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Presidential Documents

Title 3—

The President

Executive Order 12652 of September 19, 1988

Return of Authority To Administer Federal Employees' Compensation Act to the Department of Labor From the Panama Canal Commission

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including the Panama Canal Act of 1979 (93 Stat. 452; 22 U.S.C. 3601 *et seq.*), section 8146 of Title 5 of the United States Code, section 301 of Title 3 of the United States Code, and in order to return to the Secretary of Labor from the Panama Canal Commission the administration of the Federal Employees' Compensation Act as it applies to the employees of the Panama Canal Commission, it is hereby ordered as follows:

Section 1. Section 1–307 of Executive Order No. 12215 of May 27, 1980, is rescinded.

Sec. 2. The transfer and other exercises of authority made pursuant to Section 1–307 of Executive Order No. 12215 in Department of Defense Memorandum, "Implementation of Executive Order 12215, 'Delegation of Panama Canal Functions'," July 18, 1980, are rescinded.

Sec. 3. This Order shall be effective January 1, 1989.

Ronald Reagan

THE WHITE HOUSE,
September 19, 1988.

[FR Doc. 88–21764
Filed 9–20–88; 12:25 pm]
Billing code 3195–01–M

Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1632

Public Observation of Meetings

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Federal Retirement Thrift Investment Board (the Board) was established by Pub. L. 99-335 (June 6, 1986), to administer the Thrift Savings Plan for Federal employees. Regulations of the Board are contained in Title 5 CFR (Chapter VI) Parts 1600 through 1699. The Executive Director of the Board is publishing in Part 1632 final regulations concerning procedures which will govern public meetings of the Board. These regulations implement the Government in the Sunshine Act (5 U.S.C. 552b).

EFFECTIVE DATE: September 22, 1988.

FOR FURTHER INFORMATION CONTACT: John J. O'Meara, Assistant General Councel (202) 523-6367.

SUPPLEMENTARY INFORMATION: The Federal Retirement Thift Investment Board published a notice of proposed rulemaking in the **Federal Register** on April 11, 1988 (53 FR 11864). No comments were received. After further review it was determined that no changes in the proposed notice were required. Accordingly, the proposed rule is published as a final rule.

The Federal Employees' Retirement System Act of 1986 established a five member Board which is responsible for policies governing investments and the administration of the Thrift Savings Plan. They are appointed by the President; however, the Speaker of the House of Representatives and the Majority Leader of the Senate each recommends one candidate for appointment. Initial appointments were made without the advice and consent of the Senate. See 5 U.S.C. 8472 note. Subsequent appointments will be made with the advice and consent of the Senate. Since the Government in the Sunshine Act applies to any agency which is headed by a collegial body composed of two or more individual members, a majority of whom are appointed by the President with the advice and consent of the Senate, the initial Board members will serve until such time as a majority of the Board is confirmed by the Senate. At that time these regulations will apply to public meetings of the Board. As of September 16, 1988, a majority of Board Members had not been confirmed by the Senate.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only internal procedures applicable to the public meetings of the Board.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Rulemaking and 30-Day Delay of Effective Date

Pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists for making these regulations effective in less than 30 days.

List of Subjects in 5 CFR Part 1632

Administrative practice and procedure, Sunshine Act, Information, Public meetings.

Accordingly, Title 5 of the Code of Federal Regulations is amended to add Part 1632 to Chapter VI as set forth below.

Federal Retirement Thrift Investment Board.
Francis X. Cavanaugh,
Executive Director.

PART 1632—RULES REGARDING PUBLIC OBSERVATION OF MEETINGS

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1632.1 Purpose and scope.
1632.2 Definitions.
1632.3 Conduct of agency business.
1632.4 Meetings open to public observation.
1632.5 Exemptions.
1632.6 Public announcement of meetings.
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1632.8 Changes with respect to publicly announced meeting.
1632.9 Certification of General Counsel.
1632.10 Transcripts, recordings, and minutes.
1632.11 Procedures for inspection and obtaining copies of transcriptions and minutes.

Authority: 5 U.S.C. 552b and 5 U.S.C. 8474.

§ 1632.1 Purpose and scope.

This part is issued by the Federal Retirement Thrift Investment Board (Board) under section 552b of Title 5 of the United States Code, the Government in the Sunshine Act, to carry out the policy of the Act that the public is entitled to the fullest practicable information regarding the decision making processes of the Board while at the same time preserving the rights of individuals and the ability of the Board to carry out its responsibilities. These regulations fulfill the requirement of subsection (g) of the Act that each agency subject to the provisions of the Act shall promulgate regulations to implement the open meeting requirements of subsections (b) through (f) of the Act.

§ 1632.2 Definitions.

For purposes of this part, the following definitions shall apply:

(a) The term "Act" means the Government in the Sunshine Act, 5 U.S.C. 552b.

(b) The term "Board" means the Federal Retirement Thrift Investment Board and subdivisions thereof.

(c) The term "meeting" means the deliberations of at least the number of individual agency members required to take action on behalf of the Board where such deliberations determine or result in the joint conduct or disposition of official Board business. However, this term does not include—

(1) Deliberations required or permitted by subsections (d) or (e) of the Act (relating to decisions to close all or a portion of a meeting, or to decisions on the timing or content of an announcement of a meeting), or

(2) The conduct or disposition of official agency business by circulating written material to individual members.

(d) The term "number of individual agency members required to take action

on behalf of the agency" means three members.

(e) The term "member" means a member of the Board appointed under section 101 of the Federal Employees' Retirement System Act of 1986, 5 U.S.C. 8472.

(f) The term "public observation" means that the public shall have the right to listen and observe but not the right to participate in the meeting or to record any of the meeting by means of cameras or electronic or other recording devices unless approval in advance is obtained from the Secretary of the Board.

§ 1632.3 Conduct of agency business.

Members shall not jointly conduct or dispose of official Board business other than in accordance with this part.

§ 1632.4 Meetings open to public observation.

(a) Except as provided in § 1632.5 of this part, every portion of every meeting of the agency shall be open to public observation.

(b) The Freedom of Information Act, 5 U.S.C. 552, and the Board's implementing regulations, 5 CFR Part 1611, shall govern the availability to the public of copies of documents considered in connection with the Board's discussion of agenda items for a meeting that is open to public observation.

(c) The Board will maintain mailing lists of names and addresses of all persons who wish to receive copies of agency announcements of meetings open to public observation. Requests for announcements may be made by telephoning or by writing to the Office of External Affairs, Federal Retirement Thrift Investment Board, 805 Fifteenth Street NW., Washington, DC 20005.

§ 1632.5 Exemptions.

(a) Except in a case where the Board finds that the public interest requires otherwise, the Board may close a meeting or a portion or portions of a meeting under the procedures specified in § 1632.7 or § 1632.8 of this part, and withhold information under the provisions of §§ 1632.6, 1632.7, 1632.8, or 1632.11 of this part, where the Board properly determines that such meeting or portion of its meeting or the disclosure of such information is likely to:

(1) Disclose matters that are:

(i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy, and

(ii) In fact properly classified pursuant to such Executive Order;

(2) Relate solely to internal personnel rules and practices;

(3) Disclose matters specifically exempted from disclosure by statute (other than section 552 of Title 5 of the United States Code), provided that such statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Established particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would:

(i) Interfere with enforcement proceedings,

(ii) Deprive a person of a right to a fair trial or an impartial adjudication,

(iii) Constitute an unwarranted invasion of personal privacy,

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by a Federal agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(v) Disclose investigative techniques and procedures, or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by or on behalf of, or for the use of the Board or other Federal agency responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of which would:

(i) Be likely to (A) lead to significant speculation in currencies, securities, or commodities, or (B) significantly endanger the stability of any financial institution; or

(ii) Be likely to significantly frustrate implementation of a proposed action except that paragraph (a)(9)(ii) of this section shall not apply in any instance where the Board has already disclosed to the public the content or nature of its proposed action, or where the Board is required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(10) Specifically concern the issuance of a subpoena, participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition of a particular case of formal agency adjudication pursuant to the procedures in section 554 of Title 5 of the United States Code or otherwise involving a determination on the record after opportunity for a hearing.

(b) [Reserved]

§ 1632.6 Public announcement of meetings.

(a) Except as otherwise provided by the Act, public announcement of meetings open to public observation and meetings to be partially or completely closed to public observation pursuant to § 1632.7 of this part will be made at least one week in advance of the meeting. Except to the extent such information is determined to be exempt from disclosure under § 1632.5 of this part, each such public announcement will state the time, place and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated to respond to requests for information about the meeting.

(b) If a majority of the members of the Board determines by a recorded vote that Board business requires that a meeting covered by paragraph (a) of this section be called at a date earlier than that specified in paragraph (a) of this section, the Board shall make a public announcement of the information specified in paragraph (a) of this section at the earliest practicable time.

(c) Changes in the subject matter of a publicly announced meeting, or in the determination to open or close a publicly announced meeting or any portion of a publicly announced meeting to public observation, or in the time or place of a publicly announced meeting made in accordance with the procedures specified in § 1632.9 of this part, will be publicly announced at the earliest practicable time.

(d) Public announcements required by this section will be posted at the Board's External Affairs Office and may be made available by other means or at other locations as may be desirable.

(e) Immediately following each public announcement required by this section, notice of the time, place and subject matter of a meeting, whether the

meeting is open or closed, any change in one of the preceding announcements and the name and telephone number of the official designated by the Board to respond to requests about the meeting, shall also be submitted for publication in the **Federal Register**.

§ 1632.7 Meetings closed to public observation.

(a) A meeting or a portion of a meeting will be closed to public observation, or information as to such meeting or portion of a meeting will be withheld, only by recorded vote of a majority of the Members of the Board when it is determined that the meeting or the portion of the meeting or the withholding of information qualifies for exemption under § 1632.5. Votes by proxy are not allowed.

(b) Except as provided in paragraph (c) of this section, a separate vote of the Members of the Board will be taken with respect to the closing or the withholding of information as to each meeting or portion thereof which is proposed to be closed to public observation or with respect to which information is proposed to be withheld pursuant to this section.

(c) A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to public observation or with respect to any information concerning such series of meetings proposed to be withheld, so long as each meeting or portion thereof in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series.

(d) Whenever any person's interests may be directly affected by a portion of the meeting for any of the reasons referred to in exemption (a)(5), (a)(6) or (a)(7) of § 1632.5 of this part, such person may request in writing to the Secretary of the Board that such portion of the meeting be closed to public observation. The Secretary, or in his or her absence, the Acting Secretary of the Board, shall transmit the request to the members and upon the request of any one of them a recorded vote shall be taken whether to close such meeting to public observation.

(e) Within one day of any vote taken pursuant to paragraphs (a) through (d) of this section, the agency will make publicly available at the Board's External Affairs Office a written copy of such vote reflecting the vote of each member on the question. If a meeting or a portion of a meeting is to be closed to public observation, the Board, within one day of the vote taken pursuant to paragraphs (a) through (d) of this section, will make publicly available at the Board's External Affairs Office a full written explanation of its action closing the meeting or portion of the meeting together with a list of all persons expected to attend the meeting and their affiliation, except to the extent such information is determined by the Board to be exempt from disclosure under subsection (c) of the Act and § 1632.5 of this part.

(f) Any person may request in writing to the Secretary of the Board that an announced closed meeting, or portion of the meeting, be held open to public observation. The Secretary, or in his or her absence, the Acting Secretary of the Board, will transmit the request to the members of the Board and upon the request of any member a recorded vote will be taken whether to open such meeting to public observation.

§ 1632.8 Changes with respect to publicly announced meetings.

The subject matter of a meeting or the determination to open or close a meeting or a portion of a meeting to public observation may be changed following public announcement under § 1632.6 only if a majority of the Members of the Board determines by a recorded vote that that agency business so requires and that no earlier announcement of the change was possible. Public announcement of such change and the vote of each member upon such change will be made pursuant to § 1632.6(c). Changes in time, including postponements and cancellations of a publicly announced meeting or portion of a meeting or changes in the place of a publicly announced meeting will be publicly announced pursuant to § 1632.6(c) by the Secretary of the Board or, in the Secretary's absence, the Acting Secretary of the Board.

§ 1632.9 Certification of General Counsel.

Before every meeting or portion of a meeting closed to public observation under § 1632.7 of this part, the General Counsel, or in the General Counsel's absence, the Acting General Counsel, shall publicly certify whether or not in his or her opinion the meeting may be closed to public observation and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting and the persons present, witll be retained for the time prescribed in § 1632.10(d).

§ 1632.10 Transcripts, recordings, and minutes.

(a) The Board will maintain a complete transcript or electronic recording or transcription thereof adequate to record fully the proceedings of each meeting or portion of a meeting closed to public observation pursuant to exemption (a)(1), (a)(2), (a)(3), (a)(5), (a)(6), (a)(7), or (a)(9)(ii) of § 1632.5 of this part. Transcriptions of recordings will disclose the identity of each speaker.

(b) The Board will maintain either such a transcript, recording or transcription thereof, or a set of minutes that will fully and clearly describe all matters discussed and provide a full and accurate summary of any actions taken and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflecting the vote of each member on the question), for meetings or portions of meetings closed to public observation pursuant to exemptions (a)(8), (a)(9)(i)(A) or (a)(10) of § 1632.5 of this part. The minutes will identify all documents considered in connection with any action taken.

(c) Transcripts, recordings or transcriptions thereof, or minutes will promptly be made available to the public in the External Affairs Office except for such item or items of such discussion or testimony as may be determined to contain information that may be withheld under subsection (c) of the Act and § 1632.5 of this part. These documents, disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription.

(d) A complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording or verbatim copy of a transcription thereof of each meeting or portion of a meeting closed to public observation will be maintained for a period of at least two years, or one year after the conclusion of any Board proceeding with respect to which the meeting or portion thereof was held, whichever occurs later.

