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CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

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FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Parts 1605, 1630, 1631, and 1650

Thrift Savings Plan Regulations

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final Rule.

SUMMARY: The Federal Retirement Thrift Investment Board (Board) is amending its regulations to correct its address. The Board relocated from 1717 H Street, NW., Washington, DC. to 805 Fifteenth Street, NW., Washington, DC 20005, effective January 25, 1988. This address also replaces the previous mailing address of Benjamin Franklin Station, P.O. Box 511, Washington, DC 20044.

DATE: This amendment is effective August 19, 1988.

FOR FURTHER INFORMATION CONTACT: John J. O'Meara, (202) 523–6367.

SUPPLEMENTARY INFORMATION:

Waiver of Notice of Proposed Rulemaking and 30-Day Delay of Effective Date

Under 5 U.S.C. 553 (b)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days.

List of Subjects

5 CFR Part 1605

Administrative practice and procedures, Employee benefit plans, Government employees, Pensions, Retirement.

5 CFR Part 1630

Administrative practice and procedures, Privacy, Records.

5 CFR Part 1631

Administrative practice and procedures, Freedom of Information, and Records.

5 CFR Part 1650

Employee benefit plans, Government employees, Retirement, and Pensions.

Chapter VI of Title 5 of the Code of Federal Regulations is hereby amended as follows:

PART 1605—CORRECTION OF ADMINISTRATIVE ERRORS

1. The authority citation for Part 1605 continues to read as follows:

Authority: 5 U.S.C. 8351 and 8474.

2. Section 1605.8 is amended by revising paragraph (b)(2) to read as follows:

§ 1605.8 Claim procedure; agency or Board initiative; time limitation.

* * * * *

(b) * * *

(2) Within 30 days after the receipt of the Recordkeeper's decision denying a claim, an employee may appeal the decision. The appeal shall be in writing and addessed to the Executive Director, Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC 20005, and may contain any documents or comments the employee deems relevant to the claim.

* * * * *

PART 1630—PRIVACY ACT REGULATIONS

1. The authority citation for Part 1630 continues to read as follows:

Authority: 5 U.S.C. 552(a).

2. Sections 1630.4, 1630.12, 1630.14 are amended by revising paragraph (a);

3. Section 1630.17 is amended by revising paragraph (c) to read as follows:

§ 1630.4 Determining if an individual is the subject of a record.

(a) Individuals desiring to know if a specific system of records maintained by the Board contains a record pertaining to them should address inquiries to the Privacy Act Officer, Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC 20005. With respect to Thrift Savings Plan records, the employee's first inquiry should be made to his or her servicing payroll office.

* * * * *

§ 1630.12 Requirements for requests to amend records.

(a) Individuals who desire to correct or amend a record pertaining to them should submit a written request to the Privacy Act Officer, Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC 20005. The words "PRIVACY ACT—REQUEST TO AMEND RECORD" should be written on the letter and the envelope.

* * * * *

§ 1630.14 Procedures for review of determination to deny access to or amendment of records.

(a) Individuals who disagree with the refusal of the Board to grant them access to or to amend a record about them should submit a written request for review to the Privacy Act Officer, Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC 20005. The words "PRIVACY ACT—APPEAL" should be written on the letter and the envelope. Individuals desiring assistance preparing their appeal should contact the Privacy Act Officer.

* * * * *

§ 1630.17 Fees.

* * * * *

(c) Fees shall be paid in full prior to issuance of requested copies. Payment shall be by personal check or money order payable to Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC 20005.

* * * * *

PART 1631—AVAILABILITY OF RECORDS

1. The authority citation for Part 1631 continues to read as follows:

Authority: 5 U.S.C. 552, as amended by Pub. L. 93–502 and Pub. L. 99–570.

2. Section 1631.3 is amended by revising paragraph (b); and §§ 1631.4, 1631.6 and 1631.10 are amended by revising paragraph (a), to read as follows:

§ 1631.3 Organization and functions.

* * * * *

(b) The Board has no field organization, however, it provides for its

record keeping responsibility by contract and the contractor may be located outside of the Washington, DC area. Thrift Savings Plan records maintained for the Board by its contractor are Board records subject to these regulations. Offices are presently located at 805 Fifteenth Street, NW., Washington, DC 20005. The mailing address is the same. Regular office hours are from 9:00 am. to 5:30 am., Monday through Friday.

§ 1631.4 Public reference facilities and current index.

(a) The office maintains a public reading area located at 805 Fifteenth Street, NW., Washington, DC, and makes available for public inspection and copying a copy of all material required by 5 U.S.C. 552(a)(2), including all documents published by the Board in the **Federal Register** and currently in effect.

* * * * *

§ 1631.6 How to request records—form and content.

(a) A request made under the FOIA must be submitted in writing, addressed to: FOIA Officer, Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC 20005. The words "FOIA Request" should be clearly marked on both the letter and the envelope.

* * * * *

§ 1631.10 Appeals to the General Counsel from initial denials

(a) When the FOIA Officer or his or her designee has denied a request for records in whole or in part, the person making the request may, within 30 calendar days of its receipt, appeal the denial to the General Counsel. The appeal must be in writing, addressed to the General Counsel, Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC 20005 and clearly labled as "Freedom of Information Act Appeal".

* * * * *

PART 1650—METHODS OF WITHDRAWING FUNDS FROM THRIFT SAVINGS PLANS

Part 1650 of Title 5 of the Code of Federal Regulations is hereby amended as follows:

1. The authority citation for Part 1650 continues to read as follows:

Authority: 5 U.S.C. 8351, 8434(a)(2)(E), 8434(b), 8435, 8436(b), 8467, 8474(b)(5), and 8474(c)(1).

2. Section 1650.26 is amended by revising paragraph (c); and § 1650.27 is amended by revising paragraph (e) to read as follows:

§ 1650.26 Alimony and/or child support court orders.

* * * * *

(c) Service of legal process brought for the enforcement of a participant's obligation to provide child support or make alimony payments shall be accomplished by certified or registered mail, return receipt requested, or by personal service upon the General Counsel or any Assistant General Counsel of the Board. The address for mail delivery is: Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC 20005. The address for personal service and hand delivery is: Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC 20005. The telephone number is (202) 523–5066. The legal process shall be accompanied by the name, address, social security number, and employing agency of the participant involved. Receipt by an employing agency, the TSP Service Office, or any other office of the government shall not constitute receipt by the Plan.

* * * * *

§ 1650.27 Retirement benefits court orders.

* * * * *

(e) A retirement benefits court order must be received by the Federal Retirement Thrift Investment Board with accompanying information required by § 1650.28, in order to be honored. Delivery may be by ordinary, registered, certified, or overnight mail or by hand. The address for mail delivery is: Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC 20005. The address for hand delivery is: Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC 20005. Receipt by an employing agency, the TSP Service Office, or any other office of the government shall not constitute receipt by the Plan. Payments made or annuities purchased by the Plan before receipt of a retirement benefits court order will not be affected by or be subject to said court order.

Francis X. Cavanaugh,

Executive Director.

[FR Doc. 88–18786 Filed 8–18–88; 8:45 am]

BILLING CODE 6760–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1d

Rural Labor; Immigration Reform and Control Act of 1986

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends 7 CFR Part 1d, which defines fruits, vegetables, and other perishable commodities as prescribed by section 302(a) of the Immigration Reform and Control Act of 1986, Pub. L. No. 99–603, 100 Stat. 3359 (hereinafter referred to as "the Act"). This final rule redefines the term "vegetables" promulgated at 7 CFR 1d.10, and redetermines whether the commodity sugar cane falls within the definition of the term "vegetables" and whether the commodity sugar cane meets the definition of "other perishable commodities" promulgated at 7 CFR 1d.7, in light of the decision and remand of these issues to the Secretary of Agriculture from the United States District Court for the District of Columbia in *Northwest Forest Workers Association, et al. v. Richard E. Lyng, et al.*, Civil Action No. 87–1487 (D.D.C. April 25, 1988). This rule will assist the Immigration and Naturalization Service (INS) in determining the special agricultural workers to be admitted into the United States for temporary residence.

EFFECTIVE DATE: August 19, 1988.

FOR FURTHER INFORMATION CONTACT: Al French, Special Assistant for Agricultural Labor to the Assistant Secretary for Economics, Room 227–E, Administration Building, United States Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250; telephone (202) 447–4737.

SUPPLEMENTARY INFORMATION:

Background

Section 302(a) of the Act states that "seasonal agricultural services" means "the performance of field work relating to planting, growing and harvesting of fruits and vegetables of every kind and other perishable commodities, as defined in regulations by the Secretary of Agriculture." 8 U.S.C. 1160(h). This subsection requires the Secretary of Agriculture to publish regulations defining the fruits, the vegetables, and the other perishable commodities in which the field work related to planting, cultural practices, cultivating, growing and harvesting will be considered

"seasonal agricultural services" for purposes of the Act.

On June 1, 1987, the United States Department of Agriculture (USDA) published its final rule defining the terms "fruits," "vegetables," and "other perishable commodities," as well as several other terms that were necessary to an understanding of the definition of "fruits," "vegetables," and "other perishable commodities."

In the final rule, USDA defined the term "fruits" as "the human edible parts of plants which consist of the mature ovaries and fused other parts or structures, which develop from flowers or inflorescence." 7 CFR 1d.5. The term "vegetables" was defined as "the human edible leaves, stems, roots, or tubers of herbaceous plants." 7 CFR 1d.10. The term "other perishable commodities" was defined as "those commodities which do not meet the definition of fruits or vegetables, that are produced as a result of seasonal field work, and have critical and unpredictable labor demands." 7 CFR 1d.7. "Critical and unpredictable labor demands" was defined to mean "that the period during which field work is to be initiated cannot be predicted with any certainty 60 days in advance of need." 7 CFR 1d.3. USDA explained that "critical and unpredictable labor demands" was defined to make it clear that the use of alien workers is predicated upon circumstances which create the critical, yet unpredictable demand for a labor force on short notice. 52 FR 13247 (April 22, 1987). An exclusive list of those commodities that were determined to be subject to critical and unpredictable labor demands was provided within the definition of "other perishable commodities," as well as a list of examples of commodities that were determined to be not subject to critical and unpredictable labor demands. 7 CFR 1d.7. Sugar cane was listed as an example of a commodity that was not a fruit or vegetable and was determined to be not subject to critical and unpredictable labor demands. *Id.*

On July 11, 1988, at 53 FR 26076–81, USDA requested public comment on a proposed rule that redefined the term "vegetables" and reexamined whether the commodity sugar cane meets the definition of "vegetables" or the definition of "other perishable commodities," in light of the remand of those issues to the Secretary of Agriculture from the United States District Court for the District of Columbia in *Northwest Forest Workers Association, et al. v. Richard E. Lyng, et al.*, Civil Action No. 87–1487 (D.D.C. April 25, 1988) (hereinafter "*NWFWA v. Lyng*"). The comment period closed July 26, 1988. USDA received 13 comments on the proposed rule during the comment period. The comments received are discussed below.

Comments

Vegetables

USDA proposed to define "vegetables" for purposes of the Act as "the human edible herbaceous leaves, stems, roots, or tubers of plants, which are eaten, either cooked or raw, chiefly as the principal part of a meal, rather than as a dessert." 53 FR 26081 (July 11, 1988).

One commenter, while supporting the proposed definition of "vegetables" as the correct scientific definition of the term, suggested that USDA should also define the term "fruits" in horticultural terms. This commenter asserted that "fruits" and "vegetables" should be defined according to common usage on the basis of the principle of statutory construction that the common definition of a statutory term is to be presumed. Further, this commenter stated that a " 'common' or horticultural definition of *both* fruits and vegetables" would be closer to congressional intent. In addition, this commenter argued that the rationale given by USDA to retain a botanical definition of the term "fruits," *i.e.*, "in order to be more precise in distinguishing fruits from vegetables," 53 FR 26079 (July 11, 1988), is inadequate in that the crucial issue is to distinguish between activities that are within or without of the scope of "seasonal agricultural services," rather than distinguishing between fruits and vegetables. Another commenter argued the same principle of statutory construction as the previous commenter, *i.e.*, that the common meaning of a statutory term is to be presumed, but in contrast came to an opposite conclusion that instead of a horticultural definition, a botanical definition of the term "vegetables" should be used. This commenter asserted that the "common" meaning of the term "vegetables" is generally, "any plant."

One commenter argued that the original botanical definition of "vegetables" promulgated by USDA should be used, but without the "herbaceous" limitation. While the previous commenter asserted that the definition should be "any plant," this commenter asserted that the accepted botanical definition of "vegetables," is "any edible part of a plant that is not derived as a product of sexual reproduction, *i.e.*, not a fruit." *Id.* USDA notes that the phrase "a product of sexual reproduction" is not an accepted botanical definition of the term "fruits."

One commenter discussed the horticultural definition of "vegetables," asserting that it is vague and imprecise and argued that the horticultural classification of plants will vary according to where they are grown, how cultivated, and the use to which they are put. This commenter stated that it is contrary to the nature of horticultural classifications to establish rigid boundaries.

One commenter argued that horticulture was inappropriate as a source of the definition of "vegetables" because horticulture is not a pure science, and is generally restricted to those crops in which plants are grown as "individuals," *i.e.*, "garden crops," as opposed to field crops. Thus, this commenter argues, USDA implicitly has incorporated into the definition of "vegetables" limitations relating to the intensity of labor used in the production of a crop. Based on this characterization of horticulture, this commenter states that "[b]oth the legislative history and the plain language of the statutory provisions for the Special Agricultural Worker (SAW) program make clear that Congress intended that program to apply to all agricultural crops, not just select garden crops."

Several commenters argued that USDA should not mix a botanical definition of the term "fruits" with a horticultural definition of the term "vegetables." One commenter asserted that USDA failed to explain why Congress would have intended USDA to adopt two completely different conceptual approaches to defining "fruits and vegetables of every kind."

Noting that there is much overlap between the botanical definition of "fruits" and the horticultural definition of "vegetables," one commenter argued that the USDA proposed rule assumes that Congress intended to repeat itself in large measure in the phrase "fruits and vegetables of every kind." This commenter asserts that such a result is contrary to traditional principles of statutory construction. Next, this commenter asserts that the use of botanical terms to describe the plant parts that are within the scope of the term "vegetables" so as to exclude fruits is unsupported because those terms have no meaning and basis in established horticultural definitions. Finally, this commenter states that these limitations, *i.e.*, the use of botanical terms to describe the plant parts, would be unnecessary if USDA adopted a consistent approach, either botanical or horticultural.

Several commenters supported USDA's proposed definition of the term "vegetables." One commenter, a professor of soil science in the agronomy department of a state university, stated that the horticultural definition of the term "vegetables" is appropriate because the term "is of horticultural origin." Another commenter, an associate professor and certified professional agronomist and soil scientist at a state university institute of food and agricultural sciences, stated that "the botanical definition of 'fruits' and the horticultural definition of 'vegetables' recommended for use in the rule are those which correctly describe the agricultural products in question." A third commenter, the director of research and soil scientist-agronomist for the largest sugar cane producer in the United States, stated that "[t]here is no botanical definition of the term 'vegetable' and, therefore, it is reasonable to use a horticultural definition."

As the court in *NWFWA v. Lyng* noted, the Act gives the Secretary broad discretion in defining "fruits" and "vegetables." *NWFWA v. Lyng*, C.A. No. 87–1487, slip op. at 18 (D.D.C. April 25, 1988). The court found that it was reasonable to define fruits and vegetables "in scientific terms," noting that "Congress never indicated that an everyday definition of fruits and vegetables was to be used over a scientific definition," and that the plaintiffs failed "to demonstrate that a 'common' definition exists." *NWFWA v. Lyng*, C.A. No. 87–1487, slip op. at 18–19 (D.D.C. April 25, 1988). As the comments discussed above demonstrate, there is no "common" definition of the term "vegetables." The scientific definition of "vegetables" incorporated in this regulation is not a "common usage" definition; rather, it is a scientific definition.

In determining the definitions of both "fruits" and "vegetables," USDA took the same conceptual approach. Both definitions are based on the scientific literature. Thus, the distinction made by some commenters that USDA has applied two completely different conceptual approaches or that the definitions are incompatible is meritless.

Because the term "fruit" is recognized in virtually all of the scientific sources reviewed by USDA as generally the mature, sexual reproductive organ of a seed plant, 53 FR 26078 (July 11, 1988), it is appropriate to continue to define "fruits" as "the human edible parts of plants which consist of the mature ovaries and fused other parts of structures, which develop from flowers or inflorescence." 7 CFR ld.5. A review of the horticultural sources reveals that this botanical definition is recognized also in the field of horticulture as the appropriate and accepted definition of "fruits." However, a review of the scientific literature reveals that the term "vegetables" is a horticultural term. Therefore, it is appropriate to define "vegetables" on the basis of a consensus horticultural definition, with reasonable limiting factors based on the scientific literature, congressional intent, and common sense.

In response to the comment that asserted that horticulture is limited to "garden crops" and, thus, inappropriate for the source of the definition of "vegetables," USDA agrees that Congress did not intend the SAW program to be limited to "garden crops." It is clear from the legislative history and the plain language of the statute that Congress did *not* intend the SAW program to apply to *all* agricultural crops. However, the science of horticulture is not limited to "garden crops," and is in fact a science. Whatever the proper characterization of horticulture, it is clear from the scientific sources that the term "vegetables" is a horticultural term and, therefore, it is appropriate to look to horticulture for the proper and accepted scientific definition of that term.

In response to the comment that asserted that horticulture is inappropriate because the classification of a crop as a "vegetable" will vary according to where it is grown, how it is cultivated, and how it is used, USDA believes that a horticultural definition is appropriate because "vegetables" is a horticultural term. The definition of "vegetables" adopted by USDA correctly describes what is a "vegetable" as that term is recognized generally in the scientific literature. The Act relates to "seasonal agricultural services" performed by aliens in the United States during the 12-month period ending May 1, 1986. 8 U.S.C. 1160(a). The fact that a plant may be classified as a "vegetable" some time in the future is academic and irrelevant. The classification of a crop as a "vegetable" will not vary according to where it is grown; it will depend on whether it is "the human edible herbaceous leaves, stems, roots, or tubers of plants, which are eaten, either cooked or raw, chiefly as the principal part of a meal, rather than as a dessert. The classification of a plant as a "vegetable" will not vary according to how the crop is cultivated. However, for a SAW applicant to qualify under the Act, that applicant must have performed "field work" as defined in the regulations. The classification of a crop as a "vegetable" will depend on how that crop is used; it must be "eaten, either cooked or raw, chiefly as the principal part of a meal, rather than as a dessert." Because the classification of crops must be made on a commodity-by-commodity basis, the classification of a crop based on its use will not vary generally. If a crop produces "human edible herbaceous leaves, stems, roots, or tubers . . . which are eaten, either cooked or raw, chiefly as the principal part of a meal, rather than as a dessert," then that crop meets the definition of "vegetables" and the fact that the plant may be put to other uses will not disqualify the crop. On the national scope, any significant change in use or the introduction of a new plant crop, to the extent that it results in the reclassification of a crop or the addition of a new vegetable, likely will have no bearing on the SAW program because the relevant timeframe for SAW applicants is the 12-month period ending May 1, 1986, and such a change in use or introduction of a new crop on a national scope is unlikely to occur during the relevant period for replenishment special agricultural workers (beginning with fiscal year 1990 and ending with fiscal year 1993). 8 U.S.C. 1161.

In response to the comment that argued that the use of a botanical definition of "fruits" and a horticultural defintion of "vegetables" results in considerable overlap and, thus, assumes that Congress meant to repeat itself in large measure with the phrase "fruits and vegetables of every kind", USDA believes that this argument is meritless. The only generally accepted description of "vegetables" contained in the botanical sources is generally "any plant," *i.e.*, used as an adjective to describe the vegetable kingdom. The adoption of such a description as the definition of "vegetables" would result in a complete overlap between "fruits" and "vegetables." This overlap could be remedied simply by stating that any plant part which is not a fruit is a vegetable. However, this would be overly broad and inconsistent with the task given by Congress to the Secretary to define these terms. The "human edible" limitation would have to be applied, as well as other reasonable limiting factors. In any event, under any approach, there would be considerable overlap between the definitions of "fruits" and "vegetables," and various limiting factors would have to be applied. Thus, it was reasonable for USDA to look to the horticultural

definition of "vegetables" as the basis for the definition of "vegetables" because the term is a horticultural term. The description of "vegetables" as "any plant" was rejected by USDA as overbroad because it refers to the vegetable kingdom, as opposed to animal or mineral. Clearly, Congress did not intend to include all plants with the phrase "fruits and vegetables of every kind and other perishable commodities." Congress could have said simply, "all plants."

One commendter argued that the statutory phrase "fruits and vegetables of every kind," evinces a congressional intent that the definition of "vegetables" should be construed liberally, and, thus, does not allow for any of the limitations incorporated in the USDA proposed definition.

Two commenters argued that the definitions of "fruits" and "vegetables" should not be modified by the "human edible" limitation. One of these commenters cited the case of *National Cotton Council of America, et al. v. Richard E. Lyng, et al.*, Civil Action No. CA–5–87–0200 (N.D. Tex. February 8, 1988) (hereinafter *"National Cotton Council of America v. Lyng"*). This commenter argued that, either the "human edible" limitation should be eliminated or clarified to indicate that a crop is "human edible" if it is capable of being eaten by humans either before or after processing, even if its primary or sole use is for livestock feed or other agricultural uses, and not for human consumption. The decision in *National Cotton Council of America v. Lyng* is limted to the specific issue in that case, *i.e.*, whether cotton meets the definition of "fruits." Thus, USDA believes that the decision in *National Cotton Council of America v. Lyng* has no precedential value as to other commodities.

Another commenter, on the other hand, stated that USDA "is indubitably correct in its finding that 'human edible' is a necessary limitation to any of the definitions of fruit or vegetable under discussion."

The court in *NWFWA v. Lyng* found that the limiting factor of "human edible" was "explained adequately and extensively" in the notice of proposed rulemaking. *NWFWA v. Lyng*, C.A. No. 87–1487, slip op. at 16 & n.8. Thus, USDA has determined that the limiting factor of "human edible" is reasonable and necessary to the proper definition of "vegetables."

One commenter, while asserting that USDA should define "vegetables" as any edible part of a plant that is not a fruit, *i.e.*, without modfying "vegetables" by the "herbaceous" limiting factor, argued that the proper definition of a non-herbaceous or woody stem is secondary growth through a vascular cambium, and that all other plants are herbaceous. This commenter asserted that there are exceptions to this rule, but that no scientists have included sugarcane within the woody category. On the other hand, two scientists commented that the "herbaceous" limitation was reasonable because woody plant parts are indigestible by humans. Also, as one of these scientists noted, the "herbaceous" limitation is a reasonable limitation because many of the published scientific definitions of the term "vegetables" include the "herbaceous" limitation.

An examination of the scientific literature reveals that, while some scientific sources define "herbaceous" as a seed plant which develops little or no secondary woody tissue, the term "herbaceous" is defined in most scientific sources as generally a seed plant that does not develop woody tissues. Thus, USDA has determined that "herbaceous" for purposes of the definition of "vegetables" should be defined as non-woody because woody plant parts are indigestible by humans. In addition, USDA has determined that the term "herbaceous" should be applied to the specific plant part that constitutes the commodity in order to include as "vegetables" non-woody parts of woody plants that are eaten, either cooked or raw, chiefly as the principal part of a meal, rather than as a dessert.

One commenter stated that the purpose of the "principal part of a meal" clause is to include as vegetables non-sweet fruits, *e.g.*, corn, tomatoes, and cucumbers, which are eaten chiefly as the principal part of a meal. On the basis of this assertion, this commenter concludes that the "principal part of a meal" clause is superfluous because USDA has excluded fruits from the definition of "vegetables" by describing the included plant parts in botanical terms so as to exclude fruits. In addition, this commenter noted that many of the scientific sources refer to a "vegetable" as a plant part which is eaten "with" or "during" the principal part of a meal, referring to time only, while the proposed rule states that a vegetable is a plant part which is eaten "chiefly *as* the principal part of a meal, rather than as a dessert," which requires more than merely a concurrence in time. Because this commenter believes that the "principal part of a meal" clause is superfluous, this commenter concludes that there is no basis for the phrase "chiefly as the principal part of a meal, rather than as a dessert."

USDA has determined that the "principal part of a meal" clause not only delineates the time at which vegetables are eaten, it also establishes that a vegetable is a plant part that is a principal component in a main dish or side dish. It is clear from the context of the discussions of the horticultural definition of the term "vegetables" in the scientific sources that "vegetables" does not include spices, herbs, flavorings, sweeteners, condiments, medicines, or plant parts which may be eaten by only a few persons as a novelty. This approach is also dictated by common sense. Otherwise, anything that is derived from herbaceous plants that finds its way into the principal course of a meal or is consumed concurrently with the principal course of a meal would be considered a vegetable. Such a broad interpretation of the definition would be overinclusive and would lead to a number of anomalies that clearly would exceed congressional intent. Coffee, condiments, flavorings, honey, hops, molasses, oils, spices, sugar, syrup, teas, and medicines are all commodities that may be consumed during the main course of a meal, but are not considered to be vegetables. However, such is the result if common sense is not applied to the application of the definition of the term "vegetables." Furthermore, the "rather than as a dessert" element in that clause refers not only to time, but serves also to describe "vegetables" as non-sweet. It is arguable that the "rather than as a dessert" element may serve only to include as "vegetables" non-sweet fruits. However, this clause is contained in many of the published horticultural definitions and no purpose would be served by its elimination. Retaining the "rather than as a dessert" clause may serve also to distinguish plants that are used primarily as spices, herbs, flavorings, sweeteners, condiments, and medicines. Therefore, the "chiefly as the principal part of a meal, rather than as a dessert" clause is not superfluous.

Two commenters suggested that the USDA definition of "vegetables" is too narrow and restrictive in that it results in the exclusion of certain parts of certain plants that are commonly considered to be vegetables. These commenters suggested that rhubarb, cassava, onions, and parsley would fall outside of the scope of the definition of "vegetables" due to the requirement that the plant part be eaten, cooked or raw, chiefly as the principal part of a meal, rather than as a dessert. Rhubarb is frequently eaten as a stewed or steamed vegetable side dish chiefly as the principal part of a meal, rather than as a

dessert. The cassava is a starchy tuber which is used in the same ways that a potato is used, *e.g.*, boiled and used in soups or stews; sliced and fried like potato chips; or mashed and substituted for potato in recipes for baked goods. In addition, some varieties of sweet cassava may be eaten raw. Although rhubarb and cassava, like sweet potato and pineapple, may be used also for dessert does not negate the fact that these commodities meet the definition of "vegetables." Onions, served cooked or raw, clearly are eaten as the principal part of a meal, rather than as a dessert. The fact that onions also may be used as a spice or flavoring does not negate the fact that onions meet the definition of "vegetables." USDA agrees that parsley does not meet the definition of "vegetables." Parsley is a culinary herb which is not eaten chiefly as the principal part of a meal, rather than as a dessert. Although parsley may be used as a spice or a garnish with a dish eaten as the principal part of a meal, parsley is not itself eaten as the principal part of a meal. A spice, flavoring, or garnish is not a principal component of a main dish or side dish, and, thus, does not meet the definition of "vegetables."

Sugar Cane

Several commenters stated that sugar cane did not meet the definition of "vegetables," while several other commenters suggested that sugar cane did meet the definition.

Most of the comments focused on the stalk of the sugar cane in discussing whether or not it met the definition of "vegetables." Some commenters discussed the processed sugar derived from sugar cane as the commodity in question. One commenter stated:

> [T]he "vegetable" primarily under discussion is granulated cane sugar rather than whole pieces of the cane which are distributed in modest quantities through specialty food markets. This concept simplifies the discussion. To the extent that sugar cane may be woody and non-herbaceous, the granulated cane sugar is the extracted herbacious [sic] part of the cane.

Under the plain language of the Act, the SAW program is limited to "seasonal agricultural services," meaning "the performance of field work relating to planting, growing and harvesting of fruits and vegetables of every kind and other perishable commodities." The commodity in question, therefore, is the sugar cane, as opposed to the sugar which is produced from the cane, because only the cane is the product of field work. In addition; sugar is not a plant part; rather, it is a compound derived from plants.

Sugar may be any number of various water soluble compounds that vary widely in sweetness and comprise the oligosacchrides, including sucrose and fructose. Cane sugar is wholly or essentially sucrose. Sucrose is present in many plants, but is obtained commercially from sugar cane or sugar beet, and less extensively from sorghum, maples, and palms. Several commenters noted the importance of sugar cane as a crop and the importance of sugar as a component in the human diet. Some commenters noted that the per capita consumption of sugar in the United States is more than 100 pounds of sugar per year. None of these commenters noted what percentage of that sugar consumption is sugar produced from sugar cane and what percentage is from other sources. While USDA acknowledges the importance of sugar as a commodity and recognizes that Americans consume a significant amount of sugar in their diets, this is not determinative of whether sugar cane is a vegetable.

Some commenters argued that sugar cane is "human edible" because sugar cane may be chewed. USDA believes that the chewing of cane and the fact that sugar is human edible does not mean necessarily that sugar cane is "human edible" for purposes of the regulation.

One commenter, an associate professor and certified professional agronomist and soil scientist at a state university institute of food and agricultural sciences and one of the nation's leading experts on sugar cane, noted that the sugar cane stalk is not edible. This expert noted that selected soft varieties of sugar cane may be grown in gardens as "chewing" cane, but that this production is very minimal. Another commenter, stated that "[t]he minute amount of sugarcane which is 'chewed' (not eaten) as a novelty would hardly be sufficient to classify the crop as a fruit or vegetable by any reasonable standards." A third commenter, the vice president and director of research for the nation's largest sugar cane producer, stated that, while some people may suggest that sugar cane is chewed by humans, in no case is sugar cane actually eaten because the harvested part of the cane, the mature stalk, is highly fibrous and not digestible by humans.

Several commenters stated that sugar cane was herbaceous. One commenter argued that the only accepted scientific definition of "herbaceous" is secondary growth by a vascular cambium, and since grasses do not produce secondary growth through a cambium layer, sugar cane is herbaceous. This comment ignores the fact that "herbaceous" is defined generally in most of the scientific literature as "non-woody." Thus, the issue is whether sugar cane is woody.

One commenter compared sugar cane to an artichoke, described by this commenter as a woody or fibrous vegetable. This commenter stated that very little of the artichoke plant is edible and that part only after cooking, and that at least a comparable part of sugar cane is edible even without cooking.

The marketed portion of the artichoke is the herbaceous bud, which is actually an immature flower head, made up of numerous closely interlaid bracts or scales upon a receptacle. The edible portion of the artichoke consists of the tender bases of the bracts, the young flowers, and the receptacle or fleshy base upon which the flowers are borne. Although the bracts are fibrous, the edible portions of the artichoke are herbaceous modified leaves and stems which are eaten, cooked, chiefly as the principal part of a meal, rather than as a dessert. Thus, artichoke meets the definition of "vegetables."

Several commenters stated that sugar cane was not herbaceous. Those commenters who stated that sugar cane was not herbaceous noted that the stems of the sugar cane plant contain large amounts of lignin and other fibrous material which are very indigestible to humans, and that sugar cane is more like a woody plant than an herbaceous plant. An associate professor of sugar and energy crops at a state university agricultural research center, noted:

> A few varieties (those used for chewing) might have a fiber content low enough (5 to 8%) to be called herbaceous. Some sugarcane forms, however, are so fibrous (20%) that they are used as a substitute for wood in construction of fences, roofs, and wattles and partition walls. Even those varieties used for sugar production would seem woody if chewed.

The vice president of research of the nation's largest sugar company stated:

> Once the sugar and water has been extracted from the stalk, the biomass residue is actually burned as boiler fuel to run our mills, and in the past has been made into fiber board.

An examination of the scientific literature reveals that some scientists do describe sugar cane as "woody," and, thus, non-herbaceous. Because sugar cane, in the same manner as wood, is indigestible and not suitable as food, USDA has concluded that sugar cane does not have the essential characteristic of an herbaceous part of a plant.

Several commenters noted that sugar cane is not eaten, cooked or raw, chiefly as the principal part of a meal, rather than as a dessert. Other commenters stated that sugar cane is eaten as the principal part of a meal, rather than as a dessert. Some commenters noted that sugar is a significant component in many non-dessert foods, including soft drinks, non-carbonated beverages, confections, baked goods, processed foods, canned vegetables, breakfast products, and various other foods, or added directly to food eaten as the principal part of a meal. USDA has determined that such use is as a sweetener rather than as a main dish, side dish, or principal component in a main dish or side dish eaten chiefly as the principal part of a meal.

Several commenters noted that sugar cane may be chewed or sucked on and could be found in some produce markets. These commenters asserted that the chewing of sugar cane indicated that sugar cane is edible and is in fact eaten. Other commenters stated that the chewing of cane is not the "eating" of sugar cane, that sugar cane is indigestible and that the eating of sugar cane could be deleterious to human health. Eating is the process of taking into the mouth, chewing, and swallowing. While it is true that people swallow the juice from the cane, this is not the swallowing of the cane. Sugar cane marketed by a produce distributor in California and available in some East Coast supermarkets labels its packages of sugar cane with the cautionary notices: "Do not swallow;" "Not recommended for children under 5 or persons with braces." Recipes printed on the packaging suggest the use of sugar cane as a garnish only. While the juice of the sugar cane is digestible, the cane itself is not digestible by humans. USDA has determined that these facts indicate that the small amount of sugar cane which is chewed fails to establish that sugar cane is eaten raw.

Some commenters stated that sugar cane is served cooked as the principal part of a meal, rather than as a desert. One commenter included the menu of a Washington, DC, Vietnamese restaurant which serves "Blended Jumbo Shrimp wrapped around a core of fresh sugar cane (season) and grilled—Chao Tom." Upon investigation, USDA determined that such sugar cane is not eaten, but serves as a sweetener, not as a vegetable. A review of various ethnic cookbooks demonstrated that sugar cane is used as a sweetener in these dishes and may be disposed of prior to serving, after the sugar has imparted its sweetness in the dish, or the sugar cane may remain in the dish when served, but in no event is the sugar cane eaten. The sugar cane used in these dishes may be chewed on, but the cane is not swallowed.

Thus, USDA has determined that sugar cane is not a herbaceous stem which is eaten, either cooked or raw, chiefly as the principal part of a meal, rather than as a dessert. Therefore, sugar cane is not a vegetable.

In *NWFWA v. Lyng*, the court upheld the USDA definition of "other perishable commodities" as "those commodities which do not meet the definition of fruits or vegetables, that are produced as a result of seasonal field work, and have critical and unpredictable labor demands." *NWFWA v. Lyng*, C.A. No. 87–1487, slip op. at 8–14 (D.D.C. April 25, 1988). The court agreed also that unpredictable labor demands meant that the period during which field work was to be initiated cannot be predicted with any certainty within 60 days in advance of need. *Id.* USDA explained that "critical and unpredictable labor demands" was defined to make it clear that the use of alien workers is predicated upon circumstances which create the critical, yet unpredictable demand for a labor force on short notice. 52 FR 13247 (April 22, 1987).

USDA determined that sugar cane did not meet the definition of "other perishable commodities" because the production of sugar cane does not involve critical and unpredictable labor demands. Labor demands with respect to the production of sugar cane are reasonably predictable more than 60 days in advance, and extreme conditions, such as severe freezes or storms, do not create a critical need for additional labor significantly above the level that is predicted months in advance.

One commenter, a professor of soil science in the agronomy department of a state university, noted that sugar cane is not a perishable commodity since it is very robust and can withstand extremes in weather such as hot or cold, wet or dry conditions with a minimum of damage. Such conditions are generally not critical for the sugar industry except under extreme circumstances in which case an additional labor force would be of little use. Normal drought conditions which would decimate vegetables such as lettuce or cabbage may reduce the growth rate of sugar cane, but would not kill it, and, in fact, would increase the sucrose content of the cane. When water was again available, the sugar cane would resume growth. Similarly, a freeze which would kill most vegetable crops and damage fruit resulting in their complete loss of marketability, may kill the leaves of sugar cane, and if the freeze was very severe, may kill the stalks. However, this would not necessarily mean that the crop would be lost since the sucrose in the stalks does not deteriorate under cool conditions and may remain harvestable for several weeks. Therefore, the sugar growers can continue harvesting the crop at the normal rate for several weeks after a freeze and may not suffer a major loss of yield. Thus, while there is a real emergency need for labor to harvest the commodity before and after a freeze with respect to fruit and vegetable crops, with respect to sugar cane, harvesting continues at the normal rate since the sugar mills have limited capacity to process cut cane. Thus, because sugar cane does not experience the critical need for a significant number of laborers in addition to anticipated levels as a result of unforeseen events, it does not experience critical and unpredictable labor demands.

Sugar cane maturity is a matter of period of growth and weather. When the cane has nearly completed its growth in the fall, the normal low temperatures that occur serve to increase the sucrose content by reducing growth and increasing sucrose storage. However, the sucrose content of the major part of the stalk has been determined by the growing conditions earlier in the crop. Therefore, fields that have attained sufficient growth may be harvested at any time in the cool months of the year without a major loss of sucrose. Other things being equal, fields that are subject to low temperatures for a longer period generally have a higher sucrose content than those that have not experienced low temperatures. Generally, fields are scheduled for harvest from the beginning of the growing cycle depending on such factors as planting, ratooning schedules, and mill capacity. This results in labor scheduling for all components of sugar cane production at the beginning of the crop which is generally maintained until the end of the harvest.

There is a clear expression of congressional intent that the SAW program was to include as "other perishable commodities" crops which "must be harvested by hand, thereby requiring a large number of workers on short notice," and not "where mechanical harvesters can be used . . ." 131 Cong. Rec. S11322 (September 12, 1985) (statement of Sen. Wilson); *see also* 131 Cong. Rec. S11325 (September 12, 1985) (statement of Sen. Hatch); 131 Cong. Rec. S11334 (September 12, 1985)

(statement of Sen. Gorton); 131 Cong. Rec. S11344 (September 12, 1985) (statement of Sen. Evans); 131 Cong. Rec. S11537 (September 16, 1985) (statement of Sen. Gorton); 131 Cong. Rec. S11606 (September 17, 1985) (statement of Sen. Wilson); 131 Cong. Rec. S11607 (September 17, 1985) (statement of Sen. Gorton); H.R. Rep. No. 99–682, 99th Cong., 2d Sess., Part 1, July 16, 1986, at p. 85. Mechanization affects labor demands in that the more mechanized the production of a particular crop is, the less critical and the more predictable the labor demands are. Highly mechanized crops do not generally experience a critical need for a labor force on short notice.

The sugar industry is highly mechanized except for some planting in some sugar producing areas and some harvesting in Florida. Machine planting is utilized in Louisiana and Texas while manual labor is preferred in Florida. Fields are replanted usually every two to six years, although sugar cane may be rattooned for decades. Mechanical harvesting is utilized in all states. In Louisiana and Texas, virtually all of the sugar cane is mechanically harvested. In Florida, on the other hand, the majority of the sugar cane is cut by manual labor. Since the planting, cultivation, cultural practices, growing and harvesting of sugar cane is mechanized for the most part, this represents further evidence that sugar cane does not meet the criteria of "other perishable commodities."

Sugar cane is harvested normally from November through March in Florida, October through March in Texas, from mid October through December in Louisiana, and almost year-round in Hawaii. Sugar yields are generally highest after January 1, but some fields must be harvested before they have reached maximum yield to allow time for processing the whole crop. Labor requirements are anticipated months or even years in advance, and can be forecast with reasonable certainty since the harvest period is generally three to six months and the commencement date is not critical. Sugar cane can stand unharvested in the field for months. In some cases, sugar cane fields have been carried over to be harvested during the following season.

Various commenters offered examples of circumstances which they believe represent critical and unpredictable labor demands. These include greater difficulty in harvesting tangled and recumbent cane following a storm; that sugar cane may be damaged by fire or freeze; freeze damaged cane requires more topping to remove trash; more freeze damaged cane must be cut to adequately supply the mill than would normally be necessary; freeze damaged cane may require substitution of manual labor for machine harvesters; the harvest may be advanced or delayed due to early maturity or by late ripening due to weather or other factors; that sugar cane should be harvested at optimum maturity; that daily temperatures during the growing season is one of the most important factors influencing the optimum harvesting of cane; that estimates of individual worker production may be inaccurate and if under-estimated could lead to an inadequate supply of labor; that adverse weather or inability to cultivate following fertilizer application could affect crop growth and maturity or lead to unanticipated weed growth; that planting may be delayed if the weather is too wet or dry; the harvest may be delayed as a result of weather related delays at planting time; processors may insist that planting be complete prior to harvest; planting may be delayed due to unsatisfactory growth of seed cane; a delay in planting may compress the planting period resulting in an increased demand for labor; the timing of planting and harvesting may be affected by the growth and maturity of the cane crop which in turn could be affected by the cultivation, pesticide applications, and fertilization during the growing season; that the timing of some cultivation, and of some fertilizer and pesticide applications, may be unpredictable 60 days in advance. USDA recognizes that all of these examples are factors that affect sugar cane production and that most of them are typical of the problems that confront farmers generally. Nevertheless, a review of the labor demands of sugar cane production indicates that the labor requirements of sugar cane are reasonably predictable more than 60 days in advance of need, and that none of the factors cited above creates a need for additional labor significantly above the levels that had been predicted months in advance.

Some commenters asserted that USDA was reaching beyond the intent of Congress in an effort to exclude H–2 sugar cane workers from the SAW program. In all issues regarding this rule, USDA has been guided by the statute and the legislative history of the Act. USDA defined "critical and unpredictable labor demands" in terms of the 60-day bright line rule based on the legislative history of the IRCA which indicated that the SAW program was intended to be a supplement to the H–2A program. The 60-day bright line cut off represents the advance time that the Department of Labor requires normally of growers who petition for temporary agricultural workers under the H–2A program. The court in *NWFWA v. Lyng* recognized that this interface between the SAW program and the H–2A program was supported by the legislative history. *NWFWA v. Lyng*, C.A. No. 87–487, slip op. at 12–13 (D.D.C. April 25, 1988). Thus, the court found the 60-day bright line rule was reasonable. *Id.* at 13. Sugar cane producers have successfully utilized the H–2 program for decades under certification procedures which required employers to forecast their labor needs 80 days in advance. USDA determined that the use of the H–2 program by sugar cane producers demonstrated that sugar cane did not experience "critical and unpredictable labor demands." The ability of sugar cane producers to forecast their labor requirements 60 days in advance under the current H–2A program demonstrates that sugar cane is not within the scope of "other perishable commodities."

USDA notes that Congress did not intend the SAW program to be remedial. The legislative history of the Act contains expressions of explicit congressional intent that the SAW program was not meant to confer legal rights to any persons or groups. *See* 132 Cong. Rec. H9870 (October 10, 1986) (Colloquy between Rep. Weaver and Rep. Schumer) (confirming that the SAW program is not remedial in nature). Thus, the SAW program was not intended by Congress to provide resident alien status to all alien agricultural workers.

Some commenters claimed an inconsistency by USDA in including tobacco as an "other perishable commodity" while excluding sugar cane since both commodities have used the H–2 program. USDA has determined that there is a substantial difference in the labor requirements between these two commodities. Tobacco experiences critical and unpredictable labor demands while sugar cane does not. USDA's knowledge is that while nearly all sugar cane harvesters have been H–2 workers, less than five percent of the tobacco workforce has been employed through this program.

There is confusion regarding a Senate colloquy which mentioned tobacco. USDA reviewed this question consistent with the labor requirements of the commodity and the context of the statement and concluded that Congress did not intend to exclude tobacco from "other perishable commodities."

A number of commenters stated that sugar cane experiences critical and unpredictable labor demands in the event of a severe freeze: "A freeze

damages the cane stalk and requires harvesting within one to two weeks to avoid crop loss." (citing James E. Irvine, *Effects of an Early Freeze on Louisiana Sugarcane*, Agricultural Research Service, USDA, Houma, Louisiana, 1968. This study examined the effects of a record November freeze for 92 days following that freeze and found no significant change in stalk weight and a reduction in sucrose from 14.31% to 12.53%. Clearly, a freeze is not necessarily a critical condition, although it is recognized that sugar yields may be affected by warm weather following a severe freeze. Following a freeze, growers do rearrange their harvesting schedule to prioritize damaged fields on a worst first basis so as to salvage the maximum possible, but the daily tonnage to be harvested and labor required is still limited by the capacity of the mill to grind the cane. Dr. Irvine's 1968 analysis did not discuss labor requirements, but in commenting on this proposed rule Dr. Irvine wrote:

> The standing crop may be damaged by fire or freezes, and the latter is a limiting factor in sugarcane production in Louisiana. Even there, freezes are anticipated and the harvest is planned with an anticipated end of harvest before freeze losses could be serious * * *. Whether damaged by fire or freeze, *the mills are usually operating at near capacity and an extra effort to crush all damaged cane by multiplying the harvest effort is generally impractical. (emphasis added).*

Several authorities, from each of the sugar cane producing states, commented that since mills operated normally at or near capacity, they would be unable to utilize additional labor to salvage damaged cane.

Several commenters cited press reports that the Florida sugar cane industry had hired additional workers in response to past freeze damage emergencies. One commenter stated:

> That sugar mills do not normally operate at full capacity is demonstrated by the article in the *Belle Glade Herald*, Feb. 3, 1977 * * *. That article notes that following the 1977 freeze, the sugar mills were able to increase their grinding output to record levels in the periods immediately following the 1977 freeze. The increased output was the result of nearly 600 additional cane harvesters who were hired after the freeze. In 1985, the lifting of weight restrictions on trucks carrying sugar cane to the mills [by the Governor's declaration of an emergency] was expected to allow the mills to increase production by "as much as *2,000 extra tons a day.*" [*Palm Beach Post*, Jan. 23, 1985]. (emphasis added).

USDA is cognizant of news articles similar to those described above. An increase of 2,000 tons under emergency conditions would represent only a 2 to 3 percent increase above the norm for the Florida sugar cane industry. USDA concludes that the cited report indicates that the sugar mills do operate at near capacity.

The news accounts of the 1977 freeze indicated that the United States Sugar Corporation brought in 300 additional workers on an emergency basis. However, the Vice President of Research for that company maintains:

> During (the past 33 years), including the ten freezes, United States Sugar Corporation *never increased the number of sugar cane cutters over what was certified by the Department of Labor months prior to the start of the harvest.* It is also interesting to note that in the four years 1981, 1983, 1984, and 1986, in which freezes occurred, the harvest continued to scheduled completion for 40, 70, 57 and 57 days after the freeze, respectively. This is dramatic proof that sugar cane is not perishable and explains why our labor needs do not vary from what we plan prior to the crop. (emphasis added).

In an effort to determine whether sugar cane growers experience critical and unpredictable labor demands, USDA queried the Department of Labor as to whether the sugar cane industry had ever requested additional workers on an emergency basis. The response stated:

> During the seventeen years that I have been handling Florida sugar cane labor certification requests, *the industry has not asked for additional labor certification on account of freeze damage.* The only exception to this occurred in January 1981, when some of the sugar cane growers asked for supplemental workers to replace U.S. workers who did not report and for which certification had been reduced. This certification did not increase the number of workers certified above the number of workers requested earlier in the season. (emphasis added).

The H–2A program regulations provide for the replacement of attrition losses for workers who return to their native countries and it is not unusual for replenishment workers to be required. 600 of a work force of approximately 10,000 would represent an attrition rate of about 6 percent. This appears to account for the apparent disparity between the news accounts and the records of the Department of Labor. In addition, this appears to explain the inconsistency between the newspaper account of the 1977 freeze that indicated that the United States Sugar Corporation brought in 300 additional workers on an emergency basis, and the comment of the Vice President of Research of that corporation who stated that his company has never asked for additional labor certification from the Department of Labor on account of freeze damage. In fact, the very same newspaper account, quoting the vice president of another large Florida sugar cane producer, states:

> William Miller, Vice President and General Manager of the Sugar Cane Growers Cooperative of Florida, said new cane cutters arrived yesterday morning but that this was not done because of the freeze. He said *the new men were brought in to make up for attrition* over the past months of the harvest since November. *Palm Beach Post*, Feb. 1, 1977.

Thus, although growers replace normally workers lost to attrition, the growers do not generally increase the number of workers in response to a freeze over what they originally anticipated.

One commenter stated that "[t]he growers had requested and received certification for more workers than they had anticipated they would need; when the freeze hit, the growers were able to bring in additional workers without certification." USDA has concluded this is a specious argument. The Department of Labor determines the employers need and limits the number of workers to be certified. In addition, growers are required to provide housing for the number of workers certified and this would be a practical obstacle to such a scheme. Moreover, surveys conducted by the Florida Department of Labor and Employment Security indicate that following the several freezes which have occurred since 1981, employment levels of sugar cane cutters have been reduced rather then increased. In contrast, the employment of citrus workers increased as much as 30 percent during efforts to salvage damaged fruit.

Comments were received stating that following a storm or freeze, more labor is necessary to harvest the same amount of cane if it is tangled and recumbent and "[h]and labor can cut off the top part of the cane and leave it in the field. A mechanical harvester cannot do that; hand harvest labor is required. (*Clewiston (Florida) News*, Jan. 27, 1977)." The cited article makes no mention of mechanical harvesting, however, other articles in the record quote sugar industry officials following a severe freeze:

> [T]he [H–2 workers] would cut as much of the damaged cane by hand as they could because of the mechanical harvester's inability to determine the proper cropping height of the cane stalks.
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> * * * * *
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> Vaughn said that approximately 30% of the volume of sugarcane being cut presently is being cut by harvesting machines, but added that hand cutters do a better job of cutting away freeze damaged cane than the machines." *Clewiston (Florida) News*, January 6, 1982.

Hand labor is an advantage in harvesting damaged cane, according to Yancey, because the decay starts at the top of the stalk and an experienced cutter can lop off the damaged area and leave it in the field." *Clewiston News*, (no date).

These officials did not say hand harvest labor is *required*, but that hand cut cane is better or advantageous. USDA recognizes that whether normal or damaged, hand cut cane is of better quality than machine harvested cane, but USDA recognizes also that most sugar cane growers harvest mechanically both normal and damaged cane. It is evident that the advantage of manual labor is not critical because machines are used to harvest damaged cane in Louisiana and Texas, and the Florida sugar industry has not found it necessary to apply for additional H–2 certifications in response to a freeze. Mechanical harvesters do cut off the top of the cane and leave it in the fields, and they may be adjusted to remove varying amounts. However, machines do not do this as well as manual laborers. In Hawaii, Louisiana, Texas, and to some degree, Florida, storm or freeze damaged cane is harvested with mechanical harvesters, rather than by manual labor.

Several commenters stated that sugar cane must be harvested at the optimum time and noted that various factors could cause delays in the field work performed by the sugar cane industry. They argued that such delays create critical and unpredictable labor demands.

A delay of sugar cane field work activity, while it may be undesirable, is not critical *per se*. It is necessary to look beyond the fact of the delay to determine its consequences and whether it requires a labor force on short notice. Sugar cane growers have experienced delays of 60 days or more in planting and harvesting in the past without critical labor demands; the season is extended instead. For example, in Louisiana, which is considered to have the most sensitive timing of the sugar producing states with respect to planting and harvesting because of its susceptibility to freezes, growers may accommodate delays in planting by extending the planting season by 60 days or more:

> Planting season is from early August to mid-October. August and September plantings give the highest yields. *Unfavorable weather conditions often make it necessary to plant through October and sometimes through November and December.* Harvesting of sugar cane in Louisiana begins in mid-October and ends in late December. The crop is only 7 to 8 months old when harvesting begins. It increases in value, particularly on sucrose content, during October and November. However, *the grower can't wait for his crop to reach peak maturity because he would risk losing much of it due to killing freezes.* R. Malherne, R. Breaux, and R. MacMillan, Research Agronomists, and R. Jackson, Investigation Leader. *Culture of Sugarcane for Sugar Production in the Mississippi Delta, Agriculture Handbook No. 417, Agriculture Research Service, USDA, Revised 1977.* (emphasis added).

The study quoted above demonstrates also that growers in Louisiana do not generally harvest the sugar cane at peak maturity and, therefore, the timing of the harvest is not critical. In Florida, on the other hand, delays in the harvest can be accommodated by extending the harvest into the following season:

> *Harvest may be scheduled at any time over a period of several months and in fact may be delayed until the following year.* Comment of Van Waddill, Director, and Frank J. Coale, Extension Sugarcane Specialist, Everglades Research and Education Center, University of Florida, Belle Glade, Florida. (emphasis added).

As indicated by the comment of Dr. James E. Irvine, a leading expert on sugar cane, the long harvest periods for sugar cane do not create critical and unpredictable labor demands:

> Domestic labor needs may be 3 months (Louisiana), 6 months (Florida and Texas) or all year (Hawaii). The shortest harvest employs no immigrant labor since all cane is machine harvested. The longer harvest periods give ample time to remove the cane and process it. *Labor requirements are anticipated months or even years in advance* and some areas have mechanized harvest capabilities as an expensive standby measure. Comment of *James E. Irvine, Associate Professor of Sugar and Energy Crops, Texas Agricultural Research and Extension Center, Texas A&M University, Texas* (emphasis added).

Another leading expert in sugar cane states that sugar cane is not always harvested at optimum maturity, which demonstrates that delays that result in sugar cane not being harvested at optimum maturity are not critical:

> *Cane is not always harvested at optimum maturity,* although this stage can be determined easily and accurately. The processing plant involves a great investment, and the huge variable and fixed costs for such a plant can be justified only when operation can be conducted continuously for several months. In contrast, cane of a particular variety may remain at its peak of maturity only a few weeks * * * . Even with the employment of early, middle and late maturing varieties, it still may be necessary to harvest cane beyond optimum maturity. F. LeGrand, *Production of Sugar Cane, Agronomy Monograph No. 1, Institute of Food and Agricultural Sciences, University of Florida, September 1972.* (emphasis added).

Thus, USDA has determined that delays of sugar cane field work do not create critical and unpredictable labor demands.

In considering whether the sugar cane industry had critical and unpredictable labor demands, USDA looked to the past practices of the industry following delays due to increased crop size, low sugar yields, freezes, or weather. It was determined that under such circumstances, the season has been extended. The 1976/1977 season in Texas began four months late due to weather and cane was carried over to the following season. In the 1977/1978 season, Florida experienced delay due to wet weather, while the Texas industry was shut down for over two months because of rain. Some of the Texas crop was carried over to the following season. Louisiana was late completing the 1977 season. Rainy weather caused part of the 1978 crop in Hawaii to be carried over to 1979. The 1978/1979 harvest in Texas was late following freezes in December and January. The 1979/1980 harvest was shut down for three weeks due to wet weather. Florida, Louisiana, and Texas experienced drought in 1980. The completion of the 1980/1981 season in Texas was delayed over 60 days due to wet fields, and some of the crop was carried over to the 1981/1982 season. The Louisiana harvest was late finishing in the 1981 and 1982 seasons. Because of extremely high rainfall in Hawaii, cane which would normally have been processed in 1982 was carried over into 1983. A severe Texas freeze in December damaged the 1983/84 crop so badly that output fell from a potential 110,000 tons of cane sugar to about 60,000. Virtually all of the cane was harvested and processed, but after mid-January, it was processed into cane molasses. Two hurricanes in 1985 caused Louisiana cane to be down and entangled and reduced yields and sugar content ten to twenty percent. Growers increased the harvest time by cutting cane from sunup to sundown rather than three hours each morning. However, this did not create a need for additional labor. Louisiana achieved a production increase in 1986 despite above normal rainfall and the muddiest harvest period since 1972. In the 1986/1987 season, Texas was delayed over 60 days due to rain and some of the crop was carried over to the following season. Because of the unusually large crop in the 1987/1988 season, Florida started its harvest early and extended it later than usual. USDA believes the ability to extend the harvest period and otherwise cope with extreme irregularities without an

additional labor force indicates that the sugar cane industry does not experience critical and unpredictable labor demands.

Some activities, such as the application of pesticides, fertilizer and irrigation, may become critical in a relatively short period of time. However, these are not labor intensive operations which would require a labor force on short notice, but are mechanized activities performed by the normal work complement. If delayed, the farmer may utilize the same worker which he intended to emply prior to the delay.

After thorough review of labor demands with respect to sugar cane field activities from planting through harvesting, the comments received, the authoritative sources contained in the administrative record, and the record of *NWFWA v. Lyng*, USDA determined that sugar cane field work is not subject to critical and unpredictable labor demands. Thus, USDA has determined that sugar cane does not qualify for inclusion as an "other perishable commodity."

Regulatory Impact

The Assistant Secretary for Economics has reviewed this rule in accordance with Executive Order No. 12291 and has determined that it is not a major rule. Under the framework of the Act, the Immigration and Naturalization Service (INS) will use this proposed rule to assist it in determining which special agricultural workers will be admitted into the United States for temporary residence. Thus, the primary benefits of this proposed rule are internal to the operation of the United States government.

This action, in and of itself, will not have a significant effect on the economy and will not result in a major increase in costs or prices for consumers, individuals, Federal, state, or local government agencies, or geographic regions; or have a significant effect on competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

This rule redefines the term "vegetables," and reexamines whether sugar cane meets the definition of "other perishable commodities" for purposes of clarifying the term "seasonal agricultural services" as it relates to sugar cane. The rule does not contain any compliance or reporting requirements, or any timetables. The rule will assist the INS in determining the special agricultural workers to be admitted for temporary residence. Thus, the rule, in and of itself, will have no significant effect upon small entities.

Paperwork Reduction Act

This rule does not require additional procedures or paperwork not already required by law. Therefore, the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3502, *et seq.*) are inapplicable.

National Environmental Policy Act

This rule will not have an impact upon the environment.

Good Cause for Making Rule Effective Less Than 30 Days After Publication

In its June 6, 1988, order, the United States District Court for the District of Columbia ordered the Secretary to issue this final rule by August 19, 1988. *NWFWA v. Lyng*, Civil Action No. 87-1487. On the basis of this order, and in light of the November 30, 1988, deadline for SAW applications, good cause is found to make this rule effective less than 30 days after publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1d

Immigration, Rural labor.

Accordingly, 7 CFR Part 1d—Rural Labor—Immigration Reform and Control Act of 1986—Definitions is amended as follows:

PART 1d—[AMENDED]

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

Authority: 8 U.S.C. 1160.

2. Section 1d.10 is revised to read as follows:

§ 1d.10 Vegetables.

"Vegetables" means the human edible herbaceous leaves, stems, roots, or tubers of plants, which are eaten, either cooked or raw, chiefly as the principal part of a meal, rather than as a dessert.

Done at Washington, DC, this 17th day of August, 1988.

Peter C. Myers,

Acting Secretary of Agriculture.

[FR Doc. 88-18928 Filed 8-18-88; 8:45 am]

BILLING CODE 3410-01-M

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7 CFR Part 26

Determination of World Price for Certain Commodities; Upland Cotton

AGENCY: Office of the Secretary, USDA.

ACTION: Interim rule.

SUMMARY: The purpose of this interim rule is to amend the regulations found at 7 CFR Part 26 which set forth the formula which is used by the Secretary of Agriculture to determine the adjusted world price for upland cotton. These actions are initiated under the authority of section 103A(a)(5)(E) (i)-(iii) of the Agricultural Act of 1949, as amended. Implementation of the changes made by this interim rule will improve the effectiveness of the upland cotton program.

DATES: Effective August 19, 1988. Comments must be received by September 19, 1988, in order to be assured of consideration.

ADDRESS: Mail comments to Dr. Orval G. Kerchner, Acting Director, Commodity Analysis Division, USDA-ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, Leader, Fibers Group, Commodity Analysis Division, USDA-ASCS, Room 3758 South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447-7954. The Final Regulatory Impact Analysis describing the options considered in developing this interim rule and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been designated as "major." It has been determined that these provisions will result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

It has been determined that the Regulatory Flexibility Analysis completed when 7 CFR Part 26 was originally added to the Code of Federal Regulations adequately covers these amendments. Therefore, a new Regulatory Flexibility Analysis has not been prepared.

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

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

Producers are currently repaying upland cotton loans. Since the changes made by this rule will affect those producers, this rule will become effective on August 19, 1988. Comments, however, are requested and will be taken into consideration in developing the final rule.

Discussion of Changes

Statutory Background

Section 103A(a)(5)(E)(i) of the Agricultural Act of 1949, as amended (the "Act"), provides that the Secretary of Agriculture shall prescribe by regulation:

(i) a formula to define the prevailing world market price for cotton; and

(ii) a mechanism by which the Secretary shall announce periodically the prevailing world market price for cotton.

The Act also provides that the prevailing world market price for cotton shall be adjusted to United States quality and location (the "adjusted world price"). The regulations which set forth the formula used to determine the prevailing world market price for cotton, the mechanism for periodically announcing such prevailing world market price and the procedure for adjusting the prevailing world market price to United States quality and location are found at 7 CFR Part 26.

Adjusting The Northern Europe Price To Average Designated U.S. Spot Market Location

7 CFR 26.3(b)(1) currently provides that the Northern Europe price shall be adjusted to average designated U.S. spot market location by deducting the average difference in the immediately preceding 156-week period between:

(i) The average of price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted each Thursday for M 1 3/32 inch cotton C.I.F. northern Europe; and

(ii) The average price of M 1 3/32 inch (micronaire 3.5 through 4.9) cotton as quoted each Thursday in the designated U.S. spot markets.

Since the cost of transporting cotton has been increasing, the use of a 156-week period to calculate the adjustment in the Northern Europe price to average designated U.S. spot market location is not resulting in an adjustment reflective of current shipment costs. Use of a 52-week period would more accurately reflect current shipment costs while allowing for the adjustment of aberrations caused by week-to-week fluctuations in the difference between U.S. spot quotations and C.I.F. northern Europe quotations for U.S. growths. However, even with this adjustment there may be periods when the 52-week moving average does not represent current shipping costs. Therefore, implementation of a periodic review of the actual costs associated with shipping cotton to northern Europe would provide a basis for assessing the adequacy of the 52-week moving average.

Based on the results of this periodic review, the 52-week moving average could be further adjusted to more closely represent actual transportation costs. In order to implement these revisions, this interim rule amends 7 CFR 26.3(b)(1) by: (1) Changing the 156-week period to 52 weeks; and (2) adding a provision to allow a further adjustment in the adjustment of the Northern Europe price to average U.S. spot market location, if necessary, to more accurately reflect current costs associated with transporting U.S. cotton to northern Europe based upon periodic review of actual costs. In addition, a conforming change is made in 7 CFR 26.3(c) by removing "156-week" and inserting in lieu thereof "52-week".

Coarse Count Adjustment

7 CFR 26.3(e)(1) currently provides that the adjusted world price, as determined in accordance with paragraph (b) of such section, shall be subject to further adjustments as provided in this subsection with respect to any grade of upland cotton with a staple length of 1 inch or shorter or for any staple length of upland cotton with a grade which has a price support loan discount of 8.0 cents per pound or higher based upon the Schedule of Premiums and Discounts for Grade and Staple Length as announced in accordance with the upland cotton price support loan program for a crop of upland cotton. Grade and staple length must be determined by an official classification issued by USDA's Agricultural marketing Service (AMS). If no such official classification is presented, the adjustment shall not be made.

7 CFR 26.3(e)(2) currently provides that the adjustment for upland cotton provided for by paragraph (e)(1) of such section shall be determined by deducting from the adjusted world price:

(i) The difference between the northern Europe price and the average of the quotations for the corresponding Friday through Thursday for the three lowest-priced growths of the growths quoted for "coarse count" cotton C.I.F. northern Europe (hereinafter referred to as the "Northern Europe coarse count price"), minus

(ii) The difference between the applicable loan rate for a crop of upland cotton for M 1 3/32 inch (micronaire 3.5 through 4.9) cotton and the loan rate for a crop of upland cotton for SLM 1-inch (micronaire 3.5 through 4.9) cotton.

7 CFR 26.3(e)(4) currently provides that if the difference determined in accordance with paragraph (e)(2)(i) of such section is not more than 1.0 cent higher than the difference determined in accordance with paragraph (e)(2)(ii) of such section, the coarse count adjustment provided for by paragraph (e) shall not be made.

The coarse count adjustment has been applicable to any grade of upland cotton with a staple length of 1 inch or shorter. Beginning on August 1, 1988, northern Europe quotations for the Orleans/Texas growth will be based on 1 1/32 inch staple rather than 1-inch staple. After August 1, all northern Europe quotations for coarse count quality cotton will be available, basis 1 1/32 inch. Making any grade of cotton with a staple length of 1 1/32 inch or shorter eligible to receive the coarse count adjustment will maintain consistence between the quality of cotton upon which the coarse count adjustment calculation is based and the quality of cotton to which the coarse count adjustment applies.

The coarse count adjustment has been applicable to any staple length of upland cotton with a grade which has a price support loan discount of 8.0 cents per pound or higher based upon the Schedule of Premiums and Discounts for Grade and Staple Length as announced in accordance with the upland cotton price support loan program for a crop of cotton. Under the 1988-crop Schedule of Premiums and Discounts for Grade and Staple Length, a number of qualities of cotton that were eligible for the coarse count adjustment under the 1986 and 1987 Schedules of Premiums and Discounts for Grade and Staple Length was excluded. In 1987, less shorter staple, lower quality cotton was produced, resulting in higher prices for these qualities and, in turn, smaller discounts applicable for these cotton qualities under the 1988 Schedule of Premiums and Discounts for Grade and

Staple Length. Specifying the grades of cotton with a staple length of 1 1/16 inch or longer that are eligible to receive the coarse count adjustment will ensure that approximately the same qualities that were eligible under the 1986 and 1987 programs will be eligible under the 1988 program and that these same qualities will continue to be eligible under the 1989 and 1990 programs.

The coarse count adjustment provided for in 7 CFR 26.3(e)(1) has been determined by deducting from the adjusted world price the difference between the Northern Europe price and the Northern Europe coarse count price, minus the difference between the applicable loan rate for a crop of upland cotton for M 1 3/32 inch (micronaire 3.5 through 4.9) cotton and the loan rate for a crop of upland cotton for SLM 1-inch (micronaire 3.5 through 4.9) cotton. Beginning on August 1, 1988, no northern Europe quotations for 1-inch staple upland cotton will be available. Instead, all northern Europe quotations for coarse count quality cotton will be available, basis 1 3/32 inch. For consistency, the coarse count adjustment will be calculated by deducting from the adjusted world price the difference between the Northern Europe price and the Northern Europe coarse count price, minus the difference between the applicable loan rate for a crop of upland cotton for M 1 3/32 inch (micronaire 3.5 through 4.9) cotton and the loan rate for a crop of upland cotton for SLM 1 3/32 inch (micronaire 3.5 through 4.9) cotton.

The coarse count adjustment has not been applicable whenever the calculation is less than 1.0 cent per pound. Elimination of the 1.0-cent per pound minimum will, in combination with the other provisions, enhance the competitiveness of coarse count qualities of U.S. cotton.

Accordingly, this interim rule amends 7 CFR 26.3(e)(1) by providing that the adjusted world price, as determined in accordance with such section, shall be subject to further adjustments as provided in this subsection with respect to any grade of upland cotton with a staple length of 1 3/32 inch or shorter, and to the following grades of upland cotton with a staple length of 1 1/16 inch or longer: *White Grades*—Strict Good Ordinary Plus, Strict Good Ordinary, Good Ordinary Plus and Good Ordinary; *Light Spotted Grades*—Low Middling and Strict Good Ordinary; *Spotted Grades*—Middling, Strict Low Middling, Low Middling and Strict Good Ordinary; *Tinged Grades*—Strict Middling, Middling, Strict Low Middling and Low Middling; *Yellow Stained Grades*—Strict Middling and Middling; *Light Gray Grades*—Strict Low Middling; *Gray Grades*—Middling and Strict Low Middling. Conforming technical amendments are also made in 7 CFR 26.3(e)(2)(ii) by removing "SLM 1-inch" and inserting in lieu thereof "SLM 1 3/32 inch", and by removing 7 CFR 26.3(e)(4).

Interested persons are invited to submit written comments on the interim rule changes. Comments must be received by September 19, 1988, in order to be assured of consideration.

List of Subjects in 7 CFR Part 26

Upland cotton, World market price.

Interim Rule

Accordingly, this interim rule amends the regulations found at Part 26 of Title 7, Subtitle A of the Code of Federal Regulations as follows:

PART 26—[AMENDED]

1. The authority citation for Part 26, Subpart A, continues to read as follows:

Authority: Sec. 103A(a)(5)(E), Pub. L. 81–439, 639 Stat. 1031, as amended, (7 U.S.C. 1444–1(a)(5)(E)).

2. Section 26.3(b)(1) is revised to read as follows, (b) introductory text is republished.

§ 26.3 Adjusted world price for upland cotton.

* * * * *

(b) The adjusted world price for upland cotton shall equal the Northern Europe price as determined in accordance with § 26.2, adjusted to average U.S. quality and location as follows:

(1) The Northern Europe price shall be adjusted to average designated U.S. spot market location by:

(i) Deducting the average difference in the immediately preceding 52-week period between:

(A) The average price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted each Thursday for M 1 3/32 inch cotton C.I.F. northern Europe; and

(B) The average price of M 1 3/32 inch (micronaire 3.5 through 4.9) cotton as quoted each Thursday in the designated U.S. spot markets.

(ii) Based upon period estimates of actual costs associated with transporting U.S. cotton to northern Europe, if it is determined that the adjustment determined in accordance with § 26.3(b)(1)(i) inadequately reflects current actual shipping costs, the adjustment to average designated U.S. spot market location may be adjusted further.

3. Section 26.3(c) introductory text is amended by removing "156-week" and inserting in lieu thereof "52-week".

4. Section 26.3(e)(1) is revised to read as follows:

* * * * *

(e)(1) The adjusted world price, as determined in accordance with paragraph (b) of this section, shall be subject to further adjustments as provided in this subsection with respect to any grade of upland cotton with a staple length of 1 3/32 inch or shorter and the following grades of upland cotton with a staple length of 1 1/16 inch or longer: *White Grades*—Strict Good Ordinary Plus, Strict Good Ordinary, Good Ordinary Plus and Good Ordinary; *Light Spotted Grades*—Low Middling and Strict Good Ordinary; *Spotted Grades*—Middling, Strict Low Middling, Low Middling and Strict Good Ordinary; *Tinged Grades*—Strict Middling, Middling, Strict Low Middling and Low Middling; *Yellow Stained Grades*—Strict Middling and Middling; *Light Gray Grades*—Strict Low Middling; *Gray Grades*—Middling and Strict Low Middling. Grade and staple length must be determined by an official classification issued by USDA's Agricultural Marketing Service (AMS). If no such official classification is presented, the adjustment shall not be made.

5. Section 26.3(e)(2)(ii) is amended by removing "SLM 1 inch" and inserting in lieu thereof "SLM 1 3/32 inch".

6. Section 26.3(e)(4) is removed.

Signed at Washington, DC on August 2, 1988.

Richard E. Lyng,

Secretary.

[FR Doc. 88–18787 Filed 8–18–88; 8:45 am]

BILLING CODE 3410–05–M

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amdt. No. 278]

Food Stamp Program; Voluntary Quit Provisions

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: On October 1, 1986 the Department published a rulemaking at 51 FR 35152 which proposed extensive changes in the work related provisions of the Food Stamp Program. Most of the proposed rulemaking was based upon amendments to the Food Stamp Act of 1977 made through the Food Security

Act of 1985 (Pub. L. 99–198), but there were a number of changes to and clarifications of the rules to be followed when certain food stamp recipients voluntarily quit jobs of 20 hours a week or more. A procedure to address overissuances to households containing workfare participants was also in the proposed rule.

In order to expedite final publication of the statutorily mandated portion of the proposed rule, the voluntary quit and workfare overissuance sections of the rule were omitted when the October 1, 1986 proposed rule was finalized on December 31, 1986. This final rulemaking addresses the provisions which were proposed on October 1, 1986 but never finalized. This rule elaborates on the procedure to be followed by State agencies when the head of household designee changes after an employment and training (E & T) or voluntary quit sanction has been imposed, and it clarifies a provision in the December 31, 1986 final rule regarding the number of hours an individual may devote to an employment and training program.

DATES: The provisions of this rulemaking are effective October 18, 1988.

FOR FURTHER INFORMATION CONTACT: Thomas O'Connor, Director, Program Development Division, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 756–3414.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This final action has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1. The Department has classified this action as non-major.

The effect of this action on the economy will be less than $100 million. This final action will have no effect on costs or prices. Competition, employment investment, productivity, and innovation will remain unaffected. There will be no effect on the competition of United States-based enterprises with foreign-based enterprises.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final rule related Notice of 7 CFR Part 3015, Subpart V (48 FR 29115), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Anna Kondratas, Administrator of the Food and Nutrition Service, has certified that this final action does not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the program. Potential and current participants will be affected because they will have to abide by the requirements established by the guidance set forth in this rulemaking.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under that Act. The OMB approval number for these requirements is 0584–0339.

Background

This rule puts into final regulatory form a number of changes to the food stamp regulations governing sanctions for voluntarily quitting employment. These changes clarify Department policy in an area in which we have received numerous questions from State agencies.

The provisions of this rule were published in proposed form on October 1, 1986 in a rulemaking which made sweeping changes to the work requirements of the Food Stamp Program. Over one hundred letters of comment were received in response to the proposal. Voluntary quit or workfare overissuances were mentioned in thirty-five letters of comment. All of the comments were read and considered in the formulation of this rulemaking. In response to concerns raised in letters of comment, this rulemaking elaborates on the sanction and cure procedures proposed in the October 1, 1986 rulemaking. The rule also clarifies the provision found in § 273.7 (f)(3)(ii) which reflects the statutory requirement that the required hours of participation by an individual in an E & T program in any month, together with any hours worked in a workfare program and any hours worked for compensation shall not exceed 120.

Additional Cure Provisions

The Food Security Act of 1985 added to the Food Stamp Act of 1977 procedures to be followed when the head of a household fails to comply with an employment and training requirement or voluntarily quits a job without good cause and then leaves the household during the period of ineligibility. The Food Stamp Act, as amended, provides that the original household shall no longer be subject to sanction for the violation, if it is otherwise eligible, may resume food stamp participation. The Act goes on to specify that "any other household of which such person thereafter becomes the head of the household shall be ineligible for the balance of the period of ineligibility." 7 U.S.C. 2015(d)(1). This provision was implemented by the Department on December 31, 1986. The specificity in the Food Stamp Act on this point indicates to the Department that it is the intent of Congress that if a new person joins a household while either the household or individual is disqualified for an E & T or voluntary quit violation, and that person is determined to be the head of that household as defined in § 273.1(d), that head of household status shall take precedence over the head of household status another household member may have held. For instances of voluntary quit § 273.(l) defines the head of household to be the principal wage earner in the two months prior to the violation. There is no requirement that the individual be a member of the household at the time of the quit. Since a new individual may join a household as its head and cause the entire household to lose eligibility, the Department believes that the inverse should be true. If a household is disqualified because the head of the household failed to comply with employment and training requirements or voluntarily quit a job without good cause, the period of ineligibility should be terminated if a new person, who has not committed any violation, joins the household as its head, as defined in § 273.1(d)(2). This regulation includes such a provision, which applies to both employment and training and voluntary quit violations. The sanctions which apply when an individual joins a new household in a capacity other than the head of household are discussed elsewhere.

Voluntary Quit Changes

Public Law 99–198 mandated two provisions affecting households which have been disqualified because the head of the household voluntarily quit a job

without good cause. One is that food stamp eligibility may be reestablished during a period of disqualification for voluntary quit if the member who caused the sanction (the head of household) complies with the requirement which was violated. In the final rule published December 31, 1986 the Department interpreted compliance with the requirement to be acceptance of employment comparable in salary or hours to the job which was quit. That final rule also specified that eligibility for the household may be reestablished if the violator leaves the household or becomes exempt from the work registration requirements through § 273.7(b), other than through paragraphs (b)(1)(iii) or (b)(1)(v) which pertain to participation in Title IV–A or unemployment compensation work requirements.

The December 31, 1986 rule also finalized the mandated provision that when a household determined to be noncompliant due to a voluntary quit splits into more than one household, the sanction shall follow the member who caused the disqualification. If that person joins a new household as its head, the new household will be ineligible for the balance of the period of ineligibility and the sanction is lifted from the first household. In response to comments, this final rulemaking further specifies that if the violator joins a new household and is not the household head, the sanction will end. This differs from the treatment received by a head of a household who fails to comply with an employment and training requirement. If an E & T violator joins another household not as its head, of household, the violator would remain disqualified but the remainder of the new household could be eligible. The Food Stamp Act provides authority to deny food stamp benefits to an entire household if the head of that household has voluntarily quit a job without good cause. Unlike the provisions related to E & T violations, however, the Act does not provide authority to deny benefits to an individual household member who is not the household head because he or she has quit a job.

Since October 3, 1984 food stamp rules have provided that when a household leaves the program before the voluntary quit sanction can be levied, the sanction should not be imposed until the household returns to the program. The Department received a number of comments supporting its proposal to begin a voluntary quit sanction the first of the month after all normal procedures for taking adverse action have been taken and running it without interruption for 90 days or until it is cured. This rule finalizes that proposal. Voluntary quit sanctions shall no longer be held in abeyance if a household leaves the program. This change is consistent with the procedure used for failure to comply with work registration and employment and training requirements. It will also relieve States of the burden of tracking households who have left the program.

Current rules provide that persons who are exempt from the work registration provisions of § 273.7(b) are also exempt from the voluntary quit provisions. The proposed rule removed the voluntary quit exemption for persons who are not required to work register because they are enrolled or self-employed and working a minimum of 30 hours weekly. The Department received a variety of comments on the change. Some commenters contend that applying the voluntary quit provisions to persons working 30 hours a week or more will prevent those persons from making a change to employment which might entail fewer hours or a lower salary but offer greater chances to improve job skills or to achieve future advancements. This is not the intent of the change. On the contrary, the Department recognizes that such job changes will occur and allows a head of household to avoid a voluntary quit penalty by accepting employment of *comparable* hours or salary. Although the Department has not defined "comparable," we would not expect State agencies to reject a new job as not comparable simply because the number of hours or the salary of that job is lower than the job which was quit. Some commenters believe that the Department should specify that the net salary of the new job must be no less than that of the job which was quit. This was intentionally not done in order to prevent recipients from being locked into dead end jobs. The Department believes that the intent of the voluntary quit provisions in the Food Stamp Act is to deter recipients from leaving gainful employment without having other comparable employment to replace it. It should be clear that these provisions apply to all able-bodied heads of households who leave employment without good cause, including those who are working 30 hours a week or more. The proposed change to § 273.7(n)(2) is included in this final rulemaking.

Current rules are silent on the procedure to be followed when a voluntary quit occurs before certification but is not discovered until after certification. The October 1, 1986 regulation proposed procedures to follow for two situations where the quit is not discovered until after certification. The proposed rule would have treated the household whose quit was between application and certification as a participating household if the quit was discovered prior to certification. The Department did not receive any comment on this proposal.

The proposed rule also detailed procedures to follow when the household is certified under expedited service procedures and the quit is not discovered until after certification. The Department proposed that State agencies impose a sanction for the expedited service household from the date of the quit, and file a claim against the household for any benefits received in the 90 days following the quit. The Department received several comments on this proposal, including several which supported it. One commenter objected to utilizing the claims process to recoup the benefits which were improperly issued to expedited service households. The commenter contended that the claim process is administratively cumbersome and will be ineffective. Another commenter suggested that the Department consider such households as participating households and begin the 90 day sanction the first of the month after all adverse action procedures have been taken, but shorten the period of sanction by the number of days between the quit and the date of application. This mechanism, although easy to administer, appears to give an unfair advantage to households which do not disclose a quit at the time of application.

Whether or not the head of an applicant household has voluntarily quit a job without good cause within 60 days of application is a criterion for program eligibility. A question to determine whether such a quit has taken place should appear on all food stamp application forms, whether for expedited service or normal processing. The Department feels a distinction can and should be made between households whose pre-certification quit is discovered prior to certification and those whose quit is discovered after certification. Different notice and appeal procedures exist for applicants and recipients and once the household becomes a participating household it is entitled to the same rights as any other participating household, even if it was improperly certified.

For this reason the Department is finalizing the provisions from the proposed rule and imposing them upon all households, including those certified under expedited service procedures. All

households whose voluntary quit without good cause is discovered prior to certification are considered to be applicant households. Their application for benefits shall be denied and they shall remain ineligible for 90 days from the date of the quit, or until the quit is cured. Households whose quit is not discovered until after certification shall be considered participating households and the 90 day sanction shall be imposed the month after all Notice of Adverse Action procedures have been exhausted. This treatment is consistent with that received by households whose head of household voluntarily quit without good cause during food stamp participation. The sanction, in all cases, will be the full 90 days or until the violation is cured. This procedure eliminates involvement of the claims process.

Currently, the voluntary quit provisions apply only if the job quit was the most recent job held. The December 31, 1986 rule added language to § 273.7(n) providing that a voluntary quit violation could be cured by acceptance of new employment which is comparable in hours or salary to the job which was quit. This makes obsolete the reference in § 273.7(n)(1)(ii) to penalties for quitting only the "most recent" job. This rule applies the voluntary quit provisions to any job of 20 hours or more when no comparable position is secured. In response to a number of comments, the Department is also specifying in this rule that if an individual quits a job of 20 hours a week or more, secures new employment at comparable wages or hours, and is then laid off or, through no fault of his own, loses the new job, the earlier quit will not form the basis for a disqualification.

Quit During Last Month of Certification

The October 31, 1986 rule proposed that if a quit occurred in the last month of certification and is discovered during the recertification process, the household would be treated as an applicant household and be ineligible for benefits for 90 days from the date of the quit. It proposed that a claim be established for benefits received after the date of the quit. A number of commenters objected to this procedure contending that it was cumbersome and that establishing claims in such cases would be ineffective. Several commenters said it was unfair to abruptly terminate a certification period. Commenters also pointed out that the Proposed rule made no provision for how a State agency should proceed if a quit occurs prior to the last month of certification but is discovered too late in the certification period for the State to impose an adverse action.

In response to comments, the Department has changed the procedure it proposed. Through this rule, households whose quit occurred in the last month of the certification period and those whose quit is determined too late in the certification period to follow adverse action procedures, will be denied recertification for a period of 90 days beginning with the day after the old certification period has ended. This will be the procedure followed in the great majority of cases. However, in those instances where the household does not apply for recertification by the end of the certification period, a claim shall be filed by the State agency for benefits received during the 90 days subsequent to the first day of the month following the month of the quit. If benefits were received for fewer than 90 days from the first of the month following the month in which the quit occurred, a claim shall be established for benefits received, and the 90 day period of ineligibility shall be prorated accounting for the number of days for which a claim was established and imposed. By imposing a claim against households who do not reapply for benefits, the Department is ensuring that the quit does not go unacknowleged.

Workfare or Work Component Benefit Overissuances

The October 1, 1986 regulation proposed a procedure for State agencies to follow when a benefit overissuance is paid and the household has already fulfilled its workfare or work component obligation. The procedure would be applicable to workfare operated under section 20 of the Food Stamp Act as well as to any work component of a State employment and training program. This final rule does not change the procedure specified in the proposed rule. That rule provided that when the household's work requirement continues, State agencies would attempt to recover the entire overissuance and give the household a credit of workfare hours in a subsequent month(s) for extra hours worked during the month(s) of overissuance. It the work requirement does not continue, the State agency would consider whether the overissuance was the result of an intentional program violation, inadvertent household error, or a State agency error. If the overissuance resulted from an intentional program violation, a claim for the entire amount of overissuance would be established and pursued in accordance with § 273.18. In effect, the hours worked beyond those which would have been worked had the correct benefit level been used in calculating the work obligation would be forfeited. If the overissuance was caused by an inadvertent household error or a State agency error, a claim would be established for the amount of the overissuance which was not worked off. To determine the amount of the claim, the State should subtract from the amount of the overissuance the number of hours worked multiplied by the minimum wage. For example, a household was incorrectly issued a benefit of $150 in a month when $100 would have been the proper benefit. The household, based on the $150 allotment worked 44 hours ($150 divided by the minimum wage, currently $3.35). Had the allotment been correctly calculated the household could have been assigned no more than 29 hours in that month. The State should establish a claim for the amount of the overissuance which was not "worked off" (i.e., any hours between 29 and 44 which were not "worked off.") If the household worked the entire 44 hours, no claim would be established. If the household worked 35 hours, the minimum wage times nine (the number of hours not worked off) or $30.15, would have to be recovered.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamp, Fraud, Grant programs—Social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, 7 CFR Parts 272 and 273 are amended as follows:

1. The authority citation for Parts 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2029.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1 a new paragraph (g)(97) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * * *

(g) *Implementation.* * * *

(97) Amendment No. 278. State agencies shall implement the provisions of this amendment no later than October 18, 1988.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.1 a new sentence is added to the end of paragraph (d)(2) to read as follows:

§ 273.1 Household concept.

* * * * *

(d) *Head of household.* * * *

(2) * * * The designation of head of household through the circumstances of this paragraph shall take precedence over a previous designation of head of household at least until the period of ineligibility is ended.

* * * * *

4. In § 273.7 a new paragraph (c)(11) is added to read as follows:

§ 273.7 Work requirements.

* * * * *

(c) *State agency responsibilities.*

* * *

(11) If a benefit overissuance is discovered for a month or months in which a mandatory E & T participant has already fulfilled a work component requirement, the State agency shall follow the procedure specified in § 273.22(f)(9) for a workfare overissuance.

* * * * *

5. In § 273.7 paragraph (f)(3)(ii) is amended by removing the words "non-work" from the last sentence.

6. In § 273.7 paragraph (g)(1) is amended by adding a new sentence between the third and fourth sentences. The new sentence reads as follows:

* * * * *

(g) *Failure to comply.* (1) Noncompliance with Food Stamp Program work regulations. * * *

A household determined to be ineligible due to failure to comply with the provisions of this section may reestablish eligibility if a new and eligible person joins the household as its head of household, as defined in § 273.1(d)(2). * * *

* * * * *

7. In § 273.7 introductory text of paragraph (n) is revised; a new sentence is added at the end of paragraph (n)(1)(i); in the first sentence of paragraph (n)(1)(ii) the words "or who is exempt through § 273.7(b)(1)(vii)" are added between the words "work" and "has" and the words "most recent" are removed from the first sentence; paragraph (n)(1)(iii) is revised; paragraph (n)(1)(vi) is revised; paragraph (n)(2) is revised; a new sentence is added between the first and second sentences in paragraph (n)(5)(iii); and a new paragraph (n)(5)(iii) is added.

* * * * *

(n) *Voluntary quit.* No household whose head of household, as defined in § 273.1(d)(2), voluntarily quit a job of 20 hours a week or more without good cause 60 days or less prior to the date of application or at any time thereafter shall be eligible for participation in the program as specified below. At the time of application, the State agency shall explain to the applicant the consequences of the head of household quitting a job without good cause, and of the consequence of a person joining the household as its head if that individual has voluntarily quit employment.

(1) Determining whether a voluntary quit occurred and application processing.

(i) * * * If an individual quits a job, secures new employment at comparable wages or hours and is then laid off or, through no fault of his own loses the new job, the earlier quit will not form the basis of a disqualification.

* * * * *

(iii) The State agency shall determine whether any household member voluntarily quit his or her job while participating in the Program, within 60 days prior to applying for participation, or in the time between application and certification. If a household is already participating when a quit which occurred prior to certification is discovered, the household shall be regarded as a participating household and the 90 day sanction shall be imposed in accordance with § 273.7(n)(1)(vi).

* * * * *

(vi) If the State agency determines that the head of a participating household voluntarily quit his or her job while participating in the program or discovers a quit which occured within 60 days prior to application for benefits or between applicant and certification, the State agency shall provide the household with a notice of adverse action as specified in § 273.13 within 10 days after the determination of a quit. Such notification shall contain the particular act of noncompliance committed, the proposed period of ineligibility, the actions which may be taken to end or avoid the disqualification, and shall specify that the household may reapply at the end of the disqualification period. Except as otherwise specified in this paragraph, the period of ineligibility shall run continuously for three months or 90 days, beginning with the first of the month after all normal procedures for taking adverse action have been followed. The 90 day disqualification period may be converted to a three calendar month period only for participating households. If a voluntary quit occurs in the last month of a certification period or is determined in the last 30 days of the certification period the household shall be denied recertification for a period of 90 days beginning with the day after the last certification period ends. If such household does not apply for food stamp benefits by the end of the certification period, a claim shall be established for the benefits received by the household for up to 90 days beginning the first of the month after the month in which the quit occurred. If there are fewer than 90 days from the first of the month after the month in which the quit occurred to the end of the certification period, a claim shall be imposed, and the household shall remain ineligible for benefits for a prorated number of days, with the end result that a claim was established or the household was ineligible for a full 90 day period. Each household has a right to a fair hearing to appeal a denial or termination of benefits due to a determination that the head of household voluntarily quit his or her job without good cause. If the participating household's benefits are continued pending a fair hearing and the State agency determination is upheld, the disqualification period shall begin the first of the month after the hearing decision is rendered. Persons who have been disqualified for quitting a job as head of one household will carry their sanction with them if they join a new household as its head. The new household will remain ineligible for the remainder of the sanction period unless the person who cause the disqualification ends it in a manner prescribed in § 273.7(n)(5). If an individual who voluntarily quit joins a new household and is not the household head the sanction shall be terminated.

* * * * *

(2) Exemptions from voluntary quit provisions. Persons who are exempt from the work registration provisions in § 273.7(b) at the time of the quit, with the exception of those exempted by § 273.7(b)(1)(vii) shall be exempt from the voluntary quit provisions.

* * * * *

(5) Ending a voluntary quit disqualification. * * *

(ii) * * * Comparable employment may entail fewer hours or a lower net salary than the job which was quit.

* * *

(iii) A household determined ineligible due to a voluntary quit without good cause may reestablish eligibility if a new and otherwise eligible member

joins as its head of household as defined by § 273.1(d)(2).

* * * * *

8. In § 273.22 paragraph (b)(1) is revised and paragraph (f)(9) is added. The revision and addition read as follows:

§ 273.22 Optional Workfare Program.

* * * * *

(b) *Program administration.* (1) A food stamp workfare program may be operated as part of a State's employment and training program, required in § 273.7(f) or may be operated independent of such a program. If the workfare program is part of the State's employment and training program it shall be included as a component in the State's employment and training plan in accordance with the requirements of § 273.7(c). If it is operated independent of the E&T program, the State must submit a workfare plan to FNS for its approval in accordance with the requirements of this section. For the purpose of this section, a political subdivision is any local government, including, but not limited to, any county, city, town or parish. A State agency may implement a workfare program statewide or in only some areas of the State. The areas of operation must be identified in the State workfare or employment and training plan.

* * * * *

(f) *Other program requirements.* * * *

(9) Benefit overissuances. If a benefit overissuance is discovered for a month or months in which a participant has already performed a workfare or work component requirement, the State agency shall follow claim recovery procedures specified below.

(i) If the person who performed the work is still subject to a work obligation, the State shall determine how may extra hours were worked because of the improper benefit. The participant should be credited that number of hours toward future work obligations.

(ii) If a workfare or work component requirement does not continue, the State agency shall determine whether the overissuance was the result of an intentional program violation, an inadvertent household error, or a State agency error. For an intentional program violation a claim should be established for the entire amount of the overissuance. If the overissuance was caused by an inadvertent household error or State agency error, the State agency shall determine whether the number of hours worked in workfare are more than the number which could have been assigned had the proper benefit level been used in calculating the number of hours to work. A claim shall be established for the amount of the overissuance not "worked off," if any. If the hours worked equal the amount of hours calculated by dividing the overissuance by the minimum wage, no claim shall be established. No credit for future work requirements shall be given.

* * * * *

Anna Kondratas,

Administrator.

Date: August 11, 1988.

[FR Doc. 88-18801 Filed 8-18-88; 8:45 am]

BILLING CODE 3410-30-M

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7 CFR Parts 272 and 278

[Amdt. No. 291]

Food Stamp Program; Sales Tax Provision Clarifications; Sequencing/ Allocation of Food Stamp Transactions and Compliance Enforcement

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rulemaking.

SUMMARY: This final rule provides guidance to States regarding taxation of food purchases when both food stamps and cash are used to pay for taxable and nontaxable food items. Implementing these changes will simplify food stamp transactions under the sales tax provision (i.e., section 4(a)) of the Food Stamp Act (7 U.S.C. 2013(a)). This rule also clarifies the method that will be used to enforce compliance with the sales tax provision. Proposed regulations were published in the **Federal Register** of May 26, 1987 at 52 FR 19514. Comments on the proposal were solicited through July 27, 1987. This final rulemaking takes the comments received into account. Readers are referred to the proposed regulations for a more complete understanding of this rule.

DATE: All provisions are effective September 19, 1988.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be directed to Mr. Thomas O'Connor, Chief, Administration and Design Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Virginia 22302, (703) 756-3385.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

The Department has reviewed this final rule under Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has classified it as "not major." The rule will not have an annual effect on the economy of $100 million or more, nor is it likely to result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions. The rule would not result in significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprise in domestic or export markets.

Although this rule will affect the business community, its impact is not expected to be significant. One provision which addresses the sequencing (proper tax allocation of food stamps) of purchased items, may affect approximately 100,000 approved retail stores, but the change in operating procedures it requires is minor. Potential penalties will affect only those stores that fail to comply with the sales tax exemption requirement.

Executive Order 12372

The Food Stamp Program is listed in the *Catalog of Federal Domestic Assistance* under No. 10.551. For the reasons set forth in the Final rule related Notice(s) to 7 CFR Part 3015, Subpart V (Cite 48 FR 29115, June 24, 1983 or 48 FR 54317, December 1, 1983, as appropriate and any subsequent notices that may apply), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This final rule has also been reviewed with regard to the requirements of Pub. L. 96-354 and Anna Kondratas, Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The rule will simplify the procedures stores use in the acceptance of food stamps and clarify the manner in which compliance with the sales tax provision will be enforced.

Paperwork Reduction Act

There are no reporting or recordkeeping provisions included in this proposed rule.

Background

After issuing rules on April 1, 1986 at 51 FR 11009 that implemented the provision of section 1505 of Pub. L. 99-198 prohibiting the collection of sales tax on food purchases made with food stamps, the Department became aware that problems in implementing the law at the point of grocery sales were likely to occur in "partial-tax" States. A "partial-tax" State is one in which some but not all eligible food items are taxed.

A problem identified as sequencing occurs when a customer purchases both taxable and non-taxable food items with a combination of cash and food stamps. Since sales tax cannot be charged on the value of items bought with food stamps it is important to know toward which of the food items, taxable or non-taxable, the food stamps are to be applied. This decision affects the ability of stores to process the purchase.

Sequencing is particularly troublesome in those stores without sophisticated electronic grocery check-out devices. Currently, when a customer in such stores buys both eligible and non-eligible items during the same transaction, clerks must physically separate or sort the items purchased before ringing up the transaction. In a partial-tax State an additional separation of eligible items into taxable and non-taxable piles will be required to ensure that tax is not charged on food purchased with food stamps. This "double-sorting" can be time-consuming for the affected retailers.

On May 26, 1987 the Department published a notice of a proposed rulemaking at 52 FR 19514 to help resolve this added burden on retailers. The Department accepted comments on this proposal through July 27, 1987. Fourteen letters were received. The major concerns raised by the commenters are discussed below.

Choice of Sequencing Options

The proposed rule offered States a choice between two options. Under the first option there would be no tax on any transaction in which any amount of food stamps was used. Under the second option food stamps would first be allocated to taxable eligible items. The commenters were almost equally divided over the choice of options, with slightly more favoring the first. Two commenters recommended making option one mandatory while two others asked that it not be made mandatory. One State agency commented that the Federal governnent had no legal authority to involve itself in State fiscal matters by proposing any option. An advocate group believed that applying food stamps first to taxable items did not legally implement the statute.

The Department acknowledges the sensitivity of States toward Federal actions which affect State revenue and accounting. As a consequence, FNS has decided to modify the proposal in this final rule. States may select option one (no tax when food stamps used), option two (allocate stamps first to taxable items), or any other sequencing method that best serves their individual needs and circumstances and conforms with the legal guidelines discussed herein.

States will not be permitted to allocate stamps first to non-taxable eligible items. The Department's Office of General Counsel believes this approach violates section 4(a) of the Food Stamp Act since it would require food stamp customers to pay a sales tax on the taxable eligible items which might have been purchased with food stamps but are instead purchased with cash as a result of program sequencing and allocation rules. This would reduce the purchasing power of food stamp recipients by indirectly taxing benefits and in doing so undermine the intent of the Food Stamp Act. When food stamps are allocated to taxable items first, no tax is collected on the dollar value of the food stamps and no diminution of coupon purchasing power occurs. Allocating food stamps first against non-taxable eligible items acts to diminish the sales tax offset value otherwise "available to" the customer's food stamps. Allocating first against taxable items, by comparison, maximizes the offset; which is merely the choice that any rational consumer would make and thus comports with the goal of the sales tax statute. Likewise, any other method which directly or indirectly charges a sales tax on food purchased with food stamps will not be allowed.

Although it was recommended in the proposed rule that a State apply one sequencing/allocation method for all retail outlets in the State, the final rule allows States to opt for or permit more than one method, so along as all methods allowed meet the legal requirements discussed here. This approach offers States maximum choice with minimum Federal involvement. Although States are free to choose their own sequencing methods, the option chosen must not limit the purchasing power of food stamp customers.

Other Possible Methods for Compliance With the Sales Tax Provision

A number of commenters proposed other methods besides the two identified in the proposed rule, that could conceivably be used to comply with the sales tax provision. One commenter suggested making it optional as to whether a State had to choose any methods at all. This suggestion was evaluated but was rejected because it would not have adequately implemented the legislative provision of section 4(a) of the Act. Another State agency proposed that we evaluate compliance with the sales tax provision under the legal approach known as "de minimus". The rationale offered was that since most partial-tax States taxed only a few eligible food items (perhaps amounting to as little as three percent of a recipient's monthly food stamp purchases) it could be argued that these States were "substantially" in compliance. Part of this argument included the concept that the cost to the retail establishment of this one-time implementation would probably exceed one year's State tax of eligible foods. The Department rejected this suggestion. Section 4(a) requires actual, not substantial compliance. Moreover, since the sales tax prohibition provision is permanent and since the amount of food stamp benefits allowed to be taxed under this approach would have accumulated over time, this "de minimus" approach was legally suspect.

Another State agency recommended that we redefine "eligible food" under the Food Stamp Act and develop regulations to exclude "junk food" such as soda, candy, and gum. This option might result in some partial-tax States being automatically defined as in compliance since these are the primary items that are taxed in these States. This approach was also considered prior to issuance of the proposed rule. There are a number of serious problems with this approach. Earlier attempts to redefine food to exclude so-called "junk food" have encountered formidable obstacles. All States have differing lists of so-called junk or non-nutritive foods which they tax, on the basis of their view of these items as "non-food" or as "luxury" food items. Any attempt to define which out of potentially hundreds or even thousands of food items and brands are to be labelled "junk" food would be extremely difficult because of the varying viewpoints of States, nutritionists, and food industry representatives. Moreover, "food" is defined in the Food Stamp Act (Sec. 3(g), 7 U.S.C. 2012(g)) in very broad terms. Thus, it is not altogether clear that FNS has authority to narrow the definition in the manner suggested.

Implementation Problems

A number of State agencies were of the opinion that this proposed rule was issued too late in the implementation

cycle for changes in State rules and retailer software revision to be effective October 1, 1987. Several State agencies stated that they needed more implementation time because our proposed rule would require them to go back to their State legislatures for new legislation and require their retailers to make additional software changes. FNS recognizes this concern and consequently clarified and simplified the requirements for compliance.

A commenter noted that the proposal would require an additional software change by retailers in addition to their original software change effected to comply with the April 1, 1986 sales tax rule. Since the proposed rule would have required a particular allocation/sequencing method to be used, its finalization could have resulted in the additional software change noted by the commenters. By changing the rule so that a range of methods are available for use, the need of additional software changes is greatly diminished. Such software changes would be needed only if the proscribed allocation/sequencing method had been implemented or if a State decides to require one particular method to be implemented statewide and it differs from that which retailers had adopted. The Department expects the first situation will not arise since the method proscribed in this rule was also proscribed in the proposal. Moreover, since the application of coupons to non-taxable eligible items first is contrary to the statutory purpose, the Department is not at liberty to alter the rule on this point. The frequency with which the second situation will be faced is unknown since it depends on whether States will require the implementation of a uniform method.

It is important to again note that a State would be in compliance with this final sequencing/allocation rule if the sequencing/allocation method prohibited by this rule is also prohibited by the State. While written guidelines issued by State revenue departments would be definitive indicators of implementation, State policy precluding the proscribed sequencing option need not be written in order to meet initial compliance.

Miscellaneous Comments

One State agency recommended that FNS develop, print, and make available posters regarding the sales tax provision. FNS believes that since implementation methods and the actual operational effects of this provision will vary from State to State, each individual State through its Revenue department or other appropriate agency may wish to explain the sales tax provision in its own way.

One commenting agency from a full-tax State, unaffected by the proposed provisions, offered the opinion that option one, described above, would cause a serious loss of State tax revenue and allow severe abuse. This is a misunderstanding of that option. This entire rule is addressed only to partial-tax States and not to full-tax States. Option one, if implemented in a full-tax State, would have the effect the commenter noted and could cause serious program abuse and a very large and unnecessary loss of State tax revenue. However, neither of these result in a partial-tax State since it is only a very small percentage of a food stamp recipient's monthly purchases that are typically taxed in such a State and therefore there is virtually no measurable tax loss.

Compliance With the Sales Tax Provision (272.1(b)(3); 278.1(l)(1)(iv) and (2); 278.6(e)(7)

One commenter indicated a concern that food stamp recipients in a State about to be removed from the Food Stamp Program should have some warning or protection to allow them to use up previously issued food stamps. Should an entire State be sanctioned for non-compliance with the sales tax provision, State agencies would be required, under § 273.12(e)(4), to ensure that advance notification of termination of benefits be provided to food stamp recipients.

Another State agency voiced concern that with the sales tax provision FNS was turning over to States the retail store monitoring functions which FNS field offices have traditionally performed. Although we assume States will monitor their own State laws in a responsible manner, FNS will continue its historial authorization and compliance review of retail stores. Monitoring retailer implementation of the terms of the sales tax prohibition and of this clarifying rule are added to existing responsibilities.

The proposed change § 287.6(e)(7) regarding the issuance of warning letters was deleted. Comments convinced us that the language of existing section 278.6 provided sufficient authority for enforcement. Deleting this proposed provision leaves FNS offices more administrative leeway on how monitoring and compliance enforcement is to be conducted. FNS officials may issue an individualized warning letter for each occurrence, but may choose not to do so. FNS offices may use other compliance methods found to be practical and effective.

Implementation

All provisions of this rule are effective September 19, 1988.

List of Subjects

7 CFR Part 272

Alaska, Civil Rights, Food Stamps, Grant programs-social programs, Reports and recordkeeping requirements.

7 CFR Part 278

Administrative practice and procedure, Banks, banking, Claims, Food Stamps, Groceries—retail, Groceries, general line—wholesaler, Penalties.

Accordingly, Parts 272 and 278 are amended as follows:

1. The authority citation for Parts 272 and 278 continues to read:

Authority: 7 U.S.C. 2011–2029.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1:

(a) The text of paragraph (b) is redesignated (b)(1);

(b) New paragraphs (b)(2) and (b)(3) are added;

(c) A new paragraph (g)(101) is added. The additions read as follows:

§ 272.1 General terms and conditions.

* * * * *

(b) *No tax on food stamp purchases* * * *

(2) State and/or local law shall not permit the imposition of tax on food paid for with coupons. FNS may terminate the issuance of coupons and disallow administrative funds otherwise payable pursuant to Part 277 in any State where such taxes are charged. Action to disallow administrative funds shall be taken in accordance with the procedures set forth in § 276.4.

(3) A State or local area which taxes some, but not all, eligible food items shall ensure that retail food stores in that locale sequence purchases of eligible foods paid for with a combination of coupons and cash so as to not directly or indirectly charge or assign a tax to food stamp recipients on eligible food items purchased with coupons. Prohibited methods include, but are not limited to, the allocation of coupons first to non-taxable eligible items, and the application of cash, rather than coupons, to taxable eligible food.

* * * * *

(g) *Implementation.* * * *

(101) *Amendment No. 291.* The provisions of Amendment No. 291 are effective September 19, 1988.

PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

3. In § 278.1, paragraph (l) is revised to read as follows:

§ 278.1 Approval of retail food stores and wholesale food concerns.

* * * * *

(l) *Withdrawing authorization.* (1) FNS shall withdraw the authorization of any firm authorized to participate in the program for any of the following reasons.

(i) The firm's continued participation in the program will not further the purposes of the program;

(ii) The firm fails to meet the specifications of paragraphs (b), (c), (d), or (e) of this section;

(iii) The firm has been found to be circumventing a period of disqualification or a civil money penalty through a purported transfer of ownership; or

(iv) The firm is required under State and/or local law to charge tax on eligible food purchased with coupons or to sequence or allocate purchases of eligible foods made with coupons and cash in a manner inconsistent with 272.1 of these regulations.

(2) The FNS officer in charge shall issue a notice to the firm by certified mail or personal service to inform the firm of the determination and of the review procedure. FNS shall remove the firm from the program if the firm does not request review within the period specified in § 279.5.

* * * * *

4. In § 278.2, the first sentence of paragraph (b) is revised. The revision reads as follows:

§ 278.2 Participation of retail food stores.

* * * * *

(b) *Equal treatment for coupon customers.* Coupons shall be accepted for eligible foods at the same prices and on the same terms and conditions applicable to cash purchases of the same foods at the same store except that tax shall not be charged on eligible foods purchased with coupons. * * *

* * * * *

Date: August 11, 1988.

Anna Kondratas,

Administrator, Food and Nutrition Service.

[FR Doc. 88-18857 Filed 8-18-88; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 627]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 627 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 330,575 cartons during the period August 21 through August 27, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 627 (§ 910.927) is effective for the period August 21 through August 27, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5697.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order than small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

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

This regulation is consistent with the marketing policy for 1988-89. The committee met publicly on August 16, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

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

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

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

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

2. Section 910.927 is added to read as follows:

Note.—This section will not appear in the Code of Federal Regulations.

§ 910.927 Lemon Regulation 627.

The quantity of lemons grown in California and Arizona which may be handled during the period August 21, 1988, through August 27, 1988, is established at 330,575 cartons.

Dated: August 17, 1988

Charles P. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 88-18975 Filed 8-18-88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 947

[FV-88-114]

Irish Potatoes Grown in Modoc and Siskiyou Counties, CA, and all Counties in Oregon, Except Malheur County; Amendment to Relax Requirements for High Quality Red-Skinned Varieties of Potatoes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule and opportunity to file comments.

SUMMARY: This interim final rule eliminates the minimum size requirement for high quality red-skinned potatoes (also known as round red potatoes), and relieves such potatoes from special purpose shipment requirements. Currently, red-skinned potatoes must meet a minimum size of 2 inches in diameter or 4 ounces in weight. Under a special purpose provision initiated for market expansion purposes, red-skinned potatoes meeting a minimum size of 1⅛ inches may be shipped if they grade at least U.S. No. 1. Also, handlers of these potatoes are required to obtain a certificate of privilege from the committee, meet a 50-pound minimum pack requirement and report the shipment, grade and usage of such potatoes to the committee. The intent of this action is to meet current consumer demand for smaller, high quality round red potatoes, meet the industry's need for a smaller container and relieve handlers from safeguard requirements that are no longer necessary.