§ 1632.11 Procedures for inspection and obtaining copies of transcriptions and minutes.

(a) Any person may inspect or copy a transcript, a recording or transcription, or minutes described in § 1632.10(c) of this part.

(b) Requests for copies of transcripts, recordings or transcriptions of recordings, or minutes described in § 1632.10(c) of this part shall specify the meeting or the portion of meeting desired and shall be submitted in writing to the Secretary of the Board, Federal Retirement Thrift Investment Board, 805 Fifteenth Street NW.,

Washington, DC 20005. Copies of documents identified in minutes may be made available to the public upon request under the provisions of 5 CFR Part 1630 (the Board's Freedom of Information Act regulations).

[FR Doc. 88-21589 Filed 9-21-88 8:45 am]
BILLING CODE 6760-01-M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 33; Docket No. 5892S]

General Crop Insurance Regulations; Wheat Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1989 and succeeding crop years, by amending the Wheat Endorsement, 7 CFR § 401.101, to clarify the quality adjustment of wheat in relation to the U.S. Grain Standards (7 CFR 810.2201 *et seq.).*

EFFECTIVE DATE: September 22, 1988.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as April 1, 1992.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) an annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

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.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Wednesday, June 8, 1988, FCIC published a proposed rule in the **Federal Register** at 53 FR 21455, to amend the Wheat Endorsement (7 CFR 401.101) to clarify the quality adjustment of wheat in relation to the U.S. Grain Standards (7 CFR 810.2201 et seq.). The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule.

One comment was received from the Crop Hail Insurance Actuarial Association (CHIAA) correctly affirming that the stated purpose of the proposed rule was to make test weight by class a criteria for quality adjustment, thus correcting an omission in the Wheat Endorsement. The current Wheat Endorsement provides in this section that a test weight of 53 pounds will be used as a criteria in determining the adjustment, without reference to class of wheat.

In its comment, CHIAA stated that the rule proposed determines that mature production will be eligible for quality adjustment which grades U.S. No. 5 or Sample Grade and that the current endorsement has standards equal to U.S. No. 4 grade (53 pounds). CHIAA felt that the proposed rule would increase the minimum test weight from 50 to 53 pounds; and correspondingly increase the maximum total damaged kernels from 10 to 15 percent; and, the shrunken or broken kernels from 12 to 20 percent.

A careful reading of the present endorsement, however, determines that no change will be made for some classes of wheat and a change of only one pound in test weight will be made for other classes. Under either endorsement, the quality adjustment occurred when wheat graded U.S. No. 5 for certain factors.

Upon review of these regulations, FCIC determined that the test weight used for quality adjustment was not in accordance with the U.S. Grain Standards as was intended. The section currently provides that, a test weight of 53 pounds per bushel will be used as a criteria to determine the adjustment without reference to wheat class. To conform to the U.S. Grain Standards, the test weight by class of wheat insured should be used.

For this reason, FCIC does not accept CHIAA's recommendation that this proposal be revised to remain consistent with the current program, since there appears to be no difference in the meaning or intent of this section in the proposed rule and CHIAA's 1988—CHIAA 714 Small Grain Provisions on wheat test requirements for quality adjustment.

Discussions held with representatives of the Federal Grain Inspection Service resulted in suggested language which, while changing the wording as appearing in the proposed rule at 53 FR 21455, does not change the meaning of this section or the intent of the proposed rule.

FCIC hereby amends the Claim for Indemnity section of the Wheat endorsement to incorporate, by reference, the U.S. Grain Standards as to those factors which are relevant to the insured's claim.

This final rule is designed to become effective beginning with all wheat planted in the spring of 1989. It is the intention of FCIC to file this rule as a final rule by the next appropriate filing date of December 31, 1988, for those countries with an April 15 cancellation date, as provided in Section 9 of the Wheat Endorsement.

However, this action will have the effect of not providing appropriate provisions for test weight by class for those insured who produce fall planted 1989 wheat of certain classes (1989 wheat planted in the fall of 1988), because the filing date of December 31 is past the time when such wheat is planted.

For this reason, and in order to provide an equitable determination for insureds producing *both* spring and fall planted wheat, FICA will administratively consider claims for indemnity submitted by fall planted wheat insureds on the same basis as outlined in this rule.

List of Subjects in 7 CFR Part 401

General crop insurance regulations, Wheat endorsement.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.).*

the Federal Crop Insurance Corporation amends the General Crop Insurance Regulations in 7 CFR Part 401, by amending the Wheat Endorsement (7 CFR 401.101), to be effective for the 1989 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: (7 U.S.C. 1506, 1516).

2. In the Wheat Endorsement in § 401.101, the introductory text of paragraph 7.b.(2) is revised to read as follows:

§ 401.101 Wheat endorsement.

* * * * *

7. Claim for Indemnity.

b. * * *

(2) Wheat, which due to insurable causes, grades not higher than U.S. No. 5 because of test weight, total damage, or shrunken and broken kernels, or which meets the special grade requirements for "garlicky", "smutty", "light smutty", or "ergoty", (all as graded by a grain grader licensed by the Federal Grain Inspection Service or a licensed grader under the United States Warehouse Act) will be adjusted by:

* * * * *

Done in Washington, DC, on September 19, 1988.

Edward D. Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-21639 Filed 9-21-88; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Parts 418, 419, 427, and 429

[Docket No. 5919S]

Wheat, Barley, Oat, and Rye Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby adopts, as a final rule, an interim rule which was published in the **Federal Register** on June 22, 1987 (52 FR 23423). The interim rule amended the Barley, Oat, Rye, and Wheat Crop Insurance Regulations (7 CFR Parts 419, 427, 429, and 418, respectively), effective for the 1988 calendar year only, by extending the date for filing contract changes specified in the policies for insuring such crops. The intended effect of this rule is to allow additional time for FCIC to complete its studies of these programs and to amend the contracts for the 1988 crop year.

EFFECTIVE DATE: September 22, 1988.

ADDRESS: Written comments on this interim rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations remains unchanged and is made part of each regulation affected.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) an annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

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.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The interim rule published at 52 FR 23423 amended Section 16 of the policy for each of the crops affected which provides that any changes in the contract must be placed on file in the service office by June 30, 1987. The contract consists of the application, the policy, and the actuarial table. Due to the timeframe involved in making changes for each crop insured in each county where such insurance is offered, the counties where changes were scheduled to be on file by June 30, 1987, had that date extended to July 30, 1987.

FCIC was in the process of reviewing the wheat, barley, oat, and rye crop insurance regulations with a view toward making necessary changes in the policy for insurance based on actuarial soundness. In order to allow time for completion of this review, and filing of the applicable changes in each service office before the first required date for such filing (June 30), FCIC amended such regulations by interim rule to extend the time for filing program changes for these crops from June 30 to July 30, effective for the 1988 calendar year only.

John Marshall, Manager, FCIC, determined that an emergency situation exists which warrants publication of this rule without providing for a period for public comment before such publication. Without this review, the statutory mandate that the program be actuarially sound could not be met. The timeframe involved in making these changes did not permit filing of such changes by the present contract change date of June 30. There was not sufficient time to provide for public comment and implement these changes prior to June 30. Consequently, it was determined that the date by which such changes are required to be placed on file in the service office shall be extended from June 30, 1987 until July 30, 1987, and made effective for the 1988 calendar year only for Wheat, Barley, Oat, and Rye.

FCIC solicited public comment on this interim rule for 60 days after publication in the **Federal Register**. The rule was scheduled for review so that any amendment made necessary by public comment may be published in the **Federal Register** as quickly as possible thereafter. No comments were received. Therefore, the interim rule is hereby adopted as final.

List of Subjects

7 CFR Part 418

Crop insurance, Wheat.

7 CFR Part 419

Crop insurance, Barley.

7 CFR Part 427

Crop Insurance, Oat.

7 CFR Part 429

Crop insurance, Rye.

Final Rule

Accordingly, the Interim Rule, published in the **Federal Register** on June 22, 1987, at 52 FR 23423, is hereby adopted as final.

Authority: 7 U.S.C. 1506, 1516.

Done in Washington, DC, on September 29, 1988.

Edward D. Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-21638 Filed 9-21-88; 8:45 am]

BILLING CODE 3410-08-M

Rural Telephone Bank

7 CFR Part 1610

Loan Policies

July 29, 1988.

AGENCY: Rural Telephone Bank, USDA.

ACTION: Final rule.

SUMMARY: The Rural Telephone Bank (Bank) hereby amends Part 1610 Loan Policies, Chapter XVI in Title 7 of the Code of Federal Regulations by revising two new §§ 1610.10 and 1610.11. These sections establish the methodology for determining the interest rate on Bank loans and the interest rate to be used in determining loan feasibility. This action implements sections 1411(c) and 1412 of Pub. L. 100-203, the Omnibus Budget Reconciliation Act of 1987 (101 Stat. 1330), signed into law December 22, 1987, which amends section 408(b) of the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.).

All borrowers receiving loan fund advances on or after December 22, 1987 under Bank loans approved on or after October 1, 1987 are affected by the addition of § 1610.10 and the deletion of § 1610.5(b).

All borrowers receiving Bank loans supported by a feasibility study dated on or after December 22, 1987, will be affected by the addition of § 1610.11.

EFFECTIVE DATE: This final rule is effective September 22, 1988.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Chief, Loans and Management Branch, Telecommunications Staff Division, Rural Electrification Administration, Room 2823—South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 382-9550. The Final Regulatory Impact Analysis describing the options considered in developing this rule amendment is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This rule is issued in conformity with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs of prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity, innovation, or on the ability of United States-based enterprises to complete with foreign-based enterprises in domestic or export markets. Therefore, this rule has been determined to be "not major."

This action does not fall witin the scope of the Regulatory Flexibility Act. The Bank has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.* (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. For the reasons set forth in the final rule related Notice to 7 CFR Part 3015, Subpart V (50 FR 47034, November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consulation with State and local officials.

This rule amendment contains no information or recordkeeping requirements which would require approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 et. seq.).

Background

Historically the interest rate on Bank loans was set at the cost of money rate as determined quarterly by the Governor, and this rate was used to determine feasibility and was applied to loans on the date of loan approval.

The Bank published a Final Rule in the **Federal Register** on November 13, 1987, which changed this method by providing for the interest rate to be determined monthly rather than quarterly, and to be set at the time funds are advanced. The rule was applicable to all Bank loans approved on or after December 1, 1987. That rule is superseded by this one.

Comments

In the Interim Rule published March 4, 1988, the Rural Telephone Bank invited interested parties to file comments on or before April 4, 1988. Five different individual or organizations submitted comments on the interim rule. They are:

(1) Congressmen Glenn English
(2) Congressmen Ed Jones
(3) National Telephone Cooperative Association (NTCA)
(4) United States Telephone Association (USTA)
(5) National Rural Telecom Association (NRTA)

Comments (1) and (2) were filed jointly, as were comments (4) and (5).

All commentators noted that subparagraph (c)(2)(ii) of § 1601.10 of the interim rule, which read, "The rate at which dividends are payable' means the total amount of patronage rufunds in the form of Class B stock for the fiscal year divided by the total amount of outstanding Class B stock at the end of the fiscal year," is in conflict with section 406(d) of the Rural Electrification Act of 1936 as amended by Pub. L. 100-203 et al, which states that, "No dividends shall be payable on Class B stock." In the Final Rule, § 1610.10(c)(2)(ii) has been deleted and § 1610.10(c)(2)(i) has been combined with § 1610.10(c)(2). This section of the Final Rule is in accord with the applicable section of the RE Act as amended.

NTCA commented that § 1610.10(b)(1) does not include the information needed to determine "the average yield on the day of advance on outstanding marketable obligations of the United States having a final maturity comparable to the final maturity of the advance." Said information is required to determine the initial interest rate on advances under § 1610.10(b) and for feasibility analysis.

The methodology contained in § 1610.10(b)(1) was selected for a number of reasons. The Treasury's daily yield curve gives the yield on Treasury securities for different maturities. It is based on the closing market bid yields on actively traded Treasury securities in the over-the-counter market. Thus, the Treasury yield curve is the average yield on outstanding marketable securities of the United States.

The use of yields derived from Treasury's daily yield curve is also supported by precedent. The enabling legislation that specifies the rates to be used by the Federal Financing Bank (FFB) (Pub. L. 93-224) is, with regard to relating rates to "the current average yield on outstanding marketable obligations of the United States of comparable maturity", virtually identical to the language in Pub. L. 100-

203. The FFB uses the Treasury yield curve in setting its rates.

The rates contained in the Federal Reserve statistical release are taken directly from the Treasury daily yield curve. The Treasury yield curve is linear between 10- and 30-year maturities and is considered flat beyond 30 years. Straight line interpolation for maturities between 10 and 30 years and use of the 30-year rate for maturities over 30 years will result in rates virtually identical to rates obtained directly from the Treasury yield curve. Results from the Treasury daily yield curve are not available on a timely basis to REA or the general public. The Federal Reserve statistical release is published weekly and is readily available. Thus rates used by the Bank will accurately reflect the average yield on outstanding marketable obligations of the United States of comparable maturity, and they will be easily verifiable by interested parties. This section has not been changed in the Final Rule.

In addition, NTCA objected to the use of a weekly average rate in § 1610.11(b) instead of a daily rate. As a practical matter the closest rate obtainable for the feasibility determination would be the average yield for the preceding day or the day before that. This would cause certain administrative problems.

The Bank Area offices are continually working on loan processing and may arrive at the point of making a feasibility determination at any time. This means that these offices must always have a valid interest rate for use in the determination. While the prior day's yields would usually be available by telephone, this would introduce a potential for errors in transmitting the data and would make it more difficult to verify the data used.

The procedure set forth in the Rule allows the Bank staff to obtain a printed copy of the data, verify that it has been used correctly in the interpolation, and distribute the results to the line offices in a timely manner. This greatly reduces errors and processing delays. Additionally, use of the preceding week's average yields will smooth out day-to-day instability in yields due to noneconomic forces, and thus reduce any problems in arbitrarily choosing one day rather than another to make a feasibility determination because the yields are relatively high or low on that day. This section has not been changed in the Final Rule.

USTA and NRTA commented that § 1610.10(c)(2)(i) of the Interim Rule could result in an overstatement of the amount of funds received by the Bank from the issuance of Class B stock as it did not consider rescissions of Class B stock. They note that this problem could be solved by subtracting Class B stock rescissions from the amount of funds received from the issuance of Class B stock. REA agrees, thus the phrase "less rescissions of Class B stock during the fiscal year" has been added to § 1610.10(c)(2) of the Final Rule to provide for the deduction of Class B stock rescissions from the amount of Class B stock issued. REA believes this is the most practical and effective method to deal with the issue raised by USTA and NRTA, consistent with the scope and intent of section 1411(c) of Pub. L. 100–203.

USTA and NRTA contend that this approach could cause the amount of Class B stock to be overstated in certain years and understated in other years. They recognize that the overall effect on the Bank interest rate will balance out over time, but state that the Bank rate could be slightly higher or lower in any given year.

From 1974 to 1987, rescissions of Class B stock have averaged 0.5% of total Bank advances for each year. Therefore, any reasonable adjustment for rescissions of Class B stock will have a very small effect on the Bank's average cost of money, rendering de minimus any effect of the approach adopted herein on overstating or understating the amount received by the Bank from Class B stock in any given year.

USTA's and NRTA's preferred solution was for the Bank to adopt a policy whereby 5 percent of each loan advance would be assigned to Class B stock, instead of assigning the total amount of Class B stock to the first loan advance. That suggestion involves policy considerations broader than the scope of this regulation, and consequently it has not been adopted.

USTA and NRTA commented that § 1610.10(h) of the Interim Rule is advisory in nature and should be deleted from the Final Rule. The Bank acknowledges that this section is advisory in nature, but since it provides helpful information to borrowers on scheduling drawdowns of funds, it has been retained in the Final Rule.

List of Subjects in 7 CFR Part 1610

Loan programs—communications, Telecommunications, Telephone.

Therefore, REA hereby amends 7 CFR Part 1610 as follows:

PART 1610—[AMENDED]

1. The authority citation for 7 CFR Part 1610 continues to read:

Authority: 85 Stat. 29 et seq., 7 U.S.C. 941 et seq., as amended at Pub. L. 93–32, 87 Stat. 65 et seq., and Pub. L. 100–203, 101 Stat. 1330, et seq.

2. Sections 1610.10 and 1610.11 are revised as follows:

§ 1610.10 Determination of interest rate on Bank loans.

(a) All loan fund advances made on or after December 22, 1987 under Bank loans approved on or after October 1, 1987, shall bear interest at the rate determined as established below, but not less than 5 percent per annum.

(b) The interest rate for the period beginning on the date the advance is made and ending at the close of the fiscal year in which the advance is made shall be the average yield on the date of advance on outstanding marketable obligations of the United States having a final maturity comparable to the final maturity of the advance. The interest rate shall be determined to the nearest 0.01 percent.

(1) For this determination, the Bank will use yields on actively traded Treasury issues adjusted to constant maturities obtained from the *Federal Reserve statistical release* ("Treasury rate"). In accordance with standard Treasury procedures, the rate in effect for any given day is the rate set at the close of business on the preceding day. The 30-day Treasury rate will be applied to all advances with a final maturity of at least 30 years from date of advance. A straight-line interpolation between other Treasury rates will be used to determine the rate applicable for advances with final maturities of less than 30 years.

(2) The Bank will notify the borrower in writing of the interest rate that applies to each advance.

(c) After the fiscal year in which the advance is made, the interest rate applied to the advance will be the sum of the calculations made in paragraphs (c) (1) through (5) of this section. This interest rate determination shall be made by the Governor within 30 days of the end of each fiscal year and shall be determined to the nearest 0.01 percent.

(1) The aggregate of all amounts received by the Bank during the fiscal year from the issuance of Class A stock, multiplied by the rate of return payable by the Bank during the fiscal year as specified in section 406(c) of the Act, which product is divided by the aggregate of the amounts advanced by the Bank during the fiscal year.

(2) The aggregate of all amounts received by the Bank during the fiscal year from the issuance of Class B stock, multiplied by the rate at which dividends are payable by the Bank during the fiscal year as specified in

section 406(d) of the Act, which product is divided by the aggregate of the amounts advanced by the Bank during the fiscal year. Section 406(d) provides that "No dividends shall be payable on Class B stock." The "amounts received by the Bank during the fiscal year from the issuance of Class B stock" means the amount of cash received during the fiscal year for the purchase of Class B stock, plus the amount advanced to borrowers by the Bank during the fiscal year for such purchases, less any Class B stock that is rescinded during the fiscal year.

(3) The aggregate of all amounts received by the Bank during the fiscal year from the issuance of Class C stock, multiplied by the rate at which dividends are payable by the Bank during the fiscal year as specified in section 406(e) of the Act, which product is divided by the aggregate of the amounts advanced by the Bank during the fiscal year.

(4) The amounts received by the Bank during the fiscal year from each issue of telephone debentures and other obligations of the Bank, multiplied, respectively, by the rates at which interest is payable by the Bank during the fiscal year to holders of each issue, each of which product is divided, respectively, by the aggregate of the amounts advanced by the Bank during the fiscal year.

(5) The amount by which the aggregate of the amounts advanced by the Bank during the fiscal year exceeds the aggregate of the amount received by the Bank from the issuance of Class A stock, Class B stock, Class C stock, and telephone debentures and other obligations of the Bank during the fiscal year, multiplied by the historic cost of money rate as of the close of the immediately preceding fiscal year, which product is divided by the aggregate of the amounts advanced by the Bank during the fiscal year.

(6) As used in paragraph (c)(5) of this section, the term "historic cost of money rate as of the close of the immediately preceding fiscal year," means the sums of the results of the following calculations: The amounts advanced by the Bank in each fiscal year during the period beginning with fiscal year 1974 and ending with the immediately preceding fiscal year, multiplied, respectively, by the cost of money rate for the fiscal year (as set forth in Table I for fiscal years 1974 through 1987, and as determined by the Governor in paragraphs (c) (1) through (5) of this section for fiscal years after fiscal year 1987), with each product then divided by the aggregate of the amounts advanced by the Bank from the beginning of fiscal year 1974 through the end of the fiscal year just ended.

TABLE I

For advances made in fiscal year:	The cost of money rate shall be:
1974	5.01 percent.
1975	5.85 percent.
1976	5.33 percent.
1977	5.00 percent.
1978	5.87 percent.
1979	5.93 percent.
1980	8.10 percent.
1981	9.46 percent.
1982	8.39 percent.
1983	6.99 percent.
1984	6.55 percent.
1985	5.00 percent.
1986	5.00 percent.
1987	5.00 percent.

In this table, "fiscal year" means the 12-month period ending on September 30 of the designated year.

(d) A borrower with a Bank loan approved on or after October 1, 1987, and before December 22, 1987, and with funds not fully advanced as of December 22, 1987, may until the next advance under the loan or March 21, 1988, whichever is later, elect to have the interest rate specified in the loan commitment apply to the unadvanced portion in lieu of the rate which would otherwise apply as set forth in § 1610.10(a). A borrower making such an election shall contact, in writing, the applicable Area Office of REA. The Governor shall then adjust the interest rate that applies to the unadvanced portion of the loan accordingly.

(e) If the Bank, pursuant to section 407(b) of the Act, issues telephone debentures to refinance outstanding telephone debentures or other obligations, the Bank shall reduce the interest rate charged on each advance of Bank loan funds made during the fiscal year(s) in which the refinanced debentures or other obligations were originally issued. The reduction shall be for the period beginning on the issue date of the refinancing debentures and ending on the date the advance matures or is completely prepaid, whichever is earlier. This reduction shall be in addition to any other interest rate reduction required by section 408(b)(3) of the Act. The interest rate shall be reduced by the amount which fully reflects that percentage of the funds saved by the Bank as a result of the refinancing which is equal to the percentage representation of the advance of all advances made during the fiscal year(s) involved. In no case, however, shall the interest rate be reduced to less than 5 percent per annum. The interest rate reduction for each advance shall be determined as follows:

(1) The funds saved by the Bank as a result of the refinancing shall be computed.

(2) The advance shall be divided by the total of all advances made during the fiscal year(s) involved, and stated to the nearest .01 percent.

(3) The percentage in paragraph (e)(2) of this section is multiplied by the amount in paragraph (e)(1) of this section to determine the savings for a particular advance. The interest rate on that advance is then reduced to fully reflect the savings over the remaining amortization period of the loan from which the advance was made.

(f) Within 60 days after the issue date described in paragraph (e) of this section, the Governor shall amend the loan documentation for each advance described in paragraph (e) of this section, as necessary, to reflect any interest rate reduction applicable to the advance by reason of paragraph (e) of this section, and shall notify each affected borrower of the reduction.

(g) Within 5 days of determining the cost of money rate for a fiscal year, the Governor shall:

(1) Cause the determination to be published in the **Federal Register** in accordance with section 552 of Title 5, United States Code, and

(2) Furnish a copy of the determination to the Comptroller General of the United States.

(h) A borrower should not wait until the end of the fiscal year to submit a requisition for an advance of loan funds if it wants the advance made in that fiscal year. Borrower requisitions submitted late in the fiscal year may not be processed in that fiscal year because of workload and other factors.

§ 1610.11 Interest rate to be considered for purposes of assessing eligibility for loans.

For purposes of determining the creditworthiness of a borrower for a Bank loan pursuant to section 408(b)(4)(i) and (ii) of the Act, the Governor shall assume that the loan, if made, would bear interest at a rate equal to the average yield on the date of determination on outstanding marketable obligations of the United States having a final maturity comparable to the final maturity of the loan.

(a) The Treasury rate will be used for this determination. The 30-year Treasury rate will be used in all feasibility studies for loans with a final maturity of at least 30 years from the date of the mortgage note between the Bank and the

borrower. A straight-line interpolation between other Treasury rates will be used to determine the rate applicable for feasibility studies for loans with final maturities of less than 30 years.

(b) The Treasury rate will be obtained each Tuesday, or as soon as possible thereafter, from the Federal Reserve. The rate for the current week, from the column labeled "This week" in the *Federal Reserve statistical release,* will be used from that Wednesday through the following Tuesday.

(c) As used in this paragraph, the "date of determination" means the date of the feasibility study used in support of the loan recommendation.

Dated: August 17, 1988.

Jack Van Mark,

Acting Governor, Rural Telephone Bank.

[FR Doc. 88-21637 Filed 9-21-88; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 24

Current IRS Interest Rate Used in Calculating Interest on Overdue Accounts and Refunds

AGENCY: Customs Service, Treasury.

ACTION: Notice of calculation of interest.

SUMMARY: The Tax Reform Act of 1986 established a new method of determining the adjusted rate of interest on applicable overpayments or underpayments of Customs duties. The new method provides a two-tier system based on the short-term Federal rate and is adjusted quarterly. This notice advises the public that the interest rates, as set by the Internal Revenue Service, will be 11 percent for underpayments and 10 percent for overpayments for the quarter beginning October 1, 1988. It is being published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Robert B. Hamilton, Jr., Revenue Branch, National Finance Center, U.S. Customs Service, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278 (317) 298-1245.

SUPPLEMENTARY INFORMATION:

Background

By notice published in the Federal Register on January 5, 1987 (52 FR 255), Customs advised the public that the Tax Reform Act of 1986 (Pub. L. 99-514), amended 26 U.S.C. 6621, mandating a new method of determining the interest rate paid on applicable overpayments or underpayments of Customs duties. The new method provides a two-tier system based on the short-term Federal rate. As amended, 26 U.S.C. 6621 provides that the interest rate that Treasury pays on overpayments will be the short-term Federal rate plus 2 percentage points. The interest rate paid to the Treasury for underpayments will be the short-term Federal rate plus 3 percentage points. The rates will be rounded to the nearest full percentage.

The interest rates are determined by the Internal Revenue Service on behalf of the Secretary of the Treasury based on the average market yield on outstanding marketable obligations of the U.S. with remaining periods to maturity of 3 years or less and are to fluctuate quarterly. The rates are determined during the first month of a calendar quarter and become effective for the following quarter.

Determination

It has been determined that the rates of interest for the period of October 1, 1988–December 31, 1988 are 11 percent for underpayments and 10 percent for overpayments. These rates will remain in effect through December 31, 1988, and are subject to change on January 1, 1989. They will remain in effect until changed by another notice in the Federal Register.

William Von Raab,

Commissioner of Customs.

Dated: September 13, 1988.

[FR Doc. 88-21665 Filed 9-21-88; 8:45 am]

BILLING CODE 9110-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 84F-0408]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Sucrose Fatty Acid Esters; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the republication of the final rule that amended the food additive regulation on sucrose fatty acid esters (53 FR 22294; June 15, 1988). The preamble inadvertently omitted the word "no" before the word "toxicological" in the sentence "Vogin reported toxicological or pathological changes from oral administration of dimethyl sulfoxide to monkeys at a dose of 1 milliliter per kilogram." This document adds the word "no" to correctly state the results of the study reported by Vogin.

EFFECTIVE DATE: September 22, 1988.