DATES: Interim rule effective August 19, 1988; comments which are received by September 19, 1988, will be considered prior to issuance of the final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Todd A. Delello, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone (202) 475-5610.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 947 (7 CFR Part 947), as amended, regulating the handling of potatoes grown in Modoc and Siskiyou counties, California, and in all counties in Oregon, except Malheur county. This order is authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orderes issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 45 handlers of Oregon-California potatoes subject to regulation under the marketing order, and approximately 470 producers in the production area. The Small Business Administration (13 CFR 121.2) has defined small agricultural producers as those having annual gross revenue for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of Oregon-California potatoes may be classified as small entities.

Red-skinned potatoes represent less than one percent of the total potato crop in the production area. This estimate is based on red-skinned potato acreage and the national average potato yield. Red-skinned potatoes are utilized mainly in the fresh market.

While in the past consumer demand has been stronger for larger sized potatoes, there currently exists a market for small red-skinned potatoes. Potatoes produced in other areas are competing for this market. These potatoes are being merchandised as a gourmet or specialty item.

The handling requirements for fresh Oregon-California potatoes are specified in § 947.340 (53 FR 2996, February 3, 1988). The current requirements for red-skinned potatoes specify that they must grade at least U.S. No. 2 and, if shipped within the continental United States, must have a minimum diameter of 2 inches or weigh at least 4 ounces. Red-skinned potatoes for export and those shipped domestically under special purpose provisions must have a minimum diameter of 1½ inches. For red-skinned potatoes to be shipped under the special purpose provision, they must grade at least U.S. No. 1, except for size, and be packed in containers of at least 50 pounds. This interim final rule eliminates the minimum size requirement for U.S. No. 1 round red potatoes. This rule also deletes the special purpose shipment requirements for such potatoes. These changes were recommended by the Oregon-California Potato Committee on a nine to one vote.

The elimination of the size requirement will afford producers and handlers the opportunity to meet current market demand for small, high quality red-skinned potatoes. This change is expected to benefit consumers by providing them with a product they desire, and producers and handlers by increasing sales. This relaxation should not adversely affect the market for larger potatoes.

To research markets for expansion possibilities, the committee initiated a special purpose shipment provision during the 1986-87 season. This provision allows the shipment of high quality red-skinned potatoes that measure at least 1⅛ inches in diameter and that are packed in quantities of 50 pounds or more. Also, handlers of such potatoes must obtain a Certificate of Privilege from the committee prior to each season and report the shipment, grading and usage of the potatoes to the committee. The certificate and reporting requirements aided the committee is discerning the market for such potatoes.

The deletion of the special purpose requirements for red-skinned potatoes is necessary to allow shippers to meet the industry's need for a smaller container (e.g. one-pound bag). Furthermore, the certification and reporting requirements have served their purpose and are no longer necessary.

While small red-skinned potatoes are currently in high demand, this apparently does not extend to other

varieties of potatoes. For this reason, the committee recommended retaining the special purpose shipment requirements for non-red-skinned potatoes. These requirements could be eliminated at some point in the future if experience indicates that there is a viable market for these small potatoes.

An editorial change is being made regarding the special purpose requirements for other than red-skinned potatoes. While the current regulation specifies that handlers apply for a "special purpose certificate," the proper term is "Certificate of Privilege." This is the term used elsewhere in the regulation, and this revision is made in the interest of consistency.

Section 8e of the Agricultural Marketing Agreement Act of 1937 requires that when certain domestically produced commodities, including Irish potatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating a commodity produced in different areas of the United States are concurrently in effect, the Secretary shall determine which of the areas produces the commodity in most direct competition with the imported commodity. Imports then must meet the quality standards set for that particular area. Because the import requirements for red-skinned potatoes are based on the marketing orders covering Washington potatoes (M.O. 946) and Colorado Area No. 2 potatoes (M.O. 948), these changes in the handling requirements for Oregon-California potatoes will have no effect on the potato import regulation.

The information collection requirements contained in the provisions of the regulations to be revised by this interim final rule have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB No. 0581-0112. This action reduces the current information collection burden by eliminating the reporting requirements applicable to shipments of small, high quality red-skinned potatoes.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is found that the rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** for the following reasons: (1) The harvest and shipment of red-skinned potatoes has begun, and this relaxation of requirements should apply to as many shipments as possible; (2) potato handlers are aware of this action which was recommended by the committee at a public meeting, and they will not need additional time to comply with the changed requirements; (3) this rule facilitates the handling of red-skinned potatoes to meet current consumer demand, and expediting its effective date will be advantageous to producers and consumers alike; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to the finalization of the rule.

List of Subjects in 7 CFR Part 947

Marketing agreements and orders, Potatoes, Oregon, California.

For the reasons set forth in the preamble, 7 CFR Part 947 is amended as follows:

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIFORNIA, AND ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

1. The authority citation for 7 CFR Part 947 continues to read as follows:

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

2. Section 947.340 is amended by revising paragraph (b) to read as follows:

Note.—This section will appear in the Code of Federal Regulations.

§ 947.340 Handling regulation.

* * * * *

(b) *Size requirements.* (1) Such potatoes shipped to points within the continental United States shall be at least 2 inches in diameter or weigh at least 4 ounces, and such potatoes shipped to export destinations shall be at least 1½ inches in diameter.

(2) Red-skinned varieties of potatoes may be shipped without regard to any minimum size requirement, if they otherwise grade at least U.S. No. 1.

(3) All non-red-skinned varieties of potatoes that measure less than 1½ inches in diameter may be shipped if such potatoes otherwise grade at least U.S. No. 1 and are packed in quantities of 50 pounds or more per container: *Provided,* That any person who desires to handle such potatoes shall each season prior to shipment apply for and obtain a Certificate of Privilege from the committee authorizing shipment of the potatoes for market expansion purposes: *Provided further,* That any person who so handles potatoes for market expansion purposes shall promptly report the shipment, grading, and usage of the potatoes to the committee.

* * * * *

Dated: August 16, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-18875 Filed 8-18-88; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 19, 20, 21, 51, 70, 72, 73, 75 and 150

Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Waste Policy Act of 1982, as amended (NWPA) requires that monitored retrievable storage facilities (MRS) for spent nuclear fuel and high-level radioactive waste (HLW) be subject to licensing by the Nuclear Regulatory Commission (NRC). The NRC is adding language to its regulations in 10 CFR Part 72 to provide for licensing the storage of spent nuclear fuel and HLW in an MRS. The Commission intends to have the appropriate regulation to fulfill the requirements of the NWPA in place in a timely manner. The rule would also clarify certain issues that have arisen since Part 72 was made effective on November 28, 1980 and incorporate other changes resulting from public comments received.

EFFECTIVE DATE: September 19, 1988.

ADDRESSES: Copies of NUREG–0575, NUREG–1092, and NUREG–1140 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5282 Port Royal Road, Springfield, VA 22161. A copy of each NUREG is also available for public

inspection and/or copying at the NRC Public Document Room, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Keith G. Steyer or C.W. Nilsen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301)492–3824 or 492–3834, respectively.

SUPPLEMENTARY INFORMATION: On May 27, 1986, following Commission approval, the proposed revision to 10 CFR Part 72 relating to MRS licensing was published in the **Federal Register** (51 FR 19106) for comment. The comment period expired on August 25, 1986.

The NRC received 195 comment letters from utilities, engineering companies, State offices, environmental groups, private citizens, and a member of the U.S. House of Representatives. The comment letters from private citizens numbered about 145. (Some of these were signed by several individuals or were submitted on behalf of private business firms.) From the comment letters received, the staff identified 27 separate topics to which specific responses were directed. Comments were also received which addressed the original rule, not the proposed amendment. In response to the comments, several changes have been made to the proposed rule. The majority of these changes are mainly clarifying in nature.

In order to provide sufficient space to accommodate possible future amendments to Part 72, the sections of the final rule have been renumbered. To aid the reader in following the discussion of comments in the preamble of the final rule, each reference to a specific section of the final rule is followed by a bracketed reference to the parallel section of the proposed rule.

A compilation of the issues raised as a result of public comment and the accompanying Commission response follow:

1. Backfitting

Comment: Several commenters indicated that the proposed rule should incorporate the sense of the reactor backfitting rule set out in 10 CFR 50.109.

Response: Although these storage facilities are not like reactors but are, for the most part, static by nature with very little need for design changes, the staff has revised the backfitting requirements of 10 CFR 72.62 (§ 72.42). The change is being made to conform § 72.62 (§ 72.42) more closely to § 50.109 as modified by the court decision in *Union of Concerned Scientists, et al.*, v. *U.S. Nuclear Regulatory Commission, et al.*, Nos. 85–1757 and 86–1219, 824 F.2d 108 (U.S.C.A.D.C. August 4, 1987).

2. Opportunity for Hearing Prior to the First Receipt of Spent Fuel or High-Level Radioactive Waste (HLW)

Comment: A new proposed § 72.46(c) (§ 72.34(c)) was added to 10 CFR Part 72 specifically providing that the Commission may, upon its own initiative, issue a notice of opportunity for hearing prior to the first receipt of spent fuel or high-level radio-active waste at an MRS if it finds this to be in the public interest. In the supplementary information in the May 27, 1986 Proposed Rule, the Commission indicated its own considerations on this topic and expressed particular interest in receiving public comment on (1) the need to make a finding before MRS operation that construction conforms to the license application, (2) provisions for second stage hearing rights to address specific new issues which could not have been litigated at the first stage and/or new information which has been revealed since issuance of the license, and (3) the format of the hearing, if held. Of the comment letters that addressed these points, some expressed no preference, some favored the provisions, some thought the provisions were unnecessary.

The principal reasons given by proponents of these provisions are that the public will have more confidence that the MRS will be operated safely and that there should be a clear opportunity to examine new issues which could be raised. Other comments of proponents were that the Department of Energy has had poor public performance in the past, that the degree of hazard is similar to nuclear power reactors which require a two-stage process, and that the opportunity for a second hearing could be an appropriate time to examine technical/financial information. Additional comments suggested that the rule require a second mandatory hearing and that funding be provided for nonprofit groups to participate in a second hearing.

On the topic of a finding it was suggested that (1) criteria be set forth for any finding the Commission may make, and (2) the NRC inspections should certify quality assurance and completeness of construction in an inspection report prior to initiation of operation. One comment suggested that start-up of the MRS should be linked to the repository authorization as an issue at a second hearing.

The principal reasons given by those opposed to the new provisions for a second hearing were that (1) it would cause unnecessary delay, (2) the Commission's regulations in 10 CFR Part 2 were sufficient to examine any new issues, (3) the NRC's normal systematic inspections are adequate to assure that construction was proper, (4) the nature of the MRS is such that all issues could be covered by the opportunity for public review prior to issuing a license and starting construction, and (5) the backfitting provision (§ 72.62 (§ 72.42)) provides additional assurance that significant issues may be raised by staff after the license is issued. Other reasons offered in objection to the new provisions were that (6) there was no basic difference between an MRS and an Independent Spent Fuel Storage Installation (ISFSI), (7) the small amount of solidified high-level waste which could be received could not justify any change in procedure from an ISFSI, and (8) the Safety Analysis Report (SAR) update procedure will assure that any new issue will be known and understood by NRC staff.

Response: The Commission specifically added the new provision and requested comments in order to obtain as complete an understanding as possible of whether or not any benefits would accrue to the public from such a procedure. This was done with full knowledge that the Atomic Energy Act of 1954, as amended, only requires one hearing and that under the procedures in 10 CFR Part 2 the opportunity always exists for any member of the public to bring any new issues to the Commission's attention.

In the comments received from the public there was no indication that there were likely to be any new safety issues brought forward which could not have been fully addressed on the occasion of the hearing held prior to issuance of the license. The licensing process of Part 72 supports one-stage licensing as it requires that all information needed for the licensing action be available and complete before a license is issued, i.e., final design, quality assurance/control procedures, operator training procedures, operating technical specifications, etc. Unlike a reactor license where a construction permit is issued prior to final design, an MRS application for license contains a final and complete design and therefore one-stage licensing is achievable. As to conformance of construction with the application and license, the Commission believes that, unlike reactors, construction of Part 72 type facilities will be simple and straightforward. Accordingly, in the Commission's judgment, there will be no need, as part of the safety review prior to license issuance, to require an applicant to

"prove" conformance of the as-built facility with the application. NRC would audit construction progress and, in the event some problems were found, enforcement action could be taken to correct them and, if necessary, halt the receipt of spent fuel until they were corrected. In this regard, § 72.82(c)(3) (§ 72.56(c)(3)) provides for establishing an NRC resident inspection program if warranted.

3. Interaction with States

Comment: Comments were received concerning providing of information to State and local governments and their interaction in the licensing process with DOE and the Commission.

Response: Under § 72.200 (§ 72.310) of the proposed rule, the Governor and legislature of any State in which a monitored retrievable storage installation may be located and the governing body of any affected Indian tribe will be provided timely and complete information regarding determinations or plans made by the Commission with respect to siting, development, design, licensing, construction, operation, regulation or decommissioning of such monitored retrievable storage facility. In response to the comment, the Commission will change § 72.200 (§ 72.310) "Provision of MRS Information" to require that the above information will also be provided to each affected unit of local government and to the Governors of any contiguous States. The definition of "affected unit of local government" which has been added to § 72.3 tracks the definition used in the Nuclear Waste Policy Amendments Act of 1987. (Sec. 5002, Pub. L. 100-203, 101 Stat. 1330-227 (42 U.S.C. 10101 (31)).) Participation by persons, including States, in license reviews is as provided for in 10 CFR Part 2, Subpart G.

4. High Burn-Up Fuel

Comment: In response to a 1980 petition for rulemaking, the Commission agreed (51 FR 23233, June 26, 1986) to prepare an environmental assessment on high burn-up fuel. The Commission's response concerning impacts of high burn-up fuel should be provided.

Response: The Commission issued an environmental assessment addressing the subject of high burn-up fuel in February 1988 "Assessment of the Use of Extended Burnup Fuel in Light Water Power Reactors" (NUREG/CR-5009). The assessment concluded "Environmentally, this burnup increase would have no significant impact over normal burnup."

5. Emergency Planning

Comment: As discussed in supplementary information to the proposed revisions to 10 CFR Part 72 the rule was rewritten to set forth explicit requirements appropriate to an ISFSI or an MRS, rather than refer to Appendix E to CFR Part 50, which is specific to nuclear power reactors. Responders commented on this change. Several thought that there should be a wider dissemination of the emergency plan which an applicant would have to prepare pursuant to the rewritten § 72.32 (§ 72.19), as well as a comment period longer than the specified 60 days. Another responder thought that 60 days was adequate. Other comments were that (1) sabotage of casks and terrorism, sabotage and military attack scenarios should be considered in an emergency plan, (2) a fully developed and tested offsite emergency plan should be developed, (3) the new version of § 72.32 (§ 72.19) implies a need for offsite protective actions which is incorrect, (4) the supplementary information which will accompany the issuance of the final rule should discuss worldwide experience and previous reviews and studies as support for the new emergency planning provisions, and (5) the emergency plan should continue to be the same as that for nuclear power reactors.

Response: The basic concept of emergency planning in § 72.32 (§ 72.19) has not been changed. None of the respondents provided any additional information to the staff or questioned the staff analyses such as to change the basis for the staff's approach to emergency planning for an ISFSI or an MRS. Moreover, in view of the relatively passive nature of facilities for the receipt, handling and storage of spent fuel and high-level radioactive waste, as compared to operating power reactors, emergency plans for ISFSI and MRS need not be equivalent to emergency plans for reactors.

Since the proposed revision of Part 72 was published for comment on May 27, 1986, the NRC has published proposed amendments to 10 CFR Parts 30, 40, and 70 [1] which would require certain NRC fuel cycle and other radioactive materials licensees that engage in activities that may have the potential for a significant accidental release of NRC-licensed materials to establish and maintain approved emergency plans for responding to such accidents. Although applicable to persons licensed under different parts of the Commission's regulations, the proposed requirements for emergency plans in Parts 30, 40, and 70 contain substantially identical provisions because they are designed to protect the public against similar radiological hazards. The proposed revision of Part 72 as published for comment also requires applicants for an ISFSI or MRS license to submit an emergency plan (see § 72.32 (§ 72.19).) Although the texts of proposed § 72.19 (redesignated § 72.32) and the parallel provisions of the proposed Emergency Preparedness rule are not identical, these provisions have the same purpose and use the same approach. In both cases, the proposed regulations require onsite emergency planning with provisions for offsite emergency response in terms of coordination and communication with offsite authorities and the public. It is therefore appropriate that in both cases these requirements should be expressed in the same way.

Until the Commission promulgates the Emergency Preparedness rule in final form, it is not possible to ascertain exactly the language that should be used. In view of these circumstances and since there is every expectation that this period of uncertainty will be of relatively short duration, we believe the prudent course of action is to reserve § 72.32 (§ 72.19), Emergency plan, in the final rule with the understanding that the text of this section will be promulgated in final form as a conforming amendment when the Commission adopts and promulgates the final Emergency Preparedness rule or shortly thereafter. We should point out that the temporary absence from Part 72 of requirements respecting emergency plans does not present any difficulties from a regulatory standpoint. To date, only three licenses have been issued under Part 72. Two licensees also hold Part 50 licenses and are required to comply with the provisions respecting emergency plans set out in the Part. The Part 72 license held by the third licensee contains conditions relating to emergency planning with which that licensee must comply.

Sabotage, terrorism, and military attacks are not treated as emergency preparedness issues. The Commission's established practice with respect to dangers of enemy action is that the protection of the United States against hostile enemy acts is a responsibility of the nation's defense establishment and the various agencies having internal security functions. Acts other than military are covered under a planning system included in Subpart H of Part 72,

[1] Proposed rule on Emergency Preparedness for Fuel Cycle and Other Radioactive Material Licensees, 52 FR 12921, April 20, 1987.

which contains requirements respecting physical security and safeguards contingency plans that are specifically designed to preclude the occurrence of such acts. The primary purpose of an emergency response plan is to prescribe measures to be taken to mitigate the effects of accidental releases of radioactivity, irrespective of their cause. Thus, in the unlikely event that there should be an accidental release of radioactivity by reason of an act of terrorism or an act of sabotage, protective actions would be taken as prescribed in the emergency response plan, just as they would be taken in the case of accidental release arriving from other causes.

6. Department of Energy as Licensee for the MRS

Comment: Respondents commented on several aspects of the licensing of the Department of Energy for the MRS. One commenter requested that in every instance in which there would be a difference in requirement between the Department and other licensees, that that difference should be specifically defined in Part 72. Other commenters pointed out that the funding for the MRS was from the Nuclear Waste Fund as stipulated in the NWPA and, therefore, the Department should be required, through Part 72, to show how these funds will be adequate for operation and decommissioning. A further commenter questioned the Department's authority pursuant both to Part 72 and its own orders to delegate quality assurance responsibilities to its contractor(s). One commenter suggested that Part 72 should permit revocation or suspension of the Department's license for the MRS since the NRC could not impose civil penalties for license violations.

Response: As discussed in the supplementary information to the proposed revisions to Part 72, the Department of Energy is exempted from certain financial reports, creditor information and financial plans for decommissioning. As pointed out in the comment above, funding for the MRS will be from the Nuclear Waste Fund, separately accountable from public funds. Consistent with the principle of full cost recovery in section 302 of the NWPA (96 Stat. 2257, 42 U.S.C. 10222) this fund will provide all financial resources for the MRS, i.e., licensing, construction, operation and decommissioning. Since DOE is a federal agency and the status of the NWPA waste fund is reported to and reviewed by the Congress yearly, the Commission believes that Congress will assure that adequate funds are available and appropriated for DOE to carry out its statutory responsibility. Under these circumstances additional NRC oversight is unnecessary and inappropriate.

As to possible conflicts in the licensing and regulatory process between orders and procedures of the Department of Energy and NRC requirements, two government agencies, the commenter provided no specifics and the Commission is not aware of any such conflict. The Department will be provided the same latitude as any other licensee pursuant to § 72.142 (§ 72.101) wherein it is stated that "the licensee may delegate to others, such as contractors, agents, or consultants, the work of establishing and executing the quality assurance program, but shall retain responsibility for the program."

The Energy Reorganization Act of 1974, as amended, and the Nuclear Waste Policy Act of 1982, as amended, provide that upon authorization by Congress an MRS shall be subject to licensing by the Commission. Accordingly, no exemptions from the provisions of § 72.60 (§ 72.41), "Modification, revocation, and suspension of licenses" and § 72.84 (§ 72.57), "Violation" are shown for the Department. In the exercise of this broad statutory authority and consistent with its customary practice in regulating other Federal licensees, the Commission may impose penalties on the Department if there is sufficient justification. The Commission knows of no other differences between the Department and other licensees for which a change in Part 72 is warranted. (The commenters recommended no specific changes in this area.)

7. Minimum Decay Period (Age) for Receipt of Spent Fuel

Comment: It was noted that there is a seeming discrepancy between the minimum decay period (age) of spent fuel as specified in § 72.2 (one year) and a reference to the environmental analysis in NUREG–1140, "A Regulatory Analysis on Emergency Preparedness for Fuel Cycle and Other Radioactive Material Licensees" (five-year decay assumed).

Response: The minimum one-year decay period in § 72.2 is based on assuring the decay of radioisotopes having half-lives on the order of a few days or less. In actuality, the decay periods are likely to be much longer than one year. Accordingly, the NUREG-1140 analyses were based on the more realistic, but still conservative, assumption that five or more years of decay would have taken place for the spent fuel for which an accident in a dry cask was assumed. This is not a discrepancy since different purposes are being served in each instance. In choosing a nominal decay period of 10 years and a five-year minimum decay period in the design parameters for the MRS the Department of Energy (DOE) is merely exercising its own prerogative to use a longer decay criterion for purposes of fuel receipt. Selection of a five-year minimum decay period also reflects DOE's understanding that the spent fuel to be received at the MRS will already have decayed for periods of time likely to be even much greater than five years at individual power reactor sites. The original analysis for Part 72 was based on one-year decay.

8. Physical Security Plan

Comment: A few commenters were concerned about the proposed change in the requirements of the physical security plan for the Department of Energy in that the Department must provide a certification that it will provide at the MRS "such safeguards as it requires at comparable surface DOE facilities to promote the common defense and security." The concerns were that this was an added requirement imposed only on the Department and that there was no definition of what a "comparable" DOE facility would consist of.

Response: For all licensees physical security plans are designed for two purposes: (1) To protect against sabotage and (2) to promote the common defense and security. The change in the requirements of the physical security plan is intended to be consistent with 10 CFR Part 60, "Disposal of High-Level Radioactive Wastes in Geologic Repositories," wherein it is recognized that the Department already carries these responsibilities for all of its facilities.

The Department in carrying out its responsibility to promote the common defense and security of all its facilities can best identify the surface DOE facilities to which the MRS is most comparable for purposes of physical security without the unnecessary burden of an NRC definition of "Comparable." Comparability in this context is a function of the kinds and quantities of nuclear materials held at the facilities and the potential consequences of theft or sabotage. However, the NRC staff believes that the Receiving Basin for Off-Site Fuel at the Savannah River Plant may be an appropriately comparable facility.

9. Continous Cask Monitoring Provision

Comment: Several commenters pointed out that the wording of the provision in § 72.122(h)(4) (§ 72.92(h)(4)) for monitoring of storage confinement

systems was inconsistent with section 141(b)(1)(B) of the NWPA (96 Stat. 2242, 42 U.S.C. 10161(b)(1)(B)) wherein it is required that an MRS facility shall be designed to permit continous monitoring. Another commenter suggested that the State should participate in the monitoring.

Response: The difference in wording between section 141(b)(1)(B) of the NWPA (96 Stat. 2242, 42 U.S.C. 10161(b)(1)(B)) and § 72.122(h)(4) (§ 72.92(h)(4)) was inadvertent. The staff has corrected the wording of § 72.122(h)(4) (§ 72.92(h)(4)) in the final rule to agree with the NWPA. As to State participation in monitoring, this is a matter to be resolved with the Department or as indicated in Response Number 3.

10. Inspection and/or Monitoring

Comment: In § 72.44(c)(3) (§ 72.33(c)(3)) the words "inspection and monitoring" have been changed to "inspection or monitoring."

Response: The proposed change serves no useful purpose. The degree and method of inspection and monitoring will be dependent upon design and operational limits for specific cases. The words "inspection and monitoring" will be reinstated.

11. Foreign Fuel

Comment: One commenter expressed objection to the processing and storage of foreign spent fuel or HLW at the MRS and stated that it should be specifically prohibited.

Response: The reference to foreign fuel in § 72.78 (§ 72.54) of the proposed rule was limited to material transfer report requirements and was not intended either to restrict or to permit such processing or storage. Section 302(a) of the NWPA (96 Stat. 2257, 42 U.S.C. 10222(a)) does specify only "high-level radioactive waste, or spent nuclear fuel of domestic origin" and therefore the reference to foreign fuel at an MRS will be removed.

12. Tornado Missile

Comment: Commenters have disagreed with the deletion of the exemption regarding protection against tornado missile impact, that is, as expressed in the existing rule, "* * * An ISFSI need not be protected from tornado missiles * * *". Another commenter who favors the deletion concerning protection from tornado missiles would also have the restriction limiting its scope to "* * * structures, systems, and components important to safety" deleted.

Response: The explanation of the exemption for tornado missiles, set out in the preamble of the existing rule (45 FR 74693, November 12, 1980) states that radionuclide releases from spent fuel which has undergone at least a year of radioactive decay would not be significant in the event of tornado missile impact, citing an accident evaluation from NUREG–0575 "Generic Environmental Impact Statement on Handling and Storage of Spent Light Water Power Reactor Fuels" with gaseous radionuclide releases from water pool storage. With the continuing development of dry storage technologies, which include metal casks, concrete silos, dry wells, and air-cooled vaults, the Commission decided the designs should take into account tornado missile protection, unless it is shown that tornado missiles will not have any effect on structures, systems and components important to safety. While offsite gaseous release impacts from fuel rod rupture due to a tornado missile incident would remain insignificant, it is important to assure that design criteria for dry storage designs continue to address maintaining confinement of particulate material. All safety reviews for storage licensed under Part 72, both water pool and dry storage, have evaluated designs with respect to tornado missile impact. Since safety considerations drive the concern with respect to the tornado missile phenomenon, it is not necessary to expand that concern beyond "structures, systems, and components important to safety."

13. Use of Part 50 Criteria

Comment: To expedite the licensing process for facilities proposed on sites which currently possess a 10 CFR Part 50 license, it was proposed that the applicable siting evaluation factors and general design criteria which have been reviewed and approved by the NRC for the Part 50 license be directly adopted for the Part 72 facility without additional review, hearings or approvals. Adequate reviews and approvals have been completed, and any change to those previously approved should be treated as a backfit.

Response: The storage of an increased amount of spent fuel on a reactor site, over that covered under an existing Part 50 license, requires staff action through safety and environmental reviews. In taking this action to authorize additional storage capacity for spent fuel, the staff will apply criteria from Part 50 or Part 72, depending on the type of licensing action being sought. Licensing action for an ISFSI would use criteria contained in Part 72 and Part 50 would be used for amending an existing reactor license. Storage of spent fuel on a reactor site outside of an existing reactor basin is already regulated under the criteria of Part 72 and these criteria have been used in reviewing applications for additional fuel storage at reactor sites.

14. Cladding

Comment: Opposition is expressed to any lowering of fuel cladding protection, as provided for in the existing § 72.122(h)(1) (§ 72.92(h)(1)).

Response: The revision of this provision (i.e., § 72.122(h)(1) (§ 72.92(h)(1))) addressed confinement of fuel material, which is the purpose of protecting the fuel cladding. The revised provision specifically provides for additional alternative means of accomplishing this objective. This serves to enhance confinement protection capability rather than diminish it.

15. Rod Consolidation

Comment: Comments were received concerning the Department of Energy's plan to consolidate rods from spent fuel assemblies into sealed packages. One commenter suggested inserting the word "chemically" after the word "separated" in the definition of spent nuclear fuel. Another comment suggested that a separate environmental impact statement be prepared on rod consolidation. It was suggested that the NRC give rod consolidation special consideration and that it is not clear at present what requirements the NRC will use for rod consolidation.

Response: Rod consolidation is the most elaborate operation contemplated for the MRS. The Department of Energy in its proposal and elsewhere has indicated its intention to fully develop the rod consolidation process for installation and operation. The rod consolidation system must meet all applicable portions of the general design criteria. There is no precedent for the preparation of an environmental impact statement in connection with a single system of a facility for which a complete environmental impact statement will be prepared. The aspect of rod consolidation will be covered in that statement, as well as in the safety review and evaluation by the staff in connection with the application for an MRS. The NRC does expect to be kept informed by the Department of its developmental activities prior to receipt of an application.

The insertion of the word "chemically" as suggested has been accepted by the staff for the final rule.

16. Accident Analysis For Two Barriers

Comment: A comment was received regarding engineered barriers such as canisters, "* * * the design basis accident scenario (i.e., release of gap activity from all fuel contained in a dry cask) should be revised to account for cases in which canister or other engineered barriers are incorporated."

Response: Most cask designs do not incorporate canistering of spent fuel assemblies. Therefore, for purposes of this rulemaking, choice of a lesser accident scenario assuming canistering is not appropriate for a bounding analysis. In a safety review involving a specific design, which incorporates an additional engineered barrier, the design basis accident scenario should, of course, consider this addition in the review analysis.

17. Records

Comment: Comments were received concerning archiving of records; by whom and how long?

Response: The proposed rule is consistent with current NRC policy concerning retention periods for records. The specific details of their physical storage is action taken at time of licensing.

18. Operator Safety

Comment: Comments were received concerning design for ALARA.

Response: The licensee is responsible for meeting the requirements of 10 CFR Part 20 "Standards for Protection Against Radiation," and all its provisions for maintaining ALARA. In addition § 72.24 (§ 72.15) Contents of Application: Technical Information requires applicants for a license to supply information for maintaining ALARA for occupational exposure.

19. MRS Collocation with Waste Repository

Comment: Commenter suggested expanding limitation for collocation with repository to include other facilities.

Response: The collocation restrictions in § 72.96 (§ 72.75) are specifically included in order to comply with sections 141(g) and 145(g) of the NWPA (96 Stat. 2243, 42 U.S.C. 10161(g); 101 Stat. 1330–235, 42 U.S.C. 10165(g)). (See also section 135(a)(2), 96 Stat. 2232, 42 U.S.C. 10155(a)(2).)

20. MRS Collocation with Other Nuclear Facilities

Comment: Commenter was concerned about other nuclear facilities that are not licensed.

Response: The licensing process considers all activities and facilities, licensed or unlicensed, that could increase the probability or consequences of safety significant events at licensed facilities.

21. Definition of High-Level Radioactive Waste

Comment: Some commenters noted that the definition of "high-level radioactive waste" used in Part 72 was not the same as the definition used in 10 CFR Part 60 and expressed the view that the two definitions should be consistent.

Response: Since it was first promulgated in November 1980 for the purpose of establishing licensing requirements for the storage of spent fuel in an independent spent fuel storage installation, Part 72, unlike Part 60, has always contained a separate definition of spent fuel. In revising Part 72 to provide for licensing the storage of spent fuel and high-level radioactive waste in an MRS, the Commission has revised the definition of spent fuel to conform more closely to the definition set out in section 2(23) of the Nuclear Waste Policy Act of 1982, as amended (96 Stat. 2204, 42 U.S.C. 10101(23)). The Commission has also amended § 72.3 by adding a definition of "high-level radioactive waste" which conforms to the language used in section 2(12) of that Act (42 U.S.C. 10101(12)). The definitions of spent fuel and high-level radioactive waste used in Part 72, though not identical to the definition of high-level radioactive waste used in 10 CFR Part 60 which encompasses "irradiated reactor fuel," are not inconsistent with that definition. It should be noted, however, that as explained in the Commission's advance notice of proposed rulemaking relating to the definition of high-level radioactive waste (52 FR 5992, February 27, 1987), the definition of high-level radioactive waste used in Part 60 serves a jurisdictional function, specifically identification of the class of Department of Energy facilities that, under section 202 of the Energy Reorganization Act of 1974 (42 U.S.C. 5842) are subject to the licensing and related regulatory authority of the Commission.

22. High Level Liquid Waste

Comment: Several commenters were concerned about the storage of liquid High-Level Waste (HLW).

Response: The MRS will be designed and licensed for the storage of irradiated fuel and solidified waste from the processing of fuel. The MRS will not receive liquid HLW and the form of the solid waste stored will be that which is compatible with the requirements for permanent disposal in a repository.

Any liquid wastes generated at the MRS will be handled in accordance with existing regulations.

23. Quality Assurance—Quality Control

Comment: Comments were associated with the apparent difference between the quality assurance criteria proposed and the previous quality assurance criteria.

Response: The proposed rule quality assurance subpart was written to incorporate the previously referenced 10 CFR Part 50, Appendix B quality assurance criteria specifically into Part 72. There was no intent to change the criteria. Minor conforming changes have been made in the final rule.

24. Criticality

Comment: A comment was received concerning the removal of the requirement for verifying continued efficacy of solid neutron poisons.

Response: Several changes have been made to the criticality section of the final rule to make it correspond to other Parts of the Commission's regulations and standard criticality review practices. Verification of solid neutron poisons has been retained. Double contingency criteria and requirements for criticality monitors have been added. It is not the intent of the revision concerning criticality monitors to require monitors in the open areas where loaded casks are positioned for storage as that system is static. Monitors are required where the systems are dynamic.

25. MRS Storage Capacity

Comment: Commenters questioned the MRS storage capacity as stated in the proposed rule in §§ 72.1 and 72.96 (§§ 72.1 and 72.75).

Response: In the proposed rule, MRS storage capacity values are based on the NWPA, as approved by Congress. (See section 135(a)(1)(A), 96 Stat. 2232, 42 U.S.C. 10155(a)(1)(A) and section 114(d), 96 Stat. 2215 as amended by 101 Stat. 1330–230, 42 U.S.C. 10134(d) and section 141(g), 96 Stat. 2243, 42 U.S.C. 10161(g)). In addition, the Nuclear Waste Policy Amendments Act of 1987 provides that the MRS authorized by section 142(b) of NWPA (101 Stat. 1330–232, 42 U.S.C. 10162(b)) shall be subject to the storage capacity limits specified in sections 148(d) (3) and (4) (101 Stat. 1330–236, 42 U.S.C. 10168(d) (3) and (4)). These requirements have been incorporated in new § 72.44(g) which has been added to the final rule.

26. The Term—"Temporary Storage"

Comment: Comments objected to the removal of the term "Temporary Storage" from § 72.3 Definitions and the removal of the word "temporary" from § 72.2 Scope.

Response: In making these changes, the Commission does not intend to change the scope of Part 72 which relates to the licensing of ISFSI and MRS for the purpose of storage only. Part 72 does not nor is it intended to cover permanent disposal. Accordingly, use of the word "temporary" in the rule is non-definitive and unnecessary.

27. MRS Rule Making

Comment: Many commenters (approximately 150), through the use of form letters or paraphrasing, did not want the MRS in Tennessee, did not support any form of rulemaking until Congress had authorized the MRS through funding appropriation, and made reference to "license it twice."

Response: The Nuclear Waste Policy Amendments Act of 1987 authorizes the Department of Energy to site, construct and operate one MRS and prescribes procedures for the selection of an appropriate site. The Act expressly annuls and revokes the Department's proposal "to locate a monitored retrievable storage facility at a site on the Clinch River in the Roane County portion of Oak Ridge, Tennessee, with alternative sites on the Oak Ridge Reservation of the Department of Energy and on the former site of a proposed nuclear powerplant in Hartsville, Tennessee * * *" (Section 142(a), 101 Stat. 1330–232, 42 U.S.C. 10162(a)). The Commission's regulations are promulgated to permit the Commission to carry out its mandate of providing for the health and safety of the public. Except for the siting limitations in § 72.96 (§ 72.75) of the final rule, which, among other things, prohibits an MRS authorized by section 142(b) of NWPA (101 Stat. 1330–232, 42 U.S.C. 10162(b)) from being constructed in Nevada, the Commission's regulations are silent on the location of an MRS. The "license it twice" concept is addressed in Response Number 2.

28. Increase of Licensing Period for the MRS

Comment: Comments questioned the Commission's basis, as described in the statement of considerations for the proposed changes to Part 72, for providing a longer license term for an MRS (40 years) than for an ISFSI (20 years). Comments also included (1) the term should start with the receipt of spent fuel, and (2) ISFSI should also have a 40-year license term. Further explanation of the basis for the license term was also requested. All of the commenters seemed to concentrate on a license for the spent fuel rather than a license covering a facility for storage.

Response: An MRS as described in the NWPA is intended for storage, but nor necessarily for the same fuel since fuel will continually be moved in and out over the life of the facility in concert with operation of a repository. A longer license term is therefore appropriate for an MRS considering the purpose and mode of operation of the facility.

In contrast to the MRS, the spent fuel stored in an ISFSI at reactor sites or elsewhere will be collected until the Department of Energy waste disposal system is ready for its receipt. The current schedule indicates that this transfer from reactor sites to an MRS could begin to occur within about 10 years. The Commission has in place a license renewal process for ISFSI storage which provides an opportunity for extension of the 20-year license term, with staff reevaluation of safety and environmental aspects of the operation. In any event the systematic inspection program of the Commission wherein the licensee's adherence to all license conditions and technical specifications is continually being examined applies to both MRS and ISFSI storage over the entire period of a license. The Commission will provide a 40-year license term for an MRS in the final rule.

On December 22, 1987, the Nuclear Waste Policy Amendments Act of 1987 (Subtitle A of Title V of the Omnibus Budget Reconciliation Act for Fiscal Year 1988; Pub. L. 100–203, 101 Stat. 1330–227) was approved by the President and became public law. The 1987 amendments authorized the Secretary of the Department of Energy to site, construct and operate one monitored retrievable storage facility subject to certain statutory conditions (sec. 142(b), 101 Stat. 1330–232, 42 U.S.C. 10162(b)). As a result of these changes in the statute, it has been necessary to make certain conforming changes in the text of the final rule. Most of the changes are minor in nature. For example, references have been added to the authority section and conforming changes have been made in the following sections of the rule: §§ 72.22(d)(5), 72.40(b), 72.90(e) and 72.96(d) (§§ 72.14(d)(5), 72.31(b), 72.70(e) and 72.75(d)). A new paragraph (g) has been added to § 72.44 (§ 72.33), License conditions, to incorporate into the Commission's regulations the specific statutory conditions (*see* sec. 148(d) of the NWPA, 101 Stat. 1330–236, 42 U.S.C. 10168(d)) which must be included in a Commission license for the monitored retrievable storage installation authorized pursuant to section 142(b) of the NWPA (101 Stat. 1330–232, 42 U.S.C. 10162(b)). For an explanation of these conditions, *see* 133 Cong. Rec. H11973–75 and S18683–84 (daily ed. December 21, 1987).

Having considered all of the above, the Commission has determined that a final rule be promulgated. The text of the final rule has some changes as noted from the proposed rule.

Finding of No Significant Environmental Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendments to 10 CFR Part 72, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste."

NUREG–0575, "Final Generic Environmental Impact Statement on Handling and Storage of Spent Light Water Power Reactor Fuel," August 1979, was issued in support of the final rule promulgating 10 CFR Part 72. "Licensing Requirements for the Storage of Spent Fuel in an Independent Spent Fuel Storage Installation ISFSI)," which became effective November 28, 1980. On January 7, 1983, the Nuclear Waste Policy Act of 1982 was signed into law. On December 22, 1987, the Act was amended by the Nuclear Waste Policy Amendments Act of 1987 (Pub. L. 100–203, Title V, Subtitle A, 101 Stat. 1330–227). Section 142(b) of the amended Act (101 Stat. 1330–232, 42 U.S.C. 10162(b)) authorized the Secretary of the Department of Energy to site, construct and operate one MRS. NWPA also established procedures which a State or an Indian tribe may use to negotiate an agreement with the Federal Government under which the State or Indian tribe would agree to host an MRS within the State or reservation. Following enactment of legislation to implement the negotiated agreement, the Secretary of the Department of Energy could proceed to evaluate appropriate sites. As in the case of the MRS authorized by section 142(b) of NWPA (101 Stat. 1330–232, 42 U.S.C. 10162(b)), DOE must also obtain an NRC license for an MRS authorized by Congress pursuant to a negotiated agreement. The NRC staff has concluded that although existing 10 CFR Part 72 is generally applicable to the design, construction, operation, and decommissioning of MRS, additions are necessary to explicitly cover the licensing of spent nuclear fuel and high-level radioactive waste storage in an MRS. In August 1984, the NRC published

an environmental assessment for this proposed revision of Part 72, NUREG–1092, "Environmental Assessment for 10 CFR Part 72, Licensing Requirements for the Independent Storage of Spent Fuel and High-Level Radioactive Waste." NUREG–1092 discusses the major issues of the rule and the potential impact on the environment. The findings of the environmental assessment are "(1) past experience with water pool storage of spent fuel establishes the technology for long-term storage of spent fuel without affecting the health and safety of the public, (2) the proposed rulemaking to include the criteria of 10 CFR Part 72 for storing spent nuclear fuel and high-level radioactive waste does not significantly affect the environment, (3) solid high-level waste is comparable to spent fuel in its heat generation and in its radioactive material content on a per metric ton basis, and (4) knowledge of material degradation mechanisms under dry storage conditions and the ability to institute repairs in a reasonable manner without endangering the health [and safety] of the public shows dry storage technology options do not significantly impact the environment." The assessment concludes that, among other things, there are no significant environmental impacts as a result of promulgation of these revisions of 10 CFR Part 72.

Based on the above assessment the Commission concludes that the rulemaking action will not have a significant incremental environmental impact on the quality of the human environment.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget approval number 3150–0132.

Regulatory Analysis

The NRC has prepared a regulatory analysis on this final rule. The analysis examines the benefits and alternatives considered by the NRC. The analysis is available for inspection in the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the analysis may be obtained from C.W. Nilsen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (301–492–3834).

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 [5 U.S.C. 605(b)], the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. This final rule affects only the licensing and operation of independent spent fuel storage installations and of monitored retrievable storage installations. The owners of these installations, nuclear power plant utilities or DOE, do not fall within the scope of the definition of "small entities" set forth in section 601(3) of the Regulatory Flexibility Act or within the definition of "small business" in section 3 of the Small Business Act, 15 U.S.C. 632, or within the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 19

Environmental protection, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Penalty, Radiation protection, Reporting and recordkeeping requirements, Sex discrimination.

10 CFR Part 20

Byproduct material, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Special nuclear material, Source material, Waste treatment and disposal.

10 CFR Part 21

Nuclear power plants and reactors, Penalty, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 70

Hazardous materials—transportation, Material control and accounting, Nuclear materials, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

10 CFR Part 73

Hazardous materials—transportation, Incorporation by reference, Nuclear materials, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 75

Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 150

Hazardous materials—transportation, Intergovernmental relations, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, 5 U.S.C. 552 and 553, and the Nuclear Waste Policy Act of 1982, as amended, the NRC is adopting the following revision to 10 CFR Part 72 and related conforming amendments to 10 CFR Parts 2, 19, 20, 21, 51, 70, 73, 75, and 150

1. 10 CFR Part 72 is revised to read as follows:

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

Subpart A—General Provisions

Sec.

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148 (c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168 (c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 72.6, 72.22, 72.24, 72.26, 72.28(d), 72.30, 72.32, 72.44 (a) (b) (1), (4), (5), (c), (d) (1), (2), (e), (f), 72.48(a), 72.50(a), 72.52(b), 72.72 (b), (c), 72.74 (a) (b), 72.76, 72.78, 72.104, 72.106, 72.120, 72.122, 72.124, 72.126, 72.128, 72.130, 72.140 (b), (c), 72.148, 72.154, 72.156, 72.160, 72.166, 72.168, 72.170, 72.172, 72.176, 72.180, 72.184, 72.186 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 72.10 (a), (e), 72.22, 72.24, 72.26, 72.28, 72.30, 72.32, 72.44 (a), (b) (1), (4), (5), (c), (d) (1), (2) (e), (f), 72.48(a), 72.50(a), 72.52(b), 72.90 (a)–(d), (f), 72.92, 72.94, 72.98, 72.100, 72.102 (c), (d), (f), 72.104, 72.106, 72.120, 72.122, 72.124, 72.126, 72.128, 72.130, 72.140 (b), (c), 72.142, 72.144, 72.146, 72.148, 72.150, 72.152, 72.154, 72.156, 72.158, 72.160, 72.162, 72.164, 72.166, 72.168, 72.170, 72.172, 72.176, 72.180, 72.182, 72.184, 72.186, 72.190, 72.192, 72.194 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 72.10(e), 72.11, 72.16, 72.22, 72.24, 72.26, 72.28, 72.30, 72.32, 72.44 (b)(3), (c)(5), (d)(3), (e), (f), 72.48 (b), (c), 72.50(b), 72.54 (a), (b), (c), 72.56, 72.70, 72.72, 72.74 (a), (b), 72.76(a), 72.78(a), 72.80, 72.82, 72.92(b), 72.94(b), 72.140 (b), (c), (d), 72.144(a), 72.146, 72.148, 72.150, 72.152, 72.154 (a), (b), 72.156, 72.160, 72.162, 72.168, 72.170, 72.172, 72.174, 72.176, 72.180, 72.184, 72.186, 72.192 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

Subpart A—General Provisions

§ 72.1 Purpose.

The regulations in this part establish requirements, procedures, and criteria for the issuance of licenses to receive, transfer, and possess power reactor spent fuel and other radioactive materials associated with spent fuel storage in an independent spent fuel storage installation (ISFSI) and the terms and conditions under which the Commission will issue such licenses, including licenses to the U.S. Department of Energy (DOE) for the provision of not more than 1900 metric tons of spent fuel storage capacity at facilities not owned by the Federal Government on January 7, 1983 for the Federal interim storage program under Subtitle B—Interim Storage Program of the Nuclear Waste Policy Act of 1982 (NWPA). The regulations in this part also establish requirements, procedures, and criteria for the issuance of licenses to DOE to receive, transfer, package, and possess power reactor spent fuel, high-level radioactive waste, and other radioactive materials associated with the spent fuel and high-level radioactive waste storage, in a monitored retrievable storage installation (MRS).

§ 72.2 Scope.

(a) Except as provided in § 72.6(b), licenses issued under this part are limited to the receipt, transfer, packaging, and possession of:

(1) Power reactor spent fuel to be stored in a complex that is designed and constructed specifically for storage of power reactor spent fuel aged for at least one year, and other radioactive materials associated with spent fuel storage in an independent spent fuel storage installation (ISFSI); or

(2) Power reactor spent fuel to be stored in a monitored retrievable storage installation (MRS) owned by DOE that is designed and constructed specifically for the storage of spent fuel aged for at least one year, high-level radioactive waste that is in a solid form, and other radioactive materials associated with spent fuel or high/level radioactive waste storage.

The term "Monitored Retrievable Storage Installation" or "MRS," as defined § 72.3, is derived from the NWPA and includes any installation that meets this definition.

(b) The regulations in this part pertaining to an independent spent fuel storage installation (ISFSI) apply to all persons in the United States, including persons in Agreement States. The regulations in this part pertaining to a monitored retrievable storage installation (MRS) apply only to DOE.

(c) The requirements of this regulation are applicable, as appropriate, to both wet and dry modes of storage of (1) spent fuel in an independent spent fuel storage installation (ISFSI) and (2) spent fuel and solid high-level radioactive waste in a monitored retrievable storage installation (MRS).

(d) Licenses covering the storage of spent fuel in an existing spent fuel storage installation shall be issued in accordance with the requirements of this part as stated in § 72.40, as applicable.

(e) As provided in section 135 of the Nuclear Waste Policy Act of 1982, Pub. L. 97–425, 96 Stat. 2201 at 2232 (42 U.S.C. 10155) the U.S. Department of Energy is not required to obtain a license under the regulations in this part to use available capacity at one or more facilities owned by the Federal Government on January 7, 1983, including the modification and expansion of any such facilities, for the storage of spent nuclear fuel from civilian nuclear power reactors.

§ 72.3 Definitions.

As used in this part:

"Act" means the Atomic Energy Act of 1954 (68 Stat. 919) including any amendments thereto.

"Affected Indian tribe" means any Indian tribe—

(1) Within whose reservation boundaries a monitored retrievable storage facility is proposed to be located;

(2) Whose federally defined possessory or usage rights to other lands outside of the reservation's boundaries arising out of congressionally ratified treaties may be substantially and adversely affected by the locating of such a facility: *Provided,* That the Secretary of the Interior finds, upon the petition of the appropriate governmental officials of the tribe, that such effects are both substantial and adverse to the tribe.

"Affected unit of local government" means any unit of local government with jurisdiction over the site where an MRS is proposed to be located.

"As low as is reasonably achievable" (ALARA) means as low as is reasonably achievable taking into account the state of technology, and the economics of improvement in relation to—

(1) Benefits to the public health and safety,

(2) Other societal and socioeconomic considerations, and

(3) The utilization of atomic energy in the public interest.

"Atomic energy" means all forms of energy released in the course of nuclear fission or nuclear transformation.

"Byproduct material" means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

"Commencement of construction" means any clearing of land, excavation, or other substantial action that would adversely affect the natural environment of a site, but does not mean:

(1) Changes desirable for the temporary use of the land for public recreational uses, necessary borings or excavations to determine subsurface materials and foundation conditions, or other preconstruction monitoring to establish background information related to the suitability of the site or to the protection of environmental values;

(2) Construction of environmental monitoring facilities;

(3) Procurement or manufacture of components of the installation; or

(4) Construction of means of access to the site as may be necessary to accomplish the objectives of paragraphs (1) and (2) of this definition.

"Commission" means the Nuclear Regulatory Commission or its duly authorized representatives.

"Confinement systems" means those systems, including ventilation, that act as barriers between areas containing radioactive substances and the environment.

"Controlled area" means that area immediately surrounding an ISFSI or MRS for which the licensee exercises authority over its use and within which ISFSI or MRS operations are performed.

"Decommission" means to remove (as a facility) safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of license.

"Design bases" means that information that identifies the specific functions to be performed by a structure, system, or component of a facility and the specific values or ranges of values chosen for controlling parameters as reference bounds for design. These values may be restraints derived from generally accepted "state-of-the-art" practices for achieving functional goals or requirements derived from analysis (based on calculation or experiments) of the effects of a postulated event under which a structure, system, or component must meet its functional goals. The values for controlling parameters for external events include: (1) Estimates of severe natural events to be used for deriving design bases that will be based on consideration of historical data on the associated parameters, physical data, or analysis of upper limits of the physical processes involved and (2) estimates of severe external man-induced events to be used for deriving design bases that will be based on analysis of human activity in the region taking into account the site characteristics and the risks associated with the event.

"Design capacity" means the quantity of spent fuel or high-level radioactive waste, the maximum burnup of the spent fuel in MWD/MTU, the curie content of the waste, and the total heat generation in BTU per hour that the storage installation is designed to accommodate.

"DOE" means the U.S. Department of Energy or its duly authorized representatives.

"Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore islands. Areas subject to a one percent or greater chance of flooding in any given year are included.

"High-level radioactive waste" or "HLW" means (1) the highly radioacive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations;

and (2) other highly radioactive material that the Commission, consistent with existing law, determines by rule requires permanent isolation.

"Historical data" means a compilation of the available published and unpublished information concerning a particular type of event.

"Independent spent fuel storage installation" or "ISFSI" means a complex designed and constructed for the interim storage of spent nuclear fuel and other radioactive materials associated with spent fuel storage. An ISFSI which is located on the site of another facility may share common utilities and services with such a facility and be physically connected with such other facility and still be considered independent: Provided, that such sharing of utilities and services or physical connections does not: (1) Increase the probability or consequences of an accident or malfunction of components, structures, or systems that are important to safety; or (2) reduce the margin of safety as defined in the basis for any technical specification of either facility.

"Indian Tribe" means an Indian tribe as defined in the Indian Self Determination and Education Assistance Act (Pub. L. 93–638).

"Monitored Retrievable Storage Installation" or "MRS" means a complex designed, constructed, and operated by DOE for the receipt, transfer, handling, packaging, possession, safeguarding, and storage of spent nuclear fuel aged for at least one year and solidified high-level radioactive waste resulting from civilian nuclear activities, pending shipment to a HLW repository or other disposal.

"NEPA" means the National Environmental Policy Act of 1969 including any amendments thereto.

"NWPA" means the Nuclear Waste Policy Act of 1982 including any amendments thereto.

"Person" means—

(1) Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than the Commission or the Department of Energy (DOE), except that the DOE shall be considered a person within the meaning of the regulations in this part to the extent that its facilities and activities are subject to the licensing and related regulatory authority of the Commission pursuant to section 202 of the Energy Reorganization Act of 1974, as amended (88 Stat. 1244), and Sections 131, 132, 133, 135, 137, and 141 of the Nuclear Waste Policy Act of 1982 (96 Stat. 2229, 2230, 2232, 2241);

(2) Any State, any political subdivision of a State, or any political entity within a State;

(3) Any foreign government or nation, or any political subdivision of any such government or nation, or other entity; and

(4) Any legal successor, representative, agent, or agency of the foregoing.

"Population" means the people that may be affected by the change in environmental conditions due to the construction, operation, or decommissioning of an ISFSI or MRS.

"Region" means the geographical area surrounding and including the site, which is large enough to contain all the features related to a phenomenon or to a particular event that could potentially impact the safe or environmentally sound construction, operation, or decommissioning of an independent spent fuel storage or monitored retrievable storage installation.

"Reservation" means—

(1) Any Indian reservation or dependent Indian community referred to in clause (a) or (b) of section 1151 of title 18, United States Code; or

(2) Any land selected by an Alaska Native village or regional corporation under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*).

"Site" means the real property on which the ISFSI or MRS is located.

"Source material" means—

(1) Uranium or thorium, or any combination thereof, in any physical or chemical form or

(2) Ores that contain by weight one-twentieth of one percent (0.05%) or more of:

(i) Uranium,

(ii) Thorium, or

(iii) Any combination thereof.

Source material does not include special nuclear material.

"Special nuclear material" means—

(1) Plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Commission, pursuant to the provisions of section 51 of the Act, determines to be special nuclear material, but does not include source material; or

(2) Any material artificially enriched by any of the foregoing but does not include source material.

"Spent Nuclear Fuel" or "Spent Fuel" means fuel that has been withdrawn from a nuclear reactor following irradiation, has undergone at least one year's decay since being used as a source of energy in a power reactor, and has not been chemically separated into its constituent elements by reprocessing. Spent fuel includes the special nuclear material, byproduct material, source material, and other radioactive materials associated with fuel assemblies.

"Structures, systems, and components important to safety" mean those features of the ISFSI or MRS whose function is:

(1) To maintain the conditions required to store spent fuel or high-level radioactive waste safely,

(2) To prevent damage to the spent fuel or the high-level radioactive waste container during handling and storage, or

(3) To provide reasonable assurance that spent fuel or high-level radioactive waste can be received, handled, packaged, stored, and retrieved without undue risk to the health and safety of the public.

§ 72.4 Communications.

Except where otherwise specified, all communications and reports concerning the regulations in this part and applications filed under them should be addressed to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Communications, reports, and applications may be delivered in person at the Commission's Offices at 11555 Rockville Pike, Rockville, Maryland, or at 1717 H Street NW., Washington, DC.

§ 72.5 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by an officer or employee of the Commission, other than a written interpretation by the General Counsel, will be recognized to be binding upon the Commission.

§ 72.6 License required; types of licenses.

(a) Licenses for the receipt, handling, storage, and transfer of spent fuel or high-level radioactive waste are of two types: general and specific. Any general license provided in this part is effective without the filing of an application with the Commission or the issuance of a licensing document to a particular person. A specific license is issued to a named person upon application filed pursuant to regulations in this part.

(b) A general license is hereby issued to receive title to and own spent fuel or high-level radioactive waste without regard to quantity. Notwithstanding any other provision of this chapter, a general licensee under this paragraph is not authorized to acquire, deliver, receive,

possess, use, or transfer spent fuel or high-level radioactive waste except as authorized in a specific license.

(c) Except as authorized in a specific license issued by the Commission in accordance with the regulations in this part, no person may acquire, receive, or possess—

(1) Spent fuel for the purpose of storage in an ISFSI; or

(2) Spent fuel, high-level radioactive waste, or radioactive material associated with high-level radioactive waste for the purpose of storage in an MRS.

§ 72.7 Specific exemptions.

The Commission may, upon application by any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

§ 72.8 Denial of licensing by Agreement States.

Agreement States may not issue licenses covering the storage of spent fuel in an ISFSI or the storage of spent fuel and high-level radioactive waste in an MRS.

§ 72.9 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). OMB has approved the information collection requirements contained in this part under control number 3150–0132.

(b) The approved information collection requirements contained in this part appear in §§ 72.16, 72.22 through 72.34, 72.42, 72.44, 72.48 through 72.56, 72.62, 72.70 through 72.82, 72.90, 72.92, 72.94, 72.98, 72.100, 72.102, 72.104, 72.108, 72.120, 72.126, 72.140 through 72.176 72.180 through 72.186, and 72.192.

§ 72.10 Employee protection.

(a) Discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, and privileges of employment. The protected activities are established in section 210 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act of 1954, as amended, or the Energy Reorganization Act.

(1) The protected activities include but are not limited to—

(i) Providing the Commission information about possible violations of requirements imposed under either of the above statutes;

(ii) Requesting the Commission to institute action against his or her employer for the administration or enforcement of these requirements; or

(iii) Testifying in any Commission proceeding.

(2) These activities are protected even if no formal proceeding is actually initiated as a result of the employee assistance or participation.

(3) This section has no application to any employee alleging discrimination prohibited by this section who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of the Energy Reorganization Act of 1974, as amended, or the Atomic Energy Act of 1954, as amended.

(b) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person for engaging in the protected activities specified in paragrph (a)(1) of this section may seek a remedy for the discharge or discrimination through an administrative proceeding in the Department of Labor. The administrative proceeding must be initiated within 30 days after an alleged violation occurs by filing a complaint alleging the violation with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The Department of Labor may order reinstatement, back pay, and compensatory damages.

(c) A violation of paragraph (a) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for—

(1) Denial, revocation, or suspension of the license.

(2) Imposition of a civil penalty on the licensee or applicant.

(3) Other enforcement action.

(d) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The prohibition applies when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action dictated by nonprohibited considerations.

(e)(1) Each licensee and each applicant shall post Form NRC–3, "Notice to Employees," on its premises. Posting must be at location sufficient to permit employees protected by this section to observe all copy on the way to or from their place of work. Premises must be posted no later than 30 days after an application is docketed and remain posted while the application is pending before the Commission, during the term of the license, and for 30 days following license termination.

(2) Copies of Form NRC–3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in Appendix A, Part 73 of this chapter or the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

§ 72.11 Completeness and accuracy of information.

(a) Information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

(b) Each applicant or licensee shall notify the Commission of information identified by the applicant or licensee as having for the regulated activity a significant implication for public health and safety or common defense and security. An applicant or licensee violates this paragraph only if the applicant or licensee fails to notify the Commission of information that the applicant or licensee has identified as having a significant implication for public health and safety or common defense and security. Notification shall be provided to the Administrator of the appropriate Regional Office within two working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the Commission by other reporting or updating requirements.

Subpart B—License Application, Form, and Contents

§ 72.16 Filing of application for specific license.

(a) *Place of filing.* Each application for a license, or amendment thereof, under

this part should be filed with the Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Applications, communications, reports, and correspondence may also be delivered in person at the Commission's offices at 11555 Rockville Pike, Rockville, Maryland, or at the NRC Public Document Room, 1717 H Street NW., Washington, DC.

(b) *Oath or affirmation.* Each application for a license or license amendment (including amendments to such applications), except for those filed by DOE, must be executed in an original signed by the applicant or duly authorized officer thereof under oath or affirmation. Each application for a license or license amendment (including amendments to such applications) filed by DOE must be signed by the Secretary of Energy or the Secretary's authorized representative.

(c) *Number of copies of application.* Each filing of an application for a license or license amendment under this part (including amendments to such applications) must include, in addition to a signed original, 15 copies of each portion of such application, safety analysis report, environmental report, and any amendments. Another 125 copies shall be retained by the applicant for distribution in accordance with instruction from the Director or the Director's designee.

(d) *Fees.* The application, amendment, and renewal fees applicable to a license covering the storage of spent fuel in an ISFSI are those shown in § 170.31 of this chapter.

(e) *Notice of docketing.* Upon receipt of an application for a license or license amendment under this part, the Director, Office of Nuclear Material Safety and Safeguards or the Director's designee will assign a docket number to the application, notify the applicant of the docket number, instruct the applicant to distribute copies retained by the applicant in accordance with paragraph (c) of this section, and cause a notice of docketing to be published in the **Federal Register.** The notice of docketing shall identify the site of the ISFSI or the MRS by locality and State and may include a notice of hearing or a notice of proposed action and opportunity for hearing as provided by § 72.46 of this part. In the case of an application for a license or an amendment to a license for an MRS, the Director, Office of Nuclear Material Safety and Safeguards, or the Director's designee, in accordance with § 72.200 of this part, shall send a copy of the notice of docketing to the Governor and legislature of any State in which an MRS is or may be located, to the Chief Executive of the local municipality, to the Governors of any contiguous States and to the governing body of any affected Indian tribe.

§ 72.18 Elimination of repetition.

In any application under this part, the applicant may incorporate by reference information contained in previous applications, statements, or reports filed with the Commission: Provided, That such references are clear and specific.

§ 72.20 Public inspection of application.

Applications and documents submitted to the Commission in connection with applications may be made available for public inspection in accordance with provisions of the regulations contained in Parts 2 and 9 of this chapter.

§ 72.22 Contents of application: General and financial information.

Each application must state:

(a) Full name of applicant;

(b) Address of applicant;

(c) Description of business or occupation of applicant;

(d) If applicant is:

(1) An individual: Citizenship and age;

(2) A partnership: Name, citizenship, and address of each partner and the principal location at which the partnership does business;

(3) A corporation or an unincorporated association:

(i) The State in which it is incorporated or organized and the principal location at which it does business; and

(ii) The names, addresses, and citizenship of its directors and principal officers;

(4) Acting as an agent or representative of another person in filing the application: The identification of the principal and the information required under this paragraph with respect to such principal.

(5) The Department of Energy:

(i) The identification of the DOE organization responsible for the construction and operation of the ISFSI or MRS, including a description of any delegations of authority and assignments of responsibilities.

(ii) For each application for a license for an MRS, the provisions of the public law authorizing the construction and operation of the MRS.

(e) Except for DOE, information sufficient to demonstrate to the Commission the financial qualifications of the applicant to carry out, in accordance with the regulations in this chapter, the activities for which the license is sought. The information must state the place at which the activity is to be performed, the general plan for carrying out the activity, and the period of time for which the license is requested. The information must show that the applicant either possesses the necessary funds, or that the applicant has reasonable assurance of obtaining the necessary funds or that by a combination of the two, the applicant will have the necessary funds available to cover the following:

(1) Estimated construction costs;

(2) Estimated operating costs over the planned life of the ISFSI; and

(3) Estimated decommissioning costs, and the necessary financial arrangements to provide reasonable assurance prior to licensing that decommissioning will be carried out after the removal of spent fuel and/or high-level radioactive waste from storage.

§ 72.24 Contents of application: Technical information.

Each application for a license under this part must include a Safety Analysis Report describing the proposed ISFSI or MRS for the receipt, handling, packaging, and storage of spent fuel or high-level radioactive waste, including how the ISFSI or MRS will be operated. The minimum information to be included in this report must consist of the following:

(a) A description and safety assessment of the site on which the ISFSI or MRS is to be located, with appropriate attention to the design bases for external events. Such assessment must contain an analysis and evaluation of the major structures, systems, and components of the ISFSI or MRS that bear on the suitability of the site when the ISFSI or MRS is operated at its design capacity. If the proposed ISFSI or MRS is to be located on the site of a nuclear power plant or other licensed facility, the potential interactions between the ISFSI or MRS and such other facility must be evaluated.

(b) A description and discussion of the ISFSI or MRS structures with special attention to design and operating characteristics, unusual or novel design features, and principal safety considerations.

(c) The design of the ISFSI or MRS in sufficient detail to support the findings in § 72.40, including:

(1) The design criteria for the ISFSI or MRS pursuant to Subpart F of this part, with identification and justification for any additions to or departures from the general design criteria;

(2) the design bases and the relation of the design bases to the design criteria;

(3) Information relative to materials of construction, general arrangement, dimensions of principal structures, and descriptions of all structures, systems, and components important to safety, in sufficient detail to support a finding that the ISFSI or MRS will satisfy the design bases with an adequate margin for safety; and

(4) Applicable codes and standards.

(d) An analysis and evaluation of the design and performance of structures, systems, and components important to safety, with the objective of assessing the impact on public health and safety resulting from operation of the ISFSI or MRS and including determination of:

(1) The margins of safety during normal operations and expected operational occurrences during the life of the ISFSI or MRS; and

(2) The adequacy of structures, systems, and components provided for the prevention of accidents and the mitigation of the consequences of accidents, including natural and manmade phenomena and events.

(e) The means for controlling and limiting occupational radiation exposures within the limits given in Part 20 of this chapter, and for meeting the objective of maintaining exposures as low as is reasonably achievable.

(f) The features of ISFSI or MRS design and operating modes to reduce to the extent practicable radioactive waste volumes generated at the installation.

(g) An identification and justification for the selection of those subjects that will be probable license conditions and technical specifications. These subjects must cover the design, construction, preoperational testing, operation, and decommissioning of the ISFSI or MRS.

(h) A plan for the conduct of operations, including the planned managerial and administrative controls system, and the applicant's organization, and program for training of personnel pursuant to Subpart I.

(i) If the proposed ISFSI or MRS incorporates structures, systems, or components important to safety whose functional adequacy or reliability have not been demonstrated by prior use for that purpose or cannot be demonstrated by reference to performance data in related applications or to widely accepted engineering principles, an identification of these structures, systems, or components along with a schedule showing how safety questions will be resolved prior to the initial receipt of spent fuel or high-level radioactive waste for storage at the ISFSI or MRS.

(j) The technical qualifications of the applicant to engage in the proposed activities, as required by § 72.28.

(k) A description of the applicant's plans for coping with emergencies, as required by § 72.32.

(l) A description of the equipment to be installed to maintain control over radioactive materials in gaseous and liquid effluents produced during normal operations and expected operational occurrences. The description must identify the design objectives and the means to be used for keeping levels of radioactive material in effluents to the environment as low as is reasonably achievable and within the exposure limits stated in § 72.104. The description must include:

(1) An estimate of the quantity of each of the principal radionuclides expected to be released annually to the environment in liquid and gaseous effluents produced during normal ISFSI or MRS operations;

(2) A description of the equipment and processes used in radioactive waste systems; and

(3) A general description of the provisions for packaging, storage, and disposal of solid wastes containing radioactive materials resulting from treatment of gaseous and liquid effluents and from other sources.

(m) An analysis of the potential dose equivalent or committed dose equivalent to an individual outside the controlled area from accidents or natural phenomena events that result in the release of radioactive material to the environment or direct radiation from the ISFSI or MRS. The calculations of individual dose equivalent or committed dose equivalent must be performed for direct exposure, inhalation, and ingestion occurring as a result of the postulated design basis event.

(n) A description of the quality assurance program that satisfies the requirements of Subpart G to be applied to the design, fabrication, construction, testing, operation, modification, and decommissioning of the structures, systems, and components of the ISFSI or MRS important to safety. The description must identify the structures, systems, and components important to safety. The program must also apply to managerial and administrative controls used to ensure safe operation of the ISFSI or MRS.

(o) A description of the detailed security measures for physical protection, including design features and the plans required by Subpart H. For an application from DOE for an ISFSI or MRS, DOE will provide a description of the physical security plan for protection against radiological sabotage as required by Subpart H. An application submitted by DOE for an ISFSI or MRS must include a certification that it will provide at the ISFSI or MRS such safeguards as it requires at comparable surface DOE facilities to promote the common defense and security.

(p) A description of the program covering preoperational testing and initial operations.

(q) A description of the decommissioning plan required under § 72.30.

§ 72.26 Contents of application: Technical specifications.

Each application under this part shall include proposed technical specifications in accordance with the requirements of § 72.44 and a summary statement of the bases and justifications for these technical specifications.

§ 72.28 Contents of application: Applicant's technical qualifications.

Each application under this part must include:

(a) The technical qualifications, including training and experience, of the applicant to engage in the proposed activities;

(b) A description of the personnel training program required under Subpart I;

(c) A description of the applicant's operating organization, delegations of responsibility and authority and the minimum skills and experience qualifications relevant to the various levels of responsibility and authority; and

(d) A commitment by the applicant to have and maintain an adequate complement of trained and certified installation personnel prior to the receipt of spent fuel or high-level radioactive waste for storage.

§ 72.30 Decommissioning planning, including financing and recordkeeping.

(a) Each application under this part must include a proposed decommissioning plan that contains sufficient information on proposed practices and procedures for the decontamination of the site and facilities and for disposal of residual radioactive materials after all spent fuel or high-level radioactive waste has been removed, in order to provide reasonable assurance that the decontamination and decommissioning of the ISFSI or MRS at the end of its useful life will provide adequate protection to the health and safety of the public. This plan must identify and discuss those design features of the ISFSI or MRS that facilitate its decontamination and

decommissioning at the end of its useful life.

(b) The decommissioning funding plan must contain information on how reasonable assurance will be provided that funds will be available to decommission the ISFSI or MRS. This information must include a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from paragraph (c) of this section, including means of adjusting cost estimates and associated funding levels periodically over the life of the ISFSI or MRS.

(c) Financial assurance for decommissioning must be provided by one or more of the following methods:

(1) *Prepayment.* Prepayment is the deposit prior to the start of operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets such that the amount of funds would be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

(2) *A surety method, insurance, or other guarantee method.* These methods guarantee that decommissioning costs will be paid should the licensee default. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix A of 10 CFR Part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

(i) The surety method or insurance must be open-ended or, if written for a specified term, such as five years, must be renewed automatically unless 90 days or more prior to the renewal date, the issuer notifies the Commission, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance must also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the Commission withing 30 days after receipt of notification or cancellation.

(ii) The surety method or insurance must be payable to a trust established for decomissioning costs. The trustee and trust must be acceptable to the Commission. An acceptable trustee includes an appropriate State or Federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(iii) The surety or insurance must remain in effect until the Commission has terminated the license.

(3) An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund. An external sinking fund is a fund establishing and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities. The surety or insurance provision must be as stated in paragraph (c)(2) of this section.

(4) In the case of Federal, State, or local government licensees, a statement of intent containing a cost estimate for decommissioning, and indicating that funds for decommissioning will be obtained when necessary.

(5) In the case of electric utility licensees, the methods of § 50.75(e) (1) and (3) of this chapter.

(d) Each licensee shall keep records of information important to the safe and effective decommissioning of the facility in an identified location until the license is terminated by the Commission. If records of relevant information are kept for other purposes, reference to these records and their locations may be used. Information the Commission considers important to decommissioning consists of—

(1) Records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials such as concrete. These records must include any known information on identification of involved nuclides, quantities, forms, and concentrations.

(2) As-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are used and/or stored, and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations.

(3) Records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

§ 72.32 Emergency plan.

(a) [Reserved]

(b) [Reserved]

(c) For an ISFSI that is located on the site of a nuclear power reactor licensed for operation by the Commission, the emergency plan required by 10 CFR 50.47 shall be deemed to satisfy the requirements of this section.

§ 72.34 Environmental report.

Each application for an ISFSI or MRS license under this part must be accompanied by an Environmental Report which meets the requirements of Subpart A of Part 51 of this chapter.

Subpart C—Issuance and Conditions of License

§ 72.40 Issuance of license.

(a) Except as provided in paragraph (c) of this section, the Commission will issue a license under this part upon a determination that the application for a license meets the standards and requirements of the Act and the regulations of the Commission, and upon finding that:

(1) The applicant's proposed ISFSI or MRS design complies with Subpart F;

(2) The proposed site complies with the criteria in Subpart E;

(3) If on the site of a nuclear power plant or other licensed activity or facility, the proposed ISFSI would not pose an undue risk to the safe operation of such nuclear power plant or other licensed activity or facility;

(4) The applicant is qualified by reason of training and experience to conduct the operation covered by the regulations in this part;

(5) The applicant's proposed operating procedures to protect health and to minimize danger to life or property are adequate;

(6) Except for DOE, the applicant for an ISFSI or MRS is financially qualified to engage in the proposed activities in

accordance with the regulations in this part;

(7) The applicant's quality assurance plan complies with Subpart G;

(8) The applicant's physical protection provisions comply with Subpart H. DOE has complied with the safeguards and physical security provisions identified in § 72.24(o);

(9) The applicant's personnel training program complies with Subpart I;

(10) Except for DOE, the applicant's decommissioning plan and its financing pursuant to § 72.30 provide reasonable assurance that the decontamination and decommissioning of the ISFSI or MRS at the end of its useful life will provide adequate protection to the health and safety of the public;

(11) The applicant's emergency plan complies with § 72.32;

(12) The applicable provisions of Part 170 of this chapter have been satisfied;

(13) There is reasonable assurance that: (i) The activities authorized by the license can be conducted without endangering the health and safety of the public and (ii) these activities will be conducted in compliance with the applicable regulations of this chapter; and

(14) The issuance of the license will not be inimical to the common defense and security.

(b) Grounds for denial of a license to store spent fuel in the proposed ISFSI or to store spent fuel and high-level radioactive waste in the proposed MRS may be the commencement of construction prior to (1) a finding by the Director, Office of Nuclear Materials Safety and Safeguards or designee or (2) a finding after a public hearing by the presiding officer, Atomic Safety and Licensing Board, Atomic Safety and Licensing Appeal Board, or the Commission acting as a collegial body, as appropriate, that the action called for is the issuance of the proposed license with any appropriate conditions to protect environmental values. This finding is to be made on the basis of information filed and evaluations made pursuant to Subpart A of Part 51 of this chapter or in the case of an MRS on the basis of evaluations made pursuant to sections 141(c) and (d) or 148(a) and (c) of NWPA (96 Stat. 2242, 2243, 42 U.S.C. 10161(c), (d); 101 Stat. 1330–235, 1330–236, 42 U.S.C. 10168(a), (c)), as appropriate, and after weighing the environmental, economic, technical and other benefits against environmental costs and considering available alternatives.

(c) For facilities that have been covered under previous licensing actions including the issuance of a construction permit under Part 50 of this chapter, a reevaluation of the site is not required except where new information is discovered which could alter the original site evaluation findings. In this case, the site evaluation factors involved will be reevaluated.

§ 72.42 Duration of license; renewal.

(a) Each license issued under this part must be for a fixed period of time to be specified in the license. The license term for an ISFSI must not exceed 20 years from the date of issuance. The license term for an MRS must not exceed 40 years from the date of issuance. Licenses for either type of installation may be renewed by the Commission at the expiration of the license term upon application by the licensee and pursuant to the requirements of this rule.

(b) Applications for renewal of a license should be filed in accordance with the applicable provisions of Subpart B at least two years prior to the expiration of the existing license. Information contained in previous applications, statements, or reports filed with the Commission under the license may be incorporated by reference: Provided, that such references are clear and specific.

(c) In any case in which a licensee, not less than two years prior to expiration of its existing license, has filed an application in proper form for renewal of a license, the existing license shall not expire until a final decision concerning the application for renewal has been made by the Commission.

§ 72.44 License conditions.

(a) Each license issued under this part shall include license conditions. The license conditions may be derived from the analyses and evaluations included in the Safety Analysis Report and amendments thereto submitted pursuant to § 72.24. License conditions pertain to design, construction and operation. The Commission may also include additional license conditions as it finds appropriate.

(b) Each license issued under this part shall be subject to the following conditions, even if they are not explicitly stated therein:

(1) Neither the license nor any right thereunder shall be transferred, assigned, or disposed of in any manner, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of the Atomic Energy Act of 1954, as amended, and give its consent in writing.

(2) The license shall be subject to revocation, suspension, modification, or amendment in accordance with the procedures provided by the Atomic Energy Act of 1954, as amended, and Commission regulations.

(3) Upon request of the Commission, the licensee shall, at any time before expiration of the license, submit written statements, signed under oath or affirmation if appropriate, to enable the Commission to determine whether or not the license should be modified, suspended, or revoked.

(4) Prior to the receipt of spent fuel for storage at an ISFSI or the receipt of spent fuel and high-level radioactive waste for storage at an MRS, the licensee shall have in effect an NRC-approved program covering the training and certification of personnel that meets the requirements of Subpart I.

(5) The license shall permit the operation of the equipment and controls that are important to safety of the ISFSI or the MRS only by personnel whom the licensee has certified as being adequately trained to perform such operations, or by uncertified personnel who are under the direct visual supervision of a certified individual.

(6)(i) Each licensee shall notify the appropriate NRC Regional Administrator, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any Chapter of Title II (Bankruptcy) of the United States Code by or against:

(A) The licensee;

(B) An entity (as that term is defined in 11 U.S.C. 101(14)) controlling the licensee or listing the license or licensee as property of the estate; or

(C) An affiliate (as that term is defined in 11 U.S.C. 101(2)) of the licensee.

(ii) This notification must indicate:

(A) The bankruptcy court in which the petition for bankruptcy was filed; and

(B) The date of the filing of the petition.

(c) Each license issued under this part must include technical specifications. Technical specifications must include requirements in the following categories:

(1) *Functional and operating limits and monitoring instruments and limiting control settings.*

(i) Functional and operating limits for an ISFSI or MRS are limits on fuel or waste handling and storage conditions that are found to be necessary to protect the integrity of the stored fuel or waste container, to protect employees against occupational exposures and to guard against the uncontrolled release of radioactive materials; and

(ii) Monitoring instruments and limiting control settings for an ISFSI or MRS are those related to fuel or waste handling and storage conditions having significant safety functions.

(2) *Limiting conditions.* Limiting conditions are the lowest functional capability or performance levels of equipment required for safe operation.

(3) *Surveillance requirements.* Surveillance requirements include:

(i) Inspection and monitoring of spent fuel or high-level radioactive waste in storage;

(ii) inspection, test and calibration activities to ensure that the necessary integrity of required systems and components is maintained;

(iii) confirmation that operation of the ISFSI or MRS is within the required functional and operating limits; and

(iv) confirmation that the limiting conditions required for safe storage are met.

(4) *Design features.* Design features include items that would have a significant effect on safety if altered or modified, such as materials of construction and geometric arrangements.

(5) *Administrative controls.* Administrative controls include the organization and management procedures, recordkeeping, review and audit, and reporting necessary to assure that the operations involved in the storage of spent fuel in an ISFSI and the storage of spent fuel and high-level radioactive waste in an MRS are performed in a safe manner.

(d) Each license authorizing the receipt, handling, and storage of spent fuel or high-level radioactive waste under this part must include technical specifications that, in addition to stating the limits on the release of radioactive materials for compliance with limits of Part 20 of this chapter and the "as low as is reasonably achievable" objectives for effluents, require that:

(1) Operating procedures for control of effluents be established and followed, and equipment in the radioactive waste treatment systems be maintained and used, to meet the requirements of § 72.104;

(2) An environmental monitoring program be established to ensure compliance with the technical specifications for effluents; and

(3) An annual report be submitted to the appropriate regional office specified in Appendix A of Part 73 of this chapter, with a copy to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 60 days after January 1 of each year, specifying the quantity of each of the principal radionuclides released to the environment in liquid and in gaseous effluents during the previous 12 months of operation and such other information as may be required by the Commission to estimate maximum potential radiation dose commitment to the public resulting from effluent releases. On the basis of this report and any additional information the Commission may obtain from the licensee or others, the Commission may from time to time require the licensee to take such action as the Commission deems appropriate.

(e) The licensee shall make no change that would decrease the effectiveness of the physical security plan prepared pursuant to § 72.180 without the prior approval of the Commission. A licensee desiring to make such a change shall submit an application for an amendment to the license pursuant to § 72.56. A licensee may make changes to the physical security plan without prior Commission approval, provided that such changes do not decrease the effectiveness of the plan. The licensee shall furnish to the Commission a report containing a description of each change within two months after the change is made, and shall maintain records of changes to the plan made without prior Commission approval for a period of 3 years from the date of the change.

(f) A licensee shall follow and maintain in effect an emergency plan that is approved by the Commission. The licensee may make changes to the approved plan without Commission approval only if such changes do not decrease the effectiveness of the plan. Within six months after any change is made, the licensee shall submit a report containing a description of any changes made in the plan to the appropriate NRC Regional Office specified in Appendix A to Part 73 of this chapter with a copy to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Proposed changes that decrease the effectiveness of the approved emergency plan must not be implemented unless the licensee has received prior approval of such changes from the Commission.

(g) A license issued to DOE under this part for an MRS authorized by section 142(b) of NWPA (101 Stat. 1330–232, 42 U.S.C. 10162(b)) must include the following conditions:

(1) Construction of the MRS may not begin until the Commission has authorized the construction of a repository under section 114(d) of NWPA (96 Stat. 2215, as amended by 101 Stat. 1330–230, 42 U.S.C. 10134(d)) and Part 60 of this chapter;

(2) Construction of the MRS or acceptance of spent nuclear fuel or high-level radioactive waste at the MRS is prohibited during such time as the repository license is revoked by the Commission or construction of the repository ceases;

(3) The quantity of spent nuclear fuel or high-level radioactive waste at the site of the MRS at any one time may not exceed 10,000 metric tons of heavy metal until a repository authorized under NWPA and Part 60 of this chapter first accepts spent nuclear fuel or solidified high-level radioactive waste; and

(4) The quantity of spent nuclear fuel or high-level radioactive waste at the site of the MRS at any one time may not exceed 15,000 metric tons of heavy metal.

§ 72.46 Public hearings.

(a) In connection with each application for a license under this part, the Commission shall issue or cause to be issued a notice of proposed action and opportunity for hearing in accordance with § 2.105 or § 2.1107 of this chapter, as appropriate, or, if the Commission finds that a hearing is required in the public interest, a notice of hearing in accordance with § 2.104 of this chapter.

(b)(1) In connection with each application for an amendment to a license under this part, the Commission shall, except as provided in paragraph (b)(2) of this section, issue or cause to be issued a notice of proposed action and opportunity for hearing in accordance with § 2.105 or § 2.1107 of this chapter, as appropriate, or, if the Commission finds that a hearing is required in the public interest, a notice of hearing in accordance with § 2.104 of this chapter.

(2) The Director, Office of Nuclear Material Safety and Safeguards, or the Director's designee may dispense with a notice of proposed action and opportunity for hearing or a notice of hearing and take immediate action on an amendment to a license issued under this part upon a determination that the amendment does not present a genuine issue as to whether the health and safety of the public will be significantly affected. After taking the action, the Director or the Director's designee shall promptly publish a notice in the **Federal Register** of the action taken and of the right of interested persons to request a hearing on whether the action should be rescinded or modified. If the action taken amends an MRS license, the Director or the Director's designee shall also inform the appropriate State and local officials.

(c) The notice of proposed action and opportunity for hearing or the notice of hearing may be included in the notice of docketing required to be published by § 72.16 of this part.

(d) If no request for a hearing or petition for leave to intervene is filed within the time prescribed in the notice of proposed action and opportunity for hearing, the Director, Office of Nuclear Material Safety and Safeguards or the Director's designee may take the proposed action, and thereafter shall promptly inform the appropriate State and local officials and publish a notice in the Federal Register of the action taken. In accordance with § 2.764(c) of this chapter, the Director, Office of Nuclear Material Safety and Safeguards shall not issue an initial license for the construction and operation of an ISFSI or an MRS until expressly authorized to do so by the Commission.

§ 72.48 Changes, tests, and experiments.

(a)(1) The holder of a license issued under this part may:

(i) Make changs in the ISFSI or MRS described in the Safety Analysis Report,

(ii) Make changes in the procedures described in the Safety Analysis Report, or

(iii) Conduct tests or experiments not described in the Safety Analysis Report, without prior Commission approval, unless the proposed change, test or experiment involves a change in the license conditions incorporated in the license, an unreviewed safety question, a significant increase in occupational exposure or a significant unreviewed enviromental impact.

(2) A proposed change, test, or experiment shall be deemed to involve an unreviewed safety question—

(i) If the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the Safety Analysis Report may be increased;

(ii) If a possibility for an accident or malfunction of a different type than any evaluated previously in the Safety Analysis Report may be created; or

(iii) If the margin of safety as defined in the basis for any technical specification is reduced.

(b)(1) The licensee shall maintain records of changes in the ISFSI or MRS and of changes in procedures made pursuant to this section if these changes constitute changes in the ISFSI or MRS or procedures described in the Safety Analysis Report. The licensee shall also maintain records of tests and experiments carried out pursuant to paragraph (a) of this section. These records must include a written safety evaluation that provides the bases for the determination that the change, test, or experiment does not involve an unreviewed safety question. The records of changes in the ISFSI or MRS and of changes in procedures and records of tests must be maintained until the Commission terminates the license.

(2) Annually, or at such shorter interval as may be specified in the license, the licensee shall furnish to the appropriate regional office, specified in Appendix A of Part 73 of this chapter, with a copy to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, a report containing a brief description of changes, tests, and experiments made under paragraph (a) of the section, including a summary of the safety evaluation of each. Any report submitted by a licensee pursuant to this paragraph will be made a part of the public record pertaining to this license.

(c) The holder of a license issued under this part who desires—

(1) To make changes in the ISFSI or MRS or the procedures as described in the Safety Analysis Report, or to conduct tests or experiments not described in the Safety Analysis Report, that involve an unreviewed safety question, a significant increase in occupational exposure, or significant unreviewed environmental impact, or

(2) To change the license conditions shall submit an application for amendment of the license, pursuant to § 72.56.

§ 72.50 Transfer of license.

(a) No license or any part included in a license issued under this part for an ISFSI or MRS shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing.

(b)(1) An application for transfer of a license must include as much of the information described in §§ 72.22 and 72.28 with respect to the identity and the technical and financial qualifications of the proposed transferee as would be required by those sections if the application were for an initial license. The application must also include a statement of the purposes for which the transfer of the license is requested and the nature of the transaction necessitating or making desirable the transfer of the license.

(2) The Commission may require any person who submits an application for the transfer of a license pursuant to the provisions of this section to file a written consent from the existing licensee, or a certified copy of an order or judgment of a court of competent jurisdiction, attesting to the person's right—subject to the licensing requirements of the Act and these regulations—to possession of the radioactive materials and the storage installation involved.

(c) After appropriate notice to interested persons, including the existing licensee, and observance of such procedures as may be required by the Act or regulations or orders of the Commission, the Commission will approve an application for the transfer of a license, if the Commission determines that:

(1) The proposed transferee is qualified to be the holder of the license; and

(2) Transfer of the license is consistent with applicable provisions of the law, and the regulations and orders issued by the Commission.

§ 72.52 Creditor regulations.

(a) This section does not apply to an ISFSI or MRS constructed and operated by DOE.

(b) Pursuant to section 184 of the Act, the Commission consents, without individual application, to the creation of any mortgage, pledge, or other lien on special nuclear material contained in spent fuel not owned by the United States that is the subject of a license or on any interest in special nuclear material in spent fuel; Provided:

(1) That the rights of any creditor so secured may be exercised only in compliance with and subject to the same requirements and restrictions as would apply to the licensee pursuant to the provisions of the license, the Atomic Energy Act of 1954, as amended, and regulations issued by the Commission pursuant to said Act; and

(2) That no creditor so secured may take possession of the spent fuel pursuant to the provisions of this section prior to either the issuance of a license from the Commission authorizing possession or the transfer of the license.

(c) Any creditor so secured may apply for transfer of the license covering spent fuel by filing an application for transfer of the license pursuant to § 72.50(b). The Commission will act upon the application pursuant to § 72.50(c).

(d) Nothing contained in this regulation shall be deemed to affect the means of acquiring, or the priority of, any tax lien or other lien provided by law.

(e) As used in this section, "creditor" includes, without implied limitation, the trustee under any mortgage, pledge, or

lien on spent fuel in storage made to secure any creditor; any trustee or receiver of spent fuel appointed by a court of competent jurisdiction in any action brought for the benefit of any creditor secured by such mortgage, pledge, or lien; any purchaser of the spent fuel at the sale thereof upon foreclosure of the mortgage, pledge, or lien or upon exercise of any power of sale contained therein; or any assignee of any such purchaser.

§ 72.54 Application for termination of license.

(a) Any licensee may apply to the Commission for authority to surrender a license voluntarily and to decommission the ISFSI or MRS. This application must be made within two years following permanent cessation of operations, and in no case later than one year prior to expiration of the license. Each application for termination of license must be accompanied, or preceded, by a proposed final decommissioning plan.

(b) The proposed final decommissioning plan must include—

(1) The choice of the alternative for decommissioning with a description of activities involved. An alternative is acceptable if it provides for completion of decommissioning without significant delay. Consideration will be given to an alternative which provides for delayed completion of decommissioning only when necessary to protect the public health and safety. Factors to be considered in evaluating an alternative which provides for delayed completion of decommissioning include unavailability of waste disposal capacity and other site specific factors affecting the licensee's capability to carry out decommissioning safely, including presence of other nuclear facilities at the site.

(2) A description of controls and limits on procedures and equipment to protect occupational and public health and safety;

(3) A description of the planned final radiation survey; and

(4) An updated detailed cost estimate for the chosen alternative for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and plan for assuring the availability of adequate funds for completion of decommissioning including means for adjusting cost estimates and associated funding levels over any storage or surveillance period.

(5) A description of technical specifications and quality assurance provisions in place during decommissioning.

(c) For final decommissioning plans in which the major dismantlement activities are delayed by first placing the ISFSI or MRS in storage, planning for these delayed activities may be less detailed. Updated detailed plans must be submitted and approved prior to the start of such activities.

(d) If the final decommissioning plan demonstrates that the decommissioning will be performed in accordance with the regulations in this chapter and will not be inimical to the common defense and security or to the health and safety of the public, and after notice to interested persons, the Commission will approve the plan subject to such conditions and limitations as it deems appropriate and necessary and issue an order authorizing the decommissioning.

(e) The Commission will terminate the license if it determines that—

(1) The decommissioning has been performed in accordance with the approved final decommissioning plan and the order authorizing decommissioning; and

(2) The terminal radiation survey and associated documentation demonstrates that the ISFSI or MRS and site are suitable for release for unrestricted use.

§ 72.56 Application for amendment of license.

Whenever a holder of a license desires to amend the license, an application for an amendment shall be filed with the Commission fully describing the changes desired and the reasons for such changes, and following as far as applicable the form prescribed for original applications.

§ 72.58 Issuance of amendment.

In determining whether an amendment to a license will be issued to the applicant, the Commission will be guided by the considerations that govern the issuance of initial licenses.

§ 72.60 Modification, revocation, and suspension of license.

(a) The terms and conditions of all licenses are subject to amendment, revision, or modification by reason of amendments to the Atomic Energy Act of 1954, as amended, or by reason or rules, regulations, or orders issued in accordance with the Act or any amendments thereto.

(b) Any license may be modified, revoked, or suspended in whole or in part for any of the following:

(1) Any material false statement in the application or in any statement of fact required under section 182 of the Act;

(2) Conditions revealed by the application or statement of fact or any report, record, inspection or other means which would warrant the Commission to refuse to grant a license on an original application;

(3) Failure to operate an ISFSI or MRS in accordance with the terms of the license;

(4) Violation of, or failure to observe, any of the terms and conditions of the Act, or of any applicable regulation, license, or order of the Commission.

(c) Upon revocation of a license, the Commission may immediately cause the retaking of possession of all special nuclear material contained in spent fuel held by the licensee. In cases found by the Commission to be of extreme importance to the national defense and security or to the health and safety of the public, the Commission prior to following any of the procedures provided under sections 551–558 of Title 5 of the United States Code, may cause the taking of possession of any special nuclear material contained in spent fuel held by the licensee.

§ 72.62 Backfitting.

(a) As used in this section, "backfitting" means the addition, elimination, or modification, after the license has been issued, of:

(1) Structures, systems, or components of an ISFSI or MRS, or

(2) Procedures or organization required to operate an ISFSI or MRS.

(b) The Commission will require backfitting of an ISFSI or MRS if it finds that such action is necessary to assure adequate protection to occupational or public health and safety, or to bring the ISFSI or MRS into compliance with a license or the rules or orders of the Commission, or into conformance with written commitments by a licensee.

(c) The Commission may require the backfitting of an ISFSI or MRS if it finds:

(1) That there is a substantial increase in the overall protection of the occupational or public health and safety to be derived from the backfit, and

(2) That the direct and indirect costs of implementation for that ISFSI or MRS are justified in view of this increased protection.

(d) The Commission may at any time require a holder of a license to submit such information concerning the backfitting or the proposed backfitting of an ISFSI or MRS as it deems appropriate.

Subpart D—Records, Reports, Inspections, and Enforcement

§ 72.70 Safety analysis report updating.

(a) The design, description of planned operations, and other information submitted in the Safety Analysis Report shall be updated by the licensee and

submitted to the Commission at least once every six months after issuance of the license during final design and construction, until preoperational testing is completed, with final Safety Analysis Report completion and submittal to the Commission at least 90 days prior to the planned receipt of spent fuel or high-level radioactive waste. The final submittal must include a final analysis and evaluation of the design and performance of structures, systems, and components that are important to safety taking into account any pertinent information developed since the submittal of the license application.

(b) After the first receipt of spent fuel or high-level radioactive waste for storage, the Safety Analysis Report must be updated annually and submitted to the Commission by the licensee. This submittal must include the following:

(1) New or revised information relating to applicable site evaluation factors, including the results of environmental monitoring programs.

(2) A description and analysis of changes in the structures, systems, and components of the ISFSI or MRS, with emphasis upon:

(i) Performance requirements,

(ii) The bases, with technical justification therefor upon which such requirements have been established, and

(iii) Evaluations showing that safety functions will be accomplished.

(3) An analysis of the significance of any changes to codes, standards, regulations, or regulatory guides which the licensee has committed to meeting the requirements of which are applicable to the design, construction, or operation of the ISFSI or MRS.

§ 72.72 Material balance, inventory, and records requirements for stored materials.

(a) Each licensee shall keep records showing the receipt, inventory (including location), disposal, acquisition, and transfer of all spent fuel and high-level radioactive waste in storage. The records must include as a minimum the name of shipper of the material to the ISFSI or MRS, the estimated quantity of radioactive material per item (including special nuclear material in spent fuel), item identification and seal number, storage location, onsite movements of each fuel assembly or storage canister, and ultimate disposal. These records for spent fuel at an ISFSI or for spent fuel and high-level radioactive waste at an MRS must be retained for as long as the material is stored and for a period of five years after the material is disposed of or transferred out of the ISFSI or MRS.

(b) Each licensee shall conduct a physical inventory of all spent fuel and high-level radioactive waste in storage at intervals not to exceed 12 months unless otherwise directed by the Commission. The licensee shall retain a copy of the current inventory as a record until the Commission terminates the license.

(c) Each licensee shall establish, maintain, and follow written material control and accounting procedures that are sufficient to enable the licensee to account for material in storage. The licensee shall retain a copy of the current material control and accounting procedures until the Commission terminates the license.

(d) Records of spent fuel and high-level radioactive waste in storage must be kept in duplicate. The duplicate set of records must be kept at a separate location sufficiently remote from the original records that a single event would not destroy both sets of records. Records of spent fuel transferred out of an ISFSI or of spent fuel or high-level radioactive waste transferred out of an MRS must be preserved for a period of five years after the date of transfer.

§ 72.74 Reports of accidental criticality or loss of special nuclear material.

(a) Each licensee shall notify the NRC Operations Center [1] within one hour of discovery of accidental criticality or any loss of special nuclear material.

(b) This notification must be made to the NRC Operations Center via the Emergency Notification System if the licensee is party to that system. If the Emergency Notification System is inoperative or unavailable, the licensee shall make the required notification via commercial telephonic service or any other dedicated telephonic system or any other method that will ensure that a report is received by the NRC Operations Center within one hour. The exemption of § 73.21(g)(3) of this chapter applies to all telephonic reports required by this section.

(c) Reports required under § 73.71 of this chapter need not be duplicated under the requirements of this section.

§ 72.76 Material status reports.

(a) Except as provided in paragraph (b) of this section, each licensee shall complete and submit to the Commission (on DOE/NRC Form-742, Material Balance Report) material status reports in accordance with the printed instructions for completing the form. These reports must provide information concerning the special nuclear material contained in the spent fuel possessed, received, transferred, disposed of, or lost by the licensee. Material status reports must be made as of March 31 and September 30 of each year and filed within 30 days after the end of the period covered by the report. The Commission may, when good cause is shown, permit a licensee to submit material status reports at other times.

(b) Any licensee who is required to submit routine material status reports pursuant to § 75.35 of this chapter (pertaining to implementation of the US/IAEA Safeguards Agreement) shall prepare and submit such reports only as provided in that section instead of as provided in paragraph (a) of this section.

§ 72.78 Nuclear material transfer reports.

(a) Except as provided in paragraph (b) of this section, whenever the licensee transfers or receives spent fuel, the licensee shall complete and distribute a Nuclear Material Transaction Report on DOE/NRC Form-741 in accordance with printed instructions for completing the form. Each ISFSI licensee who receives spent fuel from a foreign source shall complete both the supplier's and receiver's portion of DOE/NRC Form-741, verify the identity of the spent fuel, and indicate the results on the receiver's portion of the form.

(b) Any licensee who is required to submit inventory change reports on DOE/NRC Form-741 pursuant to § 75.34 of this chapter (pertaining to implementation of the US/IAEA Safeguards Agreement) shall prepare and submit such reports only as provided in that section instead of as provided in paragraph (a) of this section.

§ 72.80 Other records and reports.

(a) Each licensee shall maintain any records and make any reports that may be required by the conditions of the license or by the rules, regulations, and orders of the Commission in effectuating the purposes of the Act.

(b) Each licensee shall furnish a copy of its annual financial report, including the certified financial statements, to the Commission.

(c) Records that are required by the regulations in this part or by the license conditions must be maintained for the period specified by the appropriate regulation or license condition. If a retention period is not otherwise specified, the above records must be maintained until the Commission terminates the license.

(d) Any record that must be maintained pursuant to this part may be either the original or a reproduced copy by any state of the art method provided

[1] Commercial telephone number of the NRC Operations Center is (301)951-0550.

that any reproduced copy is duly authenticated by authorized personnel and is capable of producing a clear and legible copy after storage for the period specified by Commission regulations.

§ 72.82 Inspections and tests.

(a) Each licensee under this part shall permit inspection by duly authorized representatives of the Commission of its records, premises, and activities and of spent fuel or high-level radioactive waste in its possession related to the specific license as may be necessary to effectuate the purposes of the Act, including section 105 of the Act.

(b) Each licensee under this part shall make available to the Commission for inspection, upon reasonable notice, records kept by the licensee pertaining to its receipt, possession, packaging, or transfer of spent fuel or high-level radioactive waste.

(c)(1) Each licensee under this part shall upon request by the Director, Office of Nuclear Material Safety and Safeguards or the appropriate NRC Regional Administrator provide rent-free office space for the exclusive use of the Commission inspection personnel. Heat, air conditioning, light, electrical outlets and janitorial services shall be furnished by each licensee. The office shall be convenient to and have full access to the installation and shall provide the inspector both visual and acoustic privacy.

(2) For a site with a single storage installation the space provided shall be adequate to accommodate a full-time inspector, a part-time secretary, and transient NRC personnel and will be generally commensurate with other office facilities at the site. A space of 250 sq. ft., either within the site's office complex or in an office trailer, or other onsite space, is suggested as a guide. For sites containing multiple facilities, additional space may be requested to accommodate additional full-time inspectors. The office space that is provided shall be subject to the approval of the Director, Office of Nuclear Material Safety and Safeguards or the appropriate NRC Regional Administrator. All furniture, supplies and Commission equipment will be furnished by the Commission.

(3) Each licensee under this part shall afford any NRC resident inspector assigned to that site, or other NRC inspectors identified by the Regional Administrator as likely to inspect the installation, immediate unfettered access, equivalent to access provided regular plant employees, following proper identification and compliance with applicable access control measures for security, radiological protection, and personal safety.

(d) Each licensee shall perform, or permit the Commission to perform, such tests as the Commission deems appropriate or necessary for the administrator of the regulations in this part.

(e) A report of the preoperational test acceptance criteria and test results must be submitted to the appropriate Regional Office specified in Appendix A of Part 73 of this chapter with a copy to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, at least 30 days prior to the receipt of spent fuel or high-level radioactive waste.

§ 72.84 Violations.

An injunction or other court order may be obtained prohibiting any violation of any provision of the Atomic Energy Act of 1954, as amended, or title II of the Energy Reorganization Act of 1974, as amended, or any regulation or order issued thereunder. A court order may be obtained for the payment of a civil penalty imposed pursuant to section 234 of the Atomic Energy Act for violation of sections 53, 57, 62, 63, 81, or 82 of the Atomic Energy Act, or section 206 of the Energy Reorganization Act of 1974, or any rule, regulation, or order issued thereunder, or any term, condition, or limitation of any license issued thereunder, or for any violation for which a license may be revoked under section 186 of the Atomic Energy Act. Any person who willfully violates any provision of the Atomic Energy Act, or any regulation or order issued thereunder, may be guilty of a crime and, upon conviction, may be punished by fine or imprisonment or both, as provided by law.

Subpart E—Siting Evaluation Factors

§ 72.90 General considerations.

(a) Site characteristics that may directly affect the safety or environmental impact of the ISFSI or MRS must be investigated and assessed.

(b) Proposed sites for the ISFSI or MRS must be examined with respect to the frequency and the severity of external natural and maninduced events that could affect the safe operation of the ISFSI or MRS.

(c) Design basis external events must be determined for each combination of proposed site and proposed ISFSI or MRS design.

(d) Proposed sites with design basis external events for which adequate protection cannot be provided through ISFSI or MRS design shall be deemed unsuitable for the location of the ISFSI or MRS.

(e) Pursuant to Subpart A of Part 51 of this chapter for each proposed site for an ISFSI and pursuant to sections 141 or 148 of NWPA, as appropriate (96 Stat. 2241, 101 Stat. 1330–235, 42 U.S.C. 10161, 10168) for each proposed site for an MRS, the potential for radiological and other environmental impacts on the region must be evaluated with due consideration of the characteristics of the population, including its distribution, and of the regional environs, including its historical and esthetic values.

(f) The facility must be sited so as to avoid to the extent possible the long-term and short-term adverse impacts associated with the occupancy and modification of floodplains.

§ 72.92 Design basis external natural events.

(a) Natural phenomena that may exist or that can occur in the region of a proposed site must be identified and assessed according to their potential effects on the safe operation of the ISFSI or MRS. The important natural phenomena that affect the ISFSI or MRS design must be identified.

(b) Records of the occurrence and severity of those important natural phenomena must be collected for the region and evaluated for reliability, accuracy, and completeness. The applicant shall retain these records until the license is issued.

(c) Appropriate methods must be adopted for evaluating the design basis external natural events based on the characteristics of the region and the current state of knowledge about such events.

§ 72.94 Design basis external man-induced events.

(a) The region must be examined for both past and present man-made facilities and activities that might endanger the proposed ISFSI or MRS. The important potential man-induced events that affect the ISFSI or MRS design must be identified.

(b) Information concerning the potential occurrence and severity of such events must be collected and evaluated for reliability, accuracy, and completeness.

(c) Appropriate methods must be adopted for evaluating the design basis external man-induced events, based on the current state of knowledge about such events.

§ 72.96 Siting limitations.

(a) An ISFSI which is owned and operated by DOE must not be located at any site within which there is a

candidate site for a HLW repository. This limitation shall apply until such time as DOE decides that such candidate site is no longer a candidate site under consideration for development as a HLW repository.

(b) An MRS must not be sited in any State in which there is located any site approved for site characterization for a HLW repository. This limitation shall apply until such time as DOE decides that the candidate site is no longer a candidate site under consideration for development as a repository. This limitation shall continue to apply to any site selected for construction as a repository.

(c) If an MRS is located, or is planned to be located, within 50 miles of the first HLW repository, any Commission decision approving the first HLW repository application must limit the quantity of spent fuel or high-level radioactive waste that may be stored. This limitation shall prohibit the storage of a quantity of spent fuel containing in excess of 70,000 metric tons of heavy metal, or a quantity of solidified high-level radioactive waste resulting from the reprocessing of such a quantity of spent fuel, in both the repository and the MRS until such time as a second repository is in operation.

(d) An MRS authorized by section 142(b) of NWPA (101 Stat. 1330–232, 42 U.S.C. 10162(b)) may not be constructed in the State of Nevada. The quantity of spent nuclear fuel or high-level radioactive waste that may be stored at an MRS authorized by section 142(b) of NWPA shall be subject to the limitations in § 72.44(g) of this part instead of the limitations in paragraph (c) of this section.

§ 72.98 Identifying regions around an ISFSI or MRS site.

(a) The regional extent of external phenomena, man-made or natural, that are used as a basis for the design of the ISFSI or MRS must be identified.

(b) The potential regional impact due to the construction, operation or decommissioning of the ISFSI or MRS must be identified. The extent of regional impacts must be determined on the basis of potential measurable effects on the population or the environment from ISFSI or MRS activities.

(c) Those regions identified pursuant to paragraphs (a) and (b) of this section must be investigated as appropriate with respect to:

(1) The present and future character and the distribution of population,

(2) Consideration of present and projected future uses of land and water within the region, and

(3) Any special characteristics that may influence the potential consequences of a release of radioactive material during the operational lifetime of the ISFSI or MRS.

§ 72.100 Defining potential effects of the ISFSI or MRS on the region.

(a) The proposed site must be evaluated with respect to the effects on populations in the region resulting from the release of radioactive materials under normal and accident conditions during operation and decommissioning of the ISFSI or MRS; in this evaluation both usual and unusual regional and site characteristics shall be taken into account.

(b) Each site must be evaluated with respect to the effects on the regional environment resulting from construction, operation, and decommissioning for the ISFSI or MRS; in this evaluation both usual and unusual regional and site characteristics must be taken into account.

§ 72.102 Geological and seismological characteristics.

(a)(1) East of the Rocky Mountain Front (east of approximately 104° west longitude), except in areas of known seismic activity including but not limited to the regions around New Madrid, MO, Charleston, SC, and Attica, NY, sites will be acceptable if the results from onsite foundation and geological investigation, literature review, and regional geological reconnaissance show no unstable geological characteristics, soil stability problems, or potential for vibratory ground motion at the site in excess of an appropriate response spectrum anchored at 0.2 g.

(2) For those sites that have been evaluated under paragraph (a)(1) of this section that are east of the Rocky Mountain Front, and that are not in areas of known seismic activity, a standardized design earthquake (DE) described by an appropriate response spectrum anchored at 0.25 g may be used. Alternatively, a site-specific DE may be determined by using the criteria and level of investigations required by Appendix A of Part 100 of this chapter.

(b) West of the Rocky Mountain Front (west of approximately 104° west longitude), and in other areas of known potential seismic activity, seismicity will be evaluated by the techniques of Appendix A of Part 100 of this chapter. Sites that lie within the range of strong near-field ground motion from historical earthquakes on large capable faults should be avoided.

(c) Sites other than bedrock sites must be evaluated for their liquefaction potential or other soil instability due to vibratory ground motion.

(d) Site-specific investigations and laboratory analyses must show that soil conditions are adequate for the proposed foundation loading.

(e) In an evaluation of alternative sites, those which require a minimum of engineered provisions to correct site deficiencies are preferred. Sites with unstable geologic characteristics should be avoided.

(f) The design earthquake (DE) for use in the design of structures must be determined as follows:

(1) For sites that have been evaluated under the criteria of Appendix A of 10 CFR Part 100, the DE must be equivalent to the safe shutdown earthquake (SSE) for a nuclear power plant.

(2) Regardless of the results of the investigations anywhere in the continental U.S., the DE must have a value for the horizontal ground motion of no less than 0.10 g with the appropriate response spectrum.

§ 72.104 Criteria for radioactive materials in effluents and direct radiation from an ISFSI or MRS.

(a) During normal operations and anticipated occurrences, the annual dose equivalent to any real individual who is located beyond the controlled area must not exceed 25 mrem to the whole body, 75 mrem to the thyroid and 25 mrem to any other organ as a result of exposure to:

(1) Planned discharges of radioactive materials, radon and its decay products excepted, to the general environment,

(2) Direct radiation from ISFSI or MRS operations, and

(3) Any other radiation from uranium fuel cycle operations within the region.

(b) Operational restrictions must be established to meet as low as is reasonably achievable objectives for radioactive materials in effluents and direct radiation levels associated with ISFSI or MRS operations.

(c) Operational limits must be established for radioactive materials in effluents and direct radiation levels associated with ISFSI or MRS operations to meet the limits given in paragraph (a) of this section.

§ 72.106 Controlled area of an ISFSI or MRS.

(a) For each ISFSI or MRS site, a controlled area must be established.

(b) Any individual located on or beyond the nearest boundary of the controlled area shall not receive a dose greater than 5 rem to the whole body or any organ from any design basis accident. The minimum distance from

the spent fuel or high-level radioactive waste handling and storage facilities to the nearest boundary of the controlled area shall be at least 100 meters.

(c) The controlled area may be traversed by a highway, railroad or waterway, so long as appropriate and effective arrangements are made to control traffic and to protect public health and safety.

§ 72.108 Spent fuel or high-level radioactive waste transportation.

The proposed ISFSI or MRS must be evaluated with respect to the potential impact on the environment of the transportation of spent fuel or high-level radioactive waste within the region.

Subpart F—General Design Criteria

§ 72.120 General considerations.

(a) Pursuant to the provisions of § 72.24, an application to store spent fuel in an ISFSI or to store spent fuel or high-level radioactive waste in an MRS must include the design criteria for the proposed storage installation. These design criteria establish the design, fabrication, construction, testing, maintenance and performance requirements for structures, systems, and components important to safety as defined in § 72.3. The general design criteria identified in this subpart establish minimum requirements for the design criteria for an ISFSI or MRS. Any omissions in these general design criteria do not relieve the applicant from the requirement of providing the necessary safety features in the design of the ISFSI or MRS.

(b) The MRS must be designed to store either spent fuel or solid high-level radioactive wastes. Liquid high-level radioactive wastes may not be received or stored in an MRS. If the MRS is a water-pool type facility, the solidified waste form shall be a durable solid with demonstrable leach resistance.

§ 72.122 Overall requirements.

(a) *Quality Standards.* Structures, systems, and components important to safety must be designed, fabricated, erected, and tested to quality standards commensurate with the importance to safety of the function to be performed.

(b) *Protection against environmental conditions and natural phenomena.* (1) Structures, systems, and components important to safety must be designed to accommodate the effects of, and to be compatible with, site characteristics and environmental conditions associated with normal operation, maintenance, and testing of the ISFSI or MRS and to withstand postulated accidents.

(2) Structures, systems, and components important to safety must be designed to withstand the effects of natural phenomena such as earthquakes, tornadoes, lighting, hurricanes, floods, tsunami, and seiches, without impairing their capability to perform safety functions. The design bases for these structures, systems, and components must reflect:

(i) Appropriate consideration of the most severe of the natural phenomena reported for the site and surrounding area, with appropriate margins to take into account the limitations of the data and the period of time in which the data have accumulated, and

(ii) Appropriate combinations of the effects of normal and accident conditions and the effects of natural phenomena.

The ISFSI or MRS should also be designed to prevent massive collapse of building structures or the dropping of heavy objects as a result of building structural failure on the spent fuel or high-level radioactive waste or on to structures, systems, and components important to safety.

(3) Capability must be provided for determining the intensity of natural phenomena that may occur for comparison with design bases of structures, systems, and components important to safety.

(4) If the ISFSI or MRS is located over an aquifer which is a major water resource, measures must be taken to preclude the transport of radioactive materials to the environment through this potential pathway.

(c) *Protection against fires and explosions.* Structures, systems, and components important to safety must be designed and located so that they can continue to perform their safety functions effectively under credible fire and explosion exposure conditions. Noncombustible and heat-resistant materials must be used wherever practical throughout the ISFSI or MRS, particularly in locations vital to the control of radioactive materials and to the maintenance of safety control functions. Explosion and fire detection, alarm, and suppression systems shall be designed and provided with sufficient capacity and capability to minimize the adverse effects of fires and explosions on structures, systems, and components important to safety. The design of the ISFSI or MRS must include provisions to protect against adverse effects that might result from either the operation or the failure of the fire suppression system.

(d) *Sharing of structures, systems, and components.* Structures, systems, and components important to safety must not be shared between an ISFSI or MRS and other facilities unless it is shown that such sharing will not impair the capability of either facility to perform its safety functions, including the ability to return to a safe condition in the event of an accident.

(e) *Proximity of sites.* An ISFSI or MRS located near other nuclear facilities must be designed and operated to ensure that the cumulative effects of their combined operations will not constitute an unreasonable risk to the health and safety of the public.

(f) *Testing and maintenance of systems and components.* Systems and components that are important to safety must be designed to permit inspection, maintenance, and testing.

(g) *Emergency capability.* Structures, systems, and components important to safety must be designed for emergencies. The design must provide for accessibility to the equipment of onsite and available offsite emergency facilities and services such as hospitals, fire and police departments, ambulance service, and other emergency agencies.

(h) *Confinement barriers and systems.* (1) The spent fuel cladding must be protected during storage against degradation that leads to gross ruptures or the fuel must be otherwise confined such that degradation of the fuel during storage will not pose operational safety problems with respect to its removal from storage. This may be accomplished by canning of consolidated fuel rods or unconsolidated assemblies or other means as appropriate.

(2) For underwater storage of spent fuel or high-level radioactive waste in which the pool water serves as a shield and a confinement medium for radioactive materials, systems for maintaining water purity and the pool water level must be designed so that any abnormal operations or failure in those systems from any cause will not cause the water level to fall below safe limits. The design must preclude installations of drains, permanently connected systems, and other features that could, by abnormal operations or failure, cause a significant loss of water. Pool water level equipment must be provided to alarm in a continuously manned location if the water level in the storage pools falls below a predetermined level.

(3) Ventilation systems and off-gas systems must be provided where necessary to ensure the confinement of airborne radioactive particulate materials during normal or off-normal conditions.

(4) Storage confinement systems must have the capability for continuous monitoring in a manner such that the

licensee will be able to determine when corrective action needs to be taken to maintain safe storage conditions.

(5) The high-level radioactive waste must be packaged in a manner that allows handling and retrievability without the release of radioactive materials to the environment or radiation exposures in excess of Part 20 limits. The package must be designed to confine the high-level radioactive waste for the duration of the license.

(i) *Instrumentation and control systems.* Instrumentation and control systems must be provided to monitor systems that are important to safety over anticipated ranges for normal operation and off-normal operation. Those instruments and control systems that must remain operational under accident conditions must be identified in the Safety Analysis Report.

(j) *Control room or control area.* A control room or control area, if appropriate for the ISFSI or MRS design, must be designed to permit occupancy and actions to be taken to monitor the ISFSI or MRS safely under normal conditions, and to provide safe control of the ISFSI or MRS under off-normal or accident conditions.

(k) *Utility or other services.* (1) Each utility service system must be designed to meet emergency conditions. The design of utility services and distribution systems that are important to safety must include redundant systems to the extent necessary to maintain, with adequate capacity, the ability to perform safety functions assuming a single failure.

(2) Emergency utility services must be designed to permit testing of the functional operability and capacity, including the full operational sequence, of each system for transfer between normal and emergency supply sources; and to permit the operation of associated safety systems.

(3) Provisions must be made so that, in the event of a loss of the primary electric power source or circuit, reliable and timely emergency power will be provided to instruments, utility service systems, the central security alarm station, and operating systems, in amounts sufficient to allow safe storage conditions to be maintained and to permit continued functioning of all systems essential to safe storage.

(4) An ISFSI or MRS which is located on the site of another facility may share common utilities and services with such a facility and be physically connected with the other facility; however, the sharing of utilities and services or the physical connection must not significantly:

(i) Increase the probability or consequences of an accident or malfunction of components, structures, or systems that are important to safety; or

(ii) Reduce the margin of safety as defined in the basis for any technical specifications of either facility.

(l) *Retrievability.* Storage systems must be designed to allow ready retrieval of spent fuel or high-level radioactive waste for further processing or disposal.

§ 72.124 Criteria for nuclear criticality safety.

(a) *Design for criticality safety.* Spent fuel handling, packaging, transfer, and storage systems must be designed to be maintained subcritical and to ensure that, before a nuclear criticality accident is possible, at least two unlikely, independent, and concurrent or sequential changes have occurred in the conditions essential to nuclear criticality safety. The design of handling, packaging, transfer, and storage systems must include margins of safety for the nuclear criticality parameters that are commensurate with the uncertainties in the data and methods used in calculations and demonstrate safety for the handling, packaging, transfer and storage conditions and in the nature of the immediate environment under accident conditions.

(b) *Methods of criticality control.* When practicable the design of an ISFSI or MRS must be based on favorable geometry, permanently fixed neutron absorbing materials (poisons), or both. Where solid neutron absorbing materials are used, the design shall provide for positive means to verify their continued efficacy.

(c) *Criticality Monitoring.* A criticality monitoring system shall be maintained in each area where special nuclear material is handled, used, or stored which will energize clearly audible alarm signals if accidental criticality occurs. Underwater monitoring is not required when special nuclear material is handled or stored beneath water shielding. Monitoring of dry storage areas where special nuclear material is packaged in its stored configuration under a license issued under this subpart is not required.

§ 72.126 Criteria for radiological protection.

(a) *Exposure control.* Radiation protection systems must be provided for all areas and operations where onsite personnel may be exposed to radiation or airborne radioactive materials. Structures, systems, and components for which operation, maintenance, and required inspections may involve occupational exposure must be designed, fabricated, located, shielded, controlled, and tested so as to control external and internal radiation exposures to personnel. The design must include means to:

(1) Prevent the accumulation of radioactive material in those systems requiring access;

(2) Decontaminate those systems to which access is required;

(3) Control access to areas of potential contamination or high radiation within the ISFSI or MRS;

(4) Measure and control contamination of areas requiring access;

(5) Minimize the time required to perform work in the vicinity of radioactive components; for example, by providing sufficient space for ease of operation and designing equipment for ease of repair and replacement; and

(6) Shield personnel from radiation exposure.

(b) *Radiological alarm systems.* Radiological alarm systems must be provided in accessible work areas as appropriate to warn operating personnel of radiation and airborne radioactive material concentrations above a given setpoint and of concentrations of radioactive material in effluents above control limits. Radiation alarm systems must be designed with provisions for calibration and testing their operability.

(c) *Effluent and direct radiation monitoring.* (1) As appropriate for the handling and storage system, effluent systems must be provided. Means for measuring the amount of radionuclides in effluents during normal operations and under accident conditions must be provided for these systems. A means of measuring the flow of the diluting medium, either air or water, must also be provided.

(2) Areas containing radioactive materials must be provided with systems for measuring the direct radiation levels in and around these areas.

(d) *Effluent control.* The ISFSI or MRS must be designed to provide means to limit to levels as low as is reasonably achievable the release of radioactive materials in effluents during normal operations; and control the release of radioactive materials under accident conditions. Analyses must be made to show that releases to the general environment during normal operations and anticipated occurrences will be within the exposure limit given in § 72.104. Analyses of design basis accidents must be made to show that releases to the general environment will be within the exposure limits given in

§ 72.106. Systems designed to monitor the release of radioactive materials must have means for calibration and testing their operability.

§ 72.128 Criteria for spent fuel, high-level radioactive waste, and other radioactive waste storage and handling.

(a) *Spent fuel and high-level radioactive waste storage and handling systems.* Spent fuel storage, high-level radioactive waste storage, and other systems that might contain or handle radioactive materials associated with spent fuel or high-level radioactive waste, must be designed to ensure adequate safety under normal and accident conditions. These systems must be designed with—

(1) A capability to test and monitor components important to safety,

(2) Suitable shielding for radioactive protection under normal and accident conditions,

(3) Confinement structures and systems,

(4) A heat-removal capability having testability and reliability consistent with its importance to safety, and

(5) means to minimize the quantity of radioactive wastes generated.

(b) *Waste treatment.* Radioactive waste treatment facilities must be provided. Provisions must be made for the packing of site-generated low-level wastes in a form suitable for storage onsite awaiting transfer to disposal sites.

§ 72.130 Criteria for decommissioning.

The ISFSI or MRS must be designed for decommissioning. Provisions must be made to facilitate decontamination of structures and equipment, minimize the quantity of radioactive wastes and contaminated equipment, and facilitate the removal of radioactive wastes and contaminated materials at the time the ISFSI or MRS is permanently decommissioned.

Subpart G—Quality Assurance

§ 72.140 Quality assurance requirements.

(a) *Purpose.* This subpart describes quality assurance requirements applying to design, purchase, fabrication, handling, shipping, storing, cleaning, assembly, inspection, testing, operation, maintenance, repair, modification of structures, systems, and components, and decommissioning that are important to safety. As used in this subpart, "quality assurance" comprises all those planned and systematic actions necessary to provide adequate confidence that a structure, system, or component will perform satisfactorily in service. Quality assurance includes quality control, which comprises those quality assurance actions related to control of the physical characteristics and quality of the material or component to predetermined requirements.

(b) *Establishment of program.* Each licensee [2] shall establish, maintain, and execute a quality assurance program satisfying each of the applicable criteria of this subpart, and satisfying any specific provisions which are applicable to the licensee's activities. The licensee shall execute the applicable criteria in a graded approach to an extent that is commensurate with the importance to safety. The quality assurance program must cover the activities identified in § 72.24(n) throughout the life of the licensed activity, from the site selection through decommissioning, prior to termination of the license.

(c) *Approval of program.* Prior to receipt of spent fuel at the ISFSI or spent fuel and high-level radioactive waste at the MRS, each licensee shall obtain Commission approval of its quality assurance program. Each licensee shall file a description of its quality assurance program, including a discussion of which requirements of this subpart are applicable and how they will be satisfied, with the Director, Office of Nuclear Material and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(d) *Previously approved programs.* A Commission-approved quality assurance program which satisfies the applicable criteria of Appendix B to Part 50 of this chapter and which is established, maintained, and executed with regard to an ISFSI will be accepted as satisfying the requirements of paragraph (b) of this section. Prior to first use, the licensee shall notify the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of its intent to apply its previously approved Appendix B program to ISFSI activities. The licensee shall identify the program by date of submittal to the Commission, docket number, and date of Commission approval.

§ 72.142 Quality assurance organization.

The licensee shall be responsible for the establishment and execution of the quality assurance program. The licensee may delegate to others, such as contractors, agents, or consultants, the work of establishing and executing the quality assurance program, but shall retain responsibility for the program. The licensee shall clearly establish and delineate in writing the authority and duties of persons and organizations performing activities affecting the functions of structures, systems and components which are important to safety. These activities include performing the functions associated with attaining quality objectives and the quality assurance functions. The quality assurance functions are:

(a) Assuring that an appropriate quality assurance program is established and effectively executed and

(b) Verifying, by procedures such as checking, auditing, and inspection, that activities affecting the functions that are important to safety have been correctly performed. The persons and organizations performing quality assurance functions must have sufficient authority and organizational freedom to identify quality problems; to initiate, recommend, or provide solutions; and to verify implementation of solutions.

The persons and organizations performing quality assurance functions shall report to a management level that ensures that the required authority and organizational freedom, including sufficient independence from cost and schedule considerations when these considerations are opposed to safety considerations, are provided. Because of the many variables involved, such as the number of personnel, the type of activity being performed, and the location or locations where activities are performed, the organizational structure for executing the quality assurance program may take various forms provided that the persons and organizations assigned the quality assurance functions have the required authority and organizational freedom. Irrespective of the organizational structure, the individual(s) assigned the responsibility for assuring effective execution of any portion of the quality assurance program at any location where activities subject to this section are being performed must have direct access to the levels of management necessary to perform this function.

§ 72.144 Quality assurance program.

(a) The licensee shall establish, at the earliest practicable time consistent with the schedule for accomplishing the activities, a quality assurance program which complies with the requirements of this subpart. The licensee shall document the quality assurance program by written procedures or instructions and shall carry out the program in accordance with these procedures

[2] While the term "licensee" is used in these criteria, the requirements are applicable to whatever design, construction, fabrication, assembly, and testing is accomplished with respect to structures, systems, and components prior to the time a license is issued.

throughout the period during which the ISFSI or MRS is licensed. The licensee shall identify the structures, systems, and components to be covered by the quality assurance program, the major organizations participating in the program, and the designated functions of these organizations.

(b) The licensee, through its quality assurance program, shall provide control over activities affecting the quality of the identified structures, systems, and components to an extent commensurate with the importance to safety, and as necessary to ensure conformance to the approved design of each ISFSI or MRS. The licensee shall ensure that activities affecting quality are accomplished under suitably controlled conditions. Controlled conditions include the use of appropriate equipment; suitable environmental conditions for accomplishing the activity, such as adequate cleanliness; and assurance that all prerequisites for the given activity have been satisfied. The licensee shall take into account the need for special controls, processes, test equipment, tools and skills to attain the required quality and the need for verification of quality by inspection and test.

(c) The licensee shall base the requirements and procedures of its quality assurance program on the following considerations concerning the complexity and proposed use of the structures, systems, or components:

(1) The impact of malfunction or failure of the item on safety;

(2) The design and fabrication complexity or uniqueness of the item;

(3) The need for special controls and surveillance over processes and equipment;

(4) The degree to which functional compliance can be demonstrated by inspection or test; and

(5) The quality history and degree of standardization of the item.

(d) The licensee shall provide for indoctrination and training of personnel performing activities affecting quality as necessary to ensure that suitable proficiency is achieved and maintained. The licensee shall review the status and adequacy of the quality assurance program at established intervals. Management of other organizations participating in the quality assurance program shall regularly review the status and adequacy of that part of the quality assurance program which they are executing.

§ 72.146 Design control.

(a) The licensee shall establish measures to ensure that applicable regulatory requirements and the design basis, as specified in the license application for those structures, systems, and components to which this section applies, are correctly translated into specifications, drawings, procedures, and instructions. These measures must include provisions to ensure that appropriate quality standards are specified and included in design documents and that deviations from standards are controlled. Measures must be established for the selection and review for suitability of application of materials, parts, equipment, and processes that are essential to the functions of the structures, systems, and components which are important to safety.

(b) The licensee shall establish measures for the identification and control of design interfaces and for coordination among participating design organizations. These measures must include the establishment of written procedures among participating design organizations for the review, approval, release, distribution, and revision of documents involving design interfaces. The design control measures must provide for verifying or checking the adequacy of design, by methods such as design reviews, alternate or simplified calculational methods, or by a suitable testing program. For the verifying or checking process, the licensee shall designate individuals or groups other than those who were responsible for the original design, but who may be from the same organization. Where a test program is used to verify the adequacy of a specific design feature in lieu of other verifying or checking processes, the licensee shall include suitable qualification testing of a prototype or sample unit under the most adverse design conditions. The licensee shall apply design control measures to items such as the following: criticality physics, radiation, shielding, stress, thermal, hydraulic, and accident analyses; compatibility of materials; accessibility for inservice inspection, maintenance, and repair; features to facilitate decontamination; and delineation of acceptance criteria for inspections and tests.

(c) The licensee shall subject design changes, including field changes, to design control measures commensurate with those applied to the original design. Changes in the conditions specified in the license require NRC approval.

§ 72.148 Procurement document control.

The licensee shall establish measures to assure that applicable regulatory requirements, design bases, and other requirements which are necessary to assure adequate quality are included or referenced in the documents for procurement of material, equipment, and services, whether purchased by the licensee or by its contractors or subcontractors. To the extent necessary, the licensee shall require contractors or subcontractors to provide a quality assurance program consistent with the applicable provisions of this subpart.

§ 72.150 Instructions, procedures, and drawings.

The licensee shall prescribe activities affecting quality by documented instructions, procedures, or drawings of a type appropriate to the circumstances and shall require that these instructions, procedures, and drawings be followed. The instructions, procedures, and drawings must include appropriate quantitative or qualitative acceptance criteria for determining that important activities have been satisfactorily accomplished.

§ 72.152 Document control.

The licensee shall establish measures to control the issuance of documents such as instructions, procedures, and drawings, including changes, which prescribe all activities affecting quality. These measures must assure that documents, including changes, are reviewed for adequacy, approved for release by authorized personnel, and distributed and used at the location where the prescribed activity is performed. These measures must ensure that changes to documents are reviewed and approved.

§ 72.154 Control of purchased material, equipment, and services.

(a) The licensee shall establish measures to ensure that purchased material, equipment and services, whether purchased directly or through contractors and subcontractors, conform to the procurement documents. These mesaures must include provisions, as appropriate, for source evaluation and selection, objective evidence of quality furnished by the contractor or subcontractor, inspection at the contractor or subcontractor source, and examination of products upon delivery.

(b) The licensee shall have available documentary evidence that material and equipment conform to the procurement specifications prior to installation or use of the material and equipment. The licensee shall retain or have available this documentary evidence for the life of ISFSI or MRS. The licensee shall ensure that the evidence is sufficient to identify the specific requirements met by the purchased material and equipment.

(c) The licensee or designee shall assess the effectiveness of the control of quality by contractors and subcontractors at intervals consistent with the importance, complexity, and quantity of the product or services.

§ 72.156 Identification and control of materials, parts, and components.

The licensee shall establish measures for the identification and control of materials, parts, and components. These measures must ensure that identification of the item is maintained by heat number, part number, serial number, or other appropriate means, either on the item or on records traceable to the item as required, throughout fabrication, installation, and use of the item. These identification and control measures must be designed to prevent the use of incorrect or defective materials, parts, and components.

§ 72.158 Control of special processes.

The licensee shall establish measures to ensure that special processes, including welding, heat treating, and nondestructive testing, are controlled and accomplished by qualified personnel using qualified procedures in accordance with applicable codes, standards, specifications, criteria, and other special requirements.

§ 72.160 Licensee inspection.

The licensee shall establish and execute a program for inspection of activities affecting quality by or for the organization performing the activity to verify conformance with the documented instructions, procedures, and drawings for accomplishing the activity. The inspection must be performed by individuals other than those who performed the activity being inspected. Examinations, measurements, or tests of material or products processed must be performed for each work operation where necessary to assure quality. If direct inspection of processed material or products cannot be carried out, indirect control by monitoring processing methods, equipment, and personnel must be provided. Both inspection and process monitoring must be provided when quality control is inadequate without both. If mandatory inspection hold points, which require witnessing or inspecting by the licensee's designated representative and beyond which work should not proceed without the consent of its designated representative, are required, the specific hold points must be indicated in appropriate documents.

§ 72.162 Test control.

The licensee shall establish a test program to ensure that all testing required to demonstrate that the structures, systems, and components will perform satisfactorily in service is identified and performed in accordance with written test procedures that incorporate the requirements of this part and the requirements and acceptance limits contained in the ISFSI or MRS license. The test procedures must include provisions for assuring that all prerequisites for the given test are met, that adequate test instrumentation is available and used, and that the test is performed under suitable environmental conditions. The licensee shall document and evaluate the test results to ensure that test requirements have been satisfied.

§ 72.164 Control of measuring and test equipment.

The licensee shall establish measures to ensure that tools, gauges, instruments, and other measuring and testing devices used in activities affecting quality are properly controlled, calibrated, and adjusted at specified periods to maintain accuracy within necessary limits.

§ 72.166 Handling, storage, and shipping control.

The licensee shall establish measures to control, in accordance with work and inspection instructions, the handling, storage, shipping, cleaning, and preservation of materials and equipment to prevent damage or deterioration. When necessary for particular products, special protective environments, such as inert gas atmosphere, and specific moisture content and temperature levels must be specified and provided.

§ 72.168 Inspection, test, and operating status.

(a) The licensee shall establish measures to indicate, by the use of markings such as stamps, tags, labels, routing cards, or other suitable means, the status of inspections and tests performed upon individual items of the ISFSI or MRS. These measures must provide for the identification of items which have satisfactorily passed required inspections and tests where necessary to preclude inadvertent bypassing of the inspections and tests.

(b) The licensee shall establish measures to identify the operating status of structures, systems, and components of the ISFSI or MRS, such as tagging valves and switches, to prevent inadvertent operation.

§ 72.170 Nonconforming materials, parts, or components.

The licensee shall establish measures to control materials, parts, or components that do not conform to the licensee's requirements in order to prevent their inadvertent use or installation. These measures must include, as appropriate, procedures for identification, documentation, segregation, disposition, and notification to affected organizations. Nonconforming items must be reviewed and accepted, rejected, repaired, or reworked in accordance with documented procedures.

§ 72.172 Corrective action.

The licensee shall establish measures to ensure that conditions adverse to quality, such as failures, malfunctions, deficiencies, deviations, defective material and equipment, and nonconformances, are promptly identified and corrected. In the case of a significant condition adverse to quality, the measures must ensure that the cause of the condition is determined and corrective action is taken to preclude repetition. The identification of the significant condition adverse to quality, the cause of the condition, and the corrective action taken must be documented and reported to appropriate levels of management.

§ 72.174 Quality assurance records.

The licensee shall maintain sufficient records to furnish evidence of activities affecting quality. The records must include the following: design records, records of use and the results of reviews, inspections, tests, audits, monitoring of work performance, and materials analyses. The records must include closely related data such as qualifications of personnel, procedures, and equipment. Inspection and test records must, at a minimum, identify the inspector or data recorder, the type of observation, the results, the acceptability, and the action taken in connection with any noted deficiencies. Records must be identifiable and retrievable. Records pertaining to the design, fabrication, erection, testing, maintenance, and use of structures, systems, and components important to safety shall be maintained by or under the control of the licensee until the Commission terminates the license.

§ 72.176 Audits.

The licensee shall carry out a comprehensive system of planned and periodic audits to verify compliance with all aspects of the quality assurance program and to determine the

effectiveness of the program. The audits must be performed in accordance with written procedures or checklists by appropriately trained personnel not having direct responsibilities in the areas being audited. Audited results must be documented and reviewed by management having responsibility in the area audited. Follow-up action, including re-audit of deficient areas, must be taken where indicated.

Subpart H—Physical Protection

§ 72.180 Physical security plan.

The licensee shall establish a detailed plan for security measures for physical protection. The licensee shall retain a copy of the current plan as a record until the Commission terminates the license for which the procedures were developed and, if any portion of the plan is superseded, retain the superseded material for three years after each change. This plan must consist of two parts. Part I must demonstrate how the applicant plans to comply with the applicable requirements of Part 73 of this chapter and during transportation to and from the proposed ISFSI or MRS and must include the design for physical protection and the licensee's safeguards contingency plan and guard training plan. Part II must list tests, inspections, audits, and other means to be used to demonstrate compliance with such requirements.

§ 72.182 Design for physical protection.

The design for physical protection must show the site layout and the design features provided to protect the ISFSI or MRS from sabotage. It must include:

(a) The design criteria for the physical protection of the proposed ISFSI or MRS;

(b) The design bases and the relation of the design bases to the design criteria submitted pursuant to paragraph (a) of this section; and

(c) Information relative to materials of construction, equipment, general arrangement, and proposed quality assurance program sufficient to provide reasonable assurance that the final security system will conform to the design bases for the principal design criteria submitted pursuant to paragraph (a) of this section.

§ 72.184 Safeguards contingency plan.

(a) The requirements of the licensee's safeguards contingency plan for dealing with threats and radiological sabotage must be as defined in § 73.40(b) of this chapter. This plan must include Background, Generic Planning Base, Licensee Planning Base, and Responsibility Matrix, the first four categories of information relating to nuclear facilities licensed under Part 50 of this chapter. (The fifth category of information, Procedures, does not have to be submitted for approval.)

(b) The licensee shall prepare and maintain safeguards contingency plan procedures in accordance with Appendix C to 10 CFR Part 73 for effecting the actions and decisions contained in the Responsibility Matrix of the licensee's safeguards contingency plan. The licensee shall retain a copy of the current procedures as a record until the Commission terminates the license for which the procedures were developed and, if any portion of the procedures is superseded, retain the superseded material for three years after each change.

§ 72.186 Change to physical security and safeguards contingency plans.

(a) The licensee shall make no change that would decrease the safeguards effectiveness of the physical security plan, guard training plan or the first four categories of information (Background, Generic Planning Base, Licensee Planning Base, and Responsibility Matrix) contained in the licensee safeguards contingency plan without prior approval of the Commission. A licensee desiring to make a change must submit an application for a license amendment pursuant to § 72.56.

(b) The licensee may, without prior Commission approval, make changes to the physical security plan, guard training plan, or the safeguards contingency plan, if the changes do not decrease the safeguards effectiveness of these plans. The licensee shall maintain records of changes to any such plan made without prior approval for a period of three years from the date of the change and shall furnish to the Regional Administrator of the appropriate NRC Regional Office specified in Appendix A of Part 73 of this chapter, with a copy to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, a report containing a description of each change within two months after the change is made.

Subpart I—Training and Certification of Personnel

§ 72.190 Operator requirements.

Operation of equipment and controls that have been identified as important to safety in the Safety Analysis Report and in the license must be limited to trained and certified personnel or be under the direct visual supervision of an individual with training and certification in the operation. Supervisory personnel who personally direct the operation of equipment and controls that are important to safety must also be certified in such operations.

§ 72.192 Operator training and certification program.

The applicant for a license under this part shall establish a program for training, proficiency testing, and certification of ISFSI or MRS personnel. This program must be submitted to the Commission for approval with the license application.

§ 72.194 Physical requirements.

The physical condition and the general health of personnel certified for the operation of equipment and controls that are important to safety must not be such as might cause operational errors that could endanger other in-plant personnel or the public health and safety. Any condition that might cause impaired judgment or motor coordination must be considered in the selection of personnel for activities that are important to safety. These conditions need not categorically disqualify a person, if appropriate provisions are made to accommodate such defect.

Subpart J—Provision of MRS Information to State Governments and Indian Tribes

§ 72.200 Provision of MRS information.

(a) The Director, Office of Nuclear Material Safety and Safeguards, or the Director's designee shall provide to the Governor and legislature of any State in which an MRS authorized under the Nuclear Waste Policy Act of 1982, as amended, is or may be located, to the Governors of any contiguous States, to each affected unit of local government and to the governing body of any affected Indian tribe, timely and complete information regarding determinations or plans made by the Commission with respect to siting, development, design, licensing, construction, operation, regulation or decommissioning of such monitored retrievable storage facility.

(b) Notwithstanding paragraph (a) of this section, the Director or the Director's designee is not required to distribute any document to any entity if, with respect to such document, that entity or its counsel is included on a service list prepared pursuant to Part 2 of this chapter.

(c) Copies of all communications by the Director or the Director's designee under this section shall be placed in the

Commission's Public Document Room and shall be furnished to DOE.

§ 72.202 Participation in license reviews.

State and local governments and affected Indian tribes may participate in license reviews as provided in Subpart G of Part 2 of this chapter.

§ 72.204 Notice to States.

If the Governor and legislature of a State have jointly designated on their behalf a single person or entity to receive notice and information from the Commission under this part, the Commission will provide such notice and information to the jointly designated person or entity instead of the Governor and the legislature separately.

§ 72.206 Representation.

Any person who acts under this subpart as a representative for a State (or for the Governor or legislature thereof) or for an affected Indian tribe shall include in the request or other submission, or at the request of the Commission, a statement of the basis of his or her authority to act in such representative capacity.

The following conforming amendments are also made to other parts of the Commission's regulations in Chapter 1, Title 10 of the Code of Federal Regulations.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

2. The authority citation for Part 2 is revised to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 544. Sections 2.754, 2.760, 2.770 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99–240, 99 Stat. 1859 (42 U.S.C. 2021j).

3. In § 2.104, paragraph (e) is revised to read as follows:

§ 2.104 Notice of hearing.

* * * * *

(e) The Secretary will give timely notice of the hearing to all parties and to other persons, if any, entitled by law to notice. The Secretary will transmit a notice of hearing on an application for a license for a production or utilization facility, for a license for receipt of waste radioactive material from other persons for the purpose of commercial disposal by the waste disposal licensee, for a license under Part 61 of this chapter, for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter, and for a license under Part 72 of this chapter to acquire, receive or possess spent fuel for the purpose of storage in an independent spent fuel storage installation (ISFSI) to the governor or other appropriate official of the State and to the chief executive of the municipality in which the facility is to be located or the activity is to be conducted or, if the facility is not to be located or the activity conducted within a municipality, to the chief executive of the county (or to the Tribal organization, if it is to be so located or conducted within an Indian reservation). The Secretary will transmit a notice of hearing on an application for a license under Part 72 of this chapter to acquire, receive or possess spent fuel, high-level radioactive waste or radioactive material associated with high-level radioactive waste for the purpose of storage in a monitored retrievable storage installation (MRS) to the same persons who received the notice of docketing under § 72.16(e) of this chapter.

4. In § 2.105, paragraph (a) is amended by deleting the word "or" at the end of paragraph (6), by redesignating paragraphs (7), (8) and (9) as paragraphs (9), (10) and (11) and by adding new paragraphs (7) and (8) to read as follows:

§ 2.105 Notice of proposed action.

(a) * * *

(7) A license under Part 72 of this chapter to acquire, receive or possess spent fuel for the purpose of storage in an independent spent fuel storage installation (ISFSI) or to acquire, receive or possess spent fuel, high-level radioactive waste or radioactive material associated with high-level radioactive waste for the purpose of storage in a monitored retrievable storage installation (MRS);

(8) An amendment to a license specified in paragraph (a)(7) of this section when such an amendment presents a genuine issue as to whether the health and safety of the public will be significantly affected; or

* * * * *

5. In § 2.764, paragraph (c) is revised to read as follows:

§ 2.764 Immediate effectiveness of initial decision directing issuance or amendment of construction permit or operating license.

* * * * *

(c) An initial decision directing the issuance of an initial license for the construction and operation of an independent spent fuel storage installation (ISFSI) or monitored retrievable storage installation (MRS) under 10 CFR Part 72 shall become effective only upon order of the Commission. The Director of Nuclear Material Safety and Safeguards shall not issue an initial license for the construction and operation of an independent spent fuel storage installation (ISFSI) or a monitored retrievable storage installation (MRS) under 10 CFR Part 72 until expressly authorized to do so by the Commission.

* * * * *

6. In Appendix C, Table 1A, is revised to read as follows:

Appendix C—General Statement of Policy and Procedure for NRC Enforcement Actions

* * * * *

TABLE 1A—BASE CIVIL PENALTIES

	Plant operations, construction, health physics and an EP	Safeguards	Transportation	
			Greater than Type A quantity [1]	Type A quantity or less [2]
a. Power reactors	$100,000	$100,000	$100,000	$5,000
b. Test reactors	10,000	10,000	10,000	2,000
c. Research reactors and critical facilities	5,000	5,000	5,000	1,000
d. Fuel fabricators and industrial processors [3]	25,000	[4] 100,000	25,000	5,000
e. Mills and uranium conversion facilities	10,000	—	5,000	2,000
f. Industrial users of material [5]	10,000	—	5,000	2,000
g. Waste disposal licensees	10,000	—	5,000	2,000
h. Academic or medical institutions [6]	5,000	—	2,500	1,000
i. Independent spent fuel and monitored retrievable storage installations	25,000	100,000	25,000	5,000
j. Other material licensees	1,000	—	2,500	1,000

[1] Includes irradiated fuel, high level waste, unirradiated fissile material and any other quantities requiring Type B packaging.
[2] Includes low specific activity waste (LSA), low level waste, Type A packages, and excepted quantities and articles.
[3] Large firms engaged in manufacturing (or distribution of byproduct, source, or special nuclear material.
[4] This amount refers to Category 1 licensees (or defined in 10 CFR 73.2(bb)). Licensed fuel fabricators not authorized to possess Category 1 material have a base penalty amount of $50,000.
[5] Includes industrial radiographers, nuclear pharmacies, and other industrial users.
[6] This applies to nonprofit institutions not otherwise categorized under sections "a" through "g" in this table.

* * * * *

PART 19—NOTICES, INSTRUCTIONS, AND REPORTS TO WORKERS; INSPECTIONS

7. The authority citation for Part 19 is revised to read as follows:

Authority: Secs. 53, 63, 81, 103, 104, 161, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2201, 2236, 2282); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841). Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 19.11(a), (c), (d), and (e) and 19.12 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 19.13 and 19.14(a) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

8. Section 19.2 is revised to read as follows:

§ 19.2 Scope.

The regulations in this part apply to all persons who receive, possess, use, or transfer material licensed by the Nuclear Regulatory Commission pursuant to the regulations in Parts 30 through 35, 39, 40, 60, 61, 70, or 72 of this chapter, including persons licensed to operate a production or utilization facility pursuant to Part 50 of this chapter.

9. In § 19.3, paragraph (d) is revised to read as follows:

§ 19.3 Definitions.

* * * * *

(d) "License" means a license issued under the regulations in Parts 30 through 35, 39, 40, 60, 61, 70, or 72 of this chapter, including licenses to operate a production or utilization facility pursuant to Part 50 of this chapter. "Licensee" means the holder of such a license.

* * * * *

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

10. The authority citation for Part 20 is revised to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 68 Stat. 930, 933, 935, 936, 937, 948, as amended (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 20.408 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 20.101, 20.102, 20.103 (a), (b) and (f), 20.104 (a) and (b), 20.105(b), 20.106(a), 20.201, 20.202(a), 20.205, 20.207, 20.301, 20.303, 20.304, and 20.305 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 20.102, 20.103(e), 20.401–20.407, 20.408(b) and 20.409 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

11. Section 20.2 is revised to read as follows:

§ 20.2 Scope.

The regulations in this part apply to all persons who receive, possess, use, or transfer material licensed pursuant to the regulations in Parts 30 through 35, 39, 40, 60, 61, 70, or 72 of this chapter, including persons licensed to operate a production or utilization facility pursuant to Part 50 of this chapter.

12. In § 20.408, paragraph (a)(5) is revised to read as follows:

§ 20.408 Reports of personnel monitoring on termination of employment or work.

(a) This section applies to each person licensed by the Commission to:

* * * * *

(5) Possess spent fuel in an independent spent fuel storage installation (ISFSI) or possess spent fuel or high level radioactive waste in a monitored retrievable storage installation (MRS) pursuant to Part 72 of this chapter; or

* * * * *

PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

13. The authority citation for Part 21 is revised to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2201, 2282); secs. 201, as amended, 206, 88 Stat. 1242, as amended, 1246 (42 U.S.C. 5841, 5846).

Sec. 21.2 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 21.6, 21.21(a) and 21.31 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 21.21, 21.41 and 21.51 are isused under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

14. Section 21.2 is revised to read as follows:

§ 21.2 Scope.

The regulations in this part apply, except as specifically provided otherwise in Parts 31, 34, 35, 39, 40, 60, 61, 70, or 72 of this chapter, to each individual, partnership, corporation, or other entity licensed pursuant to the

regulations in this chapter to possess, use, and/or transfer within the United States source material, byproduct material, special nuclear material, and/or spent fuel and high-level radioactive waste, or to construct, manufacture, possess, own, operate and/or transfer within the United States, any production or utilization facility, or independent spent fuel storage installation (ISFSI) or monitored retrievable storge installation (MRS), and to each director (see § 21.3(f)) and responsible officer (see § 21.3(j)) of such a licensee. The regulations in this part apply also to each individual, corporation, partnership or other entity doing business within the United States, and each director and responsible officer of such organization that constructs (see § 21.3(c)) a production or utilization facility licensed for manufacture, construction or operation (see § 21.3(h)) pursuant to Part 50 of this chapter, an independent spent fuel storage installation (ISFSI) for the storage of spent fuel licensed pursuant to Part 72 of this chapter or a monitored retrievable storage installation (MRS) for the storage of spent fuel or high-level radioactive waste licensed pursuant to Part 72 of this chapter, or supplies (see § 21.3(1)) basic components (see § 21.3(a)) for a facility or activity licensed, other than for export, under Parts 30, 39, 40, 50, 60, 61, 70, 71, or 72 of this chapter. Nothing in these regulations should be deemed to preclude either an individual or a manufacturer/supplier of a commerical grade item (see § 21.3(a-1)) not subject to the regulations in this part from reporting to the Commission a known or suspected defect or failure to comply and, as authorized by law, the identity of anyone so reporting will be withheld from disclosure.[1]

[1] NRC Regional Officers will accept collect telephone calls from individuals who wish to speak to NRC representatives concerning nuclear safety-related problems. The location and telephone numbers (for nights and holidays as well as regular hours) are listed below:

Region:		
I	(Philadelphia)	(215) 337-5000
II	(Atlanta)	(404) 331-4503
III	(Chicago)	(312) 790-5500
IV	(Dallas)	(817) 860-8100
IV	Uranium Recovery Field Office (Denver)	(303) 236-2805
V	(San Francisco)	(415) 943-3700

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

15. The authority citation for Part 51 is revised to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853–854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95–604, Title II, 92 Stat. 3033–3041. Sections 51.20, 51.30, 51.60, 51.61, 51.80, and 51.97 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241, and sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3038 (42 U.S.C. 2021).

16. In § 51.20, paragraph (b)(9) is revised to read as follows:

§ 51.20 Criteria for an identification of licensing and regulatory actions requiring environmental impact statements.

* * * * *

(b) The following types of actions require an environmental impact statement or a supplement to an environmental impact statement:

* * * * *

(9) Issuance of a license pursuant to Part 72 of this chapter for the storage of spent fuel in an independent spent fuel storage installation (ISFSI) at a site not occupied by a nuclear power reactor, or for the storage of spent fuel or high-level radioactive waste in a monitored retrievable storage installation (MRS).

* * * * *

17. In § 51.30, a new paragraph (c) is added to read as follows:

§ 51.30 Environmental assessment.

* * * * *

(c) An environmental assessment for a proposed action regarding a monitored retrievable storage installation (MRS) will not address the need for the MRS or any alternative to the design criteria for an MRS set forth in section 141(b)(1) of the Nuclear Waste Policy Act of 1982 (96 Stat. 2242, 42 U.S.C. 10161(b)(1)).

18. In § 51.60, paragraphs (a), (b)(1)(iii) and (b)(4) are revised to read as follows:

§ 51.60 Environmental report—materials licenses.

(a) Each applicant for a license or other form of permission, or an amendment to or renewal of a license or other form of permission issued pursuant to Parts 30, 32, 33, 34, 35, 39, 40, 61, 70 and/or 72 of this chapter, and covered by paragraphs (b)(1) through (b)(6) of this section, shall submit with its application to the Director of Nuclear Material Safety and Safeguards the number of copies, as specified in § 51.66, of a separate document, entitled "Applicant's Environmental Report" or "Supplement to Applicant's Environmental Report," as appropriate. The "Applicant's Environmental Report" shall contain the information specified in § 51.45. If the application is for an amendment to or a renewal of a license or other form of permission for which the applicant has previously submitted an environmental report, the supplement to applicant's environmental report may be limited to incorporating by reference, updating or supplementing the information previously submitted to reflect any significant environmental change, including any significant environmental change resulting from operational experience or a change in operations or proposed decommissioning activities. If the applicant is the U.S. Department of Energy, the environmental report may be in the form of either an environmental impact statement or an environmental assessment, as appropriate.

(b) * * *

(1) * * *

(iii) Storage of spent fuel in an independent spent fuel storage installation (ISFSI) or the storage of spent fuel or high-level radio-active waste in a monitored retrievable storage installation (MRS) pursuant to Part 72 of this chapter.

* * * * *

(4) Amendment of a license to authorize the decommissioning of an independent spent fuel storage installation (ISFSI) or a monitored retrievable storage installation (MRS) pursuant to Part 72 of this chapter.

* * * * *

19. Section 51.61 is revised to read as follows:

§ 51.61 Environmental report—independent spent fuel storage installation (ISFSI) or monitored retrievable storage installation (MRS) license.

Each applicant for issuance of a license for storage of spent fuel in an independent spent fuel storage installation (ISFSI) or for the storage of spent fuel and high-level radioactive waste in a monitored retrievable storage installation (MRS) pursuant to Part 72 of this chapter shall submit with its application to the Director of Nuclear Material Safety and Safeguards the number of copies, as specified in § 51.66 of a separate document entitled "Applicant's Environmental Report—ISFSI License" or "Applicant's

Environmental Report—MRS License," as appropriate. If the applicant is the U.S. Department of Energy, the environmental report may be in the form of either an environmental impact statement or an environmental assessment, as appropriate. The environmental report shall contain the information specified in § 51.45 and shall address the siting evaluation factors contained in Subpart E of Part 72 of this chapter. Unless otherwise required by the Commission, in accordance with the generic determination in § 51.23(a) and the provisions in § 51.23(b), no discussion of the environmental impact of the storage of spent fuel at an ISFSI beyond the term of the license or amendment applied for is required in an environmental report submitted by an applicant for an initial license for storage of spent fuel in an ISFSI, or any amendment thereto.

20. In § 51.80, paragraph (b) is revised to read as follows:

§ 51.80 Draft environmental impact statement—materials license.

* * * * *

(b)(1) *Independent spent fuel storage installation (ISFSI).* Unless otherwise determined by the Commission and in accordance with the generic determination in § 51.23(a) and the provisions of § 51.23(b), a draft environmental impact statement on the issuance of an initial license for storage of spent fuel at an independent spent fuel storage installation (ISFSI) or any amendment thereto, will address environmental impacts of spent fuel only for the term of the license or amendment applied for.

(2) *Monitored retrievable storage installation (MRS).* As provided in sections 141 (c), (d), and (e) and 148 (a) and (c) of the Nuclear Waste Policy Act of 1982, as amended (NWPA) (96 Stat. 2242, 2243, 42 U.S.C. 10161 (c), (d), (e); 101 Stat. 1330–235, 1330–236, 42 U.S.C. 10168 (a) and (c)), a draft environmental impact statement for the construction of a monitored retrievable storage installation (MRS) will not address the need for the MRS or any alternative to the design criteria for an MRS set forth in section 141(b)(1) of the NWPA (96 Stat. 2242, 42 U.S.C. 10161(b)(1)) but may consider alternative facility designs which are consistent with these design criteria.

21. In § 51.97, a new paragraph (b) is added to read as follows:

§ 51.97 Final environmental impact statement-materials license.

* * * * *

(b) *Monitored retrievable storage facility (MRS).* As provided in sections 141 (c), (d), and (e) and 148 (a) and (c) of the Nuclear Waste Policy Act of 1982, as amended (NWPA) (96 Stat. 2242, 2243, 42 U.S.C. 10161 (c), (d), (e); 101 Stat. 1330–235, 1330–236, 42 U.S.C. 10168 (a), (c)) a final environmental impact statement for the construction of a monitored retrievable storage installation (MRS) will not address the need for the MRS or any alternative to the design criteria for an MRS set forth in section 141(b)(1) of the NWPA (96 Stat. 2242, 42 U.S.C. 10161(b)(1)) but may consider alternative facility designs which are consistent with these design criteria.

§ 51.101 [Amended]

22. The references to §§ 72.11, 72.20 and 72.31(b) in the second sentence of paragraph (a)(2) of § 51.101 are redesignated respectively as §§ 72.16, 72.34 and 72.40(b).

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

23. The authority citation for Part 70 is revised to read as follows:

Authority: Sections 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 70.3, 70.19(c), 70.21(c), 70.22 (a), (b) (d)-(k), 70.24 (a) and (b), 70.32 (a)(3), (5) and (6), (d) and (i), 70.36, 70.39 (b) and (c), 70.41(a), 70.42 (a) and (c), 70.56, 70.57 (b), (c), and (d), 70.58 (a)-(g)(3), and (h)-(j) are issued under sec. 161b, 68 Stat. 948 as amended (42 U.S.C. 2201(b)); §§ 70.7, 70.20a (a) and (d), 70.20b (c) and (e), 70.21(c), 70.24(b), 70.32 (a)(6), (c), (d), (e), and (g), 70.36, 70.51(c)-(g), 70.56, 70.57 (b) and (d), 70.58 (a)-(g)(3) and (h)-(j) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 70.5, 70.9, 70.20b (d) and (e), 70.38, 70.51 (b) and (i), 70.52, 70.53, 70.54, 70.55, 70.58 (g)(4), (k) and (l), 70.59, and 70.60 (b) and (c) are issued under sec. 161o, 68 Stat 950, as amended (42 U.S.C. 2201(o)).

24. In § 70.1, paragraph (c) is revised to read as follows:

§ 70.1 Purpose

* * * * *

(c) The regulations in Part 72 of this chapter establish requirements, procedures, and criteria for the issuance of licenses to possess:

(1) Spent fuel and other radioactive materials associated with spent fuel storage in an independent spent fuel storage installation (ISFSI), or

(2) Spent fuel, high-level radioactive waste, and other radioactive materials associated with the storage in a monitored retrievable storage installation (MRS), and the terms and conditions under which the Commission will issue such licenses.

25. In § 70.20a, paragraph (b) is revised to read as follows:

§ 70.20a General license to possess special nuclear material for transport.

* * * * *

(b) Notwithstanding any other provision of this chapter, the general license issued under this section does not authorize any person to conduct any activity that would be authorized by a license issued pursuant to Parts 30 through 35, 39, 40, 50, 72, 110, or other sections of this part.

* * * * *

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

26. The authority citation for Part 73 is revised to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); secs. 201, as amended, 204, 88 Stat. 1242, as amended, 1245 (42 U.S.C. 5841, 5844).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Sec. 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 73.21, 73.37(g) and 73.55 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 73.20, 73.24, 73.25, 73.26, 73.27, 73.37, 73.40, 73.45, 73.46, 73.50, 73.55, 73.57, and 73.67 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 73.20(c)(1), 73.24(b)(1), 73.26 (b)(3), (h)(6), and (k)(4), 73.27 (a) and (b), 73.37(f), 73.40 (b) and (d), 73.46 (g)(6) and (h)(2), 73.50 (g)(2), (3)(iii)(B) and (h), 73.55 (h)(2), and (4)(iii)(B), 73.57, 73.70, 73.71 and 73.72 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

27. In § 73.1, paragraph (b)(6) is revised to read as follows:

§ 73.1 Purpose and scope.

* * * * *

(b) * * *

(6) This part prescribes requirements for the physical protection of spent fuel stored in either an independent spent fuel storage installation (ISFSI) or a monitored retrievable storage installation (MRS) licensed under Part 72 of this chapter.

* * * * *

PART 75—SAFEGUARDS ON NUCLEAR MATERIAL—IMPLEMENTATION OF US/IAEA AGREEMENT

28. The authority citation for Part 75 is revised to read as follows:

Authority: Secs. 53, 63, 103, 104, 122, 161, 68 Stat. 930, 932, 936, 937, 939, 948, as amended (42 U.S.C. 2073, 2093, 2133, 2134, 2152, 2201); sec. 201, as amended, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 75.4 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), the provisions of this part are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

29. In § 75.4, paragraph (k)(4) is revised to read as follows:

§ 75.4 Definitions.

As used in this part:

* * * * *

(k) "Installation" means:

* * * * *

(4) An independent spent fuel storage installation (ISFSI) or a monitored retrievable storage installation (MRS) as defined n § 72.3 of this chapter; or

* * * * *

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

30. The authority citation for Part 150 is revised to read as follows:

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

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.15 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 150.20(b) (2)–(4) and 150.21 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); § 150.14 is issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 150.16–150.19 and 150.20(b)(1) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

31. In § 150.15, paragraph (a)(7) is revised to read as follows:

§ 150.15 Persons not exempt.

(a) * * *

(7) The storage of:

(i) Spent fuel in an independent spent fuel storage installation (ISFSI) or

(ii) Spent fuel and high level radioactive waste in a monitored retrievable storage installation (MRS) licensed pursuant to Part 72 of this chapter.

* * * * *

Dated at Rockville, Maryland, this 12th day of August, 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88–18773 Filed 8–18–88; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Regulation C; Docket No. R–0635]

Home Mortgage Disclosure; Revisions to Regulation C

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board has adopted a revised Regulation C (Home Mortgage Disclosure). The revised regulation incorporates recent amendments to the Home Mortgage Disclosure Act that were contained in the Housing and Community Development Act of 1987. These statutory amendments permanently extend the act and expand its coverage to include mortgage banking subsidiaries of bank and savings and loan holding companies, and savings and loan service corporations that originate or purchase mortgage loans. Other revisions stem from a review made in accordance with the Board's Regulatory Improvement Program.

The HMDA–1 form, which is used by banks, thrifts, and other depository institutions for reporting loan data, remains essentially unchanged. The Board has adopted a separate form HMDA–2 for use by mortgage banking subsidiaries of holding companies and newly covered service corporations, because these institutions are required to exclude FHA loans from their reports.

EFFECTIVE DATES: September 19, 1988, except that the provisions in § 203.2 (f) and (g) related to the reporting of mobile and manufactured home loans will take effect on January 1, 1989. Mortgage banking subsidiaries of bank and savings and loan holding companies and savings and loan service corporations will be required to report data for calendar year 1988 in March of 1989.

FOR FURTHER INFORMATION CONTACT: John C. Wood, Senior Attorney, or Thomas J. Noto or Linda Vespereny, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at 202–452–2412 or 202–452–3667; for the hearing impaired *only*, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf, at 202–452–3544.

SUPPLEMENTARY INFORMATION:

(1) Background

The Board's Regulation C (12 CFR Part 203) implements the Home Mortgage Disclosure Act of 1975 (HMDA) (12 U.S.C. 2801 *et seq.*). It requires depository institutions that have over $10 million in assets, and have offices in metropolitan statistical areas (MSAs) or primary metropolitan statistical areas (PMSAs), to disclose annually their originations and purchases of mortgage and home improvement loans. Data must be itemized by census tract (or by county, in some instances) and also by type of loan. A statement covering the data on a calendar year basis must be made available to the public and reported to the institution's federal supervisory agency by March 31 following the calendar year for which the data are compiled.

When originally passed in 1975, HMDA contained a "sunset" provision under which the act was to expire in 1980. A number of temporary extensions were enacted and, in the Housing and Community Development Act of 1987 (Pub. L. 100–242, section 565, 101 Stat. 1815, 1945), the Congress permanently extended HMDA by striking the sunset provision from the act. The statutory amendments were signed into law on February 5, 1988. In addition to the permanent extension, these amendments expanded the coverage of HMDA to include mortgage banking subsidiaries of bank holding companies and savings and loan holding companies, as well as savings and loan service corporations.

On May 13, 1988, the Board published for public comment an amended Regulation C to implement these and other changes (53 FR 17061). With some changes that are identified in the

sections that follow, the Board is now adopting the revised regulation in final form.

(2) Regulatory Review

The Board's Regulatory Improvement Program calls for periodic review of each of the Board's regulations to determine whether the regulation can be simplified. The Board conducted such a review of Regulation C and made a number of changes. The text of the regulation was revised to improve its clarity. Obsolete provisions were deleted, footnotes eliminated, and a detailed appendix regarding state exemptions replaced by a brief reference in the regulation. In addition, the instructions to the reporting forms were significantly reworked and should be easier to follow.

(3) Availability of Aggregated Data

As required by the Home Mortgage Disclosure Act, the Federal Financial Institutions Examination Council (with support from the Federal Reserve Board and the other financial regulators) aggregates loan data received from all reporting institutions in each MSA. The Examination Council also produces tables for each MSA showing lending patterns according to demographic characteristics such as income level and age of housing stock. These tables, together with data on the individual institutions, are sent to central data depositories in each MSA. The act specifies that the aggregated data and related tables shall be available no later than December 31 following the calendar year to which they relate. Typically, the Examination Council has released these reports by late November or early December.

The conference report accompanying the HMDA amendments indicates Congressional interest in having the HMDA data available at the central data depositories earlier than is now the case. Member agencies of the Examination Council are implementing changes to data processing procedures in order to facilitate the earlier availability of the data. The Board believes that the revision of Regulation C, together with the expanded instructions for reporting, will serve this purpose by enhancing compliance and by reducing errors that require editing following data submission.

Several commenters on the proposal suggested ways in which the aggregation and presentation of aggregated data might be improved. Since the aggregation process is not governed by Regulation C, these suggestions will be brought to the attention of the Examination Council.

(4) Section-by-Section Summary

The changes made to each section of the revised regulation are discussed below.

Section 203.1 Authority, purpose, and scope.

A reference has been added in § 203.1(a) to reflect the approval of information collection requirements under the Paperwork Reduction Act. A reference to HMDA has been added to the purpose statement in § 203.1(b). Now that the term "depository institution" is no longer used in the regulation (eliminating the possibility of confusion), the term "depositories" has replaced the term "repositories" in § 203.1(d), referring to the facilities where data is available in each MSA.

Section 203.2 Definitions.

Section 203.2 contains definitions of terms used in the regulation, and has been revised as follows.

Act. The definition of "act" in § 203.2(a) has been updated.

Branch office. What qualifies as a branch office has several consequences for an institution. First, institutions that do not have a home or branch office in an MSA or PMSA are exempt from HMDA. Second, HMDA data must be itemized by census tract for loans on property located in any MSA or PMSA in which the institution has a home or branch office. For loans on property located in other MSAs or PMSAs (or not located in an MSA or PMSA at all), the data are reported as an aggregate sum without geographic itemization. Third, the data must be made available to the public at one branch office (or home office) in each MSA or PMSA where the institution has home or branch offices. Finally, the institution must post notices in all branch offices located in MSAs or PMSAs to inform the public of the availability of the HMDA data.

The revised definition set forth in § 203.2(b) takes account of the difference between the branch office structure of the newly covered mortgage banking firms and that of depository institutions such as banks and thrift institutions. While depository institutions must obtain approval from federal or state regulatory agencies to establish branch offices, mortgage banking firms generally are not required to obtain such approval.

Accordingly, the definition of branch office differs for the two classes of institutions. The definition in revised § 203.2(b)(1)(i) applies to banks, thrifts, and other depository institutions; it is the same as in the current regulation and is based on the approval process.

For other covered institutions, the Board defines "branch office" in § 203.2(b)(1)(ii) as an office of the institution that takes applications from the public for home purchase or home improvement loans. In response to comments, the words "of the institution" were added to make clear that branch offices include only facilities of the institution itself, not offices of affiliates or other third parties. This branch office definition will apply to mortgage banking subsidiaries of holding companies and saving and loan service corporations (except for those that are majority owned by a single thrift institution).

The definition of the term "financial institution" in the May proposal would have resulted in the application of the new branch office definition to majority-owned subsidiaries of depository institutions. As discussed below, the final rule does not incorporate that change. Accordingly, majority-owned subsidiaries of depository institutions (including majority-owned service corporations) will continue to be governed by the current rule, which focuses on the branch locations of the parent institution.

Federally related mortgage loan. Banks and other depository institutions are subject to HMDA only if they make "federally related mortgage loans." The definition of that term, currently in footnote 1, has been restated more concisely and incorporated in the text of the regulation as § 203.2(d).

Financial institution. Section 203.2(e) defines the institutions covered by the regulation; the term "financial institution" replaces the term "depository institution." This change is designed to avoid the confusion that might arise from the fact that, in ordinary usage, the term depository institution signifies institutions such as banks and thrifts, not mortgage banking firms and other institutions that do not take deposits. The new definition encompasses both the traditional depository institutions and the new class of covered institutions: Savings and loan service corporations and mortgage banking subsidiaries of bank holding companies and savings and loan holding companies.

As noted above, depository institutions are subject to HMDA only if they make federally related mortgage loans. The statutory amendments do not condition coverage of the newly covered institutions on the making of federally related mortgage loans. The regulatory definition of "financial institution" parallels the statute.

A number of commenters asked the Board to clarify the term "mortgage banking subsidiary." Many expressed concern that, without further elaboration, the term might be construed to cover consumer finance subsidiaries of holding companies. The Board believes that the use of the qualifying term "mortgage banking" in the statutory amendments suggests that the Congress did not intend to expand coverage to institutions that make only a limited number of mortgage loans. Section 203.2(e)(1)(ii) of the final regulation defines a mortgage banking subsidiary as an institution that makes home purchase loans in an amount greater than 10% of its total loan volume, measured in dollars. This cutoff is intended to ensure that any holding company subsidiary whose line of business is other than mortgage banking, but that makes a small number of home purchase loans, will not be required to report.

The May proposal treated majority-owned subsidiaries of depository institutions as financial institutions in their own right. Consequently, these institutions would have been considered to have branch offices in any MSA where they have offices for taking loan applications from the public. A number of commenters opposed this requirement because of the significant increase in the reporting burden for subsidiaries that have offices in MSAs other than the MSAs in which the parent institution has branches. Moreover, a regulatory agency expressed concern that some of the data presently reported by these subsidiaries would no longer be reported in itemized form. Upon further analysis, the Board has decided to retain the current rule which treats majority-owned subsidiaries as part of the parent institution.

A parallel issue arises regarding the treatment of savings and loan service corporations. Although the statutory amendments brought savings and loan service corporations specifically within the coverage of HMDA, service corporations that are majority-owned subsidiaries of thrift institutions already were covered by Regulation C. Because of the statute's specific reference to service corporations, however, the Board considered whether a majority-owned savings and loan service corporation should continue to be treated as the subsidiary of its parent institution or characterized as a "savings and loan service corporation" under the new definition in the regulation.

If treated as a majority-owned subsidiary the service corporation would continue to report, as it does now, on a consolidated basis with its parent; its data would be itemized for MSAs where its parent has offices, and would include FHA lending. If the institution were treated as a "savings and loan service corporation," however, significantly different rules would apply. The institution would itemize data only for MSAs where it has offices for taking loan applications, rather than where its parent has branch offices, and it would be required to exclude FHA loans from its reports.

The Board believes that the intent of the Congress in enacting the statutory amendments was to extend HMDA coverage to institutions that are not already covered. Until now, only those service corporations that are majority-owned subsidiaries of thrifts have been reporting (in conjunction with their parent). Other service corporations were not subject to the regulation (for example, a corporation established by multiple thrifts, none holding a majority interest). The Board believes that the amendments were intended to apply to these latter institutions. Accordingly, under § 203.2(e)(1)(iii) and (e)(2) in the revised definition of "financial institution," majority-owned savings and loan service corporations are deemed to be part of their parent institution.

The Board also has proposed to amend the definition of financial institution to cover industrial banks, which in recent years have taken on many of the characteristics of commercial and savings banks. Based on the comments and further analysis, the Board has decided not to include industrial banks within the definition of financial institution.

Home improvement and home purchase loans. The definitions of "home improvement loan" and "home purchase loan" are set forth in § 203.2(f) and (g).

The definition of "home improvement loan," though revised for clarity, is substantively unchanged. The revised definition omits the reference to refinancings found in the current regulation because home improvement loans are generally not refinanced. the provision (footnotes 2 and 3 in the current regulation) permitting any first-lien loan to be reported as a home purchase loan now appears in the instructions rather than the regulatory text.

The definition of home purchase loan currently is limited to loans for the purchase of "residential real property." In contrast, a home improvement loan is defined in terms of "residential dwelling," and may include residential structures such as mobile homes that are not classified as real property in some states. In publishing the proposed regulation, the Board requested comment on whether dwelling units such as mobile or manufactured homes should specifically be covered under the home improvement or the home purchase loan definition, or both.

Although some commenters preferred that they be excluded, a majority believed that it was appropriate for loans on such property to be disclosed, given that they are an important source of housing in some areas. Accordingly, the definitions of home purchase and home improvement loans specifically include mobile and manufactured homes, whether or not these dwellings are considered real property under state law. This provision becomes effective on January 1, 1989, and therefore will not require a change in the reporting of loan data for 1988.

Several commenters requested that the disclosure requirements for home equity lines be clarified. The instructions to the reporting forms, contained in Appendix A, specify that the data for home improvement loans may include that portion of a home equity line of credit which the borrower indicates, when the line is established, will be used for home improvement purposes.

Commenters also requested clarification on the treatment of assumptions. The Board believes that if an institution expressly agrees in writing with a new party to accept that party as the obligor on an existing home purchase loan, the transaction should be treated as a new home purchase loan. But if a new party takes over an existing obligation without a written agreement, the loan is not reportable under HMDA.

Section 203.3 Exempt institutions.

Section 203.3 excludes from the coverage of the regulation small institutions, institutions without offices in MSAs, and institutions that are subject to a similar state law and have been granted an exemption from the federal law.

The provisions of this section have been reorganized and the language clarified; the substantive rules remain unchanged. Material relating to state law exemptions has been grouped together in § 203.3(b). A new § 203.3(b)(2) has been added to indicate that a state or a financial institution may apply to the Board for an exemption from the regulation based on the existence of a similar state disclosure law. This reference replaces

the detailed discussion in current Appendix B (which the Board has deleted) about the filing of applications for state exemptions.

The Board has received questions about how data should be reported in cases where a merger of two or more financial institutions occurs. In some cases, the merger of two institutions that previously were both exempt, because of their asset size, may produce a successor institution whose assets exceed the $10 million cutoff. In other cases, a covered institution may merge with one that was previously exempt because of asset size or location outside an MSA.

In the case of two exempt institutions, the successor institution that becomes subject to HMDA will be required to disclose loan data for the calendar year following the year in which the merger took place.

If two institutions merge and only one of them was previously covered, the successor institution is required to report loan data, for the covered instituton, for the calendar year in which the merger took place. That report may, but need not, also include loan data for the previously exempt institution. Beginning with the following calendar year, the institution will file a consolidated report that includes all loan data.

A similar reporting question arises when the institutions that merge are both covered institutions. If two covered institutions merge, the successor institution may file a consolidated report for the calendar year in which they merge, but has the option of filing separate reports for that year. Beginning with the following calendar year, the institution will file a consolidated report that includes all loan data.

Section 203.4 Compilation of loan data.

Section 203.4 sets forth the requirements for itemization of loan data by census tract or county and by type of loan, and is the basis for the detailed instructions that accompany the reporting forms contained in the revised Appendix A. Substantive changes are noted below. Revised § 203.4(a) incorporates material from current § 203.4(a) and (b). Section § 203.(4)(b) has been restructured for readability, and also incorporates the rules on MSAs and census tracts presently found in § 203.4(d).

With regard to census tracts, the revised regulation refers to "the most recent census tract series" issued by the Census Bureau. The most recent series is currently the 1980 series. Use of the 1980 series is necessary because 1980 census data is used by the Federal Financial Institutions Examination Council in preparing tables illustrating lending patterns in each MSA.

Section 203.4(c) lists types of loans to be excluded from the disclosures. The six listed in paragraph (c)(1) apply both to depository institutions and to the newly covered institutions. The exclusions for loans made in a fiduciary capacity, loans on unimproved land, and certain refinancings are drawn from current § 203.4(c). The final rule specifies that a refinancing between the original parties should not be reported if the only increase in the principal results from closing costs or unpaid finance charges that are being financed.

Two of the remaining three exclusions (temporary financing and the purchase of an interest in a pool of loans) were moved into revised § 203.4 from the definition of "home purchase loan" in current § 203.2(f).

The sixth exclusion relates to loan servicing rights. The purchase of servicing rights in secondary market transactions is a practice common among mortgage bankers. When loans are sold, for example, the buyer may issue securities backed by a pool of loans that it has acquired. The right to service the loans, however, may be retained by the seller/originator of the mortgages. These servicing rights may later be transferred from one institution to another for a purchase price that is usually a small percentage (such as 1 or 2 percent) of the value of the underlying loans.

The act and regulation require institutions to report data on mortgage loans that they purchase. The Board believes that a covered institution's purchase of these servicing rights does not accurately reflect the extent to which an institution has made mortgage credit available in a community. Accordingly, the regulation excludes from the reporting requirement the purchase solely of servicing rights to mortgage loans.

Section 203.4(c)(2) applies only to mortgage banking subsidiaries and savings and loan service corporations that are not majority-owned. It excludes from the reporting requirement loans that are insured under Title I or II of the National Housing Act (that is, FHA-insured home improvement and home purchase loans), implementing new section 304(g) of HMDA, which expressly provides for their exclusion. (Under section 311 of HMDA, data on FHA-insured loans made by these types of lenders are to be collected by the U.S. Department of Housing and Urban Development.) As discussed under Appendix A, the Board has provided an optional form HMDA–2A that may be used by these institutions to disclose their FHA lending activity.

Section 203.5 Disclosure and reporting.

Section 203.5 relates to making loan data available at offices of an institution and reporting the data to supervisory agencies. As under the current provisions, disclosure statements for a given calendar year are due by the following March 31.

This section also requires institutions to post notices regarding the availability of HMDA data. Posters that may be used to meet the notice requirement are available from federal supervisory agencies. The revised section clarifies that an institution may, in its notice, give the location where disclosure statements are available.

Section 203.6 Enforcement.

Section 203.6 sets forth rules relating to administrative enforcement and bona fide errors. The language and structure of this section have been revised to clarify its provisions.

Appendix A Forms and instructions.

Appendix A of the current regulation, which lists supervisory agencies, is designated Appendix B in the revised regulation; and the current Appendix C, containing the mortgage disclosure forms, is now Appendix A.

The revised Appendix A contains two reporting forms and accompanying instructions, plus an optional form. Institutions must use the prescribed format of the HMDA–1 or HMDA–2 form, as appropriate, but are not required to use the form itself. An institution may, for example, choose to produce a computer printout of its disclosure statement instead.

The HMDA–1 reporting form continues to be the prescribed form for use by commercial banks, savings banks, savings and loan associations, building and loan associations, homestead associations (including cooperative banks), and credit unions. The instructions for completing the form have been expanded significantly to facilitate compliance; the form itself is unchanged except for minor revisions. Column headings have been changed to read "total dollar amount" instead of "principal amount," but the data to be reported in these columns remain the same. Accordingly, institutions will not have to make changes in their data processing procedures for compiling the data. A signature line has been added, calling for an officer of the reporting institution to certify to the accuracy of the report.

A new form HMDA–2 and accompanying instructions have been added for use by savings and loan service corporations and mortgage banking subsidiaries of bank holding companies and savings and loan holding companies, which will not report FHA loans. The provision of a new form is intended to minimize confusion for reporting institutions. The Board has provided an optional form, HMDA–2A, that may be used by institutions that wish to maintain a public record of their FHA lending activity. Use of the form is optional; the form will not be submitted to supervisory agencies, but could be made available to the public (along with the required HMDA data) at the institution's own offices.

Notice of the changes to the HMDA–1 reporting form and of the Board's adoption of a new HMDA–2 and HMDA–2A is being published elsewhere in this issue of the **Federal Register**, to comply with the requirements of the Paperwork Reduction Act.

Appendix B Federal supervisory agencies

Appendix B of the current regulation, relating to applications for state exemptions, has been deleted. In its place, a reference to the availability of state exemptions has been added to § 203.3.

Current Appendix A, which lists enforcement agencies, has been designated Appendix B. The Board has amended the appendix to incorporate references specifying that mortgage banking subsidiaries of bank holding companies shall submit HMDA reports to the Federal Reserve System, and that savings and loan service corporations and mortgage banking subsidiaries of savings and loan holding companies shall submit theirs to the Federal Home Loan Bank System. These reporting arrangements are appropriate in view of the Federal Reserve's general supervisory responsibility for non-bank subsidiaries of bank holding companies, and the Federal Home Loan Bank System's parallel responsibility for savings and loan service corporations and mortgage banking subsidiaries of savings and loan holding companies.

(5) *Effective dates.* Mortgage banking subsidiaries of holding companies, and savings and loan service corporations that are not majority-owned by any one thrift institution, will be required to report data on loan originations and purchases for calendar year 1988. Their first report will be due on March 31, 1989. A number of commenters asked that these institutions not be required to report data for 1988. However, because the statutory amendments specify the effective data for coverage, the Board is unable to delay the reporting requirements.

Changes related to reporting of mobile and manufactured home loans, whether or not these dwellings are characterized as realty under state law, will take effect on January 1, 1989 (to be reported on statements filed in March of 1990).

(6) *Economic impact statement.* The Board's Division of Research and Statistics has prepared an economic impact statement on the revisions to Regulation C. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC 20551, at 202–452–3245.

List of Subjects in 12 CFR Part 203

Banks, Banking, Consumer protection, Federal Reserve System, Home mortgage disclosure, Mortgages, Reporting and recordkeeping requirements.

For the reasons set out in this notice and pursuant to the Board's authority under section 305(a) of the Home Mortgage Disclosure Act (12 U.S.C. 2804(a)), 12 CFR Part 203 is revised to read as follows:

PART 203—HOME MORTGAGE DISCLOSURE

Sec.

Authority: 12 U.S.C. 2801–2810.

§ 203.1 Authority, purpose, and scope.

(a) *Authority.* This regulation is issued by the Board of Governors of the Federal Reserve System ("Board") pursuant to the Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.*). The information collection requirements have been approved by the U.S. Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and have been assigned OMB No. 7100–0090.

(b) *Purpose.* (1) This regulation carries out the purposes of the Home Mortgage Disclosure Act, which is intended to provide the public with loan data that can be used:

(i) To help determine whether financial institutions are serving the housing needs of their communities; and

(ii) To assist public officials in distributing public sector investments so as to attract private investment to areas where it is needed.

(2) Neither the act nor this regulation is intended to encourage unsound lending practices or the allocation of credit.

(c) *Scope.* This regulation applies to financial institutions, as defined in § 203.2(e), and requires them to disclose loan data at their home and certain branch offices and to report the data to supervisory agencies.

(d) *Central data depositories.* Loan data are available to the public at central data depositories located in each metropolitan statistical area. The Federal Financial Institutions Examination Council aggregates loan data for all institutions in each metropolitan statistical area, showing lending patterns by location, age of housing stock, income level, and racial characteristics. A listing of central data depositories can be obtained from the U.S. Department of Housing and Urban Development, Washington, DC 20410, or from any of the agencies listed in Appendix B.

§ 203.2 Definitions.

In this regulation:

(a) *Act* means the Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.*)

(b) *Branch office* means: (1)(i) Any office of a financial institution that is approved as a branch by a federal or state supervisory agency; or

(ii) For a financial institution that is not required to obtain approval for a branch office, any office of the institution that takes applications from the public for home purchase or home improvement loans.

(2) The term excludes free-standing automated teller machines and other electronic terminals.

(c) *Federal Housing Administration (FHA), Farmers Home Administration (FmHA), or Veterans (VA) loans* mean mortgage loans insured under Title II of the National Housing Act or Title V of the Housing Act of 1949 or guaranteed under Chapter 37 of Title 38 of the United States Code.

(d) *Federally related mortgage loan* means any loan (other than temporary financing such as a construction loan) secured by a first lien on a 1-to-4 family dwelling (including a condominium, a cooperative, or a mobile or manufactured home):

(1) That is originated by a federally insured or regulated institution;

(2) That is insured, guaranteed, or supplemented by any federal agency; or

(3) That the originator intends to sell to the Federal National Mortgage Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation.

(e) *Financial institution* means: (1)(i) A commercial bank, savings bank, savings and loan association, building and loan association, homestead association (including a cooperative bank) or credit union that originates federally related mortgage loans;

(ii) A mortgage banking subsidiary of a savings and loan holding company, or a mortgage banking subsidiary of a bank holding company; however, a subsidiary is not a "mortgage banking subsidiary" under this section unless, in the preceding calendar year, ten percent or more of its loan volume, measured in dollars, consisted of home purchase loans; or

(iii) A savings and loan service corporation that originates or purchases mortgage loans, other than a savings and loan service corporation identified in paragraph (e)(2) of this section.

(2) A majority-owned subsidiary of a financial institution, including a majority-owned savings and loan service corporation, is deemed to be part of the parent institution for purposes of this regulation.

(f) *Home improvement loan* means any loan that: (1) Is stated by the borrower (at the time of the loan application) to be for the purpose of repairing, rehabilitating, or remodeling a residential dwelling (including a condominium, cooperative, or mobile or manufactured home) located in a state; and

(2) is classified by the financial institution as a home improvement loan.

(g) *Home purchase loan* means any loan secured by and made for the purpose of purchasing, or refinancing the purchase of, a residential dwelling (including a condominium, cooperative, or mobile or manufactured home) located in a state.

(h) *Metropolitan statistical area or MSA* means a metropolitan statistical area or a primary metropolitan statistical area, as defined by the U.S. Office of Management and Budget.

(i) *State* means any state of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 203.3 Exempt institutions.

(a) *Exemption based on asset size or location.* A financial institution is exempt from the requirements of this regulation for a given calendar year if on the preceding December 31:

(1) Its total assets were $10,000,000 or less; or

(2) It had neither a home office nor a branch office in an MSA.

(b) *Exemption based on state law.* (1) A state-chartered financial institution is exempt from the requirements of this regulation if the Board determines that the institution is subject to a state disclosure law that contains requirements substantially similar to those imposed by this regulation and contains adequate provisions for enforcement.

(2) Any state, state-chartered financial institution, or association of such institutions may apply to the Board for an exemption under this paragraph.

(3) An institution that is exempt under this paragraph shall submit the data required by the state disclosure law to its state supervisory agency, for purposes of aggregation.

(c) *Loss of exemption.* (1) An institution losing an exemption that was based on asset size or location under paragraph (a) of this section shall compile loan data in compliance with this regulation beginning with the calendar year following the year in which it lost its exemption.

(2) An institution losing an exemption that was based on state law under paragraph (b) of this section shall compile loan data in compliance with this regulation beginning with the calendar year following the year for which it last reported loan data under the state disclosure law.

§ 203.4 Compilation of loan data.

(a) *Data to be included.* A financial institution shall compile data on the number and total dollar amount of home purchase and home improvement loans originated or purchased (by the institution and any majority-owned subsidiary) at any time during the calendar year, whether or not the loans are later sold. The institution shall compile the loan data in the format prescribed in Appendix A of this regulation.

(b) *Itemization of data.* A financial institution shall present the loan data separately for originations and purchases, itemizing the data by census tract or county and by type of loan, as prescribed below. It shall use the MSA boundaries (defined by the U.S. Office of Management and Budget) that were in effect on January 1 of the calendar year for which the data are compiled, and shall use the census tract maps from the most recent census tract series prepared by the U.S. Bureau of the Census.

(1) *Geographic itemization.*—(i) *Itemization by census tract or county.* For each MSA in which the institution has a home or branch office, the institution shall itemize the loan data:

(A) By the census tract in which the property purchased or improved is located, or

(B) By the county in which the property purchased or improved is located, if the property is located in an area not assigned census tracts or in a county with a population of 30,000 or less.

(ii) *Property located elsewhere.* The institution shall list the loan data as an aggregate sum for loans on property located outside an MSA, or located in an MSA where the institution has neither a home nor a branch office.

(2) *Type-of-loan itemization.* The financial institution shall further itemize the loan data within each geographic unit by loan category as follows:

(i) FHA, FmHA, and VA home purchase loans on 1-to-4 family dwellings (except as provided in paragraph (c)(2) of this section);

(ii) Conventional home purchase loans on 1-to-4 family dwellings;

(iii) Home improvement loans on 1-to-4 family dwellings;

(iv) Loans on dwellings for 5 or more families (including both home purchase and home improvement loans); and

(v) Loans reported in the 1-to-4 family categories that are made to nonoccupant borrowers, except for loans on property located outside an MSA, or located in an MSA where the institution has neither a home nor a branch office.

(c) *Data to be excluded.* (1) A financial institution shall not report:

(i) Loans originated or purchased by the financial institution acting in a fiduciary capacity (such as trustee);

(ii) Loans on unimproved land;

(iii) Refinancings, between the original parties, involving no increase in the outstanding principal aside from closing costs and accrued finance charges;

(iv) Temporary financing (such as bridge or construction loans);

(v) The purchase of an interest in a pool of mortgage loans (such as mortgage participation certificates); or

(vi) The purchase solely of the right to service loans.

(2) Mortgage banking subsidiaries of holding companies and savings and loan service corporations (as defined in § 203.2(e)(1)) shall not report FHA loans insured under Title I or II of the National Housing Act.

§ 203.5 Disclosure and reporting.

(a) *Time requirements.* By March 31 following the calendar year for which the loan data are compiled, a financial institution shall:

(1) Make a complete loan data disclosure statement available to the public, and continue to make it available for five years from that date; and

(2) Send two copies of its complete loan disclosure statement to the agency office specified in Appendix B of this regulation.

(b) *Availability to the public.* (1) A financial institution shall make a complete loan disclosure statement available at its home office.

(2) If it has branch offices in other MSAs, the financial institution shall also make a statement available in at least one branch office in each of those MSAs; the statement at a branch office need only contain data relating to property in the MSA where that branch office is located.

(3) A financial institution shall make its disclosure statement available for inspection and copying during the hours the office is normally open to the public for business. A financial institution that provides photocopying facilities may impose a reasonable charge for this service.

(c) *Notice of availability.* A financial institution shall post a general notice about the availability of its disclosure statement in the lobbies of its home office and any branch offices located in an MSA. Upon request, it shall promptly provide the location of the institution's offices where the disclosure statement is available. At its option, an institution may include the location in its notice.

§ 203.6 Enforcement.

(a) *Administrative enforcement.* A violation of the act or this regulation is subject to administrative sanctions as provided in section 305 of the act. Compliance is enforced by the agencies listed in Appendix B of this regulation.

(b) *Bona fide errors.* An error in compiling or disclosing loan data is not a violation of the act or this regulation if it was unintentional and occurred despite the maintenance of procedures reasonably adapted to avoid such errors.

Appendix A—Forms and Instructions

HMDA–1, "MORTGAGE LOAN DISCLOSURE STATEMENT"

Public reporting burden for this collection of information is estimated to vary from 2 to 50 hours per response, with an average of 30 hours per response, including time to gather and maintain the data needed and to review instructions and complete the information collection. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

INSTRUCTIONS TO COMMERCIAL BANKS, SAVINGS BANKS, SAVINGS AND LOAN ASSOCIATIONS, CREDIT UNIONS AND OTHER DEPOSITORY INSTITUTIONS

A. Who Must Use This Form

1. A commercial bank, savings bank, savings and loan association, building and loan association, homestead association (including a cooperative bank) or credit union must complete this HMDA–1 form to disclose loan data for a given calendar year if on the preceding December 31 the institution:

a. Had assets of more than $10 million, and

b. Had a home or a branch office in a metropolitan statistical area (MSA) or a primary metropolitan statistical areas (PMSA).

Example: If on December 31, 1987, your home office was located in an MSA and your assets exceeded $10 million, you must compile data and complete a disclosure statement for all home purchase and home inprovement loans that you originate or purchase during calendar year 1988.

2. However, your institution need not complete a disclosure statement—even though it meets the tests for asset size and location—if it makes *no* first-lien mortgage loans on 1-to-4 family dwellings in the calendar year for which the data are compiled.

3. Any majority-owned subsidiary is deemed to be part of the parent institution. Consequently, you should consolidate into your disclosure statement loan data relating to originations and purchases by all of your institution's majority-owned subsidiaries (including a majority-owned service corporation, in the case of a savings and loan association). To comply with the requirements described under section G (Geographic Itemization) below, itemize loan data for MSAs or PMSAs where *the parent institution* has a home or branch offices.

Example: If you have a home and branch offices in New York City, and your subsidiary's loan offices are in Philadelphia, itemize data by census tract (or county) only for the New York PMSA. Report loan data on loans relating to property located anywhere outside the New York PMSA (including loans in Philadelphia) as an aggregate sum in section 2 (Loans on property not located in MSAs/PMSAs where institution has home or branch offices).

B. Who Must Use Other Forms

1. Mortgage banking subsidiaries of bank holding companies, mortgage banking subsidiaries of savings and loan holding companies, and savings and loan service corporations that originate or purchase mortgage loans (other than service corporations that are majority-owned by a single savings and loan association) must use the HMDA–2 form instead of the HMDA–1.

2. Institutions that have been exempted by the Federal Reserve Board from complying with federal law because they are covered by a similar state law on mortgage loan disclosures must use the disclosure form required by their state law.

C. Format

1. You must use the format of the HMDA–1 form, but you are not required to use the form itself. For example, you may produce a computer printout of your disclosure statement instead. But you must give all the identifying information asked for at the top of the form, use the prescribed column headings, provide the signature of a certifying officer, etc.

2. If your report on loan originations or purchases consists of more than one page, number the pages and include the name of your institution and the MSA number at the top of each page. Enter the totals for the MSA on the final page; do not give subtotals on earlier pages. Report the section 2 data (Loans or property not located in MSAs/PMSAs) on the final page. If your report contains itemized data for more than one MSA, report the section 2 data only once for Part A and once for Part B—do not repeat the data on the report for each MSA.

D. When and Where Statement is Due

1. You must send two copies of your disclosure statement to the office specified by your federal supervisory agency no later than March 31 following the calendar year for which the loan data are compiled.

2. The completed disclosure statement must be signed by an officer of your institution (for both Part A and Part B, on the final page of each) certifying to the accuracy of the data and indicating whether the statement includes data of a majority-owned subsidiary. (See paragraph 3 of section A above.)

3. You also must make your disclosure statement available no later than March 31 for inspection by the public at your home office and, if you have branch offices in other MSAs, at one branch office in each of these MSAs.

E. Data To Be Shown

1. *Originations and purchases.* Show the data on home purchase and home improvement loans that you originated or purchased during the calendar year covered by the disclosure statement. Report the data on loan originations on Part A of the form and the data on loan purchases on Part B of the form even if the loans were subsequently sold. If you have no loans to report in one of the two parts, enter "none" in the column provided for census tract numbers and enter zeros in Columns A through E; this helps to show that no part of an institution's report has been lost.

2. *Number and total dollar amount.* Show the number of loans and the total dollar amount of loans for each category on the statement. For home purchase loans that you originate, "total dollar amount" means the original principal amount of the loan. For home purchase loans that you purchase, "total dollar amount" means the unpaid principal balance of the loan at time of purchase. For home improvement loans (both originations and purchases), you may include unpaid finance charges in the "total dollar amount" if that is how you record such loans on your books.

3. *Rounding.* Round all dollar amounts to the nearest thousand ($500 should be rounded up), and show in terms of thousands.

F. Data to Be Excluded

Do not report the following types of loans:

1. Loans that, although secured by real estate, are made for purposes other than for home purchase or home improvement (for example, do not report a loan secured by residential real property for purposes of financing education, a vacation, or business operations);

2. Loans made or purchased in a fiduciary capacity (for example, by your trust department);

3. Loans on unimproved land;

4. Refinancings that involve no increase in the outstanding principal, aside from closing costs and unpaid finance charges;

5. Construction loans and other temporary financing;

6. Purchase of an interest in a pool of mortgage loans such as mortgage participation certificates; or

7. Purchases solely of the right to service loans.

G. Geographic Itemization (breakdown of loan data for each MSA or PMSA by census tract or county and of loan data in the outside-MSA/PMSA category)

1. *MSA/PMSA.* You must compile loan data geographically for each MSA or PMSA in which you have a home or branch office. (See item 6 below for treatment of loans on property outside MSAs/PMSAs). Start a new page for each MSA or PMSA, if you itemize data for more than one MSA/PMSA. You must use the MSA/PMSA boundaries (defined by the U.S. Office of Management and Budget) that were in effect on January 1 of the calendar year for which the loan data are compiled.

2. *Census tract or county.* For loans on property that is located within one of these MSAs or PMSAs, itemize the data by the census tract in which the property is located, except that you must itemize the data by county *instead* of census tract when the property:

a. Is located in an area that is not divided into census tracts on the U.S. Census Bureau's census tract outline maps (see item 3 below); or

b. Is located in a county with a population of 30,000 or less.

To determine population, use the Census Bureau's PC80–1–A population series even if the population has increased above 30,000 since 1980.

3. *Census tract maps.* To determine census tract numbers, consult the U.S. Census Bureau's census tract outline maps. You may use the maps of the appropriate MSAs/PMSAs in the Census Bureau's PHC80–2 series for the 1980 census, or use equivalent census data from the Census Bureau (such as GBF/DIME files) or from a private publisher. Use the maps in the 1980 series even if more current maps are available.

4. *Compilation.* Enter the data for all loans made in a given census tract on the same line, listing the number and total dollar amount in the appropriate columns (as described below in section H) and listing the census tracts in numerical sequence. Do the same for loans made in a given county.

5. *Duplicate census tract numbers.* If you have a home or branch office in the New York, NY PMSA, note that there are duplicate census tract numbers in New York City. When reporting, you must indicate the county (by name or number) in addition to the tract number for these census tracts.

6. *Outside-MSA/PMSA.* If the loans are for property that is located outside those MSAs or PMSAs in which you have a home or branch office (or outside any MSA or PMSA), report the loan data as an aggregate sum in section 2 of the form. You do not have to itemize these loans by census tract or county. (But you will have to itemize the data by type of loan, as described in section H below.)

H. Type-of-Loan Itemization (Breakdown of each geographic grouping into loan categories—Columns A–E)

Column A: FHA, FmHA, and VA loans on 1-to-4 family dwellings.

1. Report in Column A loans made for the purpose of purchasing a residential dwelling for 1 to 4 families if the loan is secured by a lien and if it is insured or guaranteed by FHA, FmHA, or VA.

2. At your option, you may include loans that are made for home improvement purposes but are secured by a first lien, if you normally classify first-lien loans as purchase loans.

3. Include refinancings if there is an increase in the outstanding principal aside from any increase related to closing costs or unpaid finance charges.

4. Include any nonoccupant FHA, FmHA, or VA loans in this column as well as in Column E.

5. Do not report any FHA Title I (home improvement) loans in Column A; these loans are to be entered in Column C.

Column B: Conventional home purchase loans on 1-to-4 family dwellings.

1. Report in Column B conventional loans (all loans other than FHA, FmHA, and VA loans) made for the purpose of purchasing a residential dwelling for 1 to 4 families if the loans are secured by a lien.

2. Include refinancings if there is an increase in the outstanding principal aside from any increase related to closing costs of unpaid finance charges.

3. Include any nonoccupant conventional loans in this column as well as in Column E.

4. At your option, you may include loans that are made for home improvement purposes but that are secured by a first lien, if you normally classify first-lien loans as purchase loans.

Column C: Home improvement loans on 1-to-4 family dwellings.

1. Report in Column C only loans that:

a. The borrowers have said are to be used for repairing, rehabilitating, or remodeling residential dwellings, and

b. Are recorded on your books as home improvement loans.

2. For home equity lines of credit, you may include in Column C that portion of the line of credit that the borrower indicates will be used for home improvement, at the time the account is opened. Report only in the year the line is established.

3. Include both secured and unsecured loans.

4. You may include unpaid finance charges in the "total dollar amount" if that is how you record such loans on your books.

5. Include any nonoccupant home improvement loans in this column as well as in Column E.

Column D: Loans on multifamily dwellings (5 or more families).

1. Report in Column D loans on dwellings for 5 or more families, including both loans for home purchase and loans for home improvement.

2. Do not report loans on individual condominium or cooperative units in Column D; report such loans in Columns A, B, or C.

Column E: Nonoccupant loans on 1-to-4 family dwellings.

1. Report in Column E any home purchase and home improvement loans on 1-to-4 family dwellings (listed in Columns A, B, and C) that were made to borrowers who indicated at the time of the loan application that they did not intend to use the property as a principal dwelling.

2. In completing Column E of Part B, you may assume that a purchased loan does not fall within this "nonoccupant" category unless your documents contain information to the contrary.

3. Do not complete Column E for loans that you report under section 2 (Loans on property not located in MSAs/PMSAs), in either Part A (Originations) or Part B (Purchases).

BILLING CODE 6210-01-M

MORTGAGE LOAN DISCLOSURE STATEMENT, FORM HMDA-1

FOR USE BY DEPOSITORY INSTITUTIONS

OMB No. 7100-0090 Approval expires June 1990.
This report is required by law (12 USC 2801-2810 and 12 CFR 203).

Control number (agency use only)

Part A—Originations Report for loans made in 19___

Reporting institution

Name

Address

Enforcement agency for reporting institution

Name

Address

MSA/PMSA number for data reported in Section 1 _____

Name of MSA/PMSA

Section 1—Loans on property located in MSA/PMSA where institution has a home or branch office

CENSUS TRACT (in numerical sequence) or COUNTY (name or number)	Loans on 1-to-4 Family Dwellings						Loans on Multifamily Dwellings for 5 or More Families (home purchases and home improvement) D		Nonoccupant Loans on 1-to-4 Family Dwellings from columns A, B and C E	
	Home Purchase Loans				Home Improvement Loans C					
	FHA, FmHA, and VA A		Conventional B							
	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)
MSA/PMSA TOTAL ____ ____										

Section 2—Loans on property not located in MSAs/PMSAs where institution has home or branch offices

I hereby certify to the accuracy of this report.
The report includes ( ) does not include ( ) loan data for majority-owned subsidiaries.

Signature of Certifying Officer

Print Name of Person Completing Form

Telephone Number (include Area Code and Extension)

MORTGAGE LOAN DISCLOSURE STATEMENT, FORM HMDA-1

FOR USE BY DEPOSITORY INSTITUTIONS

Control number (agency use only)

Part B—Purchases Report for loans made in 19___

Reporting institution

Name

Address

Enforcement agency for reporting institution

Name

Address

MSA/PMSA number for data reported in Section 1 _____

Name of MSA/PMSA

Section 1—Loans on property located in MSA/PMSA where institution has a home or branch office

CENSUS TRACT (in numerical sequence) or COUNTY (name or number)	Loans on 1-to-4 Family Dwellings						Loans on Multifamily Dwellings for 5 or More Families (home purchases and home improvement)		Nonoccupant Loans on 1-to-4 Family Dwellings from columns A, B and C	
	Home Purchase Loans				Home Improvement Loans					
	FHA, FmHA, and VA A		Conventional B		C		D		E	
	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)
MSA/PMSA TOTAL										

Section 2—Loans on property not located in MSAs/PMSAs where institution has home or branch offices

I hereby certify to the accuracy of this report.
The report includes ☐ does not include ☐ loan data for majority-owned subsidiaries.

Signature of Certifying Officer

Print Name of Person Completing Form

Telephone Number (include Area Code and Extension)

BILLING CODE 6210-01-C

FORM HMDA–2, "MORTGAGE LOAN DISCLOSURE STATEMENT"

Public reporting burden for this collection of information is estimated to vary from 30 to 100 hours per response, with an average of 60 hours per response, including time to gather and maintain the data needed and to review instructions and complete the information collection. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

INSTRUCTIONS TO MORTGAGE BANKING SUBSIDIARIES OF HOLDING COMPANIES AND TO SAVINGS AND LOANS SERVICE CORPORATIONS

A. Who Must Use This Form

1. A mortgage banking subsidiary of a bank holding company, a mortgage banking subsidiary of a savings and loan holding company, or a savings and loan service corporation that originates or purchases mortgage loans (other than a service corporation that is majority-owned by a single savings and loan association) must complete this HMDA–2 form to disclose loan data for the current calendar year if on the preceding December 31 the subsidiary or service corporation:

a. Had assets of more than $10 million, and

b. Had a home or branch office in a metropolitan statistical area (MSA) or a primary metropolitan statistical area (PMSA).

Example: If on December 31, 1987, your home office was in an MSA and your assets exceeded $10 million, you must compile data and complete a disclosure statement for all home purchase and home improvement loans that you originate or purchase during calendar year 1988.

2. For purposes of loan disclosure requirements (including geographic se purchase, itemization under section G below), a branch office means any office of your institution (not of an affiliate) that takes applications from the public.

3. You must use the format of the HMDA–2 form, but you are not required to use the form itself. For example, you may produce a computer printout of your disclosure statement instead. But you must be sure to include all of the identifying information asked for at the top of the form, to use the prescribed column headings, to provide the signature of the certifying officer, etc.

B. Who Must Use Other Forms

1. Commercial banks, savings and loan banks, savings and loan associations, building and loan associations, homestead associations (including cooperative banks) and credit unions must use the form HMDA–1, instead of HMDA–2.

2. A service corporation that is majority-owned by a single savings and loan association is deemed to be part of the parent institution, and its loan data will be reported on a consolidated basis with the parent's data on the HMDA–1.

3. Institutions that have been exempted by the Federal Reserve Board from complying with the federal law because they are covered by a similar state law on mortgage loan disclosures must use the disclosure form required by their state law.

C. Format

1. You must use the format of the HMDA–2 form, but you are not required to use the form itself. For example, you may produce a computer printout of your disclosure statement instead. But you must give all the identifying information asked for at the top of the form, use the prescribed column headings, provide the signature of a certifying officer, etc.

2. If your report on loan originations or purchases consists of more than one page, number the pages and include the name of your institution and the MSA number at the top of each page. Enter the totals for the MSA on the final page; do not give subtotals on earlier pages. Report the Section 2 data (Loans on property not located in MSAs/PMSAs) on the final page. If your report contains itemized data for more than one MSA, report the Section 2 data only once for Part A and once for Part B—do not repeat the data on the report for each MSA.

D. When and Where Statement is Due

1. You must send two copies of your disclosure statement to the office specified by your federal supervisory agency no later than March 31 following the calendar year for which the loan data are compiled.

2. The completed disclosure statement must be signed by an officer of your institution (for both Part A and Part B on the final page of each), certifying to the accuracy of the data.

3. You also must make your disclosure statement available no later than March 31 for inspection by the public at your home office and, if you have branch offices in other MSAs, at one branch office in each of these MSAs.

E. Data to Be Shown

1. *Originations and purchases.* Show the data on home purchase and home improvement loans that you originated or purchased during the calendar year covered by the disclosure statement. Report the data on loan originations on Part A of the form and the data on purchases on Part B of the form even if the loans were subsequently sold. If you have no loans to report in one of the two parts, enter "none" in the column provided for census tract numbers and enter zeros in Columns A through E; this helps to show that no part of an institution's report has been lost.

2. *Number and total dollar amount.* Show both the number of loans and the total dollar amount of loans for each category on the statement. For home purchase loans that you originate, "total dollar amount" means the original principal amount of the loan. For home purchase loans that you purchase, "total dollar amount" means the unpaid principal balance of the loan at time of purchase. For home improvement loans (both originations and purchases), you may include unpaid finance charges in the "total dollar amount" if that is how you record such loans on your books.

3. *Rounding.* Round all dollar amounts to the nearest thousand ($500 should be rounded up), and show in terms of thousands.

F. Data to Be Excluded

Do not report the following types of loans:

1. Loans that, although secured by real estate, are made for purposes other than for home purchase or home improvement (for example, do not report a loan secured by residential real property for purposes of financing education, a vacation, or business operations);

2. Loans made or purchased in a fiduciary capacity;

3. Loans on unimproved land;

4. Refinancings of loans that involve no increase in the outstanding principal, aside from closing costs and unpaid finance charges;

5. Construction loans and other temporary financing;

6. Purchase of an interest in a pool of mortgage loans such as mortgage participation certificates;

7. Purchases solely of the right to service loans; or

8. FHA home purchase and home improvement loans (at your option, you may record FHA Loans on form HMDA–2A, "Mortgage Loan Statement for Optional Disclosure of FHA Loans").

G. Geographic Itemization (breakdown of loan data for each MSA or PMSA by census tract or county, and aggregation of loan data for the outside-SA/PMS category)

1. *MSA/PMSA.* You must compile loan data geographically for each MSA or PMSA in which you have a home or branch office. (See item 6 below for treatment of loans on property outside such MSAs/PMSAs). Start a new page for each MSA or PMSA if you itemize data for more than one MSA/PMSA. You must use the MSA/PMSA boundaries (defined by the U.S. Office of Management and Budget) that were in effect on January 1 of the calendar year for which the loan data are compiled.

2. *Census tract or county.* For loans on property that is located within one of these MSAs or PMSAs, itemize the data by the census tract in which the property is located, except that you must itemize the data by county *instead* of census tract when the property:

a. Is located in an area that is not divided into census tracts on the U.S. Census Bureau's census tract outline maps (see item 3 below); or

b. Is located in a county with a population of 30,000 or less.

To determine population, use the Census Bureau's PC80–1–A population series even if the populations has increased above 30,000 since 1980.

3. *Census tract maps.* To determine census tract numbers, consult the U.S. Census Bureau's census tract outline maps. You may use the maps of the appropriate MSAs/PMSAs in the Census Bureau's PHC80–2 series for the 1980 census, or use equivalent census data from the Census Bureau (such as GBF/DIME files) or from a private publisher. Use the maps in the 1980 series even if more current maps are available.

4. *Compilation.* Enter the data for all loans made in a given census tract on the same line, listing the number and total dollar amount in the appropriate columns (as described below in section H) and listing the census tracts in numerical sequence. Do the same for loans made in a given county.

5. *Duplicate census tract numbers.* If you have a home or branch office in the New York, NY PMSA, note that there are duplicate census tract numbers in New York City. When reporting, you must indicate the county (by name or number) in addition to the tract number for these census tracts.

6. *Outside-MSA/PMSA.* If the loans are for property that is located outside those MSAs or PMSAs in which you have a home or branch office (or outside any MSA or PMSA), report the loan data as an aggregate sum in Section 2 of the form. You do not have to itemize the loans by census tract or county. (But you will have to itemize the data by type of loan, as described in section H below.)

H. Type-of-Loan Itemization (breakdown of each geographic grouping into loan categories—Columns A–E).

Column A: FmHA and VA loans on 1-to-4 family dwellings.

1. Report in Column A loans made for the purpose of purchasing a residential dwelling for 1 to 4 families if the loan is secured by a lien and if it is insured or guaranteed by FmHA or VA.

2. At your option, you may include loans that are made for home improvement purposes but are secured by a first lien, if you normally classify first-lien loans as purchase loans.

3. Include refinancings if there is an increase in the outstanding principal aside from any increase related to closing costs or unpaid finance charges.

4. Include any nonoccupant loans in this column as well as in Column E.

5. Do not include FHA loans in Column A. At your option, you may record FHA loans on the form HMDA–2A, "Mortgage Loan Statement for Optional Disclosure of FHA Loans."

Column B. Conventional home purchase loans on 1-to-4 family dwellings.

1. Report in Column B conventional loans (all loans other than FmHA and VA loans) made for the purpose of purchasing a residential dwelling for 1 to 4 families if the loan is secured by a lien.

2. Include refinancings if there is an increase in the outstanding principal aside from any increase related to closing costs or unpaid finance charges.

3. Include any nonoccupant conventional loans in this column as well as in Column E.

4. At your option, you may include loans that are made for home improvement purposes but that are secured by a first lien, if you normally classify first-lien loans as purchase loans.

Column C. Home improvement loans on 1-to-4 family dwellings.

1. Report in Column C only loans that:

a. The borrowers have said are to be used for repairing, rehabilitating, or remodeling residential dwellings, and

b. Are recorded on your books as home improvement loans.

2. For home equity lines of credit, you may include in Column C that portion of the line of credit that the borrower indicates will be used for home improvement, at the time the account is opened. Report only for the year in which the line is established.

3. Include both secured and unsecured loans.

4. You may include upaid finance charges in the "total dollar amount" if that is how you record such loans on your books.

5. Include any nonoccupant home improvement loans in this column as well as in Column E.

6. Do not report FHA loans in Column C. At your option, you may report FHA loans on form HMDA–2A, "Mortgage Loan Statement for Optional Disclosure of FHA Loans."

Column D: Loans on multifamily dwellings (5 or more families).

1. Report in Column D all loans on dwellings for 5 or more families, including both loans for home purchase and loans for home improvement.

2. Do not report loans on individual condominium or cooperative units; report such loans in Columns A, B, or C.

3. Do not report FHA loans in Column D. At your option, you may report FHA loans on form HMDA–2A, "Mortgage Loan Statement for Optional Disclosure of FHA Loans."

Column E: Nonoccupant loans on 1-to-4 family dwellings.

1. Report in Column E any home purchase and home improvement loans on 1-to-4 family dwellings (listed in Columns A, B, and C) that were made to borrowers who indicated at the time of the loan application that they did not intend to use the property as a principal dwelling.

2. In completing Column E of Part B, you may assume that a purchased loan does not fall within this "nonoccupant" category unless your documents contain information to the contrary.

3. Do not complete Column E for loans that you report under section 2 (Loans on property not located in MSAs/PMASs where institution has home or branch offices), in either Part A (Originations) or Part B (Purchases).

BILLING CODE 6210-01-M

MORTGAGE LOAN DISCLOSURE STATEMENT, FORM HMDA-2

OMB No. 7100-0090 Approval expires June 1990
This report is required by law (12 USC 2801-2810 and 12 CFR 203).

FOR USE BY: • MORTGAGE BANKING SUBSIDIARIES OF HOLDING COMPANIES
• CERTAIN SAVINGS AND LOAN SERVICE CORPORATIONS

Control number (agency use only)

Part A—Originations Report for loans made in 19___

Reporting institution

Name

Address

Name of Parent Company

Enforcement agency for reporting institution

Name

Address

MSA/PMSA number for data reported in Section 1

Name of MSA/PMSA

Section 1—Loans on property located in MSA/PMSA where institution has a home or branch office

CENSUS TRACT (in numerical sequence) or COUNTY (name or number)	Loans on 1-to-4 Family Dwellings: Home Purchase Loans: FmHA and VA A		Loans on 1-to-4 Family Dwellings: Home Purchase Loans: Conventional B		Loans on 1-to-4 Family Dwellings: Home Improvement Loans C		Loans on Multifamily Dwellings for 5 or More Families (home purchases and home improvement) D		Nonoccupant Loans on 1-to-4 Family Dwellings from columns A, B and C E	
	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)
MSA/PMSA TOTAL										

Section 2—Loans on property not located in MSAs/PMSAs where institution has home or branch offices

I hereby certify to the accuracy of this report.

Signature of Certifying Officer

Print Name of Person Completing Form

Telephone Number (include Area Code and Extension)

MORTGAGE LOAN DISCLOSURE STATEMENT, FORM HMDA-2

FOR USE BY: • MORTGAGE BANKING SUBSIDIARIES OF HOLDING COMPANIES
• CERTAIN SAVINGS AND LOAN SERVICE CORPORATIONS

Control number (agency use only)

Part B—Purchases Report for loans made in 19___

Reporting institution

Name

Address

Name of Parent Company

Enforcement agency for reporting institution

Name

Address

MSA/PMSA number for data reported in Section 1 _____

Name

Section 1—Loans on property located in MSA/PMSA where institution has a home or branch office

CENSUS TRACT (in numerical sequence) or COUNTY (name or number)	Loans on 1-to-4 Family Dwellings						Loans on Multifamily Dwellings for 5 or More Families (home purchases and home improvement)		Nonoccupant Loans on 1-to-4 Family Dwellings from columns A, B and C	
	Home Purchase Loans				Home Improvement Loans					
	FmHA and VA A		Conventional B		C		D		E	
	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)
MSA/PMSA TOTAL										

Section 2—Loans on property not located in MSAs/PMSAs where institution has home or branch offices

I hereby certify to the accuracy of this report.