FOR FURTHER INFORMATION CONTACT: Blondell Anderson, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC. 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In FR Doc. 88-13434, appearing at page 22296 in the **Federal Register** of Wednesday, June 15, 1988, first column, line 17, the word "no" is added to correct the line of the sentence to read as follows: "Vogin reported no toxicological or * * *".

Dated: September 13, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-21656 Filed 9-21-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56 and 57

Metal and Nonmetal Loading, Hauling, and Dumping and Machinery and Equipment Standards; Public Meetings

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of public meetings.

SUMMARY: The Mine Safety and Health Administration (MSHA) will hold two public meetings to answer questions about the Agency's new loading, hauling, and dumping and machinery and equipment safety standards which become effective on October 24, 1988.

DATES: The public meetings will be held on October 4, 1988 in Denver, Colorado and October 6, 1988 in Pittsburgh, Pennsylvania. Each meeting will begin at 9:00 a.m.

ADDRESSES: The public meetings will be held at the following locations:

1. October 4, 1988—Federal Office Building, 1961 Stout Street, Room 1617, Denver, CO 80294
2. October 6, 1988—Sewickley Country Inn, 801 Ohio River Boulevard, Conference Center, Sewickley, PA 15143.

FOR FURTHER INFORMATION CONTACT: Frank Delimba, Chief, Division of Safety, Metal and Nonmetal Mine Safety

and Health, (MSHA), phone (703) 235–8647.

SUPPLEMENTARY INFORMATION: On August 25, 1988, MSHA published a final rule in the **Federal Register** (53 FR 32496) revising its safety standards for loading, hauling, and dumping and machinery and equipment at metal and nonmetal mines. These standards will take effect on October 24, 1988. The final rule changed several provisions in the existing standards to accommodate advances in mining technology. In addition, alternative methods of compliance were provided for many standards. In response to requests from the mining community, MSHA has scheduled two public meetings to provide individuals with an opportunity to informally discuss the revised standards with representatives of the Agency. Each meeting is scheduled to begin at 9:00 a.m., local time.

Date: September 16, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88–21635 Filed 9–21–88; 8:45 am]

BILLING CODE 4510–43–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–20

[FPMR Temp. Reg. D–74]

Property Pass

AGENCY: Public Buildings Service, GSA.

ACTION: Temporary regulation.

SUMMARY: This notice proposes to reissue regulatory guidelines for the use of Optional Form 7, Property Pass, which was erroneously deleted from 41 CFR Part 101–20 on July 1, 1987. Presently, there are no regulatory guidelines in effect to control the removal of property from Federal buildings. This proposal would eliminate this impediment. If this is not corrected, it could lead to serious external and internal control problems resulting in an increase of thefts from Federal buildings.

DATES:

Effective date: September 22, 1988.

Expiration date: September 22, 1989.

Comments due on or before November 21, 1988.

ADDRESS: Comments should be addressed to: General Services Administration, Public Buildings Service, Law Enforcement Division (PML), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Fred T. Herring, 202–535–7274.

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

List of Subjects in 41 CFR Part 101–20

Fire prevention, Blind, Safety, Concessions, Crime, Federal buildings and facilities, Government property management, Security measures.

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

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of subchapter D to read as follows:

FEDERAL PROPERTY MANAGEMENT REGULATIONS TEMPORARY REGULATION D–74

August 22, 1988.

TO: Heads of Federal agencies

SUBJECT: Property pass

1. *Purpose.* This notice announces the reissuance of regulatory guidelines affecting the use of Optional Form 7, Property Pass. To accomplish established crime prevention goals and objectives, it is essential that the appropriate external and internal controls be implemented.

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

3. *Expiration date.* This temporary regulation expires 12 months from the publication date in the Federal Register.

4. *Background.* Federal Property Management Regulation 101–20.115, Property Pass, provided regulatory guidelines for the use of Optional Form 7, Property Pass. These guidelines were erroneously deleted from 41 CFR Part 101–20 which was updated and became effective on July 1, 1987. Historically, the pass has served as an effective and efficient instrument in controlling removal and theft of property from Federal buildings.

5. *Explanation of changes.* Section 101–20.110 is added to read as follows:

§ 101–20.110 Property pass.

(a) Optional Form 7, Property Pass, may be used by all agencies requiring a pass for the removal of occupant agency controlled Government property from Federal buildings. The form may be used for the removal of personally owned property when security regulations are in force in a given building.

(b) The form is to be filled in and signed by the person authorizing the removal of the property. The person authorized to remove the property is to surrender the pass to the guard when leaving the building. The disposition of the pass after collection by the guard is a matter of administrative determination to be made by the using agency.

6. *Availability of forms.* The Optional Form 7, Property Pass may be obtained by submitting a requisition in FEDSTRIP/MILSTRIP format to the: General Services Administration, Furniture Commodity Center, FCNI, Washington, DC 20406.

7. *Comments.* Comments concerning the effect or impact of the regulation may be submitted to the GSA, Public Building Service, Law Enforcement Division (PML), Washington, DC 20405. Comments should be submitted within 60 days of publication of the regulation in the **Federal Register.**

John Alderson,

Acting Administrator of General Services.

[FR Doc. 88–21620 Filed 9–21–88; 8:45 am]

BILLING CODE 6820–23–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

Radio and Television Broadcasting; Editorial Corrections

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order makes several editorial changes to Part 73 of the Commission's Rules, to correct inaccurate, outdated rule texts.

EFFECTIVE DATE: September 22, 1988.

FOR FURTHER INFORMATION CONTACT: Rita McDonald, Policy and Rules Division, Mass Media Bureau (202) 254–3394.

SUPPLEMENTARY INFORMATION:

Order

Adopted: September 2, 1988.

Released: September 13, 1988.

By the Chief, Mass Media Bureau:

1. In this *Order*, the Commission updates its Rules to correct certain errors which currently appear in Title 47 of the Code of Federal Regulations. Specifically, the Commission makes editorial changes to 47 CFR 73.3517, 73.3597, and 73.3615, as reflected below. This information is revised as part of the Agency's oversight function.

2. This *Order* makes no substantive changes which impose additional burdens or remove provisions relied upon by licensees or the public. We conclude, for the reasons set forth above, that these revisions will serve the public interest.

3. These amendments are implemented by authority delegated by the Commission to the Chief, Mass Media Bureau. Because these amendments involve rules pertaining to agency organization, do not impose any additional burdens, and raise no issue upon which comments would serve any useful purpose, prior notice of rulemaking, effective date provisions, and public procedure on such matters are not required under the Administrative Procedure Act, 5 U.S.C. section 553.

4. Because a general notice of proposed rulemaking is not required, the Regulatory Flexibility Act does not apply.

5. Therefore, *It is ordered*, That pursuant to sections 4, 5, and 303, of the Communications Act of 1934, as amended, and §§ 0.61 and 0.283 of the Commission's Rules, Part 73 of the FCC Rules and Regulations *is amended* as set forth below, effective upon publication in the **Federal Register.**

Federal Communications Commission

Alex D. Felker,

Chief, Mass Media Bureau.

List of Subjects in 47 CFR Part 73

Television broadcasting, Radio broadcasting.

Rule Amendments

47 CFR Part 73 is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. sections 154 and 303.

2. Section 73.3517, the first sentence of paragraph (a) is revised to read as follows:

§ 73.3517 Contingent applications.

* * * * *

(a) Upon filing of an application for the assignment of a license or construction permit, or for a transfer of control of a licensee or permittee, the proposed assignee or transferee may, upon payment of the processing fee prescribed in Subpart G Part 1 of this chapter, file applications in its own name for authorization to make changes in the facilities to be assigned or transferred contingent upon approval and consummation of the assignment or transfer. * * *

* * * * *

3. Section 73.3597 is amended by revising paragraph (c)(3)(ii) to read as follows:

§ 73.3597 Procedures on transfer and assignment applications.

* * * * *

(c) * * *

(3) * * *

(ii) When the seller is to receive reimbursement of his expenses, the applications of the parties shall include an itemized accounting of such expenses, together with such factual information as the parties rely upon for the requisite showing that those expenses represent legitimate and prudent outlays made solely for the purposes allowable under paragraph (c)(2) of this section.

* * * * *

4. Section 73.3615 is amended by revising the second sentence of paragraph (e) to read as follows:

§ 73.3615 Ownership reports.

* * * * *

(e) * * * The Ownership Report of the permittee shall give the information required by the applicable form.

* * * * *

[FR Doc. 88-21490 Filed 9-21-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Parts 73 and 74

Amendment of the Rules Reflecting Changes in FCC Forms

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order revises several sections of Parts 73 and 74 of the Commission's Rules, to update the numbers and titles of FCC applications forms. The revisions are made to correct inaccurate, outdated rule texts.

EFFECTIVE DATE: September 22, 1988.

FOR FURTHER INFORMATION CONTACT: Rita McDonald, Policy and Rules Division, Mass Media Bureau, (202) 254-3394.

SUPPLEMENTARY INFORMATION:

Order

Adopted: September 2, 1988.

Released: September 13, 1988.

By the Chief, Mass Media Bureau.

1. In this *Order*, the Commission updates its Rules to reflect recent changes in the numbers and titles of broadcast application forms. This information is revised as part of the Agency's oversight function. Specifically, Forms 349-L and 349-P have deleted, and replaced with Forms 349 and 350; Form 701 has been replaced *as a broadcast form* by Form 307; and Forms 346 and 347 have new titles. Finally, as announced in an earlier *Order* (52 FR 47569, December 15, 1987) Form 330-P has been replaced by Form 330. 47 CFR 73.3500, 73.3533, 73.3534, 73.3536, 74.939, and 74.951 are accordingly amended.

2. This *Order* makes no substantive changes which impose additional burdens or remove provisions relied upon by licensees or the public. We conclude, for the reasons set forth above, that these revisions will serve the public interest.

3. These amendments are implemented by authority delegated by the Commission to the Chief, Mass Media Bureau. Because these amendments involve rules pertaining to agency organization, do not impose any additional burdens, and raise no issue upon which comments would serve any useful purpose, prior notice of rule making, effective date provisions, and public procedure on such matters are not required under the Administrative Procedure Act, 5 U.S.C. 553.

4. Because a general notice of proposed rule making is not required, the Regulatory Flexibility Act does not apply.

5. Therefore, it is ordered, that pursuant to sections 4, 5, and 303, of the Communications Act of 1934, as amended, and §§ 0.61 and 0.283 of the Commission's Rules, Parts 73 and 74 of the FCC Rules and Regulations are amended as set forth below, effective upon publication in the **Federal Register.**

Federal Communications Commission.

Alex D. Felker,

Chief, Mass Media Bureau.

List of Subjects in 47 CFR Parts 73 and 74

Television broadcasting, Radio broadcasting.

Amendments

47 CFR Parts 73 and 74 are amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.3500 [Amended]

2. Section 73.3500, Application and report forms, is amended by removing:

Form Number and Title:

349–L Application for an FM Booster Station License.

349–P Application for Authority to Construct or Make Changes in an FM Booster Station.

701 Application for Extension of Construction Permit or to Replace Expired Permit.

and by adding:

Form Number and Title:

307 Application for Extension of Broadcast Construction Permit or to Replace Expired Construction Permit.

349 Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station.

350 Application for an FM Translator or FM Booster Station License.

Finally, the titles of Forms 346 and 347 are revised to read as follows:

Form number and Title:

346 Application for Authority to Construct or Make Changes in a Low Power TV, TV Translator or TV Booster Station.

347 Application for a Low Power TV, TV Translator or TV Booster Station License.

3. Section 73.3533 is amended by revising paragraphs (a)(4), (a)(6), (a)(7), and (b) to read as follows:

§ 73.3533 Application for construction permit or modification of construction permit.

(a) * * *

(4) FCC Form 330, "Application for Authorization to Construct New or Make Changes in an Instructional Television Fixed and/or Response Station(s), or to Assign to Transfer Such Station(s)."

(5) * * *

(6) FCC Form 346, "Application for Authority to Construct or Make Changes in a Low Power TV, TV Translator or TV Booster Station."

(7) FCC Form 349, "Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station."

(b) The filing of an application for modification of construction permit does not extend the expiration date of the construction permit. Extension of the expiration date must be applied for on FCC Form 307, in accordance with the provisions of § 73.3534.

4. Section 73.3534 is amended by revising paragraphs (a) and (e) to read as follows:

§ 73.3534 Application for extension of construction permit or for construction permit to replace expired construction permit.

(a) Application for extension of time within which to construct a station shall be filed on FCC Form 307, "Application for Extension of Broadcast Construction Permit or to Replace Expired Construction Permit." The application shall be filed at least 30 days prior to the expiration date of the construction permit if the facts supporting such application for extension are known to the applicant in time to permit such filing. In other cases, an application will be accepted upon a showing satisfactory to the FCC of sufficient reasons for filing within less than 30 days prior to the expiration date.

* * * * *

(e) Application for a construction permit to replace an expired construction permit shall be filed on FCC Form 307. Such applications must be filed within 30 days of the expiration date of the authorization sought to be replaced. If approved, such authorization shall specify a period of not more than 6 months within which construction shall be completed and application for license filed.

5. Section 73.3536 is amended by revising paragraph (b) (5) and (6) to read as follows:

§ 73.3536 Application for license to cover construction permit.

(a) * * *

(b) * * *

(5) FCC Form 347, "Application for a Low Power TV, TV Translator or TV Booster Station License."

6. FCC Form 350, "Application for an FM Translator or FM Booster Station License."

* * * * *

PART 74—[AMENDED]

6. The authority citation for Part 74 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083 as amended; 47 U.S.C. 301, 303, 307.

§ 74.939 [Amended]

7. Section 74.939, Special rules governing ITFS response stations, is amended by revising the reference to FCC Form 330P, in paragraph (b), to FCC Form 330.

8. Section 74.951 is amended by revising the introductory text to read as follows:

§ 74.951 Modification of transmission systems.