Signature of Certifying Officer

Print Name of Person Completing Form

Telephone Number (include Area Code and Extension)

BILLING CODE 6210-01-C

FORM HMDA–2A, "MORTGAGE LOAN STATEMENT FOR OPTIONAL DISCLOSURE OF FHA LOANS"

This collection of information is not required. Mortgage banking subsidiaries of holding companies and certain savings and loan associations may record their FHA loans on this form if they wish to make that data available to the public. Public reporting burden for this collection of information is estimated to vary from 10 to 50 hours per response, with an average of 20 hours per response, including time to gather and maintain the data needed and to review instructions and complete the information collection. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

INSTRUCTIONS TO MORTGAGE BANKING SUBSIDIARIES OF HOLDING COMPANIES AND TO CERTAIN SAVINGS AND LOAN SERVICE CORPORATIONS

A. Who May Use This Form

If you are the mortgage banking subsidiary of a bank holding company or of a saving and loan holding company, or if you are a savings and loan service corporation that files the HMDA–2 form, *you are required to exclude* data on FHA Title I (home improvement) and FHA Title II (home purchase) loans from your form HMDA–2. At your option, however, you may record FHA loans on form HMDA–2A and make the form available to the public along with your HMDA–2 disclosure statement.

B. Data to be Shown

1. For loans that you originate, see the instructions that are provided for the HMDA–2 form under section G (Geographic Itemization). Report the number and total dollar amount of FHA home purchase loans in Column 1 and FHA home improvement loans in Column 2. Include loans on both 1-to-4 family dwellings and multifamily dwellings for 5 or more families.

2. For loans that you purchase, see the instructions that are provided for the HMDA–2 form under section G (Geographic Itemization). Report the number and total dollar amount of FHA home purchase loans in Column 3 and FHA home improvement loans in Column 4. Include loans on both 1-to-4 family dwellings and multifamily dwellings for 5 or more families.

BILLING CODE 6210-01-M

OMB No. 7100-0090 Approval expires June 1990.
This report authorized by law (12 USC 2801-2810 and 12 CFR 203).

MORTGAGE LOAN STATEMENT FOR OPTIONAL DISCLOSURE OF FHA LOANS, FORM HMDA-2A

FOR USE BY: • MORTGAGE BANKING SUBSIDIARIES OF HOLDING COMPANIES
• CERTAIN SAVINGS AND LOAN SERVICE CORPORATIONS

Record of FHA loans made in 19___

Institution

Name

Address

Name of Parent Company

Enforcement agency for this institution

Name

Address

MSA/PMSA number for data reported in Section 1 _____

Name of MSA/PMSA

Section 1—Loans on property located in MSA/PMSA where institution has a home or branch office

CENSUS TRACT (In numerical sequence) or COUNTY (name or number)	FHA Loans Originated				FHA Loans Purchased			
	Home Purchase Loans 1		Home Improvement Loans 2		Home Purchase Loans 3		Home Improvement Loans 4	
	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)	No. of Loans	Total Dollar Amount (thousands)
MSA/PMSA TOTAL								

Section 2—Loans on property not located in MSAs/PMSAs where institution has home or branch offices

BILLING CODE 6210-01-C

Appendix B—Federal Supervisory Agencies

The following list indicates which federal agency is responsible for enforcing compliance by each class of covered institutions. Questions should be directed, and copies of your disclosure statements should be sent, to the office specified below. You may also obtain posters from these agencies that you can use to inform the public of the availability of your disclosure statement.

National Banks

Comptroller of the Currency regional office serving the district in which the national bank is located.

State Member Banks and Mortgage Banking Subsidiaries of Bank Holding Companies

Federal Reserve Bank serving the district in which the state member bank or mortgage banking subsidiary is located.

Nonmember Insured Banks (except for Federal Savings Banks)

Federal Deposit Insurance Corporation Regional Director for the region in which the bank is located.

Savings Institutions Insured by FSLIC, Mortgage Banking Subsidiaries of Savings and Loan Holding Companies, Savings and Loan Service Corporations, and Members of the FHLB System (except for State Savings Banks insured by FDIC)

Federal Home Loan Bank Board Supervisory Agent in the district in which the institution is located.

Credit Unions

Office of Examination and Insurance, National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

Other Financial Institutions

Federal Deposit Insurance Corporation Regional Director for the region in which the institution is located.

By order of the Board of Governors of the Federal Reserve System, August 11, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-18701 Filed 8-18-88; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563

[No. 88-683]

Transactions With Affiliates of Subsidiary Insured Institutions

Date: August 10, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or the "Corporation"), is amending its regulations pertaining to transactions between institutions whose accounts are insured by the FSLIC ("insured institution") and affiliates of those insured institutions. The proposed amendments provide, in effect, that the conflict of interest provisions of the Board's regulations will not be applicable to transactions between holding company subsidiary insured institutions and their affiliates (other than officers, directors and natural persons that are controlling persons of the institution).

EFFECTIVE DATE: September 19, 1988.

FOR FURTHER INFORMATION CONTACT: Steven J. Gray, Attorney (202) 377-7506; V. Gerard Comizio, Director, (202) 377-6411, Corporate and Securities Division; or Julie L. Williams, Deputy General Counsel for Securities and Corporate Structure, (202) 377-6549; Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Competitive Equality Banking Act of 1987 ("CEBA"), Pub. L. No. 100-86, 101 Stat. 552, created a new statutory scheme to govern transactions between subsidiary insured institutions and their affiliates. Among the provisions contained in the CEBA are Sections 104(d) and 110, which amend section 408 of the National Housing Act ("NHA"), 12 U.S.C. 1730a, by adding new subsections (p) and (t) respectively.

New subsection (p) provides, in effect, that the limitations and prohibitions on transactions with affiliates applicable to subsidiary insured institutions of savings and loan holding companies prior to the enactment of the CEBA will not apply to transactions between a subsidiary insured institution and its affiliates engaged in activities permissible for a bank holding company under section 4(c) of the Bank Holding Company Act ("BHCA"), 12 U.S.C. 1843(c). Those transactions will, instead, be subject to the limitations and prohibitions of sections 23A and 23B of the Federal Reserve Act ("FRA"), 12 U.S.C. 371c and 371c-1. Subsection (p) further provides that the Corporation may prescribe regulations for the purpose of defining and clarifying the applicability of the provisions of Sections 23A and 23B of the FRA.[1] The Conference Report to the CEBA ("Conference Report") indicates that the intended effect of new subsection (p) is to provide "[p]arity between a bank and a thrift holding company with respect to dealings between the depository institution and affiliates engaged in activities permitted under section 4(c)(8)." [2]

New subsection 408(t) of the NHA exempts transactions between certain insured institutions (and certain of their subsidiaries) from the provisions of subsection 408(d) of the NHA restricting certain transactions between a subsidiary insured institution and its affiliates. Specifically, new subsection 408(t) provides, in pertinent part, that "an insured institution that is a subsidiary of an insured institution or insured institutions the voting stock of which is 80 percent owned by the same company shall not be subject * * * to the provisions of [408(d) of the NHA] as to transactions with such parent insured institution or affiliate insured institutions (and their subsidiaries) * * *." In addition, new subsection (t) prohibits an insured institution (or its subsidiaries) from purchasing a low quality asset (as defined in section 23A of the FRA) from another insured institution (or its subsidiaries) in any transaction exempted by the subsection. Transactions exempted by 408(t) must be on terms and conditions that are consistent with safe and sound financial practices.

Transactions not subject to either 408(p) or 408(t) remain subject to 408(d) of the NHA and regulations adopted thereunder.[3] Section 408(d) contains a list of transactions with affiliates that are strictly prohibited and a list of transactions with affiliates that are permitted with prior written approval of the Corporation. In addition, it has been the longstanding position of the Board's Office of General Counsel that the limitations and prohibitions contained in 12 CFR 563.41 and 563.43 (the "Conflicts Rules") governing transactions between or involving an insured institution and its affiliated persons are applicable to all insured institutions, including an insured institution that is a subsidiary of a savings and loan holding company.[4]

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[1] The Board expects to implement that authority in the near future and, in that regard, has solicited public comment on proposed amendments to Part 584 of its regulations. *See*, Board Res. No. 88-454, 53 FR 21838 (June 10, 1988).

[2] Conference Committee Report, H.R. 27, Competitive Equality Banking Act of 1987, H.R. Conf. Rep. No. 261, 100th Cong., 1st Sess., 138.

[3] 12 CFR 584.3.

[4] *See*, e.g. Letter from Rosemary Stewart, Associate General Counsel to W. Michael Herrick, Esq. (June 23, 1982); Letter from Thomas Vartanian, General Counsel to Richard J. Perry, Jr., Esq. (April 20, 1983); and Letter from Harry Quillian, Acting General Counsel to William B. O'Connell (June 2, 1986).

Transactions with affiliates involving holding company subsidiary institutions are also subject to regulation pursuant to the NHA, however, and the two sets of rules conflict in certain respects. For example, despite the language in section 408(d)(6) of the NHA, which provides that certain transactions shall be approved by the FSLIC unless the transaction would be detrimental to the insured institution's depositors or the FSLIC, the Conflicts Rules flatly prohibit some of these transactions.[5] That position has been based on the Board's findings, as expressed in the preamble to the Conflicts Rules "that certain types of transactions should be prohibited altogether based on the need to prevent conflicts of interest for the safety and soundness of the thrift industry." [6]

In response to the new statutory provisions and the directive of the Conference Report discussed above, the Board proposed to amend the Conflicts Rules to provide, in effect, that the Conflicts Rules would not be applicable to transactions between holding company subsidiary insured institutions and their affiliates (other than natural persons that are controlling shareholders). Board Res. No. 88–287, 53 FR 15230 (April 28, 1988) (the "Proposal"). The comment period on the Proposal closed on June 13, 1988. The Board received eighteen comment letters in response to the Proposal; thirteen from insured institutions or their holding companies, three from law firms and two from national trade associations. All of the commenters supported the Proposal. Thirteen of the eighteen commenters strongly supported the Proposal without qualification.

Two commenters, a mutual association and a trade association, supported the Board's attempt to clarify the application of the Conflicts Rules but expressed some concern over the unequal treatment of transactions involving insured institutions owned by a holding company as compared to transactions involving insured institutions that are not owned by a holding company. The Board shares this commenter's concern and expects, in the near future, to solicit public comment on proposed amendments to the Conflicts Rules. It is expected that such proposed amendments will, to the extent practicable and subject to supervisory considerations, address the issue of unequal regulatory treatment of similar transactions.

Another commenter, a law firm, noted that the Proposal did not address whether the Conflicts Rules would remain applicable to transactions between subsidiaries of insured institution subsidiaries of savings and loan holding companies and affiliates of such insured institutions. The issue of the appropriate manner in which to regulate such transactions has been raised in the Board's proposal to amend its regulations governing transactions with affiliates under a holding company structure.[7] The Board believes it appropriate to address the issue raised by this commenter after it has received other comments regarding the appropriate treatment of transactions involving subsidiaries of holding company subsidiary insured institutions in response to the June 10, 1988, proposal. Accordingly, the Board is deferring action on this issue at this time.

Two commenters, a law firm and a trade association, suggested that the Proposal be clarified by defining the term "controlling shareholder". These commenters noted that, since the term is used in the context of persons who are affiliates under Section 408 of the NHA, an appropriate definition would be a shareholder who held "control" of an insured institution within the meaning of 12 CFR 583.26. The Board intended that the Proposal would not affect the applicability of the Conflicts Rules to transactions between subsidiary insured institutions and natural persons that are affiliated persons as defined in 12 CFR 561.29. To indicate more clearly that intent the Board has deleted all references to "controlling shareholder" from the final rule and has instead explicitly provided that an institution's officers, directors, and natural persons that are controlling persons (as defined in 12 CFR 561.28) remain subject to the Conflicts Rules regardless of whether such individuals are affiliates under 12 CFR 583.15.

One commenter, a law firm, suggested that the Board should amend 12 CFR 563.45 to provide an exemption from the transactional reporting requirements of Form AR for transactions involving subsidiary insured institutions. This commenter indicated its belief that subsidiary insured institutions may effectively be barred from engaging in transactions that are permissible under Section 408 of the NHA as a result of the burdens associated with preparation of Form AR. As noted above, the Board expects, in the near future, to solicit public comment on a broader range of proposed amendments to the Conflicts Rules. The Board believes it appropriate to, and expects that it will, solicit additional comment regarding this commenter's concerns at that time.

Another commenter, an insured institution, requested that the Board clarify that the problem of overlapping regulatory provisions which the Proposal is designed to address exists only if the holding company affiliate involved in a particular transaction is also an "affiliated person" as defined in 12 CFR 561.29. The Board had and has no intention of extending the application of the Conflicts Rules to holding company affiliates of insured institutions, such as a service corporation subsidiary of such insured institution, that are not also affiliated persons. Footnote 5 above, has been modified to clarify this intent by explicitly referring to holding company affiliates that are also affiliated persons.

Finally, one commenter, a savings and loan holding company, suggested that the Board amend 12 CFR 563.40 to remove the prohibition against the payment of a loan procurement fee by a subsidiary insured institution to an affiliate that is also an affiliated person. As with the suggestions regarding other substantive amendments to the Conflicts Rules discussed above, the Board believes it appropriate to, and expects that it will, solicit comment regarding this commenter's concern when it proposes additional amendments to the Conflicts Rules.

Having considered the comments summarized above, the Board is adopting amendments to the Conflicts Rules to exclude transactions between a holding company subsidiary insured institution and such insured institution's affilaites (other than officers, directors, and natural persons that are controlling persons pursuant to 12 CFR 561.28) from the coverage of those rules and expressly to provide that those transactions are exclusively subject to the prohibitions and limitations contained in section 408 of the NHA, and the Board's regulations thereunder.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following regulatory flexibility analysis.

1. *Need for and objectives of the rules.* These elements are incorporated above in the **SUPPLEMENTARY INFORMATION.**

[5] This overlapping of regulatory provisions has been particularly troublesome regarding the purchase of mortgages and participation interests in mortgages by a subsidiary institution from one of its holding company affiliates that is also an affiliated person as defined in 12 CFR 561.29. Those transactions have been prohibited under 12 CFR 563.43(c)(2) even though they would be approvable under 408(d)(6) of the NHA and 12 CFR 584.3(a)(7) thereunder.

[6] 41 FR 35819 (1976).

[7] 53 FR 21838 (June 10, 1988).

2. *Issues raised by comments and agency assessment and response.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION.**

3. *Significant alternative minimizing small-entity impact and agency response.* The amendments will allow smaller institutions greater certainty as to which set of transactions with affiliates rules apply to them than exists under the present rules. There are no alternatives that would be less burdensome than the amendments in addressing the concerns expressed above in **SUPPLEMENTARY INFORMATION.**

List of Subjects in 12 CFR Part 563

Bank deposits insurance, Investment, Reporting and recordkeeping requirements, Savings and Loan associations.

Accordingly, the Board hereby amends Part 563, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Amend § 563.41 by revising the heading of the section and paragraph (a) to read as follows:

§ 563.41 Restrictions on real and personal property transactions with affiliated persons.

(a) *Scope of section.* Section 408 of the National Housing Act, as amended (12 U.S.C. 1730a), and the Corporation's regulations thereunder, shall be controlling with respect to transactions between an insured institution subsidiary of a savings and loan holding company and such insured institution's affiliates (other than officers, directors, and natural persons that are controlling persons pursuant to § 561.28 of this chapter) as such term is defined in § 583.15 of this chapter.

* * * * *

3. Amend § 563.43 by revising paragraph (a) to read as follows:

§ 563.43 Restrictions on loans and other investments involving affiliated persons.

(a) *Scope of section.* Section 408 of the National Housing Act, as amended (12 U.S.C. 1730a), and the Corporation's regulations thereunder, shall be controlling with respect to transactions between an insured institution subsidiary of a savings and loan holding company and such insured institution's affiliates (other than officers, directors, and natural persons that are controlling persons pursuant to § 561.28 of this chapter) as such term is defined in § 583.15 of this chapter.

* * * * *

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–18878 Filed 8–18–88; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 389

[Docket No. RM87–5–000; Order No. 497]

Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines

Issued: August 12, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; notice of OMB control number.

SUMMARY: The Federal Energy Regulatory Commission, on June 1, 1988, issued a final rule (Order No. 497) in Docket No. RM87–5–000, 53 FR 22139 (June 14, 1988). The rule established standards of conduct and reporting requirements intended to prevent preferential treatment of an affiliated marketer by an interstate pipeline in the provision of transportation service. This notice states that the Office of Management and Budget has approved the information collection requirements in Order No. 497.

EFFECTIVE DATE: August 12, 1988.

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

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act, 44 U.S.C. 3501–3520 (1982) and the Office of Management and Budget's (OMB) regulations, 5 CFR Part 1320 (1988), require that OMB approve certain information collection requirements imposed by agency rules. On August 11, 1988, the OMB approved the information collection requirements of 18 CFR Parts 161 and 250 as amended by this rule under Control Number 1902–0157.

Accordingly, Part 389, Chapter I, Title 18, Code of Federal Regulations is amended as set forth below.

Lois D. Cashell,

Acting Secretary.

PART 389—OMB CONTROL NUMBERS FOR COMMISSION INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 389 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520 (1982).

§ 389.101 [Amended]

2. The Table of OMB Control Numbers in § 389.101(b) is amended by inserting "161.3" below "161.1" in the Section Column and inserting "0157" in the corresponding OMB Control Number Column and by inserting "250.16" below "250.15" in the Section Column and inserting "0157" in the corresponding OMB Control Number Column.

[FR Doc. 88–18866 Filed 8–18–88; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 70355–7127]

Atlantic Tuna Fisheries

AGENCY: National Marine Fisheries Service, (NOAA), Commerce.

ACTION: Notice of closure.

SUMMARY: NOAA issues this notice to close the fishery for giant Atlantic bluefin tuna conducted by permitted vessels in the Harpoon Boat category. Closure of this fishery is necessary because the annual quota for this category will be attained by the effective date. The intent of this section is to prevent overharvest of the quota established for this segment of the fishery and thereby ensure that the overall U.S. quota is not exceeded.

EFFECTIVE DATE: 0001 hours local time August 21, 1988, through December 31, 1988.

FOR FURTHER INFORMATION CONTACT: Kathi L. Rodrigues, 508–281–3600, extension 324.

SUPPLEMENTARY INFORMATION:

Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971–971h) regulating the harvest of Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction were published in the **Federal Register** on October 25, 1985 (50 FR 43396).

Section 285.22(b) of the regulations provides for an annual quota of 60 short tons (st) of giant Atlantic bluefin tuna to be harvested by vessels permitted in the Harpoon Boat category from the regulatory area. This quota was subsequently increased to 75 st effective August 11, 1988, through an inseason adjustment allocation of 15 st (53 FR 30845, August 16, 1988). The Assistant Administrator for Fisheries, NOAA (Assistant Administrator) is authorized under § 285.20(b)(1) to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the total catch of Atlantic bluefin tuna will equal any quota under § 285.22.The Assistant Administrator is further authorized under § 285.20(b)(1) to prohibit the fishing for, or retention of, Atlantic bluefin tuna by the type of vessel subject to the quotas. The Assistant Administrator has determined, based on the reported catch of giant Atlantic bluefin tuna of 67 st, and the recent catch rate, that the annual quota of giant Atlantic bluefin tuna allocated to permitted vessels in the Harpoon Boat category will be attained by the effective date. Fishing for, and retention of, any Atlantic bluefin tuna by these vessels must cease at 0001 local time on August 21, 1988.

Other Matters

Notice of this action will be mailed to all Atlantic bluefin tuna dealers and vessel owners holding a valid vessel permit for this fishery. This action is taken under the authority of 50 CFR 285.20, and is taken in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

(16 U.S.C. 971 *et seq.*)

Dated: August 16, 1988.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–18923 Filed 8–17–88; 11:44 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 53, No. 161
Friday, August 19, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 926

California Tokay Grapes; Proposed Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule regarding California Tokay grapes would authorize expenses and establish an assessment rate under Marketing Order 926 for the 1988–89 fiscal period. Authorization of this budget would allow the Tokay Industry Committee to incur expenses reasonable and necessary to administer the program. Funds for this program would be derived from assessments on handlers.

DATE: Comments must be received by August 29, 1988.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–5331.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 926 (7 CFR Part 926), regulating the handling of Tokay grapes grown in San Joaquin County, California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 9 handlers of California Tokay grapes under this marketing order, and approximately 390 California Tokay grape producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable grapes handled from the beginning of such year. An annual budget of expenses is prepared by the committee and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of grapes. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected shipments of grapes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. A recomended budget and rate of assessment is usually acted upon by the committee before the season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approval must be expedited so that the committee will have funds to pay its expenses.

The Tokay Industry Committee met on July 25, 1988, and unanimously recommended a 1988–89 budget of $73,125 and an assessment rate of $0.175 per 23-pound lug. Last season's budget was $55,050 with an assessemnt rate of $0.16. Major expense items are market development, $44,200 (as compared to $26,125 for 1987–88) and administrative expenses, $28,925. The assessment rate, when applied to anticipated shipments of 400,000 lugs would yield $70,000 in assessment revenue. This amount along with interest income and reserve funds would be adequate to cover budgeted expenses.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the assessment rate approval for this program needs to be expedited. The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 926

Marketing agreements and orders, Tokay grapes (California).

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 926 be amended as follows:

PART 926—TOKAY GRAPES GROWN IN SAN JOAQUIN COUNTY, CALIFORNIA

1. The authority citation for 7 CFR Part 926 continues to read as follows:

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

2. Section 926.227 is added to read as follows:

§ 926.227 Expenses and assessment rate.

Expenses of $73,125 by the Tokay Industry Committee are authorized and an assessment rate of $0.175 per 23-pound lug of grapes is established for the fiscal year ending March 31, 1989. Unexpended funds may be carried over as a reserve.

Dated: August 16, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-18876 Filed 8-18-88; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Parts 113

[Docket No. 88-084]

Viruses, Serums, Toxins, and Analogous Products; Amendment of the Standard Requirement Concerning the Determination of Moisture Content in Desiccated Biological Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Animal and Plant Health Inspection Service (APHIS) proposes to amend the standard requirement for determining the moisture content in desiccated veterinary biological products. New methods and test procedures are now available for controlling and monitoring residual moisture content which are equally acceptable and more efficient than the test procedure specified in the current standard requirement. Manufacturers would be allowed to establish and test for moisture content using approved procedures contained in a filed Outline of Production.

DATE: Consideration will be given only to comments postmarked or received on or before October 18, 1988.

ADDRESS: Send an original and three copies of written comments to APHIS, USDA, Room 1143, South Building, P.O. Box 96464, Washington, DC 20090-6464. Specifically refer to Docket No. 88-084. You may review these comments at Room 1141 of the South Building, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Peter L. Joseph, Senior Staff Veterinarian, Veterinary Biologics Staff, VS, APHIS, USDA, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6332.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This proposed rule contains no new or amended recordkeeping, reporting, or application requirements or any type of information collection requirement subject to the Paperwork Reduction Act of 1980.

Executive Order 12291

This proposed action has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as a "Nonmajor Rule."

The proposed action would not have a significant effect on the economy and would not result in a major increase in costs or prices to consumers, individual industries, Federal, State, or local Government agencies, or geographic regions. It would also not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic markets. This action would provide for flexibility in methods used to monitor moisture content of desiccated veterinary biological products by not requiring a specific test procedure.

Certification Under the Regulatory Flexibility Act

The Administrator of the Animal and Plant Health Inspection Service has determined that this action would not result in adverse economic impact on a substantial number of small entities. Its purpose is to update the Standard Requirements for the production of veterinary biological products.

Background

The moisture content of a desiccated biological product is related to the stability of that product during its dating period. In order to provide a uniform method of determining moisture content in desiccated products, a test procedure was published in § 113.29 of the regulations in 1973. This test procedure was considered the most accurate and reproducible test method available at that time. All manufacturers of such products are currently required to determine moisture content of live desiccated products using this procedure. The procedure takes 2 days to complete and requires special laboratory equipment not normally used in other tests. The veterinary biologics industry and APHIS have gained much knowledge and experience testing products during the past 15 years. Other means of determining moisture content during the production process have been developed which are more rapid and less expensive than the test in the regulations. Lypholizers installed in some manufacturing facilities are equipped with highly sophisticated sensors and modules that monitor temperature, air, time, and vacuum pressure at shelf level. Some are equipped to measure temperature of selected vials during the drying process. Most are equipped to stopper and seal vials before internal vacuum is broken thus preventing the introduction of external moisture. Each product is unique and an acceptable range for moisture has been established by manufacturers for each of their products. The desiccating cycles can be adjusted to the criteria established for each product.

Other assurances are also employed by the manufacturer and APHIS to determine the stability of biological products. Eligibility for release of a serial requires that the product have predetermined titers at release and throughout the dating period. These titers are confirmed by the manufacturer and the National Veterinary Services Laboratories. Section 114.13 of the regulations requires the expiration period to be confirmed by satisfactory potency test on a significant number of serials at the end of the expected dating period. In few instances when the miosture content exceeds the stated requirement, serials can be released provided that the potency is shown to be satisfactory at mid-dating and at the end of the dating period.

For the reasons stated above, the Agency finds that the standard requirement in § 113.29 could be deleted without affecting the Agency's ability to ensure the stability of desiccated products. Procedures employed by manufacturers to determine moisture content would be specified on a product-by-product basis in the Outline of Production as an in-process test in accordance with § 114.9(d). Accordingly, the Agency is proposing to amend § 113.29 and delete § 113.64(e)(2) and § 113.135(e)(2).

List of Subjects in 9 CFR Part 113

Animal biologics.

PART 113—STANDARD REQUIREMENTS

Accordingly, 9 CFR Part 113 would be amended as follows:

1. The authority citation for Part 113 is revise to read as follows:

Authority: 21 U.S.C. 151–159; 37 FR 28477, 28646; 38 FR 19141.

2. Part 113 would be amended by revising § 113.29 to read as follows:

§ 113.29 Determination of moisture content in desiccated biological products.

A minimum moisture content shall be determined for each serial of desiccated product. The moisture content and an acceptable method used to determine moisture content shall be described in an Outline of Production approved and filed by APHIS for the product.

§ 113.64 [Amended]

3. In § 113.64, paragraph (e)(2) would be removed and the designation for paragraph (e)(1) would be removed.

§ 113.135 [Amended]

4. In § 113.135, paragraph (e)(2) would be removed and the designation for paragraph (e)(1) would be removed.

Done in Washington, DC, this 16th Day of August, 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–18877 Filed 8–18–88; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 8

[Docket No. 88–13]

Assessment of Fees; National Banks; District of Columbia Banks

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency ("OCC") is seeking public comment on a proposed increase of 14 percent in its semiannual assessment schedule for national banks, District of Columbia banks and federally licensed branches and agencies of foreign banks.

This action is necessary to avoid OCC revenue shortfalls. It is intended to ensure that OCC can continue to fulfill its statutory, regulatory and supervisory responsibilities. National bank fees will be raised only to the extent necessary to support OCCs's increasing and evolving supervisory responsibilities.

To the extent possible under existing statutory provisions, the proposed assessment schedule reaffirms the OCC's philosophy that the assessments paid by a bank should reflect the costs of supervising it. On a per-collar-of-assets basis, those costs decline as bank size increases. Therefore, in the proposed schedule, like the present one, the marginal assessment rate of an individual bank decreases as its assets increase. The proposed assessment schedule maintains asset brackets indexed annually to changes in the general price level. This proposal, if adopted, will replace the current schedule for payments due January 31, 1989 and beyond.

DATE: All comments should be received by the OCC no later than September 19, 1988.

ADDRESS: Comments should be directed to Docket No. 88–13, Communications Division, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., 5th Floor, Washington, DC 20219, *Attention:* Anne Smith. Comments will be available for inspection and photocopying at the same location.

FOR FURTHER INFORMATION CONTACT: Roger Tufts, Financial Economist, Economic and Policy Analysis Division, (202) 447–1924), or Ferne Fishman Rubin, Attorney, Legal Advisory Services Division, (202) 447–1880.

SUPPLEMENTARY INFORMATION:

Background

The OCC was created by Federal legislation for the purpose of supervising and regulating the national banking system. Under the National Bank Act, 12 U.S.C. 1 *et seq.*, the OCC has a responsibility to take every necessary and appropriate step to ensure that all national banks comply with the various laws enacted by Congress and the States.

The OCC is authorized by 12 U.S.C. 482 and 12 U.S.C. 3102 to assess national banks, District of Columbia banks and federally licensed branches and agencies of foreign banks to recover its supervision costs. Section 482 requires that these assessments be made in proportion to bank assets or resources and that the rate of such assessments be the same for all banks. This protects small banks from having to pay more than large banks and protects all banks of whatever size from discrimination in the matter of charges. The statute also provides that the general assessment recovers the costs of up to two examinations of a national bank per calendar year. Banks are charged special examination fees for third, and subsequent examinations.

Assessment Schedule Tied to Supervision Costs

In the bank supervision process, the cost per dollar of assets supervised declines as bank asset size increases. There are several reasons for this result. Fixed costs of supervision, such as basic preparatory tasks, do not vary proportionately from small to large banks. Further, statistical techniques used in the examination process permit larger institutions to be examined with proportionately fewer resources. For example, a larger proportion of the asset portfolio of a small bank must be reviewed by the examiner to judge asset quality than in a larger bank. Basic off-site analysis procedures also display falling average cost per dollar of assets.

The current assessment schedule reflects those economies, since the marginal assessment rate of an individual bank decreases as its assets increase. This type of schedule, originally implemented in 1976 and modified in 1984, was adopted so that the assessment levied on each bank would more closely reflect the cost of supervising it. The philosophy underlying this type of schedule is the relative cost coverage principle, whereby banks in asset size brackets are assessed in relation to the costs attributable to supervising banks in that bracket.

Milaca Decision

The principle of relative cost coverage is incorporated in the assessment schedule to the extent permissible under 12 U.S.C. 482, as interpreted by the United States Court of Appeals for the Eighth Circuit in *First National Bank of Milaca v. Heimann*, 572 F.2d 1244 (8th Cir. 1978) ("*Milaca*"). The *Milaca* court held that the OCC's 1976 revision to its assessment schedule complied with the two requirements of section 482. First, the assessments must be "in proportion to" the assets of the bank being examined. Second, the assessment rate must be the same for all national banks, except that banks which are examined more than twice in a single calendar year must pay for the additional examination. 572 F.2d at 1246. The court stated that when Congress geared supervision charges to asset size, its goal was to prohibit discrimination. In particular, according to the *Milaca* court, Congress wanted to protect small banks from having to pay more in terms of money than large banks, and to protect individual banks of whatever size from discrimination in the matter of charges. 572 F.2d at 1249.

In addition to the anti-discrimination goal of the statutory assessment scheme, the *Milaca* court agreed that the OCC may consider other factors, in addition to asset size, when arriving at an assessment, and that the charges need not be in "exact, direct, and mathematical proportion to the values of

assets of particular banks or categories of banks." *Id.* The OCC's position, adopted by the Eighth Circuit, was that the 1976 schedule met the requirements of section 482 "because the schedule is related directly to asset size and because asset size is the determining factor in the equation." *Id.* In conclusion, the *Milaca* court noted that the value of a bank's assets determines the amount of the charge, and that both the fixed fees and percentage rates set forth in the 1976 schedule were "in proportion to" asset value. "As to the fixed fees, the proportion is direct; as to the percentage rates, the proportion is inverse. That fact, however, does not destroy the proportional relationships between the amount of charge and asset size." 572 F.2d at 1250.

Well-Run Banks Subsidize Problem Banks

Commenters on the last revision to the assessment schedule in 1984 (49 FR 50601 (December 31, 1984)) suggested that current assessment methodology requires well-run banks to pay some of the costs of special supervisory attention given to problem banks. The OCC recognizes that this is true.

However, section 482, as interpreted by the court in *Milaca*, does not allow the OCC to charge higher assessments to banks which are experiencing difficulties. While a schedule based on the supervisory costs associated with a particular bank would further the goal of improved relative cost coverage, it would lead to discrimination between banks of the same asset size, because the rate of assessment would no longer be the same for all banks in a particular asset size category. In other words, a schedule based on supervisory costs is not directly related to asset size, and asset size is not the "determining factor in the equation." *Milaca*, 572 F.2d at 1249. In sum, the proportional relationship between asset size and assessment amount, required by the provisions of section 482, would be lost.

Asset-Size Brackets

The proposed revisions do not alter the basic characteristics of the 1976 assessment schedule approved by the *Milaca* court or of the current assessment schedule, *i.e.*, the use of asset-size brackets, the use of asset size to determine the amount assessed, the use of marginal assessment rates that decrease as the asset size increases, or the cost/revenue relationships. The revisions address the problems caused by assessment shortfalls brought on by changes in the industry and increased costs since 1984.

Despite successful efforts to control costs, the OCC's expenses have been rising at a faster rate than revenues. Indeed, since the last assessment schedule revision in 1984, expense growth has outpaced revenue growth. Moreover, the OCC believes that the current schedule will be inadequate to meet the resource requirements in the future.

OCC's Inadequate Resources

The OCC is proposing to increase its assessment schedule in 12 CFR 8.2 to provide the minimum amount of additional revenue needed to ensure that its supervisory responsibilities are not compromised. The OCC's inadequate resources are attributable to several factors. Revenue shortfalls occur as a result of the continued consolidation of the banking industry and decreased growth in national bank assets. Cost increases occur from the deteriorated condition of the national banking system, the increased complexity of the financial industry, and the increased responsibilities mandated by Congress.

Consider the following example.

Assume:

(i) Bank A has $500 million in assets and lends extensively to both the agriculture and the energy sectors of the economy.

(ii) Bank B has $500 million in assets and lends heavily to both the agriculture and the real estate sectors of the economy.

(iii) Bank A and Bank B merge to form Bank C to take advantage of a change in the state banking law.

(iv) Subsequent to the merger of Bank A and Bank B, it is recognized that the loan portfolio of Bank C contains loans attributable to each of the banks (A,B,C) that are "weak" as a result of deteriorated economic conditions.

(v) Bank C increases its loan loss reserves and reduces its assets by 10 percent.

Prior to the merger, Bank A and Bank B each paid $68 thousand annually for a total OCC assessment of $136 thousand. After the merger, the resulting Bank C pays an OCC assessment of $122 thousand, a decline of 10 percent. Ordinarily, this reduction in OCC assessment income is offset by economies in supervision, and the supervision of Bank C would require less of the OCC's resources than did the supervision of Bank A and Bank B. However, as troubled loans develop in Bank C's loan portfolio, Bank C may require additional supervision and, if so, the magnitude of the OCC's resources consumed in supervising Bank C rises. As a result of the deterioration in its loan portfolio, Bank C increases its loan loss reserves, thereby reducing its assets by 10 percent. After the reduction of assets, Bank C pays an OCC assessment of $112 thousand, a further decrease of eight percent. This example illustrates how the on-going trends in the consolidation of national banks and in the deteriorating condition of those banks have affected the OCC's assessment income and costs of supervision.

Bank Consolidations Reduce Revenue

The current assessment schedule is regressive, *i.e.*, the amount assessed per dollar of asset declines as the assets increase. When banks merge, the resulting bank's assets are assessed at a lower rate on average.

Since 1984, the number of national banks has declined by four percent as a result of consolidations and failures. Further consolidations are expected. Anticipated changes in banking laws in several states could result in a further decline in the number of national banks. While these reductions may result in some resource savings to the OCC, a portion of those potential savings has already been recognized through supervisory procedures. For example, national banks that are members of multibank holding companies are supervised differently, using a method that concentrates supervisory efforts on the lead bank and reduces the efforts directed toward the holding company's other national banks. Should the holding company's banks become branches, as opposed to separately chartered banks, the lost revenue may not be matched by corresponding decreases in resource requirements. This will lead to continued cost/revenue imbalances as the OCC strives to meet its supervisory requirements.

Decreased Bank Asset Growth Increases Revenue Shortfalls

As a result of trends in the financial industry and economic conditions affecting the national banking system, the current growth rate of national bank assets is less than that of the 1970s and early 1980s. The growth rate assumed in the formulation of the current assessment schedule has not been realized.

The OCC's assessments are based on national bank assets. When the national bank asset growth rate is consistent with the growth in the OCC's resource requirements, then the OCC's revenues and expenses will remain in balance. If assets grow at a slower rate than assumed or demanded by resource

requirements, revenue shortfalls will result.

Slower asset growth results from several factors. First, capital ratios are an increasingly important measure of strength within the financial industry. To improve capital ratios, banks must either increase capital, decrease assets or both.

Second, asset growth has slowed because many banks have increased their reserves for possible loan losses. This factor has been particularly prevalent over the last eighteen months as banks increased their reserves for certain international loans. These increased reserves decrease assets.

As a result, between December 1986 and December 1987, asset growth was less than two percent. This is the lowest rate since 1948. The OCC's projections indicate continued low asset growth for the next several years. Last year's reduced asset growth resulted in an assessment shortfall for the OCC. Unless the current assessment schedule is changed, current projections indicate significant future revenue shortfalls.

Increased Workload Limits OCC's Response

The OCC has sought to mitigate the impact of these revenue shortfalls through reducing expenses, improving productivity, and increasing effectiveness. However, the OCC must serve the public interest and maintain a safe and sound national banking system. This limits OCC's response to revenue shortfalls because of increased supervisory responsibilities and workloads, many of which result from external factors. Some of these factors are:

- First, the condition of the national banking system has deteriorated. Bank profits are at their lowest levels in a decade. Bank failures and the number of problem banks continue at post-Depression highs. Nearly 25 percent of the national banking system's assets and 27 percent of the national banks are receiving special supervisory attention. Weaknesses in the energy, agriculture and real estate sectors, as well as continued difficulties with foreign debt exposure, indicate continued difficulties for national banks.
- Second, since 1984, new OCC supervisory responsibilities have been mandated by the Competitive Equality Banking Act of 1987 (Pub. L. 100–86, 101 Stat. 552), the Government Securities Act of 1986 (Pub. L. 99–571, 100 Stat. 3208), the Money Laundering Control Act of 1986 (Subtitle H of the Anti-Drug Abuse Act of 1986, Pub. L. 99–570, 100 Stat. 3207), and the Bank Bribery Amendments Act of 1985 (Pub. L. 99–370, 100 Stat. 779).
- Third, the deregulation of depository institutions and the entry of banks into new financial activities have created a more complex banking environment that requires new skills on the part of the OCC's staff and increased OCC technological capabilities.

OCC Initiatives Have Mitigated Cost Increases

The OCC's staff and resource levels have been inadequate to meet the increased statutory, supervisory and regulatory requirements. Resource shortages resulted in bank supervision that, while adequate, was not as thorough as the OCC desired.

To fulfill the requirements of prudent supervision, the OCC has increased its staff from 2,850 to approximately 3,200. In 1989, the staffing target will be 3,246. The staff increase coupled with high turnover has also reduced the OCC's average experience level. This has necessitated additional training for examiners, both formally and on-the-job.

The OCC has developed two key operating strategies to utilize its resources more efficiently. These strategies improve the OCC's ability to achieve its mission of ensuring a safe and sound national banking system. These strategies are: (1) Performing more continuous off-site monitoring of bank performance, which mitigates the demand for as many highly labor intensive periodic on-site supervisory presences; and (2) focusing and allocating supervision resources on those components of the national banking system that present the greatest risk to the system.

These strategies are evident in the OCC's current supervisory approach. This approach is more dynamic, shifting focus from a bank's current to its prospective condition. Included in this approach are supervisory strategies tailored to individual banks. These strategies are continually developed and implemented based upon a risk hierarchy. Supervisory strategies are prepared by examiners who are familiar with the institution and consider a variety of bank characteristics, not just asset size and bank composite rating, to determine the prospective risk that a particular bank presents to the national banking system and the nation's financial industry. These strategies are designed to allocate OCC's limited supervisory resources.

Implementation of the revised supervisory approach required that the OCC increase its investment in data processing systems and office facilities. These investments were required to facilitate and improve OCC's off-site supervision capabilities to fulfill its supervisory approach. Thus, the OCC's savings from the revised supervisory approach are partially offset by the OCC's increased fixed costs.

Results Indicate Assessment Increase is Necessary

Nevertheless, all of the OCC's efforts to utilize its resources fully cannot offset the revenue shortfalls which result from bank consolidations and reduced bank asset growth. Cost pressures continue unabated due to statutory, supervisory and regulatory responsibilities. Further, staff turnover, recruitment and training expenses are factors which continually challenge the OCC's ability to meet its mission. If the OCC is to continue to fulfill its mission, an assessment increase is required.

Proposal

Because of these factors, OCC will operate in 1988 at breakeven or at a small deficit. Unless the assessment schedule is revised, OCC faces larger deficits in 1989 and beyond as a result of slower asset growth, the deteriorated condition of the national banking system, and the costs of maintaining OCC's supervisory mission. To avoid the projected deficits and ensure that supervisory resources are available, the OCC proposes revising the assessment schedule in 12 CFR Part 8.

The OCC proposes to revise the marginal assessment rates to generate additional revenue. The marginal rates for each bracket will be increased by 14 percent. The effective date of this proposed amendment to 12 CFR 8.2 would be for the semiannual assessment period, January 1, 1989, through June 30, 1989, with the semiannual assessment due on or before January 31, 1989. The following table shows the proposed assessment schedule.

PROPOSED SEMIANNUAL ASSESSMENT SCHEDULE FOR JANUARY 1989

If the bank's total assets (consolidated domestic and foreign subsidiaries) are—		The semiannual assessment is—		
		This amount—	Plus	Of excess over—
Over—	But not over—			
Million	Million			Million
0	$1.7	0	0.0011400	0
$1.7	15	$1,938	.0001425	$1.7
15	85	3,834	.0001140	15
85	185	11,814	.0000741	85
185	915	19,224	.0000627	185

PROPOSED SEMIANNUAL ASSESSMENT SCHEDULE FOR JANUARY 1989—Continued

If the bank's total assets (consolidated domestic and foreign subsidiaries) are—		The semiannual assessment is—		
		This amount—	Plus	Of excess over—
Over—	But not over—			
915	1,825	64,995	.0000513	915
1,825	5,470	111,678	.0000456	1,825
5,470	18,240	277,859	.0000388	5,470
18,240	36,485	772,824	.0000365	18,240
36,485		1,438,402	.0000239	36,485

Special Studies

Executive Order 12291

The OCC certifies that this proposed rule does not meet any of the conditions set forth in Executive Order 12291 for designation as a major rule. Consequently, a Regulatory Impact Analysis has not been prepared.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164), it is certified that this proposed rule, if adopted as a final rule, will not have a significant economic impact on a substantial number of small banks or other small entities.

List of Subjects in 12 CFR Part 8

National banks, Banking, Assessments, Fees.

Authority and Issuance

For the reasons set forth above, Chapter I of Part 8 of Title 12 Code of Federal Regulations is proposed to be amended as follows:

PART 8—[AMENDED]

1. The authority citation for 12 CFR Part 8 is revised to read as follows:

Authority: 12 U.S.C. 481, 482 and 3102, and 26 D.C. Code 102.

2. Section 8.1 is revised to read as follows:

§ 8.1 Scope and application.

The assessments contained in this part are made pursuant to the authority contained in 12 U.S.C. 481, 482 and 3102 and in 26 D.C. Code 102.

3. The table in § 8.2 is revised to read as follows:

§ 8.2 Semiannual assessment.

(a) * * *

If the bank's total assets (consolidated domestic and foreign subsidiaries) are:		The semiannual assessment is:		
		This amount—	Plus	Of excess over—
Over—	But not over—			
Column A	Column B	Column C	Column D	Column E
Million	Million			Million
0	X_1	0	.0011400	0
X_1	X_2	Y_1	.0001425	X_1
X_2	X_3	Y_2	.0001140	X_2
X_3	X_4	Y_4	.0000627	X_4
X_5	X_6	Y_5	.0000513	X_5
X_6	X_7	Y_6	.0000456	X_6
X_7	X_8	Y_7	.0000388	X_7
X_8	X_9	Y_8	.0000365	X_8
X_9	.....	Y_9	.0000239	X_9

* * * * *

Date: August 16, 1988.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 88–18802 Filed 8–18–88; 8:45 am]

BILLING CODE 4810-33-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket Nos. C–626 and C–2075]

The Reader's Digest Association, Inc.; Reopening of Public Comment Period on Supplemental Petition

AGENCY: Federal Trade Commission.

ACTION: Notice of period for public comment on petition to reopen the proceeding and modify the order.

SUMMARY: The Reader's Digest Association, Inc., the respondent in the orders in Docket Nos. C–626 and C–2075, filed a petition on March 30, 1988, requesting that the Commission reopen the proceeding and modify in certain respects the 1963 and 1971 consent orders against The Reader's Digest Association, Inc., requiring disclosure of the terms and conditions of offers of free merchandise and of merchandise for sale. A supplemental request to reopen the proceeding has been filed on August 2, 1988. This document announced the public comment period on the supplemental petition.

DATE: The deadline for filing comments in this matter is September 12, 1988.

ADDRESS: Comments should be sent to the Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

Requests for copies of the petition should be sent to Public Reference Branch, Room 130.

FOR FURTHER INFORMATION CONTACT: Terrence J. Boyle, Enforcement Division, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326–3016.

SUPPLEMENTARY INFORMATION: The order against The Reader's Digest Association, Inc., in Docket No. C–626 was published at 29 FR 399 on January 16, 1964. The order in Docket No. C–2075 was published at 36 FR 22824 on December 1, 1971. The petitioner, The Reader's Digest Association, Inc., is a magazine and book publisher. The original request to reopen the proceeding was published at 53 FR 12534 on April 15, 1988. The order in Docket C–626 prohibits The Reader's Digest Association, Inc., from employing words like "free" for merchandise offered to consumers unless all the conditions for receipt and retention of such merchandise are clearly and conspicuously set forth at the outset so as to leave no reasonable probability that the terms might be misunderstood. The order in Docket C–2075 prohibits The Reader's Digest Association, Inc., from offering any product for sale when all the terms and conditions of the offer are not explained fully and clearly and set forth conspicuously on the order

form or, in the case of offers in catalogues, either on the order form or elsewhere in the catalogue, with a clear and conspicuous disclosure on the order form of the location in the catalogue of the disclosures. The supplemental request to modify was placed on the public record on August 2, 1988.

List of Subjects in 16 CFR Part 13

Magazines and books.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 88-18808 Filed 8-18-88; 8:45 am]

BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-25998, File No. S7-17-88]

Exemption of Certain Foreign Government Securities Under the Securities Exchange Act of 1934 for Purposes of Futures Trading

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendment and solicitation of public comments.

SUMMARY: The Commission proposes for comment a rule amendment that would designate debt securities issued by Austria, Denmark, Finland, the Netherlands, Norway, Sweden, Switzerland, and West Germany as "exempted securities" for purposes of the marketing and trading in the United States of futures contracts on those countries' securities.

DATE: Comments should be submitted by September 19, 1988.

ADDRESSES: All comments should be submitted in triplicate and addressed to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. All comments should refer to File No. S7-17-88, and will be available for public inspection at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: David L. Underhill, Esq., 202/272-2375, Division of Market Regulation, Securities and Exchange Commission, Room 5186 (Mail Stop 5-1), 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under the Commodity Exchange Act ("CEA"), futures trading on individual securities is prohibited unless the underlying security is an exempted security under the Securities Act of 1933 ("Securities Act") or the Securities Exchange Act of 1934 ("Exchange Act"). The Securities and Exchange Commission ("SEC" or "Commission"), however, adopted and later amended Rule 3a12-8 ("Rule") under the Exchange Act to designate sovereign debt issued by Great Britain, Canada, Japan, Australia, France, and New Zealand (the "six designated countries") as exempted securities under the Exchange Act solely for purposes of marketing and trading futures on those securities in the U.S.[1] In effect, the designation of those securities as "exempted securities" removes the CEA's prohibition against marketing or trading futures on those securities in the U.S., so long as the other terms of the Rule are satisfied.

The Commission today proposes an amendment that would add the debt securities of several additional countries to those exempted by the Rule. The proposed amendment would add the debt securities of Austria, Denmark, Finland, the Netherlands, Norway, Sweden, Switzerland, and West Germany (the "eight proposed countries") to the list of those countries the debt obligations of which are exempted by the Rule. Under the proposal, to qualify for the exemption, future contracts on a country's securities would have to meet all the other existing requirements of the Rule.

II. Background

The CEA, as amended by the Futures Trading Act of 1982,[2] prohibits the trading of futures contracts on individual securities unless those securities qualify as exempted securities under section 3 of the Securities Act or section 3(a)(12) of the Exchange Act.[3] Because foreign government securities are not exempted securities under either of these sections, the CEA prohibition against trading futures on individual securities prevents the marketing and trading of futures on such foreign government securities in this country. Section 3(a)(12) of the Exchange Act, however, provides that the term "exempted security" includes such other securities * * * as the Commission may, by such rules and regulations as it deems consistent with the public interest and the protection of investors, either unconditionally or upon specified terms and conditions or for stated periods, exempt from the operation of any one or more provisions of this title which by their terms do not apply to an "exempted security" or to "exempted securities."

In March 1984, pursuant to section 3(a)(12) of the Exchange Act, the Commission promulgated Rule 3a12-8.[4] The Rule currently designates British, Canadian, Japanese, Australian, French, and New Zealand government debt securities that meet certain conditions as "exempted securities" under the Exchange Act.[5] The purpose of the Rule is to permit certain foreign, exchange-traded futures contracts on the designated securities to be marketed and traded in the U.S.[6] Under the Rule, debt securities issued by the six designated countries are considered exempted securities under the Exchange Act only with respect to futures trading on those securities and provided that: (1) The securities are not registered in the U.S.; (2) the futures contracts require delivery outside the U.S.; and (3) the futures contracts are traded on a board of trade.[7]

III. Discussion

Rule 3a12-8 was promulgated in response to Congress' understanding, in approving the 1982 amendments to the CEA, that neither the SEC nor the Commodity Futures Trading Commission ("CFTC") had intended to bar U.S. marketing of British government debt futures [8] and that administrative

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[1] Under the Rule, trading in the U.S. of futures on government securities exempted by the Rule is permitted only on or through a board of trade.

[2] Pub. L. No. 97-444, 96 Stat. 2294, 7 U.S.C. 1 *et seq* (1982).

[3] Section 2(a)(1)(B)(v) of the CEA, 7 U.S.C. 2a(v) (1982), provides that "[n]o person shall offer to enter into, enter into, or confirm the execution of any contract of sale (or option on such contract) for future delivery of any security, or interest therein or based on the value thereof, except an exempted security under section 3 of the Securities Act * * * or section 3(a)(12) of the * * * Exchange Act.* * *

[4] *See* Securities Exchange Act Release Nos. 20708 ("Adopting Release"), March 2, 1984, 49 FR 8595 and 19811 ("Proposing Release"), May 25, 1983, 48 FR 24725.

[5] As originally adopted, the Rule applied only to British and Canadian government securities. *See* Adopting Release, *supra* note 4. The Rule first was amended to include Japanese government securities. *See* Securities Exchange Act Release No. 23423, July 11, 1986, 51 FR 25096. The Rule later was amended to include debt securities issued by Australia, France, and New Zealand. *See* Securities Exchange Act Release No. 25072, October 29, 1987, 52 FR 42277.

[6] As discussed above, without this designation the U.S. trading of futures on these securities would be prohibited by section 2(a)(1)(B)(v) of the CEA.

[7] A requirement that the board of trade be located in the country that issued the underlying securities was eliminated last year. *See* Securities Exchange Act Release No. 24209, March 12, 1987, 52 FR 8875.

[8] *See* Proposing Release, *supra* note 4, 48 FR at 24725 [citing 128 Cong. Rec. H7492 (daily ed. September 23, 1982) (statements of Representatives Daschle and Wirth)].

action would be taken to allow the sale of such futures contracts in the U.S.[9] By promulgating the Rule, the Commission implemented Congress' intent without abandoning the longstanding policy of subjecting foreign government securities marketed and traded in the U.S., for most purposes, to the requirements of the federal securities laws. Accordingly, the conditions set forth in the Rule are designed to ensure that a domestic market in unregistered foreign government securities does not develop and that futures markets in these instruments are not used to avoid the registration requirements and other provisions of the federal securities laws.

At the time the Commission originally proposed Rule 3a12–8, it recognized that, should the securities of additional governments become subject to futures trading, it could become necessary to amend the Rule to include those securities.[10] Subsequently, the Commission amended the Rule to include debt securities issued by Japan, Australia, France, and New Zealand. Currently, the London International Financial Futures Exchange ("LIFFE") is developing a West German government bond futures contract scheduled to begin trading on September 29, 1988. The Commission has been informed that U.S. citizens, especially institutional investors, are interested in trading this new product and has received a request that Rule 3a12–8 be amended accordingly.[11]

As the world's securities markets become increasingly internationalized, the Commission expects to receive additional petitions for exemptive relief. As an alternative to continuing to amend the Rule on a country-by-country basis, the Commission today is proposing to amend subsection (a)(1) of Rule 3a12–8 by adding to the list of designated foreign government securities under the Rule the unregistered debt obligations of the eight proposed countries.

The eight countries proposed to be added to Rule 3a12–8 are those not covered currently by the Rule but which would have qualified pursuant to an amendment proposed by the Commission last year. Specifically, the proposal, which is still outstanding and on which the Commission solicits any further comments, would exempt debt securities issued by any country with outstanding long-term sovereign debt rated in one of the two highest rating categories by at least two nationally recognized statistical rating organizations.[12] The Commission received varied comments regarding incorporation of a generic rating standard into the Rule,[13] and determined that an interim approach would be to amend the Rule to include debt securities issued by countries in which futures exchanges had petitioned the Commission to amend the Rule, *i.e.*, Australia, France, and New Zealand.[14]

Although the generic rating standard proposed last year by the Commission may not provide a precise measure of those sovereign debt issues for which there is adequate secondary trading interest and therefore potential hedging interest, the Commission believes that the countries not included currently in the Rule but which would have qualified under the rating standard proposal should be added to the Rule. In particular, in proposing to extend to the debt securities of the eight proposed countries the exemption afforded by the Rule, the Commission believes that there are no major differences between the sovereign debt securities of the eight proposed countries and the debt securities of the six designated countries so as to justify a different regulatory response. In addition, there are no readily apparent legal or policy reasons for denying U.S. investors the ability to trade futures contracts on debt securities issued by West Germany and the other proposed countries. Indeed, the availability of new hedging vehicles should allow investors to take advantage of the growing globalization of the securities markets. Although it is possible that other countries may have sovereign debt outstanding that justifiably should be designated as exempt under the Rule, the Commission would undertake to make such a determination when it received a request to do so.

It also is important to note that under the proposal, the existing conditions set forth in the Rule (*i.e.*, that the underlying securities not be registered in the U.S., that the futures contracts require delivery outside the U.S., and that the contracts be traded on a board of trade) would continue to apply. This should ensure that a domestic market in unregistered foreign sovereign debt of newly-designated countries does not develop.[15]

The Commission seeks comments on a number of issues related to its proposal. First, the Commission encourages comments on the desirability of adding the eight proposed countries to the Rule's list of eligible countries. In addition, the Commission requests comments on whether the information available in English regarding the newly-eligible futures contracts [16] and

[9] In extending the exemption to cover futures on Canadian, Japanese, Australian, French, and New Zealand government debt, the Commission noted that there did not appear to be any legal or regulatory reasons to treat such futures contracts differently from British sovereign debt futures contracts.

[10] *See* Proposing Release, *supra* note 4, 48 FR at 24726–27.

[11] *See* letter from Brooksley Born, Arnold & Porter, to Howard L. Kramer, Assistant Director, Division of Market Regulation, SEC, dated June 3, 1988.

[12] For a discussion of this proposal, see Securities Exchange Act Release No. 24428, May 5, 1987, 52 FR 8237. The Commission is aware that some of the ratings on which it would have relied under the rating standard proposal and on which it relies implicitly today are not on direct debt issues of the sovereign issuers. This is due to the fact that some countries have not issued foreign currency-denominated debt, which is the type of foreign sovereign debt commonly rated by U.S. rating agencies. In addition, some countries that have issued foreign currency-denominated debt have not asked a U.S. rating agency to rate such debt. Accordingly, some sovereign ratings by U.S. rating agencies actually are ratings of debt guaranteed by the central government or merely are ceilings for ratings of long-term debt issued by institutions located in the particular country. The Commission understands, however, that the rating of the direct sovereign debt of any such country would be at least as high as the rating assigned to debt guaranteed by the central government or issued by institutions. The exemption provided by the Rule only would apply, however, to direct debt issues of the sovereign issuer.

[13] In general, commentators' concerns related to the proper functioning of the Rule in the event that a government issuer's rating were to fall below the two highest rating categories and the validity of relying on rating standards as a measure of the depth and liquidity of the secondary market for government issuers' securities. The Commission notes that the Chicago Board of Trade ("CBT"), in its comment letter, recommended an amendment very similar to that being proposed today. In particular, the CBT urged the Commission to amend the Rule to include specifically debt issued by all the countries that would qualify under the proposed rating standard. *See* letter form Thomas R. Donovan, President and Chief Executive Officer, CBT, to Jonathan G. Katz, Secretary, SEC, dated June 15, 1987, at 2.

[14] *See* Securities Exchange Act Release No. 25072, October 29, 1987, 52 FR at 42277. The Commission noted that it would "continue to assess the feasibility of such an amendment or other alternatives in light of the comments received." *Id.*

[15] The marketing and trading of foreign futures contracts also is subject to regulation by the CFTC. In particular, Section 4b of the CEA authorizes the CFTC to regulate the offer and sale of foreign futures contracts to U.S. residents, while Rule 30.02 (17 CFR 30.02), promulgated under section 2(a)(1)(A) of the CEA, is intended to prohibit fraud in connection with the offer and sale of futures contracts executed on foreign exchanges. In addition, the CFTC recently adopted a series of regulations governing the domestic offer and sale of futures and options contracts traded on foreign boards of trade. The rules, which became effective on January 4, 1988 but which have not been fully implemented pending CFTC review of petitions for exemption, require, among other things, that the domestic offer and sale of foreign futures be effected through CFTC registrants or through entities subject to a foreign regulatory framework comparable to that governing domestic futures trading. *See* 52 FR 28980 (August 5, 1987).

[16] The Commission notes that the only futures contract likely to be eligible immediately for sale in

Continued

underlaying sovereign debt would be adequate to permit U.S. investors to make informed investment decisions.[17] Commentators also may wish to discuss whether there are any legal or policy reasons for determining that the sovereign debt futures that would qualify under the proposed amendment should not be accorded the same treatment in the U.S. under Rule 3a12–8 as futures on sovereign debt issued by the six designated countries.

The Commission also solicits comments on possible procedures or standards pursuant to which it could exempt the debt securities of additional countries without having to do so on a country-by-country basis and solicits any further comments on the rating standard approach proposed originally in May 1987.[18] As Standard & Poor's Corp. ("S&P") noted in its comment letter on the proposed generic rating standard, there are sovereign debt issuers other than the eight proposed countries that have substantial amounts of actively-traded debt outstanding.[19] Would a standard based on volume and depth of trading in a sovereign issuer's debt be a viable and accurate standard? If so, what sources of information are readily available to obtain reliable measurements of such trading activity?[20]

the U.S. if the proposed amendment were adopted is the West German bond futures contract proposed to be traded on LIFFE.

[17] In adopting Rule 3a12–8 the Commission decided not to require, as a condition to the exemption, that such information be available. *See* Adopting release, *supra* note 4, 49 FR at 8597–98. At the time Rule 3a12–8 was adopted, both the United Kingdom and Canada had government debt issues registered in the U.S. As a result, although those particular issues were not the subject of futures trading, U.S. investors had relevant disclosure materials concerning the issuers, *i.e.*, the governments of Canada and the United Kingdom. In addition, Australia and New Zealand had government debt issues registered in the U.S. when they were added to the Rule's list of eligible issuers. The Japanese and French governments, however, had not registered any securities in the U.S. when they were added to the Rule. Of the new countries that would become eligible under the current proposal, only Austria, Denmark, and Norway currently have government debt issues registered in the U.S.

[18] *See supra* note 12 and accompanying text.

[19] *See* letter from Kurt D. Steele, Vice President & General Counsel, S&P, to Jonathan G. Katz, Secretary, SEC, dated June 15, 1987, at 2. Three such countries were mentioned specifically in the letter: Belgium, Ireland, and Italy. Because the sovereign debt securities of these three countries are rated by only one rating orginization, those securities could not have qualified under the generic rating standard.

[20] The Commission made a similar request for comments in connection with its proposal to adopt a generic rating standard. No comments on this issue were received.

IV. Cost/Benefit Analysis

There do not appear to be any costs associated with the proposed amendment. The amendment is designed to protect U.S. investors by preventing unregistered bonds issued by the eight proposed countries from entering the country and by requiring that futures on those bonds be traded on boards of trade. In addition, the amendment would impose no recordkeeping or compliance burden in itself and merely would provide an exemption under the federal securities laws. The principal benefit associated with the amendment is that it would allow U.S. boards of trade to offer, and investors to trade, a greater range of futures contracts on foreign government debt. The Commission solicits comments on the costs and benefits of the proposed amendment to Rule 3a12–8.

V. Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the amendment proposed herein would not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release.

VI. Statutory Basis

The amendment to Rule 3a12–8 is being proposed pursuant to 15 U.S.C. 78a *et seq.*, particularly sections 3(a)(12), 15 U.S.C. 78c(a)(12) and 23(a), 15 U.S.C. 78w(a).

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

VII. Text of the Proposed Amendment

The Commission is proposing to amend Part 240 of Chapter II, Title 17 of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following citation:

Authority: Sec. 23, 48 Stat. 901, as amended; 15 U.S.C. 78w. * * * § 240.3a12–8 also issued under 15 U.S.C. 78a *et seq.*, particularly secs. 3(a)(12), 15 U.S.C. 78c(a)(12) and 23(a), 15 U.S.C. 78w(a).

2. Section 240.3a12–8 is amended by removing the word "or" from (a)(1)(v), replacing the period with a semi-colon at (a)(1)(vi), and adding paragraphs (a)(1)(vii) through (xiv) as follows:

§ 240.3a12–8 Exemption for designated foreign government securities for purposes of futures trading.

(a) * * *

(1) * * *

(vii) Austria;

(viii) Denmark;

(ix) Finland;

(x) the Netherlands;

(xi) Norway;

(xii) Sweden;

(xiii) Switzerland; or

(xiv) West Germany.

* * * * *

By the Commission.

Dated: August 16, 1988.

Shirley E. Hollis,

Assistant Secretary.

Regulatory Flexibility Act Certification

I, David Ruder, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed amendment to Rule 3a12–8 set forth in Securities Exchange Act Release No. *25998*, which would define government securities of Austria, Denmark, Finland, the Netherlands, Norway, Sweden, Switzerland, and West Germany as exempted securities under the Securities Exchange Act of 1934 for purposes of futures trading on such securities, will not have a significant economic impact on a substantial number of small entities for the following reasons. First, the proposed amendment imposes no record-keeping or compliance burden in itself and merely allows, in effect, the marketing and trading in the United States of foreign futures contracts on government securities described above. Second, because futures contracts on British, Canadian, Japanese, Australian, French, and New Zealand debt, which already can be traded and marketed in the U.S., still will be eligible for trading under the proposed amendment, the proposal would not affect any entity currently engaged in trading such futures contracts. Third, because the level of interest presently evident in this country in the futures trading covered by the proposed rule amendment is modest and those primarily interested are large, institutional investors, neither the availability nor the unavailability of these futures products will have a significant economic impact on a substantial number of small entities, as that term is defined for broker-dealers in 17 CFR 240.0–10 and to the extent that it

is defined for futures market participants at 47 FR 18618.

David Ruder,

Chairman.

Dated: August 16, 1988.

[FR Doc. 88-18862 Filed 8-18-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 88-06, Notice 3]
RIN 2127-AB85

Federal Motor Vehicle Safety Standards; Side Impact Protection—Passenger Cars

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The purpose of this advance notice is to announce that the National Highway Traffic Safety Administration is considering the proposal of requirements for passenger cars intended to reduce the risk of head and neck injuries and ejections, in side impact crashes between vehicles and other crashes where the side protection of the vehicle is a relevant factor, and to request comments to assist the agency in developing the proposal. The contemplated requirements would be part of the agency's efforts to address the serious problem of side impact crashes, which account for an average of almost 8,000 fatalities and more than 23,000 serious injuries annually. As another part of those efforts, the agency earlier this year proposed requirements for passenger cars intended to reduce the risk of injuries to the thorax and pelvis in side impact crashes between vehicles. This notice also requests comments on whether additional requirements should be considered to address side impacts with fixed objects like poles and trees.

DATE: Comments must be received on or before October 18, 1988.

ADDRESSES: Comments should refer to the docket and notice numbers set forth above and the submitted (preferably in 10 copies) to the Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. [Docket hours are from 8 a.m. to 4 p.m., Monday through Friday.]

FOR FURTHER INFORMATION CONTACT: Dr. Richard Strombotne, Office of Vehicle Safety Standards, NRM-12, Room 5320, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-2264.

SUPPLEMENTARY INFORMATION: The agency is engaged in a series of efforts to address the serious problem of side impact crashes, which account for an average of almost 8,000 fatalities and more than 23,000 serious injuries annually. These figures represent 30 percent of all passenger car occupant fatalities and 34 percent of the serious injuries that occur annually in passenger cars.

As part of those efforts, on January 27, 1988, NHTSA published in the **Federal Register** (53 FR 2239) a notice of proposed rulemaking (NPRM) to upgrade Safety Standard No. 214, *Side Door Strength*, by adding dynamic test procedures and performance requirements for passenger cars. That standard currently measures performance in terms of the ability of each door to resist a piston pressing a rigid steel cylinder inward against the door. The agency's Janaury 1988 proposal would require an additional test in which a passenger car must provide protection in a full-scale crash test in which the car (known as the "target" vehicle) is struck in the side by a moving barrier simulating another vehicle. Newly-developed instrumented test dummies would be positioned in the target car to measure the potential for injuries to the thorax and pelvis of occupants in the front and rear seats. Also, the doors of the target car would be required to remain closed during the side impact, to reduce the number of persons that are ejected from a car through a door.

This notice represents another part of the effort to reduce side impact deaths and injuries. NHTSA believes that it may be possible to develop effective requirements in the following crucial areas: (1) Injuries to the head, (2) ejection through the door, and (3) ejection through windows. Comments are requested on these areas and on whether additional requirements should be considered to address side impacts with fixed roadside objects like poles and trees.

To aid the agency in obtaining useful comments, this notice discusses a variety of issues which are being considered by NHTSA in developing a possible proposal, and asks a number of questions and makes a number of requests for data. For easy reference, the questions or requests are numbered consecutively throughout the document.

In providing a comment on a particular matter or in responding to a particular question, interested persons are requested to provide any relevant factual information to support their conclusions or opinions, including but not limited to test data, statistical and cost data, and the source of such information.

Head Injuries

Almost one-half of all fatalities in passenger car side impacts occur as a result of head injuries. Moreover, non-fatal head/face injuries are the largest source of occupant impairment due to vehicle crashes. While many head injuries occur as a result of ejection from the vehicle, a high percentage occur due to head/face impacts with vehicle interior components, such as the pillars and other structures supporting the roof.

(The pillars at the front of the passenger compartment, on both sides of the windshield, are called A-pillars. The pillars along the sides of the car, by the back of the front seat, are called B-pillars. The pillars at the rear of the passenger compartment, on both sides of the rear window, are called C-pillars. Other structures supporting the roof include the headers, which are horizontal bars located above the windshield and rear window, and side rails, which are horizontal bars located above the windows along the sides of the car. The frames around the windows are referred to as window frames.)

Data from the National Accident Sampling System (NASS) show that face and head injuries from contact with the pillars and other structures cited above represent seven percent of all injuries, 8.3 percent of serious injuries (AIS 3 or greater), and 10.6 percent of fatalities.

NHTSA believes that various techniques, including the use of padding and reducing the stiffness of impacted surfaces, may be able to reduce the severity of, and in some cases prevent, many head injuries. The agency believes the following three techniques are of particular promise: (1) Padding the A, B and C pillars, roof rail components and window frames with hard rubber or high density foam materials, (2) eliminating sharp angle, thin edge design features in the component areas where head impacts are most likely to occur, and (3) reducing the local stiffness of the component areas where head impacts are most likely to occur (although the overall structural integrity of the roof-pillar structures must, of course, be maintained).

NHTSA notes that many tests on the use of padding have been carried out for instrument panel studies. The tests have used three to four inch thick samples of various low density foam materials.

However, the agency does not believe that the results of these studies are directly applicable to A-pillar and roof rail components. Due to space limitations, including the need to maintain good driver visibility, only a thin layer of padding could be placed in those areas.

Given the limited amount of padding that could be placed on the A-pillar, the agency believes that characteristics other than energy absorption capacity may be crucial in determining the performance of the padding material during an impact. In particular, NHTSA believes that the force penetration characteristics, i.e., how the padding distributes force, may be significant. For example, the padding may be able to reduce injury potential in a head impact by prolonging impact duration, enlarging the contact area, and mitigating localized load concentration. It appears that an ideal padding material would have a low resilient, elasto-plastic force-penetration property, i.e., a softening effect.

As discussed in the Preliminary Regulatory Impact Analysis (PRIA), NHTSA has conducted some tests of the effectiveness of bonding a molded pad onto the A-pillar of a car. The results of the tests indicate that this technique shows promise in reducing head injuries.

In addition to the conventional countermeasures cited above, the agency is aware of a number of possible innovative concepts to upgrade head impact protection. For example, it may be possible to extend the windshield over the roof header and/or A-pillar areas, or to eliminate the A-pillars and roof rails by use of a molded plastic and glass roof. Head impacts with the windshield have less injury potential than impacts with pillars and headers, since the windshield helps to cushion the impact.

NHTSA believes that there are a number of possible approaches to expressing performance requirements. Various devices could be used to measure the forces that would be experienced by the head during specified component tests or crash tests. One possible performance requirement, for example, would place limits on head acceleration during specified component tests using a headform impactor. The headform impactor could be placed in the vehicle in a manner which permits the impactor to coast freely into, and to rebound from, the vehicle component being tested. However, there are also many other possible approaches.

NHTSA notes that the potential safety benfits of the countermeasures discussed above go beyond side impact crashes, since head/face impacts with vehicle interior components such as A, B and C pillars, window frames, and side roof rails occur in other types of crashes. The agency also notes that Standard No. 201, *Occupant Protection in Interior Impact*, currently covers only five vehicle interior components: front instrument panels, seat backs, compartment doors, sun visors and armrests.

As an aid in analyzing issues related to developing possible requirements for improved head protection, NHTSA requests information or comments on the following questions:

1. What current crash data and crash analyses are available for head impacts with the vehicle interior? In responding to this question, please separately address, to the extent possible, side impacts and other types of crashes.

2. What tests/studies have been done concerning head impacts with the A, B and C pillars, window frames and roof rail components of current production vehicles? What are the baseline performance levels of those vehicles for head impacts with the vehicle interior?

3. Please provide estimates for cost and leadtime of padding A, B and C pillars, roof rails, and window frames, and estimates of potential safety benefits.

4. What types of performance criteria and test procedures (including vehicle component tests and crash tests) should be considered by NHTSA in developing a possible proposal? Is a measure of maximum headform acceleration response appropriate? Should a head injury criterion (HIC) along the lines of that used in Standard No. 208 be specified? If so, why? If not, why not?

5. Please provide information concerning padding materials and possible new design concepts for pillar/roof rail structures. What tests/studies have been conducted on padding for those structures? How do force intensity distribution pattern and peak force during impacts differ for alternative padding materials? How are these differences relevant to the effectiveness of the padding in reducing injury, particularly head injury?

6. Please provide information concerning new roof/windshield/window design concepts incorporating structural glass or other techniques to reduce head impact severity.

7. Please provide information concerning A-pillar design specification and the angles of the driver's forward vision obscured by A-pillars. Would adding padding to A-pillars enlarge the angle of obscured vision and thereby adversely affect the driver's fields of view? How could any such problems be overcome?

8. Should NHTSA consider rulemaking to address all head interior impacts not addressed by present standards or only those head interior impacts associated with side impact crashes?

9. Please provide information about whether the tracks used for motorized automatic safety belts present any potential interior impact problems that could be mitigated by padding or by making the tracks softer.

10. What would be the effect of increased safety belt use, in terms of head injury severity reduction?

Ejections

A significant number of side impact fatalities and serious injuries involve the partial or complete ejection of occupants through the doors or side windows. A large number of ejections through the doors or side windows also occur in crashes other than side impacts. Data from the Fatal Accident Reporting System (FARS) for 1982–85 show that almost a quarter of all passenger car occupant fatalities involved ejection (19.5 percent involved total ejection and 4.3 percent involved partial ejection). Data from the National Crash Severity Study (NCSS) show that for passenger car occupant fatalities involving ejection, 52 percent were ejected through the doors and 34 percent through the side windows. Several studies have shown that ejection increases the probability of an occupant fatality or serious injury by several times over that for non-ejected occupants.

NHTSA is aware that some researchers have suggested that if a crash is sufficiently severe to eject the occupants, then it is capable of causing serious injuries even if the occupants remain inside the vehicle compartment. However, the agency believes that many occupant ejections may occur in crashes that are not very high crash severity. Moreover, given the trend toward more "friendly" interiors, the advantages of occupants remaining inside the vehicle should be increasing. The agency requests comments on the following question:

11. What studies, including current data and crash analyses, are available concerning the benefits of ejection reduction? What impact does the trend toward more "friendly" interiors have on such benefits? What are the severities of the various types of crashes in which ejection occurs?

NHTSA believes that it may be possible to develop effective requirements to reduce the risk of ejections. Occupant ejections through

the door opening can be prevented if the door remains closed in the latched position during a crash sequence. Standards No. 206, *Door Locks and Door Retention Components*, requires that door locks/striker assemblies and hinges not separate during specified tests, and that door latches not engage from the fully latched position during specified tests. However, many occupant ejections occur through the side door opening despite those requirements. NHTSA is concerned that the quasi-static tests specified by Standard No. 206 may not adquately represent the twisting and bending forces at work during a severe side impact.

NHTSA believes that stronger side door latches may reduce the risk of ejections. In considering developing performance requirements, the agency believes that a number of approaches are possible. One approach would be to add additional strength and/or deformation requirements to Standard No. 206. For example, a combined axial/moment loading test might be added to address latch failure caused by the door being subjected to torsion. Another approach would be to develop a dynamic test for the entire door assembly. Such a test procedure could be quite different from that proposed in the January 1988 NPRM, which would only require that doors not open during the test.

To aid in analyzing issues related to developing possible upgraded requirements to reduce the risk of ejections through side doors, NHTSA requests information or comments on the following questions:

12. What tests/studies have been done concerning side door ejections and associated door latch/lock failure mechanisms?

13. How do different vehicle body styles and door mechanism designs affect the risk of ejection?

14. What testing/measuring techniques are there for evaluating door latch performance in relation to the potential for reducing side door ejection?

15. Please provide information concerning alternative approaches for reducing the risk of side door ejections.

16. Please provide estimates for the cost and leadtime of improved side door latches, and estimates of potential safety benefits.

17. What types of performance criteria and test procedures should be considerd by NHTSA in developing a possible proposal?

18. What would be the effect of increased safety belt use, in terms of side door ejection reduction?

As indicated above, a significant number of fatal ejections from passenger cars are through the side window opening. The tempered glass inside door windows breaks easily and offers essentially no resistance to ejection.

NHTSA believes that new side window designs, incorporating different glazing/frames, may be able to reduce the risk of ejections. The agency notes that vehicle windshields typically incorporate a middle plastic layer which is sufficiently strong to prevent many occupant ejections. NHTSA believes that it might be possible to use variations on this approach for side windows. One possibility would be to affix an extra sheet of plastic to the inside surface of existing glazing. In addition to adding the plastic layer, it would be necessary to anchor the plastic in order to prevent complete separation of the glazing assembly after the glass is broken. One problem of particular concern is how to anchor the plastic in a manner that permits the window to be opened. For essentially rectangular windows, it may be possible to use glazing whose front and rear edges have a T-shape when viewed in cross section. The head or top of the T would interlock with a T-shaped track in the outer window frame and still allow vertical window movement. NHTSA recognizes, however, that there are difficulties associated with anchoring current side windows, given their shapes, and is particularly interested in comments on the design changes needed to anchor the glazing in a manner that permits the windows to be opened. The agency notes that, in addition to preventing ejection, glass-plastic glazing could also absorb impact energy.

NHTSA believes that there are a number of possible approaches to testing the performance of windows in preventing ejection. For example, one approach would be to use a 40 pound glazing test device (representing the combined head/thorax mass that would impact the glazing), requiring that the device not penetrate the plastic layer of a side window at 20 mph (an estimate of the typical contact speed when an occupant's head contacts the glazing), while permitting a bulge within specified limits. Requirements might also be developed to test side window retention capability.

To aid in analyzing issues related to developing possible requirements to reduce the risk of ejections through side windows, NHTSA requests information or comments on the following questions:

19. What current crash data and crash analyses are available for side window ejections, including partial occupant ejections?

20. What tests/studies have been done concerning side glazing performance in preventing ejections? Please address this question for windows in both the fully and partially closed positions.

21. What testing/measuring techniques are there for evaluating side glazing system performance in preventing ejections?

22. What problems are there in bonding a layer of plastic to glass and attaching it to the frame, while permitting the side windows to be movable? How can these problems be solved?

23. What would be the effectiveness of the approach discussed above and alternative approaches in retaining occupants during crashes, including consideration of HIC values and laceration potential? What thicknesses of glass and plastic would be optimum, particularly with regard to HIC mitigation?

24. Please provide information concerning fabricating, manufacturing, installing, using and repairing T-edge and similar glazing mechanisms, including methods of treating edges to ensure compatibility with other aspects of automotive design, the stability of the plastic as a function of time and temperature, the care and maintenance of glass-plastic side windows, and other issues which may be relevant.

25. Please provide estimates for cost, weight, and leadtime. Please also provide estimates for the cost of repair and replacement.

26. What types of performance criteria and test procedures should be considered by NHTSA in developing a possible proposal? Should in-vehicle tests be specified (as opposed to testing glazing samples) in evaluating the likelihood of occupant ejection? Would an approach along the lines of specifying that a 40 pound glazing test device not penetrate the plastic layer at 20 mph, while permitting a bulge of between 10 and 20 inches, be appropriate?

27. What other innovative concepts are there which could be used to modify, improve, or replace the concept discussed above?

28. What would be the effect of increased safety belt use, in terms of side window ejection reduction?

Side Impacts with Poles, Trees and Other Similar Fixed Objects

The January 1988 proposal and the possible requirements discussed above would address several significant aspects of the side impact problem. NHTSA is also considering whether

separate requirements should be developed to address side impacts with poles, trees and similar fixed objects. Many fatalities and injuries occur in these types of side impacts. NHTSA requests comments on the following questions:

29. What current crash data and analyses are available regarding side impacts with poles/trees?

30. What tests/studies have been done concerning side impacts with poles/trees and injuries to the thorax, pelvis, and/or head, and occupant ejections?

31. What information is available to determine how high the underside of a car should be or to determine how high significant remains of a breakaway device's stub should be to prevent snagging and resulting sudden velocity changes to an impacting car?

32. What vehicle countermeasures are currently available to address side impacts with poles/trees? Please provide estimates of the costs, benefits and leadtime for such countermeasures.

33. Please provide information concerning alternative approaches and innovative concepts for protecting occupants in side impacts with poles/trees.

34. To what extent is occupent compartment intrusion a major injury producing mechanism in side impacts with poles, trees and other fixed roadside objects? What countermeasures are available or are conceivable to mitigate, or prevent, such intrusions?

35. What factors should be considered by NHTSA in deciding whether to develop possible requirements to address side impacts with poles/trees? What types of performance criteria and test procedures should be considered? Is the test proposed in the January 1988 NPRM, using a moving deformable barrier, an effective test for providing occupant protection against poles, trees and other fixed objects?

Potential Regulatory Impacts

NHTSA has considered the potential burdens and benefits associated with requirements addressing the areas discussed above: head injuries, ejection through side doors, ejection through windows, and side impacts with poles and trees. This advance notice of proposed rulemaking is not subject to Executive Order 12291, since that only applies to notices of proposed rulemaking and final rules. However, NHTSA believes that this advance notice is a "significant" rulemaking action under the Department of Transportation regulatory policies and procedures. The advance notice concerns a matter in which there is substantial public interest. Also, depending on the scope and precise requirements of any NPRM that may be issued, there is the potential for a substantial positive impact on a major transportation safety problem, and potential annual costs of $100 million or more. The agency has prepared a PRIA which addresses preliminary estimates of the costs and benefits of potential countermeasures that the agency is considering in this action. (The PRIA also covers a separate advance notice of proposed rulemaking being published elsewhere in this issue of the **Federal Register** that addresses side impact protection for light trucks, vans and multipurpose passenger vehicles.) The analysis is available in the docket.

It is difficult to develop quantified estimates of the burdens associated with the potential actions on which this notice seeks public comment, because the precise requirements have not been developed. Additionally, changes may be made to any of these courses of action in response to comments received on this notice. Therefore, the cost figures cited below are very preliminary.

In the area of improving head protection, the PRIA estimates the cost of padding all pillars, the front rear headers, and the side roof rails at about $25 to $31 for a four door passenger car. With respect to reducing occupant ejection through the side windows, the cost of using laminated glass instead of tempered glass for the front and rear side windows is estimated to be about $15 for a four-door passenger car, and $17 for a two-door passenger car. The agency does not have sufficient information to estimate the costs associated with anchoring the glazing to the window frame. In the area of reducing occupant ejection through the doors, the cost of improving door latches is estimated to be about $1.00 per door. The above estimates do not take into account the cost of any secondary weight or fuel cost penalties. The agency has not sufficiently developed countermeasures for side impacts with poles and trees to estimate potential costs.

NHTSA does not have sufficient information at this time to quantify the benefits associated with the courses of action addressed in this notice. However, the agency believes that there may be a potential for substantial benefits in terms of reduced fatalities and serious injuries.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does nto have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

NHTSA solicits public comments on this notice. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the advance proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments on the advance proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

(15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50)

Issued date: August 16, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-18795 Filed 8-16-88; 10:52 am]

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49 CFR Part 571

[Docket No. 88-06, Notice 4]
RIN 2127-AC43

Federal Motor Vehicle Safety Standards; Side Impact Protection—Light Trucks, Vans, and Multipurpose Passenger Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The purpose of this advance notice is to announce that the NHTSA is considering the proposal of requirements for light trucks, vans and multipurpose passenger vehicles intended to reduce the risk of fatalities and injuries in side impacts and other crashes where the side protection of the vehicle is a relevant factor, and to request comments to assist the agency in developing the proposal. The contemplated requirements would be part of the agency's efforts to address the serious problem of side impacts. As another part of those efforts, the agency earlier this year proposed requirements for passenger cars intended to reduce the risk of injuries to the thorax and pelvis in side impact crashes between vehicles.

DATE: Comments must be received on or before October 18, 1988.

ADDRESSES: Comments should refer to the docket and notice numbers set forth above and be submitted (preferably in 10 copies) to the Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. [Docket hours are from 8 a.m. to 4 p.m., Monday through Friday.]

FOR FURTHER INFORMATION CONTACT: Dr. Richard Strombotne, Office of Vehicle Safety Standards, NRM-12, Room 5320, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-2264.

SUPPLEMENTARY INFORMATION: On January 27 1988, NHTSA published in the **Federal Register** (53 FR 2239) a notice of proposed rulemaking (NPRM) to upgrade Safety Standard No. 214, *Side Door Strength*, by adding dynamic test procedures and performance requirements for passenger cars. That standard, which applies only to passenger cars, currently measures performance in terms of the ability of each door to resist a piston pressing a rigid steel cylinder inward against the door. The agency's January 1988 proposal would require an additional test in which a passenger car must provide protection in a full-scale crash test in which the car (known as the "target" car) is struck in the side by a moving deformable barrier simulating another vehicle. Newly-developed instrumented test dummies would be positioned in the target car to measure the potential for injuries to an occupant's thorax and pelvis. Also, the doors of the car would be required to remain closed during the side impact, to reduce the number of persons ejected from a car through a door.

NHTSA's January 1988 proposal is one part of the agency's efforts to address the serious problem of side impact crashes. A second part or those efforts has been the development of an advance notice of proposed rulemaking (ANPRM) concerning requirements for passenger cars intended to reduce the risk of head and neck injuries and ejections, in side impact crashes between vehicles and other crashes where the side protection of the vehicle is a relevant factor. That notice also seeks comments on whether additional requirements should be considered to address side impacts with poles and trees.

This notice represents a third part of NHTSA's efforts to reduce side impact deaths and injuries. As indicated above, the existing Standard No. 214 and the rulemaking actions discussed above concern passenger cars. NHTSA believes that it may be possible to develop effective side impact requirements for trucks, buses and multipurpose passenger vehicles with a gross vehicle weight rating of 10,000 pounds or less (light trucks, vans and multipurpose passenger vehicles, hereafter referred to as "LTV's").

Annual LTV side impact fatalities have averaged about 1,200 in recent years. The agency believes that it may be possible to develop a dynamic side impact test requirement for LTV's, similar to the one proposed for cars, to reduce the risk of injuries to the thorax and pelvis. The agency also believes that it may be possible to develop requirements to address injuries to the head and ejections through the doors and windows. Requirements in these areas could potentially result in substantial benefits in terms of reduced LTV fatalities and serious injuries. Comments are requested on these areas, on whether the existing requirements of Standard No. 214 or similar requirements should be extended to LTV's, and on whether additional requirements should be considered to address side impacts with fixed objects like poles and trees.

To aid the agency in obtaining useful comments, this notice discusses a variety of issues which are considered by NHTSA in developing a possible proposal, and asks a number of questions and makes a number of requests for data. For easy reference, the questions or requests are numbered consecutively throughout the document.

In providing a comment on a particular matter or in responding to a particular question, interested persons are requested to provide any relevant factual information to support their conclusions or opinions, including but not limited to test data, statistical and cost data, and the source of such information.

Before proceeding with a discussion of the specific types of requirements the agency is considering developing, NHTSA notes its recognition of the fact that possible new safety standards or new applications of current standards must be analyzed to determine the appropriateness of applying them to specific vehicle types. Although many of the issues raised by this notice are similar to those being raised in connection with passenger cars, the differences in physical characteristics and use between LTV's and passenger cars would likely warrant differences in possible test procedures and/or performance requirements. NHTSA requests that comments specifically consider whether particular requirements are appropriate for LTV's, and whether different requirements may be needed for different types of LTV's.

Thorax and Pelvis Protection

As indicated by the Protection Regulatory Impact Analysis (PRIA), each year there may be 1,350 serious injuries (AIS 3 or greater) to LTV occupants resulting from contact between the side interior of the vehicle and the abdomen, chest, pelvis and upper extremities. Approximately 190 of these serious injuries result in fatalities. As discussed in the January 1988 NPRM, NHTSA's research has shown for passenger cars that the use of structural modifications in combination with padding or the use of padding alone can

reduce the probability of these types of injuries. The agency believes that the same types of countermeasures may provide benefits for LTV occupants. The agency also believes that the January 1988 NPRM's approach of requiring a vehicle to protect its occupants in a full-scale side impact crash test, utilizing a moving deformable barrier and instrumented test dummies, may also be appropriate for LTV's. (For additional information, see the January 1988 NPRM, whose citation is provided above, the Preliminary Regulatory Impact Analysis prepared for that rulemaking (available in Docket 88–06, under Notice 1), and a related NPRM on the side impact test dummy (53 FR 2254, January 27, 1988)).

While NHTSA believes that it may be possible to apply these basic approaches to improving and testing side impact performance to both passenger cars and LTV's, the agency also believes that differences between those vehicle types and their crash experiences would likely warrant some differences in possible test procedures and/or performance requirements.

NHTSA noted in the January 1988 NPRM that in multiple vehicle crashes resulting in serious injuries and fatalities to passenger car occupants, trucks are about equally as likely as cars to be the striking vehicle. The agency therefore tentatively concluded that the moving deformable barrier in testing cars should in some respects be more like light trucks than cars.

In testing the side impact performance of LTV's, it appears to be even more important than the moving deformable barrier be representative of light trucks. Crash data indicate that in two vehicle side impact collisions, more LTV occupants are killed by other LTV's and medium/heavy trucks than by passenger cars. The agency also notes that a passenger car striking the side structure of a vehicle does not constitute as much of a threat to the occupants of LTV's as it does to occupants of passenger cars. This is because most LTV's are stronger and heavier than typical cars, and the door sill height matches better with the passenger car bumper. Also, since LTV seats are relatively high as compared with passenger car seats, LTV occupants are less likely to be struck directly.

NHTSA also notes that the differences between passenger cars and LTV's and their crash experiences must also be taken into account in evaluating the effectiveness of potential countermeasures.

In analyzing issues related to developing possible requirements for improved thorax and pelvis protection, NHTSA requests information and comments on the following questions:

1. What current crash data and crash analyses are available for injuries to the thorax and pelvis of LTV occupants in side impact crashes between vehicles?

2. What tests/studies have been done concerning the performance of current production LTV's in preventing injuries to the thorax and pelvis in side impacts?

3. What countermeasures are available to reduce injuries to the thorax and pelvis in side impacts? Please provide estimates of the costs and benefits associated with possible countermeasures. To what extend do the available countermeasures, costs, and benefits differ for different types of LTV's?

4. What types of performance criteria and test procedures should be considered by NHTSA in developing a possible proposal? Is the approach of the January 1988 passenger car NPRM appropriate for LTV's? If so, why? If not, why not? If the agency uses that approach, what characteristics should the moving deformable barrier have? What impact test speeds and angles should be considered?

Head Injuries

A large number of LTV side impact fatalities occur due to head/face impacts with vehicle interior components, such as the pillars and other structures supporting the roof. Moreover, non-fatal head/face injuries are a large source of occupant impairment due to vehicle crashes.

(The pillars at the front of the passenger compartment, on both sides of the windshield, are called A-pillars. Other structures supporting the roof include the headers, which are horizontal bars located above the windshield and read window, and side rails, which are horizontal bars located above the windows along the sides of the vehicle.)

Data from the National Accident Sampling Sysem (NASS) show that face and head injuries from contact with the pillars, headers, roof rails, and window frames represent 5.8 percent of all injuries, 5.4 percent of serious injuries (AIS 3 or greater), and 11 percent of fatalities.

NHTSA believes that various techniques, including the use of padding and reducing the stiffness of impacted surfaces, may be able to reduce the severity of, and in some cases prevent, many head injuries. In particular, the agency believes the following three techniques are of particular promise: (1) Padding the A pillars and roof rail components with hard rubber or high density foam materials, (2) eliminating sharp angle, thin edge design features in the component areas where head impacts are the most likely to occur, and (3) reducing the local stiffness of the component areas where head impacts are most likely to occur (although the overall structural integrity of the roof-pillar structures must, of course, be maintained).

NHTSA notes that many tests on the use of padding have been carried out for instrument panel studies. The tests have used three to four inch thick samples of various low density foam materials. However, the agency does not believe that the results of these studies are directly applicable to A-pillar and roof rail components. Due to space limitations, including the need to maintain good driver visibility, only a thin layer of padding could be placed in those areas.

Given the limited amount of padding that could be placed on the A-pillar, the agency believes that characteristics other than energy absorption capacity may be crucial in determining the performance of the padding material during an impact. In particular, NHTSA believes that the force penetration characteristics, i.e., how the padding distributes force, may be significant. For example, the padding may be able to reduce injury potential in a head impact by prolonging impact duration, enlarging the contact area, and mitigating localized load concentration. It appears that an ideal padding material would have a low resilient, elasto-plastic force-penetration property, i.e., a softening effect.

As discussed in the PRIA, NHTSA has conducted some tests of the effectiveness of bonding a molded pad onto the A-pillar of a car. The results of the tests indicate that this technique shows promise in reducing head injuries.

In addition to the conventional countermeasures cited above, the agency is aware of a number of possible innovative concepts to upgrade head impact protection. For example, it may be possible to extend the windshield over the roof header and/or A-pillar areas, or to eliminate the A-pillars and roof rails by use of a molded plastic and glass roof. Head impacts with the windshield have less injury potential than impacts with pillars and headers, since the windshield helps to cushion the impact.

NHTSA believes that there are a number of possible approaches in expressing performance requirements. Various devices could be used to measure the forces that would be experienced by the head during specified component tests or crash tests.

One possible performance requirment, for example, would place limits on head acceleration during specified component tests using a headform impactor. The headform impactor could be placed in the vehicle in a manner which permits the impactor to coast freely into, and to rebound from, the vehicle component being tested. However, there are also many other possible approaches.

NHTSA notes that the potential safety benefits of the countermeasures discussed above go beyond side impact crashes, since head/face impacts with vehicle interior components such as pillars and side roof rails occur in other types of crashes. The agency also notes that Standard No. 201, *Occupant Protection in Interior Impact*, currently covers only five vehicle interior components; front instrument panels, seat backs, compartment doors, sun visors and armrests.

To aid in analyzing issues related to developing possible requirements for improved head protection, NHTSA requests information or comments on the following questions:

5. What current crash data and crash analyses are available for head impacts with the vehicle interior? In responding to this question, please separately address, to the extent possible, side impacts and other types of crashes.

6. What tests/studies have been done concerning head impacts with the A-pillar/roof rail components of current production vehicles? What are the baseline performance levels of those vehicles for head impacts with the vehicle interior?

7. Please provide estimates for cost and leadtime of padding A-pillars and/or roof rails, and estimates of potential safety benefits.

8. What types of performance criteria and test procedures (including vehicle component tests and crash tests) should be considered by NHTSA in developing a possible proposal? Is a measure of maximum headform acceleration response appropriate? Should a head injury criterion (HIC) along the lines of that used in Standard No. 208 be specified? If so, why? If not, why not?

9. Please provide information concerning padding materials and possible new design concepts for pillar/roof rail structures. What tests/studies have been conducted on padding for those structures? How do force intensity distribution pattern and peak force during impacts differ for alternative padding materials? How are these differences relevant to the effectiveness of the padding in reducing injury, particularly head injury?

10. Please provide information concerning new roof/windshield/window design concepts incorporating structural glass or other techniques to reduce head impact severity.

11. Please provide information concerning A-pillar design specifications and the angles of the driver's forward vision obscured by A-pillars. Would adding padding to A-pillars enlarge the angle of obscured vision and thereby adversely affect the driver's fields of view? How could any such problems be overcome?

12. Should NHTSA consider rulemaking to address all head interior impacts not addressed by present standards or only those head interior impacts associated with side impact crashes?

13. What would be the effect of increased safety belt use, in terms of head injury severity reduction?

Ejections

A large number of LTV occupant fatalities and serious injuries involve the partial or complete ejection of occupants through the doors or side windows. While some of these ejection occur in side impact crashes, a much larger number occur in crashes other than side impacts. Data from the Fatal Accident Reporting System (FARS) for 1982–85 show that that more than 40 percent of all LTV fatalities involved ejection (35.5 percent involved total ejection and 6.4 percent involved partial ejection). Data from the National Accident Sampling Study (NASS) show that for LTV occupant fatalities involving ejection, 46 percent were ejected through the doors and 15 percent were ejected through the side windows. Several studies have shown that the ejection of a vehicle occupant in a crash increases the probability of a fatality or serious injury by several times. The agency notes that crash data indicate that LTV occupants are considerably more likely to be ejected from a vehicle in a crash than passenger car occupants.

NHTSA believes that it may be possible to develop effective requirements to reduce the risk of ejections. Occupant ejections through the door opening can be prevented if the door remains closed in the latched position during a crash sequence. Standard No. 206, *Door Locks and Door Retention Components*, requires that door locks/striker assemblies and hinges not separate during specified tests, and that door latches not disengage from the fully latched position during specified tests. However, many occupant ejections occur through the side door opening despite those requirements. NHTSA is concerned that the quasi-static tests specified by Standard No. 206 may not adequately represent the twisting and bending forces at work during a severe side impact.

NHTSA believes that stronger side door latches may reduce the risk of ejections. In considering developing performance requirements, the agency believes that a number of approaches are possible. One approach would be to add additional strength and/or deformation requirements to Standard No. 206. For example, a combined axial/moment loading test might be added to address latch failure caused by the door being subjected to torsion. Another approach would be to develop a dynamic test for the entire door assembly. Such a test procedure could be quite different from that proposed in the January 1988 passenger car NPRM, which would only require that doors not open during a side impact crash test.

To aid in analyzing issues related to developing possible upgraded requirements to reduce the risk of ejections through side doors, NHTSA requests information or comments on the following questions:

14. What current crash data and crash analyses are available regarding side door ejections?

15. What tests/studies have been done concerning side door ejections and associated door latch/lock failure mechanisms?

16. How do different vehicle body styles and door mechanism designs affect the risk of ejection?

17. What testing/measuring techniques are there for evaluating door latch performance in relation to the potential for reducing side door ejection?

18. Please provide information concerning alternative approaches for reducing the risk of side door ejections.

19. Please provide estimates for the cost and leadtime of improved side door latches, and estimates of potential safety benefits.

20. What types of performance criteria and test procedures should be considered by NHTSA in developing a possible proposal?

21. What would be the effect of increased safety belt use, in terms of side door ejection reduction?

As indicated above, a significant number of fatal ejections from LTV's are through the side window opening. The tempered glass in side door windows breaks easily and offers essentially no resistance to ejection.

NHTSA believes that new side window designs, incorporating different glazing/frames, may be able to reduce the risk of ejections. The agency notes that vehicle windshields typically

incorporate a middle plastic layer which is sufficiently strong to prevent many ejections. NHTSA believes that variations on this approach could be used for side windows. One possibility would be to affix an extra sheet of plastic to the interior surface of the existing glazing. In addition to adding the plastic layer, it would be necessary to anchor the plastic in order to prevent complete separation of the glazing assembly after the glass is broken. One problem of particular concern is how to anchor the plastic in a manner that permits the window to be opened. For essentially rectangular windows, it may be possible to use glazing whose front and rear edges have a T-shape when viewed in cross section. The head or top of the T would interlock with a T-shaped track in the outer window frame and still allow vertical window movement. NHTSA recognizes, however, that there are difficulties associated with anchoring many current side windows, given their shapes, and is particularly interested in comments on the design changes needed to anchor the glazing in a manner that permits the windows to be opened. The agency notes that, in addition to preventing ejection, glass-plastic glazing could also be absorb impact energy.

NHTSA believes that there are a number of possible approaches to testing performance. For example, one approach would be to use a 40 pound glazing test device (representing the combined head/thorax mass that would impact the glazing), requiring that the device not penetrate the plastic layer of a side window at 20 mph (an estimate of the typical contact speed when an occupant's head contacts the glazing), while permitting a bulge within specified limits. Requirements might also be developed to test side window retention capability.

To aid in analyzing issues related to developing possible requirements to reduce the risk of ejections through side windows, NHTSA requests information or comments on the following questions:

22. What current crash data and crash analyses are available for side window ejections, including partial occupant ejections?

23. What tests/studies have been done concerning side glazing performance in preventing ejections? Please address this question for windows in both the fully and partially closed positions.

24. What testing/measuring techniques are there for evaluating side glazing system performance in preventing ejections?

25. What problems are there in bonding a layer of plastic to glass and attaching it to the frame, while permitting the side windows to be moveable? How can these problems be solved?

26. What would be the effectiveness of the approach discussed above and alternative approaches in retaining occupants during crashes, including consideration of HIC values and laceration potential? What thickness of glass and plastic would be optimum, particularly with regard to HIC mitigation?

27. Please provide information concerning fabricating, manufacturing, installing, using and repairing T-edge and similar glazing mechanisms, including methods of treating edges to ensure compatibility with other aspects of automotive design, the stability of the plastic as a function of time and temperature, the care and maintenance of glass-plastic side windows, and other issues which may be relevant.

28. Please provide estimates for costs, weight, and leadtime. Please also provide estimates for the cost of repair and replacement.

29. What types of performace criteria and test procedures should be considered by NHTSA in developing a possible proposal? Should in-vehicle tests be specified (as opposed to testing glazing samples) in evaluating the likelihood of occupant ejection? Would an approach along the lines of specifying that a 40 pound glazing test device not penetrate the plastic layer at 20 mph, while permitting a bulge of between 10 and 20 inches, be appropriate?

30. What other innovative concepts are there which could be used to modify, improve, or replace the concept discussed above?

31. What would be the effect of increased safety belt use, in terms of side window ejection reduction?

Extension of Standard No. 214's Existing Requirements

As indicated above, Standard No. 214 currently applies only to passenger cars. The standard specifies performance requirements for each side door in a passenger car to mitigate occupant injuries in side impacts. The standard seeks to do this by reducing the extent to which the side structure of a car is pushed into the passenger compartment during a side impact. The standard requires each door to resist crush forces that are applied by a piston pressing a steel cylinder inward against the door's outside surface in a laboratory test. The standard does not attempt to regulate directly the level of crash forces experienced by an occupant when striking the car interior in such an impact. Since the standard became effective on January 1, 1973, vehicles manufacturers have generally chosen to meet the performance requirements of the standard by reinforcing the side doors with metal beams.

The agency's analysis of real-world crash data has shown that the strengthening of the doors with the beams is indeed effective, but primarily in single car side impacts. See NHTSA's November 1982 study "An Evaluation of Side Structure Improvements in Response to Federal Motor Vehicle Safety Standard 214."

NHTSA requests comment on the following question:

32. Are side beams an appropriate countermeasure to reduce side impact injuries in LTV's? Should NHTSA consider extending Standard No. 214's existing test requirements to LTV's? Please estimate the costs and benefits associated with such an approach.

Side Impacts with Poles, Trees and Other Similar Fixed Objects

NHTSA is also considering whether separate requirements should be developed to address side impacts with fixed objects like poles and trees. Many fatalities and injuries occur in these types of side impacts. NHTSA requests comments on the following questions:

33. What current crash data and analysis are available regarding side impacts with poles/trees?

34. What tests/studies have been concerning side impacts with poles/trees and injuries to the thorax, pelvis, and/or head, and occupant ejections?

35. What information is available to determine how high the underside of an LTV should be or to determine how high significant remains of a breakaway device's stub should be to prevent snagging and resulting sudden velocity changes to an impacting LTV?

36. What vehicle countermeasures are currently available to address side impacts with poles/trees? Please provide estimates of the costs, benefits and leadtime for such countermeasures.

37. Please provide information concerning alternative approaches and innovative concepts for protecting occupants in side impacts with poles/trees.

38. To what extent is occupant compartment intrusion a major injury producing mechanism in side impacts with poles, trees and other fixed roadside objects? What countermeasures are available or are conceivable to mitigate, or prevent, such intrusions?

39. What factors should be considered by NHTSA in deciding whether to

develop possible requirements to address side impacts with poles/trees? What types of performance criteria and test procedures should be considered? Is the test proposed in the January 1988 NPRM for passenger cars, using a moving deformable barrier, an effective test for providing occupant protection against poles, trees and other fixed objects?

Potential Regulatory Impacts

NHTSA has considered the potential burdens and benefits associated with requirements addressing the areas discussed above: injuries to the thorax and pelvis, head injuries, ejection through side doors, ejection through windows, and side impacts with poles and trees. This advance notice of proposed rulemaking is not subject to Executive Order 12291, since that only applies to notices of proposed rulemaking and final rules. However, NHTSA believes that this advance notice is a "significant" rulemaking action under the Department of Transportation regulatory policies and procedures. The advance notice concerns a matter in which there is substantial public interest. The agency has prepared a PRIA which addresses preliminary estimates of the costs and benefits of potential countermeasures that the agency is considering in this action. (The PRIA also covers a separate advance notice of proposed rulemaking being published elsewhere in this issue of the **Federal Register** that addresses side impact protection for passenger cars.) The analysis is available in the docket.

It is difficult to develop quantified estimates of the burdens associated with the potential actions on which this notice seeks public comment, because the precise requirements have not been developed. Additionally, changes may be made to any of these courses of action in response to comments received on this notice. Therefore, the cost figures cited below are very preliminary.

The PRIA estimates the costs of countermeasures to provide improved thorax and pelvis protection as follows: front door padding, 0 to $20; changed structure, 0 to $75; padding and changed structure, 0 to $95; and increased door thickness, 0 to $5. In the area of improving head protection, the PRIA estimates the cost of padding all pillars, the front and rear headers, and the side roof rails at about $20 to $25 for an LTV. With respect to reducing occupant ejection through the side windows, the cost of using laminated glass instead of tempered glass for the side windows is estimated to be about $10 for an LTV. The agency does not have sufficient information to estimate the costs associated with anchoring the glazing to the window frame. In the area of reducing occupant ejection through the doors, the cost of improved door latches is estimated to be about $1.00 per door. With respect to extending the existing requirements of Standard No. 214 to LTV's, the cost of reinforcing the side doors with metal beams is estimated to be approximately $18 per door. The estimates included in this paragraph do not take into account the cost of any secondary weight or fuel cost penalties. The agency has not sufficiently developed countermeasures for side impacts with poles and trees to estimate potential costs.

NHTSA does not have sufficient information at this time to quantify the benefits associated with the courses of action addressed in this notice. However, the agency believes that there may be a potential for substantial benefits in terms of reduced fatalities and serious injuries.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

NHTSA solicits public comments on this notice. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the advance proposal will be considered, and will be available for examination in the docket at the above address both before and after the date. To the extent possible, comments filed after the closing date will also be considered. Comments on the advance proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

(15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50)

Issued Date: August 16, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-18794 Filed 8-16-88; 11:15 am]

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INTERSTATE COMMERCE COMMISSION

49 CFR Part 1312

[Ex Parte No. 290 (Sub-No. 6)]

Amendments to Rail Carrier Cost Recovery Tariffs

AGENCY: Interstate Commerce Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission is instituting this proceeding to consider whether 49 CFR Part 1312 should be revised to change our regulations governing the form and volume of supplemental matter to rail carrier cost recovery tariffs filed pursuant to Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures.* Present regulations provide that such tariffs be published with expiration dates and they may be maintained without regard to the amount of

supplemental matter in effect. Informal criticisms have been received by the Commission which indicate that the tariffs have become extremely cumbersome to follow and to apply. In view of these criticisms, the Commission is concerned that the tariffs are not being published in a manner which is consistent with the public interest. Comments dealing with problems encountered by users of the rail carrier cost recovery tariffs are solicited as well as suggestions for rule changes.

DATE: Comments must be submitted by October 18, 1988.

ADDRESS: Send an original and 10 copies of any comments, referring to Ex Parte No. 290 (Sub-No. 6) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Lawrence C. Herzig, (202) 275–7358 or Charles E. Langyher (202) 275–7739. TDD for hearing impaired (202) 275–1721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to the Secretary's Office, Room 2215, Interstate Commerce Commission, Washington, DC 20423, or call (202) 275–7428, (assistance for the hearing impaired is available through TDD services (202) 275–1721).

List of Subjects in 49 CFR Part 1312

Railroads.

This action will not significantly affect the quality of the human environment or energy conservation and it will not have a significant economic impact on a substantial number of small entities.