Formal application on FCC Form 330 is required for any of the following changes or modifications of the transmission systems:

* * * * *

[FR Doc. 88–21491 Filed 9–21–88; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 95

[FCC 88–256]

Personal Radio Services

AGENCY: Federal Communications Commission.

ACTION: Order; final rules.

SUMMARY: This document corrects and clarifies the Technical Regulations of the Personal Radio Services. The Personal Radio Services include the General Mobile Radio Service, the Radio Control Service and the Citizens Band Radio Service. These rules are being adopted to correct errors and clarify matters that were not readily apparent in the text of the Technical Regulations.

DATES: These rules are effective October 24, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John J. Borkowski, Special Services Division, Private Radio Bureau, (202) 632–4964.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order*, FCC 88–256, adopted July 26, 1988, and released August 17, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Order

1. In this *Order* the technical regulations of the Personal Radio Services Rules contained in Subpart E of Part 95, 47 CFR 95.601–95.669 were corrected and clarified. The Personal Radio Services include the General Mobile Radio Service (GMRS), the

Radio Control Radio Service (R/C), and the Citizens Band Radio Service (CB).

2. Three years ago we revised these technical regulations and deleted certain unnecessary provisions. *See Order*, 50 FR 5074 (1985). Since that time, it has become apparent that Subpart E as printed in the Code of Federal Regulations may be unclear in certain respects. The new rules herein have been rewritten to make them easier to understand and to clarify certain long-standing rule interpretations related to Subpart E.

3. Section 95.605 (definitions), 47 CFR 95.605, has been removed. Instead, terms are defined in context where they first appear in the rules. A glossary of terms has been added as an Appendix. All of the rules have been rewritten in their entirety to standardize terms. For example, standard symbols for technical units are now used throughout (dB, W. RF, TP, etc.).

4. We have removed certain redundant rules and made certain editorial changes, including corrections in §§ 95.607 and 95.633(c), 47 CFR 95.607 and 95.633(c). We also clarified our current policy interpreting §§ 95.222 and 95.643, 47 CFR 95.222 and 95.643, when taken together, to prohibit crystal changing capability by the user of an R/C transmitter.

5. We have removed the frequencies 72.08, 72.16, 72.24, 72.32, 72.40, 72.96 and 75.64 MHz from § 95.623(a), 47 CFR 95.623(a). As of December 20, 1987, these channels are no longer available in the R/C service. *See* §§ 95.207(a)(4) and (a)(5), 47 CFR 95.207(a)(4) and (a)(5).

6. In § 95.633(a), 47 CFR 95.633(a), we changed the rule to reflect the specific frequency modulation types permitted in the GMRS. In § 95.633(c), 47 CFR 95.633(c), the requirement that "the modulation percentage must be sufficient to provide efficient communication" has been recodified to state that "the modulation must be greater than 85 percent." As a matter of policy and procedure, we have had to interpret this rule when evaluating equipment. We currently consider modulation greater than 85 percent as presumptively efficient communication.

7. Section 95.661(a), 47 CFR 95.661(a), provides that each multifrequency CB transmitter may transmit only on CB channels. We have added a sentence explaining that transmitters with frequency capability for the Amateur Radio Services, Military Affiliate Radio Systems and Civil Air Patrol are among those that will not be type accepted in the CB Radio Service (*see* new § 95.661(a)).

8. We conclude that good cause exists to enact these rule corrections and clarifications without conducting a notice and comment rule making proceeding. The changes to Subpart E of Part 95 in this document merely codify long-standing Commission rule interpretations, delete redundant or obsolete rules and make editorial corrections and revisions. These actions will not result in any change in Commission type acceptance or type approval procedures and, thus, there will be no impact upon manufacturers of this type of equipment. We therefore conclude that the rule changes are minor and noncontroversial and that a notice and comment proceeding is unnecessary. *See* 5 U.S.C. 553(b)(B).

9. In view of the foregoing, and pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), it is ordered that Subpart E of Part 95 of the Commission's Rules is amended as set forth below.

10. It is further ordered that these rule amendments shall become effective October 24, 1988.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

Part 95 of Chapter I of Title 47 of the Code of Federal Regulations is amended, as follows:

1. The authority citation for Part 95 continues to read as follows:

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

2. The Table of Contents for Subpart E of Part 95 is revised to read as follows:

PART 95—PERSONAL RADIO SERVICES

* * * * *

Subpart E—Technical Regulations

General Provisions

Sec.
95.601 Basis and purpose.
95.603 Type acceptance required.
95.605 Type acceptance procedure.
95.607 CB transmitter modification.

Technical Standards

95.621 GMRS transmitter channel frequencies.
95.623 R/C transmitter channel frequencies.
95.625 CB transmitter channel frequencies.
95.627 Emission types.
95.629 Emission bandwidth.
95.631 Unwanted radiation.
95.633 Modulation standards.
95.635 Maximum transmitter power.

Type Acceptance Requirements

95.641 Control accessibility.
95.643 R/C transmitter antenna.
95.645 Power capability.
Sec.
95.647 Crystal control required.
95.649 Instructions and warnings.

Additional Type Acceptance Requirements For CB Transmitters

95.661 Frequency capability.
95.663 CB transmitter power.
95.665 External controls.
95.667 Serial number.
95.669 Copy of rules.
Appendix 1—Glossary of Terms

3. Subpart E of Part 95 is revised in its entirety to read as follows:

Subpart E—Technical Regulations

General Provisions

§ 95.601 Basis and purpose.

These rules provide the technical standards to which each *transmitter* (apparatus that converts electrical energy received from a source into *RF* (radio frequency) energy capable of being radiated) used or intended to be used in a station authorized any of the the Personal Radio Services must comply. They also provide requirements for obtaining type acceptance of such transmitters. The Personal Radio Services are the *GMRS* (General Mobile Radio Service), the *R/C* (Radio Control Radio Service) and the *CB* (Citizens Band Radio Service). For operating rules, see Part 95, Subpart A—GMRS; Subpart C—R/C; Subpart D—CB.

§ 95.603 Type acceptance required.

(a) Each *GMRS transmitter* (a transmitter that operates or is intended to operate at a station authorized in the GMRS) must be type accepted.

(b) Each *R/C transmitter* (a transmitter that operates or is intended to operate at a station authorized in the R/C) must be type accepted, except one that transmits only in the 26–27 MHz frequency band and is *crystal controlled* (where the transmitted frequency is established by a *crystal* (a quartz piezo-electric element)).

(c) Each *CB transmitter* (a transmitter that operates or is intended to operate at a station authorized in the CB) must be type accepted. No CB transmitter type accepted pursuant to an application filed prior to September 10, 1976, shall be manufactured or marketed.

§ 95.605 Type acceptance procedure.

Any entity may request type acceptance for its transmitter in one of the Personal Radio Services, following the applicable type acceptance procedures in Part 2 of this chapter.

§ 95.607 CB transmitter modification.

Only the holder of the grant of authorization of the particular type

accepted CB transmitter may make the modifications permitted under the provisions for type acceptance (see Part 2 of this Chapter.) No grantee shall make any of the following modifications to the transmitter without prior written permission from the *FCC* (Federal Communications Commission):

(a) The addition of any accessory or device not specified in the application for type acceptance and authorized by the FCC in granting the type acceptance;

(b) The addition of any switch, control or external connection;

(c) Any modification to provide for additional transmitting frequencies, increased modulation level, a different form of modulation, or increased *TP* (RF transmitter power expressed in *W* (watts), either *mean power* (TP averaged over at least 30 cycles of the lowest modulating frequency, typically 0.1 seconds at maximum power) or *peak envelope power* (TP averaged during 1 RF cycle at the highest crest of the modulation envelope), as measured at the transmitter output antenna terminals.)

Technical Standards

§ 95.621 GMRS tansmitter channel frequencies.

(a) The GMRS transmitter *channel frequencies* (reference frequencies from which the carrier frequency, suppressed or otherwise, may not deviate by more than the specified frequency tolerance) are 462.550 MHz, 462.575 MHz, 462.600 MHz, 462.625 MHz, 462.650 MHz, 462.675 MHz, 462.700 MHz, 462.725 MHz, 467.550 MHz, 467.575 MHz, 467.600 MHz, 467.625 MHz, 467.650 MHz, 467.675 MHz, 467.700 MHz and 467.725 MHz.

Note: Certain GMRS transmitter channel frequencies are authorized only for certain station classes and station locations. See Part 95, Subpart A.

(b) Each GMRS transmitter for mobile and control operation must be maintained within a frequency tolerance of 0.0005%. Each GMRS transmitter for base, mobile relay or fixed operation must be maintained within a frequency tolerance of 0.00025%.

§ 95.623 R/C transmitter channel frequencies.

(a) The R/C transmitter channel frequencies are 26.995 MHz, 27.045 MHz, 27.095 MHz, 27.145 MHz, 27.195 MHz, 27.255 MHz, 72.01 MHz, 72.03 MHz, 72.05 MHz, 72.07 MHz, 72.09 MHz, 72.11 MHz, 72.13 MHz, 72.15 MHz, 72.17 MHz, 72.19 MHz, 72.21 MHz, 72.23 MHz, 72.25 MHz, 72.27 MHz, 72.29 MHz, 72.31 MHz, 72.33 MHz, 72.35 MHz, 72.37 MHz, 72.39 MHz, 72.41 MHz, 72.43 MHz, 72.45 MHz, 72.47 MHz, 72.49 MHz, 72.51 MHz, 72.53 MHz, 72.55 MHz, 72.57 MHz, 72.59 MHz, 72.61 MHz, 72.63 MHz, 72.65 MHz, 72.67 MHz, 72.69 MHz, 72.71 MHz, 72.73 MHz, 72.75 MHz, 72.77 MHz, 72.79 MHz, 72.81 MHz, 72.83 MHz, 72.85 MHz, 72.87 MHz, 72.89 MHz, 72.91 MHz, 72.93 MHz, 72.95 MHz, 72.97 MHz, 72.99 MHz, 75.41 MHz, 75.43 MHz, 75.45 MHz, 75.47 MHz, 75.49 MHz, 75.51 MHz, 75.53 MHz, 75.55 MHz, 75.57 MHz, 75.59 MHz, 75.61 MHz, 75.63 MHz, 75.65 MHz, 75.67 MHz, 75.69 MHz, 75.71 MHz, 75.73 MHz, 75.75 MHz, 75.77 MHz, 75.81 MHz, 75.83 MHz, 75.85 MHz, 75.87 MHz, 75.89 MHz, 75.91 MHz, 75.93 MHz, 75.95 MHz, 75.97 MHz and 75.99 MHz.

Note: Certain R/C transmitter channel frequencies are authorized to operate only certain kinds of devices (see Part 95, Subpart C.)

(b) Each R/C transmitter that transmits in the 26–27 MHz frequency band with a mean TP of 2.5 W or less and used solely by the operator to turn on and/or off a device at a remote location, other than a device used solely to attract attention, must be maintained within a frequency tolerance of 0.01%. All other R/C transmitters must be maintained within a frequency tolerance of 0.005%.

§ 95.625 CB transmitter channel frequencies.

(a) The CB transmitter channel frequencies are:

Channel number	MHz
1	26.965
2	26.975
3	26.985
4	27.005
5	27.015
6	27.025
7	27.035
8	27.055
9	27.065
10	27.075
11	27.085
12	27.105
13	27.115
14	27.125
15	27.135
16	27.155
17	27.165
18	27.175
19	27.185
20	27.205
21	27.215
22	27.225
23	27.255
24	27.235
25	27.245
26	27.265
27	27.275
28	27.285
29	27.295
30	27.305
31	27.315
32	27.325
33	27.335
34	27.345
35	27.355
36	27.365
37	27.375
38	27.385
39	27.395
40	27.405

(b) Each CB transmitter must be maintained within a frequency tolerance of 0.005%.

§ 95.627 Emission types.

(a) A GMRS transmitter must transmit only emission types A1D, F1D, G1D, H1D, J1D, R1D, A3E, F3E, G3E, H3E, J3E or R3E. A non-voice emission is limited to selective calling or tone-operated squelch tones to establish or continue voice communications. See § 95.181 (g) and (h).

(b) An R/C transmitter may transmit any appropriate non-voice emission which meets the emission limitations of § 95.631.

(c) A CB transmitter may transmit only emission types A1D, H1D, J1D, R1D, A3E, H3E, J3E, R3E. A non-voice emission is limited to selective calling or tone-operated squelch tones to establish or continue voice communications. See § 95.412 (b) and (c).

(d) No GMRS or CB transmitter shall employ a digital modulation or emission.

(e) No GMRS, CB or R/C transmitter shall transmit non-voice data.

§ 95.629 Emission bandwidth.

(a) The *authorized bandwidth* (maximum permissible bandwidth of a transmission) for emission type H1D, J1D, R1D, H3E, J3E or R3E is 4 kHz. The authorized bandwidth for emission type A1D or A3E is 8 kHz. The authorized bandwidth for emission type F1D, G1D, F3E or G3E is 20 kHz.

(b) The authorized bandwidth for any emission type transmitted by an R/C transmitter is 8 kHz.

§ 95.631 Unwanted radiation.

(a) In addition to the procedures in Part 2, the following requirements apply to each transmitter both with and without the connection of all attachments acceptable for use with the transmitter, such as an external speaker, microphone, power cord, antenna, etc.