Authority: 49 U.S.C. 10321 and 10762, 5 U.S.C. 553)

Decided: August 12, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 88–18810 Filed 8–18–88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Findings on Petitions To List Mono Lake Brine Shrimp and Edgewood Blind Harvestman

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of findings on petitions.

SUMMARY: The U.S. Fish and Wildlife Service announces two 90-day petition findings for petitions to amend the List of Endangered and Threatened Wildlife and Plants. Petitioners have presented substantial information that petitions to list the Mono Lake brine shrimp and the Edgewood blind harvestman may be warranted. Formal review of the status of the Edgewood blind harvestman is initiated herewith.

DATES: The findings announced in this notice were made in October 1987 and March 1988. Comments and information may be submitted until further notice.

ADDRESSES: Information, comments, or questions regarding either of these two petitions may be submitted to the Field Supervisor, Endangered Species, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E–1823, Sacramento, California 95825. The petitions, findings, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Gail C. Kobetich, Field Supervisor, at the above address (telephone 916/978–4866 or FTS 460–4866).

SUPPLEMENTARY INFORMATION: .

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973 (Act), as amended in 1982 (16 U.S.C. 1531 *et seq.),* requires that the U.S. Fish and Wildlife Service (Service) make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register.** If the finding is positive, the Service is also required to promptly commence a review of the status of the involved species.

The Service has received and made 90-day findings on the following two petitions:

A petition from Dr. Dennis Murphy was dated June 23, 1987, and received by the Service on June 19, 1987. The petition requested the Service to list the Mono Lake brine shrimp, *Artemia monica,* as an endangered species. Status review for the Mono Lake brine shrimp was initiated by a notice of review published May 22, 1984 (49 FR 21664).

The petition stated that the Mono Lake brine shrimp is restricted in distribution to Mono Lake in Mono County, California. The petition and accompanying documentation indicated that the survival of the species is threatened by increased salinity due to the lowering of the lake surface level. After a review of the petition, accompanying documentation and references cited therein, the Service found that the petition presented substantial information that the action may be warranted. Within one year from the date the petition was received, a finding as to whether the petitioned action is warranted is required by section 4(b)(3)(B) of the Act.

A partial petition from Thomas S. Briggs of California Academy of Sciences was received by the Service October 16, 1987, and completed with additional information on December 21, 1987. The petition requested the Service to list the Edgewood blind harvestman, *Sitalcina minor,* as a threatened or endangered species.

The petition stated that the Edgewood blind harvestman is restricted in distribution to two known populations. One is in Edgewood County Park and the other has probably been eliminated. The petition and accompanying documentation stated that the survival of the species is threatened at Edgewood County Park by habitat modification that will result if a proposed large golf course that is being planned is developed. The other population was probably eliminated due to the construction of an eight-lane freeway near the place where it was last seen in 1966.

After a review of the petition, accompanying documentation, and references cited therein, the Service found that the petition presented substantial information that the action requested may be warranted. Status review of the species is required to determine whether listing the Edgewood blind harvestman is actually warranted. A formal status review of the Edgewood blind harvestman is initiated herewith. Within one year from the date the completed petition was received, a finding as to whether the petitioned action is warranted is required by section 4(b)(3)(B) of the Act.

The Service would appreciate any additional data, comments and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the status of the Edgewood blind harvestman, *Sitalcina minor.*

Author

This notice was prepared by Ms. Robyn Thorson and Dr. Andrew F. Robinson, Jr., U.S. Fish and Wildlife Service, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232 (503/231–6150 or FTS 429–6150).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

List of Subjects in 50 CFR Part 17

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

Dated: August 11, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–18882 Filed 8–18–88; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Technical Amendments to the Sea Otter Translocation Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service is proposing to amend the Translocation Regulations for southern sea otters, a threatened species of marine mammal, which were published in the **Federal Register** on August 11, 1987. Regulations were promulgated for the translocation of southern sea otters to San Nicolas Island pursuant to Pub. L. 99–625.

The proposed changes, which would address certain technical problems identified during the first year of the translocation project, concern the age and number of animals released at any one time, the number of animals with radio transmitters to be captured, the season for capture, and the retainment of animals is temporary holding pens. The changes are expected to promote survival and reduce dispersal of the translocated otters.

DATE: Comments must be received on or before September 29, 1988.

ADDRESS: Comments may be mailed to the Ventura Endangered Species Recovery Office, 2140 Eastman Avenue, Ventura, California 93003.

FOR FURTHER INFORMATION CONTACT: Joseph J. Dowhan, at the above address (805–644–1766, FTS 983–6039).

SUPPLEMENTARY INFORMATION:

Background

Pursuant to Public Law 99–625, the regulations found at 50 CFR 17.84 (d) provide for a three-state plan for the translocation of southern sea otters (*Enhydra lutris nereis*) from a parent population on the central California coast to a Translocation Zone around San Nicolas Island, California. The process described in the regulations includes techniques for capture, transport, holding, and release. During the first year of translocation, under the existing regulations, it has become apparent that these techniques can be improved to enhance survival and reduce dispersal of the translocated otters, and that improved techniques can be expected to have a lesser impact on the parent population.

The Service is limiting the public comment period for this proposal to 10 days because of special reasons that require prompt decisionmaking in this case. The most favorable weather for capture and translocation of otters generally occurs during late summer and early autumn. It is the Service's attention to make a final decision on this proposal as early as possible so that the most favorable weather conditions can be available to maximize the chances for a successful translocation in 1988. Simultaneously with publication of this proposal rule, actual notice of the proposed amendments has been furnished to individuals and organizations that participated on the Service's Interagency Project Review Team for the initial southern sea otter translocation proposal. (A list of these individuals and organizations is provided in the Final Environmental Impact Statement, Translocation of Southern Sea Otters (May 1987), at pages VII–12 to VII–14.) By providing for actual notice to the key parties described above, the Service believes that the public will have a meaningful opportunity to comment on these proposed technical amendments within the period provided.

According to the existing regulations, the U.S. Fish and Wildlife Service may translocate up to 70 otters a year, totaling no more than 250 otters in a 5-year period. Of the animals translocated each year up to 20 are to be adults; the remainder will be weaned, immature otters. The capture is restricted to the period between August and mid-October, during which time the weather is mostly passive.

After capture, the animals are to be inspected by veterinarians and tagged for identification. Each year up to thirty otters are to be captured prior to translocation and surgically implanted with radio transmitters. They are then released back into the parent population. Of the thirty previously radioed otters up to fifteen are to be among those recaptured and translocated to San Nicolas Island.

All animals to be translocated are transported from their place of capture to be held and observed in specially constructed holding facilities. A minimum of 20 otters must be translocated at each time; therefore the otters are held in captivity until at least 20 have been captured. After each otter is determined to be fit-to-travel, the group will be transported by truck, then flown by airplane to San Nicolas Island.

Once at the island, the otters are to be transferred to a stationary floating pen, where they are held for up to 5 days. Male and female otters are to be held separately, and no more than ten otters are to be held in any pen. After allowing time for the otters to acclimatize to their new surroundings, the nets are to be removed from the pens and the animals allowed to leave at will.

The translocated otters are monitored to determine their growth rate, behavior, impact on the marine environment, and dispersal tendencies. Otters from either population are restricted to their current range on the mainland coast north of Point Conception or to the Translocation Zone around San Nicolas Island. Any otter found in the "no otter" Management Zone is captured using non-lethal means and transported back to the Translocation Zone or the current mainland range.

Problems arose with the translocation during the first year of the project. The difficulties occurred primarily because otters became wary and increasingly difficult to capture after exposure to capture activities in their home territories. This affected the ability of the U.S. Fish and Wildlife Service to select specific individuals for translocation. It also affected the time needed to obtain the correct number and composition of otters. As a result the age ratio of translocated otters was very difficult to predetermine, as was the recapture of otters with radio transmitters. In addition, the stress imposed upon the animals while awaiting translocation in holding pens on the mainland resulted in several mortalities.

Another problem arose when the otters were held in floating pens at the translocation site. Instead of calming the

animals and allowing them time to adjust to the new environment, the additional holding period increased stress and unduly agitated the otters. As a result, three otters died.

The following proposed amendments to the regulations are designed to improve otter survival by minimizing stress, thereby enhancing the establishment of the population at San Nicolas Island. The changes would: (1) Provide more flexibility in selecting the ages of otters for translocation, (2) eliminate the restriction to capture otters only within the August to mid-October time-frame, (3) eliminate the requirement to surgically implant up to thirty otters with radio transmitters, (4) provide flexibility to either immediately transport otters or hold them on the mainland before release at San Nicolas Island, and (5) eliminate the restriction to translocate a minimum of 20 otters at a time.

The U.S. Fish and Wildlife Service intends that any final action resulting from this proposal be as accurate and effective as possible. Therefore, the Service is asking for comments from other government agencies, individuals, the fishing community, conservation organizations, and any other interested parties concerning any aspect of this proposal.

Final action on this proposal will take into consideration these comments and any additional information received by the Service, and may lead to a final regulation that differs from this proposal.

Executive Order 12291, Paperwork Reduction Act and Regulatory Flexibility Act

The Service has determined that this is a not a major rule as defined by Executive Order 12291, that the rule will not have a signficant economic effect on a substantial number of small entities as described in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and that the rule does not contain any information collection or recordkeeping requirements as defined in the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* These conclusions were reached after an analysis that is documented in a Determination of Effects of Rules, which is on file and available for public review at the address listed under **ADDRESSES**, above.

The effects of the amendments would not be significantly greater than those of the rule now in effect. Because the establishment of the otter population at San Nicolas is not proceeding as rapidly as had been originally expected, effects to commercial and sport fishing will occur later than had been projected, and projected increases in commercial kelp harvest will also be delayed.

National Environmental Policy Act

A draft Environmental Assessment pertaining to this proposal has been prepared and is available for inspection at: Ventura Endangered Species Recovery Office, (see **ADDRESSES** above). A determination will be made at the time of the final rule as to whether or not this is a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969.

Author

The principal author of this proposed rule is Teresa Nichols, Ventura Endangered Species Recovery Office (see **ADDRESSES** above).

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

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

§ 17.84 [Amended]

2. It is proposed to amend § 17.84(d)(2) by removing the last three sentences and adding the following in place thereof:

* * * * *

(d) * * *

(2) * * * The majority of animals translocated each year will be weaned, immature otters with a sex ratio of about 4 to 1, females to males. Of the adult otters selected for translocation, approximately 3 out of every 4 animals will be female.

* * * * *

3. It is proposed to revise the second sentence of § 17.84(d)(3)(i) to read as follows:

* * * * *

(d)* * *

(3) * * * Sea otters will be captured using diver-held devices, dip nets, surface entangling nets or other methods which may be proven to be safe and effective in the future.

* * * * *

4. It is proposed to further amend § 17.84(d)(3)(i) by removing the last two sentences.

5. It is proposed to revise the first sentence of § 17.84(d)(3)(ii) to read as follows:

* * * * *

(d) * * *

(ii) All animals to be translocated will be transported direcly to the translocation zone or held in specially constructed holding facilities prior to their movement to the translocation zone. * * *

* * * * *

6. It is further proposed to amend § 17.84(d)(3)(ii) by removing the last sentence.

7. It is proposed to revise § 17.84(d)(3)(iii) to read as follows:

* * * * *

(d) * * *

(3) * * *

(iii) *Release.* The animals will be released directly into the wild from their transport cages, or held for up to 5 days in secured floating pens at the release site. No more than 10 individuals will be held in any pen, and adult males will be held separately. When held in floating pens the animals will be released passively by opening the floating pens and allowing animals to leave at will.

Dated: August 11, 1988.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–18668 Filed 8–18–88; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Findings on Petitions to List the Louisiana Black Bear, Lower Keys Marsh Rabbit, and Sherman's Fox Squirrel

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of findings on petition.

SUMMARY: The Service announces two 90-day petition findings and two 12-month petition findings for petitions to amend the Lists of Endangered and Threatened Wildlife and Plants. Petitioners have presented substantial information that petitions to list the Louisiana black bear and Sherman's fox squirrel may be warranted. One-year findings are announced on the petitions to list the Louisiana black bear and the lower Keys marsh rabbit. The Service has determined that the actions requested are warranted but precluded by other actions to amend the lists.

DATES: The findings announced in this notice were made during the period from June 1987 to May 1988. Comments and information may be submitted until further notice.

ADDRESSES: Information, comments, or questions regarding the Louisiana black bear petition may be submitted to the Jackson Field Office, U.S. Fish and Wildlife Service, Jackson Mall Office Center, Suite 316, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213 (telephone 601/965–4900, FTS 490–4900). Information, comments, or questions regarding the lower Keys marsh rabbit or Sherman's fox squirrel petitions may be submitted to the Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216 (telephone 904/791–2580, FTS 96–2580). The petitions, findings, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the addresses listed above.

FOR FURTHER INFORMATION CONTACT: Mr. James Stewart at the Jackson, Mississippi, Field Office or Mr. David Wesley at the Jacksonville, Florida, Field Office (telephone numbers are listed above under "**ADDRESSES**").

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended in 1982 (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register.** If the finding is positive, the Service is also required to promptly commence a review of the status of the involved species. All species mentioned here were already under review by the Service when petitioned, and all were listed in a notice of review published September 18, 1985 (50 FR 37958), in category 2 as under consideration for possible addition to the List of Endangered and Threatened Wildlife and Plants.

Section 4(b)(3)(B) of the Act, as amended, requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information, a finding be made within 12 months of the date of receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted, but precluded from immediate proposal by other pending proposals. Section 4(b)(3)(C) requires that petitions for which the action requested is found to be warranted but precluded should be treated as though resubmitted on the date of such finding, i.e. requiring a subsequent finding to be made within 12 months. Such 2-month findings are to be published promptly in the **Federal Register.**

The Service has received and made 90-day findings on the following two petitions:

A petition from Mr. Reed F. Noss was dated November 21, 1987, and received by the Service on November 27, 1987. It requested the Service to list Sherman's fox squirrel, *Sciurus niger shermani,* as a threatened species with critical habitat. Status review for Sherman's fox squirrel was initiated by a notice of review published December 30, 1982 (47 FR 58454). The petition cited a listing in category 2 of the most recent vertebrate notice of review, some status work conducted by the petitioner, and some additional data in the possession of Florida Natural Areas Inventory in support of the action requested.

The petition to list Sherman's fox squirrel was examined by the Service. On the basis of the best scientific and commercial information presently available, the Service determined that this petition presented substantial information indicating that the action requested may be warranted.

A petition dated March C, 1987, from Mr. Harold Schoeffler was received by the Service on March 23, 1987. It requested the Service to list *Ursus americanus luteolus,* the Louisiana black bear. The Service had previously initiated review of the status of the Louisiana black bear in a notice published December 30, 1982 (47 FR 58454). The petition gave a summary of evidence that this subspecies is still extant in two restricted areas in the Tensas River Basin and in the lower Atchafalaya Basin of Louisiana. This range was described as a contraction from an area once covering most of Louisiana and extending into eastern Texas and western Mississippi. A number of threats were indicated to exist, including the threat of interbreeding with black bear stocks introduced within the historic range from Minnesota between 1964 and 1967.

In July 1987 the Service determined that the action requested by this petitioner may be warranted. Notice of the administrative 90-day finding has not previously been published. A 12-month finding has subsequently been made, that the action requested in respect to the Louisiana black bear is warranted but is precluded by work on other species having higher priority for listing. Both findings are reported herewith. The Service wishes to develop further information about the existence and exact status of the subspecies in order to support a rule to propose it for addition to the list of Endangered and Threatened Wildlife and Plants. There is sufficient evidence to justify active continuation of surveys to answer the necessary questions about its status. The Tensas River National Wildlife Refuge has agreed to conduct a survey in the Tensas River basin; and the Louisiana Cooperative Fish and Wildlife Research Unit at Baton Rouge will assist the Service by surveying the remainder of the known current range in the Atchafalaya River basin. Dates for completion of the surveys have not yet been established.

A recent 12-month petition finding has been made on a petition from Ms. Joel L. Beardsley, Mariposa, Florida. Dated April 11, 1985; and received by the Service on April 27, 1985; this petition requested endangered listing for the lower (Florida) Keys marsh rabbit (*Sylvilagus palustris hefneri*). This rabbit is known to occur only in a few locations in the lower (or western) Florida Keys and was stated to have become very scarce in recent years. The petitioner indicated that the limited area it inhabits is jeopardized by development. A 90-day determination that the action requested may be warranted was reported in the **Federal Register** of August 30, 1985 (50 FR 35272), with a notice of review of the status of the marsh rabbit. Previous 12-month findings that the action was considered warranted but precluded by other listing activity were made in 1986 and 1987. The most recent finding is again that the action requested is warranted, but precluded by work on other species having higher priority for listing. The priority in respect to this species has increased, however, with the recent completion of a survey to determine its status.

Section 4(b)(3)(B)(iii) of the Act states that petitioner actions may be found to be warranted but precluded by other listing actions when it is also found that the Service is making expeditious progress in revising the lists. Expeditious progress in listing endangered and threatened species is being made, and is reported annually in the **Federal Register.** The most recent progress report was published on July 7, 1988 (53 FR 25511).

Author

This notice was prepared by Dr. George Drewry, Division of Endangered Species and Habitat Conservation, U.S. Fish and Wildlife Service, Washington, DC. 20240 (703/235–1975 or FTS 235–1975).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

List of Subjects in 50 CFR Part 17

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

Dated: August 11, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–18832 Filed 8–18–88; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 80732–8132]

Regulations Governing the Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA proposes to establish the basic living accommodations acceptable for observers employed by the Federal Government on U.S. tuna vessels and further to establish the minimum adjustments in living arrangements that will be required to accommodate a female observer on a vessel with an all-male crew. NOAA has determined it is necessary to implement minimal standards to address problems that have arisen in the past with the placement of observers and to avoid problems that may arise with the placement of female observers on tuna boats with all-male crews.

DATE: Comments on this proposed rule must be postmarked on or before October 3, 1988.

ADDRESS: Comments should be addressed to E.C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

FOR FURTHER INFORMATION CONTACT: E.C. Fullerton, Regional Director, 213–514–6196.

SUPPLEMENTARY INFORMATION:

Background

Federal employees commonly called "tuna/porpoise observers" serve as biological technicians aboard privately-owned U.S. flag tuna purse seine vessels in the eastern Pacific Ocean which hold certificates of inclusion under the tuna porpoise regulatory program. Fishing trips for these vessels usually range between 500 and 3000 miles from San Diego and last from 45 to 120 days at sea with few or no port stops. These observers are college graduates with majors in biology and an emphasis in marine science or fisheries. They are trained to record data on porpoise safety gear, marine mammals observed in the wild, fishing operations involving porpoise, and the dissection of porpoise that are killed incidentally during fishing.

Since 1976 more than 400 persons have been hired as observers, trained, and placed on more than 950 purse seine fishing trips. In August 1986, NOAA decided not to continue seeking waivers from the Office of Personnel Management which allowed the hiring of only males for positions as observers. This decision was prompted by a complaint alleging sex discrimination by the NMFS Tuna/Porpoise program for not hiring females and a recommendation from NOAA's Office of Civil Rights to hire and place female observers. From the beginning of the tuna/porpoise observer program in the mid-1970s, only men had been hired and placed as observers. The basis for this limited hiring policy stemmed from the nature of the observer's living and work environment, including the fact that all vessels had all-male crews. These conditions persist; but, NOAA believes that, with reasonable adjustments by tuna vessels, women can be placed as observers without violating the personal privacy of either the crew members or the observer.

Objections Raised by the Tuna Fishermen and NMFS Responses

NMFS attempted to place qualified and trained female observers aboard tuna vessels in January 1987. Two women successfully completed trips collecting the data necessary for the porpoise program. After these two placements, preliminary injunctions, issued by the United States District Court in San Diego, enjoined NMFS from placing other female observers. During the placement meetings, in letters, over the telephone, and in the lawsuits filed in court, vessel owners, captains, and crew members raised the following objections to carrying female observers to sea.

1. *Objection:* Due to the shared sleeping and toilet accommodations on board the fishing vessels, the presence of a woman would be an unreasonable invasion of the all-male crew's privacy.

Response: NMFS asserts that the experience to date supports its view that, with reasonable accommodation, a female observer would not invade the personal privacy of crew members, but would, in fact, integrate into the tunaboat routine. This experience consists of two tuna vessel trips which carried NMFS female observers, as well as many observer trips aboard foreign flag fishing vessels conducting operations within the U.S. Exclusive Economic Zone.

2. *Objection:* The protection and indemnity (P&I) insurance would not cover the additional risk of having a woman on the fishing trip.

Response: NMFS already reimburses vessel owners for any additional insurance premiums necessary for P&I insurance covering the observers. Any risks not covered by P&I insurance, such as intentional torts, cannot properly be used as a basis to discriminate against female observers.

3. *Objection:* The presence of a woman on a long fishing trip would be disruptive to the discipline of the crew and would cause friction between crew members.

Response: Experience to date shows that female observers are not disruptive. Furthermore, potentially negative attitudes on the part of male crewmen, male captains, and male owners cannot properly be used as a basis for discrimination.

4. *Objection:* The presence of a women on the vessel would disrupt the social order of the fishermen's families at home.

Response: This assertion is speculative and, if accepted as a concept to justify discrimination, might bar women and individuals of other groups from many jobs they hold throughout society.

5. *Objection:* Ship's officers would be required to relinquish the room they earned as a privilege of their office to a female observer and this degrading of the officers would adversely affect discipline on the vessel.

Response: The vessel owner or the captain has the option to assign an officer's cabin to the observer and berth

the officer elsewhere, but this is not required by the Government and is only one of the options open to the owner. Sharing a one- or divided two-person cabin would be acceptable as would the modification of another area of the vessel to provide sleeping accommodations for the observer. The assertion that displacing an officer from his normally assigned cabin would jeopardize discipline on the vessel has not been substantiated by the experience of the one vessel on which a female observer was given the navigator's cabin for the duration of the trip.

6. *Objection:* The presence of a female observer would alter the crews' practice of showering and changing clothes on the deck after the day's fishing or would invade the crew members' privacy if they continue this practice.

Response: Observers in the past have uniformly stated that crew members have always been either fully or partially clothed while on deck and that they never saw crew members taking showers on the open deck. If this practice does occur on some vessels, it is clearly not a common practice and could be modified.

7. *Objection:* The presence of a female observer cannot help but unduly interfere with commercial fishing operations.

Response: The mere presence of a woman aboard the vessel on an extended trip with an all-male crew has been addressed in response to Objection 3. Regarding the research and observation duties of a female observer, the conduct of these duties will not differ from that of a male observer. All observers are required by regulation (50 CFR 216.24(f)(2)) to carry out their duties in such a manner as to minimize interference with commercial fishing operations. The two vessels that have carried female observers to date did not report any interference with their operations.

Description of the Vessels in the Fleet, Including General Information on the Living Accommodations

There are currently 36 active U.S. flag tuna seiners that hold certificates of inclusion under the American Tunaboat Association General Permit, issued under the Marine Mammal Protection Act, that allow fishing for tuna associated with porpoise in the eastern Pacific Ocean. According to the Federal marine mammal regulations at 50 CFR 216.24(f), all vessels that hold certificates of inclusion are required to accept observers when assigned by the Southwest Regional Director, NMFS.

The vessels vary in size, age, and in configuration of the living accommodations. The smallest certificated vessel has a carrying capacity of about 500 tons and the largest vessels have capacities of between 1200 and 1400 tons. Crew size also varies, ranging from 15 to 23 officers and crew.

Crew bunks are commonly arranged in four-person cabins, although some vessels have two-, six- or eight-person cabins. Typically, each bunk is equipped with a reading light and curtains, which can be pulled for privacy. Crew members sleep and dress in the cabin to which they are assigned. Shower and toilet facilities may be available to each crew cabin or may be shared by two or more cabins, depending on the vessel layout.

The captain has his own cabin, which usually includes a private front room, bedroom, and bathroom with a shower and toilet. Navigators and chief engineers usually also have a one person sleeping room with separate shower and toilet facilities, though the shower and toilet facilities may be shared with other cabins. Some vessels have several semi-private cabins, many of which are equipped with private showers and toilets.

Living Arrangements Afforded Observers in the Past

Most of the vessels provide standard crew accommodations for the assigned observer. That accommodation is a bunk in a two-, four-, six-, or eight-bunk cabin. A few vessels have not provided regular crew accommodations, but have assigned the observer to sleep on the floor of a shared one bunk cabin or in the ship's card room on a padded bed or "futon" that folds up into a chair during the day. Among the more than 950 trips made by observers, a few observers have slept on a futon on the floor of a multiple bunk cabin, but this arrangement provides the observer with no privacy and crowds the crew's cabin. At least one male observer has had private use of an owner's stateroom with a living room, bedroom and private bathroom.

Two female observers made trips aboard tuna vessels early in 1987. Both observers were successful in completing all their data collection duties and neither reported any difficulties with the ship's crew of officers. One of the women shared a cabin and adjacent toilet and shower with the navigator, sleeping on a futon on the floor, which was the same arrangement that had been made for male observers in the past on that vessel. The manager of the vessel carrying the other female observer chose to move the vessel's navigator out of his cabin, which included a private toilet and shower. That cabin was designated as private and for exclusive use of the observer for the duration of the voyage.

Proposed Requiremens for Living Accommodations for Government Observers Aboard U.S. Flag Tuna Vessels

In order to ensure that Government observers aboard U.S. flag tuna vessels are provided suitable living accommodations that will not hinder them in their performance of official duties nor unduly disrupt vessel operations, NMFS proposes to amend 50 CFR 216.24(f) to set minimum standards for such accommodations. The proposed amendment would require that all observers be provided sleeping, toilet and eating accommodations at least equivalent to a full crew member. A mattress or futon on the floor or a cot would not be acceptable replacement for a regular bunk. Meals and other galley privileges must be the same for the observer as for other crew members.

NMFS believes that it is not unreasonable to require standard crew member accommodations for observers because the program has been requiring that these vessels carry observers on a sample of their fishing trips since 1976. Further, the schedule for placing observers is announced well in advance of the actual trip and, under the current schedule, a vessel owner can predict that an observer will be placed on each alternate trip of his vessel. Finally, NMFS reimburses the vessel owner for the costs of providing the observer with living accommodations and food during the trip. For these reasons, the vessel owner is expected to plan for adequate space and provisions for the assigned observer.

For female observers, additional adjustments to toilet, shower, and sleeping accommodations would be required under the proposed regulation. Female observers on a vessel with an all-male crew must be provided a bunk either in a single-person cabin or in a two-person cabin shared with a licensed officer of the vessel if reasonable privacy can be ensured by installing a curtain or other temporary room divider. If the cabin assigned to the female observer does not have attached toilet and shower facilities that can be provided for the exclusive use of the observer, then a schedule for time-sharing common facilities must be established before the placement meeting and approved by NMFS and must be adhered to during the entire

trip. In the event there are one or more female crew members, the female observer may be provided a bunk in a cabin shared solely with female crew members, and provided toilet facilities shared solely with these female crew members.

The proposed amendment to the regulations also provides vessel owners with an all-male crew a procedure for seeking an exemption from carrying female observers, under explicit criteria. Under the proposal, the Southwest Regional Director of NMFS may grant an exemption from the requirement to carry female observers if the vessel owner demonstrated the following:

1. The vessel will have an all-male crew; and

2. The vessel has fewer than two private (single-person) and semi-private (two-person) cabins in total, excluding the captain's cabins; and

3. A curtain or other temporary room divider cannot be installed in any of the private or semi-private cabins (excluding the captain's cabin) to provide reasonable privacy; and

4. There are no other areas (excluding the captain's cabin) that can be converted to a sleeping room without either significant expense or significant sacrifice to the crew's quarters. A vessel with two or more private or semi-private cabins, in addition to the captain's cabin, cannot qualify for an exemption and must carry an assigned observer regardless of gender. The exemption criteria do provide that the vessel certificate of inclusion holder can qualify for the exemption without having to provide the captain's cabin for the observer.

Application for an exemption must be made by the vessel certificate of inclusion holder (or the owner in the case of a new applicant for a vessel certificate of inclusion) in writing to the Southwest Regional Director when applying for the vessel certificate of inclusion. An accurate diagram of the vessel's living area, and other areas possibly suitable for sleeping, is required to be provided. Additional documents, such as conversion cost estimates, and an inspection of the vessel may be required to substantiate that the vessel does meet the criteria for granting an exemption. An exemption, once granted, is valid for the calendar year which coincide with the period that the certificate of inclusion is valid. Exemptions must be renewed annually to remain valid. The vessel certificate of inclusion holder is responsible for reporting to the Regional Director any modifications to the vessel which may affect the continued eligibility for an exemption. Upon reasonable notice, NMFS may inspect a vessel holding an exemption to determine whether the critieria for an exemption are still satisfied. The Regional Director will revoke an exemption if the exemption criteria are no longer met.

Alternative Accommodation Requirements Considered But Not Proposed

Before arriving at the proposed requirements for accommodating observers, NMFS considered several other options which are discussed below.

1. Continue the current policy of requiring no special arrangements for female observers beyond those for males. This policy has left to the vessel owner and captain the full range of options for adapting their vessel and crew to the presence of male or female observers. The Government has suggested, but not required, some minor adjustments to shipboard life that would avoid conflict that might arise from having a female observer aboard a vessel with an all male crew. Two women were placed as observers under this policy. One was given a private cabin with toilet and shower facilities that was customarily assigned to the navigator. The navigator shared a cabin with another crew member. The other female observer slept on a futon in the navigator's cabin and shared the adjacent toilet and shower facilities with the navigator. Neither trip resulted in any problematic incidents and the observers successfully performed their data collection duties. NMFS is not proposing to establish this current policy in the regulations because it leaves too much uncertainly among vessel owners and operators regarding the agency's expectations for accommodating observers on the vessels. The current policy also does not provide a structured procedure or explicit criteria for obtaining an exemption from taking a female observer.

2. Require that the female observer must be provided a private cabin or a two-person cabin shared only by another woman. The question has been raised whether it is appropriate to require female observers to share sleeping accommodations with male crew members as a condition of employment and vice versa. This alternative rule would provide the observer and crew with the greatest privacy. Such a requirement would afford female observers equivalent living accommodations to male observers because neither would be expected to share sleeping or toilet/shower areas with the opposite sex. The privacy of crew members would likewise be preserved as much as possible. Under this approach, at least one officer of the vessel would be displaced from the cabin, which is customarily assigned to that office. All vessels in the fleet have separate cabins for the captain. It was not considered that the captain be required to surrender his cabin to an observer. Many vessels also have one- or two-person cabins for the navigator and chief engineer. Under this option, these cabins would be subject to being assigned to a female observer. A few vessels have a cabin reserved for the vessel owner and these cabins could be assigned to a female observer when the owner does not accompany the vessel. This policy would reduce the available sleeping spaces on some vessels.

3. Require only vessels with unassigned private cabins to carry female observers. This alternative would reduce the number of vessels to one or two that would be required to accept female observers. Essentially only those vessels that have an owner's cabin would be considered. If two vessels were so equipped and made an average of four trips per year, we would expect to place observers on half of the trips which would be four observed trips. Even if these vessels were required to carry female observers exclusively, that would provide jobs for only about two women in the program at a time. Further, the sampling plan for estimating porpoise mortality calls for observers to be cycled through the fleet and not returned to the same vessel if possible to avoid bias in our estimate.

4. Require that the vessel construct a new private sleeping area for the observer if space does not exist currently on the vessel which can be modified at a reasonable cost for use by the observer. This alternative has been researched by inquiring of a local marine surveyor what the approximate cost of a secure seaworthy cabin addition to an existing vessel would be. The estimated significant expense of adopting this option dissuaded NMFS from requiring construction of new space.

Classification: NMFS has prepared an environmental assessment (EA) as a part of developing this proposed rule and initially determined that there will be no significant impact on the environment as a result of this rule. A copy of the EA is available upon request (see ADDRESS).

The Under Secretary of NOAA has determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The present action will not have a cumulative effect on the economy of $100 million or more, nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant

adverse effects on competition, employment, investments, productivity, innovation, or competitiveness of U.S.-based enterprises are anticipated.

The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small businesses. There are currently 36 tuna purse seine vessels that would be subject to this rule and the individual business's cost to comply with the proposed requirements would be minimal. For the most part, the cost would involve placement of a temporary room divider or, at most, the installation of one additional bunk on some vessels. Therefore, a regulatory flexibility analysis was not prepared.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act (PRA). Information will be required to be submitted by vessel certificate of inclusion holders who choose to apply for an exemption that would allow them to carry only male observers. The information collection requirements in this rule have been submitted for review to the Office of Management and Budget under section 3504(h) of the PRA.

Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the National Marine Fisheries Service (F/PR1), Washington, DC 20235; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

This rule does not directly affect the coastal zone of any state with an approved coastal zone management program.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Date: August 16, 1988.

James W. Brennan,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, NOAA proposes to amend 50 CFR Part 216 as follows:

PART 216—[AMENDED]

1. The authority citation for 50 CFR Part 216 continues to read as follows:

Authority: 16 U.S.C. 1361–1407.

2. Section 216.24 is amended by adding new paragraphs (f)(6) and (f)(7) to read as follows:

§216.24 Taking and related acts incidental to commercial fishing operations.

* * * * *

(f) * * *

(6)(i) All observers must be provided sleeping, toilet, shower, and eating accommodations at least equal to that provided to a full crew member. A mattress or futon on the floor or a cot is not acceptable in place of a regular bunk. Meals and other galley privileges must be the same for the observer as for other crew members.

(ii) Female observers on a vessel with an all-male crew must be accommodated either in a single-person cabin or, if reasonable privacy can be ensured, by installing a curtain or other temporary divider in a two-person cabin shared with a licensed officer of the vessel. If the cabin assigned to a female observer does not have its own toilet and shower facilities that can be provided for the exclusive use of the observer, then a schedule for time-sharing common facilities must be established before the placement meeting and approved by NMFS and must be followed during the entire trip.

(iii) In the event there are one or more female crew members, the female observer may be provided a bunk in a cabin shared solely with female crew members, and provided toilet and shower facilities shared solely with these female crew members.

(7)(i) A vessel certificate of inclusion holder (or vessel owner in the case of a new application) may seek an exemption from carrying a female observer on a vessel by applying to the Southwest Regional Director when applying for the vessel certificate of inclusion (or in 1988 within 30 days of the effective date of these regulations) and establishing the following:

(A) The vessel will have an all-male crew; and

(B) The vessel has fewer than two private (one-person) and semi-private (two-person) cabins in total (excluding the captain's cabin); and

(C) A temporary divider such as a curtain cannot be installed in the private or simi-private cabin (excluding the captain's cabin) to provide reasonable privacy; and

(D) There are no other areas (excluding the captain's cabin) that can be converted to a sleeping room without either significant expense or significant sacrifice to the crew's quarters.

(ii) The exemption criteria can be met without having to provide the captain's cabin for the observer.

(iii) The application for an exemption must also include an accurate diagram of the vessel's living areas, and other areas possibly suitable for sleeping. Additional documentation to support the application may also be required, as may an inspection of the vessel.

(iv) The exemption, once granted, is valid for the same calendar year as the vessel certificate of inclusion, and the exemption must be renewed annually to remain valid.

(v) The vessel certificate of inclusion holder is responsible for reporting to the Regional Director any changes aboard the vessel within 15 days of the change which might affect the continued eligibility for an exemption. The Regional Director will revoke an exemption if the criteria for an exemption are no longer met.

* * * * *

[FR Doc. 88-18843 Filed 8-16-88; 3:16 pm]
BILLING CODE 5510-22-M

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50 CFR Part 672

[Docket No. 80745-8145]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: The Secretary of Commerce (Secretary) has determined that the definition for directed fishing in the regulations at § 672.2 is inappropriate to the sablefish hook-and-line fishery in the Gulf of Alaska. The Secretary proposes, therefore, to amend this definition to define such fishing more accurately. Three other regulatory changes are proposed, which remove unnecessary material and also improve regulatory implementation. The intent of this rule is to clarify the regulations.

DATE: Comments are invited until September 19, 1988.

ADDRESS: Send comments to James W. Brooks, Acting Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802. Copies of

the environmental assessment/regulatory impact review (EA/RIR) may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Biologist NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the exclusive economic zone (EEZ) of the Gulf of Alaska are managed under the Fishery management Plan for Groundfish of the Gulf of Alaska (FMP). The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations for the foreign fishery at 50 CFR Part 611, Subpart A and § 611.92, and for the U.S. fishery at 50 CFR Part 672.

This rule proposes the following four changes to regulations that implement the FMP: (1) The definition of directed fishing for sablefish with hook-and-line gear would be amended to reduce the percentage criterion for directed fishing from 20 percent to 4 percent; (2) definitions of the Central Southeast Outside and Southeast Inside Districts would be deleted; (3) the reference to the component of domestic annual processing (DAP) that is designated as domestic non-processed (DNP) fish in the processor and purchaser reporting requirements would be eliminated, and (4) a starting time of 12:00 noon would be established for the sablefish hook-and-line fishery. Reasons for the changes are as follows:

1. The definition of directed hook-and-line sablefish fishing would reduce the percentage criterion for directed fishing from 20 percent to 4 percent.

One of the groundfish species managed under the FMP is sablefish, which is important to U.S. fishermen. The annual harvest quota, or total allowable catch (TAC), for this species is further allocated among fishermen using trawl, pot, and hook-and-line gear. Most of the sablefish TAC is allocated to fishermen using hook-and-line gear. Sablefish are also caught incidentally in other target fisheries.

Incidental catches are commonly referred to as bycatches. As with other groundfish species, bycatches of sablefish up to 20 percent of the total amount of groundfish catch have been allowed during times when the directed fishery was closed as long as the definition of directed fishing § 672.2 was not violated. Directed fishing is defined as fishing that is intended or can be reasonably expected to result in the catching, taking, or harvesting of quantities of any groundfish that amount to 20 percent or more of the catch, take, or harvest, or to 20 percent or more of the total amount of fish or fish products on board at any time. However, NMFS has found that the actual bycatch rate of sablefish in other groundfish fisheries is less than 4 percent and that the definition of directed fishing should be amended to reflect actual fishing practices. As a result of a recommendation made by the Council at its January 20–22, 1988, meeting, the Secretary published an emergency rule (53 FR 7938, March 11, 1988) and later extended it through September 5, 1988 at 53 FR 21649, (June 9, 1988) that redefined directed fishing with respect to sablefish in the hook-and-line fishery. The emergency rule defined directed fishing for sablefish caught with hook-and-line gear as the harvest of quantities of sablefish that amounted to 4 percent, rather than 20 percent, of the total groundfish harvest. The Council made the recommendation because allowance of up to 20 percent bycatch of high-valued sablefish could encourage fishermen to target on sablefish in other hook-and-line fisheries during periods when the directed sablefish fishery is closed. Covert targeting is inconsistent with the Council's intention for the management of sablefish. Full explanation underlying the Council's recommendation and the Secretary's action is provided in the preamble to the emergency rule.

When the Council made its recommendation, it reflected on whether it had intended that sablefish should be retained as bycatch by hook-and-line gear prior to a directed fishing season when it adopted the April 1 starting date for this fishery and when it made assignments of sablefish to gear types in Amendment 14 to the FMP (see 50 FR 43193, October 24, 1985). Although the Council determined that it had not specifically addressed whether sablefish should be retained as bycatch at all in other hook-and-line fisheries, it did affirm, after receiving recommendations from NMFS, that a bycatch between 1 and 5 percent was realistic, and that it did not intend that the bycatch should be as high as was permissible prior to the emergency rule.

At that time, the Council also requested the Secretary to replace the emergency rule with a regulatory amendment to remedy this problem in future seasons. At its April 13–15, 1988, meeting, the Council reviewed the draft regulatory amendment that NMFS had prepared, adopted the NMFS recommendation that 4 percent criterion be used to define fishing for sabelfish in the hook-and-line fishery, and voted to recommend that the Secretary implement the regulatory amendment.

The Secretary, in reviewing this problem, has determined that the original definition for directed fishing in the regulations should be amended as requested. He therefore proposes to amend § 672.2 to redefine directed fishing for sablefish with hook-and-line gear.

To take no action would undermine NMFS's intended management of the hook-and-line sablefish fishery, as authorized under § 672.24(3)(i). Under this paragraph, NMFS intends to limit the directed hook-and-line sablefish harvest to an amount that would leave an appropriate amount as bycatch to support other hook-and-line fisheries when the directed sablefish season in each of the management areas of the Gulf of Alaska is closed. If fishermen are allowed to continue to harvest up to 20 percent of sablefish as a bycatch when the directed fishing season is closed, it is unlikely that sufficient bycatch amounts would last for the remainder of the year. Then, under § 672.24(3)(ii), any additional amounts of sablefish would have to be treated as a prohibited species and discarded at sea for the remainder of the year. Such treatment is a waste of a valuable resource, which otherwise could be landed in a future year's fishery, to the benefit of the industry.

A more realistic bycatch rate was determined by NMFS following a review of 1987 domestic fishing data. Actual catches (see Table 1 in the EA/RIR) with hook-and-line gear of sablefish, Pacific cod, and various rockfish species were examined for the period prior to April 1, when the directed sablefish fishery opened, and after September 30, after sablefish from the September 21–23 opening in the Southeast Outside/East Yakutat District (SE/EYK) had been landed. These periods were selected to exclude landings from the directed sablefish fishing seasons. The overall sablefish bycatch rate was less than 1 percent in all cases except for an overall rate of 14.2 percent in the SE/EYK district after September 30. NMFS finds that the true bycatch rates are small, usually less than 1 percent, and contends that the high rate of 14.2 percent was the result of covert targeting on sablefish.

Since fishermen will have opportunity to harvest sablefish during the open sablefish season, their potential earnings will not be adversely affected. Even though a bycatch percentage less than 1 percent could probably be justified empirically, the Secretary

proposes 4 percent to accommodate those occasions when a fisherman might inadvertently catch a few more sablefish as a true bycatch, and allow retention rather than waste such a minor catch; this accommodation is in the public interest and is still in keeping with Council objectives.

2. The definitions of the Central Southeast Outside and Southeast Inside Districts would be deleted.

Definitions at § 672.2 for the Central Southeast Outside District (CSEO) and the Southeast Inside District exist but serve no purpose. Alaska uses three divisions of the Southeast Outside District, of which the CSEO district is one, for purposes of managing demersal shelf rockfish as provided for by the FMP. Its present inclusion is not needed for Federal management. Since the Southeast Inside District lies entirely within the waters of the State of Alaska, its definition is not needed in Federal regulations at § 672.2.

3. Reference to the component of domestic annual processing (DAP) that is referred to as domestic non-processed (DNP) fish in the processor and purchaser reporting requirements would be eliminated.

The FMP had included bait as a component of DAP, referred to as "domestic non-processed" or DNP. Amendment 11 (48 FR 43044, September 21, 1983) to the FMP deleted this component, combining its numerical equivalents with DAP, because DNP served no worthwhile purpose. Reference to this component still appears at § 672.5(b)(3)(v), which pertains to information requested of processors and purchasers of fish. This rule proposes to eliminate the references to DNP in that section. This is a technical amendment.

4. A starting time of 12:00 noon would be established for the sablefish hook-and-line fishery.

The current starting time for the hook-and-line sablefish fishery is 0001 hours, i.e., one minute after midnight. A nighttime starting time imposes unacceptable problems for fishermen. Aggregations of boats working in close proximity to each other in the dark create gear conflicts and unsafe working conditions. Also, a few fishermen may elect to fish early under cover of darkness prior to the official starting time, and thus take an unfair advantage over those fishermen who obey the regulations. The Secretary, therefore, proposes to set 12:00 noon local time as the official starting time, thereby preventing the above problems.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary for the conservation and management of the sablefish fishery in the Gulf of Alaska and that it is consistent with the Magnuson Act and other applicable law.

The Alaska Region, NMFS, prepared an EA for this rule and the Assistant Administrator for Fisheries concluded that no significant MRM impact on the environment will occur as a result of this rule. You may obtain a copy (see **ADDRESS**).

The Under Secretary for NOAA determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the socioeconomic impacts discussed in the EA/RIR.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. Recent scientific research indicates that a 4 percent sablefish bycatch rate would better conform to actual fishing experience than the existing 20 percent rate, and would not, therefore, significantly affect industry operations or catch rates for those who targeted sablefish, only when directed fishing was authorized. The adjustment would help assure that a maximum amount of fish is available for directed fishing on other species. All other management actions proposed are housekeeping in nature and would have no effect on fishing operations or costs to industry.

This rule does not contain a collection information requirement subject to the Paperwork Reduction act.

NOAA has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 672

Fisheries.

Dated August 16, 1988.

James W. Brennan,

Assistant Administrator For Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, Part 672 is proposed to be amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for Part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.2, in the introductory text of the definition for MRM *Regulatory District,* the word "four" is revised to read "the three', paragraphs (1) and (2) are removed, and paragraphs (3), (4), and (5) are redesignated (1), (2), and (3), respectively; also in § 672.2, the definition for *Directed fishing* is revised to read as follows:

§ 672.2 Definitions.

* * * * *

Directed fishing means (1) with respect to any species, stock, or other aggregation of fish, other than sablefish caught with hook-and-line gear, fishing that is intended or can reasonably be expected to result in the catching, taking, or harvesting of quantities of such fish that amount to 20 percent or more of the catch, take, or harvest, or 20 percent or more of the total amount of fish, or fish products on board at any time. It will be a rebuttable presumption that, when any species, stock, or other aggregation of fish comprises 20 percent, or more of the catch, take, or harvest, or 20 percent or more of the total amount of fish or fish products on board at any time, such fishing was directed to fishing for such fish; or

(2) With respect to sablefish caught with hook-and-line gear, fishing that is intended or can reasonably be expected to result in the catching, taking, or harvesting of quantities of sablefish that amount to 4 percent or more of the catch, take, or harvest, or 4 percent or more of the total amount of groundfish or groundfish products on board at any time. It will be a rebuttable presumption that, when sablefish comprises 4 percent, or more of the catch, take, or harvest, or 4 percent or more of the total amount of fish or fish products on board at any time, such fishing was directed to fishing for sablefish.

* * * * *

§ 672.5 [Amended]

3. In § 672.5(b)(3)(v), the words "and domestic non-processed fish (DNP)" are removed.

4. Section 672.23 is amended by revising paragraph (b) to read as follows:

§ 672.23 Seasons.

* * * * *

(b) Directed fishing for sablefish in the regulatory areas and districts of the Gulf of Alaska is authorized for hook-and-line gear from 12:00 noon Alaska local time on April 1 through December 31 and for pot gear from MRM April 1, through December 31, subject to other provisions of this part.

[FR Doc. 88-18809 Filed 8-16-88; 12:47 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 53, No. 161
Friday, August 19, 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.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Proposed Determinations With Regard to the 1989 Program for Extra Long Staple Cotton Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of proposed determinations.

SUMMARY: The Secretary of Agriculture proposes to make the following determinations with respect to the 1989 crop of extra long staple (ELS) cotton: (a) Whether an acreage reduction program should be implemented and, if so, the percentage reduction under such acreage reduction program and (b) other related determinations. These determinations are to be made in accordance with the Agricultural Act of 1949, as amended, (the "1949 Act").

DATE: Comments must be received on or before September 19, 1988, in order to be assured of consideration.

ADDRESS: Director, Commodity Analysis Division, USDA–ASCS, Rm. 3741 South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, Leader, Fibers Group, Commodity Analysis Division, USDA–ASCS, Room 3758 South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447–7954. The Preliminary Regulatory Impact Analysis describing the options considered in developing these proposed determinations is available on request from the aforementioned individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "non major" since the proposed provisions are 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 U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The titles and numbers of the Federal assistance programs to which this notice applies are: Title—Cotton Production Stabilization, Number 10.052 and Title—Commodity Loans and Purchases, Number 10.051, as found in the Catalog of Federal Domestic Assistance.

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

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

It is necessary that the determinations for the 1989 crop of ELS cotton be made in sufficient time to permit ELS cotton producers to make plans for the production of their crop. Therefore, comments with respect to the following proposed determinations must be received by September 19, 1988, in order to allow the Secretary an adequate period to consider the comments before making the program decisions.

Proposed Determinations

a. *Acreage Reduction Program.* Section 103(h)(8)(A) of the 1949 Act provides that, with respect to the 1989 crop of ELS cotton, if the Secretary determines that the total supply of ELS cotton, in the absence of an acreage reduction program (ARP), will be excessive, taking into account the need for an adequate carryover to maintain reasonable and stable prices and to meet a national emergency, the Secretary may provide for an ARP. Such reduction shall be achieved by applying a uniform percentage reduction of the acreage base for each ELS-cotton-producing farm. Producers who knowingly produce ELS cotton in excess of the permitted ELS cotton acreage shall be ineligible for ELS cotton loans and payments with respect to that farm. The acreage base for any farm for the purpose of determining any reduction required to be made for any year as the result of an ARP shall be the average acreage planted on the farm to ELS cotton for harvest in the three crop years immediately preceding the year prior to the year for which the determination is made. For the purpose of determining the acreage base, the acreage planted to ELS cotton for harvest shall include any acreage which producers were prevented from planting to ELS cotton or other nonconserving crops in lieu of ELS cotton because of drought, flood, or other natural disaster or other condition beyond the control of the producers. The Secretary may make adjustments to reflect established crop-rotation practices and to reflect such other factors as the Secretary determines necessary to establish a fair and equitable base. A number of acres on the farm determined by dividing (a) the product obtained by multiplying the number of acres required to be withdrawn from the production of ELS cotton times the number of acres actually planted to ELS cotton, by (b) the number of acres authorized to be planted to ELS cotton in accordance with the acreage reduction established by the Secretary, shall be devoted to approved conservation uses in accordance with regulations issued by the Secretary. If an ARP is in effect for the 1989 crop of ELS cotton, the national program acreage, program allocation factor, and voluntary reduction provisions of section 103(h) of the 1949 Act will not be applicable to such crop. The individual farm program acreage shall be the acreage planted on the farm to ELS cotton for harvest within the permitted ELS cotton acreage established for the farm under the ARP.

The need for an ARP for the 1989 crop of ELS cotton will depend upon the projected level of ending stocks for the 1988–89 marketing year and the likely demand for ELS cotton in 1989–90. Estimates as of July 1988 indicate that production may slightly exceed utilization in 1988–89, resulting in ending stocks of an estimated 60,000 bales. Demand for the 1989–90 season is projected to increase primarily due to a

strong export market and producers' response to prices. As of July 1988, the production increase is projected to outweigh the increase in use; therefore, some reduction in production may be needed to keep stocks from increasing above the desirable level of 65,000 bales. Options under consideration at this time include a 5-percent ARP and a 10-percent ARP. However, future developments in weather conditions, market trends and projections of supply and use could affect the suitability of various production adjustment programs. Options considered at the final determination stage may vary depending upon conditions in existence and information available at that time.

Interested persons are encouraged to comment on whether an ARP should be implemented for the 1989 crop of ELS cotton, and, if so, the appropriate percentage level of such reduction.

b. *Other Related Provisions.* A number of other determinations must be made in order to carry out the ELS cotton loan program such as: (1) Commodity eligibility; (2) micronaire discounts; (3) loan levels for the individual qualities of 1989-crop ELS cotton; and (4) such other provisions as may be necessary to carry out the program.

Consideration will be given to any data, views and recommendations that may be received relating to the above items.

Authority: Sec. 103(h) of the Agricultural Act of 1949, as amended, 97 Stat. 494 (7 U.S.C. 1444(h)).

Signed at Washington, DC on August 9, 1988.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 88-18788 Filed 8-18-88; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Proposed Extension, Rio Verde Drive; Tonto National Forest, Maricopa County, AZ; Environmental Impact Statement Cancellation Notice

Maricopa County Highway Department Officials have withdrawn their proposal to study highway access routes across National Forest Lands linking the Phoenix Metropolitan Area with Arizona State Highway 87.

The Notice of Intent, published in the **Federal Register** on February 5, 1987, is hereby rescinded (45 FR 54386).

For further information contact: Berwyn L. Brown, Environmental Coordinator, Tonto National Forest, P.O. Box 5348, Phoenix, Arizona 85010; telephone 602-255-5200.

Dated: August 10, 1988.

James L. Kimball,

Forest Supervisor.

Dated: August 10, 1988.

[FR Doc. 88-18815 Filed 8-18-88; 8:45 am]

BILLING CODE 3410-11-M

Supplement to Draft Environmental Impact Statement for Land and Resource Management Plan of the Wallowa-Whitman National Forest of Pacific Northwest Region

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare supplement to draft environmental impact statements for Wallowa-Whitman National Forest.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Department of Agriculture, Forest Service, will prepare a supplement to the draft environmental impact statement (EIS) on Land and Resource Management Plan for Wallowa-Whitman National Forest in Pacific Northwest (Oregon and Washington). The purpose of the supplement is to present for public review and comment additional information that was not included in the draft EISs and proposed plan. The agency invites written comments on the scope of this supplemental analysis. In addition, the agency gives notice of this analysis that will occur so that interested and affected people are aware of how they may participate and contribute to the final decision.

FOR FURTHER INFORMATION CONTACT: Questions and comments about these supplements should be directed to Tom Nygren, Director of Planning, P.O. Box 3623, Portland, OR 97208; Phone (503) 221-2387.

SUPPLEMENTARY INFORMATION: The supplement to the draft EIS for the Wallowa-Whitman National Forest is expected to be published in September 1988. The information to be presented in a supplement includes a "No Change Alternative" and the background and analysis of management requirements used in developing the alternatives. Also included will be information on the Upper Grande Rhonde and Beaver Creek Roadless Areas. The information was developed because of needs identified since the draft EISs were published and in response to decisions regarding two administrative appeals by the Northwest Forest Resource Council. (1) Filed on May 19, 1986 centered on direction by the Regional Forester to require inclusion of management requirements for protection and management of natural resources such as wildlife habitat, in the No Action Alternative for each forest plan. (2) Filed on September 18, 1986 centered on direction from Regional Forester to incorporate management requirements into forest plan alternatives.

Dated: August 8, 1988.

James F. Torrence,

Regional Forester.

[FR Doc. 88-18816 Filed 8-18-88; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Delaware Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Delaware Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 3:15 p.m. on September 15, 1988, in Conference Room A of the Carvel State Office Building, 820 North French Street, Wilmington, Delaware. The purpose of the meeting is to orient the new members of the Committee, enable the Committee to discuss and act upon the draft of a summary report, Legal Assistance Available to Minority Prisoners, hear a Committee member discuss the status of special education, and decide upon a project for its next activity.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Henry A. Heiman (302/658-1800) or John I. Brinkley, Director of the Eastern Regional Division at (202/523-5264; TDD 202/376-8117.) Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 15, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-18817 Filed 8-18-88; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Members of the Bureau of the Census Performance Review Board

The following individuals will serve as members of the Bureau of the Census Performance Review Board:

(1) Bryant Benton
(2) William P. Butz
(3) Charles D. Jones
(4) C.L. Kincannon
(5) Roland H. Moore
(6) Charles A. Waite
(7) Katherine K. Wallman

Date: August 15, 1988.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 88-18831 Filed 8-18-88; 8:45 am]

BILLING CODE 3510-07-M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Limited Entry Ad Hoc Committee will convene a public meeting on September 1, 1988, at 10 a.m., at the National Marine Fisheries Service, Northwest Region Conference Room, 7600 Sand Point Way, NE., Seattle, WA, to review its report to the Pacific Council. The report will present options to unsettled Committee issues, and will respond to the Pacific Council's advisory entities' comments.

For further information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metrol Center, 2000 SW. First Avenue, Suite 420, Portland, OR 97201; telephone: (503) 221-6352.

Date: August 15, 1988.

Richard H. Schaefer,

Director, Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-18881 Filed 8-18-88; 8:45 am]

BILLING CODE 3510-22-M

National Telecommunications and Information Administration

Senior Executive Service: Performance Review Board; Membership

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the National Telecommunications and Information Administration Senior Executive Service (SES) Performance Appraisal System:

Dennis R. Connors
Larry Eads
David Farber
William D. Gamble
Harold G. Kimball
Robert J. Mayher
Richard D. Parlow
Charles M. Rush
Roger K. Salaman
Neal B. Seitz
William F. Utlaut

Edward A. McCaw,

Executive Secretary, National Telecommunications and Information Administration, Performance Review Board.

[FR Doc. 88-18784 Filed 8-18-88; 8:45 am]

BILLING CODE 3510-60-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1988 commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: September 19, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: E.R. Alley, Jr., (703) 557-1145.

SUPPLEMENTARY INFORMATION: On June 10, June 17, June 24, and July 1, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (53 FR 21885, 22688, 23782, 24992) of proposed additions to Procurement List 1988, December 10, 1987 (52 FR 46926).

After consideration of the relevant matter presented, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to Procurement List 1988:

Commodities

Filter, Air Conditioning
4130-00-870-8796
4130-00-720-4143
4130-00-542-4482
4130-00-756-0978
4130-00-541-3220
4130-00-203-3318
4130-00-959-4734
4130-00-951-1208
(GSA Regions 1, 2, 3, W, 6, 7, 8, 9, and 10)
4130-00-274-7800
4130-00-249-0966
4130-00-756-1840
4130-00-203-3321
(GSA Region 1 only)
Cover, Generator Set
6115-00-960-2703
6115-00-945-7545

Services

Janitorial/Custodial, National Institute for Occupational Safety and Health, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio
Janitorial/Custodial, U.S. Courthouse and Customhouse, 1716 Spielbusch Avenue, Toledo, Ohio.

E.R. Alley, Jr.,

Acting Executive Director.

[FR Doc. 88-18851 Filed 8-18-88; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1988; Proposed Additions and Deletion

AGENCY: Committee for Purschase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to and Deletion from Procurement List.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1988 commodities to be produced and services to be provided by workshops for the blind and other severely handicapped.

Comments Must Be Received on or Before: September 19, 1988.

ADDRESS: Committee for Purschase from the Blind and Other Severely

Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: E.R. Alley, Jr., (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1988, December 0, 1987 (52 FR 46926).

Commodities

Frame, Picture, Walnut
7105–01–282–0630
7105–01–282–0631
7105–01–282–0632
7105–01–282–0633
Cloth, Lint Free
7930–00–NSH–0003 (w/o Lanyard)
7930–00–NSH–0004 (w/ Lanyard)
Requirements for Charleston Naval Supply Center, Charleston, South Carolina only)
Case, Map and photograph; 8460–00–368–4281

Services

Janitorial/Custodial U.S. Courthouse, 300 Ala Moana Boulevard, Honolulu, Hawaii
Mailing Service, Department of the Treasury, Bureau of Public Debt, Parkersburg, West Virginia
Mailroom Service, Defense Logistics Agency—DCASR, 495 Summer Street, Boston, Massachusetts

Deletion

It is proposed to delete the following service from Procurement List 1988, December 10, 1987 (52 FR 46926): Janitorial/Custodial, Officer's Open Mess, Building 542 and NCO Open Mess, Building 956, Robins Air Force Base, Georgia.

E.R. Alley, Jr.

Acting Executive Director.

[FR Doc. 88–18852 Filed 8–18–88; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

National Guard Bureau; Availability of an Environmental Impact Statement (EIS)

AGENCY: National Guard Bureau, DOD/ Idaho Military Division, Idaho National Guard.

ACTION: Notice of availability of an environmental impact statement; proposed mission expansion/multiple construction at Orchard Training Area, Idaho.

Background

Orchard Army National Guard Training Area is located on public domain land under the control of the Bureau of Land Management (BLM). It is a federally funded, state operated installation under a Memorandum of Understanding between the Governor of Idaho and the Boise District BLM. Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Guard Bureau and the Idaho Military Division have, acting as co-lead agencies, prepared a Final Environmental Impact Statement (EIS) on the proposed master plan construction and mission expansion at Orchard Training Area, Idaho. On December 11, 1986, a Notice of Intent to prepare an Environmental Impact Statement was published in the **Federal Register**. A scoping meeting (in accordance with the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508)) was conducted on January 7, 1987, at Gowen Field, Idaho, to identify significant issues related to the proposed master plan construction/ mission expansion at Orchard Training Area. A Draft EIS was prepared and a Notice of Availability was published in the **Federal Register** on March 4, 1988. Public comments were received between March 4, 1988 and May 23, 1988. The public hearing was held on March 22, 1988 at Gowen Field, Idaho. Comments and responses are included in the Final EIS.

Action

The proposed action includes renovation and rehabilitation of existing facilities, construction of new facilities, range improvements, development of new ranges, and associated maneuver areas, and a potential for increased training site utilization. The Final EIS addresses direct and indirect environmental impacts, both beneficial and detrimental. Environmental impacts addressed include those affecting air quality, noise, physical setting, natural resources, land use, waste disposal, water resources, cultural resources, and social and economic resources.

In addition to the proposed actions, three alternatives were considered in the Final EIS:

(a) No Action (Status Quo).

(b) Modification/Alteration of Proposed Action.

(c) Conduct actions at another location.

Document Availability

The identification of preferred alternatives in the Final Environmental Impact Statement does not constitute a final decision. The Final EIS and any comments received will be used by the Army National Guard to prepare a Record of Decision. Copies of the Final EIS may be obtained from: COL Richard Brown, The Adjutant General's Office, Idaho Military Division, P.O. Box 45, Boise, Idaho 83707–4507, or (208) 385–5286.

Lewis D. Walker,

Deputy for Environment, Safety, and Occupational Health, OASA (I&L).

[FR Doc. 88–18790 Filed 8–18–88; 8:45 am]

BILLING CODE 3710–08–M

Office of the Secretary

Dissemination of Unclassified Information Concerning Physical Protection of Special Nuclear Material

ACTION: Notice.

SUMMARY: Section 1123 of Pub. L. 100–180 amended Chapter 3 of Title 10, United States Code by inserting a new Section entitled, "Physical protection of special nuclear material: limitation on dissemination of unclassified information." This new authority affects the Department's Freedom of Information Act Program as it is a statute within the meaning of 5 U.S.C. 552(b)(3).

In accordance with the foregoing authority, the Deputy Secretary of Defense hereby prohibits the unauthorized dissemination of unclassified information pertaining to security measures, including security plans, procedures, and equipment for the physical protection of special nuclear material. This prohibition shall be applied by Department of Defense personnel to prohibit the dissemination of any such information only if and to the extent that it is determined that the unauthorized dissemination of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of: Illegal production of nuclear weapons; or theft, diversion, or

sabotage of special nuclear materials, equipment, or facilities.

In making a determination in accordance with the foregoing, DoD personnel may consider what the likelihood of an illegal production, theft, diversion, or sabotage would be if the information proposed to be prohibited from dissemination were at no time available for dissemination.

DoD personnel shall exercise the foregoing authority to prohibit the dissemination of any information described: To apply the minimum restrictions needed to protect the health and safety of the public or the common defense and security; and upon determination that the unauthorized dissemination of such information could reasonably be expected to result in a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of illegal production of nuclear weapons or theft, diversion, or sabotage of nuclear materials, equipment, or facilities.

DoD employees shall not utilize this authority to withhold information from the appropriate committees of Congress.

The Assistant Secretary of Defense (Public Affairs), shall prepare, or cause to be prepared, on a quarterly basis, a report to be made available upon the request of any interested person, detailing the application during that period of this order or subsequent regulation. In particular, this report shall: (1) Identify any information protected from disclosure pursuant to this order or subsequent regulation; and (2) specifically state the justification for determining that unauthorized dissemination of the information protected from disclosure under this order of subsequent regulation could reasonable be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of illegal production of nuclear weapons or the theft, diversion, or sabotage of special nuclear materials, equipment, or facilities, as specified above, and (3) provide justification that this order or subsequent regulation has been applied so as to protect from disclosure only the minimum amount of information necessary to protect the health and safety of the public or the common defense and security.

FOR FURTHER INFORMATION CONTACT: Mr. D. Whitman, Office of the Deputy Under Secretary of Defense (Policy), telephone (202) 695–2289 or autovon 225–2686.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Dated: August 15, 1988.

[FR Doc. 88–18813 Filed 8–18–88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before September 19, 1988.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collecton requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: August 15, 1988.

Carlos U. Rice,

Director for Information Technology Services.

Office of Education Research and Improvement

Type of Review: Revision.

Title: Teacher Status Information for the Teacher Follow-up Survey.

Affected Public: State or local governments; businesses or for-profit; non-profit institutions; small businesses or organizations.

Frequency: On occasion.

Reporting Burden:

Responses: 11,459

Burden Hours: 2,865

Recordkeeping:

Recordkeepers: 0

Burden Hours: 0

Abstract: The Teacher Follow-up Survey is a follow-up to the Schools and Staffing Survey, to be conducted one year after the base year survey. The sample consists of a subset of teachers that were in the Schools and Staffing Survey. This survey will be used to obtain teacher status information.

[FR Doc. 88–18823 Filed 8–18–88; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84.003Z]

Notice Inviting Applications for New Awards Under the Bilingual Education Training Development and Improvement Program for Fiscal Year 1989

Purpose: Provides awards to institutions of higher education to encourage reform, innovation, and improvement in higher education programs related to programs for limited English proficient persons.

Deadline for Transmittal of Applications: October 14, 1988.

Deadline For Intergovernmental Review Comments: December 12, 1988.

Applications Available: August 29, 1988.

Available Funds: The President's Budget for fiscal year 1989 includes approximately *$600,000* for new awards under this program. The Congress has not yet completed action on the 1989 appropriation. The estimates below

assume passage of the President's Budget.

Estimated Range of Awards: $50,000–$100,000.

Estimated Average Size of Awards: $75,000.

Estimated Number of Awards: 8.

Project Period: 36 months.

Applicable Regulations: (a) The Bilingual Education: Training Development and Improvement Regulations, 34 CFR Part 573, (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79.

For Applications of Information Contact: Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue SW. (Room 5628, Mary E. Switzer Building), Washington, DC 20202–6642. Telephone: (202) 732–1843.

Program Authority: 20 U.S.C. 3321(a)(3).

Dated: August 15, 1988.

Alicia Coro,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 88–18828 Filed 8–18–88; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84.003A]

Notice Inviting Applications for New Awards Under the Program of Transitional Bilingual Education for Fiscal Year 1989

Purpose: Provides grants to local educational agencies (LEAs) and institutions of higher education applying jointly with one or more LEAs to establish, operate, and improve programs of transitional bilingual education.

Deadline for Transmittal of Applications: October 7, 1988.

Deadline for Intergovernmental Review Comments: December 6, 1988.

Applications Available: August 26, 1988.

Available Funds: The Bilingual Education Act reserves at least 75 percent of the Part A appropriation for the Transitional Bilingual Education, Developmental Bilingual Education, Academic Excellence, Family English Literacy and Special Populations Programs. Assuming enactment of the President's 1989 Budget, the Department estimates that at least $14 million will be available for Transitional Bilingual Education grants and perhaps as much as $22 million.

Estimated Range of Awards: $40,000–$500,000.

Estimated Number of Awards: 75–120.

Project Period: 36 months.

Applicable Regulations: (a) The Program of Transitional Bilingual Education Regulations, 34 CFR Parts 500–501, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, 79, and 80.

Additional Factors: In accordance with 34 CFR 501.32(b), the Secretary—in evaluating applications under the published criteria—distributes an additional 15 points among the factors listed in § 501.32(a) as follows: (1) Historically underserved (4 points); (2) relative need (4 points); (3) geographic distribution (3 points); (4) relative number and proportion of children from low-income families (4 points).

For Applications or Information Contact: Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue SW. (Room 5086, Mary E. Switzer Building), Washington, DC 20202–6641. Telephone: (202) 732–1843.

Program Authority: 20 U.S.C. 3291(a)(1).

Dated: August 12, 1988.

Alicia Coro,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 88–18829 Filed 8–18–88; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84.003R]

Notice Inviting Applications for New Awards Under the Bilingual Education Educational Personnel Training Program for Fiscal Year 1989

Purpose: Provides grants to institutions of higher education to meet the needs for additional or better trained educational personnel for programs for limited English proficient persons.

Deadline for Transmittal of Applications: October 28, 1988.

Deadline for Intergovernmental Review Comments: December 28, 1988.

Applications Available: August 29, 1988.

Available Funds: The President's Budget for fiscal year 1989 includes approximately *$5,000,000* for new awards under this program. The Congress has not yet completed action on the 1989 appropriation. The estimates below assume passage of the President's Budget.

Estiated Range of Awards: $40,000–$210,000.

Estimated Average Size of Awards: $125,000.

Estimated Number of Awards: 40.

Project Period: 36 months.

Applicable Regulations: (a) The Bilingual Education Educational Personnel Training Program Regulations (34 CFR Part 561), and (b) the Education Department General Administrative Regulations, (34 CFR Parts 74, 75, 77, 78, and 79).

Additional Factors: In accordance with 34 CFR 561.32(b), the Secretary—in evaluating applications under the published criteria—distributes an additional 10 points among the factors listed in § 561.32(a) as follows: (1) Job placement and development (4 points); (2) evidence of prior participant's success in serving LEP children in projects previously funded (2 points); (3) evidence of demonstrated capacity and cost-effectiveness (4 points).

For Applications or Information Contact: Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue SW. (Room 5628, Mary E. Switzer Building), Washington, DC 20202–6642. Telephone: (202) 732–1843.

Program Authority: 20 U.S.C. 3321(a)(1).

Dated: August 15, 1988.

Alicia Coro,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 88–18824 Filed 8–18–88; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84.003V]

Notice Inviting Applications for New Awards Under the Bilingual Education Short-Term Training Program for Fiscal Year 1989

Purpose: Provides awards to eligible applicants to improve the skills of educational personnel and parents participating in programs for limited English proficient persons.

Deadline for Transmittal of Applications: October 14, 1988.

Deadline for Intergovernmental Review Comments: December 12, 1988.

Applications Available: August 29, 1988.

Priorities: The Secretary will give a competitive preference in accordance with 34 CFR 75.105(c)(2)(ii), to projects which provide training designed to improve the instructional competence of teachers in carrying out their responsibilities in programs for limited English proficient persons as stated in 34 CFR 574.10(a) and 574.30.

Available Funds: The President's Budget for fiscal year 1989 includes approximately *$1,900,000* for new awards under this program. The Congress has not yet completed action on the 1989 appropriation. The estimates below assume passage of the President's Budget.

Estimated Range of Awards $150,000.

Estimated Average Size of Awards: $125,000.

Estimated Number of Awards: 15.

Project Period: 12 to 36 months.

Applicable Regulations: (a) The Bilingual Education: Short-Term Training Program Regulations, 34 CFR Part 574, and (b) The Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 80.

Additional Factors: In accordance with 34 CFR 574.31(b), the Secretary—in evaluating applications under the published criteria—distributes an additional 10 points among the factors listed in § 574.33(a) as follows: (1) Evidence of prior participant's success in projects previously funded (5 points); (2) evidence of demonstrated capacity and cost effectiveness (5 points).

For Applications or Information Contact: Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue SW. (Room 5628, Mary E. Switzer Building), Washington, DC 20202–6642. Telephone: (202) 732–1843).

Program Authority: 20 U.S.C. 3321(a)(4).

Dated: August 15, 1988.

Alicia Coro,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 88–18825 Filed 8–18–88; 8:45am]

BILLING CODE 4000–01–M

[CFDA No. 84.003L]

Notice Inviting Applications for New Awards Under the Bilingual Education Special Populations Program for Fiscal Year 1989

Purpose: Provides awards to local educational agencies, institutions of higher education and private nonprofit organizations to establish, operate, or improve preparatory or supplemental preschool, special education, and gifted and talented programs for limited English proficient children.

Deadline for Transmittal of Applications: October 14, 1988.

Deadline for Intergovernmental Review Comments: December 12, 1988.

Applications Available: August 29, 1988.

Available Funds: The President's Budget for fiscal year 1989 includes approximately *$1,700,000* for new awards under this program. The Congress has not yet completed action on the 1989 appropriation. The estimates below assume passage of the President's Budget.

Estimated Average Size of Awards: $125,000.

Estimated Range of Awards: $100,000—$150,000.

Estimated Number of Awards: 14.

Project Period: 36 months.

Applicable Regulations: (1) The Bilingual Education: Special Populations Program Regulations, 34 CFR Part 526, (b) the Education Department General Administration Regulations, 34 CFR Parts 74, 75, 77, 78, 79, and 80.

Additional Factors: In accordance with 34 CFR 526.31(b), the Secretary—in evaluating applications under the published criteria—distributes an additional 15 points among the factors listed in § 525.32 as follows: (1) Historically underserved (4 points); (2) geographic distribution (4 points); (3) need (4 points); (4) relative number and proporation of children from low-income families (3 points).

For Applications or Information Contact: Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue SW. (Room 5628, Mary E. Switzer Building), Washington, DC 20202–6642. Telephone: (202) 732–1843.

Program Authority: 20 U.S.C. 3291(a)(6).

Dated: August 15, 1988.

Alicia Coro,

Director, Office of Bilingual Education, Minority Languages Affairs.

[FR Doc. 88–18826 Filed 8–18–88; 8:45 am]

BILLING CODE 4000–01–M

[CFA No. 84.003E]

Notice Inviting Applications for New Awards Under the Special Alternative Instructional Program for Fiscal Year 1989

Purpose: Provides grants to local educational agencies (LEAs) and institutions of higher education applying jointly with one or more LEAs to establish, operate, and improve special alternative instructional programs.

Deadline for Transmittal of Applications: October 7, 1988.

Deadline for Intergovernmental Review Comments: December 6, 1988.

Applications Available: August 26, 1988.

Available Funds: The Bilingual Education Act permits up to 25 percent of the Part A appropriation to be used for Special Alternative Instructional projects. Assuming enactment of the President's 1989 Budget the maximum amount available for new Special Alternative Instructional grants is estimated to be $22,000,000. The Department estimates that at least $14,000,000 will be available for new Special Alternative Instructional projects in 1989.

Estimated Range of Awards: $60,000–$90,000.

Estimated Average Size of Awards: $75,000.

Estimated Number of Awards: 180–190.

Project Period: 36 months.

Applicable Regulations: (a) The Special Alternative Instructional Program Regulations, 34 CFR Parts 500–501, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, 79, and 80.

Additional Factors

In accordance with 34 CFR 501.32(b), the Secretary—in evaluating applications under the published criteria—distributes an additional 15 points among the factors listed in § 501.32(a) as follows: (1) Historically underserved (4 points); (2) Relative need (4 points); (3) Geographic distribution (3 points); (4) Relative number and proportion of children from low-income families (4 points). In addition, in accordance with 34 CFR 501.33(b), the Secretary awards 5 points on the factors listed in § 501.33 (a) as follows: (1) Administrative impracticability of establishing a bilingual education program (3 points); (2) Unavailability of qualified personnel (1 point); (3) Presence of a small number of LEP students in the LEA's schools and the LEA's inability to obtain native language teachers because of isolation or regional location (1 point).

For Applications or Information Contact: Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 5086, Mary E. Switzer Building), Washington, DC 20202–6641. Telephone: (202) 732–1843.

Program Authority: 20 U.S.C. 3291(a) (3)

Dated: August 12, 1988.

Alicia Coro,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 88–18867 Filed 8–18–88; 8:45 am]

BILLING CODE 4000–01–M

[CFDA Nos. 84.016, 84.017, and 84.153]

Notice Inviting Applications Under the International Education Programs for Fiscal Year 1989 New Awards

AGENCY: Department of Education.

ACTION: Combined Notice Inviting Applications Under the International Education Programs: Undergraduate International Studies and Foreign Language, International Research and Studies, and Business and International Education for Fiscal Year 1989 New Awards.

Purpose: Applications are invited for new awards for Fiscal Year 1989 under Title VI of the Higher Education Act of 1965, as amended, for the following programs: The Undergraduate International Studies and Foreign Language Program (84.016); the International Research and Studies Program (84.017); and the Business and International Education Program (84.153).

The Undergraduate International Studies and Foreign Language Program provides grants to institutions of higher education, combinations of those institutions, and public and private nonprofit agencies and organizations, including professional and scholarly associations, to strengthen and improve undergraduate instruction in international studies and foreign languages in the United States.

The International Research and Studies Program provides grants to public and private agencies, organizations, institutions, and individuals to conduct research and studies to improve and strengthen instruction in modern foreign languages, area studies, and related fields.

The Business and International Education Program provides grants to institutions of higher education to enhance international business education programs and to expand the capacity of the business community to engage in international economic activities.

Deadlines For Transmittal of Applications: For the Undergraduate International Studies and Foreign Language Program—November 4, 1988;

For the Business and International Education Program—November 9, 1988;

For the International Research and Studies Program—November 18, 1988.

Applications Available: September 15, 1988.

Eligible Applicants: For the Undergraduate International Studies and Foreign Language Program, eligible applicants are institutions of higher education, combinations of institutions of higher education, and public and private nonprofit agencies and organizations, including professional and scholarly associations.

For the International Research and Studies Program, eligible applicants are public and private agencies, organizations, institutions, and individuals.

For the Business and International Education Program, eligible applicants are institutions of higher education.

Priorities: The Secretary selects the following priorities from § 660.10 and § 660.34 of the regulations governing the International Research and Studies Program for Fiscal Year 1989. The priorities will be implemented for that program only in accordance with the provisions of the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.105(c)(2)(ii).

(1) Research and studies on more effective methods of instruction, including competency-based instruction, in the modern foreign languages of the Middle East, South Asia, Southeast Asia, Eastern Europe, Inner Asia, the Far East, Africa and Latin America. (34 CFR 660.34(a)(2) and 34 CFR 660.34(a)(3)).

(2) Research and studies on foreign language proficiency testing with emphasis on the languages of the Middle East, South Asia, Southeast Asia, Eastern Europe, Inner Asia, the Far East, Africa and Latin America. (34 CFR 660.34(a)(2) and 34 CFR 660.34(a)(3)).

(3) The development of specialized materials for providing instruction in the languages of the Middle East, South Asia, Southeast Asia, Eastern Europe, Inner Asia, the Far East, Africa and Latin America. (34 CFR 660.10(c); 34 CFR 660.34(a)(1); and 34 CFR 660.34(a)(2)).

INTERNATIONAL EDUCATION PROGRAMS

Title and CFDA Number	Available funds	Estimated range of awards	Estimated size of awards	Estimated number of awards	Project period in months
Undergraduate International and Foreign Language Program (CFDA No. 84-016)	$1,642,000	$20,000 to $70,000	$48,000	34	24 to 36
International Research and Studies Program (CFDA No. 84.017)	864,248	23,000 to 123,000	66,000	13	12 to 36
Business and International Education Program (CFDA No. 84.153)	1,225,000	40,000 to 135,000	65,000	16	24

Applicable Regulations: Regulations applicable to these programs include the following:

(a) Undergraduate International Studies and Foreign Language Program, 34 CFR Parts 655 and 658;

(b) International Research and Studies Program, 34 CFR Parts 655 and 660;

(c) Business and International Education Program, 34 CFR Part 661; and

(d) Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78.

For applications or information contact:

Ralph Hines (Undergraduate International Studies and Foreign Language Program), Telephone (202) 732-3290;

Jose L. Martinez (International Research and Studies Program), Telephone (202) 732-3297;

Susanna C. Easton (Business and International Education Program), Telephone (202) 732-3302, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3053, ROB-3, Mail Stop 3308, Washington, DC 20202.

Program Authority: Undergraduate International Studies and Foreign Language Program (20 U.S.C. 1124); International Research and Studies Program (20 U.S.C. 1125); and Business and International Education Program (20 U.S.C. 1130-1130b).

Dated: August 3, 1988.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 88-18827 Filed 8-18-88; 8:45 am]

BILLING CODE 4000-01-M

Meeting of the National Advisory Council on Indian Education

AGENCY: National Advisory Council on Indian Education, Evaluation

ACTION: Notice of Executive Committee Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming partially closed Executive Committee meeting of the National Advisory Council on Indian Education. This notice also describes the function

of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2. This document is intended to notify the general public of their opportunity to partially attend.

DATE: September 3, 1988, 8:30 a.m. until conclusion of business.

ADDRESS: Clarion Hotel, 1345 28th Street, Boulder, Colorado 80302 (303/443-3850).

FOR FURTHER INFORMATION CONTACT: Gloria Duus, Acting Executive Director, National Advisory Council on Indian Education, 330 C Street, SW., Switzer Building, Washington, DC 20202-7556 (202/732-1353).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 442 of the Indian Education Act (20 U.S.C. 1221g). Among other things, the Council is established to assist the Secretary of Education and the Assistant Secretary of Elementary and Secondary Education with regard to education programs benefiting Indian children and adults.

The Executive Committee will meet in closed session beginning at 8:30 a.m. to discuss personnel matters that will reflect confidential information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. The meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. Appendix I) and under exemption (6) of section 552b(c) of the Government in the Sunshine Act (Pub. L. 94-049; 5 U.S.C. 552b(c)(6)). The open portion of the meeting will start at the conclusion of the closed meeting at approximately 3:00 p.m. on September 3rd to discuss other Executive Committee matters and will end at the conclusion of business.

A summary of the activities of the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b, shall be available for public inspection at the office of the National Advisory Council on Indian Education located at 330 C Street, SW., Room 4072, Switzer Bldg., Washington DC 20202-7556 (202/732-1353).

Date: August 10, 1988. Signed at Washington DC.

Gloria Duus,

Acting Executive Director, National Advisory Council on Indian Education.

[FR Doc. 88-18849 Filed 8-18-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award; Atlantic Council of the United States

AGENCY: Department Of Energy (DOE).

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: In accordance with 10 CFR 600.7(b), eligibility for award of a grant, resulting from Procurement Request No. 01-88IE10688.000, will be restricted to the Atlantic Council of the United States. The DOE is conducting negotiations with the Atlantic Council of the United States, for the support of two U.S.-Japan Energy Policy Dialogue conferences. These negotiations are expected to result in the issuance of Grant Number DE-FG01-88IE10688, in which the DOE will provide $50,000 of the total estimated cost of $250,505, for a performance period of twenty-four months, estimated to begin September 1, 1988.

PROJECT SCOPE: The grant will provide assistance for two conferences entitled, "U.S.-Japan Energy Policy Dialogue." The first conference will be a bilateral executive session, between Japan and the United States, that will jointly plan the 1989 plenary conference in Japan. The second conference will explore jointly, rigorously, and regularly the issues related to energy demand, supply, use and financing in the United States, Japan, among the member developed nations and among the member developing and newly industrializing nations.

The Atlantic Council of the United States is a nonprofit organization that has a solid reputation; is well established in this continuing project; and has support and members from private industry, the academic communities and from international financial communities. These national and international relationships make the Atlantic Council of the United States uniquely qualified to perform these conferences.

FOR FURTHER INFORMATION CONTACT: Stanley T. Colt, MA-453.1, Office of Procurement Operations, 1000 Independence Avenue SW., Washington DC 20585, (202) 586-5645.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 88-18885 Filed 8-18-88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA C&E 88-17; Certification Notice 22]

Filing of Certification of Compliance: Coal Capability of New Electric Powerplants Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*), provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a)). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the 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 has filed a self certification:

Name	Date received	Type facility	Megawatt capacity	Location
Mid-Set Cogeneration Company, Bakersfield, CA	8-11-88	Cogen Simple Cycle	33	Kern County, CA.

Amendments to the FUA on May 21, 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 August 12, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–18785 Filed 8–18–88; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 88–46–NG]

Access Energy Corp.; Application To Extend Blanket Authorization To Export Natural Gas to Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for extension of blanket authorization to export natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on August 5, 1988, of an application filed by Access Energy Corporation (Access) requesting that the blanket authorization, previously granted in DOE/ERA Opinion and Order No. 147 (Order No. 147), issued September 26, 1986, be amended to extend its term for two years beginning October 1, 1988, the expiration of its current authorization, through the period ending September 30, 1990.

Quarterly reports filed with the ERA indicate that Access has exported approximately 3.5 Bcf of gas under Order No. 147 as of July 1, 1988.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than September 19, 1988.

FOR FURTHER INFORMATION:

Frank Duchaine, Natural Gas Division, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8233.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Order No. 147 was originally issued to Yankee International Company (Yankee) on September 26, 1986; subsequent to the February 8, 1988, purchase by Access of Yankee's business assets, the ERA, on February 24, 1988, approved the transfer of this authority to Access. The existing blanket authorization allows Access to export to Canada a daily maximum of 200 MMcf of domestic natural gas, up to a total of 146 Bcf over a two-year term that ends September 30, 1988.

Access, a Delaware corporation, with its principal office in Dublin, Ohio, intends to continue exporting gas on a short-term and spot basis, for its own account or as agent for suppliers or purchasers, from a variety of U.S. suppliers for resale to Canadian purchasers, including commercial and industrial end-users and local distribution companies. The terms of each transaction would be negotiated in response to market conditions. Existing facilities of U.S. pipelines would continue to be used to transport the gas. The delivery points where the gas would exit the U.S. would be established during sales contract negotiations and may vary for different transactions. Access contemplates that some of the gas may be exported and re-imported back into the U.S. for delivery to its customers under its current blanket import authorization granted by the ERA in DOE/ERA Opinion and Order No. 107 issued January 29, 1986. That import authorization was also transferred to Access from Yankee on February 24, 1988.

This export application will be reviewed pursuant to Section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order No. 0204–111. The decision on whether this export of natural gas is in the public interest will be based upon the domestic need for the gas and other matters deemed to be appropriate by the Administrator, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing parties to freely negotiate their own trade arrangements. The applicant asserts that the gas to be exported will be incremental to current U.S. demand and that this export arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming these assertions.

All parties should be aware that if the ERA approves this request to amend a blanket export, it may designate a total amount of authorized volumes for the term without any daily limit, in order to provide the applicant with maximum flexibility of operation. In addition, the ERA may permit the export of the gas at any existing point of exit and through any existing transmission system.

Access requests that an authorization be granted on an expedited basis. An ERA decision on Access' request for expedited treatment will not be made until all responses to this notice have been received and evaluated.

Public Comment Procedures:

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.s.t., September 19, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures by provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially

advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Access' application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 16, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-18896 Filed 8-17-88; 10:17 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER88-553-000 et al.]

Sierra Pacific Power Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Sirerra Pacific Power Company

[Docket No. ER88-553-000]

August 15, 1988.

Take notice that on August 8, 1988, Sierra Pacific Power Company (Sierra) tendered for filing as a change in rates pursuant to 18 CFR 35 *et seq.* the "General Transfer Agreement executed by the United States of America Department of Enegy acting by and through the Bonneville Power Administration and Sierra Power Company" (hereafter "Transfer Agreement").

The above-referenced agreement principally concerns transportation service by Sierra to Bonneville Power Administration (BPA) on behalf of Wells Rural Electric Company (Wells). The agreement also provides for related interconnection services. The agreement would supersede a January 24, 1985 transmission and interconnection agreement for similar services to BPA on behalf of Wells.

Sierra Proposes February 26, 1988 as the effective date for the rates, terms, and conditions of the Transfer Agreement. Sierra requests waiver of the Commission's notice requirements in connection with its proposed effective date.

Comment date: August 29, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Commonwealth Edison Company of Indiana, Inc.

[Docket No. ER88-531-000]

August 15, 1988.

Take notice that on July 25, 1988, a Consent Settlement Agreement executed by the Commission Trial Staff (Staff) Commonwealth Edison Company of Indiana, Inc. (formerly Chicago District Generating Corporation and hereafter referred to as "Chicago District"), and Commonwealth Edison Company (Edison) was filed with the Commission. The Consent Settlement Agreement provides for a decrease in rates under the Electric Service Agreement (dated July 1, 1941, as amended) and the Transmission Service Agreement (dated May 1, 1958, as amended) between Chicago District and Edison.

The signatories request an effective date of January 1, 1988.

Copies of this filing were served upon Chicago District and Edison.

Comment date: August 29, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. South Carolina Generating Company

[Dockt No. ER85-204-000]

August 15, 1988.

Take notice that on August 9, 1988, South Carolina Generating Company tendered for filing, pursuant to Commission Opinion No. 280 and Opinion No. 280-A, a refund summary showing refunds and a computation of interest on refunds for sales by GENCO to South Carolina Electric & Gas Company under a Unit Power Sales Agreement dated December 18, 1984.

Comment date: August 29, 1988, in accordance with Standard Paragraph E. at the end of this notice.

4. Cliffs Electric Service Company

[Docket No. ER88-555-000]

August 15, 1988.

Take notice that on August 2, 1988, Cliffs Electric Service Company (Service Company) tendered for filing a notice of cancellation with respect to FERC rate Schedule No. 17, its Hydro Energy Purchase Agreement with Upper Peninsula Power Company (Power Company). In view of the fact that the hydro facilities in question have been sold by Service Company to Power Company, Service Company requests that the notice be allowed to become effective on February 16, 1988, the date of the conveyance of the facilities.

Comment date: August 29, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Connecticut Yankee Atomic Power Company

[Docket No. EL87-23-003]

August 15, 1988.

Take notice that on May 23, 1988, Connecticut Yankee Atomic Power Company tendered for filing, in compliance with Commission Order (Opinion No. 258A), changes to the Connecticut Yankee 1987 Supplementary Power Contract in order to revise that rate schedule.

Comment date: August 22, 1988, in accordance with Standard Paragraph E at the end of this document.

6. Niagara Mohawk Power Corporation

[Docket No. ER88-554-000]

August 16, 1988.

Take notice that on August 5, 1988, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing as an initial rate schedule, an Agreement between Niagara Mohawk and the City of Syracuse (Public Body) dated August 1, 1988. Niagara Mohawk proposes an effective date of October 4 for the Agreement.

This Agreement provides for Niagara Mohawk to allow the use of such portions of its electric system and facilities as are required for the delivery of Preference Power to Eligible Customers of the Public Body. The Public Body's agent purchases the Preference Power from the Power Authority of the State of New York.

Niagara Mohawk states that the Agreement is an initial rate schedule because it is a new service to a new customer. Niagara Mohawk further states that the proposed rate is the rate per kWhr charged under Niagara Mohawk's applicable, residential rate tariff, minus the cost of fuel included in the retail rates, plus additional A&G expenses incurred by Niagara Mohawk as a result of the services provided the Agency under the Agreement. Niagara Mohawk states that the rate was arrived at through arms-length negotiations between the parties, and that the proposed rate is intended to produce a return to Niagara Mohawk essentially equivalent to which Niagara Mohawk would have received had it supplied at its residential retail rates the amount of power delivered as Preference Power.

Copies of this filing were served upon the Public Service Commission of the State of New York and the City of Syracuse.

Comment date: August 30, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Iowa Power and Light Company

[Docket No. ER88-538-000]

August 16, 1988.

Take notice that on July 29, 1988, Iowa Power and Light Company (Iowa Power), on its own behalf and on behalf of Iowalllinois Gas and Electric Company, Iowa Public Service Company, and Iowa Southern Utilities Company, tendered for filing a rate schedule change identified as Amendment No. 1 to Operating Agreement, Neal 3 Transmission, dated December 18, 1987 (Amendment).

Iowa Power states the purpose of the Amendment is to revise the fixed charge rate contained in Exhibit C to the Neal 3 Transmission Operating Agreement to reflect the lower 34 percent federal income tax rate of the Tax Reform Act of 1986. Iowa Power further states the Amendment also modifies certain provisions of the Operating Agreement to facilitate operation of Neal 3 Transmission by the joint owners as tenants in common, rather than as individual owners of segments of the Transmission as had been originally contemplated by the parties. Other minor revisions to the Operating Agreement are also made by the Amendment.

Iowa Power and the concurring parties request waiver of the Commission's regulations so as to permit the rate schedule change to become effective July 1, 1987. The parties further request waiver of Part 33 of the Commission's regulations in the event the Commission determines a filing under Section 203 of the Federal Power Act is required.

Copies of the filing were served upon the Iowa State Utilities Board; Illinois Commerce Commission; Minnesota Public Utilities Commission; South Dakota Utilities Commission; Corn Belt Power Cooperative; and the Iowa municipalities of Algona, Bancroft, Coon Rapids, Cedar Falls, Graettinger, Laurens, Milford, Spencer, Webster City, and Waverly.

Comment date: August 30, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. New England Hydro-Transmission Electric Company Inc., New England Hydro-Transmission Corporation, New England Power Company, Boston Edison Company

[Docket No. ER88-556-000]

August 16, 1988.

Take notice that on August 5, 1988, New England Hydro-Transmission Electric Company Inc. (New England Hydro), New England Hydro-Transmission Corporation (New Hampshire Hydro), New England Power Company (NEP), Boston Edison Company (Edison) tendered for filing amendments to certain of the contracts that govern participation by utilities in New England in Phase II of the interconnection arrangement between those utilities and Hydro-Quebec.

The amendments are technical changes to the Support Agreements for the AC and DC transmission and interconnection facilities and would authorize (1) the transfer of shares among participants prior to the effective date of the Support Agreements (currently anticipated in October, 1988) and modification of the date by which the initial computation of participant share is to be made; (2) the extension of certain deadlines by which participants are to provide documentation evidencing their obligations under the Support Agreements; (3) the modification of the procedure by which NEP and Public Service Company of New Hampshire will be compensated for the loss of transmission capacity; and (4) the update of certain schedules to reflect revised participating shares.

The Applicants have requested waiver of the requirement to file cost data and of the notice requirement so that the Amendments may become effective at the earliest possible date to allow financing to proceed expeditiously.

Comment date: August 30, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. L&J Energy Systems, Inc.

[Docket No. QF88-480-000]

August 16, 1988.

On August 2, 1988, L&J Energy Systems Inc. (Applicant), of 16401 Shagbark Place, Tampa, Florida 33618, submitted for filing an application for certification of a facility as a qualifying congeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Kraft plant in Lowville, New York. The facility will consist of a combustion turbine generator, a waste heat recovery steam generator, and an extraction/condensing steam trubine generator. Thermal energy recovered from the facility will be used in the processing of milk and refrigeration of dairy products. The net electric power production capacity of the facility will be 40,502 KW. The primary source of energy will be natural gas. Construction of the facility will begin April, 1989.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18864 Filed 8-18-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI88-489-000 et al.]

ARCO Oil and Gas Co. et al.; Natural Gas Certificate Filings

August 15, 1988.

Take notice that the following filings have been made with the Commission:

1. ARCO Oil and Gas Company, Division of Atlantic Richfield Company:

[Docket No. CI88-489-000]

Take notice that on June 13, 1988, ARCO Oil and Gas Company, Division of Atlantic Richfield Company (ARCO) of P. O. Box 2819, Dallas, Texas 75221, filed an application pursuant to section 7 of the Natural Gas Act and § 157.23 of the Federal Energy Regulatory Commission's (Commission) regulations thereunder for a certificate of public convenience and necessity to authorize the sale of natural gas to Northwest Pipeline Corporation (Northwest), all as more fully set forth in the application

which is on file with the Commission and open for public inspection.

ARCO states that on July 13, 1953, Sinclair Oil & Gas Company (Sinclair), a predecessor of ARCO, and the Pacific Northwest Pipeline Corporation (Pacific), a predecessor of Northwest entered into an agreement by which Sinclair conveyed to Pacific its right, title and interest in gas and gas rights under oil and gas leases, and options for oil and gas leases, in the San Juan Basin of New Mexico, from the surface down to and including the Mesaverde formation. Sinclair reserved a so-called special overriding royalty interest in the gas produced therefrom. This agreement is known as PLA–2.

Since 1973 ARCO and Northwest have been involved in litigation to determine whether the amount of the special overriding royalty under PLA–2 and similar agreements was subject to regulation by the Commission. In 1984 the Supreme Court denied petitions for certiorari and made final the Fifth Circuit's determination that the special overriding royalties paid under PLA–2 and similar agreements were not subject to Commission jurisdiction.

On May 4, 1988, ARCO and Northwest entered into a settlement agreement which, according to ARCO, when ultimately effective will constitute a complete and final settlement and release of all of ARCO's and Northwest's claims and causes of action arising out of PLA–2. ARCO states that, among other things, the settlement agreement provides for the assignment to ARCO of the PLA–2 properties, the extinguishment of the special overriding royalty payable under PLA–2, and the execution of a Gas Purchase Contract between ARCO and Northwest for the production from the PLA–2 properties. ARCO's application seeks certificate authorization for the gas sale under the May 4, 1988, contract between ARCO and Northwest executed pursuant to the settlement agreement.

Comment date: August 31, 1988, in accordance with Standard Paragraph J at the end of the notice.

2. Pennzoil Exploration and Production Company (Successor to Pennzoil Company)

[Docket No. CI66–94–000, *et al.*]

Take notice that on July 12, 1988, Pennzoil Exploration and Production Company (PEPCO) of P. O. Box 2967, Houston, Texas 77252–2967, filed an application pursuant to section 7 of the Natural Gas Act and § 154.92 and 157.24, *et seq.* of the Federal Energy Regulatory Commission's (Commission) regulations thereunder for certificates of public convenience and necessity to continue the service previously rendered by Pennzoil Company (Pennzoil) under the certificates listed in Exhibit A hereto. PEPCO also requests that Pennzoil's rate schedules listed in Exhibit A hereto be redesignated as those of PEPCO, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

PEPCO states that by Deed, Assignment and Conveyance executed and effective March 31, 1988, Pennzoil assigned all of its natural gas interests to PEPCO and PEPCO assumes all of the obligations of Pennzoil under the certificates and rate schedules listed in Exhibit A hereto.

Comment date: August 31, 1988, in accordance with Standard Paragraph J at the end of the notice.

Exhibit A

Pennzoil Co. rate schedule No.	FERC docket No.	Purchaser
13	CI66–94	Northern Natural Gas Co.
15	CI67–662	Transwestern Pipeline Co.
18	CI68–1229	Natural Gas Pipeline Co.
22	CI69–803	Do.
23	CI69–970	Do.
29	CI71–668	Do.
30	CI71–871	Do.
31	CI72–331	Do.
32	CI72–553 (CI74–264)	Panhandle Eastern Pipe Line Co.
35	CI73–22	Transwestern Pipeline Co.
36	CI73–23	Do.
37	CI73–202	Northern Natural Gas Co.
41	CI75–26	Transwestern Pipeline Co.
42	CI75–142	El Paso Natural Gas Co.
43	CI75–367	Do.
45	CI77–685	Williston Basin Interstate Pipeline Co.
46	CI78–401	Natural Gas Pipeline Co. of America
49	CI82–387	Northern Natural Gas Co.
50	CI79–676	Tennessee Gas Pipeline Co.
51	CI84–430	MGPC, Inc.
52	CI85–10	El Paso Natural Gas Co.
55	G–13633	Arkla Energy Resources, a division of Arkla, Inc.
57	G–13633	Trunkline Gas Co.
58	G–13633	Do.
59	G–13633	Val Gas Co.
62	G–13633	Southern Natural Gas Co.
63	G–13633	Do.
67	CI85–488	Primos Gathering System
68	G–13633	Kerr-McGee Corp.
69	G–13633	Texas Eastern Transmission Corp.
78	G–15077	Southern Natural Gas Co.
80	G–17087	Valero Interstate Transmission Co.
83	G–18193	Texas Gas Transmission Corp.
85	G–19450	Arkla Energy Resources, a division of Arkla, Inc.
87	CI60–344	Southern Natural Gas Co.
95	CI61–318	ANR Pipeline Co.
96	CI62–639	Natural Gas Pipeline Co. of America
97	CI63–714	Texas Eastern Transmission Corp.
101	G13633	Arkla Energy Resources, a division of Arkla, Inc.
102	CI66–106	Natural Gas Pipeline Co. of America
103	CI67–18	Southern Natural Gas Co.
104	CI67–713	Do.
109	CI70–577	Do.
110	CI70–629	Tennessee Gas Pipeline Co.
111	CI70–767	Texas Gas Transmission Corp.
113	CI72–425	Arkla Energy Resources, a division of Arkla, Inc.
123	CI75–217	Texas Eastern Transmission Corp.
135	CI80–45	ANR Pipeline Co.
138	CI81–460	Do.
139	CI82–356	Tennessee Gas Pipeline Co.
140	CI83–32	ANR Pipeline Co.
141	CI84–487	Transcontinental Gas Pipe Line Corp.
142	CI85–379	Natural Gas Pipeline Co. of America
147	CI77–702 *et al.* (CI78–767)	Southern Natural Gas Co.
148	CI85–295	Texas Gas Transmission Corp.
162	CI78–93 (CI84–126)	Southern Natural Gas Co.
168	CI78–93 (CI84–126)	Do.
173	CI79–429	Do.
185	CI80–50	ANR Pipeline Co.
188	CI81–461	Do.
195	CI83–320	Do.
197	CI85–247	Texas Gas Transmission Corp.
206	CI84–407–001	Tennessee Gas Pipeline Co.
207	CI85–443	Do.
209	CI66–447	ANR Pipeline Co.
210	CI74–84	Arkla Energy Resources, a division of Arkla, Inc.
211	CI73–671	Natural Gas Pipeline Co. of America

3. National Fuel Gas Supply Corporation

[Docket No. CP88–663–000]

Take notice that on August 8, 1988, National Fuel Gas Supply Corporation (Applicant), Ten Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP88–663–000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity

authorizing the sale of gas on a firm basis to the Town of Rushford, New York, under Applicant's Rate Schedule RQ, as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to serve the Town of Rushford with the natural gas requirements of the Rushford Kiln and Milling Ltd. (The Rushford Kiln) which are expected to be 234 dth per day. Applicant asserts that such sales would be made pursuant to its Rate Schedule RQ and the terms of an executed service agreement between Applicant and the Town of Rushford, which has a primary term of five years.

Applicant would establish a single delivery point between the facilities of Applicant and Rushford Pipeline Company located in the Town of Canadea, Allegany County, New York. Applicant asserts that Rushford Pipeline Company has been authorized by the Public Service Commission of the State of New York to transport the gas sold by Applicant to the Rushford Kiln.

Applicant proposes to replace an existing purchase meter station with a 2-inch regulatory, relief and meter setting, at an estimated cost of $10,700, in order to establish a delivery point to the Rushford Pipeline.

Comment date: September 6, 1988, in accordance with Standard Paragraph F at the end of this notice.

4. Tennessee Gas Pipeline Company

[Docket No. CP88-670-000]

Take notice that on August 10, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-670-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Tenngasco Corporation (Tenngasco), a marketer, acting as agent for Tenngasco Exchange Corporation, under the certificate issued in Docket No. CP87-115-000 on June 18, 1987, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated May 10, 1988, it proposes to transport up to 1,000,000 dekatherms per day equivalent of natural gas on an interruptible basis for Tenngasco from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A", which transportation service involves interconnections between Tennessee and various transporters. Tennessee states that it would receive the gas at various existing points on its system in Louisiana, Offshore Louisiana, Texas, Offshore Texas, New York, New Jersey, New Hampshire, Connecticut, Massachusetts, Rhode Island, Pennsylvania, West Virginia, Ohio, Mississippi, Alabama, Kentucky, and Arkansas, and that it would transport and redeliver the gas to Tenngasco in Louisiana.

Tennessee advises that service under § 284.223(a) commenced May 18, 1988, as reported in Docket No. ST88-4337 (filed June 21, 1988).

Comment date: September 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18799 Filed 8-18-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-661-000 et al.]

K N Energy, Inc., et al.; Natural Gas Certificate Filings

August 12, 1988.

Take notice that the following filings have been made with the Commission:

1. K N Energy, Inc.

[Docket No. CP88-661-000]

Take notice that on August 8, 1988, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP88-661-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate sales taps for the

delivery of natural gas to four end-users, under the blanket authorization issued in Docket Nos. CP83–140–000, CP83–140–001, and CP83–140–002 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

K N proposes to construct and operate four sales taps in order to serve end-users located along its jurisdictional pipelines. K N states that the proposed sales taps are not prohibited by any of its existing tariffs and that the additional taps would have no significant impact on K N's peak day and annual deliveries. K N states that it would serve the following customers from the herein proposed sales taps:

1. Gary McBee, Lane County, Kansas (2 Mcf/peak day and 120 Mcf/annum);
2. Stan Sommerfeld, Wallais County, Kansas (30 Mcf/peak day and 1,000 Mcf/annum);
3. Ray Brock, Custer County, Nebraska (2 Mcf/peak day and 120 Mcf/annum);
4. Spencer Land Company, Kearney County, Nebraska (24 Mcf/peak day and 1,000 Mcf/annum).

Comment date: September 26, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Tennessee Gas Pipeline Company

[Docket No. CP88–672–000]

Take notice that on August 11, 1988, Tennessee Gas Pipeline Company, (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88–672–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Ashton Energy Company (Ashton), a marketer, under the certificate issued in Docket No. CP87–115–000, on June 18, 1987, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated June 16, 1988, as amended on June 29 and June 30, 1988, it proposes to transport up to 100,000 dekatherms per day equivalent of natural gas on an interruptible basis for Ashton from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A", which transportation service involves interconnections between Tennessee and various transporters. Tennessee states that it would receive the gas at various existing points on its system Offshore Louisiana, and in the states of Louisiana and Texas, and that it would transport and redeliver the gas to Ashton at various points in multiple states.

Tennessee advises that service under § 284.223(a) commenced June 30, 1988, as reported in Docket No. ST88–4815 (filed July 21, 1988).

Comment date: September 26, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. CNG Transmission Corporation

[Docket No. CP88–664–000]

Take notice that on August 8, 1988, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301 filed in Docket No. CP88–664–000 a request pursuant to § 157.212 of the Regulations under the Natural Gas Act (18 CFR 157.212) for authorization to add a new delivery point to New York State Electric and Gas Corporation (NYSEG), its existing jurisdictional customer, and to construct and operate appurtenant facilities, all as more fully set forth in the request on file with the Commission and open to public inspection.

CNG indicates that it proposes to add the new delivery point on its existing 12-inch Line No. 551, near the City of Geneva, in Seneca County, New York, to be known as the Millard Road Connection. CNG also indicates that it will construct and operate the facilities necessary to deliver the gas to NYSEG, including mesurement and pressure regulating facilities. The estimated cost for all delivery facilities required is $567,000.

Comment date: September 26, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. CNG Transmission Corporation

[Docket No. CP88–671–000]

Take notice that on August 10, 1988, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26302, filed in Docket No. CP88–671–000 a prior notice request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for various shippers under the certificate issued in Docket No. CP86–311–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CNG proposes to transport gas for the shippers on an interruptible basis from various receipt points on its system to various interconnections between CNG and certain local distribution companies and pipelines. CNG lists for each shipper the receipt and delivery points, the maximum daily, average daily, and annual volumes, as well as the docket number related to the 120-day transportation service initiated by CNG (see attached appendix).

Comment date: September 26, 1988, in accordance with Standard Paragraph G at the end of this notice.

Exhibit "A" Part 284, Subpart G, Transportation Transactions for the Period 5–01–88 Through 7–15–88

Docket No.	Shipper customer	Commence date	Max. daily DT, avg. daily DT, est. annual DT.	Receipt point	LDC
ST88–4924	1. Landmark Petroleum	6/15/88	2,250 3,000 821,250	C	EOG
ST88–4925	2. Cuyahoga County Hospital	6/01/88	2,000 1,233 730,000	B	EOG
ST88–4912	3. Clinton Gas Marketing	6/02/88	27,000 1,895 9,855,000	A	EOG
ST88–4939	4. IESCO	6/20/88	15,000 49 5,475,000	D	EOG
ST88–4938	5. End Users Supply System	6/18/88	10,000 659 3,650,000	D	HOPE
ST88–4944	6. Consolidated Fuel	6/02/88	4,000	A	PNG

Docket No	Shipper customer	Commence date	Max. daily DT, avg. daily DT, est. annual DT.	Receipt point	LDC
			348		
ST88-4943	7. Manufacturer's Fuel	6/02/88	1,460,000 200	B	NFG
			65		
ST88-4931	8. Anheuser-Busch	6/04/88	73,000 7,500	A	NIMO
			1,074		
ST88-4913	9. James River Corp. #2	6/15/88	2,737,500 1,000	A	NIMO
			136		
ST88-4942	10. Access Energy	6/10/88	365,000 50,000	B	NIMO
			189		
ST88-4915	11. Entrade	6/09/88	18,250,000 150,000	D	NIMO
			1,668		
ST88-4922	12. End Users Supply	6/18/88	54,750,000 20,000	D	NIMO
			665		
ST88-4941	13. North Atlantic	6/25/88	7,300,000 10,000	A	NIMO
			201		
ST88-4929	14. Unicorp (H & H)	6/10/88	3,650,000 100,000	D	NIMO
			2,190		
ST88-4928	15. CNG Trading Company	6/11/88	36,500,000 140,000	A	NYSEG
			467		
ST88-4926	16. Ohio Gas Marketing	6/01/88	51,100,000 900	A	Transco
			900		
ST88-4919	17. JDS Energy	5/01/88	328,500 4,000	C	EOG
			3,645		
ST88-4918	18. LTV Steel	5/01/88	1,460,000 100,000	B	EOG
			2,450		
ST88-4940	19. Riley Natural Gas Co.	7/15/88	36,500,000 10,000	B	Corgas
			5,000		
			3,650,000		

Legend of Local Distribution Companies (LDC) or Delivery points: HGI—Hope Gas, Inc.; NYSEG—New York State Electric & Gas Corporation; RGE—Rochester Gas & Electric Corporation; EOG—East Ohio Gas Company; PNG—Peoples Natural Gas Company; NIMO—Niagara Mohawk Power Corporation; NFG—National Fuel Gas Supply Corporation; Transco—Transcontinent Gas Pipeline Corporation; Corgas—Corgas Pipeline Company (Intrastate).
Legend of Receipt Points: A—Various Interconnects between Tennessee Gas Pipeline Company and CNG; B—Various receipt points in WV/PA/NY; C—Various interconnects between Texas Gas Transmission Corporation and CNG; D—Various Interconnects between Texas Eastern Transmission Corporation and GNG.

5. Williams Natural Gas Company

[Docket No. CP88-669-000]

Take notice that on August 10, 1988, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP88-669-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon by reclaim 800 feet of 12-inch pipeline, measuring, regulating and appurtenant facilities and construct 420 feet of 6-inch pipleine, measuring, regulating and appurtenant facilities all in Cherokee County, Kansas, for the sale and delivery of gas to Empire District Electric Company (Empire), under the certificate issued in Docket No. CP82-479-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG states that Empire is replacing obsolete equipment at its Riverton power plant which would enable WNG to replace and relocate existing facilities to allow for better operation. The cost to reclaim is $2,490 with an estimated salvage value of $4,297 and the cost of construction is estimated to be $66,020, would be paid from treasury cash, it is stated.

WNG states that this change is not prohibited by an existing tariff and it has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers. WNG further states that the estimated peak day volume of 51,120 MMBtu of natural gas equivalent will not exceed the total volume authorized in Docket No. C 398.

Comment date: September 26, 1988, in accordance with Standard Paragraph G at the end of this notice

6. United Gas Pipe Line Company

[Docket No. CP88-654-000]

Take notice that on August 1, 1988, United Gas Pipe Line Company (United) P.O. Box 1478, Houston, Texas 77251 filed in Docket No. CP88-654-000 a request pursuant to § 157.216(b) of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon facilities formerly being used to serve Exxon Pipeline Company (Exxon) at its Gilmer Pump Station located in Upshur County, Texas, under the certificate issued in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United indicates that the metering facilities (including a bypass, and miscellaneous appurtenances) to be abandoned were certificated under

Docket No. CP86–724 and that such abandonment would be accomplished without detriment or disadvantage to its existing customers.

Comment date: September 26, 1988, in accordance with Standard Paragraph G at the end of this notice.

7. Granite State Transmission, Inc.

[Docket No. CP88–667–000]

Take notice that on August 9, 1988, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, filed in Docket No. CP88–667–000 a request pursuant to § 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to establish two new off-system delivery points for sales service to its affiliated distribution company customer, Bay State Gas Company (Bay State), under Granite State's blanket certificate issued in Docket No. CP82–515–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Granite State proposes to establish a new off-system delivery points to Bay State at Mahwah, New Jersey and Mendon, Massachsuetts, where the pipeline facilities of Tennessee Gas Pipeline Company (Tennessee) and Algonquin Gas Transmission Company (Algonquin Gas) interconnect. Granite State states that Tennessee, which is Granite State's largest supplier, was recently authorized to establish delivery points to Granite State at the Mahwah and Mendon interconnections with Algonquin Gas in Docket No. CP86–732–000 for sales deliveries on an interruptible basis [1] (43 FERC ¶ 61,041, April 6, 1988). According to Granite State, Algonquin Gas is providing interruptible transportation service to its customers pursuant to section 311 of the Natural Gas Policy Act and Part 254 of the Commission's Regulations. Bay State, an Algonquin Gas customer, is eligible for such interruptible transportation service and has designated Mahwah and Mendon as receipt points for gas to be transported by Algonquin Gas to Bay State's Brockton, Massachusetts division, it is stated. It is explained that the new delivery points would be used only for interruptible sales service, and that deliveries for Granite State's account by Tennessee at the new delivery points would not increase Bay State's presently authorized daily contract demand or annual purchase entitlements with Granite State and that no other customer of Granite State would be adversely affected by the proposal. Finally, according to Granite State, no construction is required to establish the new delivery points.

Comment date: September 26, 1988, in accordance with Standard Paragraph G at the end of this notice.

8. Chattanooga Gas Company, a Division of Jupiter Industries, Inc. and Chattanooga Gas Company

[Docket No. CP88–660–000]

Take notice that on August 5, 1988, Chattanooga Gas Company, a Division of Jupiter Industries, Inc. (CGC–Jupiter), 811 Broad Street, Chattanooga, Tennessee 37402, and Chattanooga, Gas Company (CGC-Atlanta), 235 Peachtree Street, Atlanta, Georgia 30303, jointly filed in Docket No. CP88–660–000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act requesting (1) authorization for CGC-Atlanta to acquire the gas liquefaction facility owned by CGC-Jupiter, and (2) authorization for CGC-Jupiter to abandon the services provided by the LNG facility and certificate in Docket Nos. CP73–329 and CP80–487 by transfer of the certificates to CGC-Atlanta, all as more fully described in the application which is on file with the Commission and open to public inspection.

The joint applicants state that the request stems from the April 5, 1988, agreement between CGC-Jupiter and CGC-Atlanta whereby CGC-Atlanta would acquire substantially all of the assets of CGC-Jupiter for a cash purchase price of approximately 35 million dollars. It is indicated that closing of the transaction is subject to various governmental approvals. It is also indicated that on May 6, 1988, the joint applicants submitted an application to the Tennessee Public Service Commission requesting authorization for the sale of CGC-Jupiter's assets to CGC-Atlanta.

The joint applicants note that the certificates in Docket Nos. CP73–329 and CP80–487 authorize CGC-Jupiter to (1) sell LNG produced in the LNG facility to various customers for resale and (2) provide a storage service for LNG. The joint applicants state that CGC-Jupiter is not currently providing any service pursuant to the certificates and CGC-Jupiter's LNG facility has reverted to its original, peak-shaving function. The joint applicants state the requested authorization is needed (1) to reflect the April 5, 1988, agreement by CGC-Jupiter to sell the LNG facility and (2) to ensure that CGC-Atlanta can provide LNG service as the successor to CGC-Jupiter. The joint applicants ask that if the Commission addresses this application before the Tennessee Public Service Commission (PSC) addresses the companion application, the authorization be conditioned on approval by the Tennessee PSC of the companion petition. In addition the joint applicants ask for any waiver which may be needed in order to grant the requested authorization.

Comment date: September 2, 1988, in accordance with Standard Paragraph F at the end of this notice.

9. Midwestern Gas Transmission Company

[Docket No. CP88–659–000]

Take notice that on August 4, 1988, Midwestern Gas Transmission Company (Midwestern) filed in Docket No. CP 88–659–000 an application pursuant to sections 7(c) of the Natural Gas Act for authorization to transport up to 125,000 dt equivalent of natural gas per day for DeKalb Petroleum Corporation (DeKalb), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Midwestern explains that the gas would be received at Emerson, Manitoba, on the Canadian border, and that equivalent volumes would be delivered to DeKalb at an existing interconnection with ANR Pipeline Company near Marshfield, Wisconsin, pursuant to a transportation agreement signed June 10, 1988. It is asserted that the transportation service would be performed on an interruptible basis and would require no construction of new facilities. It is stated that Midwestern would charge the rates established in its Rate Schedule IT–2.

Comment date: September 2, 1988, in accordance with Standard Paragraph F at the end of this notice.

10. United Gas Pipe Line Company

[Docket No. CP88–666–000]

Take notice that on August 9, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP88–666–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a sales tap for the delivery of natural gas, for resale, under the certificate authorization issued in Docket No. CP82–430–000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application that is on file

[1] Deliveries for Granite State's account by Tennessee are limited to 20,000 Dt a day on an interruptible basis under the certificate authorization in Docket No. CP86–732–000, *supra*.

with the Commission and open to public inspection.

United proposes to construct and operate a one-inch sales tap on its 16-inch Jackson-Mobile Main Line near Magee, Simpson County, Mississippi. United states that the new sales tap would enable it to supply an estimated average of 2 Mcf per day of natural gas under United's Rate Schedule DG–N to Entex Inc. for resale for commercial use to the James N. Griffith's Chicken Farm. United further states that the estimated peak daily and annual quantities would be 9 Mcf and 800 Mcf, respectively.

United states that it would construct and operate the proposed sales tap in compliance with 18 CFR Part 157, Subpart F, and that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers.

Comment date: September 26, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date filed with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in the subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–18800 Filed 8–18–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD8817017T]

Designation of Tight Formation, Duval County, TX; Tight Formation Determination

August 16, 1988.

Take notice that on August 3, 1988, the Railroad Commission of Texas (Texas) submitted to the Commission its determination that the Hagist Ranch (Wilcox Reagan, Wilcox K Middle, Wilcox House C, and Wilcox Basal House) Fields located in Duval and McMullen Counties, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The application includes the Railroad Commission's order issued July 18, 1988, finding that the formation meets the requirements of the Commission's regulations set forth in 18 CFR Part 271.

Any person desiring to be heard or to protest Texas' determination should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Rules of Practice and Procedure (18 CFR 385.211, 385.214 (1988)). All such comments should be filed within 20 days after publication of this notice in the **Federal Register**. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–18868 Filed 8–18–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP88–678–000 et al.]

Tennessee Gas Pipeline Co. et al.; Natural Gas Certificate Filings

August 15, 1988.

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Company

[Docket No. CP88–678–000]

Take notice that on August 12, 1988, Tennessee Gas Pipeline Company, (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88–678–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Citizens Gas Supply Corporation (Citizens), a marketer, under the certificate issued in Docket No. CP87–115–000 on June 18, 1987, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated July 14, 1988, and amended July 20, 1988, it proposes to transport up to 150,000 dekatherms per day equivalent of natural gas on an interruptible basis for Citizens from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A", which transportation service involves interconnections between Tennessee and various transporters. Tennessee states that it would receive the gas at various existing points on its system Offshore Louisiana, and in the states of Louisiana, Mississippi, Texas, Alabama, Kentucky, New Jersey, Massachusetts, New York, and that it would transport and redeliver the gas to Citizens at various points in multiple states.

Tennessee advises that service under § 284.223(a) commenced July 28, 1988, as reported in Docket No. ST88–5146 (filed August 9, 1988).

Comment date: September 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Tennessee Gas Pipeline Company

[Docket No. CP88–677–000]

Take notice that on August 12, 1988, Tennessee Gas Pipeline Company,

(Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88–677–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Tejas Power Corporation (Tejas), a marketer, under the certificate issued in Docket No. CP87–115–000 on June 18, 1987, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated July 7, 1988, and amended July 7, 1988, it proposes to transport up to 20,000 dekatherms per day equivalent of natural gas on an interruptible basis for Tejas from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A", which transportation service involves interconnections between Tennessee and various transporters. Tennessee states that it would receive the gas at various existing points on its system Offshore Louisiana, Offshore Texas, and in the states of Louisiana, Mississippi and Texas, and that it would transport and redeliver the gas to Tejas at various points in the states of Kentucky, Louisiana, Mississippi, Tennessee, West Virginia, Indiana, Illinois, Texas and Arkansas.

Tennessee advises that service under § 284.223(a) commenced July 7, 1988, as reported in Docket No. ST88–5123 (filed August 5, 1988).

Comment date: September 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Northern Natural Gas Company Division of Enron Corporation

[Docket No. CP88–668–000]

Take notice that on August 9, 1988, Northern Natural Gas Company, Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP88–668–000 a request pursuant to § 1457.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Arco Oil & Gas Company, a producer of natural gas, under Northern's blanket certificate issued in Docket No. CP86–435–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to transport up to 100,000 MMBtu/day for Arco Oil & Gas Company from one point of receipt in Offshore Texas to one point of delivery in Texas. Northern states that construction of facilities would not be required to provide the proposed service.

Comment date: September 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. Northern Natural Gas Company Division of Enron Corporation

[Docket No. CP88–675–000]

Take notice that on August 12, 1988, Northern Natural Gas Company, Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP88–675–000 a request pursuant to § 1157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Maxus Exploration Company, (Maxus), under the authorization issued in Docket No. CP86–435–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern would perform the proposed interruptible transportation service for Maxus, a producer of natural gas, pursuant to an executed interruptible transportation agreement. The term of the transportation agreement is for one year and month to month thereafter unless terminated upon 30 days prior written notice by one party to the other party. Northern proposes to transport on a peak day up to 20,000 MMBtu; on an average day up to 15,000 MMBtu; and on an annual basis 7,300 MMBtu of natural gas for Maxus. Northern proposes to receive the subject gas from two receipt points in Texas and Oklahoma. Northern would then transport and redeliver such volumes to Maxus at eighteen delivery points located in Texas. Northern avers that construction of facilities would not be required to provide the proposed service.

Northern states that it would perform such transportation service for Maxus pursuant to its Rate Schedule IT–1, or any effective superseding rate schedule on file with the FERC or any successor thereof. It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's regulations. Northern commenced such self-implementing service on June 1, 1988, as reported in Docket No. ST88–5172–000.

Comment date: September 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. Tennessee Gas Pipeline Company

[Docket No. CP88–676–000]

Take notice that on August 12, 1988, Tennessee Gas Pipeline Company, (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88–676–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Mobile Natural Gas, Inc. (Mobil), a marketer, under the certificate issued in Docket No. CP87–115–000 on June 18, 1987, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated July 25, 1988, it proposes to transport up to 100,000 dekatherms per day equivalent of natural gas on an interruptible basis for Mobile from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A", which transportation service involves interconnections between Tennessee and various transporters. Tennessee states that it would receive the gas at various existing points on its system Offshore Louisiana, Offshore, Texas, and in the states of Louisiana and Texas, and that it would transport and redeliver the gas to Mobil at various points in West Virginia.

Tennessee advises that service under § 284.223(a) commenced August 1, 1988, as reported in Docket No. ST88–5145 (filed August 9, 1988).

Comment date: September 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 18865 Filed 8–18–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER88–433–000]

Central Louisiana Electric Company, Inc.; Filing

August 16, 1988.

Take notice that on July 27, 1988, Central Louisiana Electric Company, Inc. (CLECO) tendered for filing additional data in support of its filing and an amendment to the proposed fuel adjustment clause contained in its May 27, 1988 filing for a rate increase for firm power service provided to the Towns of Boyce and Elizabeth, Louisiana.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 25, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–18869 Filed 8–18–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88–44–010 and RP88–184–003]

El Paso Natural Gas Co.; August 15, 1988.

Take notice that on August 10, 1988, El Paso Natural Gas Company (El Paso) filed First Substitute Original Sheet No. 1–D.3, First Revised Sheet No. 1–D.3, Second Revised Sheet No. 1–D.3 and Substitute Second Revised Sheet No. 1–D.3 to its FERC Gas Tariff, Third Revised Volume No. 2.

El Paso states that the purpose of this filing is to insert the "San Juan Triangle Facilities Demand Charge" which had been omitted from earlier filings, including compliance filings made on July 14 and August 1, 1988. El Paso requests that these tariff sheets be substituted for their previously filed counterparts.

El Paso states that a copy of this filing is being served upon all parties of record in Docket Nos. RP88–44–000 and RP88–184–000 and upon all interstate pipeline system customers of El Paso and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before August 23, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–18870 Filed 8–18–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88–2–15–001]

Mid Louisiana Gas Co.; Proposed Change of Rates

August 15, 1988.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on August 9, 1988, tendered for filing as a part of First Revised Volume No. of its FERC Gas Tariff, Substitute Sixty-Fourth Revised Sheet No. 3a to become effective September 1, 1988.

Mid Louisiana states that the purpose of the filing of Substitute Sixty-Fourth Revised Sheet No. 3a is to reflect the correction of mathematical error contained in the calculation of the Purchased Gas Cost Surcharge in its filling of July 1, 1988.

Mid Louisiana states this filing is made in accordance with Section 19 of Mid Louisiana's FERC Gas Tariff. Copies of this filing have been mailed to Mid Louisiana's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before September 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not have to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–18871 Filed 8–18–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88–94–000; RP88–94–001]

Natural Gas Pipeline Co. of America; Notice of Technical Conference

August 15, 1988.

Pursuant to the Commission order issued on April 29, 1988, a second technical conference will be held to address issues in the above-captioned proceeding. The conference will be held on Thursday, September 8, 1988, at 1:00 p.m. in a room to be designated at the office of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20423.

All interested parties are permitted to attend.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–18872 Filed 8–18–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G–4579–051 et al.]

OXY USA Inc., Successor to Cities Service Oil and Gas Corp.; Redesignation

August 16, 1988.

Take notice that on June 3, 1988, OXY USA Inc. of P.O. Box 300, Tulsa, Oklahoma 74102, filed an application pursuant to § 157.23(b) of the Federal Energy Regulatory Commission's Regulations to amend certificates of public convenience and necessity to substitute OXY USA Inc. for Cities Service Oil and Gas Corporation. OXY USA Inc. also requests that the FERC Gas Rate Schedules of Cities Service Oil and Gas Corporation be redesignated as those of OXY USA Inc. and that OXY USA Inc. be substituted for Cities Service Oil and Gas Corporation in any related proceedings presently pending before the Commission. The related certificates and rate schedules are listed in the attached Exhibit A. The application is on file with the

Commission and open for public inspection.

Effective April 1, 1988, the corporate name of Cities Service Oil and Gas Corporation was changed to OXY USA Inc.as evidenced by a Certificate of Amendment of Certificate of Incorporation dated February 22, 1988.

Notice is hereby given that all certificates and related rate schedules as listed in the attached Exhibit A are hereby redesignated to reflect the corporate name change from Cities Service Oil and Gas Corporation to OXY USA Inc. and that OXY USA Inc. is substituted for Cities Service Oil and Gas Corporation in all pending proceedings.

Lois D. Cashell,

Acting Secretary.

EXHIBIT A

R.S. No.	Purchaser	Certificate Docket
1*	Trunkline Gas Company	G-4579
18	El Paso Natural Gas Company.	G-4579
19*	...do...	G-4579
20	...do...	G-4579
21	...do...	G-4579
23	...do...	G-4579
24	...do...	G-4579
25	...do...	G-4579
27	...do...	G-4579
28	...do...	G-4579
31	...do...	G-4579
32	Northern Natural Gas Company.	G-4579
38	El Paso Natural Gas Company.	G-4579
39	...do...	G-4579
40	...do...	G-4579
41	...do...	G-4579
50	Texas Gas Transmission Corp..	G-4579
51	El Paso Natural Gas Company.	G-4579
53	Northern Natural Gas Company.	G-4579
57	El Paso Natural Gas Company.	G-4579
58	...do...	G-4579
59	...do...	G-4579
60	...do...	G-4579
61	...do...	G-4579
62	...do...	G-4579
63	...do...	G-4579
64	...do...	G-4579
65	...do...	G-4579
66	...do...	G-4579
69	Lone Star Gas Company	G-4579
90	K N Energy, Inc.	G-4579
91	Colorado Interstate Gas Company.	G-4579
98	Northern Natural Gas Company.	G-11838
		G-16997
99*	Colorado Interstate Gas Company.	G-12149
100*	...do...	G-12150
107	Phillips 66 Natural Gas Company.	G-14532
108	K N Energy, Inc.	G-4579
111	Phillips 66 Natural Gas Company.	G-14533
		G-14525
		G-14526
		G-14530
		G-14524
		G-14522
		G-14523
120	Philips 66 Natural Gas Company.	G-14529
121	K N Energy, Inc.	G-4579
124	West Texas Gathering Company.	G-14437
125*	Colorado Interstate Gas Company.	G-4579
126	...do...	G-4579
127	Northern Natural Gas Company.	G-17451
129	Natural Gas Pipeline Co. of America.	G-18352
130	El Paso Natural Gas Company.	G-18456
133	Colorado Interstate Gas Company.	G-19549
134	Trunkline Gas Company	G-19559
135	El Paso Natural Gas Company.	G-4579
137	Transwestern Pipeline Company.	G-18235
140*	Northern Natural Gas Company.	CI60-830
142	Transwestern Pipeline Company.	G-18236
146	Colorado Interstate Gas Company.	CI61-1123
147	Transwestern Pipeline Company.	CI61-1100
150	Ringwood Gathering Company and Pioneer Gas Products Company.	CI61-1664
152	Natural Gas Pipeline Co. of America.	CI62-72
153	...do...	CI62-508
158	Colorado Interstate Gas Company.	CI63-76
160	Northern Natural Gas Company.	CI63-316
162	ANR Pipeline Company	CI63-647
164	Natural Gas Pipeline Co. of America.	CI63-710
165	Colorado Interstate Gas Company.	CI63-1307
166*	Northern Natural Gas Company.	G-4579
167*	...do...	G-4579
168*	...do...	G-4579
169*	...do...	G-4579
170*	...do...	G-4579
171*	...do...	G-4579
172	Arkla Energy Resources, a division of Arkla, Inc..	CI64-136
175	Colorado Interstate Gas Company.	CI64-664
176	Columbia Gas Transmission Corp..	G-2721
177	El Paso Natural Gas Company.	G-4579
180	Tennessee Gas Pipeline Company.	G-11046
182*	ANR Pipeline Company	G-13228
185	Southern Natural Gas Company.	CI60-20
186	Tennessee Gas Pipeline Company.	G-19707
187	...do...	CI62-135
190	Northern Natural Gas Company.	CI64-752
191	...do...	CI64-773
193	Tennessee Gas Pipeline Company.	CI64-1110
199*	El Paso Natural Gas Company.	CI64-1451
200	Williams Natural Gas Company.	G-9792
201	Northern Natural Gas Company.	CI61-385
203	El Paso Natural Gas Company.	G-3566
205	...do...	G-3567
210	...do...	CI66-636
217	Northern Natural Gas Company.	CI67-1566
218	Transwestern Pipeline Company.	CI67-930
220	Texas Eastern Transmission Corp..	CI68-311
223	Southern California Gas Company.	CI68-924
224	Tennessee Gas Pipeline Company.	CI67-864
225	Transwestern Pipeline Company.	CI68-1276
228	Tennessee Gas Pipeline Company.	CI69-57
231	Texas Gas Transmission Corp..	G-4560
233	Kentucky West Virginia Gas Co..	G-7008
234	Columbia Gas Transmission Corp..	G-7009
235	...do...	G-7009
236	Oklahoma Gas Pipeline Company.	G-7011
237	K N Energy, Inc.	G-7012
238	Northern Natural Gas Company.	G-7014
239	...do...	G-7015
240	...do...	G-7015
241	Colorado Interstate Gas Company.	G-7016
242	Northern Natural Gas Company.	G-7017
243	Oklahoma Gas Pipeline Company.	G-7018
244*	Colorado Interstate Gas Company.	G-8994
245	Northern Natural Gas Company.	G-9864
246	Colorado Interstate Gas Company.	G-10802
248	Columbia Gas Transmission Corp..	G-12487
249	Northern Natural Gas Company.	G-12508
253	Colorado Interstate Gas Company.	G-7006
		G-7010
255	Colorado Interstate Gas Company.	CI60-169
261	CNG Transmission Corporation.	G-7074
262	...do...	G-7075
264	...do...	G-7077
267	Columbia Gas Transmission Corp..	G-7080
269	...do...	G-7081
270	Equitable Transmission Company.	G-7083
271	Columbia Gas Transmission Corp..	G-7084
272	...do...	G-7085
274	CNG Transmission Corporation.	G-11120
277	...do...	G-13074
279	Columbia Gas Transmission Corp..	G-11648
280	CNG Transmission Corporation.	CI60-139
281*	Columbia Gas Transmission Corp..	CI62-458

EXHIBIT A—Continued

R.S. No.	Purchaser	Certificate Docket
282	CNG Transmission Corporation.	CI62-498
285	Equitable Transmission Company.	CI63-1312
286	Texas Gas Transmission Corp..	CI63-1317
288	Northern Natural Gas Company.	CI64-425
292	Columbia Gas Transmission Corp..	CI66-351
297	...do...	CI68-212
299	CNG Transmission Corporation.	CI68-736
300	...do...	CI68-891
302	ANR Pipeline Company	CI68-1322
304	Transwestern Pipeline Company.	CI69-394
305	Natural Gas Pipeline Co. of America.	CI69-406
310	ANR Pipeline Company	CI69-443
311	...do...	CI69-1096
313	...do...	CI69-1236
314	Texas Eastern Transmission Corp..	CI69-1235
315	Tennessee Gas Pipeline Company.	CI69-1117
316*	Northern Natural Gas Company.	CI70-80
317	Transwestern Pipeline Company.	CI70-176
318	CNG Transmission Corporation.	CI70-129
319	Mountain Fuel Resources, Inc..	CI70-481
322	Tennessee Gas Pipeline Company.	CI70-598
323	...do...	CI70-660
325	ANR Pipeline Company	CI70-941
327	Columbia Gas Transmission Corp..	CI70-982
329	ANR Pipeline Company	CI70-1080
330	Texas Eastern Transmission Corp..	CI71-237
331	Tennessee Gas Pipeline Company.	CI70-1008
332	Transcontinental Gas Pipe Line Corp..	CI71-207
333	Columbia Gas Transmission Corp..	CI71-295
334	Arkla Energy Resources, a division of Arkla, Inc..	CI71-324
335	El Paso Natural Gas Company.	CI71-435
337	CNG Transmission Corporation.	CI71-492
338	Phillips 66 Natural Gas Company.	G-14531 G-14527 G-14258 G-14521
339	Columbia Gas Transmission Corp..	CI71-559
344	Williams Natural Gas Company.	CI72-69
345*	Transwestern Pipeline Company.	CI72-78
347	Columbia Gas Transmission Corp..	CI72-160
349	Arkla Energy Resources, a division of Arkla, Inc..	G-2712
351*	Southern Natural Gas Company.	G-2712
355	Texas Eastern Transmission Corp..	G-3031
358	Mobil Oil Corporation	G-3031
362	Arkla Energy Resources, a division of Arkla, Inc..	G-3031
364	Tennessee Gas Pipeline Company.	G-8713

EXHIBIT A—Continued

R.S. No.	Purchaser	Certificate Docket
365*	Arkla Energy Resources, a division of Arkla, Inc..	G-2712
368*	Texas Transmission Corp.	G-9789
370*	...do...	G-10188
373*	...do...	G-16204
375	...do...	G-19716
376	Tennessee Gas Pipeline Company.	CI60-198
377	Texas Eastern Transmission Corp..	CI61-1131
379	Arkla Energy Resources, a division of Arkla, Inc..	G-2712
380	Trunkline Gas Company	CI72-231
383	Arkla Energy Resources, a division of Arkla, Inc..	CI72-600
384	Transwestern Pipeline Company.	CI72-635
389	ANR Pipeline Company	CI72-840
391	CNG Transmission Corporation.	CI73-118
392	ANR Pipeline Company	CI73-38
394	CNG Transmission Corporation.	CI73-206
398	Tennessee Gas Pipeline Company.	CI73-468
399	Columbia Gas Transmission Corp..	CI73-635
400	Tennessee Gas Pipeline Company.	CI73-728
403	Southern Natural Gas Company.	CI73-845
406	Transwestern Pipeline Company.	CI74-194
407	Northern Natural Gas Company.	CI74-435
410	Trunkline Gas Company	CI75-181
411	K N Energy, Inc.	CI75-227
415	Tennessee Gas Pipeline Company.	CI75-489
417	Northern Natural Gas Company.	CI75-539
418	Texas Gas Transmission Corporation.	CI75-558
419*	El Paso Natural Gas Company.	CI75-605
420	Transwestern Pipeline Company.	CI75-606
424	...do...	CI76-38
425	Trunkline Gas Company	CI76-18
426	Tennessee Gas Pipeline Company.	CI76-58
429	...do...	CI76-220
430	...do...	CI76-805
431	Colorado Interstate Gas Company.	CI76-333
434	Northern Natural Gas Company.	CI76-381
436	Tennessee Gas Pipeline Company.	CI76-620
437	El Paso Natural Gas Company.	CI77-16
440	Colorado Interstate Gas Company.	CI77-188
441*	Natural Gas Pipeline Co. of America.	CI77-99
442	El Paso Natural Gas Company.	CI77-327
443	Transco Gas Supply Company.	CI77-402
445	Natural Gas Pipeline Co. of America.	CI77-174
446	El Paso Natural Gas Company.	CI77-491
447	...do...	CI77-512
448	Tennessee Gas Pipeline Company.	CI77-579
449	Transco Gas Supply Company.	CI77-594
450	...do...	CI77-616

EXHIBIT A—Continued

R.S. No.	Purchaser	Certificate Docket
451	El Paso Natural Gas Company.	CI77-634
453	ANR Pipeline Company	CI77-693
454	Northern Natural Gas Company.	CI77-822
455	ANR Pipeline Company	CI77-699
456	Panhandle Eastern Pipe Line Co..	CI77-770
457	ANR Pipeline Company	CI78-6
458	K N Energy, Inc.	CI78-99
459	Natural Gas Pipeline Co. of America.	CI78-156
460	Panhandle Eastern Pipe Line Co..	CI78-211
462	ANR Pipeline Company	CI78-392
467	Northern Natural Gas Company.	CI78-615
469	ANR Pipeline Company	CI78-688
473	K N Energy, Inc.	CI78-838
476	Northern Natural Gas Company.	CI78-1048
478	...do...	CI78-693
479	Colorado Interstate Gas Company.	CI78-1217
480	El Paso Natural Gas Company.	CI79-426
481	ANR Pipeline Company	CI79-462
482	Tennessee Gas Pipeline Company.	CI79-508
483	ANR Pipeline Company	CI79-470
490	...do...	CI80-422
492	Southern Natural Gas Company.	CI81-5
494	Tennessee Gas Pipeline Company.	CI81-202
495	Transcontinental Gas Pipe Line Corp..	CI81-300
497	Texas Eastern Transmission Corp..	CI81-44
498	Williams Natural Gas Company.	CI78-210
499	Trunkline Gas Company	CI82-204
500	...do...	CI82-217
501	Northern Natural Gas Company.	CI82-302
503	El Paso Natural Gas Company.	CI82-434
505	Tennessee Gas Pipeline Company.	CI83-168
507	Transcontinental Gas Pipe Line Corp..	CI84-435
508	Northern Natural Gas Company.	CI85-262
511	Williston Basin Interstate Pipeline Co..	CI85-638
512	ANR Pipeline Company	CI86-183
513	Amoco Gas Company	CI85-623
514	Northern Natural Gas Company.	CI86-133
515	Tennessee Gas Pipeline Company.	CI86-268
516	ANR Pipeline Company	CI86-365
518	...do...	CI86-362
520	Columbia Gas Transmission Corp..	CI86-360
521	...do...	CI86-358
522	Northern Natural Gas Company.	CI86-366
523	Northwest Pipeline Corporation.	CI86-363
525	Southern Natural Gas Company.	CI86-356
526	Texas Eastern Transmission Corp..	CI86-343
527	Texas Gas Transmission Corporation.	CI86-342
528	Transco Gas Supply Company.	CI86-357
529	...do...	CI86-355

EXHIBIT A—Continued

R.S. No.	Purchaser	Certificate Docket
530	...do...	CI86-354
531	...do...	CI86-341
532	...do...	CI86-352
533	...do...	CI86-351
535	Transcontinental Gas Pipe Line Corp.	CI86-346
536	...do...	CI86-353
537	...do...	CI86-349
538	Trunkline Gas Company	CI86-348
544	Columbia Gas Transmission Corp.	CI73-122
545	Northern Natural Gas Company.	CI87-105
546	Transco Gas Supply Company.	CI81-490
547	Transcontinental Gas Pipe Line Corp.	CI87-255
548	Texas Eastern Transmission Corp.	CI87-624
549	...do...	CI87-775
550	Trunkline Gas Company	CI87-885
551	...do...	CI87-886
552	Colorado Interstate Gas Company.	CI88-152
553	Texas Eastern Transmission Corp.	G-17239-001

*Operator, *et al.*

[FR Doc. 88-18873 Filed 8-18-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP88-155-001]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

August 15, 1988.

Take notice that on August 9, 1988, Southern Natural Gas Company (Southern) tendered for filing the following original and revised tariff sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1 to become effective June 1, 1988:

Substitute Sixth Revised Sheet No. 45B
Substitute Fifth Revised Sheet No. 45C
Substitute Seventh Revised Sheet No. 45D
Substitute Eighth Revised Sheet No. 45E
Substitute First Revised Sheet No. 45E.1
Substitute First Revised Sheet No. 45E.2
Substitute First Revised Sheet No. 45E.3
Substitute First Revised Sheet No. 45E.4
Substitute Original Revised Sheet No. 45E.5
Substitute Original Revised Sheet No. 45E.6
Substitute Original Revised Sheet No. 45E.7
Substitute Original Revised Sheet No. 45E.8

Southern states that the proposed tariff sheets reflect certain changes to the Purchased Gas Adjustment (PGA) clause of Southern's tariff in compliance with the July 8, 1988 order issued by the Director of the Office of Pipeline and Producer Regulation in Docket No. RP88-155-000.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions and upon the parties to Docket No. RP88-155-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.212 or 385.214) All such motions or protests should be filed on or before August 23, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18874 Filed 8-18-88; 8:45 am]
BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders During the Week of May 23 Through May 27, 1988

During the week of May 23 through May 27, 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.

Appeals

Glen Milner, 5/23/88, KFA-0188

Glen Milner filed an Appeal from a denial by the Senior Information Officer, Albuquerque Operations Office, of a Request for Information which he had submitted under the Freedom of Information Act. The document that was the subject of the Appeal was a page of a technical manual concerning the characteristics of containers for nuclear weapons. In considering the Appeal, the DOE found that the document sought might be exempt from mandatory release pursuant to Exemption 2 of the FOIA, but that the determination letter did not contain sufficient information to enable the DOE to make a decision regarding the exemption's application in the case. Accordingly, the matter was remanded for release of the document or a new determination letter explaining in more detail why the document was exempt from release under Exemption 2.

Jeff Nesmith, 5/24/88, KFA-0184

Jeff Nesmith filed an Appeal from a determination by the Chairman of the Superconducting Super Collider (SSC) Task Force of a request which he had submitted under the Freedom of Information Act. Nesmith sought copies of the contents of sealed envelopes, containing voluntary offers of financial assistance, that were submitted with the SSC site proposals. In considering the Appeal, the DOE found that the contents of the sealed envelopes do not constitute agency records, and therefore are not subject to the FOIA. Accordingly, Nesmith's Appeal was denied.

Office of Scientific & Technical Information, 5/26/88, KFA-0158

The DOE's Office of Scientific and Technical Information (OSTI) filed a Motion for Clarification of a Decision and Order that had been issued to the National Security Archive on December 18, 1987. That Decision required OSTI to search its computerized database for information that was sought by the NSA. The DOE found that while it is clear that the FOIA does not require agencies to make computations or manipulate data contained in computerized records, when an agency already has software capable of retrieving the information sought by a requester, the FOIA requires that the agency utilize its computer capabilities to retrieve the information.

Request for Exception

Pro Oil, 5/27/88, KEE-0164

Pro Oil filed an Application for Exception in which it sought relief from its obligation to submit Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering the firm's request, the DOE found that the firm failed to demonstrate that it was experiencing a significantly greater hardship than other reporting firms. Accordingly, exception relief was denied.

Motion for Discovery

Ozark County Gas, Inc., Charles Luna, 5/25/88 KRD-0239, KRH-0239

The OHA issued a Decision and Order denying a Motion for Discovery and Motion for Evidentiary Hearing filed by Ozark County Gas, Inc. and Charles Luna in connection with a Remedial Order issued to them. In denying the Motion for Discovery, the

OHA found that the information sought by Luna and Ozark was irrelevant to the final resolution of the case. OHA also denied the PRO respondents' request for an evidentiary hearing, finding that Luna and Ozark had not shown that convening such a hearing would in any way advance the resolution of the factual disputes in the case.

Refund Applications

Aminoil U.S.A., Inc./Orland LP-Gas, Inc., Orland L.P. Gas Co., 5/27/88, RF139-1, RF139-2

The DOE issued a Decision and Order concerning two Applications for Refund filed by the previous and current owners of Orland LP-Gas, Inc. (Orland) in the Aminoil U.S.A., Inc. special refund proceeding. The DOE first found that Orland had demonstrated that it experienced injury in connection with its Aminoil purchases. The DOE then found that by virtue of complete ownership of the corporation's stock, the current owner was the proper party to receive the corporation's refund. The DOE concluded that the firm should receive a refund of $22,361, representing $12,786 in principal and $9,575 in interest.

Augustus Bros., Inc., 5/27/88, RF272-6283

The DOE issued a Decision and Order considering an application for a crude oil overcharge refund filed by Augustus Bros. Inc., a gasoline retailer during the period August 19, 1973 through January 27, 1981. Because Augustus did not demonstrate that it was injured due to the crude oil overcharges, the application was denied.

BAK Ltd./Amoco Corporation, Supreme Petroleum Co., of New Jersey, 5/27/88, RF303-1, RF303-2

The DOE issued a Decision and Order concerning Applications for Refund filed by Amoco Corporation, an integrated petroleum refiner, and Supreme Petroleum Co., of New Jersey, a petroleum products reseller. Both applicants sought a portion of the settlement fund obtained by the DOE through a consent order entered into with Bernard A. Krouse, Krouse Fuel Co., Allan Fuel Co., Kealy Fuel Co., and Walter T. Hoff & Son (BAK). The DOE found that Amoco was injured by BAK's alleged No. 2 heating oil overcharges. Using the competitive disadvantage methodology, the DOE determined that Amoco was entitled to receive its maximum potential refund of $32,347 plus $30,245 in accrued interest. Accordingly, Amoco was granted a total refund of $62,592. The DOE denied the Supreme refund claim because the firm, a spot purchaser of BAK heating oil, failed to demonstrate that it was injured by BAK's pricing practices.

Beacon Oil Company/E.B. Johnstone, Inc., Redwood Tree Service Stations, Inc., Wallace Transport, 5/26/88, RF238-15, RF238-28, RF238-76

The DOE issued a Decision and Order concerning the Applications for Refund filed by E.B. Johnstone, Inc. (Johnstone), Redwood Tree Service Stations, Inc. (Redwood), and Wallace Transport (Wallace) in the Beacon Oil Company special refund proceeding. Since Wallace, and end-user of Beacon products, failed to provide adequate purchase volume information, its claim was denied. Johnstone and Redwood were retailers that provided purchase volume information demonstrating that they were each entitled to refunds of less than $5,000. Accordingly, the two firms were granted refunds totaling $10,299, representing $4,862 in principal and $5,437 in accrued interest.

Charles Fudge, et al., 5/23/88, RF272-5499, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 23 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 the products involved and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is $506.

Conoco Inc./Thornhill Oil Company, Inc., Piasa Motor Fuels, Inc., Nebraska-Iowa Supply, 5/23/88, RF220-245, RF220-246, RF220-247

The DOE issued a Decision and Order granting Applications for Refund filed by three resellers of Conoco, Inc. refined petroleum products. The DOE concluded that the annual cost bank data submitted by the applicants was an inadequate basis for demonstrating injury and therefore limited each applicant's refund to the $5,000 small claims threshold. The total amount of refunds approved in the Decision was $21,558, representing $15,000 in principal and $6,558 in accrued interest.

David Hoffman, 5/23/88, RF272-2154

The DOE issued a Decision and Order considering an Application for Refund from crude oil overcharge funds filed by David Hoffman, an end-user of gasoline, diesel fuel, motor oil, grease, and propane. Mr. Hoffman demonstrated the volumes of all refined petroleum products that he purchased, except for propane, for which he only had records of the dollar amount spent. Using information developed by the Energy Information Administration and *Platt's Oil Price Handbook*, OHA derived an estimated national weighted average price for propane sold on the retail level during the crude oil price control period of $.4017 per gallon. Since he was an end-user, Mr. Hoffman was presumed injured as a result of his purchases of refined petroleum products and was granted a refund of $13.

Day Farm, et al., 5/25/88, RF272-4265, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 49 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 the products involved and was therefore presumed injured as a result of the alleged crude oil overcharges. The sum of the refunds granted in this Decision is $1,099.

Daystrom Furniture Inc., Bituminous Material & Supply, 5/25/88, RF272-1165, RF272-1257

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to two applicants, based on their purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant was an end-user of the products involved and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in the Decision is $3,911.

Dorchester Gas Corporation/Fowler Oil Company, 05/25/88, RF253-45

The DOE issued a Decision and Order considering an Application for Refund filed by Fowler Oil Company in the Dorchester Gas Corporation refund proceeding. Fowler demonstrated that it purchased approximately 587,333 gallons of propane indirectly from Dorchester through Champlin Petroleum Company during the consent order period. Since Champlin had not filed a claim in the Dorchester proceeding, the DOE determined that Fowler's claim should be treated in a manner similar to those filed by direct purchasers. Because Fowlers limited its claim to $5,000, it was not required to demonstrate injury. Accordingly, Fowler was granted a refund of $5,000 in principal and $1,857 in interest.

Dudley S. Tyler, 5/23/88, RF272-5350

The DOE issued a Decision and Order considering a refund application for crude oil overcharge funds filed by Dudley S. Tyler, based on his purchases of refined petroleum products during the

period August 19, 1973, through January 27, 1981. As an end-user of the products involved, Tyler was presumed injured by the alleged crude oil overcharges. The refund granted in this Decision is $21.

Farmers Union Oil Co., 5/25/88, RF272–1143

The DOE issued a Decision and Order considering a refund application filed by Farmers Union Oil Company (FUOC), an agricultural cooperative, in the DOE's Supert V crude oil refund proceedings. Since FUOC established that it would disburse the refund to its members, the application was granted. The total amount of refund approved in this Decision and Order is $1,920.

Gulf Oil Corporation/Harley Goldston's Gulf, 5/24/88, RF40–3707

The DOE issued a Decision and Order concerning duplicate Applications for Refund filed by Energy Watch, Inc. (EWI), and Energy Refunds, Inc. (ERI) on behalf of Harley Goldston's Gulf (Goldston) in the Gulf Oil Corporations special refund proceeding. In a search for duplicate applications, the DOE discovered that Goldston had received two refunds from the Gulf escrow account. Since the ERI application was both received and granted after that of EWI, the DOE ordered ERI to return $869, the amount of Goldston's refund approved through the ERI application, plus $74 in interest.

Larson Products, Inc., et al., 5/27/88, RF272–5289, 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 the products involved and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is $434.

Leonard E. Belcher, Inc./Somers Oil Service, 5/26/88, RR227–1

The DOE issued a Decision and Order regarding a Motion for Modification of a refund previously granted to Somers Oil Service from a consent order fund made available by Leonard E. Belcher, Inc. In the Motion, Somers contended that it was an error not to grant it a refund for several months in which Belcher's prices were higher than average terminal prices in its area, since Somers was injured in those months. The DOE noted that the listing Somers referred to in its Motion was actually a cargo lot price listing, which was not reflective of Somers' operations. The DOE found that terminal prices were the appropriate comparative prices upon which to measure Somers' injury level. The DOE then determined that Somers should have already received a refund for those months in which Belcher's prices were higher than the relevant terminal price, and that no additional refund was warranted. Accordingly, the Motion was denied.

Madison Water Utility, et al., 5/27/88, RF272–3853, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to ten 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 the products involved and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is $33,162.

Minnkota Power Cooperative, Inc., Southern Mississippi Electric Power Association, 5/25/88, RF272–98, RF272–121

The DOE issued a Decision and Order granting refunds to Minnkota Power Cooperative, Inc. and Southern Mississippi Electric Power Association, two electricity generation and transmission cooperatives which had submitted Applications for Refund in OHA's Subpart V crude oil overcharge refund proceedings. Each applicant provided evidence of the volume of refined petroleum products it purchased during the period August 19, 1973 through January 27, 1981 and certified that it would pass through the refund to its member distribution cooperatives. Using the rationale adopted in cases involving refund requests of investor-owned utilities, the DOE found that the two cooperatives would serve as appropriate conduits and provide the most direct possible restitution to their member customers. The refunds granted totaled $41,611.

Mobil Oil Corporation/Middletown Oil Company, 5/25/88, RR225–18, RR225–20, RR225–30, RR225–31

The DOE issued a Decision and Order regarding a Motion for Reconsideration filed by Middletown Oil Company in the Modil Oil Corporation special refund proceeding. Middletown's original refund claim was dismissed because it was filed after the deadline for Mobil refund applications. Because the applicant showed good cause for its late filing in its Motion, and because Mobil refund applications were still being processed, the Motion was granted and a total refund of $5,798 was approved.

Mobil Oil Corp./Moore Oil Co., Henry Ricci, 5/25/88, RF225–9262, RF225–9374

The DOE issued a Decision and Order considering Applications for Refund from the Mobil Oil Corporation escrow account filed by Moore Oil Co. and Henry Ricci, resellers of Mobil refined petroleum products. The claimants elected to submit documentation that they were injured by Mobil's pricing practices rather than to rely on the applicable presumptions of injury. The DOE determined that the motor gasoline purchased by each firm during the consent order period was purchased at prices higher than the market average price and therefore concluded that both applicants were eligible to receive full volumetric refund amounts for their purchases from Mobil. The refunds granted to the firms totaled $897, respresenting $720 of principal and $177 of interest.

Mobil Oil Corporation/Morris Oil Services, Inc., 5/23/88, RF225–08752, RF225–10807

The DOE issued a Decision regarding an Application for Refund from the Mobil Oil Corporation escrow account filed by Morris Oil Services, Inc., a reseller of Mobil refined petroleum products during the Mobil consent order period. Since the firm did not submit the detailed evidence of injury needed to establish its eligibility for a claim larger than $5,000, the DOE limited Morris' refund to that amount, plus $1,231 interest.

Mobil Oil Corporation/Southern Illinois University/Air Institute and Services 5/26/88, RF225–6236

The DOE issued a Decision and Order granting an Application for Refund from the Mobil Oil Corporation escrow account filed by Southern Illinois University/Air Institute and Services (SIU), a reseller and end-user of Mobil refined petroleum products. The DOE granted SIU a refund based on its purchases of 4,665,597 gallons of aviation fuel. However, the DOE denied the allocation claim filed by SIU because it had not sought redress contemporaneous to the alleged allocation violation. The total refund granted to SIU was $2,338, representing $1,876 in principal and $462 in interest.

Mobil Oil Corporation/Trancas Mobil, 5/23/88, RF225–253

The DOE issued a Decision granting an Application for Refund from the Mobil Oil Corporation escrow account filed by Trancas Mobil, a retailer of Mobil refined petroleum products. Trancas elected to apply for a refund based upon the applicable presumptions

of injury. After determining that Trancas' estimates of its purchase volumes reasonably reflected its actual purchases from Mobil, the DOE granted Trancas a refund of $662, representing $531 in principal plus $131 in interest.

Northeast Research & Extension Center, et al., 5/27/88, RF272-2864, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to six claimants, based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. As an end-user of the products involved, each applicant was presumed injured by the alleged crude oil overcharges. The refunds granted in this Decision total $573.

Red Owl Stores, Inc., 5/25/88, RF272-1269

The DOE issued a Decision and Order granting an Application for Refund from crude oil overcharge funds to Red Owl Stores, Inc., based on its purchases of refined petroleum products during the period Agust 19, 1973 through January 27, 1981. As an end user of the products involved, Red Owl was presumed injured by the alleged crude oil overcharges. The refund granted in this Decision was $3,296.

Roberts Farms, Inc., et al., 5/26/88, RF272-4195, et al.

The DOE issued a Decision and Order granting crude oil overcharge refunds to 48 applicants, based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each claimant was an end-user of the products involved and therefore presumed to have been injured by the crude oil overcharges. The refunds granted totalled $2,785.

Standard Oil Co., (Indiana)/Illinois, 5/27/88, RQ251-447

The DOE issued a Decision and Order regarding an Application for Refund filed by the State of Illinois in the Standard Oil Co. (Indiana) (Amoco II) second-stage refund proceeding. In its application, Illinois proposed to spend $4,455,082 of its Amoco II monies on ten programs. In reviewing Illinois' application, the DOE determined that six of the proposed programs, including a rural energy management program and three programs involving energy conservation measures in low income residences, met the restitutionary criteria used to evaluate second-stage refund applications. The DOE also determined that several parts of a public information program proposed by Illinois would effect restitution and therefore should be approved, but that other parts of the information program were too vague to determine their restitutionary impact. Finally, the DOE did not approve three of Illinois' proposed projects—a transportation study project, an energy planning project, and an electric utility brokerage project—because they did not effect restitution. The DOE granted Illinois $3,433,854 for the approved projects.

Tyler Farms, Inc., et al., 5/25/88, RF272-6355, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 133 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. As an end-user of the products involved, each applicant was presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is $3,631.

Vickers Energy Corporation/Michigan, 5/25/88, RQ1-453

The DOE issued a Decision and Order approving a second-stage refund application submitted by the State of Michigan in the Vickers Energy Corporation special refund proceeding. Since the pending Vickers litigation was resolved, the DOE determined that the Vickers funds previously granted to Michigan could now be disbursed to the State. Accordingly, the DOE granted Michigan a total of $85,100 ($47,070 in principal, plus $38,030 in interest) for use in a previously-approved traffic signal synchronization project and ridesharing program.

Dismissals

The following submissions were dismissed:

Name	Case No.
Albert A. Entz	RF272-40059.
Charles Gulf Services	RF300-1712.
Charles Gulf	RF330-1568.
Contishipping Division, Continental Grain.	RF272-25299.
Doug Hollowell	RF272-27261.
Franklin A. Weymiller	RF272-10012.
Jenkins Gulf Service	RF300-436.
Jones Petroleum	RF225-9439, RF225-9440, RF225-9441.
Larry Winter	RF272-33418.
Louisville Water Company	RF272-8248.
Montrose Community Schools	RF272-30972.
Robert Herhasselt	RF272-8037.
State of Washington	RM3-95.
Sunny Slope Ranch, Inc.	RF272-35617.
Wilson Brothers	RF272-36586.

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.

August 12, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 88-18883 Filed 8-18-88; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders During the Week of May 30 Through June 3, 1988

During the week of May 30 through June 3, 1988, the decisions and orders summarized below were issued with respect to appeals and applications for 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.

Appeal

U.A. Local Union No. 412, 6/3/88, KFA-0185

The DOE issued a Decision and Order denying the Freedom of Information Act (FOIA) request made by U.A. Local Union No. 412 (Union). The Union appealed a determination by the DOE's Albuquerque Field Office to withhold the names of the employees in the payroll records of a government contractor which the Union alleged to have violated federal wage laws. The DOE found that Exemption 6 of the FOIA covered this request, as the privacy interest in the employees' personnel records outweighed the public interest in their release. The DOE found that the Union had failed to produce enough evidence of the alleged wage violations which would tip the scales in favor of disclosure. Accordingly, the DOE denied the Union's Appeal.

Refund Applications

Aminoil U.S.A., Inc./Terhune L.P. Gas Company, Wilder & Son, Inc., 6/1/88, RF139–43, RF139–47

The DOE issued a Decision and Order concerning Applications for Refund filed by Terhune L.P. Gas Company (Terhune) and Wilder & Son, Inc. (Wilder) in the Aminoil U.S.A., Inc. special refund proceeding. Both firms submitted a market price comparison and information which allowed the DOE to approximate their cost banks. The reconstructed cost banks show that the firms passed through all but $3,151 and $5,969, respectively of their increased product costs, including the alleged overcharges. The market price data indicated that the firms were forced to absorb the alleged overcharges and, thus, were injured. After examining the firms' application and supporting documentation, the DOE concluded that Terhune and Wilder should be granted refunds of $4,962 ($3,151 in principal and $1,811 in interest) and $9,400 ($5,969 in principal and $3,431 in interest).

Cloverleaf Local School District, et al., 6/3/88, RF272–7212, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to three applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the petroleum products in operating educational facilities and relied on actual purchase records from the crude oil price control period. Each applicant was an end-user of the products it claimed. Accordingly, based upon the end-user presumption of injury, the DOE found that the applicants were injured as a result of the alleged crude oil overcharges. The sum of the refunds granted in this Decision is $950.

Dorchester Gas Corp./Home Oil Company, Inc., Williams Brothers Supply Company, Gruver Oil & Gas Company, Inc., 6/2/88, RF253–15, RF253–35, RF253–40

The DOE issued a Decision and Order granting three Applications for Refund in the Dorchester Gas Corporation refund proceeding. Each of the claimants demonstrated that it was a direct purchaser of Dorchester covered products during the consent order period. Each applicant elected to limit its claim to the volumes contained in the *Dorchester* Appendices. Because each of the three claimants elected to limit its claim to the established $5,000 threshold amount, none of the claimants was required to submit a detailed demonstration of injury. The total amount of refunds granted in this Decision is $20,604, representing $15,000 in principal and $5,604 in accrued interest.

Herb Glassman, et al., 6/3/88, RF272–991, et al.

The DOE issued a Decision and Order granting 16 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, and used the products for various agricultural, manufacturing or service activities. Each applicant determined the volume of its fuel purchases by using a reasonable estimation technique. As an end-user, each applicant was presumed injured and, therefore, entitled to receive a refund of its full volumetric share. The sum of the refunds granted in this Decision is $5,013.

L.G. Vanderwork, 6/1/88, RF272–46868

The DOE issued a Decision and Order rescinding a refund that was granted to L.G. Vanderwork in *Goldfawn Farms and Dairy*, 16 DOE ¶ 85,674 (1987) (*Goldfawn*). In *Goldfawn*, the DOE granted refunds from crude oil overcharge funds to 50 claimants based on their purchases of refined petroleum products between August 19, 1973, and January 27, 1981. The DOE subsequently determined, however, that Vanderwork resold the gallons listed in its crude oil refund application and therefore, that the end-user presumption was applied erroneously in approving Venderwork's crude oil refund claim. Since Vanderwork was unable to demonstrate that it was injured by crude oil overcharges as a reseller, this Decision and Order requires the firm to repay $421 to the DOE.

Lee Beverage Co. Inc., et al., 6/2/88, RF272–62, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds. The DOE found that the applicants had provided sufficient evidence of the volume of refined petroleum products that they purchased during the period August 19, 1973 through January 27, 1981. The DOE also found that, as end-users of petroleum products, the applicants were injured as a result of the crude oil overcharges. The sum of the refunds granted was $397.

Lockhart Iron & Steel Company, et al., 6/2/88, RF272–1896, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 17 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 the products it claimed and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is $4,709.

Mobil Oil Corp./John L. Williams Co. Shotmeyer Brothers Petroleum Corp., 6/2/88, RF225–8763, RF225–8772, RF225–8773, RF225–8774

The DOE issued a Decision and Order concerning Applications for Refund filed by two reseller/retailers of refined petroleum products in the Mobil Oil Corporation special refund proceeding. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). Both applicants attempted to rebut the level-of-distribution presumptions for their purchases of Mobil motor gasoline. After analyzing the cost bank and purchase price data submitted by each applicant, the DOE granted John L. Williams Co. a refund of $7,974 ($6,398 in principal plus $1,576 in interest) on its purchases of Mobil motor gasoline and granted Shotmeyer Brothers Petroleum Corp. a refund of $37,555 ($30,134 in principal plus $7,421 in interest) on its Mobil motor gasoline purchases. Shotmeyer also claimed a refund on its distillate purchases from Mobil. The firm, however, did not attempt to demonstrate injury with regard to its distillate purchases. Therefore, that portion of its claim was denied. The total amount of refunds approved in the Decision and Order was $45,529, representing $36,532 in principal and $8,997 in interest.

Mobil Oil Corporation/The Hertz Corporation, 6/2/88, RF225–10558, RF225–10750

The DOE issued a Decision and Order regarding an Application for Refund from the Mobil Oil Corporation escrow account filed by The Hertz Corporation, a nationwide car rental company. In its Application, Hertz contended that it acted as an end-user of Mobil products and therefore was eligible to receive the full volumetric refund on its purchases from Mobil. However, the DOE determined that Hertz, like other car rental companies, acted as a retailer of Mobil products and therefore was eligible to receive a refund based upon the 30 percent level-of-distribution presumption. Accordingly, Hertz was granted a refund of $3,015, representing $2,491, in principal plus $614 in interest.

Plaquemines Oil Sales Corp./Defelice Marine Ocean Drilling & Exploration Co., 6/3/88, RF305–7, RF305–10

The DOE issued a Decision and Order approving two Applications for refund filed by purchasers of No. 2 diesel fuel from Plaquemines Oil Sales Corp. (POSC). Each firm applied for a refund as an end-user based on the procedures outlined in *Plaquemines Oil Sales Corp.*, 17 DOE ¶ 85,059 (1988). DeFelice Marine (DeFelice) and Ocean Drilling and Exploration Company (ODECO), were identified as overcharged purchasers of No. 2 diesel fuel in the *POSC* decision. After examining the Applications and supporting information, the DOE issued a refund of $4,909 ($3,467 principal plus $1,442 interest) to DeFelice and $2,138 ($1,510 principal plus $628 interest) to ODECO. The total amount of refunds approved in this decision is $7,047, representing $4,997 in principal and $2,070 in interest. Due to a current enforcement proceeding involving ODECO, the refund for the firm was placed in an interest-bearing escrow account pending a decision in that proceeding.

Dismissal

The following submission was dismissed:

Name and Case No.

J&K Service—Bainton's Gulf, RF300–442

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.

August 12, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 88–18884 Filed 8–18–88; 8:45 am]

BILLING CODE 6540–1–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3432–2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and is available to the public for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Title III Emergency Planning and Emergency Release Notification. (EPA ICR# 1395).

Abstract: Title III of the Superfund Amendments and Reauthorization Act (SARA) requires that facilities provide local planning committees with the information necessary for the preparation of emergency plans. Facilities must also immediately report to State and local commissions about release of hazardous substances, and provide written information about these releases.

Burden Statement: Public reporting burden for this collection of information is estimated to average 18 to 19 hours for facilities reporting on hazardous substances. The total burden for Local Emergency Planning Committees (LEPCs) is estimated to average 140 to 150 hours, and includes the receipt of facility reports and the revision of emergency response plans. Annual burden to the States Emergency Response Commission (SERC) is estimated to be between 2000 and 2100 hours. This includes receiving facility release reports and the development of a records system.

Respondents: Facilities that produce, use or store hazardous substances. LEPCs and SERCs also have the responsibilities for development and review of emergency response plans, and the receipt of facility chemical release notifications.

Estimated No. of Respondents: 46,123 (including 41,937 facilities, 4,133 LEPCs and 53 SERCs).

Frequency of Collection: On occasion.

Total Estimated Annual Burden: Facilities: 786,438; LEPCs: 605,687; SERCs: 109,907=1,501,832 hours.

Estimated No. of Respondents: 46,123 (including 41,937 facilities, 4,133 LEPCs and 53 SERCs).

Frequency of Collection: On occasion.

Total Estimated Annual Burden: Facilities: 786,438; LEPCs: 605,687; SERCs: 109,907=1,501,832 hours.

Send comments regarding the burden estimates, or any other aspect of these collections of information, including suggestions for reducing the burdens, to:

Carla Levesque, Environmental Protection Agency, Information Policy Branch (PM–223), 401 M St. SW, Washington, DC 20460
and
Nicolas Garcia (ICR# 1221) and Tim Hunt (ICR# 0583), Marcus Peacock (ICR# 1395), Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20503, (Telephone (202) 395–3084).

Date: August 12, 1988.

Paul Lapsley, *Director,*

Information and Regulatory Systems Division.

[FR Doc. 88–18833 Filed 8–18–88; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3432–4DRR]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5076 or (202) 382–5075. Availability of Environmental Impact Statements Filed August 8, 1988 Through August 12, 1988 Pursuant to 40 CFR 1506.9.

EIS No. 880251, Draft, COE, TX, Brooke Army Medical Center Replacement Facility Construction, Implementation, Fort Sam Houston, Bexar County, TX, Due: October 3, 1988, Contact: Mr. Strimel (512) 221–4930.

EIS No. 880252, Draft, FHW, NM–516/Santa Fe-Los Alamos Corridor Construction, Phase C, Funding, Santa Fe and Los Alamos Counties, NM, Due: October 3, 1988, Contact: W.L. Taylor (505) 827–5253.

EIS No. 880253, Final, REA, GA, ADOPTION-Rocky Mountain Pumped Storage Hydroelectric Project, Loan Guarantee, Floyd County, GA, Due: September 19, 1988, Contact: Robert Quigel (202) 382–8437. The U.S. Department of Agriculture, Rural Electrification Administration has adopted the Federal Power Commission's (FPC) FEIS #760735, filed 5–18–76 and the Federal Energy Regulatory Commission's (formally the FPC) FSEIS #810439, filed 6–4–81.

EIS No. 880254, Final, FHW, NC, US 311 Bypass Improvement, US 311 North of High Point to US 311 South of Archdale, High Point East Belt, Funding and 404 Permit, Guilford and Randolph Counties, NC, Due: September 19, 1988, Contact: Kenneth L. Bellamy (919) 856–4346.

EIS No. 880255, DSuppl, AFS, CO, Rock Creek Reservior, Routt National Forest or Muddy Creek Reservior, Kremmling Resource Area,

Construction, Special Use and 404 Permits, Routt and Grand Counties, CO, Due: November 25, 1988, Contact: Ed Ryberg (303) 879–1722. US Department of Agriculture, Forest Service and US Department of the Interior, Bureau of Land Management are joint Lead Agencies on this project.

EIS No. 880256, Final, BLM, CA, NV, California Vegetation Management Program, Implementation, Orange, Riverside, Kern, Inyo, and Modoc Counties, CA and NV, Due: September 30, 1988, Contact: Carl Rountree (916) 978–4722.

EIS No. 880257, Final, EPA, CA, Los Angeles/Long Beach (LA–2) Ocean Dredged Material Disposal Site, Permenant Designation for Material Dredged from the Ports of Los Angeles and Long Beach, Los Angeles County, CA, Due: September 19, 1988, Contact: Dr. Wendy Wiltse (415) 974–9812.

EIS No. 880258, Draft, FHW, PA, Airport Parkway-Southern Expressway Construction, US 22/30 and PA–60 Interchange to PA–60/Beaver Valley Expressway, Funding, Allegheny County, PA, Due: October 3, 1988, Contact: Manuel A. Marks (717) 872–3461.

EIS No. 880259, Final, USA, ID, Orchard Training Area Facilities Development Project, Construction and Improvements, Implementation, Ada County, ID, Due: September 19, 1988, Contact: Richard Brown (208) 399–5286.

Dated: August 16, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88–18894 Filed 8–18–88; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3432–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 1, 1988 through August 5, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amedned. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5074.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13318).

Draft EISs

ERP No. D–BLM–L67021–AK, Rating EO2, Minto Flats Watershed, Placer Mining Management Plan, Approval and 404 Permit, Implementation, AK.

Summary: EPA feels signfiicant impacts to water quality, fish and wildlife habitat, vegetation, wetland functional values, and subsistence uses would occur under the proposed action. EPA's rating reflects primarily concerns regarding the lack of restrictions and mitigations incorporated into the proposed action and a range of alternatives.

ERP No. D–CDB–F85071–MI, Rating EC2, Ambassador Bridge Border Station Expansion and Hubbard-Richard Housing Project Development, Urban Development Action and Community Development Block grants, Wayne County, MI.

Summary: EPA expresses that additional noise abatement alternatives should be studied and documented, and a commitment should be made to provide adequate noise mitgation measures to impacted residents. The final EIS should indicate whether proposed development is addressed in the State implementation Plan. EPA should also be notifed prior to beginning any work in areas containing asbestos. In addition, EPA would like to review the plan for regulatory compliance regarding removal of equipment containing PCB's.

ERP No. D–FHW–F40298–OH, Rating EC2, OH–297/Whipple Avenue Improvement, US-30 Interchange at Raff Road/Whipple Avenue/OH–297 to I–77 Interchange at Everhard Road, Funding, Stark County, OH.

Summary: EPA feels the final EIS should provide details on how the noise measurements were taken. A noise analysis should be undertaken for a church located near the south end of Whipple Avenue. The numbers of residence and people exposed to substantial adverse noise impacts should also be specified. In addition, the final EIS should consider other types of noise abatement, and a commitment should be made to provide noise mitigation to those people negatively impacted by traffic noise.

ERP No. DB–NRC–A06162–PA, Rating LO, Three Mile Island Nuclear Power Station, Decontamination/Disposal of Radioactive Waste Resulting from the March 28, 1979 Accident, Post Defueling Monitored Storage (PDMS), Londonderry Township, Dauphin County, PA.

Summary: EPA believes either proposed action is satisfactory from an environmental viewpoint.

ERP No. D–SCS–E36161–MS, Rating LO, Town Creek Watershed Flood Protection Plan, Funding and Implementation, Lee, Pontotoc, Prentiss and Union Counties, MS.

Summary: EPA believes that the environmental ramifications of these flood control measures are within acceptable limits.

ERP No. D–USN–E10006–NC, Rating EC2, Mid-Atlantic Electronic Warfare Range (MAEWR) Within Restricted Airspace R–5306A Establishment, Beaufort, Carteret Craven, Hyde and Pamlico Counties, NC.

Summary:

EPA is concrned about the overall wetland loss attendant to operating the current facility as well as implementing the enlarged training capabilities. However, increased noise levels associated with upgrading the range, water quality consequences of enlarging the physical operation, and offshore dredging to improve access also figured in EPA's review.

(Note.—The above the summary should have appeared in the 8–12–88 FR Notice.)

Final EISs

ERP No. F–BOP–E81028–KY, Manchester Federal Correctional Institution Complex, Construction and Operation, Clay County, KY.

Summary: EPA finds this document adequately addresses comments on the draft EIS. However, since the stormwater management and site plans are not yet complete copies of these plans were requested for review at the design phase.

ERP No. F–FRC–B03003–00, Ocean State Power Project, Natural Gas Fired Combined-Cycle Power Plant and Pipeline Construction and Operation, Licenses and Section 10 and 404 Permits, Providence County, RI; Erie, Livingston, Onondaga, Niagara, Rensselaer and Wyoming Counties, NY and Hampden and Worcester Counties, MA.

Summary: EPA concludes that the proposed project will cause substantial water quality, wetlands, and noise impacts which could be largely avoided through: Implementation of the environmentally preferable alternative "Ironstone" site located in Uxbridge, MA; use of dry cooling technology to protect the water quality of the Blackstone River; routing of pipelines around critical wetlands; and stringent ncise mitigation measures.

Regulations

ERP No. R–NRC–A 22112–00, 10 CFR Part 61; Disposal of Radioactive Wastes (53 FR 17706).

Summary: EPA expressed some concerns that the approach in this rulemaking could lead to implementation problems. EPA offered

to address these concerns in its ongoing rulemakings for radiation protection standards. The following is a correction to the summary published in the 8–12–88 FR Notice.

Amended Notices

The following is a correction to the summary published in the 8–12–88 FR Notice

ERP No. D–FRC–D05122–00, Rating E02, Upper Ohio River Basin Hydroelectric Development, Construction, Operation and Maintenance, Licenses, Belmont, Gallia, Jefferson, Mohoning and Washington Cos., OH; Hancock Co., WV and Butler, Beaver, Allegheny, Armstrong, Fayette, Washington and Westmoreland Cos., PA.

Summary: EPA suggested that FERC investigate additional alternatives. EPA expressed concerns over entrainment of fish, dissolved oxygen in the water, and the presence of toxics in the water.

Dated: August 16, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88–18895 Filed 8–18–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL HOME LOAN BANK BOARD

[No. 88–685]

Regulatory Capital Maintenance Obligations of Acquirors of Insured Institutions

Date: August 12, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Federal Home Loan Bank Board (the "Board"), as operating head of the Federal Savings and Loan Insurance Corporation (the "FSLIC") is publishing a statement of policy setting forth its views on the extent to which savings and loan holding companies and other controlling persons of institutions the accounts of which are insured by the FSLIC ("insured institutions") should be required to contribute financial assistance to the insured institutions. The Board is taking this action to set before potential acquirors and the public its views on this issue.

EFFECTIVE DATE: August 19, 1988.

FOR FURTHER INFORMATION CONTACT: John Robinson, Director, Policy Analysis, Office of Regulatory Activities, (202) 778–2509, Federal Home Loan Bank System, 801 17th Street, NW., Washington, DC 20552; Stuart Feldstein, Staff Attorney, Corporate and Securities Division, (202) 377–6476, or Julie L. Williams, Deputy General Counsel, (202) 377–6459, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Board recently has had the opportunity to revisit its policies regarding the extent to which savings and loan holding companies and other controlling persons of insured institutions should be required to contribute financial assistance to the insured institutions. The Board is aware that the open-ended, unlimited in duration regulatory capital maintenance obligation that is customarily imposed in connection with approvals of applications to acquire insured institutions may deter potential acquirors from considering such acquisitions. In reviewing its practices in this area, the Board has concluded that other approaches to the issue of an acquiror's obligations to financially support its insured institution would be effective in attaining the goals of protecting the insured institution and the FSLIC, with less deterrence to potential acquirors than the current form of obligation.

The Board believes that it is important for potential applicants and the public to be informed of the Board's views on this issue and accordingly has determined to issue the following policy statement:

Policy Statement on Regulatory Capital Maintenance Obligations of Insured Institution Acquirors

This policy statement expresses the Board's views regarding the imposition of conditions, incident to approval of holding company, change in control, or other applications, that require an applicant to agree to maintain the regulatory capital of the acquired insured institution at specified levels.

As a general matter, the Board continues to believe that savings and loan holding companies that control the practices of their insured subsidiaries and enjoy the benefits of such control, including FSLIC insurance of accounts, should support such institutions during periods of financial weakness or instability. Providing financial assistance to subsidiary institutions enhances the institution's capital base and helps to promote its continued viability, which, in turn, protects the FSLIC fund from loss. The overall effect of such action is to help to maintain a safe and sound financial system and to promote depositor confidence.

The Board has concluded, however, that the Board's expectation that an acquiror should play a positive role with respect to its insured institution should not continue to be implemented via a practice of conditioning approvals of holding company and certain change in control applications upon an open-ended requirement that the acquiror agrees to maintain the regulatory capital of the institution. The Board believes that such an approach may have had the effect of deterring qualified acquirors from making investments in the thrift industry.

Accordingly, the Board has determined that the imposition of open-ended regulatory capital maintenance obligations upon acquirors in connection with acquisitions of insured institutions should be discontinued. Nevertheless, the Board will generally require acquirors to make a commitment to the insured institution that will provide the acquiror with sufficient incentive to prudently manage the insured institution and will provide the FSLIC with a reasonable amount of protection against adverse events and the uncertainty and time lags inherent in a regulatory capital and accounting system based on historical costs.

The Board will, as a general rule, require a "net worth maintenance agreement" or a "prenuptial agreement" to satisfy this requirement. In a net worth maintenance agreement, which shall be limited or capped, the acquiror agrees that the Board can require the infusion of additional equity capital if, during the term of the agreement, the insured institution fails to meet its regulatory capital requirement or the institution's regulatory capital declines below a predetermined amount. The aggregate amount of infusion that could be required, at a single time or in multiple infusions, would be limited or capped at a specified amount in the agreement.

A prenuptial agreement permits an officer of the FSLIC the right to vote the securities of the institution held by the acquiror respecting certain actions, to remove and replace the board of directors of the institution, or to dispose of any or all of the securities of the institution owned by the acquiror in the event the institution's regulatory capital declines below a specified percentage of an institution's liabilities or assets.

The Board will generally require one of these two forms of agreements. The acquiror may negotiate the form of agreement; however, it may select the net worth maintenance agreement only if the Board is satisfied that the acquiror has adequate resources to satisfy its obligations under the net worth agreement.

The Board itself will also consider other approaches to meeting the objectives identified above. In all cases, the requirements will be evidenced by a

separate agreement that the acquiror will be required to execute before acquisition of the insured institution.

The above-described treatment of acquirors' regulatory capital maintenance obligations will be applied prospectively, in connection with applications approved after this policy goes into effect. With regard to holding companies and other acquirors that are subject to other forms of obligations, such obligations shall remain in full force and effect except to the extent that the Board agrees in writing to the modification of any such obligation.

Guidelines may be issued to assist in the implementation of this policy, including determining aspects of such agreements that would present significant issues of law or policy warranting consideration by the Board itself of the holding company application or change in control notice.

Finally, the Board notes that in all cases, regardless of whether an explicit agreement is required or not, should the insured institution's capital level fall below that required by the Board's regulations, or otherwise be deemed inadequate by the institution's Prinicipal Supervisory Agent, the Board retains the ability to establish individual minimum capital requirements for the institution pursuant to 12 CFR 563.14, or to issue a capital directive pursuant to 12 CFR 563.14–1 to require the institution to increase capital, or both.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–18879 Filed 8–18–88; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

Survey of Marine Terminal Operators

The Federal Maritime Commission recently sent surveys to marine terminal operators seeking their views as to the impact of the Shipping Act of 1984, 46 U.S.C, app. 1701 *et seq.* ("1984 Act"). The survey is being conducted as part of a five-year study mandated in section 18 of the 1984 Act, which directed the Federal Maritime Commission to "collect and analyze information concerning the impact of this Act upon the international ocean shipping industry," and to present its findings to an Advisory Commission on Conference in Ocean Shipping, to be convened five and one-half years after enactment of the 1984 Act. The surveys are the third in a series to be distributed on an annual basis through 1989. Substantial revisions have been made to the 1988 survey based upon responses to the 1987 surveys and recommendations of the section 18 Study Advisory Committee.

The Federal Maritime Commission would like its survey to have the widest possible distribution. All interested marine terminal operators who have *not* received a copy of the survey are urged to contact: Robert M. Blair; Bureau of Economic Analysis; Federal Maritime Commission; 1100 L Street NW., Washington, DC 20573; telephone (202) 523–5870.

Joseph C. Polking,

Secretary.

[FR Doc. 88–18853 Filed 8–18–88; 8:45 am]

BILLING CODE 6730–01–M

Survey of Ocean Common Carriers

The Federal Maritime Commission recently sent surveys to ocean common carriers seeking their views as to the impact of the Shipping Act of 1984, 46 U.S.C. app. 1701 *et seq.* ("1984 Act"). The survey is being conducted as part of a five-year study mandated in section 18 of the 1984 Act, which directed the Federal Maritime Commission to "collect and analyze information concerning the impact of this Act upon the international ocean shipping industry," and to present its findings to an Advisory Commission on Conferences in Ocean Shipping, to be convened five and one-half years after enactment of the 1984 Act. The surveys are the third in a series to be distributed on an annual basis through 1989.

The Federal Maritime Commission would like its survey to have the widest possible distribution. All interested ocean common carriers who have *not* received a copy of the survey are urged to contact: Sandra L. Kusumoto; Bureau of Economic Analysis; Federal Maritime Commission; 1100 L Street NW., Washington, DC 20573; telephone (202) 523–5870.

Joseph C. Polking,

Secretary.

[FR Doc. 88–18854 Filed 8–18–88; 8:45 am]

BILLING CODE 6730–01–M

Survey of Ports

The Federal Maritime Commission recently sent surveys to ports seeking their views as to the impact of the Shipping Act of 1984, 46 U.S.C. app. 1701 *et seq.* ("1984 Act"). The survey is being conducted as part of a five-year study mandated in section 18 of the 1984 Act, which directed the Federal Maritime Commission to "collect and analyze information concerning the impact of this Act upon the international ocean shipping industry," and to present its findings to an Advisory Commission on Conferences in Ocean Shipping, to be convened five and one-half years after enactment of the 1984 Act. The surveys are the third in a series to be distributed on an annual basis through 1989. Substantial revisions have been made to the 1988 survey based upon responses to the 1987 surveys and recommendations of the Section 18 Study Advisory Committee.

The Federal Maritime Commission would like its survey to have the widest possible distribution. All interested marine terminal operators who have *not* received a copy of the survey are urged to contact: Robert M. Blair; Bureau of Economic Analysis; Federal Maritime Commission; 1100 L Street NW., Washington, DC 20573; telephone (202) 523–5870.

Joseph C. Polking,

Secretary.

[FR Doc. 88–18855 Filed 8–18–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822).

OMB Desk Officer—Robert Neal—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7340).

Proposal to approve under OMB delegated authority the implementation of the following report:

1. *Report title:* Mortgage Loan Disclosure Statement.

Agency form number: FR HMDA–2.

OMB Docket number: 7100–0090.

Frequency: Annual.

Reporters: Mortgage subsidiaries of bank holding companies.

Annual reporting hours: 40,000.

Estimated average hours per response: 80.

Number of respondents: 500.

Small businesses are not affected.

General description of report:

This information collection is mandatory [12 U.S.C. 2801–2810] and is not given confidential treatment.

This new form collects data from mortgage subsidiaries of bank holding companies under the Home Mortgage Disclosure Act, 12 U.S.C. 2801–2810 (HMDA), as implemented by the Board's Regulation C, 12 CFR Part 203. The act requires respondents to make annual disclosures that show a geographic breakdown of their purchased and originated mortgage and home improvement loans. However, FHA loans are not reported.

Board of Governors of the Federal Reserve System, August 12, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–18796 Filed 8–18–88; 8:45 am]

BILLING CODE 6210–01–M

Agency Forms Under Review

August 15, 1988

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822).

OMB Desk Officer—Robert Neal, Jr.—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7340).

Final approval under OMB delegated authority of the extension, without revision, of the following:

1. *Report title:* Applications for the Issuance and Cancellation of Federal Reserve Stock—National Bank, Nonmember Bank, Member Bank.

Agency form number: FR 2030, 2030a, 2056, 2086a, 2086b, and 2087.

OMB Docket number: 7100–0042.

Frequency: On occasion.

Reporters: National, State Member and Nonmember Banks.

Annual reporting hours: 1,134 (FR 2030: 155; FR 2030a: 32; FR 2056: 889; FR 2086a: 12; FR 2086b: 13; FR 2087: 33).

Number of Reporters: 2,268 (FR 2030: 309; FR 2030a: 64; FR 2056: 1,778; FR 2086a: 24; FR 2086b: 26; FR 2087: 67).

Average Number of Hours per Response: 0.5 (for each form). Small businesses are affected.

General description of report:

This information collection is mandatory [12 U.S.C. 222, 35, 287, 321, and 288 (1982)] and is not given confidential treatment. These Federal Reserve Bank Stock application forms are required to be submitted to the Federal Reserve System by any National Bank, State Member Bank, or nonmember bank wanting to purchase stock in the Federal Reserve System, increase or decrease its Federal Reserve Bank Stock holdings, or cancel such stock.

Board of Governors of the Federal Reserve System, August 15, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–18797 Filed 8–18–88; 8:45 am]

BILLING CODE 6210–01–M

Fleet/Norstar New York, Inc.; Proposal To Underwrite and Deal in Certain Securities to a Limited Extent

Fleet/Norstar Financial Group, Inc., Providence, Rhode Island, and Fleet/Norstar New York, Inc., Albany, New York (together, "Applicant"), have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for permission to engage *de novo* through their wholly owned subsidiary, Adams, McEntee & Co., Inc., New York, New York ("Company"), in the activities of underwriting and dealing in, to a limited degree, municipal revenue bonds (including "public ownership" industrial development bonds) and commercial paper (together, "ineligible securities"). These securities are eligible for purchase by banks for their own account but not eligible for banks to underwrite and deal in.

The application presents issues under section 20 of the Glass-Steagall Act (12 U.S.C. 377). Section 20 of the Glass-Steagall Act prohibits the affiliation of a member bank, such as Fleet National Bank, with a firm that is "engaged principally" in the "underwriting, pubic sale or distribution" of securities. Applicant states that it would not be "engaged principally" in such activities on the basis of the restrictions on the amount of the proposed activity relative to the total business conducted by the underwriting subsidiary.

Applicant has applied to underwrite and deal in ineligible securities in accordance with virtually all of the limitations set forth in the Board's Order approving those activities for a number of bank holding companies. *See Citicorp, J.P. Morgan & Co. Incorporated and Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 473 (1987) (underwriting and dealing in commercial paper, municipal revenue bonds and mortgage-related securities) ("*Citicorp/Morgan/Bankers Trust*"). In that Order, the Board determined that a member bank affiliate would not be "engaged principally" in the above ineligible securities underwriting activity if, over any two-year period, its gross revenues from that activity did not exceed a range of between 5 and 10 percent of its total gross revenues. The Board determined, however, that at that time the lower end of the range—5 percent—was the appropriate level to be applied.

Applicant proposes to engage in ineligible securities underwriting and dealing up to 10 percent of Company's gross revenues based on a five year average. Applicant submits that this is appropriate for several reasons. First, Applicant argues that, because of the small absolute size of Company's activities (relative to the businesses at issue in the *Citicorp/Morgan/Bankers Trust* Order), a 5 percent limitation would prevent Company from conducting sufficient ineligible securities activity to make such business profitable. Applicant submits that a 5 percent limitation would effectively close the ineligible securities underwriting and dealing business to all but the largest bank holding companies that own primary dealers or otherwise have large bases of eligible securities business. Applicant asserts that this would reduce competition in the relevant markets, in conflict with the Bank Holding Company Act's pro-competitive goals. Moreover, Applicant argues that the absence of small competitors such as Company from the municipal underwriting industry could have an especially harmful effect on small municipal issuers.

Applicant submits that basing the gross revenue limitation on a five-year, rather than a two-year, average will provide a more reliable indication of the trend of Company's revenues from eligible securities activities, given that 1987 was aberrational in terms of gross revenues generated. Applicant argues that basing its revenue limitation on the past two-years' earnings would

effectively preclude Company from commencing ineligible securities underwriting activities.

In connection with its underwriting activities, Company also proposes to advise issuers as to the terms of the proposed offerings.

In publishing Applicant's proposal for comment, the Board does not take any position on the differences between Applicant's proposal and the Board's prior ineligible securities underwriting orders. Notice of the proposal is published solely in order to seek the views of interested persons and does not represent a determination by the Board that the proposal is consistent with the Board's prior orders.

Any request for a hearing on this application must comply with § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Boston.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than September 13, 1988.

Board of Governors of the Federal Reserve System, August 16, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-18798 Filed 8-18-88; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities Under OMB Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090-0001, Application of Eleemosynary Institution. This form is used by GSA National Capital Region to determine an institution's eligibility to participate in the forfeited distilled spirits donation program and to match an institution's needs with the beverages that become available.

AGENCY: Property Management Division (FBP), GSA.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), F Street at 18th NW., Washington, DC 20405.

Annual Reporting Burden: Firms responding, 25; responses, 1 per year; average hours per response, .25; burden hours, 6.

For Further Information Contact: A.L. Harris, 703/557-1234.

Copy of Proposal: A copy of the proposal may be obtained from the Information Collection Management Branch (CAIR), Room 3014, GS Bldg., Washington, DC 20405, or by telephoning 202/535-7074.

Dated: August 12, 1988.

Emily C. Karam,

Director, Information Management Division (CAI).

[FR Doc. 88-18818 Filed 8-18-88; 8:45 am]

BILLING CODE 6820-24-M

General Services Administration Advisory Committee on the FTS2000 Procurement; Meeting Cancellation

Notice is hereby given that the meeting of the General Services Administration Advisory Committee on the FTS2000 Procurement tentatively scheduled for August 24 will not be held.

Questions regarding this cancellation should be directed to John J. Landers (202) 523-5308.

Dated: August 11, 1988.

John J. Landers,

Director of Administration, Information Resources Management Service.

[FR Doc. 88-18819 Filed 8-18-88; 8:45 am]

BILLING CODE 6820-25-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-010-4212-13; NM NM 68419]

Realty Action—Exchange of Public Lands; San Juan and Dona Ana Counties, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to section 206 of the Federal Land Policy Act of 1976 (43 U.S.C. 1716), the following described lands have been determined to be suitable for disposal by exchange:

New Mexico Principal Meridian, New Mexico

T. 23 S., R. 3 E.,
Sec. 28: All.

In exchange for these lands, the Federal Government will acquire two parcels of non-Federal land in San Juan County from Wayne G. and Barbara J. Wallace. These lands are described as follows:

New Mexico Principal Meridian, New Mexico

T. 25 N., R. 7 W.,
Sec. 3: Lot 4, SW/4NW/4;
Sec. 4: Lots 1, 2, 3, S/2NE/4, SE/4NW/4, NE/4SW/4, NW/4SE/4.
T. 26 N., R. 7 W.,
Sec. 22: W/2;
Sec. 33: S/2NE/4, SE/4.
T. 27 N., R. 5 W.,
Sec. 3: SE/4NE/4, SW/4, N/2SE/4;
Sec. 4: Lot 3, S/2NE/4, SE/4NW/4, SE/4;
Sec. 10: NW/4NW/4.
T. 27 N., R. 6 W.,
Sec. 6: Lots 2, 3, 4.
T. 28 N., R. 5 W.,
Sec. 29: W/2NE/4, NE/4NE/4, W/2, NW/4SE/4;
Sec. 32: Lots 1, 2, 3, 4, N/2, N/2S/2;
Sec. 33: W/2NE/4, E/2NW/4;
Sec. 34: Lots 3, 4, N/2SW/4.
T. 28 N., R. 6 W.,
Sec. 7: Lots 1, 2, 3, 4, 5, SE/4SW/4, S/2SE/4;
Sec. 13: NW/4SW/4;
Sec. 14: SW/4SW/4, NE/4SW/4, N/2SE/4;
Sec. 15: S/2SE/4;
Sec. 22: E/2;
Sec. 23: W/2NW/4, NW/4SW/4, SE/4SW/4, S/2SE/4;
Sec. 24: S/2SW/4, SW/4SE/4;
Sec. 25: N/2NE/4, SW/4;
Sec. 26: N/2, SW/4;
Sec. 27: S/2SE/4;
Sec. 29: W/2SE/4;
Sec. 31: E/2SE/4, SW/4SE/4;
Sec. 32: NE/4, E/2NW/4, N/2SW/4;
Sec. 33: N/2, NE/4SW/4;
Sec. 34: N/2.
T. 28 N., R. 7 W.,
Sec. 12: Lot 1, SE/4SE/4;
Sec. 13: NE/4NE/4, N/2NW/4, SE/4NW/4, E/2SW/4;
Sec. 14: N/2NE/4, NE/4NW/4;
Sec. 24: W/2NE/4, E/2NW/4, NE/4SW/4, NW/4SE/4.
T. 29 N., R. 6 W.,
Sec. 31: SW/4, SW/4SE/4.

The areas described amount to 7,256.59 acres.

The purpose of this exchange is to enable BLM to consolidate public land on Superior and Delgadito Mesas in Rio Arriba County, enhancing the opportunities to improve wildlife, range, recreation and cultural management. The selected lands are located in the designated disposal area in Dona Ana County. The exchange would be consistent with the Bureau's land use plan in both areas. The public interest would be well served by making this exchange.

The values of the lands to be exchanged are approximately equal. If an adjustment is necessary the values can be equalized by the addition of lands and/or cash payment.

Publication of this notice segregates the public lands from the operation of the public land laws including the mining laws, but excluding the mineral leasing laws. Duration of the segregation

is for a period of two years from the date of first publication or completion of the exchange, whichever occurs first.

The terms and conditions applicable to the exchange are:

When the patent is issued it will be subjected to all existing valid rights.

Detailed information concerning the exchange, including the environmental analysis is available for review at the Farmington Resource Area Office, 1235 La Plata Highway, Farmington, New Mexico 87401 and the Albuquerque District Office, 435 Montano Road NE., Albuquerque, New Mexico 87107.

For a period of 45 days interested parties may submit comments to the Albuquerque District Manager, 435 Montano Road NE., Albuquerque. New Mexico 87107. Any adverse comments will be evaluated by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Date: August, 15, 1988.

Robert T. Dale,

District Manager.

[FR Doc. 88-18789 Filed 8-18-88; 8:45 am]

BILLING CODE 4310-FB-M

National Park Service

Chattahoochee River National Recreation Area; Advisory Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of advisory commission meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Chattahoochee River National Recreation Area Advisory Commission will be held at 1:00 p.m. at the following location and date.

DATE: September 22, 1988.

ADDRESS: The Chattahoochee River National Recreation Area, Johnson Ferry Unit, Concession Building, Cobb County, Georgia.

FOR FURTHER INFORMATION CONTACT: Warren D. Beach, Superintendent, Chattahoochee River National Recreation Area, 1978 Island Ford Parkway, Dunwoody, Georgia 30350. Telephone (404) 394-7912.

SUPPLEMENTARY INFORMATION: The purpose of the Chattahoochee River National Recreation Area Advisory Commission is to consult and advise the Secretary of the Interior regarding the management and operation of the area, protection of resources within the area, and the priority of lands to be acquired within the area. The members of the Advisory Commission are as follows:

Mr. J. Neal Shepard, Jr.
Mr. Robert A. Meadows
Mrs. Delouris J. West
Mr. Benjamin H. West
Mr. Howard D. Zeller
Mr. Larry B. Thompson
Mrs. Lillian Webb
Mr. David O. Eldridge
Mr. H. Edwin Schultz
Ms. Evelyn H. Hopkins
Mr. Michael Bennett
Mr. James O. Watson, Jr.

The meeting will be a forum to share information on the Chattahoochee River National Recreation Area and discuss current issues.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Written statements may also be submitted to the Superintendent at the address above. Minutes of the meeting will be available at Park Headquarters for public inspection approximately 4 weeks after the meeting.

Date: August 10, 1988.

C. W. Ogle,

Acting Regional Director, Southeast Region.

[FR Doc. 88-18850 Filed 8-18-88; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Housing Guaranty Program; Investment Opportunity for Guatemala; Correction

This is a correction of the Notice of Investment Opportunity for Guatemala originally published on August 15, 1988 in the **Federal Register** (53 FR 30729). The individuals and telephone, telex, and telefax numbers for communication to the Government of Guatemala in that notice need correction. Also the telefax number for RHUDO/Tegucigalpa is incorrect and the telephone number for Michael G. Kitay/Barton Veret, Agency for International Development needs to be added. The corrections are as follows:

Government of Guatemala

Project: 520-HG-004—$10,000,000,
Attention: Lic. Fernando Figueroa Amado, General Manager, Banco de Guatemala, 7a Avenida 22-01, Zona 1, Guatemala, Guatemala, C.A., Telex No.: 6072/6073/5231/5461 (answer back GUABAN-GU), Telefax No.: 502/(2)28509, Telephone No.: 502/(2)534053

Mr. Fabian B. Pira A., Deputy Manager, Banco de Guatemala, 7a Avenida 22-01, Zona 1, Guatemala, Guatemala, C.A., Telex No.: 6072/6073/5231/5461 (answer back GUABAN-GU), Telephone No.: 502/(2)535927

Mr. Carlos E. Echeverria Salas, Director International Department, Banco de Guatemala, 7a Avenida 22-01, Zona 1, Guatemala, Guatemala, C.A., Telex No.: 6072/6073/5231/5461 (answer back GUABAN-GU), Telephone No.: 502/(2)535995

Mr. Mario Pita, Assistant Director, Central America, RHUDO/Tegucigalpa, USAID/Tegucigalpa, APO Miami 34022, (street address: Edificio Castillo Poujol, Colonia Palmira, 4 Calle, #2401, Tegucigalpa, D.C. Honduras), Telephone No.: 504/323120, Telefax No.: 504-312776

Michael G. Kitay/Barton Veret, Agency for International Development, GC/PRE, Room 3328 N.S., Washington, DC 20523, Telephone: 202/647-8235, Telex No.: 892703 AID WSA, Telefax No.: 202/647-4958 (preferred communication)

For any further information, please contact: Fredrik A. Hansen, Deputy Director, Office of Housing and Urban Programs, Agency for International Development, Room 315, SA-18C, Washington, DC 20523, Telephone: 703/875-4842.

Fredrik A. Hansen,

Deputy Director, Agency for International Development Office of Housing and Urban Programs.

Date: August 16, 1988.

[FR Doc. 88-18814 Filed 8-18-88; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Philips Industries Inc., an Ohio Corporation, P.O. Box 943, 4801 Springfield Street, Dayton, HO 45401.

2. Wholly-owned subsidiaries which will participate in the operations, and state(s) of incorporation:

(1) Air Damper Manufacturing Corp. (New York)
(ii) Philips Industrial Components, Inc. (Ohio)
(iii) Hytec, Inc. (Washington)
(iv) Frenkin Corporation (Washington)
(v) Shelby Advanced Automotive Technology, Inc. (Texas)
(vi) Dearborn Fabricating & Engineering Company (Michigan)
(vii) Unified Industries Inc. (Michigan)
(viii) Arrowhead Conveyor Co., Inc. (Delaware)
(ix) Baker Erection Company Inc. (Missouri)
(x) Mayfran International, Inc. (Delaware)
(xi) Mid-West Conveyor Company, Inc. (Delaware)
(xii) Stearns Airport Equipment Company, Inc. (Delaware)
(xiii) Versa Corporation (Ohio).

Noreta R. McGee,
Secretary.

[FR Doc. 88-18812 Filed 8-18-88; 8:45 am]
BILLING CODE 7035-01-M

Clarification of Filing Fee for Form BOC-3, Designation of Agents, Motor Carriers and Brokers

AGENCY: Interstate Commerce Commission.

ACTION: Notice.

SUMMARY: The purpose of this notice is to clarify that a separate $8.00 filing fee is not required when a person submits a form BOC-3, Designation of Agents—Motor Carriers and Brokers, to the Interstate Commerce Commission.

By the decision, *Regulations Governing Fees For Services*, 2 I.C.C. 2d 23 (1985) and 50 FR 40024 (October 1, 1985) the Commission revised its user fee schedule by merging the filing fee for the form BOC-3, Designation of Agents—Motor Carriers and Brokers, with the application fee for motor carriers and broker operating authority. The separate filing fee for the BOC-3 filing was removed from the fee schedule in that decision. The current filing fee for motor carrier or broker operating authority includes the fee for the BOC-3 filing. Separate filing fees submitted will be returned to the sender.

EFFECTIVE DATE: August 15, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen M. King, 202-275-7428.

By the Commission.

Noreta R. McGee,
Secretary.

[FR Doc. 88-18844 Filed 8-18-88; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-1 (Sub-No. 219)]

Chicago and North Western Transportation Co.; Abandonment and Discontinuance of Trackage Rights; Between Casper and Riverton in Natrona and Fremont Counties, WY; Findings

August 16, 1988.

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a decision decided August 19, 1988, a finding, which is administratively final, was made by the Administrative Law Judge stating that, the present or future public convenience and necessity permit the abandonment by the applicant of Chicago and North Western Transportation Company of its line of railroad between milepost 607.8 just west of Casper Air Base and milepost 615.1 near Illco in Natrona County, WY; and discontinue its trackage rights and operations over an 86.5 mile line of railroad owned and operated by the Burlington Northern Railroad ("BN") between BN milepost 217.5 near Illco, and BN milepost 304.0 near Shobon in Natrona and Fremont Counties, WY subject to: (1) The employee protective conditions in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979); and (2) the condition that C&NW maintain any historic structures intact and not sell or dispose of any portion of the abandoned right of way where historic structures are located until the requirements of section 106 of the National Historic Preservation Act have been met. Pursuant to the decision, a certificate for abandonment is granted, effective 30 days from the date of service.

Noreta R. McGee,
Secretary.

[FR Doc. 88-18845 Filed 8-18-88; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 1165 (Sub-No. 1]

Application of the New York Central Railroad Co. for Approval of Purchase of Stock, Lease of Property, and Option To Purchase Stock or Property

AGENCY: Interstate Commerce Commission.

ACTION: Proceeding reopened and modified procedure schedule adopted.

SUMMARY: By petition filed April 27, 1988, Consolidated Rail Corporation (Conrail), successor in interest to the properties of the New York Central Railroad Company, seeks to reopen this proceeding to remove the 17 conditions imposed on the transaction in 1922 (71 I.C.C. 631). Conrail specifically discusses certain of the conditions designed to ensure the neutrality of both the Chicago River and Indiana Railroad Company (CRI) and the Chicago Junction Railway Company (CJ) with respect to the terminal switching services they performed for linehaul carriers and to ensure that linehaul carriers could continue to operate their own livestock trains over the CJ line.

DATES: Comments are due on October 3, 1988, and any rebuttal by Conrail is due on October 24, 1988.

ADDRESSES: Send an original and 10 copies of any pleadings referring to Finance Docket No. 1165 (Sub-No. 1) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
and
(2) Petitioner's representatives: John A. Daily, Deborah J. Somers, Consolidated Rail Corporation, 1138 Six Penn Center Plaza, Philadelphia, PA 19103-2959.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721]

SUPPLEMENTARY INFORMATION: With CRI and CJ now part of its system, Conrail contends that the protective conditions should be removed because of changed circumstances. Specifically, it contends that: (1) The carriers originally intended to be protected have been absorbed by other railroads; (2) livestock traffic has long since ceased; (3) only six shippers have required terminal switching in the past 3 years; (4) the total volume of traffic moving subject to the protective conditions is a fraction of what moved when the conditions were imposed; and (5) a substantial portion of this traffic has been exempted from regulation. Conrail states that, if the conditions are removed, terminal switching service will remain available for those carriers that require it and that trackage rights will be offered to any carriers interested in this type of arrangement.

As to the other conditions, Conrail argues that they should be removed as well. It contends that they are either outmoded or no longer serve any useful purpose. Comments are requested on whether it is appropriate to retain all or any of the 17 conditions.

This action will not significantly affect either the quality of the human environment or energy conservation. However, comments regarding environmental and energy issues, if any, should be included in the statements filed with the Commission.

A copy of Conrail's petition may be obtained from its representatives or may be inspected at the Washington, DC, offices of the Interstate Commerce Commission during normal business hours (assistance for the hearing impaired is available through TDD services (202 275–1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: August 11, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre Commissioners Sterrett, Simmons, and Lamboley. Commissioner Sterrett did not participate in the disposition of this proceeding.

Noreta R. McGee,

Secretary.

[FR Doc. 88–18811 Filed 8–18–88; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

August 16, 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 before the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The title of the form or collection; (2) the agency form number, if any and the applicable component of the Department sponsoring the collection; (3) how often the form must be filled out or the information is collected; (4) who will be asked or required to respond, as well as a brief abstract; (5) an estimate of the total number of respondents and the amount of estimated time it takes each respondent to respond; (6) an estimate of the total public burden hours associated with the collection; and, (7) an indication as to whether section 3504(h) of Pub. L. 96–511 applies. Comments and/or questions regarding the item(s) contained in this notice, especially regarding the estimated response time, should be directed to the OMB reviewers, Mr. Sam Fairchild, on (202) 395–7340 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 who can be reached on (202) 633–4312.

New Collection

(1) Petition for Attorney General recognition to provide courses of study for legalization; Phase II.

(2) I–803, Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals and households, State and local governments, businesses or other for-profit, non-profit institutions, small businesses or organizations. Needed to allow INS to certify qualified educational programs to ensure there are adequate programs available nationwide to eligible, legalized aliens.

(5) 40,000 respondents at one hour each.

(6) 40,000 estimated annual public burden hours.

(7) Submitted for expedited review within thirty days. Copies of the form accompany this notification.

BILLING CODE 4410–10–M

U.S. Department of Justice
Immigration and Naturalization Service

Petition for Attorney General Recognition to Provide Course of Study for Legalization: Phase II

INS USE ONLY - DO NOT WRITE IN THIS BLOCK

Approval for attendance by aliens adjusting to permanent resident status under Section 245A of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, by satisfactorily pursuing a course of study recognized by the Attorney General.

Signature of the Director of Outreach	
Signature of the District Director	
District Office	Date of Approval

This section is to be **COMPLETED BY THE PETITIONER**. If you need more space to answer any items on this form, use a separate sheet of paper. Identify each answer with the number and letter of the corresponding item.

TO THE IMMIGRATION AND NATURALIZATION SERVICE:

Petition is made to the (check one) ☐ Director of Outreach ☐ District Director of the _____ District Office for approval of this institution or organization as a course(s) of study recognized by the Attorney General for attendance by temporary resident aliens who wish to comply with the basic citizenship requirements of Section 245A(b)(1)(D)(i)(II) of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99-603, by satisfactorily pursuing a course of study to achieve a minimal understanding of ordinary English and a knowledge and understanding of the history and Government of the United States.

1. Name of School	2. Address of School	3. Telephone Number

4. Mailing Address *(If different than box 2)*	5. Name and Address of Responsible Official *(Or owner)*

6. Applicant organization is:

- ☐ National organization
- ☐ Local government agency
- ☐ Community organization
- ☐ Non-profit organization providing educational services
- ☐ Church, synagogue, or other religious communal center
- ☐ Farm labor organization
- ☐ Association of agricultural employers
- ☐ Proprietary school
- ☐ Other *(Explain)*

7. The organization operates under the following authorization:

- ☐ Non-profit status issued by IRS or State certifying agency
- ☐ Proprietary *(Attach appropriate licensing and a certified copy of accountant's last statement of school's net worth, income, and expenses)*
- ☐ Volunteer *(Attach evidence of affiliation with recognized non-profit organization, i.e. religious community, literacy organization, State or local educational authority)*
- ☐ Local government agency
- ☐ Other *(Explain)*

8. This organization offers:

- ☐ English as a second language (ESL) and citizenship preparation
- ☐ English as a second language
- ☐ Citizenship preparation

9. The type of course(s) proposed has been offered by this organization since *(Enter date)*:

_____
(Mo./Day/Year)

10. Average class size and intensity of instruction:

When offered	Average class size & intensity
Day: _____	Number classes per week: _____
Evening: _____	Period of instruction per class: _____
Both: _____	Average class size: _____

11. Levels of instruction *(Attach a copy of the curriculum proposed, including levels taught):*

- ☐ ESL/Citizenship
  - ☐ Literacy
  - ☐ Beginner
  - ☐ Intermediate
  - ☐ Advanced
- ☐ Citizenship Preparation Only

12. Brief description of student assessment process *(Describe pre-placement and progress testing. Indicate whether it is written or oral or both):*

13. Brief description of physical facilities where instruction will be held:

14. Type of training and technical assistance provided for teachers:

15. Describe how classes will be advertised or promoted:

16. Teacher qualifications *(Include qualifications of the Administrator and Supervisor(s)):*

- ☐ State teachers certificate
- ☐ Specific training in Teaching English to Speakers of Other Language (TESOL)
- ☐ Other *(Explain)*

17. Instructional fee *(If any):*

a. Per hour of instruction per student: _____

b. For a 100-hour course of instruction: _____

c. Materials fee *(If any):* _____

IF THE APPLICATION IS APPROVED, THE PETITIONER AGREES TO:

1. Meet all INS requirements for courses of study approved by the Attorney General including:

   a. Providing evidence of certification by the Attorney General.
   b. Use of Federal Citizenship Text series.
   c. Use of a curriculum.
   d. Maintenance of student records and formal assessment process.
   e. Adherence to the fee structure established by the Director of Outreach or the District Director.
   f. Monitoring by the INS.
   g. Appointment of "Designated Official(s)" with samples of their original signatures.
   h. Issuance of "Satisfactorily Pursuing" certificates.

2. Provide 30-days advance written notice to the INS Director of Outreach or District Director, if petitioner chooses to withdraw as a recognized program during the Phase II period for adjustment of status.

I Certify that I am authorized to execute this petition. I understand that unless this institution fully complies with all terms described on this form, approval may be withdrawn. Notification of withdrawal shall be issued in writing and shall be preceeded by a 30-day corrective action period.

Dated at _____, this _____ day of _____, 19 _____

Signature _____

Title _____

Penalities for False Statements in Petitions

Whoever files a petition for approval as a course of study recognized by the Attorney General under 8 CFR 245a.3(b)(5), and who knowingly and willfully falsifies, misrepresents, conceals or covers up a material fact or makes any false statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry will be subject to criminal prosecution.

Authority for Collecting this Information

The authority to prescribe this form is contained in the "Immigration Reform and Control Act of 1986". The information is necessary to determine whether the petitioner is eligible for Attorney General recognition to provide course of study for Legalization Phase II. All questions must be answered. Failure to do so may result in the denial of the application petition.

Reporting Burden

Public reporting burden for this collection of information is estimated to average 60 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, N.W., Washington, D.C. 20536; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503

BILLING CODE 4410-10-C

Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or in TGHE Method of Collection

(1) Supplemental Qualification Statement Immigration Inspector, GS–1816–5.

(2) G–777, Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households. Used by individuals concerning their accomplishments in various areas as the basis for the rating they receive under the Immigration Inspector Examination.

(5) 4,000 annual respondents at one hour each.

(6) 4,000 estimated annual burden hours.

(7) Not applicable under 3504(h).

Larry E. Miesse,

Department Clearance Officer, Department of Justice.

[FR Doc. 88–18830 Filed 8–18–88; 8:45 am]

BILLING CODE 4410–10–M

Joint Newspaper Operating Agreement

Notice is hereby given that the Attorney General has received an application for approval of a joint operating agreement involving the two newspapers in Manteca, California. The application was filed on July 15, 1988 by the Manteca *News* and the Manteca *Bulletin*. The proposed arrangement provides that the printing and commercial operations of both newspapers be handled by the Manteca Newpaper Agency, a limited partnership created by the newspapers. According to the application all the editorial and reporting functions and policies of each newspaper would remain separate.

The Newspaper Preservation Act, 15 U.S.C. 1801 *et seq.*, requires that joint newspaper operating arrangements such as that proposed by the Manteca newspapers have the prior written consent of the Attorney General of the United States in order to qualify for the antitrust exemption provided by the Act. Before granting his consent, the Attorney General must find that one of the publications is a failing newspaper and that approval of the arrangement would effectuate the policy and purpose of the Act.

In accordance with the Newspaper Preservation Act Regulations, published at 28 CFR Part 48, copies of the proposed arrangement and other materials filed by the newspapers in support of the application are available for public inspection in the main offices of the newspapers involved and in Room 6332 of the Department of Justice, 601 D Street, NW., Washington, DC 20530.