(b) The power of each unwanted emission shall be less than TP as specified in the applicable paragraph:

Transmitter	Emission type	Applicable paragraphs
GMRS	A1D, A3E, F1D, G1D, F3E, G3E with filtering.	(1), (3), (7)

Transmitter	Emission type	Applicable paragraphs
	A1D, A3E, F1D, G1D, F3E, G3E without filtering.	(5), (6), (7)
	H1D, J1D, R1D, H3E, J3E, R3E.	(2), (4), (7)
NOTE: *Filtering* refers to the requirement in § 95.633(b).		
R/C	As specified in § 95.627(b).	(1), (3), (7)
CB	A1D, A3E.....	(1), (3), (8), (9)
	H1D, J1D, R1D, H3E, J3E, R3E.	(2), (4), (8), (9)
	A1D, A3E type accepted before September 10, 1976.	(1), (3), (7)
	H1D, J1D, R1D, H3E, J3E, R3E type accepted before September 10, 1986.	(2), (4), (7)

Note: Unwanted RF radiation may be stated in mean power or in peak envelope power, provided it is stated in the same parameter as TP.

(1) At least 25 *dB* (decibels) on any frequency removed from the center of the authorized bandwidth by more than 50% up to and including 100% of the authorized bandwidth.

(2) At least 25 dB on any frequency removed from the center of the authorized bandwidth by more than 50% up to and including 150% of the authorized bandwidth.

(3) At least 35 dB on any frequency removed from the center of the authorized bandwidth by more than 100% up to and including 250% of the authorized bandwidth.

(4) At least 35 dB on any frequency removed from the center of the authorized bandwidth by more than 150% up to and including 250% of the authorized bandwidth.

(5) At least 83 $\log_{10}$ (f_d/5) dB on any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz), of more than 5 kHz up to and including 10 kHz.

(6) At least 116 $\log_{10}$ (f_d/6.1) dB, or if less, 50+10 $\log_{10}$ (TP) dB, on any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz), of more than 10 kHz up to and including 250% of the authorized bandwidth.

(7) At least 43+$\log_{10}$ (TP) dB on any frequency removed from the center of the authorized bandwidth by more than 250%.

(8) At least 53+$\log_{10}$ (TP) dB on any frequency removed from the center of the authorized bandwidth by more than 250%.

(9) At least 60 dB on any frequency twice or greater than twice the fundamental frequency.

Note: If spurious or harmonic emissions result in *harmful interference* (any transmission, radiation or induction that endangers the functioning of a radionavigation or other safety service or seriously degrades, obstructs or repeatedly interrupts a radiocommunication service operating in accordance with applicable laws, treaties and regulations), the FCC may, at its discretion, require appropriate technical changes in the station equipment to alleviate the interference, including the use of a low pass filter between the transmitter antenna terminals and the antenna feed line.

§ 95.633 Modulation standards.

(a) A GMRS transmitter that transmits emission types F1D, G1D, F3E or G3E must not exceed a peak frequency deviation of plus or minus 5 kHz.

(b) Each GMRS transmitter, except a mobile station transmitter with a power output of 2.5 W or less, must automatically prevent a greater than normal audio level from causing overmodulation. The transmitter also must include audio frequency low pass filtering, unless it complies with the applicable paragraphs of § 95.631 (without filtering.) The filter must be between the modulation limiter and the modulated stage of the transmitter. At any frequency (f in kHz) between 3 and 20 kHz, the filter must have an attenuation of at least 60 $\log_{10}$ (f/3) dB greater than the attenuation at 1 kHz. Above 20 kHz, it must have an attenuation of at least 50 dB greater than the attenuation at 1 kHz.

(c) When emission type A3E is transmitted, the modulation must be greater than 85% but must not exceed 100%. Simultaneous amplitude modulation and frequency or phase modulation of a transmitter are not permitted.

(d) When emission type A3E is transmitted by a CB transmitter having a TP of greater than 2.5 W, the CB transmitter must automatically prevent the modulation from exceeding 100%.

(e) Each CB transmitter that transmits emission type H3E, J3E or R3E must be capable of transmitting the upper sideband. The capability of also transmitting the lower sideband is permitted.

§ 95.635 Maximum transmitter power.

(a) No GMRS transmitter, under any condition of modulation, shall exceed:

(1) 50 W *Carrier power* (average TP during one unmodulated RF cycle) when transmitting emission type A1D, F1D, G1D, A3E, F3E or G3E.

(2) 50 W peak envelope TP when transmitting emission type H1D, J1D, R1D, H3E, J3E or R3E.

(b) No R/C transmitter, under any condition of modulation, shall exceed a carrier power or peak envelope TP (single-sideband only) of:

(1) 4 W in the 26–27 MHz frequency band, except on channel frequency 27.255 MHz;

(2) 25 W on channel frequency 27.255 MHz;

(3) 0.75 W in the 72–76 MHz frequency band.

(c) No CB transmitter, under any condition of modulation, shall exceed:

(1) 4 W Carrier power when transmitting emission type A1D or A3E;

(2) 12 W peak envelope TP when transmitting emission type H1D, J1D, R1D, H3E, J3E or R3E. Each CB transmitter which transmits emission type H3E, J3E of R3E must automatically prevent the TP from exceeding 12 W peak envelope TP or the manufacturer's rated peak envelope TP, Whichever is less.

Type Acceptance Requirements

§ 95.641 Control accessibility.

(a) No control, switch or other type of adjustment which, when manipulated, can result in a violation of the rules shall be accessible from the transmitter operating panel or from exterior of the transmitter enclosure.

(b) An R/C transmitter which incorporates plug-in frequency determining modules which are changed by the user must be type accepted with the modules. Each module must contain all of the frequency determining circuitry including the oscillator. Plug-in crystals are not considered modules and must not be accessible to the user.

§ 95.643 R/C transmitter antenna.

The antenna of each R/C station transmitting in the 72–76 MHz band must be an integral part of the transmitter. The antenna must have no gain (as compared to a half-wave dipole) and must be vertically polarized.

§ 95.645 Power capability.

No CB or R/C transmitter shall incorporate provisions for increasing its transmitter power to any level in excess of the limit specified in § 95.635.

§ 95.647 Crystal control required.

All transmitters used in the Personal Radio Services must be crystal controlled, except a R/C transmitter which transmits in the 26–27 MHz frequency band.

§ 95.649 Instructions and warnings.

(a) A user's instruction manual must be supplied with each transmitter marketed, and one copy (a draft or preliminary copy is acceptable provided a final copy is provided when completed) must be forwarded to the FCC with each request for type acceptance.

(b) The instruction manual must contain all information necessary for the proper installation and operation of the transmitter including:

(1) Instructions concerning all controls, adjustments and switches that may be operated or adjusted without resulting in a violation of the rules.

(2) Warnings concerning any adjustment that could result in a violation of the rules or that is recommended to be performed by or under the immediate supervision and responsibility of a person certified as technically qualified to perform transmitter maintenance and repair duties in the private land mobile services and fixed services by an organization or committee representative of users of those services.

(3) Warnings concerning the replacement of any transmitter component (crystal, semiconductor, etc.) that could result in a violation of the rules.

(4) For a CMRS transmitter, warnings concerning licensing requirements and information concerning license application procedures.

Additional Type Acceptance Requirements for CB Transmitters

§ 95.661 Frequency capability.

(a) No transmitter equipped with a frequency capability not listed in § 95.625 will be type accepted for use in the CB, unless such transmitter is also type accepted for use in another radio service for which the frequency is authorized and type acceptance is also required in that radio service. (Transmitters with frequency capability for the Amateur Radio Services, Military Affiliate Radio System and Civil Air Patrol will not be type accepted.)

(b) All frequency determining circuitry (including crystals), other than the frequency selection mechanism, in each CB transmitter must be internal to the transmitter and must not be accessible from the exterior of the transmitter operating panel or from the exterior of the transmitter enclosure.

(c) No add-on device, whether internal or external, the function of which is to extend the transmitting frequency capability of a CB transmitter beyond its original capability, shall be manufactured, sold or attached to any CB station transmitter.

§ 95.663 CB transmitter power.

The dissipation rating of all the semiconductors or electron tubes which supply RF power to the antenna terminals of each CB transmitter must not exceed 10 W. For semiconductors, the dissipation rating is the greater of the collector or device dissipation value established by the manufacturer of the semiconductor. These values may be temperature de-rated by no more than 50° C. For an electron tube, the dissipation rating is the Intermittent Commercial and Amateur Service plate dissipation value established by the manufacturer of the electron tube.

§ 95.665 External controls.

(a) Only the following external transmitter controls, connections or devices will normally be permitted in a CB transmitter:

(1) Primary power connection. (Circuitry or devices such as rectifiers, transformers, or inverters which provide the nominal rated transmitter primary supply voltage may be used without voiding the transmitter type acceptance.)

(2) Microphone connection.

(3) Antenna terminals.

(4) Audio frequency power amplifier output connector and selector switch.

(5) On-off switch for primary power to transmitter. This switch may be combined with receiver controls such as the receiver on-off switch and volume control.

(6) Upper/lower sideband selector switch (for a transmitter that transmits emission type H3E, J3E or R3E).

(7) Carrier level selector control (for a transmitter that transmits emission type H3E, J3E or R3E.) This control may be combined with the sideband selector switch.

(8) Channel frequency selector switch.

(9) Transmit/receive selector switch.

(10) Meter(s) and selector switch(es) for monitoring transmitter performance.

(11) Pilot lamp(s) or meter(s) to indicate the presence of RF output power or that the transmitter control circuits are activated to transmit.

(b) The FCC may authorize additional controls, connections or devices after considering the functions to be performed by such additions.

§ 95.667 Serial number.

The serial number of each CB transmitter must be engraved on the transmitter chassis.

§ 95.669 Copy of rules.

A copy of Part 95, Subpart D, of the FCC Rules, current at the time of packing of the transmitter, must be furnished with each CB transmitter marketed.

Appendix 1—Glossary of Terms

The definitions used in Part 95, Subpart E are:

Authorized bandwidth. Maximum permissible bandwidth of a transmission.

Carrier power. Average TP during one unmodulated RF cycle.

CB. Citizens Band Radio Service.

CB transmitter. A transmitter that operates or is intended to operate at a station authorized in the CB.

Channel frequencies. Reference frequencies from which the carrier frequency, suppressed or otherwise, may not deviate by more than the specified frequency tolerance.

Crystal. Quartz piezo-electric element.

Crystal controlled. Use of a crystal to establish the transmitted frequency.

dB. Decibels.

FCC. Federal Communications Commission.

Filtering. Refers to the requirement in § 95.633(b).

GMRS. General Mobile Radio Service.

GMRS transmitter. A transmitter that operates or is intended to operate at a station authorized in the GMRS.

Harmful interference. Any transmission, radiation or induction that endangers the functioning of a radionavigation or other safety service or seriously degrades, obstructs or repeatedly interrupts a radiocommunication service operating in accordance with applicable laws, treaties and regulations.

Mean power. TP averaged over at least 30 cycles of the lowest modulating frequency, typically 0.1 seconds at maximum power.

Peak envelope power. TP averaged during 1 RF cycle at the highest crest of the modulation envelope.

R/C. Radio Control Radio Service.

R/C transmitter. A transmitter that operates or is intended to operate at a station authorized in the R/C.

RF. Radio frequency.

Transmitter. Apparatus that converts electrical energy received from a source into RF energy capable of being radiated.

TP. RF transmitter power expressed in W, either mean or peak envelope, as measured at the transmitter output antenna terminals.

W. Watts.

[FR Doc. 88-21608 Filed 9-21-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS-103, Amdt. No. 192-61]

Transportation of Natural and Other Gas by Pipeline; Incorporation by Reference of ASTM D2513

AGENCY: Research and Special Programs Administration (RSPA).

ACTION: Final rule.

SUMMARY: This amendment updates to the 1987 edition the existing incorporation by reference of the American Society for Testing and Materials (ASTM) Specification D2513, "Standard Specification for Thermoplastic Gas Pressure Piping Systems." This update improves pipeline safety by requiring improved technology, materials, and practices.

EFFECTIVE DATE: This amendment takes effect October 24, 1988.

FOR FURTHER INFORMATION CONTACT: Paul J. Cory, (202) 366-4561, regarding changes on safety standards or the Dockets Unit, (202) 366-5046, for copies of this final rule or other material in the docket.

SUPPLEMENTARY INFORMATION: Part 192 incorporates by reference the requirements of ASTM D2513 concerning thermoplastic pipe and fittings using in the transportation of natural gas. This document is referenced in several sections of the Code of Federal Regulations. It is referenced in § 192.59(a)(1) as a manufacturing qualification for the use of thermoplastic pipe, in § 192.63 as a standard for marking thermoplastic pipe, and in § 192.121 for the design of thermoplastic pipe. It is also referenced in § 192.191 for the design of thermoplastic fittings, in § 192.281 as a standard for solvent cement, and in § 192.283 as burst test requirements in qualifying joining procedures for thermoplastic pipe.

The 1981 edition is the latest edition of ASTM D2513 that is incorporated by reference, as indicated by the listing in Appendices A and B to Part 192. This edition has been superseded by the 1987 edition.

In response to a petition of the Plastics Pipe Institute (PPI) (Petition No. P-32), RSPA has reviewed the 1987 edition and finds that it reflects the latest developments in materials and plastic pipe technology. Although most of the changes that have been made between the 1981 edition and the 1987 edition are editorial in nature, a few changes reflect the latest improvments in plastic pipe technology relating to material properties and quality control. Accordingly, it is in the interest of both safety and efficient operation to require the use of the 1987 edition for pipelines subject to Part 192. A summary of the differences between the 1981 and 1987 editions was included in the petition, which is part of the docket.

In addition to requesting that the referenced edition of ASTM D2513 be updated, the petition requests that § 192.63(b) be deleted. This section, concerning material marking, refers to earlier editions of ASTM D2513 (1974a and 1975b) that are no longer in use. The marking requirements established by reference to these earlier editions are not relevant to newly manufactured materials. They were established as an interim rule for marking plastic pipe until the then existing reference to ASTM D2513 could be updated. (See Amdt. 192-31, 43 FR 13880.) Therefore, RSPA is, by this document, deleting paragraph (b) of § 192.63.