Any person with views about the proposed arrangement may file written comments stating the reasons why approval should or should not be granted, or requesting that a hearing be held on the application. A request for hearing must set forth the issues of fact to be determined and the reason that a hearing is believed necessary to determine them. Comments shall be filed by mailing or delivering five copies to the Assistant Attorney General for Administration, Justice Management Division, Department of Justice, Washington, DC 20530, and must be received by September 19, 1988.

Replies to any comments filed on or before that date may be filed on or before October 18, 1988.

FOR INFORMATION CONTACT: Janis A. Sposato, General Counsel, Justice Management Division, 202–633–3452.

Date: August 16, 1988.

Harry H. Flickinger,

Assistant Attorney General for Administration.

[FR Doc. 88–18858 Filed 8–18–88; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

National Cooperative Research Act; National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* (the "Act"), the National Center for Manufacturing Sciences, Inc. ("NCMS"), filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission on July 11, 1988, disclosing the identities of additional parties that have become members of NCMS since May 5, 1988. The additional members are:

Advanced Material Process Corporation
Dravo Automation Sciences, Inc.
Metal Improvement Company, Inc.

The additional written notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The NCMS is a nonprofit public benefit corporation organized under the laws of the State of California to undertake research in the areas of production equipment design, analysis, testing and control, manufacturing data and factory control, manufacturing processes and materials, manufacturing operations, information and technology transfer and strategic issues. Its principal place of business is at 900 Victors Way, Ann Arbor, Michigan 48108.

On February 20, 1987, the NCMS filed its original notification pursuant to section 6(a) of the Act, in response to which the Department published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 17, 1987, 52 FR 8375. On April 15, 1988 and May 5, 1988, the NCMS filed additional written notifications concerning clarification of its research agenda and the identities of parties that had become members of the NCMS. In response to these additional notifications, the Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 2, 1988, 53 FR 20194.

With the addition of the three parties listed above, the NCMS membership comprises the following:

Advanced Controls, Inc.
Advanced Material Process Corporation
Airborn, Incorporated
Aircraft Engines Engineering Division General Electrice Company
Amphion, Inc.
Aries Technology, Inc.
American Telephone & Telegraph Co.
Automation Intelligence, Inc.
The Bodine Corporation
The Cincinnati Gilbert Machine Tool Company
Consilium, Inc.
Control Technology, Inc.
The Cross Co.
DeVlieg Machine Company
Digital Equipment Corporation
Dravo Automation Sciences, Inc.
Erie Press Systems (an EFCO Company)
Extrude Hone Corporation
Fabreeka Products Company
Ford Motor Company
Gearhart Industries, Inc.
General Motors Corporation
Gilbert/Commonwealth, Inc. of Michigan
The Gleason Works
Hardinge Brothers, Inc.
Haworth, Inc.
Hougen Manufacturing Company, Inc.
Hufcor, Inc.
S.E. Huffman Corp.
Hurco Companies, Inc.
International Cybernetics Corporation
Kasper Machine Co.
Kayex Spitfire, a unit of General Signal Corporation
Kinefac Corporation
Kingsbury Machine Tool Corp.
H.R. Krueger Machine Tool, Inc.
The M.D. Larkin Company
Len Industries, Inc.
Litton Industrial Automation Systems, Inc.
Manuflex Corporation
Masco Machine, Inc.
Master Chemical Corporation
Mattison Machine Works
Mayday Manufacturing Co.

Measurex Automation Systems, Inc.
Mechanical Technology, Incorporated
Medar, Inc.
Metal Improvement Company, Inc.
Met-Coil Systems Corporation
Microfab Technologies, Inc.
Modern Engineering Service Company
Moore Special Tool Co. Inc.
Murdock Engineering Company
The National Machinery Company
Newcor Bay City, Division of Newcor, Inc.
Parker-Majestic, Inc.
Perceptron, Inc.
Plainfield Tool and Engineering, Inc. (d/b/a/ Plaintifled Stamping-Illinois Incorporated)
Radian Corporation
R&B Machine Tool Company
Raycon Textron, Inc.
Recognition Equipment Incorporated
RF Monolithics, Inc.
Rockwell International Corporation
Savoir
Sheffield Machine Tool Company
SpeedFam Corporation
Sybase, Inc.
The Taft-Pierce Manufacturing Company
Technology Integration, Inc.
Teledyne Inc.
Texas Instruments Incorporated
Transform Logic Corporation
Turchan Enterprises, Inc.
United Technologies Corporation
Valisys Corporation
The Vulcan Tool Company
Walker Magnetics Group, Inc.
The Warner & Swasey Co.
Weldon Machine Tool, Inc.
Wizdom Systems, Inc.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88-18821 Filed 8-18-88; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984; Fabric Softner Quats Joint Venture

Notice is hereby given, pursuant to section 6(a) of the National Cooperative Reseach Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), that Sherex Chemical Company for the Fabric Softner Quats Joint Venture ("Joint Venture") has filed on July 25, 1988, written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the Joint Venture and (2) the nature and objectives of the Joint Venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the Joint Venture and its general areas of planned activity are given below.

The parties to the Joint Venture are Sherex Chemical Company, Dublin, OH; Capital City Products, Columbus, OH; Croda Incorporated, New York, NY; Chemical Specialties Manufacturers Association, Washington, DC.

The purpose of the Joint Venture is to collect and submit appropriate data on Imidazolium quaternary ammonium compounds and Ethoxylated quaternary ammonium compounds as required by the 22nd ITC Report.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 18-18859 Filed 8-18-88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S-3504, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions being added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume I

Virginia:
VA88-23 ..... pp. 1160q-1160r.
VA88-24 ..... pp. 1160s-1160t.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Georgia:
GA88-9 (Jan. 8, 1988)..... p. 234.
GA88-10 (Jan. 8, 1988)..... p. 236.
GA88-11 (Jan. 8, 1988)..... p. 238.
GA88-12 (Jan. 8, 1988)..... p. 240.
GA88-24 (Jan. 8, 1988)..... p. 264.
GA88-25 (Jan. 8, 1988)..... p. 266.
GA88-26 (Jan. 8, 1988)..... p. 268.
GA88-27 (Jan. 8, 1988)..... p. 270.
GA88-28 (Jan. 8, 1988)..... p. 272.
GA88-29 (Jan. 8, 1988)..... p. 274.
GA88-30 (Jan. 8, 1988)..... pp. 275-276.
Pennsylvania:
PA88-14 (Jan. 8, 1988) ..... pp. 944-947.
Virginia:
VA88-3 (Jan. 8, 1988)..... p. 1124.
VA88-5 (Jan. 8, 1988)..... p. 1128.
VA88-14 (Jan. 8, 1988)..... p. 1150.
VA88-15 (Jan. 8, 1988)..... pp. 1154-1155.
VA88-17 (Jan. 8, 1988)..... p. 1160b.
VA88-18 (Jan. 8, 1988)..... pp. 1160e-1160f.
Listing by Location (index)..... pp. xliv-xlvi.
Listing by Decision (index)..... p. lx.

Volume II

Illinois:
IL88-8 (Jan. 8, 1988) ..... p. 142.
IL88-18 (Jan. 8, 1988) ..... p. 229.
Indiana:
IN88-1 (Jan. 8, 1988) ..... pp. 234-237.
IN88-2 (Jan. 8, 1988) ..... pp. 248-252, pp. 262-264b.
Indiana:
IN88-3 (Jan. 8, 1988) ..... pp. 266-267.
IN88-4 (Jan. 8, 1988) ..... pp. 278-281,287.
IN88-5 (Jan. 8, 1988) ..... pp. 290-292.
IN88-6 (Jan. 8, 1988) ..... pp. 300,302,306.
Nebraska
NE88-1 (Jan. 8, 1988) ..... p. 670.

Volume III

Washington:
WA88-3 (Jan. 8, 1988) ..... pp. 398-399, pp. 401-402.
WA88-8 (Jan. 8, 1988) ..... p. 420.
Wyoming:
WY88-1 (Jan. 8, 1988)..... p. 432.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and Related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 12 day of August 1988.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 88-18616 Filed 8-18-88; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

[TA-W-20,792]

Termination of Investigation; Belltex Inc.

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated in response to a worker petition received on July 11, 1988 which was filed on behalf of workers at Belltex Incorporated, Bergenfield, New Jersey.

All workers were separated from the subject firm more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 10th day of August 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-18892 Filed 8-18-88; 8:45 am]

BILLING CODE 4510-30-M

Job Corps Advisory Committee; Meeting

A public meeting of the Job Corps Advisory Committee will be held on September 13, 1988, commencing at 9:00 a.m., at the National Housing Center, 15th and M Streets, NW., Washington, DC.

The purposes of the meeting are to:

1. Conduct final review of Committee's Report to Secretary McLaughlin on the center assessment system.

2. Review and discuss paper synthesizing results of Utah meeting as background for subsequent discussion.

3. Consider what a Job Corps of the future should look like. Committee will discuss in detail the qualities, characteristics, structure and results which should be expected of a 'model' future center and will identify and categorize issues and obstacles associated with achieving that status.

4. Discuss Work Plan—September 1988—September 1989—Committee will formulate a plan which specifies the products and process of its major work for ensuing year.

Individuals or organization wishing to submit written statements pertaining to Job Corps center assessment should send 20 copies to Peter E. Rell, Director, Office of Job Corps, U.S. Department of Labor, Room N–4508, Washington, DC 20210, telephone (202) 535–0550. Papers will be accepted and included in the record of the meeting if received on or before September 12, 1988.

Roberts T. Jones,

Assistant Secretary of Labor-Designate.

Signed at Washington, DC, this 12th day of August 1988.

[FR Doc. 88–18891 Filed 8–18–88; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

[Docket No. M–88–140–C]

Bare Mining, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Bare Mining, Inc., Route 3, Box 84, Big Stone Gap, Virginia 24219 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Mine No. 2 (I.D. No. 15–16310) located in Letcher County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. Petitioner states that the use of canopies on the mine's electric face equipment would result in a diminution of safety because the canopies would limit the operator's visibility, due to the decrease in the mining height. The canopies could strike and dislodge roof supports, creating the possibility of roof falls. The canopies could also cut electrical cables, creating the possibility of an electrical shock.

3. Petitioner further states that if canopies are used, ventilation could be disrupted because face curtains could be torn down due to the operator's limited visibility.

4. For these reasons, petitioner requets a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 19, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: August 12, 1988.

[FR Doc. 88–18887 Filed 8–18–88; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–88–126–C]

Clinchfield Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Clinchfield Coal Company, P.O. Box 7, Dante, Virginia 24237 has filed a petition to modify the application of 30 CFR 75.1101–1(b) (deluge-type water spray systems) to its McClure No. 1 Mine (I.D. No. 44–04251), its Splashdam Mine (I.D. No. 44–00269), its Lambert Fork No. 2 Mine (I.D. No. 44–06175), its Kilgore Creek Mine (I.D. No. 44–04445), its Triple C No. 1 Mine (I.D. No. 44–06375), its Moss No. 4 Mine (I.D. No. 44–01644), its Moss No. 4A Mine (I.D. No. 44–04817), its Laurel Mountain Mine (I.D. No. 44–06444), and its Maple House Branch Mine (I.D. No. 44–04937) all located in Dickenson County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that nozzles attached to the branch lines be provided with blow-off dust covers.

2. Petitioner states that the covers allow corrosion and dust to accumulate in the branch lines which would cause the system to be inoperative upon

actuation, thus, causing a diminution of safety to the miners.

3. As an alternate method, petitioner proposes that—

(a) A weekly functional test would be conducted on each deluge-type spray system by a qualified person;

(b) A date board would be provided at each belt conveyor drive and the date, time and the qualified person's initials would be recorded upon completion of the weekly functional test; and

(c) The results of the weekly functional test would be recorded in a book kept on the surface and made accessible to all interested parties.

4. In support of this request, petitioner states that a weekly functional test for deluge-type spray systems provided at underground belt conveyor drives would keep branch lines and nozzles free of debris and thus would enhance a more dependable system.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affeced as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 672, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 19, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: August 12, 1988.

[FR Doc. 88-18888 Filed 8-18-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-141-C]

Eastern Associated Coal Corp.; Petition for Modification of Mandatory Safety Standard

Eastern Associated Coal Corporation, Route 85, P.O. Box 29, Wharton, West Virginia 25208 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Lightfoot No. 2 Mine (I.D. No. 46-04955) located in Boone County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. On June 20, 1986, petitioner was granted a modification of 30 CFR 75.326 to use belt haulage air in the active working faces of the longwall development sections and to install an early warning fire detection system in all belt entries used as intake aircourses (docket number M-85-133-C).

2. This petition concerns paragraph 7 of the Decision and Order which states that the carbon monoxide monitoring system shall be examined visually at least once each coal-producing shift and tested for functional operation at intervals not exceeding 7 days to ensure the monitoring system is functioning properly and that required maintenance is being performed. The monitoring system shall be calibrated with known concentrations of carbon monoxide and air mixtures at intervals not exceeding 30 calendar days. A record of all inspections shall be maintained on the surface. The inspection record shall show the time and date of each weekly inspection, monthly calibration, and all maintenance performed on the system.

3. Petitioner states that the belt conveyor system is totally idle and the power source to the belt drives will be locked out. MSHA will be notified prior to start up of any belt drive, and the CO monitoring system will be checked in its entirety to ensure proper functioning of the system.

4. For these reasons, petitioner requests an amendment to the previously granted petition modifying the application of 30 CFR 75.326.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 19, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: August 12, 1988.

[FR Doc. 88-18889 Filed 8-18-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-148-C]

Scarlett Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Scarlett Coal Company, Inc., H.C. 87, Box 192, Williamsburg, Kentucky 40769 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 2 (I.D. No. 15-15734) located in Whitley County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and is required to be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The hydraulic scoops are permissible DC powered machines, approximately 30-40% of the coal is hand loaded. Approximately 20% of the time the scoop is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on hydraulic scoops. In further support of this request, petitioner states that:

(a) Each hauling hydraulic scoop will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading scoop in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure the detection of any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery scoops immediately. Production will cease and will not resume until the methane level is lower than one percent.

(d) A spare continuous monitor will be available to assure that all coal hauling scoops will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 19, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: August 12, 1988.

[FR Doc. 88-18390 Filed 8-18-88; 8:45 am]

BILLING CODE 4510-43-M

NUCLEAR REGULATORY COMMISSION

American Nuclear Society Executive Workshop on the Utility/NRC Interface

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of conference.

SUMMARY: NRC staff will participate in an Executive Workshop sponsored by the American Nuclear Society on the subject of the Utility/NRC Interface.

DATE: September 25-27, 1988.

LOCATION: Holiday Inn Crowne Plaza, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Information on conference fees and registration procedures may be obtained by writing or calling the American Nuclear Society, Meetings Department, 555 North Kensington Avenue, LaGrange Park, IL 60525; (312) 352-6611.

SUPPLEMENTARY INFORMATION: The Workshop to be held in Rockville, MD, September 25-27, 1988, will provide information to improve communications and the overall effectiveness of the operations-related interface between utilities and the NRC.

Dated at Bethesda, Maryland, this 15th day of August, 1988.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management.

[FR Doc. 88-18835 Filed 8-18-88; 8:45 am]

BILLING CODE 7590-01-M

Cleveland Electric Illuminating Co. et al. Request To Suspend the Perry and Davis-Besse Nuclear Power Plant Antitrust License Conditions: Time for Filing Comments Extended

On May 2, 1988, the Cleveland Electric Illuminating Company (CEI) and the Toledo Edison Company (TE) requested the Director of the Office of Nuclear Reactor Regulation to amend the antitrust license conditions that are attached to the Perry Nuclear Power Plant (Perry), Facility Operating License No. NPF-58, and the Davis-Besse Nuclear Power Station (Davis-Besse), Facility Operating License No. NPF-3. The Perry operating license was issued to CEI, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company and TE. the Davis-Besse operating license was issued to TE and CEI. The CEI and TE application for amendment requested suspension of the antitrust license conditions from both the Perry and Davis-Besse plants as they apply to CEI and TE.

Notification of receipt of this amendment request was published in the **Federal Register** (53 FR 22589) on June 16, 1988 and comments were sought from the public within 30 days. By motion dated July 7, 1988, the City of Cleveland, Ohio (Cleveland) requested a 60-day extension of time in which to file comments. In light of the fact that Cleveland has shown good cause for its request to extend the filing period in this proceeding and both CEI and TE have not opposed the request, staff hereby grants Cleveland's request and extends the time period for filing comments on the captioned amendment request until September 13, 1988.

Any person who wishes to express views pursuant to the antitrust issues raised in this amendment request should submit said views by September 13, 1988 to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Chief, Policy Development and Technical Support Branch, Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland, this 11th day of August 1988.

For the Nuclear Regulatory Commission.

Kenneth E. Perkins,

Director, Project Directorate III-3, Division of Reactor Projects-III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-18838 Filed 8-18-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 72-1]

General Electric Co.; Issuance of Amendment To Materials License SNM-2500

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 5 to Materials License No. SNM-2500 held by the General Electric Company for the receipt and storage of spent fuel at the Morris Operation, located at 7555 East Collins Road, Morris, Illinois. The amendment is effective as of the date of issuance.

The amendment revises the Technical Specifications making organizational changes redefining the Plant Safety Committee and reflecting restructuring within the General Electric Company. These administrative changes do not affect fuel receipt, handling, and storage safety.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of the amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that, pursuant to 10 CFR 51.22(c)(11), an environmental assessment need not be prepared in connection with issuance of the amendment.

For further details with respect to this action, see (1) the application for amendment dated July 21, 1988, and (2) Amendment No. 5 to Materials License No. SNM-2500, and (3) the Commission's letter to the licensee dated August 11, 1988. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC.

Dated at Rockville, Maryland, this 11th day of August 1988.

For the U.S. Nuclear Regulatory Commission.

Leland C. Rouse,

Chief, Fuel Cycle Safety Branch Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 88-18834 Filed 8-18-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-482]

Kansas Gas and Electric 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-42, issued to Kansas Gas and Electric Company, Kansas City Power & Light Company, and Kansas Electric Power Cooperative, Inc., (the licensees), for operation of the Wolf Creek Generating Station located in Coffey County, Kansas.

The amendment would revise the heatup, cooldown, and Cold Overpressure Mitigation System Power Operated Relief Valve setpoint pressure/temperature limits in accordance with the requirements of 10 CFR Part 50, Appendix H and Technical Specification 4.4.9.1.2. These revisions are based on the results of the analysis of surveillance capsule "U" removed from the Wolf Creek reactor vessel during the first refueling outage. In addition, the amendment would also limit the reactor coolant system heatup rate to less than or equal to 60 °F/Hr for indicated reactor coolant system temperatures less than 200 °F.

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 September 19, 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 proceedings, 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 requested 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 Jose A. Calvo: 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 Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037, 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 June 20, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Local Public Document Room, Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas, and the Washburn University School of Law Library, Topeka, Kansas.

Dated at Rockville, Maryland, this 10th day of August, 1988.

For the Nuclear Regulatory Commission.

Jose A. Calvo,

Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-18839 Filed 8-18-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-322-OL-3 (Emergency Planning)]

Long Island Lighting Co.; Oral Argument

Notice is hereby given that, in accordance with the Appeal Board's order of August 12, 1988, oral argument

on the joint appeal of Suffolk County, the State of New York and the Town of Southampton from the Licensing Board's May 9, 1988, partial initial decision on suitability of reception centers (LBP–88–13) will be heard at 2:00 p.m. on Wednesday, September 14, 1988, in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.

For The Appeal Board.

C. Jean Shoemaker,

Secretary to the Appeal Board.

Dated: August 15, 1988.

[FR Doc. 88–18840 Filed 8–18–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–322–OL–5 (EP Exercise)]

Long Island Light Co.; Oral Argument

Notice is hereby given that, in accordance with the Appeal Board's order of July 29, 1988, oral argument on the appeal Long Island Lighting Company (LILCO) from the Licensing Board's February 1, 1988, initial decision (LBP–88–2) will be heard at 9:30 a.m. on Wednesday, September 14, 1988, in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.

For The Appeal Board.

C. Jean Shoemaker,

Secretary to the Appeal Board.

Dated: August 15, 1988.

[FR Doc. 88–18841 Filed 8–18–88; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Maintenance Practices and Procedures; Meeting

The ACRS Subcommittee on Maintenance Practices and Procedures will hold a meeting on September 7, 1988, Room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, September 7, 1988—8:30 a.m. until the conclusion of business

The Subcommittee will discuss and review the maintenance rule and associated NUREG.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Herman Alderman (telephone 202/634–1413) until August 26 and after August 29 (telephone 301/492–7750) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: August 15, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88–18836 Filed 8–18–88; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Pilgrim Restart; Meeting

The ACRS Subcommittee on Pilgrim Restart will hold a meeting on August 26, 1988, at the Memorial Hall, 83 Court Street, Plymouth, MA.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, August 26, 1988—8:00 a.m. until the conclusion of business

The Subcommittee will review the proposed restart of the Pilgrim plant.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee may exchange preliminary views regarding matters to be considered during the balance of the meeting. The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 202/634–3267) between 7:15 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: August 11, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88–18837 Filed 8–18–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–445 and 50–446]

Texas Utilities Electric Co., et al.[1]; Issuance of Amendments to Construction Permits

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 9 to Construction Permit No. CPPR–126 and Amendment No. 8 to Construction Permit No. CPPR–127 for the Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, to show a change in ownership interest.

By letter dated March 4, 1988, as supplemented on March 31, 1988, Texas Utilities Electric Company (TU Electric) requested amendment of Construction Permit Nos. CPPR–126 and CPPR–127 for the CPSES, Units 1 and 2, to reflect a

[1] The current Construction Permit holders for the Comanche Peak Steam Electric Station are: Texas Utilities Electric Company, Brazos Electric Power Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc.

transfer of 6.2% interest in CPSES ownership from Texas Municipal Power Authority to TU Electric. These amendments will become effective as of the date of completion of the transfer of the ownership interest.

The issuance of these amendments to Construction Permit Nos. CPPR–126 and CPPR–127 complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which is set forth in Amendments No. 9 and No. 8. Prior public notice of Amendments No. 9 and No. 8 was not required, since the amendments do not involve a significant hazards consideration.

For further details with respect to this action see (1) the application for amendment, dated March 4, 1988, and supplemental information dated March 31, 1988, (2) Amendments No. 9 and No. 8 to Construction Permit Nos. CPPR–126 and CPPR–127, respectively, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Local Public Document Room at the Somervell County Public Library on the Square, P.O. Box 1417, Glen Rose, Texas 76043.

In addition, a copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Comanche Peak Project Division, Office of Special Projects.

Dated at Rockville, Maryland, this 10th day of August 1988.

For the Nuclear Regulatory Commission.

Christopher I. Grimes,

Director, Comanche Peak Project Division Office of Special Project.

[FR Doc. 88–18842 Filed 8–18–88; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–25996; File No. SR–Amex–87–26]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Expansion of the Amex Auto-Ex System

I. Introduction

On October 13, 1987, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to expand its automatic execution system ("AUTO-EX") to all equity options on a permanent basis.

The proposed rule change was noticed in Securities Exchange Act Release No. 25056 (October 23, 1987), 52 FR 42164. No comments were received on the proposed rule change.

II. Background

In December 1985, the Exchange implemented a pilot program to initiate the AUTO-Ex system for the automatic execution of options on the Major Market Index ("XMI").[3] AUTO-EX is an automated system that executes public customer market and marketable limit orders [4] in options at the best bid or offer displayed at the time the order is entered into the Automatic Amex Options Switch ("AUTOAMOS") system.[5] If the best bid or offer is on the specialist's limit order book, the incoming order is routed to the specialist's post where it is executed against the book order, thus assuring that public customer orders on the book retain priority over orders in the crowd. If the best bid or offer is not on the specialist's limit order book, the contra-side of the AUTO-EX trade is assigned on a rotation basis to either one of the Registered Options Traders ("ROTs")[6] who have signed on to the system or to the specialist.

Each specialist in an AUTO-EX eligible option is automatically signed on to the system from the moment it is activated and remains a participant until the system is turned off, while ROTs participate on a voluntary basis. Prior to signing on to the AUTO-EX system, however, ROTs must sign an agreement with the Exchange undertaking to satisfy the following requirements prior to and during their participation on the system. A ROT:

1. Must be in good standing at the Amex;

2. Must have the written concurrence of his or her clearing firm to participate on the system;

3. Once signed on to the system for a particular option class, must remain in the trading crowd for that option. The ROT may, however, sign on to one additional AUTO-EX option class so long as the ROT can be considered in the crowd for both options;

4. May sign on the system at any time during the day, but only may sign off and back on to the system one additional time during the day;

5. While signed on to the system in a particular option class, may not place orders on the specialist's book for that option; and

6. Must accept Exchange-mandated price adjustments when a trade is automatically executed at an incorrect price.

Since its implementation in selected series of XMI options in August 1986, AUTO-EX has been extended to: (1) Use during periods of extremely high order flow in stock options,[7] (2) use in selected competitively traded stock options,[8] and (3) use in 40 equity options on a pilot program basis.[9] These three circumstances represent approximately 1.36% of Amex options order flow. Amex represents that member firms have been supportive of these various applications of AUTO-EX. The Exchange's Member Firm Advisory Committee, representing the major retail firms, has urged the Amex to make AUTO-EX more generally available for stock options.

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1988).

[3] The pilot was approved on a permanent basis in August 1986. Securities Exchange Act Release No. 23544 (August 27, 1986), 51 FR 30601.

[4] A market order is an order to buy or sell a stated amount of a security at the most advantageous price obtainable after the order is represented in the trading crowd. A marketable limit order is an order to buy or sell a stated amount of a security at a specified price or at a better price if obtainable, after the order is represented in the trading crowd, entered at a time when the market is trading at or better than the specified price.

[5] AUTOAMOS is an electronic order routing system which transmits market and marketable limit orders of up to 20 contracts and related administrative messages from member firms directly to the specialist on the Exchange floor via printers at each trading post. After arriving at the appropriate specialist's post, the order must be executed either automatically through AUTO-EX, or printed out and executed manually against an order on the book, the specialist as principal, or one or more brokers or traders in the crowd. *See* Securities Exchange Act Release No. 22447 (September 24, 1985), 50 FR 40093. When the order is executed the system transmits related execution reports and responses to administrative inquiries directly back to the member firm from the specialist via mark sense card input.

[6] Amex ROTs trade on the floor for their own accounts and are provided favorable margin treatment in return for making markets in one or more options classes. ROTs must engage in a course of dealing reasonably calculated to contribute to the maintenance of a fair and orderly market. *See* Amex Rule 958.

[7] *See* Securities Exchange Act Release Nos. 24228 (March 18, 1987), 52 FR 9601, 25487 (March 18, 1988), 53 FR 9721, and 25873 (June 30, 1988), 53 FR 25557.

[8] Options that can be traded on more than one exchange, such as options on over-the-counter stocks, are considered competitively traded options. *See* Securities Exchange Act Release Nos. 24714 (July 17, 1987), 52 FR 28396 and 25056 (October 23, 1987), 52 FR 42164.

[9] *See* Securities Exchange Act Release No. 25630 (April 29, 1988), 53 FR 16328.

Due to the sucessful operation of the AUTO-EX system in the aforementioned categories, the Amex, on October 13, 1987, filed a proposal to expand the AUTO-EX system to all equity options on a full-time, permanent basis. The Amex states that the proposed rule change is designed to promote just and equitable principles of trade and to protect the investing public because it will permit the Exchange to provide member firms and their customers with the execution efficiencies inherent in the AUTO-EX system to orders in all equity options. The Amex beleives the expansion of the AUTO-EX system to all equity options is a necessary and appropriate step for it to continue to offer the level of service that member firms and their customers require, while remaining competitive with other markets.[10] The Amex believes further that this expansion of AUTO-EX is necessary for it to attract sufficient order flow to enable the maintenance of viable markets. Finally, as explained more fully below, the Amex represents that the operation of AUTO-EX in all equity options will have no adverse impact on the Exchange's order routing system capacity.[11]

III. Discussion

The Commission finds that the proposed rule change permitting the use of the AUTO-EX system in all equity options on a permanent basis is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, in particular, the requirements of Section 6 and the rules and regulations thereunder. Specifically, the Cmmission believes that the proposed rule change will benefit public customers by affording them a more efficient method of executing small market and marketable limit orders in all equity options. The Commission previously has approved on a pilot basis the use of AUTO-EX in equity options during emergency or "breakout" situations. The Amex's experience during these periods has been that AUTO-EX's availability enhances order execution and brings operational efficiencies to the trading post during these emergencies.[12] Extension of the AUTO-EX system to all equity options would provide the Exchange's trading posts with enhanced order execution and other operational efficiencies not only during emergencies but during normal day-to-day trading as well.

The Commission believes that the efficiency of the AUTO-EX system would be greatly enhanced if ROTs participated in the system during periods of volatile market movements. Although Amex specialists are required to be on the system at all times, periods of excessive trading volume and volatility, like those experienced during the October market break, demonstrate that the participation of additional market makers on the system would help spread the risks imposed from acting as buyer or seller of last resort and, thus, contribute to a more deep, liquid, and efficient market for those options classes. Because the specialist is required to participate in AUTO-EX at all times, however, the Commission believes that a specific requirement obligating ROTs to remain on AUTO-EX for a full trading session or longer is not necessary. The current requirement permitting a ROT that has signed on to AUTO-EX in an options class to sign off and back on only once in a trading session should help ensure that ROTs stay on the system during the majority of any trading day they sign on. Moreover, other ROT obligations, such as the requirement that they remain in the trading crowd while participating in AUTO-EX for an option, that they agree to accept any Exchange ordered price adjustments, and the potential for Exchange disciplinary action for breaching their obligations, will help to assure that ROTs will be available to supplement the specialist's required participation in AUTO-EX. Nevertheless, in light of the problems AUTO-EX experienced during the October 1987 Market Break,[13] the Amex should consider whether more stringent ROT participation requirements should be imposed.

The Amex has indicated that the AUTO-EX system will remain in continuous operation during the trading day absent operational failure, trading halts, or trading suspensions in underlying securities, and would be turned off only in the interest of maintaining fair and orderly markets and investor protection. Moreover, the Amex has proposed that if a situation arose tht necessitated shutting the AUTO-EX system off in a specific options class, two Floor Governors (both members of the Exchange's Board of Governors) would have to concur. Before the system could be shut off floorwide during a trading day, however, a Senior Exchange Official, in addition to the two Floor Governors, would have to determine that such action was necessary to maintain fair and orderly markets or protect investors. Similarly, before a decision could be made not to activate AUTO-EX in a given options class or floorwide before trading commences, a Senior Exchange Official and two Floor Governors would have to concur that such action was appropriate to ensure fair and orderly markets and investor protection.[14]

The Commission believes that continued operation of automatic execution systems in all market conditions is appropriate. Investors who have relied on prompt order execution through AUTO-EX during normal markets also should be confident that these systems will be available in volatile markets as well.[15] In this regard, the Commission believes that the Amex's proposed standards for shutting off AUTO-EX either in a particular option or floorwide, *i.e.*, The maintenance of fair and orderly markets or the protection of investors, coupled with its proposed procedural safeguards, should ensure that AUTO-EX will continue to be available for execution of small retail orders at all appropriate times. Nevertheless, in light of the general unavailability of AUTO-EX in one options class—XMI—during the volatile week of October 19, 1987 the Amex should examine more carefully how the extension of AUTO-EX to over 100 stock options would affect the availability of the AUTO-EX system during periods of increased volatility.

The Commission also believes, based on Amex data, that the use of AUTO-EX will not increase the number of messages being processed through the Amex's automated options order routing systems to such an extent that those systems will become unable to handle additional order flow related messages. These systems have a capacity to

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[10] For example, the Chicago Board Options Exchange ("CBOE") has a small order execution system for options.

[11] *See* Letter from Paul Stevens, Executive Vice President, Amex, to Howard L. Kramer, Assistant Director, Division of Market Regulation, SEC, dated April 8, 1988.

[12] *See* Division of Market Regulation, *The October 1987 Market Break* (February 1988) ("Division Report") at 8–8 through 8–10.

[13] During the week of October 19–23 the Amex experienced a decline in ROT AUTO-EX participation. Approximately 2 to 4 ROTs, in addition to the specialist, participated in AUTO-EX each day of that week while 6 ROTs were on AUTO-EX each day, in addition to the specialist, during the week of October 12. *See* Division Reprot at 8–10.

[14] *See* Letter from Claire P. McGrath, Esq., Amex Options Division, to Joseph Furey, Esq., Branch Chief, Division of Market Regulation, SEC, dated June 22, 1988.

[15] In the Division's Report it noted that on October 19 and 20, 1987, the Amex and CBOE made their automatic execution systems largely inoperable. *See* Division Report, *supra* note 12, at 8–8.

process 18 messages per second (4½ times the peak one second message traffic received on an average day and 3½ times the traffic experienced on the busiest trading day ever experienced at the Exchange).[16] However, in light of the volume-related problems during October 1987 experienced by the small order routing and execution systems at the various stock exchanges, the Amex should consider whether increasing the volume of trades handled by AUTO-EX through AUTOAMOS may lead to similar problems in Amex options trading during periods of extreme volatility and excessive volume.[17]

IV. Conclusion

Based upon the aforementioned factors the Commission finds that the proposed rule change permitting the use of the AUTO-EX system in all equity options on a permanent basis is consistent with the requirements of section 6(b)(5) and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[18] that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Dated: August 15, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-18860 Filed 8-18-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25995; File Nos. SR-CBOE-87-35 and SR-CBOE-87-47]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc; Order Approving Proposed Rule Changes Relating to the Retail Automatic Execution System ("RAES")

I. Introduction

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") on July 27, 1987, a proposed rule change (SR-CBOE-87-35) to make the CBOE's Retail Automatic Execution System ("RAES") permanent in such classes of equity options as designated by the Exchange.[3] On October 19, 1987, the CBOE filed a related proposal, SR-CBOE-87-47, describing the RAES eligibility requirements that would be applicable to market makers electing to participate in RAES, and that also may be imposed in certain circumstances on members of the trading crowd.[4]

II. Background

In August 1986 the commission approved a CBOE proposal to pilot RAES in six classes of individual equity options, including International Business Machines ("IBM"), by volume the largest option class traded on the CBOE.[5] All CBOE trading rules regarding priority of order execution were honored in connection with the use of RAES in each of the piloted equity classes except IBM; *i.e.*, public customer orders placed in the limit order books of the pilot classes were guaranteed executions in the event orders entered through RAES were executed at the same price as limit orders on the book.[6] RAES' use in IBM operated as an exception due to the impracticability, from the CBOE's viewpoint, of performing the manual integration functions necessary to maintain book priority in a high volume option at that time.[7]

During the past two years the pilot has been expanded to include all CBOE equity option classes.[8] The CBOE believes it is now appropriate to approve the floorwide use of RAES on a permanent basis because the pilot has demonstrated the System's ability to handle small public customer orders efficiently and to operate without technical or other difficulties. Moreover, the Exchange believes the proposed amendments to its market maker RAES participation standards, discussed herein, will ensure the continued functioning of the system, including during periods of unusual market volatility.

III. Description of Proposals

A. System Operation (SR-CBOE-87-35)

Currently RAES accepts public customer market and marketable limit orders of ten or fewer contracts.[9] Pursuant to the proposed rule change the Exchange, in its discretion, may utilize RAES on a permanent basis in any of the equity options traded on its floor.[10] The CBOE, however, may restrict eligible orders by, for example, limiting RAES to market orders, and may lower contract limits.[11] It also will have discretion to place on the system such series in the eligible classes of options as it determines are appropriate.[12]

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[16] On an average day, during the peak one minute period, there are approximately 4 messages per second sent through the system; the largest number of messages sent, as of April 1988, was 5½ messages per second on January 23, 1987, which exceeded those sent on any trading day in October 1987. *Supra* note 11.

[17] *Supra* note 10, at 7-24 through 7-26.

[18] 15 U.S.C. 78s(b)(2) (1982).

[19] 17 CFR 200.30-3(a)(12) (1988).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1987).

[3] RAES automatically executes public customer market and marketable limit orders of a certain size (typically ten contracts or fewer) against participating market makers in the CBOE trading crowd at the best bid or offer reflected in the CBOE quotation system. SR-CBOE-87-35 was published for comment in Securities Exchange Act Release No. 24916 (September 11, 1987), 52 FR 35506. No comments were received on the proposed rule change.

[4] SR-CBOE-87-47 and Amendment No. 1 to the proposed rule change were published for comment, respectively, in Securities Exchange Act Release No. 25173 (December 4, 1987), 52 FR 47470, and in Securities Exchange Act Release No. 25620 (April 27, 1988), 53 FR 15934. Two commentators submitted letters, discussed *infra*, concerning the proposal.

[5] *See* Securities Exchange Act Release No. 23490 (August 1, 1986), 51 FR 28788 ("Equities Pilot Approval Order"). In addition to IBM, RAES was piloted in Eastman Kodak ("EK"), American Telephone & Telegraph ("AT&T"), General Motors ("GM"), Sears ("S"), and General Electric ("GE").

[6] CBOE priority rules accord public customer book orders time priority over any other orders at the same price. See CBOE Rule 6.45.

[7] The Commission simultaneously approved the use of RAES on a permanent basis for options on the Standard & Poor's 100 ("OEX") index. RAES' use in OEX was exempted from CBOE priority rules due to the liquidity of the option contract and the inability of the CBOE to protect OEX book orders without significantly degrading the efficiencies of RAES. In approving RAES on a permanent basis, the Commission accepted the Exchange's good faith representation to continue to explore the development of an electronic limit order book that would allow for the full integration of the limit order book with RAES. *See, e.g.*, letter from Charles I. Henry, President and Chief Operating Officer, CBOE, to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated October 2, 1987.

[8] *See, e.g.*, Securities Exchange Act Release No. 25571 (April 11, 1988), 53 FR 12840.

[9] A market order is an order to buy or sell a stated number of option contracts at the best price obtainable when the order reaches the post at which the option is traded. CBOE Rule 5.53(a). Marketable limit orders are limit orders (*i.e.*, orders to sell or buy at a specified price or better) which are immediately executable because the market is at or better than the limit price.

[10] At the current time, all but approximately 10 of the 178 equity options listed for trading on the CBOE are utilizing RAES. Those classes not utilizing RAES generally are thinly traded and have little market maker participation.

[11] In the event the CBOE elects to decrease or increase the size of orders eligible for RAES execution, or modify the types of orders that are eligible, the Exchange must file a proposed rule change with the Commission pursuant to section 19(b) of the Act.

[12] During the pilot period, the three closest to the money put and call series were accessible through RAES. The Exchange intends to make announcements concerning eligible series daily by memoranda and taped telephone messages.

The proposed rule change generally provides that, if approved on a permanent basis, RAES will operate in the same manner as it has during the pilot period. For example, firms currently on the Exchange's Order Routing System ("ORS") automatically will have their small public customer market orders routed into RAES.[13] Firms not on ORS will be provided access to RAES from terminals at their booths on the floor. Participating market makers will be assigned as the contra parties to RAES trades on a rotating basis, with the first market maker each day selected randomly. Market makers will be obligated to trade at the displayed market quote at the time an order enters the system through ORS,[14] thus providing the public customers generating the order a firm quote for up to the maximum number of RAES guaranteed contracts.

To preserve limit order book priority (in all options classes except IBM), if a RAES order would be executed at the price of one or more orders on the limit order book, the RAES order will be rerouted on ORS to either the entering firm's floor broker in the crowd (via printers located in the trading crowd), or the firm's floor booth. The order then would be represented, executed, and reported in the normal manner.[15] The proposed rule change also provides that the Exchange may suspend limit order book protection in RAES in any equity options class upon a declaration of unusual market conditions. This declaration only may by called by the Exchange's Vice Chairman and Preident (or their respective nominees) when, due to unusually active market conditions, the printer in the trading crowd becomes unavailable, or market operations "do not otherwise allow for the prompt and efficient handling of RAES orders which would be rerouted * * *." [16]

[13] ORS is a CBOE computer-driven support system that distributes customer orders received from member firms to designated destinations on the CBOE floor.

[14] RAES orders to buy are executed at the lowest offering price; RAES orders to sell receive executions at the highest bid price.

[15] This provision of the proposed rule change would codify certain system enhancements implemented by the CBOE in August 1987. Prior to that time, in the event a limit order on the book represented the best bid or offer and an order entered through RAES was executed at that price, the market maker who was the contra party to the RAES trade also would trade with the book order. The CBOE found that certain inefficiencies resulted from this system, and accordingly undertook the proposed modifications explained in the text above. *See Report on RAES Pilot in Equity Options for the Period September 1986—June 1987*, filed as an exhibit to File No. SR-CBOE-87-35 ("Report on RAES Pilot").

[16] *See* letter to Holly H. Smith, Special Counsel, Division of Market Regulation, SEC, from Frederic M. Krieger, Associate General Counsel, CBOE, dated May 10, 1988.

B. Market Maker Participation Requirements (SR-CBOE-87-47)

In connection with its request that the Commission approve the use of RAES on a permanent basis for all CBOE-trade equity options, the Exchange filed a proposed rule change to amend its market maker RAES eligibility standards on a six month pilot basis. The amendments would alter the administration of the eligibility standards and provide the Exchange with additional authority to both encourage and require market maker participation in RAES.

First, the proposed rule change would authorize the CBOE Market Performance Committee ("MPC") to exempt participating market makers from the joint account participation and trading in-person restrictions currently applicable. The market maker participation standards presently in effect limit participation to market makers trading in person in the trading crowd, and provide that only one member of a joint account may participate in RAES at a time in the same option class. The proposed rule would clarify the MPC's authority under existing Exchange rules and interpretations to allow the multiple participation of a joint account, and would delegate to the MPC authority currently vested solely in the Exchange's Floor Procedure Committee to grant exemptive relief from any of the rule's provisions in unusual market conditions.

Second, the proposed rule change would provide the MPC discretion to designate option classes in which any market maker who logs onto RAES in that class at any time during an expiration month would be required to participate in RAES whenever he is present in that trading crowd until the next expiration.[17] This change is intended to address the problem, identified during the RAES equity options pilot, of inadequate market maker RAES participation at expiration, typically at times of larger volume and increased market maker exposure. The Exchange believes this new provision will assure the existence of an adequate number of market makers on RAES through an expiration cycle.

Third, the proposed rule change provides that, in the event there is inadequate RAES participation in an options class at any time, the MPC may require market makers who are members of the trading crowd to sign onto RAES "absent reasonable justification or excuse for non-participation." Members may be fined pursuant to CBOE Rule 6.20 [18] and further disciplinary action may be taken by the Business Conduct Committee ("BCC") for their failure to comply with any of the requirements of the rule. In addition, the MPC may suspend a member's RAES participation eligibility and also is authorized to take remedial action pursuant to Chapter VIII of the Exchange's Rules.[19]

[17] The proposed rule change provides that market makers will be given notice of the imposition of this obligation prior to signing on the system at the beginning of an expiration month.

IV. Discussion

A. System Operation

In 1986 when the Commission approved the start-up of RAES in a select group of equity options, it recognized the importance and potential efficiencies of an automatic execution system for options, and noted the benefits it could provide public customers—notably, nearly instantaneous execution of small orders at a guaranteed price and the assurance of liquidity for orders entered through the system. The Commission also noted that public customers who choose to place orders on the book would, with the exception of IBM, generally not be disadvantaged by the operation of RAES.[20] The Commission stated its concern, however, over any possible reduction in public protection, and requested that the CBOE monitor during the pilot period the operational efficiencies of RAES, its impact on

[18] Rule 6.20 provides that two Floor Officials, upon a finding that a market maker has impaired the maintenance of a fair and orderly market or impaired public confidence in the operations of the Exchange, may fine the market maker a maximum of $1000. The imposition of this fine may be appealed to the Exchange's Appeals Committee, which must appoint a hearing panel of no fewer than three persons and create a record of its proceedings.

[19] *See*, for example, CBOE Rule 8.12 specifying remedial actions available to the MPC upon a determination that market makers (either individually or collectively as members of a trading crowd) have failed to meet minimum performance standards. The MPC may suspend, terminate or restrict a market maker's registration or appointment to one or more options classes; restrict appointments to additional option classes; relocate options classes; and prohibit a member from trading at a particular station. Any action taken by the MPC is reviewable by the CBOE Board of Directors or a panel composed of at least three Board members. The review panel or the Chairman of the Board may grant or deny a stay of the Committee's action. *See also* CBOE Rule 8.2.

[20] The Commission noted that if limit order protection was not guaranteed, public customers might become discouraged from entering limit orders, a phenomenon which could negatively affect the pricing efficiency of the market, particularly in less active option classes.

equity options limit order books, and its operation in IBM.

In August 1987 the Exchange submitted a report to the Commission detailing the operation of the pilot from September 1986 to June 1987.[21] This report generally supports the CBOE's assertion that RAES has functioned smoothly from a technical standpoint throughout the pilot period, and, moreover, has not operated to a significant degree to the detriment of customers entering orders in the IBM book. The CBOE report discloses that in those five classes in which limit order protection was assured, RAES orders "touched" the book, *i.e.*, were executed at the price of the highest bid on the limit order book in the case of a sell order, or the lowest offer in the case of a buy order, an average of 13.1% of the time. In individual classes this percentage ranged from a low of 8.7% in Sears, to a high of 27.8% in AT&T.[22]

In IBM, the Exchange found that between April-June, 1987, in those instances when a RAES execution touched the book, book orders at that price were removed before a price change or the end of the trading day in 94.5, 87.2, and 94.9 percent of the instances. When these statistics were calculated for the most active day each month, the percentages rose to 95.2% (on April 21), 100% (on May 20), and 98.9% (on June 24).[23] The CBOE found that in most instances booked orders were filled within one minute of the RAES execution. The median (*i.e.*, mid-point correction number) was between 2 and 6 minutes, and the average (dividing total minutes of all corrections by number of corrections) was between 13 and 24 minutes. The CBOE believes these statistics support a finding that RAES has not resulted in materially disadvantaging a statistically significant number of orders on the limit order book in IBM.[24]

The Exchange also submitted data indicating that the expansion of RAES to all CBOE listed equity options would not in its estimation place any stress from an operational standpoint on the capacity of CBOE computer systems.[25] The CBOE estimates that when RAES is expanded to all equity options, the consolidated utilization rate of CBOE computer systems would be only 71.6% on a three million contract day. RAES utilization would represent 9% of the total projected supportable capacity.[26] Based on these estimates, the CBOE believes that even assuming volume of unprecedented magnitude, response times for orders entered through RAES would remain sub-second.

In addition to considering this data, the Commission also has considered the performance of RAES during the October 1987 market break. The Commission examined the performance of each of the options markets during this time in connection with the staff's preparation of a market break study.[27] The Commission's Division of Market Regulation ("Division") found that during the week of October 1987 and for some time thereafter, the CBOE elected to limit (in some time periods severely) the use of RAES by making only far term, out-of-the-money series eligible for RAES execution. By taking this action the CBOE deleted from RAES those option contracts which may have been most in demand by public customers. The Division found that the CBOE's action was prompted in large part by an unwillingness on the part of its market makers to participate in RAES during a period of unusual market volatility.[28] The Division recommended in its report that the CBOE and other exchanges operating systems similar to RAES re-examine their rules governing market maker participation in these systems.[29]

B. Commission Findings

The Commission, upon careful consideration of the above cited data, believes that permanent approval of the system's use in CBOE listed equity options is appropriate. The Commission continues to believe that the development and expansion of automatic execution systems for options will help improve market efficiency and contribute to the smooth handling of small public customer orders. Although systems such as RAES have in the past been subject to decreased market maker participation during periods of market stress, the Commission believes this problem is properly addressed by revisions to the exchange market maker participation rules, not changes in the technology of the system itself. Moreover, systems such as RAES provide public customers with substantial benefits whose significance increases during periods of market volatility and price uncertainty. Specifically, RAES provides options customers with one of the limited means at present to lock-in the price of a trade, and provides significant benefits to both member firm users and their customers in terms of the speed with which orders can be executed and executions confirmed.[30]

Regarding the issue of limit order book protection, the Commission continues to be concerned that these orders receive timely executions and not be materially disadvantaged by the operation of a system that does not

[21] *See* Report on RAES Pilot, *supra* note 15. *See also Discussion of the RAES Pilot in Equity Options* (Supplement to Report on RAES Pilot in Equity Options), enclosed in letter to Holly H. Smith, Special Counsel, Division of Market Regulation, SEC, from Frederic M. Krieger, Associate General Counsel, CBOE, dated August 20, 1987. The CBOE found that a moderate percentage of customer order flow was handled by RAES; during the period studied, an average of 6% of customer orders in each pilot class were executed through RAES (representing 1.9% of total customer contracts).

[22] In July 1987 AT&T was replaced by an over-the-counter option traded on the CBOE, Battle Mountain Gold ("BMG"). The CBOE represented that it made this change because of insufficient market maker participation in RAES in AT&T. The Exchange believes that AT&T market makers were unwilling to participate in RAES because of the frequency with which they were required to trade with the book in order to guarantee book order protection.

[23] In calculating these statistics, when a RAES trade occurred at the price of a book order, the Exchange assumed an equal number of contracts on the book, and then tracked the book order until it was fully satisfied or the trading day ended. In addition, the CBOE did not consider book bids and offers satisfied unless and until *all* the trading interest on the book at that price was taken out, even though the number of orders executed through RAES at a particular price may have been less than the number of orders on the book.

[24] The CBOE also monitored the number of times when so-called "fast market" conditions were declared, thus enabling the Exchange to suspend book protection. To date, book priority in a pilot class has been suspended only once, for a two hour time period.

[25] *See* letter to Howard Kramer, Assistant Director, SEC, from Nancy R. Crossman, Associate General Counsel, CBOE, dated April 6, 1988 (enclosing Memorandum from CBOE Systems Division to Nancy Crossman).

[26] On October 16, 1988, approximately 2 million contracts were executed on the CBOE, making it the most active trading day in CBOE history. On this date the consolidated utilization rate of CBOE's computer system was 47.8% of available capacity. RAES, if fully expanded to all equity options, would have represented 6% of that utilization.

[27] *See The October 1987 Market Break*, A Report by the Division of Market Regulation, U.S. Securities and Exchange Commission (February 1988) ("Division Report").

[28] *Id.* at 8–8 through 8–10; 8–22.

[29] RAES' use was further limited by the fact that the system cannot be used while an option is in trading rotation, a condition that prevailed throughout much of October 19 and 20.

[30] At present, among the option exchanges only the American Stock Exchange ("Amex") has developed an execution system similar to RAES. Called "AUTO-EX," the Amex system guarantees executions at the market quote for public customer orders up to 10 contracts in the Amex's Major Market Index ("XMI") and in forty equity options. Although neither the Pacific Stock Exchange or the Philadelphia Stock Exchange have yet developed automated execution systems, both exchanges require their market makers to fill public customer orders in certain option series to a minimum depth of 10 contracts. *See* PSE Rule VI, Secs. 48 and 79; Phlx Rule 1033(A).

directly interface with limit order books. We believe, however, that in the present circumstance the benefits of RAES and the unique trading characteristics of IBM options (*i.e.*, generally high volume and deep markets) warrant the continuation of the IBM exception to limit order protection. The Commission finds support for this exception in the data compiled by the CBOE regarding the number of book orders that may have been disadvantaged by RAES executions. Nevertheless, the Commission expects the CBOE to continue monitoring RAES' impact on the IBM book, and, in the event a high number of book orders do not receive executions before a price change or the end of the trading day on a frequent basis, to take such action as appropriate to modify RAES' interaction with IBM limit orders. The Commission also expects that the Exchange will continue to develop an electronic limit order book that would allow the full integration of the CBOE's limit order books with RAES.

For the reasons set forth above, the Commission finds that the CBOE's proposal seeking permanent approval of RAES' use in equity options is consistent with the Act.

C. Market Maker Participation Standards

1. Comments Received

The Commission received three letters from two commentators concerning the CBOE's proposed market maker standards. One commentator, a CBOE market maker and floor broker, stated that allowing the MPC to require RAES participation by trading crowd members could "destabiliz[e] the market and provide inadequate safeguards against abuse and trauma during volatile trading periods." [31] The commentator also objected, for reasons not stated, to the disciplinary action provision of the rule.

The second commentator, a CBOE market making firm, the Fossett Corporation ("Fossett"), supports the objectives of the rule but believes that voluntary participation by market makers currently excluded from RAES by the in-person trading requirement is preferable to coercing participation by in-crowd market makers.[32] Fossett believes that the in-person eligibility requirement should be waived "to allow other market makers the opportunity to log on the system disdained by those present in the crowd."[33] As an alternative to the Exchange proposal, Fossett proposes a two-phase approach. First, if RAES participation is determined to be inadequate in a given equity option class, market makers not physically present in that trading crowd would be allowed to log on RAES in that option class if they so desire, provided that they agree to remain on the system until the next expiration. Second, if the level of participation is still insufficient or if immediate action is required in order to make RAES available, then the MPC could require market makers in the trading crowd to sign on.

Fossett believes this alternative is preferable to the system proposed by the Exchange because it is more likely to result in continuous, adequate participation by market makers in all equity classes; introduce additional capital into the system by non-trading crowd members; and ensure the continued viability of RAES. It believes the proposal put forward by the Exchange, on the other hand, would impose unjustifiable burdens on competition in the equity options market in violation of sections 6(b)(5) and 6(b)(8) of the Act.[34] Specifically, Fossett believes that the proposal will have anti-competitive effects on the trading crowd and the Exchange. Finally, Fossett asserts that the proposal may chill market making by in-crowd trading members by presenting them with the possibility of forced, involuntary RAES participation, while it prohibits outside market makers from competing on RAES when RAES in-crowd participation is insufficient.

Fossett also commented on the disciplinary action provision of the proposal, suggesting that the maximum potential penalty for violating participation requirements should be explicitly stated in the rule, so that members have notice of their potential liability and to ensure that penalties are commensurate with the significance of the violation. Fossett believes it is unfair for the Exchange to present its members with the possibility of unlimited fines, suspension of market maker appointments, and expulsion from RAES, and proposes instead that a fine not exceeding $1000 ($5000 for multiple violations) and a three month suspension from RAES participation (1 year for multiple violations) be established as the maximum penalties that the MPC may impose.

In response to the comments of the Fossett Corporation, the CBOE notes in a letter to the Commission that its proposed rule does in fact authorize the MPC to waive the in-person requirement as and when it deems appropriate, thereby providing for participation by non-trading crowd members when determined to be appropriate by the MPC.[35] The Exchange believes, however, that the ability of the MPC to require participation in the first instance by in-crowd members is consistent with the Exchange Act. With respect to the comment regarding the establishment of a maximum fine, the Exchange notes that pursuant to the proposed rule change the CBOE's Business Conduct Committee (BCC), rather than the MPC, has the authority to level fines, that the BCC does not have a maximum fine limit, and that it would be inappropriate to establish such a limit in Chapter XVII (Discipline) of the Exchange Rules.

2. Commission Findings

The CBOE's proposed rule change is expressly intended to address problems identified during the pilot period with the current eligibility criterion. The chief problem, highlighted most significantly during the market crash in October 1987 and discussed above, [36] concerns the willingness of individual market makers to participate voluntarily on a continuous basis in RAES during periods of unusual and unpredicted market volatility. As was seen during the October market break, market makers participating in an automatic execution system during a market downturn may find themselves acting as buyers of last resort, and in turn may have difficulty hedging their positions in either the options or underlying equity markets. Under these circumstances an exchange may be forced by market maker defections from its small order execution system to discontinue its operation, thereby contributing to

[31] *See* letter to Ann Taylor, Associate General Counsel, CBOE, from Leon A. Greenblatt, Geldermann Securities, Inc., dated April 27, 1988. Copies of the two comment letters received in response to the proposed rule change are available in the Commission's Public Reference Room in Washington, DC, in File No. SR–CBOE–87–47.

[32] *See* letter from J. Stephen Fossett, President, Fossett Corporation, to Jonathan G. Katz, Secretary, SEC, dated May 24, 1988 ("Fossett Letter I") and letter to Holly Smith, SEC, dated June 27, 1988 ("Fossett Letter II").

[33] Fossett Letter I, *supra* note 32, at 4. The commentator states that in its experience there have been "pockets of resistance" to the use of RAES in some option classes for a variety of reasons, including capital charges and the use of discouraging tactics by other members of the trading crowd. *Id.* at 3.

[34] Sections 6(b)(5) and 6(b)(8) require, respectively, that the rules of a national securities exchange "remove impediments to and perfect the mechanisms of a free and open market," and "not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act."

[35] *See* letter from Frederic M. Kreiger, Associate General Counsel, CBOE, to Jonathan G. Katz, Secretary, SEC, dated June 8, 1988.

[36] *See* discussion at pages 12–13 *supra*.

investor uncertainty and market instability.[37] The CBOE proposal discussed herein is designed to ensure the continued operation of RAES, including during periods of increased market volatility, by requiring market maker participation during expiration months (periods historically associated with volatility increases) and on occasions when the Exchange determines there is inadequate RAES participation in any equity options class.

The Commission believes the proposed rule change is a positive step in strengthening the integrity of the RAES system. The Commission has considered carefully the opinions of the commentators but for several reasons is not persuaded that the rule change, which generally assists in ensuring sufficient levels of market maker participation under all trading circumstances, is inconsistent with the Act. In reaching this conclusion, the Commission has borne in mind that the CBOE has requested approval of this proposal on a six-month basis only, thereby allowing the Commission to determine, based on the operation of the pilot, if the rule should be modified thereafter.

a. *Market Maker Participation.* First, the Commission notes the relatively narrow degree of dissimilarity between the Fossett proposal and the Exchange proposal. The CBOE has chosen to provide the MPC with discretion to act in a variety of ways to alleviate inadequate market maker participation. The MPC may require in the first instance in-crowd market maker participation, or it may first respond by waiving the in-person requirement, or it may take both actions simultaneously. In contrast, Fossett believes it is preferable to require the MPC in almost every instance to try to attract non-crowd participation prior to requiring RAES participation by trading crowd members. Notably, under both proposals trading crowd members could be required to participate in RAES.

The Commission does not believe that the CBOE's grant of authority and discretion to the MPC to demand participation by a certain group of CBOE members prior to, or instead of, voluntary participation by another group is inconsistent with the purposes of the Act. We believe an exchange reasonably may differentiate for certain purposes between those broker-dealers who regularly accommodate customer order flow and perform other market making responsibilities in a particular options class—*i.e.*, crowd market makers—from those who do not regularly perform these functions for that class. It is consistent with the Act for an exchange to accord to, and demand from, the former group certain privileges and responsibilities such as access to and trading with, orders entered through its automatic execution facilities, when there is a legitimate goal to be furthered thereby. In the present case we find such a purpose in the Exchange's need to ensure levels of in-person market maker participation sufficient to accommodate customer order flow in its RAES system.

Second, the Commission notes that it is not required to approve the least anti-competitive means of achieving a regulatory objective, but rather must weigh competing regulatory goals and ensure that the means selected is not inconsistent with the Act.[38] Although Fossett's suggested modification may indeed be a viable alternative consistent with the Act's goals, we cannot find for that reason alone that the CBOE's proposed rule is inconsistent with those same goals. Moreover, we believe that the rule change as proposed by the CBOE may have benefits not contemplated by the Fosset proposal. The rule change may have a positive impact on options pricing by providing in-crowd market makers with an incentive to ensure that quotations are updated on a timely basis. We also note that the CBOE's proposal offers more financial protection to the Exchange community. Under the Fossett proposal it is possible for a market maker to be signed on to RAES in dozens of classes and thus could be financially jeopardized under volatile conditions. The CBOE proposal would, in most instances, limit a market maker's exposure to the few classes traded in his crowd.

Third, although not an issue raised by the commentators, the Commission wishes to emphasize its belief that it is consistent with the Act for an exchange to require participation by trading crowd market makers in an exchange's small order execution system. To find otherwise would be inconsistent with the investor protection goals of the Act and give insufficient weight to the experience of some options exchanges during the market crash, when market maker defections from execution systems such as RAES resulted in their virtual shutdown. Indeed, in its study of market behavior in October, the Commission's Division of Market Regulation suggested that the "performance of small order execution systems during the week of October 19 evidences the need for the CBOE and the Amex [American Stock Exchange] to revisit their rules governing market maker and registered options trader ("ROT") [39] participation in these systems." [40] The Division recommended that both the CBOE and the Amex consider adopting more stringent policies with respect to market maker participation, including obligations similar to those proposed by the National Association of Securities Dealers, Inc. ("NASD") following the market crash. The NASD rule change, recently approved by the Commission, makes participation in the NASD's Small Order Execution System ("SOES") mandatory for all market makers in NASDAQ/NMS Securities.[41]

b. *Disciplinary Sanctions.* The Fossett Corporation has argued that possible disciplinary sanctions for violation of the new market maker participation requirements should be specifically enumerated in the rule. The Commission disagrees because of our belief that it is in the public interest for both the MPC and the BCC to have some degree of flexibility in fashioning remedies, and because we do not believe that the requirements imposed on market makers by the proposed rule are so unique or onerous as to require the establishment of maximum penalties. On the contrary, we believe that a determination regarding the severity of a market maker's violation of this rule by, for example, refusing to participate in RAES, and the nature of the remedy, is best left to the discretion of committees which are required to consider the totality of the circumstances. We note that other rules of the CBOE and other exchanges do not contain maximum or fixed penalties for rule violations.[42]

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[37] For example, on October 20, 1987, the day following a 508 point decline in the Dow Jones Industrial Average, only one market maker signed onto RAES in GE, as compared to an average of 11 market makers per day in September, and 5 per day in November 1987. Similarly, no market makers signed onto RAES in BMG, EK, or GM on October 20th.

[38] *See* Senate Report No. 94-75, 94th Cong. 1st Sess. (April 14, 1975) at 13-14.

[39] Like CBOE market makers, Amex ROTs trade on the floor for their own accounts and are provided favorable margin treatment in return for making markets in one or more option classes. ROTs must engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market. *See* Amex Rule 958.

[40] *See* Division Report, *supra* note 27, at Chapter 8.

[41] *See* Securities Exchange Act Release No. 25791 (June 9, 1988).

[42] *See, e.g.*, Amex Rule 114(e) (Registered Equity Market Makers may be suspended in addition to or in lieu of penalties that may be imposed pursuant to the Exchange's general disciplinary rules); NYSE Rule 476 (in disciplinary proceedings the Hearing Panel may impose their choice of a wide range of disciplinary sanctions).

Indeed, the Commission recently approved proposals by the New York and American Stock Exchanges to eliminate the maximum limit on fines that may be imposed in connection with an exchange disciplinary action.[43]

We also do not agree with the Fossett Corporation that it is inappropriate to delegate to the MPC authority to suspend or restrict a market maker's registration in one or more option classes for failure to comply with the requirements of the proposed rule.[44] The Commission believes that these sanctions and others provided for in Chapter VIII of the Exchange Rules legitimately may be imposed for a failure to comply with the rule so long as the Exchange provides minimum standards of due process to the parties involved. The Commission has carefully reviewed the CBOE's disciplinary process as codified in XVII of its rules, and believes that it is consistent with the due process requirements of the Act.[45]

V. Conclusion

The Commission has concluded after careful review that the proposed rule changes discussed herein are consistent with the requirements of the Act and the rules and regulations thereunder, in particular, the requirements of sections 6[46] and 11A.[47] Accordingly, the Commission is approving both proposed rule changes as amended. The proposal relating to market maker RAES participation standards is approved for a six month period to run from the date of this order.

It is therefore ordered, pursuant to section 19(b)(2)[48] of the Act, that the proposed rule changes be, and hereby are, approved.

By the Division of Market Regulation, pursuant to delegated authority.

Dated: August 15, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-18861 Filed 8-18-88; 8:45 am]

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[43] *See* Securities Exchange Act Release No. 25276 (January 20, 1988).

[44] *See* Fossett Letter II, *supra* note 32, at 7.

[45] *See* Section 6(b)(7), 6(d)(1) and 19(e)(2) of the Act. Moreover, any broker-dealer sanctioned in a disciplinary proceeding by the CBOE for violating an Exchange rule has a right to appeal the Exchange's decision to the Commission. 15 U.S.C. 78s(d)(2) (1982).

[46] 15 U.S.C. 78s(b)(2) (1982).

[47] 15 U.S.C. 78K-1 (1982).

[48] 17 CFR 200.30-3(a)(12) (1985).

[Rel. No. 34-25997; File No. SR-NASD-88-30]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Amendment to Definition of Qualified Independent Underwriter

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 July 13, 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 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 proposes to amend the definition of the term "qualified independent underwriter" at section 2(1) of Schedule E to the NASD By-Laws ("Schedule E"). The following is the text of the proposed rule change. New language is underlined, deleted language is in brackets.

SCHEDULE E

* * * * *

Section 2—Definitions

* * * * *

(1) Qualified independent underwriter*—a member which:

* * * * *

(4) has actively engaged in the underwriting of public offerings of securities *of a similar size and type* for at least the five-year period immediately preceding the filing of the registration statement. *For purposes of this section, the above requirement shall be satisfied if the member:*

(a) With respect to a proposed debt offering, has acted as manager or co-manager of public offerings of debt securities within the previous five years, including offerings each with gross proceeds of not less than 25% of the anticipated gross proceeds of the proposed offering,

(b) with respect to a proposed equity offering, has acted as manager or co-manager of public offerings of equity securities (or of securities covertible into equity securities) within the previous five years, including offerings each with gross proceeds of not less than 50% of the anticipated gross proceeds of the proposed offering, or

(c) has acted as manager or co-manager of public offerings of securities within the previous five years, including offerings each with gross proceeds of not less than $50 million, or

(d) demonstrates that it has acquired experience within the previous five years involving the pricing and due diligence functions comparable to that of a manager or co-manager of public offerings of securities in the above amounts;

(5) *no person associated with the member in a supervisory capacity responsible for organizing, structuring or performing due diligence with respect to corporate public offerings of securities:*

(a) has been convicted within five years prior to the filing of the registration statement of a violation of the anti-fraud provisions of the federal or state securities laws, or any rules or regulations promulgated thereunder, in connection with the distribution of a registered or unregistered offering of securities;

(b) is subject to any order, judgment, or decree of any court of competent jurisdiction entered within five years prior to the filing of the registration statement permanently enjoining or restraining such person from engaging in or continuing any conduct or practice in violation of the anti-fraud provisions of the federal or state securities laws, or any rules or regulations promulgated thereunder in connection with the distribution of a registered or unregistered offering of securities; or

(c) has been suspended or barred from association with any member by an order or decision of the Securities and Exchange Commission, any state, the Corporation or any other self-regulatory organization within five years prior to the filing of the registration statement for any conduct or practice in violation of the anti-fraud provisions of the federal or state securities laws, or any rules, or regulations promulgated thereunder, or the anti-fraud rules of the self-regulatory organization in connection with the distribution of a registered or unregistered offering of securities; or

(6) [(5)] is not an affiliate of the entity issuing securities pursuant to Section 3 of this Schedule *and does not beneficially own five percent or more of the outstanding voting securities of such entity which is a corporation or beneficially own a partnership interest in five percent of more of the distributable profits or losses or such entity which is a partnership;* and

(7) [(6)] (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 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 adopted Schedule E in 1972 to address the conflicts of interest present in a public distribution by a member of its own securities or those of an affiliate. A conflict of interest arises, *inter alia*, when the member participates in establishing the public offering price of the securities and when the member conducts due diligence with respect to the registration statement. Schedule E addresses these conflicts by requiring that a member independent of the issuer, with a background in underwriting and a track record of profitable operations and experienced management, conduct due diligence, participate in the preparation of the offering document, and provide an opinion that the price of an equity issue is no higher or the yield of a debt issue is no lower than it would recommend.[1] Such member is denominated a "qualified independent underwriter" and must come within the definition of that term included at Section 2(l) of Schedule E.[2]

The current criteria contained in the definition in Section 2(l) were intended to ensure that only those members that are independent of the issuer, with significant investment banking experience and demonstrated knowledge of federal securities law requirements in the context of public offerings of securities would act as qualified independent underwriters. The NASD has determined that it is necessary to clarify and enhance the current criteria to ensure that the purposes of the definition will be achieved. Therefore, the NASD is proposing to amend the definition of qualified independent underwriters included at Section 2(l) of Schedule E.[3]

Experience Requirement

The NASD is concerned that the current criterion in Subsection 2(l)(4) of Schedule E does not specify the type or kind of experience necessary to meet the requirement that the member have been "actively engaged in the underwriting of public offerings of securities." The NASD believes that the lack of specificity undermines the intent of this criterion to ensure that the qualified independent underwriter is sufficiently experienced to perform the due diligence and pricing functions with respect to a public offering of securities. The NASD is proposing to amend subsection (4) of Section 2(l) of Schedule E to require that the member have experience in managing or co-managing public offerings of a size and type similar to the proposed offering. The "manager or co-manager" requirement is intended to ensure that the member has experience in performing the functions of due diligence and pricing. Such functions are not performed by the underwriting or selling group members. The similar "type and size" requirement is intended to prevent, for example, a member with experience as an underwriter of small equity offerings from acting as a qualified independent underwriter for a large firm-commitment offering of high-risk, high-yield debt.

Subprovisions (a) and (b) to Subsection 2(l)(4) include specific parameters on the size and type of offerings managed or co-managed by a member that would permit a member to act as qualified independent underwriter. In the case of debt offerings, a member must have managed or co-managed other debt offerings each with gross proceeds of not less than 25% of the gross proceeds of the proposed offering in the prior five-year period. With respect to equity offerings, the member must have managed or co-managed other equity offerings in the prior five-year period each with gross proceeds of not less than 50% of the gross proceeds of the proposed offering.

In addition, subprovisions (c) and (d) include two alternative criteria that would permit the member to demonstrate that it has substantial due diligence and pricing expertise, even though the member cannot demonstrate compliance with the first two criteria. First, a member can satisfy the size and type requirement if the member has acted as manager or co-manager of public offerings each with gross proceeds of $50 million. It is believed that members with demonstrable experience acting as a manager or co-manager of medium-to-large offerings have the type of experience in performing the due diligence and pricing functions that is applicable to any type or size offering.

Second, a member can satisfy the size and type requirement if the member can demonstrate that it has acquired experience within the previous five years involving the pricing and due diligence functions comparable to that of a manager or co-manager of public offerings of securities of the size set forth in the first three criteria. This provision was intended to be less specific in order to permit those members with extensive experience comparable to that of a manager or co-manager of offerings comparable to that being filed to act as a qualified independent underwriter. Thus, members with extensive experience, for example, in performing due diligence and rendering a fairness opinion in connection with mergers and acquisitions would be permitted to demonstrate that the member has experience comparable to that of a manager or co-manager of a public offering similar in size and type to that filed. The gross dollar value of the transactions or of the entities for which the fairness opinions were issued by the member would be required to be (1) not less than 25% of the anticipated gross proceeds of a proposed equity offering; or (2) not less than 50% of the anticipated gross proceeds of a proposed debt offering; or (3) at least $50 million.

Disciplinary History Requirement

The NASD believes that it is inappropriate to permit a member which has associated with it persons with a disciplinary history related to practices in connection with an underwriting to be

[1] Where the offering is of equity securities with a bona fide independent market, as defined in Section 2(c) of Schedule E, or of a class of securities rated investment grade, a qualified independent underwriter is not required.

[2] Recently adopted amendments to Schedule E changed the subsection designations in Section 2 thereof. Current Section 2(l) was formerly Section 2(k). *See*, Notice to Members 88-83 (May 12, 1988); SR-NASD-87-21.

[3] The proposed rule change will also amend the criteria for qualified independent underwriters under the Venture Capital Restrictions and Proceeds Directed to Members provisions of the interpretation of the Board of Governors—Review of Corporate Financing, Article III, Section 1 of the NASD Rules of Fair Practice, NASD *Manual* (CCH) ¶ 2151.02. The Venture Capital Restrictions permit a qualified independent underwriter as defined in Section 2(l) to Schedule E to address the conflicts of interest present when a member acts as both a selling shareholder and distributor in connection with an initial public offering. The Proceeds Directed to Members provision permits a qualified independent underwriter as defined in Section 2(l) of Schedule E to address the conflicts of interest present when more than 10 percent of the net proceeds of an offering are directed to members participating in the distribution.

a qualified independent underwriter. Therefore, the NASD is proposing to adopt new Subsection (5) of Section 2(l) of Schedule E to preclude a member from acting as a qualified independent underwriter if any person associated with the member in a supervisory capacity responsible for structuring corporate public offerings or conducting due diligence has been convicted, enjoined, suspended or barred within the previous five years for a violation of federal, state or self-regulatory organization antifraud rules in connection with a distribution of securities. Thus, disqualification based on disciplinary history is restricted to those persons associated with a member responsible for performing the functions required of a qualified independent underwriter under Schedule E.

Subprovision (a) to Subsection 2(l)(5) of Schedule E would disqualify a member where any of the enumerated persons has been convicted within five years prior to the filing of the registration statement of a violation of the anti-fraud provisions of the federal or state securities laws, or any rules or regulations promulated thereunder, in connection with the distribution of a registered or unregistered offering of securities. Subprovision (b) to Subsection 2(l)(5) would disqualify a member where any of the enumerated persons is subject to any order, judgment, or decree of any court of competent jurisdiction entered within five years prior to the filing of the registration statement permanently enjoining or restraining such person from engaging in or continuing any conduct or practice in violation of the anti-fraud provisions of the federal or state securities laws, or any rules or regulations promulgated thereunder, in connection with the distribution of a registered or unregistered offering of securities. Subprovision (c) to Subsection 2(l)(5) would disqualify a member where an enumerated person has been suspended or barred from association with any member by an order or decision of the Securities and Exchange Commission, any state, the NASD or any other self-regulatory organization within five years prior to the filing of the registration statement for any conduct or practice in violation of the anti-fraud provisions of the federal or state securities laws, or any rules or regulations promulgated thereunder, or the anti-fraud rules of any self-regulatory organization in connection with the distribution of a registered or unregistered offering of securities.

Equity Ownership Requirement

Current Subsection 2(l)(5) of Schedule E provides that the qualified independent underwriter may not be an affiliate of the issuer. The definition of "affiliate" contained in Section 2(a) of Schedule E involves the concept of control of the issuer. Control is generally not presumed unless a member owns at least ten percent of the voting stock of the issuer. Further, the presumption of control can be rebutted by a member. Therefore, under the current provision, a qualified independent underwriter could, for example, own 8% of the outstanding securities of the issuer and meet the qualified independent underwriter requirement. Further, a member that had rebutted the presumption of control would technically meet the definition in Section 2(l) and could act as qualified independent underwriter, even though the member owned 10% or more of the outstanding securities of the issuer. The NASD, however, has consistently interpreted this provision to not permit a member with a 10% or greater equity interest in the issuer to act as a qualified independent underwriter.

The NASD is concerned that the current definition does not ensure that the qualified independent underwriter is fully objective and independent of conflicts of interest as a result of its equity interest in the issuer. The NASD believes that a significant percentage equity interest in the issuer is inconsistent with the intent of the requirement to establish objectivity and independence in the pricing and due diligence functions.

Therefore, the NASD is proposing to redesignate Subsection (5) as Subsection (6) of Section 2(l) of Schedule E and amend the provision to prohibit a member from acting as a qualified independent underwriter if the member beneficially owns five percent or more of the outstanding voting securities of a corporate issuer or beneficially owns a partnership interest in five percent or more of the distributable profits or losses of an issuer which is a partnership. The provision will also retain the current requirement that a qualified independent underwriter may not be affiliated with the issuer.

In arriving at the 5% level, the NASD has relied on the standard set forth in Section 13(d) of the Securities Exchange Act of 1934, which requires reports to be filed with the SEC when any person owns 5% or more of a public company. It is not believed that a less-than-5% interest will affect the objectivity and independence of the qualified independent underwriter. Thus, the level of 5% appears to be an appropriate one in the context of the obligations of a qualified independent underwriter.

The proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, as the proposed rule change will enhance the protection of investors who purchase securities in a public offering by a member of its own securities or those of an affiliate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change presents no burden on competition not necessary 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

The initial version of the proposed rule change was published for comment in Notice to Members 87–87 (December 30, 1988). The NASD received 18 comments.

In general, 11 of the commentators (61%) opposed the amendments in the form published for comment and seven (39%) supported them. The proposed rule change incorporate many of the commentators' suggested modifications to the initial published version.

Experience Requirement

Eleven of the commentators addressed the proposed requirement that a qualified independent underwriter have experience managing or co-managing public offerings of a size and type similar to the proposed offering. The two commentators were in support of the proposed requirement. The nine commentators opposed to the proposed requirement objected to both the management requirement and the size and type requirement. In general the commentators viewed the management requirement as unduly restrictive and urged that it would preclude otherwise competent members from acting as qualified independent underwriters.

In response to the comments received, the NASD determined to include new subprovision (d) to Subsection 2(1)(4) of Schedule E to permit a member to demonstrate that it has acquired experience within the previous five years involving the pricing and due diligence functions comparable to that of a manager or co-manager of public offerings of securities in the amounts referenced in subprovisions (a) through (c).

In response to comments that the size and type requirement was too vague, the NASD determined that the proposed

rule change should be more specific as to the criteria that would be utilized to establish sufficient experience. The NASD modified the initial published version so Subsection 2(1)(4) to include in new subprovisions (a) through (c) specific parameters on the size and type of offerings managed or co-managed by members which would permit to act qualified independent underwriters.

Disciplinary History Requirement

Thirteen of the commentators addressed the disciplinary history disqualification provisions, which was initially proposed to preclude a member from acting as a qualified independent underwriter if the member or certain of its senior associated persons or controlling shareholders had been convicted or enjoined for violations of the securities laws or had been the subject of serious disciplinary action taken by the Commission, NASD, or other self-regulatory organization during the five years prior to the filing of the registration statement. Of the 13 commentators, six supported adoption of the proposal, while seven opposed it.

In response to comments received from the Securities Commissions for the States of Pennsylvania, Wisconsin and New Mexico, the NASD determined to modify the initial published version to specifically reference in subprovisions (5) (a), (b), (c) Section 2(1) violations of the anti-fraud provisions of state securities laws in connection with the distribution of a registered or unregistered offering of securities.

In addition, several of the commentators opposed to adoption of the proposal indicated that the range of offenses or misdeeds covered by the proposal was too broad and, as a result, the proposal failed to address the issue of whether a member or senior associated person lose their ability to be objective and independent in the due diligence and pricing functions required of a qualified independent underwriter. Other commentators objected to the broad nature of term "senior officer" and indicated that the term "senior officer" is not defined under the Act or the NASD By-Laws. Commentators also pointed out that if a sister subsidiary or parent of a member were enjoined from violating the proxy rules of the Act, the member would be disqualified from acting as a qualified independent underwriter under the initial proposed version.

In response to the foregoing comments, the NASD determined that the disciplinary history disqualification provisions should only be applicable to persons associated with a member in a supervisory capacity responsible for structuring public offerings or performing due diligence.

Commentators also suggested limiting the scope of the provision related to a court order, judgement, or decree to those situations that involve a violation of the antifraud provisions of the securities laws, any orders, judgements, or decrees of a criminal nature or orders, judgments or decrees intended to prevent the unlawful sale of securities. The NASD determined to modify the initial proposed version to more narrowly focus the proposed disciplinary history disqualification provision on violations of any federal, state, or self-regulatory organization anti-fraud provision in connection with a public or private offering of securities.

Equity Ownership Requirement

Six commentators offered specific comments on the proposal that would limit a qualified independent underwriter's equity interest in an issuer to less than five percent. Three of the six commentators supported adoption of the proposal while three of the commentators opposed adoption of the stock ownership limitation. Of the commentators opposed, one commentator argued it would be extremely difficult to judge whether independence is lost at five percent or ten percent and, thus, felt it was unclear how the proposed reduction would facilitate an underwriter's objectivity.

The NASD determined that it should rely on the special requirements for reporting pursuant to section 13(d) of the Act, which requires reports to be filed with the Commission when any person aggregates an ownership interest of five percent or more in a public company. While the NASD agrees it is difficult to judge whether independence is lost at five or ten percent, the NASD believes it should set a standard to insure that a qualified independent underwriter has sufficient independence to perform its pricing and due diligence functions in all cases. Therefore, the NASD determined to retain the proposal, but to modify the initial published version to clarify that the limitation on stock ownership of the issuer by the qualified independent underwriter is based on the outstanding voting securities of an issuer which is a corporation

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date 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 forgoing. 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 communication relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with 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 the file number in the caption above and should be submitted by September 9, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated August 15, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 18863 Filed 8–18–88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–25992; File No. SR–DTC–88–15]

Self Regulatory Organizations; Depository Trust Co.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("the Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 1, 1988, the Depository Trust Company ("DTC") filed a proposed fee change that revised the fee for the Change of Mode of Payment Service ("CMOPS"). The

Commission is publishing this notice to solicit comment on the rule change.

CMOPS enables DTC participants to choose the frequency with which they receive dividend payments on certain investment company and corporate preferred securities. CMOPS fees were initially set at the same rate as the fee charged for conversions, i.e. two deliver order charges plus $20.00 minimum for a transaction of 400 shares or less, $.05 per share for transactions over 401 shares, up to a maximum of $100 per transaction. Based on unit service costs during the pilot operation, DTC has found that the service fees should be reduced to reflect estimated unit service costs. This proposed rule change revises CMOPS fees to $11.00 per CMOPS instruction plus two deliver order fees, effective July 1, 1988.

DTC believes that the proposed rule change is consistent with the requirements of section 17A(b)(3)(D) of the Act in that the proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among its participants.

The rule change has become effective pursuant to section 19(b)(3)(A) of the Act. The Commission may summarily abrogate the rule changes at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

You may submit written comments within 21 days after notice is published in the **Federal Register.** Please file six copies of your comment with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, with accompanying exhibits, and all written comments, except for material that may be withheld from the public under 5 U.S.C. § 552, are available at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC. Copies of the filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–88–15.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: August 12, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–18805 Filed 8–18–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–25990; File No. SR–MCC–88–02]

Self-Regulatory Organizations; Midwest Clearing Corporation; Order Approving Proposed Rule Change

The Midwest Clearing Corporation ("MCC") on May 5, 1988, submitted a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"). the proposal would terminate one of MCC's current securities withdrawal procedures. Notice of the proposal appeared in the **Federal Register** on July 12, 1988, to solicit public comment.[1] No comments were received. This order approves the proposed rule change.

I. Description of the Proposal

The proposal would amend MCC Article 3, Rule 3 to discontinue the service known as "demand street requests.' By related conforming changes, the term "demand street requests" would be excised from all of MCC's Rules.[2]

An MCC "demand street request," also known as a "demand street withdrawal request," is a request by a participant to MCC for the withdrawal of street-name securities from MCC's offices for physical delivery or pick-up.[3] MCC currently processes such requests ahead of the more routine "street withdrawal requests" but at a higher charge to its participants.

II. MCC's Rational for the Proposal

MCC states that recent improvements to its electronic systems have expedited the processing of routine withdrawal requests. MCC notes that, consequently, the volume of requests for demand street requests, at their premium prices, has diminished significantly.

MCC states that it proposes to terminate "demand street requests" because, in its business judgment, the declining use of that service does not justify the inefficiences of continuing two parallel services that provide essentially the same product. MCC believes that the proposal is consistent with Section 17A of the Act in that the proposal would provide MCC with uniform security withdrawal procedures that would improve both cost effectiveness and the safeguarding of securities in the custody or control of MCC.

III. Discussion of the Proposal

The Commission believes that this proposal is consistent with the Act, particularly Section 17A of the Act. MCC has reported that, due to systems enhancements its participants have shown significantly reduced interest in using the more expensive withdrawal procedure that this proposal would eliminate. Moreover, MCC has represented that a uniform system for its participants' withdrawal of street name securities would be more efficient in terms of: (1) Cost effectiveness, and (2) custodial techniques for safeguarding securities. Accordingly, the Commission believes that the proposal will facilitate more efficient and safe procedures for the prompt and accurate clearance and settlement of transactions in securities.

IV. Conclusion

For the reasons discussed in this order, the Commission finds that the proposed rule change is consistent with the requirements of Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b) of the Act, that the above-mentioned proposed rule change (SR–MCC–88–02) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: August 12, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–18806 Filed 8–18–88; 8:45 am]

BILLING CODE 8010–01–M

[1] *See* Securities Exchange Act Release No. 25884 (July 5, 1988), 53 FR 26349.

[2] The Commission recently approved an identical rule proposal by an MCC affiliate, the Midwest Securities Trust Company ("MSTC"). *See* Securities Exchange Act Release No. 25900 (July 12, 1988), 53 FR 27250 (File No. SR–MSTC–88–03). MCC and MSTC are both wholly-owned subsidiaries of the Midwest Stock Exchange, Inc.

[3] According to MCC's current Article III, Rule 3(a), a "demand street request" ordinarily results in delivery of the security in the morning, and a "street request" ordinarily results in delivery of the security in the afternoon.

[Release No. 34–25993; File No. SR–NASD–88–36]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Listing Criteria for NASDAQ National Market System Securities

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 August 5, 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 NASD. The Commission

is publishing this notice to solicite 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 proposed amendment would modify the quantitative designation criteria for NASDAQ National Market System ("NASDAQ/NMS") securities contained in Part III of Schedule D to the NASD By-Laws and would add to the non-quantitative criteria in that Part a requirement for shareholder approval of certain corporate transactions.

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 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 proposed rule changes would amend Parts I and III of Schedule D to the NASD's By-Laws relating to qualification standards for NASDAQ/NMS issuers. The proposed rule changes are derived primarily out of discussions among representatives of the Commission, the NASD, certain of the registered securities exchanges, and the North American Securities Administrators Association ("NASAA"), which were directed toward developing a set of minimum quantitative and non-quantitative listing criteria that would provide a basis for a uniform exemption from state securities registration requirements for all securities traded in markets with such listing criteria. The minimum listing criteria and terms of the uniform marketplace exemption are set forth in a memorandum of understanding executed on March 16, 1988 by the presidents of NASAA and the NASD. The proposed rule changes reflect the terms of the memorandum of understanding.

The quantitative criteria in the proposed rule change would amend the existing NASDAQ/NMS designation criteria to make them substantially equivalent to the criteria imposed by the American Stock Exchange prior to February 1987. The NASD believes that such levels are consistent with designating securities in which there is a national level of interest among investors and which would therefore most greatly benefit from exemption from the state registration of securities provisions while providing sufficient safeguards to investors to warrant such an exemption.

The proposed amendment to Section 5(b) of Part III would modify the requirements imposed upon issuers with respect to interim reports by removing the requirement that such reports be distributed to shareholders and substituting the requirement that such reports be made available to shareholders. The NASD notes that many issuers routinely distribute interim reports to shareholders but believes that in some instances a mandatory distribution of such reports may be unduly burdensome and costly to issuers. The NASD also notes that neither the New York nor the American Stock Exchange require mandatory distribution of interim reports to shareholders. The NASD therefore believes that if issuers make such reports available to shareholders upon request, the purpose of keeping investors informed will be served without undue burden upon the issuer.

The proposed new provision to Section 5 of Part III would impose upon NASDAQ/NMS issuers the requirement to obtain shareholder approval of certain significant corporate transactions. The purpose of this proposal is to provide to shareholders of NASDAQ/NMS issuers a greater level of participation in corporate affairs by enhancing the non-quantitative requirement for NASDAQ/NMS designation which were first implemented after Commission approval in August of 1987. The NASD believes that implementation of the shareholder approval requirement, is another important step in the continuing development of the National Market System segment of the NASDAQ system and that such a requirement provides further shareholder protections concomitant with the stature of the issuers comprising that market. Some of the registered securities exchanges currently impose similar shareholder approval requirements. In addition, the NASD notes that the Commission, in its recent release adopting Rule 19c–4, in its discussion of the possible applicability of that rule to "lock-up" plans noted the existence of the shareholder approval requirements of the exchanges and suggested that the NASD consider adopting a similar rule as a part of its implementation of Rule 19c–4. The proposed rule change will accomplish this purpose.

The NASD believes that the proposed rule changes are consistent with Section 15A(b)(6) of the Act which requires that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market and, in general, protect investors in the public interest. The NASD believes that the proposed rules protect investors and are consistent with the purposes of the Act in permitting greater participation in corporate affairs by those investors. The NASD also believes that the proposed rule changes are consistent with the provisions of section 11A(a) (1) and (2) of the Act in that such changes will help to assure fair competition among marketplaces and in general will serve to enhance the development of the national market system mandated by Congress in that the standards will assure that issuers traded in the NASDAQ National Market System will meet quantitative criteria consistent with the national interest in those securities and to the degree that such securities are exempted from state securities registration, the proposed rule changes will serve to remove impediments to the development of a national market system in securities. The NASD also believes that the proposed rule changes are consistent with section 19(c) of the Securities Act of 1933 which seeks cooperation among the Commission and representatives of the state governments and maximum uniformity of federal and state regulatory standards in that the amendments should facilitate a national standard for granting of exemptions from state securities regulation.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule changes do not impose any 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 on the proposed rule changes 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 approved 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 the file number in the caption above and should be submitted by September 9, 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: August 12, 1988.

[FR Doc. 88-18807 Filed 8-18-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16525; 812-6322]

ML Venture Partners I, L.P., et al.; Notice of Application

August 12, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

Applicants: ML Venture Partners I, L.P. ("MLVP I") ML Venture Partners II, L.P. ("MLVP II") (collectively, "BDC Partnerships"), Merrill Lynch KECALP Growth Investments Limited Partnership 1983, Merrill Lynch KECALP L.P. 1984, Merrill Lynch KECALP L.P. 1986, and Merrill Lynch KECALP L.P. 1987 (collectively, "KECALP Partnerships").

Relevant 1940 Act Sections: Order requested under Sections 6(c) and 17(d) and Rule 17D-1 thereunder permitting certain joint transactions otherwise prohibited by Sections 57(a)(4) and 17(d).

Summary of Application: Applicants seek an order, on a prospective basis, under Sections 6(c) and 17(d) of the 1940 Act and Rule 17d-1 permitting the purchase of securities by the BDC Partnerships in joint transactions, otherwise prohibited by Sections 57(a)(4) and 17(d) of the 1940 Act, in which the BDC Partnerships and the KECALP Partnerships are participants.

Filing Dates: The application was filed on March 21, 1986, and amended on May 5, 1987, February 18, April 29, and August 9, 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 reguests must be received by the SEC by 5:30 p.m., on September 2, 1988. Reguest 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.

ADDRESS: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. MLVP I and II, 717 Fifth Avenue, New York, New York 10022, and KECALP Partnerships, North Tower, World Financial Center, New York, New York 10281.

FOR FURTHER INFORMATION CONTACT: Richard Pfordte, Special Counsel, (202) 272-2811, or Karen L. Skidmore, Branch Chief, (202) 272-3023, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial Copier, (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. MLVP I, a limited partnership organized in 1982 under the laws of Delaware, has elected to be regulated as a business development company under the 1940 Act. The investment objective of MLVP I is to seek long-term capital appreciation by making venture capital investments. MLVP I has five general partners, four of whom are individuals ("Individual General Partners"). In accordance with section 56(a) of the 1940 Act, a majority of the Individual General Partners are persons who are not "interested persons" of MLVP I within the meaning of section 2(a)(19) of the 1940 Act ("Independent General Partners"). *See In re ML Venture Partners I, L.P. et al.* (Investment Company Act Release No. 12601, August 12, 1982). The managing general partner for MLVP I, Merrill Lynch Venture Capital Co. L.P., is responsible for identification and management of MLVP I's venture capital investments. The general partner of the managing general partner is Merrill Lynch Venture Capital Inc. ("MLVC"), which is also the management company for MLVP I. MLVC is an indirect subsidiary of Merrill Lynch & Co., Inc. ("ML & Co.").

2. MLVP II is a Delaware limited partnership that has elected to be regulated as a business development company under the 1940 Act. The investment objective of MLVP II is to seek long-term capital appreciation by making venture capital investments. MLVP II has five general partners, four of whom are individuals ("Individual General Partners"). A majority of the Individual General Partners are persons who are not "interested persons" of MLVP II within the meaning of section 2(a)(19) of the 1940 Act. A majority of the Independent General Partners also have no affiliation with MLVP I. See *In re ML Venture Partners II, L.P., et al.* (Investment Company Act Release No. 15652, March 30, 1987). The managing general partner for MLVP II is MLVP II Co., L.P., which is responsible for MLVP II's venture capital investments. MLVP II Co., L.P., is a limited partnership controlled by MLVC, which is also the management company for MLVP II. At September 30, 1987, MLVP II had net assets of approximately $111.4 million.

3. The KECALP Partnerships, each a Delaware limited partnership, are non-diversified, closed-end investment companies of the management type under the 1940 Act. The investment objective of each KECALP Partnership is to seek long-term capital appreciation. Under the terms of the offerings, as set forth in the registration statements of

the KECALP Partnerships, Units are being offered exclusively to employees of ML & Co. and its subsidiaries and to nonemployee directors of ML & Co. Each KECALP Partnership is an "employees' securities company" within the meaning of section 2(a)(13) of the 1940 Act, and operates in accordance with the terms of an exemptive order issued pursuant to section 6(b) of the 1940 Act, the general exemptive provision for employees' security companies. (Investment Company Act Release No. 12363, April 8, 1982) ("KECALP Exemptive Order"). The general partner for the KECALP Partnerships is KECALP Inc. ("KECALP"), a Delaware corporation that is a wholly-owned subsidiary of ML & Co. KECALP is responsible for managing and making investment decisions for the KECALP Partnerships. The KECALP Exemptive Order permits KECALP to organize new limited partnerships for employees of ML & Co. and its subsidiaries each year.

4. Each of the KECALP Partnerships and BDC Partnerships (collectively, "Partnerships") will make venture capital investments. It is expected that, given the nature of their investment objectives and the close affiliation of management of the Partnerships, a significant number of investment opportunities will come to the attention of management of the Partnerships that will be appropriate investments for more than one Partnership. The Partnerships may be considered under common control within the meaning of the 1940 Act. Thus, MLVP I and MLVP II may not make "joint investments" with any one of the other Partnerships unless an order is issued by the Commission under Sections 17(d) and 57 of the 1940 Act. ("Joint investment" in this context refers broadly to any "joint enterprise or other joint arrangement or profit-sharing plan" under Rule 17d–1(c) under the 1940 Act.)

Under the terms of the KECALP Exemptive Order, the KECALP Partnerships are permitted to engage in transactions in which certain affiliated persons may also be participants; specifically, the KECALP Partnerships may invest in:

(i) Any other partnerships or other investment vehicles which are sponsored or managed by ML & Co. or its affiliates or

(ii) Investments in which a partnership described in clause (i) is a participant or plans to become a participant and which would not be prohibited investments except that ML & Co. or any of its subsidiaries, or one or more officers, directors or employees of KECALP have a partnership interest in, or compensation arrangement with the partnership described in clause (i).

Thus, while the KECALP Partnerships may co-invest with the BDC Partnerships under the terms of the KECALP Exemptive Order, the BDC Partnerships may not co-invest with the KECALP Partnerships or with each other without an order of the Commission permitting such a transaction.

5. MLVP I and certain of the KECALP Partnerships have filed a number of applications for orders of the Commission under the 1940 Act, summarized in the application. Applicants have obtained requested orders of the Commission permitting various joint transactions. Applicants state, however, that the application process has been expensive to MLVP I and the other Applicants. Accordingly, Applicants seek an order on a prospective basis, pursuant to sections 6(c) and 17(d) of the 1940 Act and Rule 17d–1 thereunder, permitting the BDC Partnerships to enter into joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the 1940 Act on the terms and conditions set forth below. Applicants request an order only with respect to the BDC Partnerships because the KECALP Partnerships may co-invest under the terms of the KECALP Exemptive Order.

6. The requested exemption is intended to permit prospective relief, generally consistent with the BDC Partnerships' past co-investment history with affiliates. The BDC Partnerships do not seek to make co-investments with other Partnerships a comprehensive part of their investment programs nor will the BDC Partnerships made such comprehensive co-investments unless they have obtained a separate exemptive order or an amendment to the order requested in the application with respect to such comprehensive program of co-investments among the Partnerships. In this regard, each BDC Partnership will not have more than 45% of its assets invested jointly with all affiliates, except as a higher percentage may result from appreciation rather than acquisition of assets.

Conditions For Co-Investment

Co-investment by the Partnerships under the order requested by Applicants will be subject to the following conditions:

(1) The Independent General Partners of each BDC Partnership that has funds available for investment or is otherwise considering new investments will be provided with periodic information listing all venture capital investments made by each Partnership. The managing general partner of each BDC Partnership will be responsible for providing such information to the Independent General Partners of their respective BDC Partnership. The BDC Partnership will not have more than 45% of its assets invested jointly with all affiliates, except as a higher percentage may result from appreciation rather than acquisition of assets.

(2)(a) To the extent that a BDC Partnership has funds available for investment or is otherwise considering new investments, the BDC Partnership's managing general partner will review investment opportunities. The managing general partner will make a preliminary determination as to whether each particular investment opportunity meets applicable investment criteria and is consistent with the existing composition of the BDC Partnership's portfolio in terms of diversification of investments. If the managing general partner makes a favorable determination with respect to a particular investment, such investment will be deemed eligible for investment by the BDC Partnership. The managing general partner will maintain at the BDC Partnership's office written records of the factors considered in any preliminary determination.

(b) Following the making of the determination referred to in (a), information concerning the proposed investment will be distributed to the Independent General Partners of each BDC Partnership and to KECALP, except that such information need not be distributed to the Independent General Partners of any BDC Partnership that, at that time, either does not have funds available for investment or is not otherwise considering new investments. Such information will be presented in written form and will include the name of each Partnership that proposes to make the investment and the amount of each proposed investment.

(c) Information regarding the managing general partner's preliminary determinations will be reviewed by the Independent General Partners of the BDC Partnership. If a majority of the Independent General Partners determine that the amount proposed to be invested by the BDC Partnership is not sufficient to obtain an investment position they consider appropriate in the circumstances, that BDC Partnership will not participate in the joint investment unless the proposed amount to be invested by each Partnership is proportionately reduced. Such a proportionate reduction will be based on a ratio derived by comparing the total funds available for investment by each participating Partnership. Similarly, a BDC Partnership will not participate in a joint investment if a majority of the Independent General Partners determine

that the amount proposed to be invested is an amount in excess of that which is determined to be appropriate in the circumstances. A BDC Partnership will only make a joint investment with another Partnership if a majority of the Independent General Partners of the BDC Partnership prior to making the investment conclude, after consideration of all information deemed relevant, that:

(i) The terms of the transaction, including the consideration to be paid, are reasonable and fair to the limited partners of the BDC Partnership and do not involve overreaching of the BDC Partnership or such partners on the part of any person concerned;

(ii) The transaction is consistent with the interests of the limited partners of the BDC Partnership and is consistent with the BDC Partnership's investment objectives and policies as recited in filings made by the BDC Partnership under the Securities Act of 1933, as amended, its registration statement and reports filed under the Securities Exchange Act of 1934, as amended, and its reports to partners;

(iii) The investments by one or more other Partnerships would not disadvantage the BDC Partnership in the making of such investment, maintaining its investment position or disposing of such investment; and

(iv) The proposed investment by the BDC Partnership will not benefit, directly or indirectly, ML & Co. or any entity affiliated with ML & Co. other than the other Partnership(s) making the proposed joint investment, except to the extent permitted pursuant to sections 17(e) and 57(k) of the 1940 Act.

The Independent General Partners will maintain at the BDC Partnership's office written records of the factors considered in any decision regarding the proposed investment.

(3) Purchases of securities by a BDC Partnership made jointly with another Partnership shall consist of the same class of securities, including the same registration rights (if any), and other rights related thereto, and be purchased at the same price and the approval of such transactions, including determination of the terms of the transactions, by a BDC Partnership's Independent General Partners and/or KECALP shall be made in the same time period.

(4) Neither the Independent General Partners of a BDC Partnership nor any other Merrill Lynch affiliate, with the exception of KECALP Partnerships, shall co-invest with another Partnership unless a separate exemptive order with respect to such transaction has been obtained.

(5) If one Partnership elects to sell a security that is also held by another Partnership(s), notice of the proposed sale will be given to the Partnership(s) at the earliest practical time and the other Partnership(s) will be given the opportunity to participate in such sale on a proportionate basis. The managing general partner of a BDC Partnership, upon receiving notification, will formulate a recommendation as to participation by such BDC Partnership in such a sale, and provide the recommendation to the Independent General Partners of such BDC Partnership. Each BDC Partnership will participate in such sale if its Independent General Partners determine that such action is in the best interest of the BDC Partnership. Each Partnership will bear its own expenses associated with the sale of a portfolio security. The Independent General Partners of each BDC Partnership will record in their records the managing general partner's recommendation and their decision as to whether to participate in such sale, as well as the basis for their decision that such action is in the best interest of the BDC Partnership.

(6) If a majority of a BDC Partnership's Independent General Partners, with respect to the BDC Partnerships, or KECALP, with respect to the KECALP Partnerships, determines that a Partnership should make a "follow-on investment (i.e., an additional investment in the same entity) in a particular portfolio company whose securities are held by one or more other Partnerships or to exercise warrants or other rights to purchase securities of such an issuer, notice of such transaction will be provided to such Partnership(s) at the earliest practical time. The managing general partner of a BDC Partnership, upon receiving notification, will formulate a recommendation as to the proposed participation by a BDC Partnership in a follow-on investment, and provide the recommendation to the Independent General Partners of the BDC Partnership along with notice of the total amount of the follow-on investment. Each BDC Partnership's Independent General Partners will make their own determination with respect to follow-on investments. Assuming that the amount of a follow-on investment available to a Partnership is not based on the amount of such Partnership's initial investment, the relative amount of investment by each Partnership participating in a follow-on investment will be based on a ratio derived by comparing the total funds available for investment by each such participating Partnership with the total amount of the follow-on investment. Each Partnership will participate in such investment if the Independent General Partners, with respect to the BDC Partnerships, or KECALP, with respect to the KECALP Partnerships, determine that such action is in the best interests of their Partnership. The Independent General Partners of each BDC Partnership shall record in their records the managing general partner's recommendation and their decision as to whether to engage in a follow-on transaction with respect to that portfolio company, as well as the basis for such decision.[1]

(7) The Independent General Partners of a BDC Partnership will be provided quarterly for review, all information concerning co-investments made by the BDC Partnerships, including co-investments in which one or more BDC Partnership declined to participate, so that they may determine whether all investments made during the preceding quarter, including those investments they declined, complied with the conditions set forth above. In addition, at least annually, as well as during any quarter in which a co-investment was made, the Independent General Partners will consider the continuing appropriateness of the standards established for investments by a BDC Partnership. The Independent General Partners will consider whether use of such standards continues to be in the best interests of the BDC Partnership and the limited partners and does not involve overreaching of the BDC Partnership or its limited partners on the part of any party concerned.

The Individual General Partners of each BDC Partnership will maintain the records required by section 57(f)(3) of the 1940 Act and will comply with the provisions of section 57(h) of the 1940 Act, and each of the Applicants will otherwise maintain all records required by the 1940 Act, all of which will be available for inspection by the limited partners of each respective Partnership. All records referred to or required under these conditions will be available for inspection by the Commission.

(9) The Partnerships will make no changes in conditions (1)–(8) until an amendment of any order issued pursuant to this application is obtained from the Commission.

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[1] This condition permits BDC Partnerships to co-invest in follow-on investments. With respect to the KECALP Partnerships, this condition is not intended to expand the relief granted to the KECALP Partnerships in the KECALP Exemptive Order, but rather merely permits the BDC Partnerships to make co-investments with the KECALP Partnerships, which otherwise would be prohibited by Section 57(a)(4) of the 1940 Act.

Applicants' Legal Conclusions

1. The Applicants submit that the conditions set forth above provide an effective control on potential conflicts of interest, and thus participation by the BDC Partnerships in joint transactions with affiliated persons will be consistent with the protection of investors and the provisions, policies and purposes of the 1940 Act. Applicants also submit that, on the basis of the information set forth in the application and the terms of the proposed order, such co-investments are appropriate and beneficial to the respective Partnerships and that given the practical difficulties of obtaining a separate exemptive order for each transaction, the requested prospective exemptive relief satisfies the standards of Section 6(c).

2. Applicants believe the legislative history of the Small Business Investment Incentive Act of 1980 and the policy underlying such Act with respect to business development companies support relief of the types requested for the BDC Partnerships. In this regard, the Applicants state that the relief sought is limited to the BDC Partnerships and not to registered investment companies since the KECALP Partnerships (the only Partnerships which are registered under the 1940 Act) have previously received prospective relief (KECALP Exemptive Order) pursuant to section 6(b) of the 1940 Act granting exemption from, in part, section 17(d). Applicants also state that the relief sought does not extend to co-investments with ML & Co. or its subsidiaries.

3. The requested order will permit MLVP I and MLVP II to co-invest with other Partnerships on the terms set forth in the application. Applicants submit that these terms and conditions will ensure that co-investments by MLVP I and MLVP II with another Partnership are consistent with the protection of the BDC Partnership's limited partners and the purposes and policies of the 1940 Act.

4. Applicants also submit that, in addition to providing potential investment opportunities to the BDC Partnerships, the inclusion of the KECALP Partnerships as potential co-investors will not subject any BDC Partnership to overreaching by such other Partnerships or otherwise disadvantage the BDC Partnerships.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-18803 Filed 8-18-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16524; 812-7012]

Alex. Brown Cash Reserve Fund, et al.; Notice of Application

August 12, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Alex. Brown Cash Reserve Fund ("Cash Reserve"), Flag Investors Corporate Cash Trust ("Corporate Cash"), Flag Investors Telephone Income Trust ("Telephone"), Flag Investors International Trust ("International"), Tax Free Investments Trust ("Tax Free"), and all investment companies which may in the future be advised, administered or distributed by Alex. Brown & Sons Incorporated ("Alex. Brown") or its affiliates.

Relevant 1940 Act Sections: Exemption is requested pursuant to Section 6(c) of the 1940 Act from provisions of Section 32(a)(1) of the 1940 Act.

Summary of Application: Applicants seek an order to permit them and any future funds advised, administered or distributed by Alex. Brown & Sons Incorporated or its affiliates to file with the SEC financial statements signed or certified by an independent public accountant selected at a board of trustees or directors meeting held not more than 90 days before or after the beginning of their respective fiscal years.

Filing Dates: The Application was filed on March 24, 1988 and an amendment thereto was filed on August 9, 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 requests must be received by the SEC by 5:30 p.m., on September 6, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 135 East Baltimore Street, Baltimore Maryland 21202, Attention: Edward J. Veilleux, Vice President.

FOR FURTHER INFORMATION CONTACT: Fran Pollack-Matz, Staff Attorney at (202) 272-3024 or Karen Skidmore, Branch Chief at (202) 272-3023.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Each of the Applicants is an open-end management investment company registered under the 1940 Act. Each of the Applicants is organized as a corporation under the laws of the State of Maryland or a business trust under the laws of the Commonwealth of Massachusetts. Therefore, each of the Applicants, pursuant to its charter, declaration of trust, bylaws and applicable provisions of state law, is not typically required to hold annual shareholders' meetings.

2. The principal underwriter for each of the Applicants is Alex. Brown. Alex. Brown or its affiliates also act as advisor or administrator of certain of the Applicants.

3. Cash Reserve and Tax-Free have a fiscal year end of March 31. International has a fiscal year end of October 31. Corporate Cash and Telephone have fiscal years ending on December 31.