The petition further requests that § 192.281(b)(3), relating to handling of solvent cements, be amended by deleting the reference to Appendix A of ASTM D2513. In the 1987 edition of ASTM D2513, the safety requirements relating to handling solvent cements are no longer in Appendix A, but are referenced in the body of the ASTM D2513 specification. Specification ASTM D2513 is incorporated by reference in § 192.281(b)(2). Thus, the safety requirements for handling solvent cements are in effect through the reference to ASTM D2513 in § 192.281(b)(2). The out-of-date reference in § 192.281(b)(3) is not needed and is therefore deleted.

Because this document does not change any of the basic substantive requirements of Part 192 in any significant way, RSPA believes that notice and public procedure are unnecessary. Therefore, in accordance with 5 U.S.C. 553, the amendment is final. Also, the amendment will have a positive effect on the economy of less than $100 million a year, will result in a cost savings to consumers and industry and will have no adverse effects. Hence, this action is not considered "major" under Executive Order 12291 or "significant" under DOT procedures.

RSPA has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that it does not have sufficient federalism implications to warrant preparing a Federalism Assessment.

List of Subjects in 49 CFR Part 192

Pipeline safety, Thermoplastic pipe, Incorporation by reference.

In consideration of the foregoing, Part 192 of Title 49 of the Code of Federal Regulations is amended as follows:

PART 192—[AMENDED]

1. The authority citation for Part 192 continues to read as follows:

Authority: 49 App. U.S.C. 1672 and 1804; 49 CFR 1.53.

§ 192.63 [Amended]

2. In § 192.63, paragraph (b) is removed and paragraphs (c), (d), and (e) are redesignated (b), (c), and (d), respectively.

§ 192.28 [Amended]

3. In § 192.281(b), paragraph (3) is removed and paragraph (4) is redesignated (3).

Appendix A [Amended]

4. In section II.B. of Appendix A, item (21) is amended by removing "(D 2513-81)" and adding in its place "(D 2513-87)."

Appendix B [Amended]

5. In Section I of Appendix B, the listing for ASTM D2513 is amended by removing "(1981)" and adding in its place "(1987)."

Issued in Washingon, DC, on September 15, 1988.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 88-21458 Filed 9-21-88; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 71158-7258]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS) NOAA, Commerce.

ACTION: Notice of fishing restriction and request for comments.

SUMMARY: NOAA issues this notice modifying earlier restrictions to limit the levels of fishing for widow rockfish taken in the groundfish fishery off the coasts of Washington, Oregon, and California, and seeks public comment on this action. This action is authorized under regulations implementing the

Pacific Coast Groundfish Fishery Management Plan and is necessary because the likelihood of biological stress is greatly increased if landings of widow rockfish are not further restricted. This action is intended to lower fishing rates, to reduce the risk of biological stress while allowing for unavoidable incidental catches in other fisheries, and to reduce the probability of fishery closure before the end of the year.

DATES: Effective 0001 hours, local time, September 21, 1988 until modified, superseded, or rescinded. Comments will be accepted through October 7, 1988.

ADDRESSES: Send comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, Bldg. 1, Seattle, WA 98115; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140; or Rodney R. McInnis at 213–514–6202.

SUPPLEMENTARY INFORMATION: At its July 1988 meeting, the Pacific Fishery Management Council (Council) recommended that the Secretary of Commerce (Secretary) reduce the trip limit for the widow rockfish fishery off Washington, Oregon, and California, if necessary, to avoid reaching the 12,100-metric ton optimum yield (OY) quota before the end of the year. The Council recommended that the current trip limit of 30,000 pounds, which may be taken in only one landing per week above 3,000 pounds, be replaced with a 3,000-pound trip limit with no restriction on the number of landings that could be made.

The Secretary published a notice of fishing restrictions on August 5, 1988 (53 FR 29480) which announced concurrence with the Council's recommendation and stated that this reduced trip limit would be implemented at the appropriate time by separate notice in the **Federal Register**. All other provisions of the trip limit for widow rockfish announced at 53 FR 248 (January 6, 1988) remain in effect.

The best available scientific information as of August 18, 1988 indicates that the 3,000-pound trip limit must be implemented on September 21, 1988 in order to avoid reaching the OY before the end of the year. Accordingly, the trip limit for widow rockfish is reduced to 3,000 pounds on that date. The States of Washington, Oregon, and California are implementing this action concurrently.

This reduction is intended to allow most incidental catches of widow rockfish to be landed while greatly reducing target fishing on this species. If this action does not sufficiently control landings, additional restrictions may be necessary. If the OY is reached before the end of the calendar year, further landings of widow rockfish will be prohibited.

Secretarial Action

The Secretary concurs with the Council's recommendation and, for the reasons stated above and announced at 53 FR 29480 (August 5, 1988), announces:

(1) Effective at 0001 hours, local time, on September 21, 1988, no more than 3,000 pounds (round weight) of widow rockfish may be taken and retained, or landed per vessel per fishing trip.

(2) This restriction applies to all widow rockfish taken between 0 and 200 nautical miles offshore of Washington, Oregon, and California. All widow rockfish possessed from 0–200 nautical miles offshore of, or landed in, Washington, Oregon, or California are presumed to have been taken and retained from 0–200 nautical miles offshore of Washington, Oregon, or California unless otherwise demonstrated by the person in possession of those fish.

Retention of widow rockfish by foreign fishing or processing vessels is limited by incidental percentage limits established under 50 CFR 611.70.

U.S. vessels operating under an experimental fishing permit issued under 50 CFR 663.10 also are subject to these restrictions unless otherwise provided in the permit.

Landings of groundfish in the pink shrimp, spot and ridgeback prawn fisheries are governed by regulations at 50 CFR 663.28. If fishing for groundfish and pink shrimp, spot or ridgeback prawns occurs in the same fishing trip, the groundfish restrictions in this notice apply.

Classification

The determination to impose this restriction is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the office of the Director, Northwest Region (see ADDRESSES) during business hours until the end of the comment period.

This action is taken under authority of 50 CFR 663.22 and 663.23, and is in compliance with E.O. 12291. The action is covered by the Regulatory Flexibility Analysis prepared for the authorizing regulations.

Section 663.23 of the groundfish regulations states that the Secretary will publish a notice of action reducing fishing levels in proposed form unless he determines that prior notice and public review are impracticable, unnecessary, or contrary to the public interest. If landings of widow rockfish are not immediately restricted, premature closure of this fishery will occur, resulting in discards of incidentally caught widow rockfish and disruption of the market for this species. Accordingly, further delay of this action is impracticable and contrary to the public interest, and this action is published in final form.

The public has had the opportunity to comment on this action. The public participated in Groundfish Select Group, Groundfish Management Team, and Council meetings in July 1988 that generated this management action, which was endorsed by the Council and the Secretary. A public comment period followed publication of the August 5, 1988 notice (53 FR 29480) announcing the intent to take this action. No public comments were received. Further public comments will be accepted for 15 days after date of filing with the Office of the Federal Register.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 19, 1988.

Joe P. Clem,

Acting Director, Office of Fishery Conservation and Management, National Marine Fishery Service.

[FR Doc. 88–21658 Filed 9–19–88; 3:02 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 53, No. 184
Thursday, September 22, 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

Federal Crop Insurance

7 CFR Part 449

[Amdt. No. 1; Doc. No. 6044S]

Fresh Market Sweet Corn Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Withdrawal of Notice of Proposed Rulemaking.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) publishes this notice for the purpose of withdrawing a Notice of Proposed Rulemaking (NPRM) amending the Fresh Market Sweet Corn Crop Insurance Regulations by extending the date for filing actuarial changes. FCIC has determined that these regulations are subject to further review before the issuance of any proposed rule changes thus negating the need for an extension of filing date.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: On Wednesday, March 2, 1988, FCIC published an NPRM in the **Federal Register** at 53 FR 6655, which proposed to amend the Fresh Market Sweet Corn Crop Insurance Regulations (7 CFR Part 449) to extend the date for for filing contract changes specified in the policy for insuring fresh market sweet corn.

Upon review, FCIC has determined that the Fresh Market Sweet Corn Regulations are subject to further review which has the effect of negating the need for extension of the present filing date for contract changes. Therefore we believe that the proposed rule published at 53 FR 6655 should be, and is hereby, withdrawn.

Done in Washington DC on September 16, 1988.

Edward D. Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 88–21640 Filed 9–21–88; 8:45 am]

BILLING CODE 3410–08–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 26

Fitness-for-Duty Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing to create a new part to its regulations to require licensees authorized to operate nuclear power reactors to implement a fitness-for-duty program, the general objective of which is to provide reasonable assurance that nuclear power plant personnel are not under the influence of any substance, legal or illegal, or mentally or physically impaired from any cause, which in any way adversely affects their ability to safety and competently perfom their duties. One major element of a fitness-for-duty program and the focus of this rule, is to assure safety by creating an environment which is free of the effects of drugs. The rule would, with limited exceptions, apply to all individuals granted unescorted access to protected areas, and to any licensee or contractor personnel required to respond to the licensee's Technical Support Center (TSC) or Emergency Operations Facility (EOF) in accordance with licensee emergency plans and procedures. Under the proposed rule, testing for impermissible drug use would be conducted prior to authorizing unescorted access to protected areas or assignment to out activities within the scope of the proposed rule, randomly for such licensee and contractor personnel, after certain operational events, based on reasonable cause, and to verify continued abstention. In addition, the proposed rule provides for other basic fitness-for-duty program elements such as the development of written policy and procedures, provisions for the training of supervisors and employees, standards for drug testing, management actions, and requirements for employee assistance programs and appeal procedures.

DATES: Comments should be submitted by November 21, 1988. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Comments should be sent to the Secretary of the Commission, Attention: Docketing and Service Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or may be hand-delivered to the Office of the Secretary, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland, between the hours of 7:30 a.m. and 4:15 p.m. weekdays, or the Public Document Roon, 2120 L St., NW., Washington, DC 20555, between the hours of 7:45 a.m. and 4:30 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Loren Bush, Reactor Safeguards Branch, Division of Reactor Inspection and Safeguards, Office of Nuclear Reactor Regulations, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–0944.

SUPPLEMENTARY INFORMATION:

Background

On August 5, 1982, the Commission published for comment a proposed rule to require licensees to develop and implement written procedures concerning fitness for duty (47 FR 33980). Seventy-three responses containing 310 comments were received and considered during the Commission deliberations on the proposed rule (51 FR 27872). Subsequently, in recognition of initiatives and commitments made by the industry to develop and self-manage fitness-for-duty programs, the Commission decided to defer implementation of the rule, to issue a policy statement to further encourage such self-improvement and to reconsider the need for rulemaking after evaluating the experience gained under the industry program. The Commission's Policy Statement on Fitness for Duty of Nuclear Power Personnel was published in the **Federal Register** on August 4, 1986 (51 FR 27921). Ten respondents commented on the policy statement (SECY–87–64). On December 1, 1987, the Commission was briefed by the Nuclear Utility Management and Resources

Council (NUMARC) and the NRC staff on the experience gained to date and on the status of implementation of the Commission's fitness-for-duty policy statement.

Discussion

The Commission recognizes and appreciates the significant efforts already undertaken by NUMARC, the Institute of Nuclear Power Operations (INPO), the Edison Electric Institute (EEI), and each nuclear power reactor licensee in developing and implementing fitness-for-duty programs for nuclear power plant personnel. Much progress has been made through the industry efforts in achieving an environment in which nuclear power plant operations are free of the effects of alcohol and durgs. Nevertheless, the Commission's evaluation of experience gained in the 18 months since the policy statement became effective indicates that rulemaking is now appropriate. During the December 1, 1987 briefing on the implementation of the policy statement, the Commission was informed that licensees did not have uniform program standards, there were significant differences in key program elements, and that there were many factors that made it unlikely that the nuclear industry could achieve uniformity at the desired level. For example, (1) not all licensees were conducting random tests, some because of union intervention or prohibition by state laws, (2) drug testing cutoff levels varied significantly, some of which were inadequate, (3) disciplinary actions in response to positive test results varied partly due to the degree of local tolerance toward the various fitness-for-duty conditions, and (4), training and awarness programs needed to be improved by many licensees. The current and apparently continuing lack of uniformity in these key program elements was the basis for the Commission request that a proposed rule be prepared. The rule is designed to take into account existing programs, rectify the shortcomings as stated above, and establish uniform standards to promote the public health and safety.

The proposed rule takes into account the many positive aspects of existing industry programs while providing for more uniform program standards, with due regard to both public and worker safety and the rights of individuals. In developing this proposed rule, the NRC staff considered public comments received in response to the 1982 proposed rulemaking and the 1986 policy statement. The staff also considered industry experience reported to the Commission, together with lessons learned by the staff from evaluating the effectiveness of utility fitness-for-duty programs, from assessing reported drug related incidents, and from reviewing similar rules being developed by other Government agencies.

The Commission also considered whether the proposed rule should be applicable to persons having access to information requiring protection, such as national security information, safeguards information, or proprietary information. The Commission believes that determinations of eligibility for access to protected information based on the current 10 CFR Part 10, or the proposed Nuclear Power Plant Access Authorization Program policy statement published on March 9, 1988 (53 FR 7534), will provide a suitable mechanism to protect that information from those individuals whose trustworthiness may be in question.

In considering the minimum requirements of this proposed rule, the Commission has decided to require certain programs that could be viewed as rightfully being left to the discretion of licensee management in structuring their programs to meet fitness-for-duty objectives, dealing with employees, and in establishing their benefits. For example, the Commission proposes to require that licensees maintain Employee Assistance Programs and that individuals be trained in the health hazards of drug abuse. The Commission seeks comments as to whether these program elements should be in the rule or included as recommendations in implementing guidance.