4. The membership of each board of directors/trustees is very similar, with each board having the same four disinterested directors/trustees. In addition, the audit committee of each of the Applicants is identical. It is the usual practice of the Applicants to have the board of directors/trustees consider an issue that affects more than one of the Applicants at the same meeting. Regularly scheduled meetings of the board of directors/trustees of each Applicant normally are held on the same day of March, June, September and December of each year.

5. The selection of independent public accountants for the Applicants is based on the recommendation of each Applicant's audit committee. The audit committee meets with the accountants each year in a systematic and organized manner and discusses the scope and estimated cost of each Applicant's audit and the procedures to be followed in respect of such audits. The audit committee also meets to review the results of all of the audits, including among other things, accounting practices, qualifications and independence of accountants, actual

accountant's fees and cooperation by the Applicants' management. Based on these reviews, the audit committee makes its recommendation to the boards of each of the Applicants with respect to the selection of the indepedent public accountant for each such Applicant.

Applicants' Legal Conclusions

1. Expanding the 30-day period under section 32(a)(1) of the 1940 Act to 90 days will permit a regular and structural consideration of the independent accountant for complexes at a meaningful interval of time. Moreover, expansion of the period is consistent with the purpose of the 1940 Act and the position of the SEC that the selection of the accountant should occur close to the beginning of a fund's fiscal year.

2. By expanding the 30-day period within which the Applicants must select their independent accountant to 90 days, the Applicants can institute a review procedure ensuring that the selection of the Applicants' independent accountant is considered on an economical and systematic basis that will provide for detailed and systematic review by the Applicants' audit committee of the services furnished to the Applicants by their independent accountants and result in consideration by the directors/trustees of all information developed by the audit committee.

3. The proposed process will more effectively meet the current logistical needs of the industry, which is comprised of complexes having a substantial number of funds rather than funds operated on an individual basis or in small groups.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-18804 Filed 8-18-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Region IX Advisory Council Meeting Public Meeting; California

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of San Francisco, will hold a public meeting at 12:00 noon on Thursday, September 8, 1988, at 211 Main Street, 5th Floor, Conference Room 543, San Francisco, California, 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 Michael R. Howland, District Director, U.S. Small Business Administration, 211 Main Street, 4th Floor, San Francisco, California 94105, (415) 974-0642.

Jean M. Nowak,

Director, Office of Advisory Councils.

August 12, 1988.

[FR Doc. 88-18791 Filed 8-18-88; 8:45 am]

BILLING CODE 8025-01-M

National Small Business Development Center Advisory Board; Public Meeting; Kentucky

The National Small Business Development Center Advisory Board will hold a public meeting in Lexington, Kentucky on Monday, September 12th from 8:00 a.m. to 12:00 noon and on Tuesday, September 13, from 8:00 a.m. to 11:00 a.m. at the Radisson Plaza Hotel—the room designation will be posted on the hotel directory in the main lobby.

The purpose of the meetings is to discuss such matters as may be presented by Advisory Board Members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Hardy Patten, SBA, Room 317, U.S. Small Business Administration, 1441 L Street, NW., Washington, DC 20416, telephone (202) 653-6315.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 88-18792 Filed 8-18-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: August 15, 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 regarding this information collection should be addressed 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: 1545-0047
Form Number: Form 990; Schedule A (Form 990)
Type of Review: Revision
Title: Return of Organization Exempt from Income Tax Under section 501(c) (except black lung benefit trust or private foundation) of the Internal Revenue Code or section 4947(a)(1) trust
Description: Form 990 is needed to determine that Internal Revenue Code section 501(a) tax-exempt organizations fulfill the operating conditions of their tax exemption. Schedule A (Form 990) is used to elicit special information from section 501(c)(3) organizations. IRS uses the information from these forms to determine if the filers are operating within the rules of their exemption.
Respondents: Non-profit institutions
Estimated Number of Respondents: 554,753
Estimated Burden Hours Per Response: 17 hours and 28 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 8,712,143 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. 88-18846 Filed 8-18-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: August 15, 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 regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Wasington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: 8743
Type of Review: New Collection

Title: Information on Fuel Inventories and Sales
Description: Form 8743 is used to provide information on fuel inventories and sales. This form enables IRS to monitor the excise tax liability for all taxable fuels. (Internal Revenue Code sections 4081, 4091 and 4041). The form will be filed by refiners, wholesalers, and retailers of fuel.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 16,000
Estimated Burden Hours Per Response: 41 minutes
Frequency of Response: Quarterly
Estimated Total Reporting Burden: 43,777 hours
OMB Number: 1545–0020
Form Number: 709
Type of Review: Revision
Title: United States Gift (and Generation-Skipping Transfer) Tax Return
Description: Form 709 is used by individuals to report transfers subject to the gift and generation-skipping transfer taxes and to compute these taxes. IRS uses the information to enforce these taxes and to compute the estate tax
Respondents: Individuals or households
Estimated Number of Respondents: 70,500
Estimated Burden Hours Per Response: 4 hours and 46 minutes
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 356,683 hours
OMB Number: 1545–0051
Form Number: 990–C
Type of Review: Revision
Title: Farmers' Cooperative Association Income Tax Return
Description: Form 990–C is used by farmers' cooperatives to report the tax imposed by section 1381. IRS Uses the information to determine whether the tax is being properly reported.
Responents: Farms, Businesses or other for-profit
Estimated Number of Respondents: 6,000
Estimated Burden Hours Per Response: 11 hours and 53 minutes
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 71,974 hours
OMB Number: 1545–0118
Form Number: 1099–PATR
Type of Review: Extension
Title: Statement for Recipients (Patrons) of Taxable Distributions Received from Cooperatives
Description: Form 1099-PATR is used to report patronage dividens paid by cooperatives (Internal Revenue Code Section 6044). The information is used by IRS to verify reporting compliance on the part of the recipient.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 4,480
Estimated Burden Hours Per Response: 6 minutes
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 165,537 hours
OMB Number: 1545–0128
Form Number: 1120–L
Type of Review: Revision
Title: U.S. Life Insurance Company Income Tax Return
Description: Life insurance companies are required to file an annual return of income and compute and pay the tax due. The data is used to insure that companies have correctly reported taxable income and paid the correct tax.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 2,440
Estimated Burden Hours Per Response: 10 hours and 20 minutes
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 36,791 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. 88–18847 Filed 8–18–88; 8:45 am]
BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: August 15, 1988.

The Department of Treasury had made revisions and resubmitted the following public informaton 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 regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., DC 20220.

Internal Revenue Service

OMB Number: 1545–0085
Form Number: 1040A
Type of Review: Revision
Title: U.S. Individual Income Tax Return
Description: This form is used by individuals to report their income subject to income tax and to compute their correct tax liability. The data is used to verify that the income reported on the form are correct and are also for statistics use.
Respondents: Individuals or households
Estimated Number of Respondents: 21,447,413
Estimated Burden Hours per Response: 1 hour and 9 minutes
Frequency of Response: Annually
Estimated Average Reporting Burden: 21,752,052 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. 88–18848 Filed 8–18–88; 8:45 am]
BILLING CODE 4810–25–M

Internal Revenue Service (IRS)

Commissioner's Advisory Group; Open Meeting

There will be a meeting of the Commissioner's Advisory Group on September 14 & 15, 1988. The meeting will be held in Room 3313 of the Internal Revenue Service Building. The building is located at 1111 Constitution Avenue, NW., Washington, DC. The meeting will begin at 8:00 a.m. on Wednesday, September 14 and 8:00 a.m. on Thursday, September 15, 1988. The agenda will include the following topics:

Wednesday, September 14, 1988

Penalties
State Tax Resources/Initiatives
Information Reporting
Relationships with Practitioners

Thursday, September 15, 1988

Compliance Strategies of the 1990's
Correspondence
General Discussion

Note.—Last minute changes to the day or order of topic discussion are possible and could prevent effective advance notice.

The meeting, which will be open to the public, will be in a room that accommodates approximately 50 people, including members of the Commissioner's Advisory Group and IRS officials. Due to the limited conference space, notification of intent to attend the meeting must be made with Robert F. Hilgen, Assistant to the Senior Deputy Commissioner, no later than September 8, 1988.

If you would like to have the committee consider a written statement, please call or write Robert F. Hilgen, Assistant to the Senior Deputy Commissioner, 1111 Constitution Avenue, NW., Room 3014, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Robert F. Hilgen, Assistant to the Senior Deputy Commissioner, [202] 566–4143 [Not toll-free].

Lawrence B. Gibbs,

Commissioner.

[FR Doc. 88–18856 Filed 8–18–88; 8:45 am]

BILLING CODE 4830–01–M

VETERANS ADMINISTRATION

Scientific Advisory Committee to the National Vietnam Veterans Readjustment Study; Meeting

In accordance with Pub. L. 92–463, the Veterans Administration gives notice that a meeting of the Scientific Advisory Committee to the National Vietnam Veterans Readjustment Study will be held in the Days Inn, Research Triangle Park, NC, on September 6, 1988, beginning at 9 a.m. The purpose of this meeting is to review the progress, to date, of the National Vietnam Veterans Readjustment Study, mandated by Pub. L. 98–160, and provide recommendations as the Committee deems appropriate.

The meeting will be open to the public (to the seating capacity of the room) at the start of the meeting on September 6th for approximately one hour to cover administrative matters and to discuss the general status of the study. During the closed session, the Committee will be reviewing preliminary research findings and survey research procedures. Disclosure of these findings and specific survey techniques could serve as a source of sample contamination that could invalidate the total research effort. In addition, the qualifications and performance of involved staff will be open to review. Disclosure of such information would be a clearly unwarranted invasion of personal privacy. Thus, the closing is in accordance with section 552b, subsections (c)(6) and (c)(9)(B), 5 U.S.C., and the determination of the Administrator of Veterans Affairs under section 10(d) of Pub. L. 92–463 as amended by section 5(c) of Pub. L. 94–409.

Due to the limited seating capacity of the room, those who plan to attend the open session should contact Dr. Thomas L. Murtaugh, Project Officer, National Vietnam Veterans Readjustment Study, 1521 A South Edgewood St., Baltimore, MD 21227 (Phone—301/646–5604) at least 5 days before the meeting.

Dated: August 12, 1988.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 88–18793 Filed 8–18–88; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 161
Friday, August 19, 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).

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 8:26 a.m. on Tuesday, August 16, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider: (1) A recommendation concerning an administrative enforcement proceeding; and (2) matters relating to the possible closing of certain insured banks.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Chairman L. William Seidman, concurred in by Ms. Judith A. Walter, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: August 16, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 88-18903 Filed 8-17-88; 10:13 am]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, August 24, 1988.

PLACE: Marriner S. Eccies Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: August 16, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-18897 Filed 8-17-88; 10:13 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 3:05 p.m., Tuesday, August 16, 1988.

The business of the Board required that this meeting be held with less than one week's advance notice to the public, and no earlier announcement of the meeting was practicable.

PLACE: 20th Street and Constitution Avenue, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Report of the operations review of the Office of the Secretary.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452-3204.

Date: August 16, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-18898 Filed 8-17-88; 10:13 am]

BILLING CODE 6210-01-M

LEGAL SERVICES CORPORATION

Board of Directors; Meeting

TIME AND DATE: The open meeting of the Board of Directors will commence on Friday, August 26, 1988, at 11:30 a.m., or immediately following the previous meeting, and continue until all official business is completed. An Executive Session will be held during the luncheon break, from 12:00 p.m. until 1:30 p.m.

PLACE: The Sheraton Grand Hotel, Ballroom Eastroom East, 525 New Jersey Ave., NW., Washington, DC 20001.

STATUS OF MEETING: Open [A portion of the meeting is to be closed to discuss personnel, personal, litigation and investigatory matters under The Government in the Sunshine Act [5 U.S.C. 552b (c)(2), (6), (7), (9)(B), and (10)] and 45 CFR 1622.5 (a), (e), (f), (g) and (h)].

MATTERS TO BE CONSIDERED:

Executive Session (Closed)

1. Personnel and Personal Matters
2. Litigation and Investigatory Matters

Board of Directors Meeting (Open)

1. Approval of Agenda
2. Approval of Minutes
   —July 1, 1988
   —March 25, 1988
3. Discussion of LSC Monitoring Procedures
4. Discussion of Clients' Ideas for Effective Representation and Training
5. Discussion of LSC Grantee Funding Applications

Discussion and Public Comment follow each item.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863-1839.

Dated Issued: August 17, 1988.

Maureen R. Bozell,

Secretary.

[FR Doc. 88-19013 Filed 8-17-88; 3:59 am]

BILLING CODE 7050-01-M

LEGAL SERVICES CORPORATION

Voucher Subcommittee of the Committee for the Provision for the Delivery of Legal Services

TIME AND DATE: The meeting will commence on Friday, August 26, 1988, at 8:00 a.m. and continue until 9:30 a.m.

PLACE: The Sheraton Grand Hotel, Ballroom East, 525 New Jersey Ave., NW., Washington, DC 20001.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
   —April 9, 1988
3. Discussion on the Status of the San Antonio Voucher Project Draft Report

Discussion and Public Comment follow each item.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863-1839.

Date issued: August 17, 1988.

Maureen R. Bozell,

Secretary.

[FR Doc. 88-19014 Filed 8-17-88; 3:59 pm]

BILLING CODE 7050-01-M

LEGAL SERVICES CORPORATION

Audit and Appropriations Committee Meeting

TIME AND DATE: The meeting will commence on Friday, August 26, 1988, at 9:30 a.m. or immediately following the previous meeting, and continue until 11:00 a.m.

PLACE: The Sheraton Grand Hotel, Ballroom East, 525 New Jersey Ave., NW., Washington, DC 20001.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
   —March 25, 1988
3. Review of FY 1988 Monthly Expenditures through June 30, 1988
4. Preliminary Discussion of FY 1990 Budget

Discussion and Public Comment follow each item.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863-1839.

Date issued: August 17, 1988.

Maureen R. Bozell,

Secretary.

[FR Doc. 88-19015 Filed 8-17-88; 3:59 pm]

BILLING CODE 7050-01-M

Corrections

Federal Register
Vol. 53, No. 161
Friday, August 19, 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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD-FRL-3409-9]

National Emission Standards for Hazardous Air Pollutants; Benzene Emissions From Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants

Correction

In proposed rule document 88-16751 beginning on page 28496 in the issue of Thursday, July 28, 1988, make the following corrections:

1. On page 28559, in the third column, in the first complete paragraph, in the fourth line from the bottom, "0.004"should read "0.0004".

2. On page 28568, in the first column, in the first complete paragraph, in the fifth line, after "tank," and preceding "light-oil", insert "tar storage tank, flushing-liquor circulation tank,".

3. On the same page, in the same column, in the third complete paragraph, in the 13th line, after "concentration" and preceding "would" insert "of more than 500 ppm by volume above a background concentration".

PART 61—[CORRECTED]

§ 61.115 [Corrected]

4. On page 28574, in the second column, in § 61.115(a)(1), in the third line, "§ 61.113" should read "§ 61.13".

5. On the same page, in the table of contents for Subpart L, in the entry for "61.138", in the second line, "amendments" should read "requirements".

§ 61.133 [Corrected]

6. On page 28576, in the second column, in § 61.133(a)(2), in the 2nd and 3rd lines, "maintain a vent on the" should read "maintain an access hatch on each".

§ 61.134 [Corrected]

7. On the same page, in § 61.134(b), in the third line, "mixer-organic liquid" should read "mixer-settler is used to separate naphthalene by means of tar or another organic liquid".

§ 61.135 [Corrected]

8. On page 28577, in the first column, in § 61.135(e)(5), in the fourth line, "paragraph (e)(r)(ii)" should read "paragraph (e)(4)(ii)".

§ 61.139 [Corrected]

9. On page 28581, in the second column, in § 61.139(j), in the fourth line from the bottom, "§ 651.10" should read "§ 61.10".

§ 61.276 [Corrected]

10. On page 28590, in the first column, in § 61.276(b), in the fourth line from the bottom, "39 cubic" should read "38 cubic".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 433

[BQC-59-P]

Medicaid Program; Medicaid Management Information System: Revised Definition of "Mechanized Claims Processing and Information Retrieval System"

Correction

In proposed rule document 88-18149 beginning on page 30317 in the issue of Thursday, August 11, 1988, make the following correction:

§ 433.122 [Corrected]

On page 30322, in the third column, in § 433.122(b), in the seventh line, after "quarter" insert "before the fourth quarter".

BILLING CODE 1505-01-D

federal register

Friday
August 19, 1988

Part II

Environmental Protection Agency

40 CFR Part 799

Testing Consent Orders on Aniline and Seven Substituted Anilines; Final Rule

40 CFR Part 799

Termination of Rulemaking for Certain Chemicals in the Anilines Category; Notice of Termination of Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42054B; FRL-3431-9]

Testing Consent Orders on Aniline and Seven Substituted Anilines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document announces that EPA has signed enforceable testing consent orders both with manufacturers (including importers) who have agreed to perform certain health and environmental effects tests on aniline and with manufacturers who have agreed to perform certain health and/or environmental effects tests on seven substituted anilines that they manufacture. These chemical substances were designated by the Interagency Testing Committee (ITC) for priority testing. Elsewhere in this issue of the **Federal Register**, the Agency announces its decision to terminate rulemaking for certain other category members for health and environmental effects and chemical fate.

EFFECTIVE DATE: Effective on August 19, 1988.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Room EB-44, 401 M Street, SW., Washington, DC., (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: This rule adds aniline (CAS No. 62-53-3), 2-chloroaniline (CAS No. 95-51-2), 4-chloroaniline (CAS No. 106-47-8), 3,4-dichloroaniline (CAS No. 95-76-1), 2-nitroaniline (CAS No. 88-74-4), 4-nitroaniline (CAS No. 100-01-06), 2,4-dinitroaniline (CAS No. 97-02-9), and 2,6-dichloro-4-nitroaniline (CAS No. 99-30-9) to the list of chemical substances and mixtures ("chemicals") subject to testing consent orders in 40 CFR 799.5000.

I. ITC Recommendation

In its Fourth Report to EPA, published in the **Federal Register** of June 1, 1979 (44 FR 31866), the ITC recommended that all chemicals in the category defined as "aniline and anilines substituted in one or more positions with a chloro, bromo, or nitro group, or any combination of one or more of these substituent groups" be considered for health effects, chemical fate and environmental effects testing. The ITC recommended testing for chronic health effects with emphasis on blood and nervous system disorders, teratogenicity, carcincogenicity, mutagenic effects, and epidemiology studies. The ITC also recommended chemical fate and environmental effects testing.

In response to the ITC, EPA published an Advance Notice of Proposed Rulemaking (ANPR) for the anilines category (49 FR 108, January 3, 1984). In the ANPR, EPA identified 20 individual chemicals in production in 1982, reviewed the available health and environmental effects information on the chemicals, indicated tentative data gaps in available health and environmental effects information, and requested public comments on a scheme to test representative category members rather than all category members. The ANPR named six subcategories (aniline, monochloroanilines, polychloroanilines, mononitroanilines, polynitroanilines, and halo-nitroanilines) and seven representative subcategory members (aniline; 4-chloroaniline; 3,4-dichloroaniline; 4-nitroaniline; 2,4-dinitroaniline; 2-chloro-4-nitroaniline; and 2-bromo-4,6-dinitroaniline) for possible health and environmental effects testing consideration under section 4(a)(1)(A) of TSCA. In response to the ANPR, EPA received comments and new information from the Aniline Association and the Substituted Anilines Task Force (SATF), an industry group organized as a special project of the Synthetic Organic Chemical Manufacturers Association, whose members manufacture or import one or more of the substituted anilines (Refs. 1 and 2). Comments were also received from Sodyeco Inc., Eastman Kodak, and Upjohn Company (Refs. 3 through 5). The Aniline Association and SATF provided results of surveys of processors to determine the potential for human exposure and environmental release. The exposure and release data supplied by the SATF and some of the data supplied by the Aniline Association were submitted as Confidential Business Information (CBI) (Refs. 6 and 7).

II. Testing Consent Order Negotiations

In the **Federal Register** of August 11, 1986 (51 FR 28758) and in accordance with the procedures established in 40 CFR 790.28, EPA requested that persons interested in participating in or monitoring testing negotiations on aniline and seven substituted anilines contact the Agency. EPA held public meetings on August 12, 1986; October 14, 1986; January 15, 1987; and February 19, 1987 to discuss testing appropriate for these eight chemicals. On or before July 7, 1988, five manufacturers of aniline and four manufacturers of substituted anilines signed eight separate Testing Consent Orders with EPA. Under one Order, the five manufacturers of aniline agreed to conduct or provide for the conduct of the following tests: *In vivo* mouse micronucleus assay, grammarid acute effects test, and daphnid chronic effects test. Under seven separate Orders, the manufacturers of the seven substituted anilines agreed to conduct or provide for the conduct of the following tests for each of the substituted anilines they manufacture: *In vivo* cytogenetics (*in vivo* mouse micronucleus assay) for 2-chloroaniline, 4-chloroaniline, 3,4-dichloroaniline, 2-nitroaniline, 4-nitroaniline, 2,4-dinitroaniline; gammarid acute effects, daphnid chronic effects, and rainbow trout acute effects (with trigger to rainbow trout early-life stage) for 2-chloroaniline; and algae acute effects, daphnid acute effects (with trigger to grammarid acute and daphnid chronic effects), and rainbow trout early life-stage test for 2,6-dichloro-4-nitroaniline. The test standards to be followed and the testing schedule for each test are specified in each Order. Procedures for submitting study plans, modifying the Order, monitoring the testing, and other provisions were also included in each Order.

The following table presents the disposition by EPA of the 20 anilines

category members reported to be in production in 1982.

ANILINES CATEGORY MEMBERS DISPOSITION

CAS No.	Chemical name	Disposition
62-53-3	Aniline	(1)
95-51-2	2-Chloroaniline	(1)
108-42-9	3-Chloroaniline	(2)
106-47-8	4-Chloroaniline	(3)
608-27-5	2,3-Dichloroaniline	(2)
554-00-7	2,4-Dichloroaniline	(2)
95-82-9	2,5-Dichloroaniline	(2)
95-76-1	3,4-Dichloroaniline	(3)
634-93-5	2,4,6-Trichloroaniline	(2)
1817-73-8	2-Bromo-4,6-dinitroaniline	(2)
88-74-4	2-Nitroaniline	(3)
99-09-2	3-Nitroaniline	(2)
100-01-6	4-Nitroaniline	(3)
97-02-9	2,4-Dinitroaniline	(3)
121-87-9	2-Chloro-4-nitroaniline	(2)
6282-25-6	2-Chloro-5-nitroaniline	(2)
89-63-4	4-Chloro-2-nitroaniline	(2)
635-22-3	4-Chloro-3-nitroaniline	(2)
99-30-9	2,6-Dichloro-4-nitroaniline	(4)
827-94-1	2,6-Dibromo-4-nitroaniline	(2)

[1] Consent Order: health and aquatic effects testing.
[2] Decision to terminate rulemaking found elsewhere in this issue of **Federal Register.**
[3] Consent Order: health effects testing.
[4] Consent Order: aquatic effects testing.

III. Technical Summary

A. Manufacture, Use And Release

Aniline is produced by five manufacturers (DuPont, First Mississippi Corp., Rubicon, Mobay Chemical Corp., and U.S.S. Chemical Corp.) at five locations in the United States. Production was about 790 million pounds in 1984 (Ref. 1). The production volumes for substituted anilines range from less than 1000 pounds to 10 million pounds. The manufacturers of the substituted anilines have provided EPA with exact production volumes for 1982 as CBI (Ref. 8). The TSCA section 8(b) confidential chemical inventory update reports that there has not been a significant increase in production of these chemicals from levels reported in 1982.

The manufacturers and processors of aniline and substituted anilines report that the chemicals are used consumptively as chemical intermediates (Refs. 7 and 9). Aniline is used to produce isocyanates, rubber processing chemicals, dyes, and hydroquinone, for drug manufacture, and for other uses including production of herbicides, synthetic fibers, and photographic chemicals. The primary use for most of the substituted anilines is as intermediates in dye and pigment production. 3,4-Dichloroaniline and 2-chloroaniline are used primarily as pesticide intermediates. 4-Nitro-aniline and 2-nitroaniline are used solely as intermediates for phenylenediamines.

Manufacturers of aniline report that approximately 2.5 million pounds were disposed of by deep well injection, 2.5 million pounds were incinerated, 130,000 pounds went to regulated landfills, 49,500 pounds were released to air, and 14,700 pounds were released to water. The manufacturers of aniline have provided to EPA site-specific aquatic release volumes for 1984 as CBI (Ref. 10). Total estimated aquatic release of aniline by processors was 85,155 pounds at 22 locations with the range of location-specific release between 22,000 pounds (3 locations) and 1,000 pounds or less (14 locations) (Ref. 11). Both manufacturers and processors of substituted anilines have provided EPA with release volumes for 1982 as CBI.

B. Human Exposure

1. *Occupational exposure.*—a. *Aniline.* The Aniline Association has provided EPA with information on potential occupational exposure from aniline manufacturing and processing operations (Refs. 1 and 7). The Association reports that there is little or no occupational exposure to aniline because: Few workers are potentially exposed for short periods; production occurs in an enclosed, continuous process mostly in open-design plants (plant not enclosed in a building); and rigorous workplace controls and industrial hygiene practices are used to protect workers from the known acute toxic effects of aniline. Also, most manufacturers and processors require that employees wear rubber suits and gloves for protection in potential exposure situations such as reactor entry, special work procedures, and sampling and maintenance operations, because the greatest potential for exposure is through dermal contact (aniline is absorbed very rapidly through the skin). Air monitoring and medical surveillance results show control practices are effectively preventing exposures to aniline (Ref. 1). Aniline has excellent acute indicator properties; the olfactory detection level is 0.5 to 1 ppm, and acute exposure causes cyanosis, a condition evidenced by bluish skin discoloration due to deficient blood oxygenation.

The Aniline Association survey data reported that 487 workers involved in manufacturing are potentially exposed to airborne aniline concentration levels between 0.001 to 1.4 ppm, with 97 percent of workers below 1 ppm. An additional 1,524 workers involved in internal and outside processing of aniline are potentially exposed to levels ranging from 0.001 to 5 ppm with 99.9 percent of total worker hours at exposures below 2 ppm. The Occupational Safety and Health Administration's (OSHA) inspection summary data time-weighted averages (TWA) were all below 0.25 ppm and serve to support the Association's conclusions (Ref. 12). The OSHA permissible exposure limit (PEL) for aniline is 5 ppm (Ref. 13). The American Conference of Governmental Industrial Hygienists (ACGIH) TWA recommended exposure limit is 2 ppm for aniline (Ref. 14).

b. *Substituted anilines.* The SATF has provided EPA with confidential information on potential occupational exposure from manufacturing and processing operations of substituted anilines (Refs. 6 and 8). The SATF also reports that there is little or no occupational exposure to the substituted anilines currently in production because very few employees are potentially exposed. The SATF reports that production occurs over short time periods in a closed continuous process during which the chemical is consumed; that workplace controls and industrial hygiene practices are used to protect workers from the known or suspected acute toxic effects of the substituted anilines, and that air monitoring and medical surveillance results show control practices are effectively preventing exposures to the substituted anilines. Some substituted anilines also have excellent acute effects indicator properties like those of aniline.

A study by one manufacturer/processor to evaluate the effects of potential airborne exposure of manufacturing workers to 4-chloroaniline on various biological (blood) parameters reported that: (1) All the methemoglobin levels measured fall within what has been traditionally regarded as a normal range, (2) a small statistically significant elevation in methemoglobin following the work shift was observed among employees involved in 4-chloroaniline manufacture and the matched comparison group suggesting the observed increase in methemoglobin among workers may not be work-related, and (3) there was no correlation between post-exposure methemoglobin and 4-chloroaniline air sampling data within the narrow range of low level exposures typical in this work setting (Ref. 15). A major manufacturer/processor of chloro- and nitroanilines reports an average of 3 cases per year or methemoglobinemia, defined as oxygen saturation below 90 percent, observed at the their main plant over the last 10 years (Ref. 16). Over the

last 5 years, no methemoglobinemia was observed.

2. *Consumer exposure.* There is no known or suspected consumer exposure to any of the aniline category members as a result of TSCA-covered activities because they are wholly consumed chemical intermediates.

C. Environmental Exposure

There are few monitoring data available for aniline and the substituted anilines in wastewater of sediment. Ewing et al. in 1977 sampled surface waters from 204 sites near heavily industrialized areas across the U.S. Aniline and substituted anilines were not detected at concentrations above 1 ppb (Ref. 17). In another study wastewater, receiving waters and sediments near a plant manufacturing a broad range of chemicals were analyzed for organic pollutants (Ref. 18). One sample of wastewater contained 0.02 ppm of aniline. Aniline was not detected in river water or sediments. Chloroaniline (isomers unspecified) was not detected in wastewater or river water but was found in sediment at 1 to 2 ppm. Plant and sampling locations were not reported.

Games and Hites in 1977 measured organic compounds in untreated and treated effluent originating from a dye manufacturing plant (Ref. 19). Results showed the presence of six aniline compounds. The compounds included aniline, chloroaniline, dichloroaniline, nitroaniline, tribromoaniline and bromodinitroaniline. The concentrations ranged from 36 to 480 ppb for raw wastewater to 7 to 96 ppb for treated effluent.

USEPA data in the STORET system include a total of 46 data points or observations on environmental levels of aniline in streams, and 42 data points or observations on levels of 2-nitroaniline in streams (Ref. 20) The mean residual level of aniline was 9.47 ppb, with maximum and minimum values of 13 and 1 ppb, respectively; the STORET data were collected between August 1978 and August 1980. The mean residual level for 2-nitroaniline was 0.39 ppb with maximum and minimum values of 1.7 and 0.1 ppb, respectively; the STORET data were collected between January 1983 and May 1985.

D. Physicochemical Properties

1. *Water solubility, vapor pressure, and octanol/water partition coefficient.* EPA has estimated water solubilities, vapor pressures, and the log octanol/water partition coefficients (log P) of aniline and six representative substituted anilines, and these data are presented in the following table:

PHYSICAL AND CHEMICAL PROPERTIES OF ANILINE AND SIX SUBSTITUTED ANILINES

Chemical	CAS Number	Empirical formula	Molecular weight	Water solubility (mg/L)	Log octanol/water partition coefficient (Log KOW)	Soil sorption coefficient (KOC)	Vapor pressure	Henry's law constant
Aniline	62-53-3	C_6H_7N	93.13	[1] 35,000	[1] 0.90	47	0.473 25° C	0.17×10^{-5}
2-Chloroaniline	95-51-2	C_6H_6C1N	127.57	3,900	1.91	261	0.22 25° C	0.95×10^{-5}
4-Chloroaniline	106-47-8	C_6H_6C1N	127.57	[1] 3,900	1.83	236	9.8×10^{-2} 25° C	0.54×10^{-5}
3,4-Dichloroaniline	95-76-1	$C_6H_5C1_2N$	162.02	[1] 51	2.69	691	5.8×10^{-3} 25° C	0.24×10^{-4}
2-Nitroaniline	88-74-4	$C_6H_6N_2O_2$	138.13	1,200	1.69	198	3.8×10^{-3} 25° C	0.55×10^{-6}
4-Nitroaniline	100-01-6	$C_6H_6N_2O_2$	138.13	800	1.39	136	2.9×10^{-4} 25° C	0.66×10^{-7}
2,6-Dichloro-4-Nitroaniline	99-30-9	$C_6H_4C1_2N_2O_2$	207.02	49	2.45 to 3.29	1,000	1.45×10^{-5} 25° C	0.81×10^{-7}

[1] = Measured value.

Experimental values of some parameters are available for aniline, 4-chloroaniline, and 3,4-chloroaniline (Refs. 21 through 24). The calculated and experimental values indicate that, under equilibrium conditions, aniline, the chloroanilines, and the nitroanilines will remain in the water compartment, although other data suggest that anilines will bind chemically to sediment (see Unit III.D.3).

2. *Soil mobility.* The adsorption properties of aniline and some substituted anilines have been reported and EPA has estimated soil organic-carbon sorption coefficients (Koc) from calculated log P values using equations developed by Kenaga, and Kenaga and Goring (Refs. 25 and 26). (See table for these values.) The measured and estimated Koc values indicate that aniline and substituted anilines adsorb weakly to moderately to organic matter in soil and sediment and therefore can be considered moderately to highly mobile. However, there are experimental data to indicate that 4-chloroaniline and 3,4-chloroaniline and other aromatic amines chemically bind to organics in soil and sediment; therefore these and possibly other category members may be much less mobile in soil and sediment than predicted by the Koc (Refs. 27 through 31).

3. *Presistence.* Chemical fate data on aniline indicate that it is readily biodergradable and oxidizable in surface water and sewage sludge (Refs. 32 through 35). The overall experimental degradation half-life in surface water is less than 1 day (Refs. 36 and 43).

Data on 2-chloroaniline, 4-chloroaniline, and 3,4-dichloroaniline (DCA) indicate the major reaction in soil is chemical binding with the humic acid fraction (Refs. 27 through 31). After binding, the chloroaniline are not extractable as such. As the concentration of the chemicals in the soil increases, polymerization of these chemicals also occurs. The humic adsorption properties of the chloroanilines are believed to correlate with the organic content and pH of the soil (Ref. 37). Microbial metabolism occurs slowly in soil because the chloroanilines bind to soil organics (Refs. 38 through 42). The chloroanilines have relatively low log P values and are therefore not likely to bioconcentrate in fatty tissue of aquatic organisms, although their lower water solubilities and higher log P values indicate they are more likely to do so than aniline.

Photodegradation is likely to be a primary route of aquatic degradation of the chloroanilines (Refs. 43 through 45). The experimental half-life of DCA in distilled water, natural sea water, and Instant Ocean is less than 1 day (Ref. 43). The rates of biodegradation of monochloroanilines are estimated to be slower than aniline in the aquatic environment (Ref. 46). In aerobic environments 4-chloroaniline biodegrades faster than DCA. In anaerobic environments the reverse is true (Ref. 47). Some monochloroanilines

are reported to be degraded in activated sludge (Refs. 33 and 47).

Available data on the chemical fate of the nitroanilines and halogenated nitroanilines are limited. In semicontinuous activated sludge testing, 4-nitroaniline has been described as readily degradable and 2-nitroaniline as resistant to degradation (Ref. 48). 4-nitroaniline and 2,6-dichloro-4-nitroaniline (DCNA) undergo microbial degradation in pure culture (Refs. 49 and 50). The relatively low log P values indicate the nitroanilines and halogenated nitroanilines are not likely to bioconcentrate in aquatic organisms. The nitroanilines and halogenated nitroanilines may, like other aromatic amines, chemically bind to organics in soils and sediments, although there are no data to confirm this effect for these chemicals.

IV. Testing Program

A. Environmental Effects

In its Fourth Report to the EPA, published in the **Federal Register** of June 1, 1979 (44 FR 31866), the ITC recommended chemical fate testing because of suspected environmental effects and also because there were conflicting reports on the ability of animals, plants, and microbes to metabolize and tolerate these chemicals. The ITC recommended environmental effects testing because reports of occurrences of residues and their persistence in water and soil suggested a highly dispersive discharge into the environment and available data raised a concern that category members may produce adverse effects.

Using CBI supplied by manufacturers and processors and information from the open literature, EPA has calculated worst-case aquatic predicted environmental concentrations (PECs) for aniline, 2-chloroaniline, and 2,6-dichloro-4-nitroaniline, which were the category members judged to be released in significant amounts (Ref. 51). Because the Agency has few data on the fate of the substituted anilines in the environment, calculation of their PECs was based on the worst-case assumption that none of the substituted anilines are affected by physical or biological processes other than dilution in the discharge environment. For aniline, PECs were calculated using a measured overall degradation half-life of 17.5 hours (¾ day) which includes biodegradation, oxidation, photolysis, and hydrolysis in natural waters (Ref. 52). In addition, the concentration in the discharge environment was conservatively based on the lowest river flow rate that would not be exceeded 5 percent of the time. The PECs for aniline and the substituted anilines judged to be released in significant amounts are not described here because they are derived from CBI data.

The Agency has reviewed the available data on environmental effects and the potential for environmental exposure to other anilines category members currently in production (see Notice of Termination of Rulemaking for Certain Anilines Category Members appearing elsewhere in this issue of the **Federal Register**). The Agency has determined that, given the low anticipated and observed exposure to these chemicals and in the light of the environmental effects data available for this category, these chemicals do not reach levels in the environment that raise a concern for adverse effects.

EPA has estimated the potential for releases of anilines category members to adversely affect aquatic organisms by examining available aquatic toxicity data and by comparing acute vertebrate and invertebrate LC50's to the site-specific PECs calculated as described in Unit IV.A.2.

EPA has determined that concentrations of aniline, 2-chloroaniline, and DCNA in the aquatic environment resulting from manufacturing and processing could reach levels which may be harmful to aquatic organisms (i.e., LC50's of sensitive aquatic species of aniline, 2-chloroaniline, and DCNA are likely to be less than or equal to 1000 × the predicted environmental concentrations or less than or equal to 1 mg/L). Therefore, additional acute toxicity testing is needed to determine the effects of: Aniline on daphnids, 2-chloroaniline on gammarids and rainbow trout, and DCNA on algae and daphnids with trigger to gammarids. Testing to determine the chronic effects of aniline on dephanids, 2-chloroaniline from acute trigger to daphnid or gammarid and rainbow trout early life stage, and DCNA early life stage in rainbow trout is also needed to assess the potential long-term hazard of these chemicals to aquatic organisms.

The following is a summary of available aquatic effects information the Agency has considered in its decision to issue a Consent Order for aquatic effects testing of aniline, 2-chloroaniline, and 2,6-dichloro-4-nitroaniline. The 96-hour EC50 for aniline in freshwater algae (*Selenastrum capricornutum*) is 19 mg/L and the 48-hour EC50 for 2-chloroaniline in freshwater algae (*Scenedesmus pannonicus*) is 32 mg/L (Refs. 53 and 54). The 48-hour LC50 for aniline in *Daphnia magna* is 0.65 mg/L and the 48-hour EC50 for 2-chloroaniline in Daphnia magna is 0.46 mg/L (Refs. 55 and 54). The 96-hour LC50's for aniline and 2-chloroaniline in fathead minnows are 134 mg/L and 5.8 mg/L, respectively (Ref. 56). The 96-hour LC50 for aniline in rainbow trout is 8 mg/L (Ref. 57). The 96-hour LC50's for 2,6-dichloro-4-nitroaniline in bluegill sunfish and rainbow trout are 1.08 mg/L and 0.56 mg/L, respectively (Refs. 58 and 59).

B. Health Effects

In its Fourth Report 44 FR 31866, the ITC recommended that all chemicals in the anilines category be tested for chronic health effects with emphasis on blood and nervous system disorders, teratogenicity, caricinogenicity, mutagenic effects, and epidemiology studies. The ITC based its recommendations for chronic health effects (with emphasis on blood and nervous system disorders), for teratogenic effects testing, and for epidemiology studies on the potential for some category members to cause methemoglobinemia in humans. The ITC recommended mutagenic and carcinogenic effects testing because some category members were reported to cause mutagenic and/or carcinogenic effects, and the results raise a suspicion of these effects in untested members. The Agency in its ANPR for the aniline category, 49 FR 108, proposed testing for reproductive effects based on the potential for some category members to cause methemoglobinemia in humans.

The Agency has reviewed the available data on health effects and the potential for human exposure to the seven anilines category members named in the Consent Orders and the other anilines category members currently in production (see Notice of Termination of Rulemaking for Certain Anilines Category Members appearing elsewhere in this issue of the **Federal Register**). The Agency has determined that, given the low anticipated and observed exposure to these chemicals and in light of the health effects data available for the category, these chemicals do not reach levels in the workplace environment that raise a concern for chronic, developmental, and reproductive effects.

However, potential human exposure to aniline, 2-chloroaniline, 4-chloroaniline, 3,4-dichloroaniline, 2-nitroaniline, 4-nitroaniline, and 2,4-dinitroaniline resulting from manufacturing and processing is sufficient to raise a concern for effects on human health through adverse heritable mutagenic effects. Therefore, additional testing to characterize the

mutagenicity for seven category members is necessary.

This additional testing is necessary as part of a tiered testing approach which involves a program review to follow the development of the in vivo cytogenetics data and considers all available mutagenic and health effects data to determine the need for further mutagenic effects or other health effects testing. EPA is deferring any decision as to the need for carcinogenicity testing of the substituted anilines until it has received the results from all the mutagenicity testing to be performed under the Consent Orders. Data on the carcinogenic potential of aniline has been evaluated and judged to be adequate. The Agency will announce its decision on further mutagenicity or carcinogenicity testing needs in a separate rulemaking.

The following is a summary of available health effects information the Agency has considered in its decision to issue Consent Orders only for mutagenic effects testing of seven anilines category members.

1. *Acute effects.* The primary acute effect in mammals associated with exposure to aniline and some substituted anilines is an increase in methemoglobin levels in blood (Ref. 60). However, a recent study sponsored by American Hoechst shows that not all substituted anilines readily cause increased levels of methemoglobin in rats (Ref. 61). The study was designed to rate the methemoglobin-inducing potency of category members relative to aniline, using high doses to maximize the amount of methemoglobin produced. Doses were equimolar to 100 and 400 mg/kg of aniline. When test compounds induced the formation of methemoglobin above vehicle controls in a dose-dependent manner they were considered positive. For compounds classified as positive, the results of the 100 mg/kg equimolar does at 1 hour were then statistically compared with the 100 mg/kg aniline results to determine if the test compound was more potent, equipotent, or less potent than aniline. Test compounds that failed to induce methemoglobinemia at either time point (1 hour and 6 hours) or dose were considered negative.

Only 3-chloroaniline and 4-chloroaniline were significantly more potent methemoglobin producers than aniline. Four chemicals were equipotent to aniline: 3-nitroaniline, 4-nitroaniline, 2,4-dinitroaniline, and 3,4-dichloroaniline; and four were less potent than aniline: 2-chloroaniline, 4-chloro-3-nitroaniline, 2,3-dichloroaniline, and 3,5-dichloroaniline. The other eleven chemicals were negative.

Numerous reports and studies describe secondary effects from acute human and animal exposure to aniline, 4-chloroaniline, and 4-nitroaniline related to methemoglobinemia and resulting anoxia (Ref. 62). The secondary effects include cyanosis, and central nervous system symptoms which result from the decreased oxygen-carrying capacity of methemoglobic blood. Changes in blood chemistry and development of Heinz bodies also occur. Removal from exposure usually allows a normalization of hematologic conditions, followed by amelioration of secondary abnormalities.

2. *Metabolism.* Studies on the disposition and metabolism of aniline, 4-chloroaniline, 4-nitroaniline, 2,4-dinitroaniline, 2-bromo-4,6-dinitroaniline, 2,6-dichloro-4-nitroaniline, and 4-chloro-2-nitroaniline in rats indicate these chemicals are rapidly metabolized and excreted (Refs. 63 through 68). For example, the whole body half-life of these chemicals ranges from 1 to 7 hours; and within 2 to 3 days, clearance of chemical-derived radioactivity from the body was almost complete.

Aniline and some of the substituted members of the category (2-chloroaniline, 3-chloroaniline, 4-chloroaniline, 2,3-dichlororaniline, 2,4-dichloroaniline, 3,4-dichloroaniline, 3-nitroaniline, 4-nitroaniline, and 4-chloro-3-nitroaniline) are biotransformed in rats and other mammals into intermediates which initiate the formation of methemoglobin from hemoglobin (Ref. 60). There are two metabolic pathways involved in the metabolism of aniline and the other methemoglobin-forming members: (1) The hydroxylation of the aromatic ring carbons to produce phenols which are the precursors for conjugated products excreted in urine or bile or (2) the hydroxylation of the nitrogen atom to form phenylhydroxylamine and nitrosobenzene which convert hemoglobin to an oxidized form, methemoglobin, an irreversible oxygen carrier. However, the sensitivity to methemoglobin-forming anilines varies among mammals. Cats are the most sensitive and produce the highest and most sustained levels of methemoglobin. Humans, dogs, rats, and rabbits are less sensitive (order of decreasing sensitivities). The variation in sensitivity could be due to the extent to which the chemical is metabolized to phenylhydroxylamine or to the differences in the activities of enzymes that promote the reduction of methemoglobin in the red cell back to hemoglobin.

3. *Subchronic and chronic effects.* Results from prechronic or subchronic and chronic (oncogenicity) oral studies in rats or rats and mice for three methemoglobin-inducing chemicals (aniline, 4-chloroaniline, and 4-nitroaniline) have been reported (Refs. 69 through 75). Some common effects that result from long term exposure to aniline and 4-chloroaniline at doses (10 to 100 mg/kg/day) that induce significant methemoglobin include: Anemia, red blood cell Heinz bodies, dose-related increase in spleen weight and size, dose-related congestion of splenic pulp, increased red blood cell turnover rate, and dose-related increased pigment (hemosiderin engorgement) in spleen and in kidney and liver at high doses (> 10 mg/kg/day). At higher doses (30 to 100 mg/kg/day), a dose-dependent increased incidence of primary splenic sarcomas, principally in male rats, was reported for aniline and 4-chloroaniline (Refs. 69 and 75).

Results of a chronic oral study in rats using 4-nitroaniline indicate the administration of 4-nitroaniline at levels up to 9 mg/kg/day for 2 years did not cause any treatment-related oncogenic effects (Ref. 74). The study was designed to determine whether chronic or oncogenic effects occur from long-term exposure to 4-nitroaniline at doses that induce increased levels of methemoglobin in rats. Methemoglobin levels were increased over controls at mid (1.5 mg/kg/day) and high (9.0 mg/kg/day) dosage levels. Slight anemia was observed mainly at the high dosage level. At the low (0.25 mg/kg/day) dosage level, the only treatment-related change was slight brown pigment in splenic reticuloendothelial cells. The only treatment-related change at the mid and high dosage levels was accumulation of brown pigment in sinusoidal macrophages in the liver and in reticuloendothelial cells in the spleen. Results of an oral 90-day subchronic study in mice using 4-nitroaniline have been reported. Effects in both sexes given 30 and 100 mg/kg/day include: Methemoglobinemia, Heinz bodies, increased red blood cell turn over rate, increased spleen and liver weight, and pigment deposition within phagocytic cells of spleen, bone marrow and liver (Ref. 74). The National Toxicology Program (NTP) is sponsoring an oral chronic effects-oncogenicity study of 4-nitroaniline in mice at dose levels of 0, 3, 30, and 100 mg/kg/day (Ref. 76).

Subchronic inhalation studies using rats and mice with the methemoglobin inducers 3-chloroaniline, 3,4-dichloroaniline, and 4-nitroaniline report

the same type of effects that occur at lower doses and over shorter exposure periods in oral studies in rats and mice (Refs. 77 through 81). Subchronic oral exposure of rats to 4-chloro-3-nitroaniline resulted in reduced testes-weight-to-brain-weight ratio at 18 mg/kg/day and testicular atrophy along with other toxic effects at 90 mg/kg/day (Ref. 82). No treatment-related effects were observed at or below 100 ppm in the diet in two chronic/oncogenicity studies in rats and dogs for 2,6-dichloro-4-nitroaniline (DCNA), which does not induce significant methemoglobinemia in mammals (Ref. 83). An oncogenicity study of DCNA in mice is in progress (Ref. 84).

Because there is evidence from studies on the metabolism of methemoglobin-producing anilines for a non-genotoxic mechanism for the induction of hemangio- and fibrosarcomas in the spleen of rats from dietary exposure at high concentrations, and because EPA wants to review all relevant data on all the anilines before making a determination as to the need for oncogenicity testing, the Agency is deferring its decision on the need for additional data on oncogenic effects of substituted anilines until the results of the in vivo mutagenicity tests are available (Ref. 85). The available data on the oncogenic effects of aniline are adequate for TSCA risk assessment purposes.

Also, after reviewing the available reports and studies on the acute and chronic health effects of the anilines category the Agency has found no evidence of adverse hematologic or central nervous system effects that are not likely to be related to the decreased oxygen-carrying capacity of methemoglobic blood. The data provide no basis to believe that these chemicals may present an unreasonable risk of adverse hematologic or central nervous system effects at anticipated exposure levels as manufacturers and processors control potential human exposure below the threshold for methemoglobinemia. Therefore, the Agency has concluded that additional information on hematologic or central nervous system effects of aniline and substituted anilines is not necessary at this time.

4. *Developmental toxicity.* Aniline, a potent methemoglobin producer, was observed not to be developmentally toxic in rats at levels (100 mg/kg) that produced maternal and fetal toxicity commonly caused by methemoglobinemia (Ref. 86). Timed pregnant mice treated with aniline (500 mg/kg/day) during days 7 through 14 of gestation revealed no apparent effect on numbers of litters produced; however, offspring viability through the first three postpartum days was significantly lower than for the control group. Also, reductions in birth weight and weight gain were seen in aniline-treated litters (Ref. 87). No treatment-related maternal or embryotoxicity was observed below 125 mg/kg/day (oral administration) of 4-nitroaniline in New Zealand rabbits (Ref. 88). 4-Nitroaniline administered by gastric intubation to pregnant rats at a dose of 25 mg/kg/day from day 6 to 19 of gestation was not maternally or developmentally toxic (Ref. 89). At 85 mg/kg/day some maternal toxicity (increased spleen weight) and fetotoxicity (reduced fetal weight) were evident; however, no developmentally toxic effects were observed. At 250 mg/kg/day, 4-nitroaniline produced maternal toxicity, embryotoxicity and terata. No treatment-related maternal or developmental toxicity was observed at or below 300 mg/kg/day of 2-nitroaniline to pregnant rats after gavage administration on days 6 to 15 of gestation. Significant evidence of maternal toxicity was observed at 2-nitroaniline dosages of 600 mg/kg with a single malformation in one fetus each from two litters at that dosage (Ref. 90). Pregnant rats exposed to 1.1 and 1.7 mg/m^3 of 2,4-dinitroaniline developed maternal and embryotoxicity, but no other developmental toxic effects were observed (Ref. 91). Pregnant rabbits exposed to DCNA showed no maternal toxicity or developmental toxicity at 1,000 ppm in diet (Ref. 92). A second teratology study of DCNA in rats is in progress (Ref. 84).

The data provide no basis to believe that these chemicals may present an unreasonable risk of adverse developmental effects at anticipated exposure levels, as available data show no developmental effects that occur at exposure levels at which some category members cause methemoglobinemia and manufacturers and processors control potential human exposure below the threshold for methemoglobinemia. Therefore, the Agency has concluded that additional information on the developmental effects of aniline and the substituted anilines is not necessary for risk assessment purposes at this time.

5. *Reproductive effects.* Aniline administered subcutaneously in female rats (average weight 150 grams) for seven days at 50 mg/day caused alterations in steroidal hormone levels of the *corpora luteum* (Ref. 93). 4-Nitroaniline administered by gastric intubation at dose levels of 0.25, 1.5 and 9.0 mg/kg/day to the F0 and F1 generation of male and female rats during pre-mating growth and through ensuing mating, gestation, and lactation intervals showed no significant adverse effect on mortality rates or body weights in the F0 and F1 generations (Ref. 94). In the F0 generation, the male fertility index and pregnancy rate for the high dose group were lower than control data; however, only for the pregnancy rate was this difference from the control group statistically significant. In the F1 generation, mating, pregnancy, and fertility indices were comparable between control and treated groups. No adverse effects of treatment were indicated during either generation in parturition or litter size data, pup weight date, pup survival, or sex distribution data or dead pup observations. Likewise, gross and histopathological evaluation of selected tissues from F1 and F2 pups or adults to include testes/epididymides of F0 males (high dose group) did not reveal an adverse effect. The recent chronic study using aniline has no mention of long-term effects on reproductive organs (Ref. 69). Chronic studies on 4-chloroaniline and 4-nitroaniline have no mention of effects on reproductive organs (Ref. 70 and 74). 4-Chloro-3-nitroaniline caused testicular effects in rats after subchronic oral exposure at 90 mg/kg/day, but the animals showed other toxicities as well (Ref. 82). The NOEL was reported as close to but below 3.6 mg/kg/day. The 3.6 mg/kg/day dose produced a minimal toxic response. A sperm morphology vaginal cytology (SMVCE) study of 4-nitroaniline reported no effects of the chemical on mouse estrous cycles but reduced sperm motility in mice at 100 mg/kg/day (Ref. 95). An SMVCE study of 4-chloro-2-nitroaniline reported no effects on reproductive parameters in male rats; however, the chemical appeared to interfere with the relative frequency of estrous stages (600 and 1,200 mg/kg/day) (Ref. 96). This effect is likely to be caused by alteration in hormonal activity. A three generation reproductive study of DCNA reported no effects on reproductive parameters in male or female rats at 100 ppm and 10 ppm in diet (Ref. 97).

The data provide no basis to believe that these chemicals may present an unreasonable risk of adverse reproductive effects at anticipated exposure levels, as available reproductive effects data show no reproductive effects that occur at exposure levels at which some category members cause methemoglobinemia and manufacturers and processors control potential human exposure below the threshold for methemoglobinemia. Therefore, the Agency has concluded

that additional information on the reproductive effects of aniline and the substituted anilines is not necessary for risk assessment purposes at this time.

6. *Mutagenic effects.* The following data were considered by EPA for evaluating the risk of mutagenic injury to human health from exposure to seven category members.

a. Aniline is reported to have negative results in the following gene mutation assays: *Salmonella, E. coli,* WP2 uvr A, and *Aspergillus* (Refs. 98 through 101). Aniline is positive for the L5178Y TK, ± mouse lymphoma gene mutation assay and negative for the *Drosophila* sex linked recessive lethal assay (SLRL) (Refs. 102 through 104). Aniline is negative for sister chromatid exchange in human lymphocytes, and negative for chromosomal aberrations in cultured Chinese hamster ovary cells (Refs. 105 and 106). Aniline caused an increased frequency of sister chromatid exchange (SCE) *in vivo* in mouse bone marrow cells and *in vitro* with Chinese hamster ovary cells (Refs. 107 and 108). Aniline also caused a slight increase in frequency of SCE's in cultured human fibroblasts (Ref. 109). EPA believes that an *in vivo* cytogenetics test is necessary for risk assessment purposes, and manufacturers have agreed to perform the testing (mouse micronucleus).

b. 2-Chloroaniline is negative in the *Salmonella* gene mutation assay, and there are no data on cytogenetic effects of 2-chloroaniline (Ref. 110). EPA believes that an *in vivo* cytogenetics test is necessary for risk assessment purposes, and manufacturers have agreed to perform the testing (mouse micronucleus).

c. 4-Chloroaniline is reported to have positive results in the following gene mutation assays; *Salmonella, E. coli* pol A, *Aspergillis* and L5178Y TKI± mouse lymphoma (Refs. 101 and 111 through 113). 4-Chloroaniline is positive for sister chromatid exchange and chromosomal aberration effects *in vitro* (Ref. 114). EPA believes that an *in vivo* cytogenetics test is necessary for risk assessment purposes, and manufacturers have agreed to perform the testing (mouse micronucleus).

d. 3,4-Dichloroaniline is reported to have negative results in the *Salmonella* gene mutation assay and positive results in the *Aspergillus* gene mutation assay (Refs. 99 and 115). There are no data on the cytogenetic effects of 3,4-dichloroaniline. EPA believes that an *in vivo* cytogenetics test is necessary for risk assessment purposes, and manufacturers have agreed to perform the testing (mouse micronucleus).

e. 2-Nitroaniline is reported to have positive results in the *Salmonella* gene mutation assay; there are no data available on the cytogenetic effects of 2-nitroaniline (Ref. 116 and 118). EPA believes that an *in vivo* cytogenetics test is necessary for risk assessment purposes, and manufacturers have agreed to perform the testing (mouse micronucleus).

f. 4-Nitroaniline is reported to have positive results in the *Salmonella* and L5178Y TK± mouse lymphoma assays and negative results in the *Drosophila* SLRL assay (Refs. 117, 119 and 122). 4-Nitroaniline is weakly positive for sister chromatid exchange and chromosomal aberration effects *in vitro* (Ref. 120). EPA believes that an *in vivo* cytogenetics test is necessary for risk assessment purposes, and manufacturers have agreed to perform the testing (mouse micronucleus).

g. 2,4-Dinitroaniline is reported to have positive effects in the *Salmonella* gene mutation assay and is negative in the *Drosophila* SLRL assay (Refs. 116, 121, and 123). 2,4-Dinitroaniline is also being tested for *in vitro* cytogenetics effects (Ref. 120). EPA believes that an *in vivo* cytogenetics test is necessary for risk assessment purposes, and manufacturers have agreed to perform the testing (mouse micronucleus).

V. Export Notification

The issuance of these Consent Orders subject any person who exports or intends to export aniline, 2-chloroaniline, 4-chloroaniline, 3,4-dichloroaniline, 2-nitroaniline, 4-nitroaniline, 2,4-dinitroaniline, and 2,6-dichloro-4-nitro-aniline to the export notification requirements of section 12(b) of TSCA. The specific requirements are listed in 40 CFR Part 707. EPA added and reserved subpart C of 40 CFR 799.5000 for a list of testing consent orders issued by EPA. This listing serves as notification to persons, who export or who intend to export chemical substances or mixtures which are the subject of testing consent orders, that 40 CFR Part 707 applies.

VI. Rulemaking Record

EPA has established a record for these Consent Orders (docket number OPTS–42054B). This record contains the basic information considered by the Agency in developing these Testing Consent Orders.

A. Supporting Documentation

(1) Testing Consent Orders between the five manufacturers/importers of aniline and the Agency.

(2) Testing Consent Orders between the four manufacturers/importers of seven substituted anilines and the Agency.

(3) **Federal Register** notices pertaining to this notice consisting of:

(a) Notice containing the designation of the Anilines Category to the Priority List (44 FR 107; June 1, 1979).

(b) Advance Notice of Proposed Rulemaking for the Anilines Category (49 FR 108; January 3, 1984).

(c) Notice soliciting interested parties for developing a Consent Order for Aniline and Seven Substituted Anilines (51 FR 28758; August 11, 1986).

(d) Notice of interim final rule on procedures for developing enforceable consent agreements (51 FR 23706; June 30 1986).

(4) Communications consisting of:

(a) Written letters.

(b) Contact reports telephone conversations.

(c) Meeting summaries.

(5) Reports—published and unpublished factual materials.

B. References

(1) LaRoe, Winn and Moerman, Counsel for Aniline Association. Comments of the Aniline Association on the Advance Notice of Proposed Rulemaking on the Need for Additional Testing of Aniline Under section 4 of TSCA. (1984).

(2) Cleary, Gottlieb, Steen and Hamilton, Counsel for Substituted Anilines Task Force. Comments on Advance Notice of Proposed Rulemaking for Chloro-, Bromo-, and/or Nitroanilines, for the Substituted Anilines Task Force of Synthetic Organic Chemical Manufacturers Association. (1984).

(3) Sodyeco Inc. Comments of Sodyeco Inc. on the Advance Notice of Proposed Rulemaking on the Need for Additional Testing of Anilines Under section 4 of TSCA. Letter of March 2, 1984 from B.W. Drum to TSCA Public Information Office.

(4) Eastman Kodak Company. Comments of Eastman Kodak on the Advance Notice of Proposed Rulemaking on the Need for Additional Testing of Aniline Under section 4 of TSCA. Letter of March 2, 1984 from R.F. Brothers to TSCA Public Information Office.

(5) Upjohn Company. Aniline and Chloro-, Bromo- and/or Nitroanilines; Response to the Interagency Testing Committee by Upjohn Company. Letter of February 28, 1984 from J.S. Mehring to TSCA Public Information Office.

(6) Cleary, Gottlieb, Steen and Hamilton. Comments on Advance Notice of Proposed Rulemaking for Chloro-, Bromo-, and/or Nitroanilines (Appendix A. Confidential Business Information) for the Substituted Anilines Task Force of the Synthetic Organic Chemical Manufacturers Association. (1984).

(7) LaRoe, Winn and Moerman. Comments of the Aniline Association on the need for additional testing of aniline under section 4 of TSCA. From: Aniline Association, August 26, 1983.

(8) Cleary, Gottlieb, Steen and Hamilton. Information relevant to EPA's determination of whether to require additional health or environmental effects testing of the substituted anilines under section 4 of TSCA. From: Substituted Anilines Task Force of the Synthetic Organic Chemical Manufacturers Association, July 18, 1983. (Appendix A. Confidential Business Information).

(9) Cleary, Gottlieb, Steen and Hamilton. Information relevant to EPA's determination of whether to require additional health or environmental effects testing of the substituted anilines under section 4 of TSCA. From: Substituted Anilines Task Force of the Synthetic Organic Chemical Manufacturers Association, July 18, 1983

(10) SOCMA. Synthetic Organic Chemical Manufacturers Association. Letter from A. Rautio of Synthetic Organic Chemical Manufacturers Association to M. McCommas, Office of Toxic Substances. USEPA. (Confidential Business Information). (1985).

(11) SOCMA. Letter from A. Rautio of Synthetic Organic Chemical Manufacturers Association to M. McCommas, Office of Toxic Substances, USEPA. (1985).

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Confidential Business Information, while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the TSCA Public Docket Office, Room. NE–G004, 401 M Street., SW., Washington, DC from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

List of Subjects in 40 CFR Part 799

Testing, Hazardous substances, Chemicals, Recordkeeping and reporting requirements.

Dated: August 8, 1988.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR Part 799 is amended as follows:

PART 40—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Section 799.5000 is amended by adding the following chemical substances in Chemical Abstract Service (CAS) Registry Number order to the table, to read as follows:

§ 799.5000 Testing consent orders.

* * * * *

CAS No. and substance or mixture name	Testing	Federal Register citation
62–53–3 Aniline	Health effects	(Insert FR date)
	Environmental effects.	Do.
88–74–4 2-Nitroaniline.	Health effects	Do.
95–51–2 2-Chloroaniline.	Health effects	Do.
	Environmental effects.	Do.
95–76–1 3,4-Dichloroaniline.	Health effects	Do.
97–02–9 2,4-Dinitroaniline.	Health effects	Do.
99–30–9 2,6-Dichloro-4-nitro-aniline.	Environmental effects.	Do.
100–01–6 4-Nitroaniline.	Health effects	Do.
106–47–8 4-Chloroaniline.	Health effects	Do.

* * * * *

[FR Doc. 88–18727 Filed 8–18–88; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42054A; FRL-3431-8]

Termination of Rulemaking for Certain Chemicals in the Anilines Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of termination of rulemaking.

SUMMARY: This notice announces EPA's decision to terminate rulemaking for certain members of the anilines category (aniline, and chloro-, bromo-, and/or nitro-anilines) designated by the Interagency Testing Committee (ITC) for priority testing. EPA, at this time, is terminating rulemaking proceedings for health effects testing of 13 member chemical substances ("chemicals") because there is no basis for a finding that any of these chemicals may present an unreasonable risk of injury to human health and because there is no substantial or significant human exposure to these chemicals. EPA is terminating rulemaking for environmental effects testing of 17 member chemicals because there is no basis for a finding that the chemicals may present an unreasonable risk of injury to the environment, because there is no substantial release to the environment of these chemicals, or because adequate data are available. However, elsewhere in this issue of the **Federal Register**, EPA is announcing that eight additional category members are being tested for health and/or environmental effects, under Testing Consent Orders.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 3, 1984 (49 FR 108), EPA issued an Advance Notice of Proposed Rulemaking under section 4(a) of TSCA to obtain data to help determine the potential risk of the anilines category to human health and the environment. The Agency is now issuing a decision not to require testing of 13 category members for health effects testing and 17 category members for environmental effects testing.

I. Background

Section 4(a) of TSCA authorizes the Administrator of EPA to promulgate regulations requiring testing of chemical substances and mixtures in order to develop data necessary to determine the risk chemicals present to human health and the environment. Section 4(e) of TSCA established the Interagency Testing Committee (ITC) to recommend chemicals to the Administrator of EPA for consideration for test rules under section 4(a).

In the ITC's Fourth Report to the Administrator, published in the **Federal Register** of June 1, 1979 (44 FR 31866), the Committee designated the anilines category for consideration of human health and environmental effects testing. The ITC defined the anilines category as: "Aniline and aniline substituted in one or more positions with a chloro, bromo, or nitro group or any combination of one or more of these substituent groups."

The ITC listed 19 chemicals in the category but instructed that the category not be limited to the 19 listed. EPA identified 20 chemicals within the ITC's category definition that were in production in 1982.

The ITC recommended human health and environmental effects testing in general because the high production volumes of category members suggested a potential for significant human exposure and environmental release. The ITC recommended testing for chronic health effects with emphasis on blood and nervous system disorders because most category members probably have the ability to induce methemoglobinemia and because humans are particularly sensitive to compounds that induce methemoglobinemia. The ITC recommended testing for teratogenicity because sustained methemoglobinemia may have adverse effects on the fetus and embryo of exposed pregnant women. The ITC recommended testing for carcinogenicity because aniline has been reported to be carcinogenic in male rats and other category members have a high suspicion of carcinogenicity. The ITC recommended testing for mutagenic effects because some members have been reported to be mutagenic and these results raise a suspicion for untested members. The ITC also recommended epidemiology studies to assess the possible adverse, chronic health effects, where there is or has been significant human exposure, because there is no information on the chronic effects produced in humans exposed to members of the category.

The ITC recommended environmental effects testing because occurrences of residues and persistence in soil and water for some category members suggested a continuous and highly dispersive discharge into the environment and available data raised a concern for the ability of members to produce adverse environmental effects. The ITC recommended chemical fate testing because of suspected environmental effects and because there are conflicting reports of the ability of animals, plants, and microbes to metabolize and tolerate these chemicals.

EPA's response to this designation was published in the **Federal Register** of January 3, 1984 (49 FR 108) as an Advance Notice of Proposed Rulemaking (ANPR) for the anilines category. In the ANPR, EPA: (1) Identified 20 individual chemicals in production in 1982, (2) presented a profile of the available health and environmental effects information on the chemicals, (3) indicated tentative gaps in the available health and environmental effects information, and (4) proposed for public comment an approach by which tests would be performed on category members chosen to represent small groups (subgroups) of category members instead of considering testing all category members. The ANPR named six subcategories (aniline, monochloroanilines, polychloroanilines, mononitroanilines, polynitroanilines, and halonitroanilines) and seven representative subcategory members (aniline; 4-chloroaniline; 3,4-dichloroaniline; 4-nitroaniline; 2,4-dinitroaniline; 2-chloro-4-nitroaniline; and 2-bromo-4,6-dinitroaniline) for possible health and environmental effects testing consideration.

II. Public Response to ANPR

EPA received comments and information from the Aniline Association (AA) and the Substituted Anilines Task Force (SATF) of the Synthetic Organic Chemical Manufacturers Association, and comments from Sodyeco Inc., Eastman Kodak, and the Upjohn Company (Refs. 1 through 5). The AA and SATF provided results of surveys of processors and users to determine the potential for human exposure and environmental release. The AA and SATF also provided additional data from manufacturers and processors on biological and workplace monitoring for human worker exposure. The exposure, release, and monitoring data were supplied by the SATF as confidential business information. The summary conclusions of the SATF and other comments were that: (1) The available data on potential human exposure, environmental release, and health and environmental effects of aniline and

substituted anilines would support neither a TSCA section 4(a)(1)(A) nor a section 4(a)(1)(B) finding to require further testing of anilines category members and, (2) the proposed testing will have such an adverse economic impact as to force the manufacturers of the dyes and pigments made from these intermediates to stop production in the United States. Industry toxicologists for the SATF commented that the substituted anilines should not be considered a single category for purposes of determining the need to test because the category members share no common health effect, and the category should include only those members for which a section 4(a) finding could be made. The SATF commented that structural and biological similarities among the members of three chemical groups—nitroanilines, chloroanilines, and halonitroanilines—may be sufficient to permit the selection of a representative test substance, the toxicity of which might be used to characterize other members of the group.

III. Decision Not To Continue Rulemaking

A. Environmental Effects

EPA has decided at this time not to continue rulemaking proceedings to require chemical fate or environmental effects testing of the 17 anilines category members listed in the following Table 1:

TABLE 1.—ANILINES CATEGORY MEMBERS DROPPED FROM CHEMICAL FATE OR ENVIRONMENTAL EFFECTS TESTING

CAS No.	Chemical name	Reason for dropping
108-42-9	3-Chloroaniline	(1)
106-47-8	4-Chloroaniline	(2)
608-27-5	2,3-Dichloroaniline	(1)
554-00-7	2,4-Dichloroaniline	(1)
95-82-9	2,5-Dichloroaniline	(1)
95-76-1	3,4-Dichloroaniline	(3)
634-93-5	2,4,6-Trichloroaniline	(1)
88-74-4	2-Nitroaniline	(2)
99-09-2	3-Nitroaniline	(1)
100-01-6	4-Nitroaniline	(2)
97-02-9	2,4-Dinitroaniline	(1)
121-87-9	2-Chloro-4-nitroaniline	(1)
6283-25-6	2-Chloro-5-nitroaniline	(1)
89-63-4	4-Chloro-2-nitroaniline	(1)
635-22-3	4-Chloro-3-nitroaniline	(1)
827-94-1	2,6-Dibromo-4-nitroaniline	(1)
1817-73-8	2-Bromo-4,6-dinitroaniline	(1)

[1] Little or no production and release.
[2] Using available data, EPA finds no indication of potential unreasonable risk.
[3] Data are adequate to reasonably determine or predict the potential for risk of injury to the environment.

Thirteen category members are not being proposed for testing at this time, because there is little or no production or importation of some of the compounds, and because the reported environmental release is judged to be insignificant for all 13 chemicals.

Because there is some manufacture and release of 4-chloroaniline, 3,4-dichloroaniline, 2-nitroaniline, and 4-nitroaniline, EPA has estimated the environmental risk potential of these chemicals, by comparing available aquatic vertebrate or invertebrate LC50's to site-specific predicted environmental concentrations (PECs) (Refs. 6 through 14). In general, if the median lethal concentration (LC50) for a chemical exceeds its predicted or measured environmental concentration by 3 orders of magnitude or exceeds 1 mg/L and the potential for the substance to bioconcentrate in tissues of aquatic organisms is low, i.e. Kow < 100, the Agency considers the substance to be of low priority for further aquatic toxicity testing or assessment. The factor of 3 orders of magnitude between the LC50 and PEC takes into account uncertainties related to interspecies variability and acute-to-chronic or lab-to-field effects extrapolations. Because the LC50's for 4-chloroaniline, 3,4-dichloroaniline, 2-nitroaniline, and 4-nitroaniline exceed the site-specific PECs for these category members by 3 orders of magnitude, or exceed 1 mg/L and the Kow values of these anilines are <100, EPA finds no indication of potential unreasonable risk. Furthermore, EPA believes that factors used in calculating the predicted environmental concentrations, such as assuming low flow conditions of a river and assuming that no biodegradation or adsorption occurs to remove these chemicals from the aquatic environment, are very conservative and provide an additional margin of confidence that current releases of these four category members present no unreasonable risk of injury to the environment. In addition, EPA finds that data on the environmental effects of 3,4-dichloraoniline are sufficient to reasonably determine or predict the potential for risk of injury to the environment (Refs. 7 through 10).

In summary, the ITC recommended chemical fate and environmental effects testing of the anilines category because high production volumes of some members suggested a potential for significant environmental exposure and a concern for potential persistence in soil and water and for members to produce adverse environmental effects. However, EPA concludes that available environmental effects data and confidential release data provided by manufacturers and processors of these substances do not support a TSCA section 4(a)(1)(A) finding that the anilines category members listed in Table 1 may present an unreasonable risk of injury to the environment. EPA also concludes on the basis of this information, some of which was unavailable to the ITC, that there is not sufficient environmental release to support a TSCA section 4(a)(1)(B) finding of substantial production and substantial release to the environment. Therefore, the Agency is not proposing chemical fate or environmental effects testing of the anilines category members, listed in Table 1, at this time.

EPA will monitor future manufacturing of these 17 chemicals through the section 8(b) TSCA Inventory Update Rule, 40 CFR 710, published in the **Federal Register** of June 12, 1986 (51 FR 21438), because some of the anilines category members for which testing is not being required cause toxic effects in aquatic organisms.

B. Health Effects

EPA has decided at this time not to continue rulemaking proceedings to require human health effects testing of the 13 anilines category members listed in the following Table 2:

TABLE 2.—ANILINES CATEGORY MEMBERS DROPPED FROM HEALTH EFFECTS TESTING

CAS No.	Chemical name
108-42-9	3-Chloroaniline
608-27-5	2,3-Dichloroaniline
554-00-7	2,4-Dichloroaniline
95-82-9	2,5-Dichloroaniline
634-93-5	2,4,6-Trichloroaniline
99-09-2	3-Nitroaniline
121-87-9	2-Chloro-4-nitroaniline
6283-25-6	2-Chloro-5-nitroaniline
89-63-4	4-Chloro-2-nitroaniline
635-22-3	4-Chloro-3-nitroaniline
99-30-9	2,6-Dichloro-4-nitroaniline
827-94-1	Dibromo-4-nitroaniline
1817-73-8	2-Bromo-4,6-dinitroaniline

EPA has assessed the potential risk of injury to human heatlh from exposure to chemicals in the anilines category, and EPA's evaluation indicates that a TSCA section 4(a)(1)(A) finding of "may present an unreasonable risk" cannot be supported for these 13 chemicals (Refs. 14 through 23).

The ITC based its recommendations for chronic health effects (with emphasis on blood and nervous system disorders) and teratogenic effects testing and for epidemiology studies of the anilines catgegory on the potential for some category members to cause methemoglobinemia in humans. The ITC recommended mutagenic and oncogenic

effects testing because some category members were reported to be oncogenic and/or mutagenic and these results raise a suspicion of these effects for untested members.

On the basis of information not available to the ITC on the number of workers potentially exposed, duration of potential exposure, and measured or estimated exposure levels, EPA has determined that there is no basis, at this time, to believe that these 13 chemicals may present an unreasonable risk for any of the effects recommended by the ITC because: (1) Very few workers are potentially exposed and the period for potential exposure is brief, (2) available health effects data for the anilines category members, listed in Table 2, report no chronic (including hematologic and neurotoxic), teratologic, or reproductive effects that occur below exposure levels that cause methemoglobinemia (concern for reporductive effects was raised by EPA in the ANPR), and (3) the manufacturers and processors control human exposure below the threshold for methemoglobinemia (and therefore for known chronic, teratologic, and reproductive health effects of the anilines category) (Refs. 14 and 16). Epidemiology studies are not necessary at this time because reported worker exposure levels are below the concentrations that are likely to cause health effects from exposure to methemoglobinemia-producing compounds. In addition, EPA finds the data (currently available or required under an EPA Office of Pesticide Programs Registration Standard) on the chronic, teratologic, and reproductive effects of 2,6–dichloro–4–nitroaniline are sufficient to determine or predict the risk of injury to human health for these effects (Ref. 17).

In summary, the ITC recommended testing of anilines for chronic effects, and teratologic, oncogenic, and mutagenic effects, and EPA raised a possible concern for reproductive effects; however, EPA concludes that available health effects and confidential occupational exposure information provided by manufacturers and processors of substituted anilines, some of which was not available to the ITC, does not support a TSCA section 4(a)(1)(A) finding that the 13 category members, listed in Table 2, may present an unreasonable risk of injury to human health. EPA also concludes on the basis of this information that there is not sufficient human exposure to support a TSCA section 4(a)(1)(B) finding for health effects. Therefore, the Agency is not proposing health effects testing for the substituted anilines listed in Table 2 at this time.

EPA will monitor future manufacturing of these 13 chemicals through the section 8(a) TSCA Inventory Update Rule, 40 CFR Part 710, published in the **Federal Register** of June 12, 1986 (51 FR 21438), because some of the anilines category members for which testing is not being required cause toxic effects in laboratory animals.

IV. Public Record

EPA has established a public record for this decision not to test under section 4 of TSCA (docket number OPTS–42054A). This record includes the following information:

A. Supporting Documentation

(1) **Federal Register** notice designating the Anilines category to the priority list (44 FR 107; June 1, 1979), and all comments received thereon.

(2) Advance Notice of Proposed Rulemaking for the Anilines Category (49 FR 108; January 3, 1984).

(3) Partial Update of TSCA Inventory Database; Production and Site Reports. Final Rule. (51 FR 21438; June 12, 1986).

(4) Communications consisting of:

(a) Written public and intra-agency or interagency memoranda and comments.

(b) Summaries of telephone conversations.

(c) Summaries of meetings.

(5) Reports—published and unpublished factual materials, including contractors' reports.

B. References

(1) LaRoe, Winn and Moerman, Counsel for Aniline Association. Comments of the Aniline Association on the Advance Notice of Proposed Rulemaking on the Need for Additional Testing of Aniline Under Section 4 of TSCA. (1984).

(2) Cleary, Gottlieb, Steen and Hamilton, Counsel for Substituted Anilines Task Force. Comments on Advance Notice of Proposed Rulemaking for Chloro-, Bromo-, and/or Nitroanilines, for the Substituted Anilines Task Force of Synthetic Organic Chemical Manufacturers Association. (1984).

(3) Sodyeco Inc. Comments of Sodyeco Inc. on the Advance Notice of Proposed Rulemaking on the Need for Additional Testing of Anilines Under Section 4 of TSCA. Letter of March 2, 1984 from B.W. Drum to TSCA Public Information Office.

(4) Eastman Kodak Company. Comments of Eastman Kodak on the Advance Notice of Proposed Rulemaking on the Need for Additional Testing of Aniline Under Section 4 of TSCA. Letter of March 2, 1984 from R.F. Brothers to TSCA Public Information Office.

(5) Upjohn Company. Aniline and Chloro-, Bromo- and/or Nitroanilines; Response to the Interagency Testing Committee by Upjohn Company. Letter of February 28, 1984 from J.S Mehring to TSCA Public Information Office.

(6) Monsanto Chemical Company. "Acute toxicity of 4-chloroaniline to *Daphnia magna.*" Conducted by Analytical Biochemistry Laboratories. Unpublished company data. (1979).

(7) Adema, D.M. and Vink, G.J. "A comparative study of the toxicity of 1,1,2-trichloroethane, dieldrin, pentachlorophenol, and 3,4-dichloro-aniline for marine and freshwater organisms." *Chemosphere* 10: 533–554. (1981).

(8) Crossland, N.O. and Hillaby, J.M. "3,4-Dichloroaniline: Chronic toxicity to *Daphnia magna.*" Shell Research Limited, Sittingbourne Research Center, Sittingbourne, Kent, England. Unpublished company data. (1983).

(9) Hillaby, J.M. and Crossland, N.O. "3,4–Dichloroaniline: Acute toxicity to *Daphnia magna* and *Selenastrum capricornutum.*" Shell Research Limited, Sittingbourne Research Center, Sittingbourne, Kent, England. Unpublished company data. (1983).

(10) USEPA. U.S. Environmental Protection Agency. Testing results report of USEPA Environmental Research Laboratory, Duluth, MN. (1985).

(11) Schulz, T.W. and Applehans, F.M. "Correlations for the acute toxicity of multiple nitrogen substituted aromatic molecules." *Ecotoxicology and Environmental Safety* 10: 75–85. (1985).

(12) Monsanto Chemical Company. "Acute toxicity of 3,4–dichloroaniline to *Daphnia magna.*" Conducted by Analytical Biochemistry Laboratories. Unpublished company data. (1979).

(13) USEPA. Predicted environmental concentrations for selected substituted anilines. Confidential Business Information, prepared by M. McCommas, Test Rules Development Branch, Office of Toxic Substances. (1985).

(14) Cleary, Gottlieb, Steen and Hamilton. Comments on Advance Notice of Proposed Rulemaking for Chloro-, Bromo-, and/or Nitroanilines (Appendix A. Confidential Business Information) for the Substituted Anilines Task Force of the Synthetic Organic Chemical Manufacturers Association. (1984).

(15) Reynolds, W.P., Roell, M.G. and Fleming, J.J. "Methemoglobin inducing potential of various substituted anilines in rats." Toxicology Section of Hoechst-Roussel Pharmaceuticals Incorporated) Somerville, NJ. Unpublished company data. (1984).

(16) OSHA. Occupational Safety and Health Administration. OHDS-4 Health Sampling Report for Aniline (Substance Code 0220) for Period June 1979 through May 1983. U.S. Department of Labor, Washington, DC. (1979).

(17) USEPA. Office of Pesticides Programs. Registration Standard for 2,6-Dichloro-4-nitroaniline. (1984).

(18) Donoghue, J.L. "Subchronic oral toxicology of 4-chlor-3-nitroaniline in the rat." Toxicological Sciences Health and Environmental Laboratories, Eastman Kodak Company, Rochester, NY. Unpublished company data. (1983).

(19) Chopade, H.M. and Matthews, H.B. "Disposition and metabolism of 4-chloro-2-nitroaniline in the male F344 rat." *Journal of Toxicology and Environmental Health* 12:267-282. (1983).

(20) Chopade, H.M. and Matthews, H.B. "Disposition and metabolism of 2-bromo-4, 6-

dinitroaniline in the male F344 rat." *Journal of Toxicology and Environmental Health.* (1984).

(21) Weisburger, E.K., Russfield, A.B., Homburger, F. et al. "Testing of 21 environmental aromatic amines or derivatives for long term toxicity or carcinogenicity." *Journal of Environmental Pathology and Toxicology* 2:235-256. (1978).

(22) NIEHS. National Institute of Environmental Health Sciences. SMVCE report on 4-chloro-2-nitroaniline. Conducted by Litton Bionetics for N. Lamb, Environmental Health Research and Testing Laboratory, Durham, NC. (1984).

(23) NTP. Status of Chemicals in NTP Toxicological studies. (1985).

This record includes basic information considered by the Agency in developing this notice. Confidential business information (CBI), while part of the record, is not available for public review. A public version of the record from which CBI has been deleted is available for inspection in the TSCA Public Docket Office, Room, Rm. NE-G004, 401 M St., SW., Washington, DC, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. The Agency will supplement the record periodically with additional relevant information received.

Authority: 15 U.S.C. 2603.

Dated: August 8, 1988.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 88-18728 Filed 8-18-88; 8:45 am]

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Federal Register

Friday
August 19, 1988

Part III

Department of Education

34 CFR Part 31

Salary Offset for Federal Employees Who are Indebted to the United States Under Programs Administered by the Secretary of Education; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 31

Salary Offset for Federal Employees Who are Indebted to the United States Under Programs Administered by the Secretary of Education

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary of Education (Secretary) amends regulations governing the use of offset against current pay accounts of Federal employees and payments due from the accounts of former employees under Civil Service Retirement System or the Federal Employees Retirement System to recover amounts owed on debts arising under programs administered by the Secretary. The amendments simplify the procedure used to provide the employee notice of the proposed offset, as well as the procedures used to permit an employee to inspect records relating to the debt, to secure a hearing on the debt or proposed offset schedule, and to enter into a repayment agreement for the debt in order to avoid collection by offset.

EFFECTIVE DATES: These regulations take effect September 19, 1988, pursuant to 5 U.S.C. 553. The provisions of §§ 31.6 through 31.10 of these final regulations apply to any employee who, on the effective date of these regulations, had not yet received a hearing requested in accordance with the requirements of 34 CFR 31.6(a) of current regulations.

FOR FURTHER INFORMATION CONTACT: Jim Nielson, U.S. Department of Education, Office of Management, Room 3017, FOB 6, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone number (202) 732–4194.

SUPPLEMENTARY INFORMATION: The Secretary amends the rules governing the collection of debts arising under programs administered by the Department of Education by offset against payments of salary of a Federal employee, or against amounts payable to a former Federal employee or the beneficiary of such an employee from an account under the Civil Service Retirement System or Federal Employee Retirement System, referred to generally in the rules as the Federal retirement account of the employee. These rules simplify and expedite the current salary offset procedures by making them more consistent with those used under Part 30 for collection by offset against Federal income tax refunds. The revised regulations are consistent with the requirements of the Debt Collection Act and of government-wide regulations issued by the Office of Personnel Management (OPM), except that employees are given 65 days to respond to the pre-offset notice, rather than the 30 days required under the Act and under OPM rules.

The rationale for the adoption of these rules is stated in the preamble to the Notice of Proposed Rulemaking, at 53 FR 15336–15337. With minor exceptions, the final regulations are those rules described in the NPRM; that rationale is therefore adopted here by reference.

Only one written comment was received in response to the NPRM. The commenter, an institution participating in the Perkins Loan Program under title IV part E of the Higher Education Act of 1965, as amended, suggested that the Secretary assist institutions of higher education in collecting defaulted Perkins loans held by the institutions by salary offset under these rules. Perkins loans are made by institutions from a fund composed of Federal and institutional capital contributions, and the Department has an equitable interest in these loans; however, the loans are payable to the institution, and the United States has no right to payment on its own account unless the institution relinquishes its interest in the loan and assigns the loan to the Department. Because the statute authorized salary offset only to collect debts to which the United States is entitled to be repaid, 5 U.S.C. 5514(a)(1), the Secretary declines to adopt the suggested use of salary offset for loans not yet assigned to the Department.

The Secretary has revised §§ 31.4(c), 31.5(a)(2), and 31.10(c) slightly to clarify the effect of a failure by the employee to meet deadlines in this part. First, these changes clarify that the Department provides the documents, hearing, or opportunity to resolve payment of the debt by agreement to any employee who so requests, whether or not the request is made within the deadlines in this part. Second, consistent with 5 CFR 550.1104(d)(9), if the employee makes a request for a hearing after the deadlines in these regulations, the Department delays the start of an offset, or suspends an offset already commenced, only if the employee provides proof satisfactory to the Department that the employee lacked notice of the proposed offset, or that factors beyond the control of the employee prevented him or her from making the request for a hearing, until the deadline had passed. However, the Department will routinely send pre-offset notices both to the residence and the work address of the employee. Therefore, a debtor currently employed by a Federal agency who claims lack of notice must demonstrate more than a mere change of home address in order to show that delay or suspension of the offset is justified. The Secretary has adopted a sixty-five day period for requesting a hearing, more than twice as long as that mandated in the statute and in OPM rules, in order to minimize the likelihood that factors over which the employee may lack control, including misrouted or delayed mail, illness, or absence from one's residence on travel or vacation, would significantly prejudice the ability to make a timely request for a hearing. The Secretary therefore expects that only in the most unusual circumstances will he exercise this discretion to defer or suspend an offset for an employee who does not request relief in a timely manner under these rules.

The Secretary reconsidered the provision of § 31.5.(d) of the NPRM that would have required employees who were offered oral hearings to confirm within ten days of the date of the offer that they would appear for a scheduled hearing; this period has been lengthened in this final rule to allow 15 days for employees to confirm their intention to appear. 34 CFR 31.5(d). In addition, the Secretary has adopted, for consistency, the definition of agency used in the OPM regulations, 5 CFR 550.1103, and made conforming revisions to the definitions of agency and employee in these rules. 34 CFR 31.2.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities, because they would affect only individuals, who are not included within the definition of "small entities" in the Regulatory Flexibility Act.

List of Subjects in 34 CFR Part 31

Claims, Debt collection.

Dated: July 1, 1988.

William J. Bennett,

Secretary of Education.

The Secretary revises Part 31 of Title 34 of the Code of Federal Regulations to read as follows:

PART 31—SALARY OFFSET FOR FEDERAL EMPLOYEES WHO ARE INDEBTED TO THE UNITED STATES UNDER PROGRAMS ADMINISTERED BY THE SECRETARY OF EDUCATION

Sec.

Authority: 5 U.S.C. 5514; 31 U.S.C. 3716.

§ 31.1 Scope.

(a) *General.* The Secretary establishes the standards and procedures in this part that apply to the offset from disposable pay of a current or former Federal employee or from amounts payable from the Federal retirement account of a former Federal employee to recover a debt owed the United States under a program administered by the Secretary of Education.

(b) *Exclusions.* This part does not apply to—

(1) Offsets under 34 CFR Part 32 to recover for overpayments of pay or allowances to an employee of the Department;

(2) Offsets under 34 CFR Part 30; or

(3) Offsets under Sec. 124 of Pub. L. 97–276 to collect debts owed to the United States on judgments.

(c) *Reports to consumer reporting agency.* The Secretary may report a debt to a consumer reporting agency after notifying the employee, in accordance with 34 CFR 30.35, of the intention to report the debt, and after providing the employee an opportunity to inspect documents, receive a hearing, and enter into a repayment agreement under this part.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3711; 31 U.S.C. 3716)

§ 31.2 Definitions

As used in this part:

"Agency" means—

(1) An Executive agency as defined in 5 U.S.C. 105, including the U.S. Postal Service and the U.S. Postal Rate Commission;

(2) A military department as defined in 5 U.S.C. 102;

(3) An agency or court in the judicial branch, including a court as defined in 28 U.S.C. 610, the District Court for the Northern Mariana Islands, and the Judicial Panel on Multidistrict Litigation;

(4) An agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and

(5) Any other independent establishment that is an entity of the Federal Government.

"Days" refer to calendar days.

"Department" means the Education Department.

"Disposable pay" means the amount that remains from an employee's pay after required deductions for Federal, State, and local income taxes; Social Security taxes, including Medicare taxes; Federal retirement programs; premiums for basic life insurance and health insurance benefits; and such other deductions that are required by law to be withheld.

"Employee" means a current or former employee of an agency. In the case of an offset proposed to collect a debt owed by a deceased employee, the references in this part to the employee shall be read to refer to the payee of benefits from the Federal retirement account or other pay of the employee.

"Federal retirement account" means an account of an employee under the Civil Service Retirement System or the Federal Employee Retirement System.

"Offset" means a deduction from the pay of an employee, or a payment due from the Federal retirement account of an employee, to satisfy a debt.

"Pay" means basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an individual not entitled to basic pay, other authorized pay, including severance pay or lump sum payments for accrued annual leave, and amounts payable from the Federal retirement account of an employee.

"Secretary" means the Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§ 30.3 Pre-offset notice.

(a) At least 65 days before initiating an offset against the pay of an employee, the Secretary sends a written notice to the employee stating—

(1) The nature and amount of the debt;

(2) A demand for payment of the debt;

(3) The manner in which the Secretary charges interest, administrative costs, and penalties on the debt;

(4) The Secretary's intention to collect the debt by offset against—

(i) 15 percent of the employee's current disposable pay; and

(ii) If the debt cannot be satisfied by offset against current disposable pay, a specified amount of severance pay, a lump sum annual leave payment, a final salary check, or payments from the Federal retirement account of the employee;

(5) The amount, frequency, approximate beginning date and duration of the proposed offset;

(6) The employee's opportunity to—

(i) Inspect and copy Department records pertaining to the debt;

(ii) Obtain a pre-offset hearing before a hearing official who is not under the control or supervision of the Secretary regarding the existence or amount of the debt, or the proposed offset schedule; and

(iii) Enter into a written agreement with the Secretary to repay the debt;

(7) The date by which the employee must request an opportunity set forth under paragraph (a)(6) of this section;

(8) The grounds for objecting to collection of the debt by offset;

(9) The applicable hearing procedures and requirements;

(10) That the Secretary grants any request for access to records, for a hearing, or for a satisfactory repayment agreement made by an employee;

(11) That the Secretary does not delay the start of the proposed offset, or suspend an offset already commenced, unless—

(i) An employee makes the request for access to records or for a hearing, or enters into a repayment agreement that is acceptable to the Secretary, before the deadlines described in this part; or

(ii) An employee requests a hearing after the deadlines established in § 31.5(a), but submits evidence satisfactory to the Secretary that the request was not made in a timely manner because the employee did not have notice of the proposed offset, or was prevented from making the request by factors beyond his or her control, until after the deadlines had passed;

(12) That a final decision on the hearing will be issued not later than 60 days after the date on which the employee files a request for a hearing under § 31.5, unless a delay in the proceedings is granted at the request of the employee;

(13) That submission by the employee of knowingly false statements, representations or evidence may subject the employee to applicable disciplinary procedures, or civil or criminal penalties; and

(14) That any amounts paid or collected by offset on a debt later determined to be unenforceable or canceled will be refunded to the employee.

(b)(1) In determining whether an employee has requested an opportunity set forth under paragraph (a)(6) of this

section in a timely manner, the Secretary relies on—

(i) A legibly dated U.S. Postal Service postmark for the employee's request; or

(ii) A legibly stamped U.S. Postal Service mail receipt for the employee's request.

(2) The Secretary does not rely on either of the following as proof of mailing:

(i) A private metered postmark.

(ii) A mail receipt that is not dated by the U.S. Postal Service.

(c) Payment by offset under this part of all or part of a debt does not constitute an acknowledgment of the debt or a waiver of rights available to the employee under this part or other applicable law if the employee has not agreed in writing to the offset.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§ 31.4 Request to inspect and copy documents relating to a debt.

(a) The Secretary makes available for inspection and copying before offset under this part those Department documents that relate to the debt, if the employee—

(1) Files a written request to inspect and copy the documents within 20 days of the date of the pre-offset notice under § 31.3, and

(2) Files the request at the address specified in that notice.

(b) A request filed under paragraph (a)(1) of this section must contain—

(1) All information provided to the employee in the pre-offset notice under § 31.3 that identifies the employee and the debt, including the employee's Social Security number and the program under which the debt arose, together with any corrections of that identifying information; and

(2) A reasonably specific identification of the documents that the employee wishes to have available for inspection and copying.

(c) The Secretary makes available documents for inspection and copying upon request by the employee. However, the Secretary may initiate an offset before making the requested documents available if the employee fails to request inspection and copying in accordance with this section.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§ 31.5 Request for hearing on the debt or the proposed offset.

(a) *Deadlines.* (1) The Secretary provides a hearing before offset on the existence, amount, or enforceability of the debt described in the pre-offset notice provided under § 31.3, or on the amount or frequency of the offsets as proposed in that notice, if the employee—

(i) Files a request for the hearing within the later of—

(A) 65 days after the date of the pre-offset notice provided under § 31.3; or

(B) 15 days after the date on which the Secretary makes available to the employee the relevant, requested documents if the employee had requested an opportunity to inspect and copy documents within 20 days of the date of the pre-offset notice provided under § 31.3; and

(ii) Files a request at the address specified in that notice.

(2) The Secretary provides a hearing upon request by the employee. However, if the employee does not submit, within the deadlines in paragraph (a)(1) of this section, a request that meets the requirements of paragraphs (b) and (c) of this section, the Secretary does not delay the start of an offset, or suspend an offset already commenced, unless the employee submits evidence satisfactory to the Secretary that the request was not made in a timely manner because the employee did not have notice of the proposed offset, or was otherwise prevented from making the request by factors beyond his or her control, until after the deadlines had passed.

(b) *Contents of request for a hearing.* A request for a hearing must contain—

(1) All information provided to the employee in the pre-offset notice under § 31.3 that identifies the employee and the particular debt, including the employee's Social Security number and the program under which the debt arose, together with any corrections needed with regard to that identifying information;

(2) An explanation of the reasons why the employee believes that—

(i) The debt as stated in the pre-offset notice is not owing or is not enforceable by offset; or

(ii) The amount of the proposed offset described in the pre-offset notice will cause extreme financial hardship to the employee;

(3) If the employee contends that the amount of the proposed offset will cause extreme financial hardship under the standards set forth in § 31.8(b)—

(i) An alternative offset proposal;

(ii) An explanation, in writing, showing why the offset proposed in the notice would cause an extreme financial hardship for the employee; and

(iii) Documents that show for the employee and for the spouse and dependents of the employee, for the one-year period preceding the Secretary's notice and for the repayment period proposed by the employee in his or her offset schedule—

(A) Income from all sources,

(B) Assets,

(C) Liabilities,

(D) Number of dependents,

(E) Expenses for food, housing, clothing, and transportation,

(F) Medical expenses, and

(G) Exceptional expenses, if any; and

(4) Copies of all documents that the employee wishes to have considered to support the objections raised by the employee regarding the enforceability of the debt or the claim of extreme financial hardship.

(c) *Request for oral hearing.* (1) If the employee wants the hearing to be conducted as an oral hearing, the employee must submit a request that contains the information listed in paragraph (b) and must include with the request—

(i) An explanation of reasons why the employee believes that the issues raised regarding the enforceability of the debt or a claim of extreme financial hardship cannot be resolved adequately by a review of the written statements and documents provided with the request for a hearing;

(ii) An identification of—

(A) The individuals that the employee wishes to have testify at the oral hearing;

(B) The specific issues about which each individual is prepared to testify; and

(C) The reasons why each individual's testimony is necessary to resolve the issue.

(2) The Secretary grants a request for an oral hearing if—

(i) The employee files a request for an oral hearing that meets the requirements of paragraphs (b) and (c) of this section; and

(ii) The Secretary determines that the issues raised by the employee require a determination of the credibility of testimony and cannot be adequately resolved by a review of the written statements and documents submitted by the employee and documents contained in the Department's records relating to the debt.

(3) The Secretary may decline a request for an oral hearing if the Secretary accepts the employee's proffer of testimony made in the request for an oral hearing under paragraph (c)(1) of this section, and considers the facts at issue to be established as stated by the employee in the request.

(4) If the Secretary grants a request for an oral hearing, the Secretary—

(i) Notifies the employee in writing of—

(A) The date, time, and place of the hearing;

(B) The name and address of the hearing official;

(C) The employee's right to be represented at the hearing by counsel or other representatives;

(D) The employee's right to present and cross-examine witnesses; and

(E) The employee's right to waive the requested oral hearing and receive a hearing in the written record; and

(ii) Provides the hearing official with a copy of all written statements submitted by the employee with the request for a hearing, and all documents pertaining to the debt or the amount of the offset contained in the Department's files on the debt or submitted with the request for a hearing.

(d) *Employee choice of oral hearing or hearing on written submissions.* An employee who has been sent notice under paragraph (c)(4) that an oral hearing will be provided must, within 15 days of the date of that notice, state in writing to the hearing official and the Secretary—

(1) Whether the employee intends to proceed with the oral hearing, or wishes a decision based on the written record; and

(2) Any changes in the list of the witnesses the employee proposes to produce for the hearing, or the facts about which a witness will testify.

(e) *Dismissal of request for hearing.* The Secretary considers the employee to have waived the request for a hearing of any kind—

(1) If an employee does not provide the hearing official in a timely manner the written statement required under paragraph (d) of this section; or

(2) If the employee does not appear for a scheduled oral hearing.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§ 31.6 Location and timing of oral hearing.

(a) If the Secretary grants a request for an oral hearing, the Secretary selects the time, date, and location of the hearing. The Secretary selects, to the extent feasible, the location that is most convenient for the employee.

(b) For a current military employee, the Secretary selects the time, date, and location of the hearing after consultation with the Secretary of Defense.

(c) For a current Coast Guard employee, the Secretary selects the time, date, and location of the hearing after consultation with the Secretary of Transportation.

(d) For an employee not described in paragraph (a) or (b) of this section, the hearing will be held in Washington, DC, or in one of the following cities: Boston, Philadelphia, New York, Atlanta, Chicago, Dallas, Kansas City, Denver, San Francisco, or Seattle.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§ 31.7 Hearing procedures.

(a) *Independence of hearing official.* A hearing provided under this part is conducted by a hearing official who is neither an employee of the Department nor otherwise under the supervision or control of the Secretary.

(b) *Lack of subpoena authority or formal discovery.* (1) Neither the hearing official nor the Secretary has authority to issue subpoenas to compel the production of documents or to compel the attendance of witnesses at an oral hearing under this part. The Secretary will attempt to make available during an oral hearing the testimony of a current official of the Department if—

(i) The employee had identified the official in the request for a hearing under § 31.5(b) and demonstrated that the testimony of the official is necessary to resolve adequately an issue of fact raised by the employee in the request for a hearing; and

(ii) The Secretary determines that the responsibilities of the official permit his or her attendance at the hearing.

(2) If the Secretary determines that the testimony of a Department official is necessary, but that the official cannot attend an oral hearing to testify, the Secretary attempts to make the official available for testimony at the hearing by means of a telephone conference call.

(3) No discovery is available in a proceeding under this part except as provided in § 31.4.

(c) *Hearing on written submissions.* If a hearing is conducted on the written submissions, the hearing official reviews documents and responses submitted by the Secretary and the employee under § 31.5.

(d) *Conduct of oral hearing.* (1) The hearing official conducts an oral hearing as an informal proceeding. The official—

(i) Administers oaths to witnesses;

(ii) Regulates the course of the hearing;

(iii) Considers the introduction of evidence without regard to the rules of evidence applicable to judicial proceedings; and

(iv) May exclude evidence that is redundant, or that is not relevant to those issues raised by the employee in the request for hearing under § 31.5 that remain in dispute.

(2) An oral hearing is generally open to the public. However, the hearing official may close all or any portion of the hearing if doing so is in the best interest of the employee or the public.

(3) The hearing official may conduct an oral hearing by telephone conference call—

(i) If the employee is located in a city outside the Washington, D.C. Metropolitan area.

(ii) At the request of the employee.

(iii) At the discretion of the hearing official.

(4) No written record is created or maintained of an oral hearing provided under this part.

(e) *Burden of proof.* In any hearing under this part—

(1) The Secretary bears the burden of proving, by a preponderance of the evidence, the existence and amount of the debt, and the failure of the employee to repay the debt, as the debt is described in the pre-offset notice provided under § 31.3; and

(2) The employee bears the burden of proving, by a preponderance of the evidence—

(i) The existence of any fact that would establish that the debt described in the pre-offset notice is not enforceable by offset; and

(ii) The existence of any fact that would establish that the amount of the proposed offset would cause an extreme financial hardship for the employee.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§ 31.8 Rules of decision.

(a) *Enforceability of debt by offset.* In deciding whether the Secretary has established that the debt described in the pre-offset under § 31.3 is owed by the employee, or whether the employee has established that the debt is not enforceable by offset, the hearing official shall apply the principles in this paragraph.

(1) The statutes and Department regulations authorizing and implementing the program under which the debt arose must be applied in accordance with official written interpretations by the Department.

(2) The principles of res judicata and collateral estoppel apply to resolution of disputed facts in those instances in which the debt or material facts in dispute have been the subject of prior judicial decision.

(3) The act or omission of an institution of higher education at which the employee was enrolled does not constitute a defense to repayment of an obligation with regard to a grant or loan under a program authorized under Title IV of the Higher Education Act or similar authority, except to the extent that—

(i) The act or omission constitutes a defense to the debt under applicable Federal or State law;

(ii) The institution owed the employee a refund under its refund policy and failed to pay that refund to the employee or to a lender holding a loan made to the employee; or

(iii) The institution ceased teaching activity while the employee was in

attendance and during the academic period for which the grant or loan was made, and failed to refund to the employee or holder of a loan to the employee a proportionate amount of the grant or loan funds used to pay tuition and other institutional charges for that academic period.

(4)(i) A debt otherwise established as owed by the employee is enforceable by offset under this part if the Secretary sends the pre-offset notice for the debt within the ten year period following the later of—

(A) The date on which the Secretary acquired the debt by assignment or referral, or

(B) The date of a subsequent partial payment reaffirming the debt.

(ii) Periods during which the statute of limitations applicable to a lawsuit to collect the debt has been tolled under 11 U.S.C. 108, 28 U.S.C. 2416, 50 U.S.C. App. 525, or other authority are excluded from the calculation of the ten year period described in paragraph (a)(4)(i) of this section.

(b) *Extreme financial hardship.* (1) In deciding whether an employee has established that the amount of the proposed offset would cause extreme financial hardship to the employee, the hearing official shall determine whether the credible, relevant evidence submitted demonstrates that the proposed offset would prevent the employee from meeting the costs necessarily incurred for essential subsistence expenses of the employee and his or her spouse and dependents.

(2) For purposes of this determination, essential subsistence expenses include costs incurred only for food, housing, clothing, essential transportation and medical care.

(3) In making this determination, the hearing official shall consider—

(i) The income from all sources of the employee, and his or her spouse and dependents;

(ii) The extent to which the assets of the employee and his or her spouse and dependents are available to meet the offset and the essential subsistence expenses;

(iii) Whether these essential subsistence expenses have been minimized to the greatest extent possible;

(iv) The extent to which the employee and his or her spouse and dependents can borrow to satisfy the debt to be collected by offset or to meet essential expenses; and

(v) The extent to which the employee and his or her spouse and dependents have other exceptional expenses that should be taken into account, and whether these expenses have been minimized.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§ 31.9 Decision of the hearing official.

(a) The hearing official issues a written opinion within sixty days of the date on which the employee filed a request for a hearing under § 31.5, unless a delay in the proceedings has been granted at the request of the employee. In the opinion, the hearing official states his or her decision and the findings of fact and conclusions of law on which the decision is based.

(b) If the hearing official finds that a portion of the debt described in the pre-offset notice under § 31.3 is not enforceable by offset, the official shall state in the opinion that portion which is enforceable by offset.

(c) If the hearing official finds that the amount of the offset proposed in the pre-offset notice will cause an extreme financial hardship for the employee, the hearing official shall establish an offset schedule that will result in the repayment of the debt in the shortest period of time without producing an extreme financial hardship for the employee.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§ 31.10 Request for repayment agreement.

(a) The Secretary does not initiate an offset under this part if the employee agrees in writing to repay the debt under terms acceptable to the Secretary and makes the first payment due under the agreement on or before the latest of—

(1) The seventh day after the date of the decision of the hearing official, if the employee timely requested a hearing under § 31.5 (a) and (d);

(2) The sixty-fifth day after the date of the pre-offset notice under § 31.3 if the employee did not timely request either a hearing in accordance with § 31.5 (a) and (d) or an opportunity to inspect and copy documents related to the debt under § 31.4; or

(3) The fifteenth day after the date on which the Secretary made available documents related to the debt, if the employee filed a timely request for documents under § 31.4.

(b) In the agreement, the Secretary and the employee may agree to satisfaction of the debt from sources other than an offset under this part, or may modify the amount proposed to be offset in the pre-offset notice or estimated in the decision of the hearing official.

(c) If the employee does not enter into a repayment agreement acceptable to the Secretary within the deadlines in this section, the Secretary may initiate an offset under this part. The Secretary continues to collect by offset until an employee enters in a satisfactory repayment agreement for the debt. The Secretary suspends an offset already commenced under circumstances described in § 31.5(a)(2).

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§ 31.11 Offset process.

(a) The Secretary attempts to collect debts under this part within the shortest time authorized under—

(1) The offset schedule proposed in the pre-offset notice, unless modified by agreement or by the decision of a hearing official;

(2) A written repayment agreement with the employee; or

(3) The offset schedule established in the decision of the hearing official.

(b) In proposing an offset schedule under § 31.3 or establishing a repayment agreement under § 31.10, the Secretary also considers the expected period of Federal employment of the employee.

(c) Unless the Secretary determines, in his discretion, to delay or suspend collection, the Secretary effects an offset under this part—

(1) According to the terms agreed to by the employee pursuant to a timely request under § 31.10 to enter into a repayment agreement; or,

(2) After the deadlines in § 31.10(b) for requesting a repayment agreement with the Secretary.

(d) If the employee retires, resigns, or leaves Federal employment before the debt is satisfied, the Secretary collects the amount necessary to satisfy the debt by offset from subsequent payments of any kind, including a final salary payment or a lump sum annual leave payment, due the employee on the date of separation. If the debt cannot be satisfied by offset from any such final payment due the employee on the date of separation, the Secretary collects the debt from later payments of any kind due the employee in accordance with the provisions of 4 CFR 102.4.

(e) The Secretary effects an offset under this part against payments owing to an employee of another Federal agency after completion of the requirements of this part, in accordance with the provisions of 5 CFR 550.1108.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

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