In addition, the Commission has preliminarily decided not to include several matters in the rule. These matters are summarized in the Appendix to this **Federal Register** Notice. The Commission seeks comments as to whether these matters should be added to the rule or included as recommendations in implementing guidance. In this regard, Public Citizen (a public interest group) submitted a letter on June 4, 1987, petitioning the Commission to amend its regulations to require licensees to report: (1) All instances of drug and alcohol use by personnel while on duty, (2) the details of fitness-for-duty programs, (3) the results of rehabilitation programs, and (4) the results of drug testing programs. This letter was not noticed due to the moratorium on rulemaking on fitness for duty established by the Commission's Policy Statement (51 FR 27921). However, NRC staff communicated with Public Citizen and informed them of the Commission's intent to address the issues raised. The Commission will address this request in conjunction with its consideration of public comments provided in response to this proposed rule.

The Commission seeks comments from knowledgeable persons on the scientific and technical basis of the proposed rule and the consequences of drug use on the safe operation of a nuclear power reactor. The Commission also seeks comments on the following:

1. Are there practical alternatives to random testing, not discussed herein, that provide equivalent deterrence and detection of drug use?

2. What practical alternatives, not discussed herein, exist that could determine physical and mental impairment?

3. What rates of random testing and retesting provide an acceptable probability of detection and adequate deterrence? What should be the basis for any future modifications in the rate for random testing? Chairman Zech and Commissioner Carr believe, in view of the military's experience with testing cited in section IV of this notice, that a 300 percent annual testing frequency is more appropriate to ensure that the testing program provides an adequate deterrent. They request specific comments as to whether a 300 percent annual testing frequency (Alternative B) or Alternative A in § 26.24.(a)(2) in the proposed rule is the more effective testing scheme. Is there some other alternative that should be considered? Data to support recommendations are requested.

4. Are there effective alternatives to the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" issued by Health and Human Services (HHS) on April 11, 1988 (53 FR 11970) that the Commission should adopt as minimum standards for fitness-for-duty programs at nuclear power plants?

5. Are there any additional quality control measures or appeal procedures that should be considered to protect the rights of individuals being tested, to ensure that individuals are not misidentified in the process as drug users, and to provide a mechanism to correct any errors? Specifically, who should have access to knowledge of the results of unconfirmed initial test results (employee, immediate supervisor, higher management levels)? What procedures are necessary to assure appropriate privacy?

6. Should the Commission provide general guidance on potential impairments, such as alcohol abuse and prescription drugs? How should such guidance be implemented in a fitness-for-duty program? Should any random testing program be expanded to

encompass legal drug and alcohol? If so, should the response to a positive test for alcohol be the same as for illegal drugs? What should be the response to a positive test for legal drugs?

7. How long should a person be barred from performing activities within the scope of the proposed rule following removal under the fitness-for-duty policy, and under what circumstances should reinstatement be allowed? How long should records of this removal be retained to facilitate future employment decisions?

8. Are the categories of workers identified for testing appropriate, or is some other population (whole site, control room operators only) necessary/sufficient for safety?

9. Should training on the items covered under 3, 4, and 5 of § 26.22(a) be provided to all employees covered under the rule so each employee can recognize drugs, indications of the use, sale, or possession of drugs, and impairment of a person covered under the rule and know what action to take?

10. Finally, the Commission is especially interested in receiving comments on the extent to which NRC regulations on fitness for duty should address other regulated activities not currently within the scope of this proposed rule. Regulated activities being considered for rulemaking or a Commission statement of policy include:

- The construction and pre-operational testing of nuclear power plants prior to the issuance of a license and the loading of nuclear fuel.
- The operation of nonpower reactors used in academic, research, and commercial applications.
- Fuel cycle facilities involved in the possession and processing of plutonium or uranium in highly enriched, low enriched, or natural uranium forms.
- The utilization of nuclear materials in other activities such as radiography, product irradiation, radiopharmaceutical production, nuclear medicine, uranium milling activities, production and use of various sources, and radioactive waste disposal activities.

While fully supportive of programs to address the national problems of drug and alcohol abuse and to provide for the health and safety of individual workers, the Commission's policy on the regulation of fitness-for-duty programs for persons involved in the above activities will primarily be based upon considerations for the safety of the public and fellow workers.

In the matter of requirements for fitness-for-duty programs at nuclear power plants undergoing construction and pre-operational testing, the Commission requests views on: (1) The relative safety significance of the wide variety of specific construction steps and crafts involved, (2) the extent to which the controls described above do or do not tend to provide adequate identification or mitigation of individual failures in performance in these areas and, accordingly, (3) the nature and extent of any fitness-for-duty program elements which shoud be applied to these activities. An example might be the welding or reactor primary system boundaries, structures and supports, and safety-related systems, as opposed to balance of plant welding.

Although fitness for duty programs are intended to provide reasonable assurance that individuals are not using or under the influence of any substance, or mentally or physically impaired from any cause that could adversely affect safety, the specific program elements and procedures contained in the proposed rule apply only to drugs. In meeting the proposed rule's requirements that licensees provide reasonable assurance that its employees are fit to perform their duties, specific measures for addressing alcohol, legal drugs, and other health problems, such as mental stress and fatigue, are left to the discretion of each licensee.

Commissioner Roberts has the following additional comments: After reviewing the proposed rulemaking "Fitness-for-Duty Programs", I feel a certain kinship with Sisyphus. I must, then, repeat my objections to this proposal and request public comments on them.

The stated general objective of the proposed rule "is to provide reasonable assurance that nuclear power plant personnel are not under the influence of any substance, legal or illegal, or mentally or physically impaired from any cause, which in any way adversely affects their ability to safely and competently perform their duties." As one who believes in zero tolerance of drugs or alcohol abuse, I fully agree with this objective. However, the proposed rule as written is insufficient in certain fundamental respects and I question whether it can accomplish this objective. My specific comments are as follows:

- I still find no nexus made between the categories of workers chosen for testing and their safety related duties. "The rule would, with limited exceptions, apply to all individuals granted unescorted access to protected areas, and to any licensee or contractor personnel required to respond to the licensee's Technical Support Center (TSC) or Emergency Operations Facility (EOF) in accordance with licensee emergency plans and procedures." I would like to see a documented basis for this. Why not the whole site? Why not only control room operators? This may be the correct class of workers but I would like a rationale.
- The rule portends to provide reasonable assurance that workers are not impaired from a variety of substances, yet it is only focused on *illegal* drugs. I would like comments on the nature of the impairment suffered by abusing legal drug and alcohol. If the industry program is sufficient to provide a reasonable assurance that legal drugs and alcohol are not causing impairment of workers at nuclear power plants, why is it not sufficient—in conjunction with the local law enforcement agencies—to provide the assurance for illegal drug? Why are alcohol and abuse of legal drugs excluded from our area of concern?
- The staff does an excellent job in describing the effects of marijuana, cocaine, opiates, phencyclidine, and amphetamines and of citing expert works to support their descriptions. I note that *each one* of the categories of drugs to be tested have observable effects. Given that the purpose of random testing is detection and deterrence, it seems to me that *testing for cause* would be the preferred alternative since it can also offer detection, and deterrence while having a much better chance of being found to be constitutional.
- Finally, I am concerned that we indicate the illegal drugs to be tested, the frequency of the tests, the mode of testing and yet are silent, other than for a "do good" statement, on the details of procedures to ensure protection of the rights of those tested. How is the NRC going to ensure that those rights are protected? If we rely on the unions to protect their members, how are we going to assure there will be *"uniform program standards"* within the industry?

I firmly believe the prudent Constitutional path leads to modification of this rule.

Options Considered

In developing this proposed rule, various options were considered covering the following subjects:

I. Impairment amd Reliability

The use of alcohol and drugs can directly impair job performance. The effects of alcohol, which is a drug, are well known and documented, and therefore, are not repeated here. Drugs such as marijuana, sedatives, hallucinogens, and high doses of stimulants could adversely affect an employee's ability to correctly iudge

situations and make decisions (NUREG/CR-3196, "Drug and Alcohol Abuse: The Bases for Employee Assistance Programs in the Nuclear Industry," available from the National Technical Information Service). The greatest impairment occurs shortly after use or abuse, and the nagative short-term effects on human performance (including subtle or marginal impairments that are difficult for a supervisor to detect) can last for several hours or days.

The problem with determining impairment is that there are many degrees of physical and mental impairment, some of which cannot be detected by current methods. Furthermore, a positive urine test result does not establish that an individual is currently subject to any physiological or psychological effects of a drug. The most direct measurements of current impairment from tests of body fluids are obtained from tests of fluid in brain tissue, followed by tests of blood serum. Although a positive urine test result may not indicate current impairment, it can provide reasonable evidence to support the conclusion that the person was impaired or marginally impaired. For these reasons, the actions taken by employers in response to drug use are typically based on "reliability" determinations rather than observable evidence of impairment.

Reliability determinations are based upon a well-founded assumption that the use of the drug or alcohol results in impaired motor and mental functioning. The assumption that the use of illicit drugs and the misuse of alcohol can cause significant on-the-job impairment is supported by the scientific literature. The findings of the studies cited herein suggest the likely effects of substance use on job performance at nuclear power plants. These were refereed studies (i.e., subject to peer review by experts in the field prior to publication) and so represent acceptable experimental techniques with findings that are likely to be valid.

The following provides a summary of the research literature on drug use and impairment for the five drug types for which random drug testing is required (marijuana, cocaine, opiates, phencyclidine, and amphetamines). The recently published "Second Triennial Report on Drug Abuse and Drug Abuse Research to the Congress," from the Secretary, Department of Health and Human Services, published in 1987, contains a summary of recent research findings which are consistent with those described below.

A. Marijuana

1. *Background.* Frequent smoking of marijuana is associated with a decline in social, mental, psychomotor, and perceptual skills. Marijuana intoxication impairs motor vehicle driving skills such as motor coordination, eye tracking skills, and perceptual functions (Schwarz and Hawks, 1985). Marijuana intoxication impairs sensory/perceptual performance such s hearing and vision (Murray, 1986). Marijuana intoxication can shorten attention span, decrease manual dexterity, and impair motor steadiness (Murray, 1986; NUREG/CR-3196, 1983).

Marijuana intoxication impairs performance of cognitive and physical tasks (Fehr and Kalant, 1983). Studies have shown forms of cognitive impairment such as interference with learning, impaired numerical reasoning, and interference with the transfer of information from short-term to long-term memory and susceptibility to distraction or stress (Murray, 1986; NUREG/CR-2196, 1983). The larger the dose, the greater the perceived subjective effect of a "high," and the greater the effect on physiologic indexes, such as increased heart rate (Blum, 1984). Research has clearly demonstrated that the degree of impairment in individual subjects is dose related; i.e., the greater the dose, the greater the degree of impairment (Chesher, 1986). It should be noted that the potency of street samples of marijuana continues to rise, and is typically two to four times (and for some 14 times) greater than that used in most research (Cohen, 1986). The implication is that impairment from marijuana is likely to be more acute than that reported in the literature.

There are significant differences between casual and heavy users of marijuana. In one study, casual users of marijuana made five times as many errors on a divided-attention task when they were smoking an ad libitum dose of marijuana as they did when they were smoking the placebo. Heavy users did not show any increase of errors in the ad libitum dose condition. A similar study comparing casual and heavy users showed that heavy users displayed more hostility, poorer work adjustment, and worse interpersonal relations than did the casual users. (Murray, 1986).

The effects of marijuana intoxication on social interaction vary. Some subjects become withdrawn; other subjects more aggressive. Marijuana intoxication generally affects social behavior and interaction in a variety of measurable forms, a fact with some implications for crew as well as individual performance.

A study of the effects of marijuana intoxication on vehicle driving performance demonstrated that those who were intoxicated had worse composite driving performance than those who were not intoxicated. The study also showed that even small doses of marijuana impaired driving ability (Klonoff, 1974; Fehr and Kalant, 1983).

Studies of the effects of marijuana on aircraft pilot performance showed that marijuana can produce residual behavioral effects 24 hours after ingestion. Simple performance measure returned within baseline levels in a relatively short time; highly complex aspects of the task showed deficits 24 hours after ingestion (Yesavage, et al., 1985; Walsh, 1987). Hangover effects of marijuana induce significant residual subjective and behavioral effects at least nine hours after smoking (i.e., the next morning) (Chait, et al., 1985; Walsh, 1987).

Relatively low amounts of marijuana combined with alcohol can have serious disruptive effects on performance (Sutton, 1983; Ross and Ross, 1985). On some tasks, the effects of combined alcohol and marijuana have shown an antagonistic or less than additive reaction between the two drugs. Low doses of marijuana combined with alcohol produced an antagonistic effect; high doses of marijuana combined with alcohol produced additive effects. The effects produced by these drugs when used singularly and in combination produce qualitatively and quantitatively different effects (Chesher, 1986). Another study concluded that both marijuana and alcohol had significant effects on driving performance, and the effects were particularly detrimental when both drugs were combined. Marijuana effects had a more rapid onset than those of alcohol and were somewhat less severe for most tasks (Peck, et al., 1986).

Combining alcohol with marijuana can significantly impair cognitive and psychomotor task performance. Studies of airplane pilot performance in simulate flight demonstrated that pilots made significant major errors (becoming lost or stalling) and minor errors (altitude and heading deviations) in performance, even though they knew they were under the influence of marijuana and attempted to compensate for the effects (Janowsky, et al., 1976; Ross and Ross, 1985). Similar driving simulator studies showed major performance decrements (ability to maneuver, negotiate curves, following another car, passing a car, etc.) (Smiley, et al., 1981; Moskowitz 1985). Performance decrements are also

noted for handsteadiness, execution of movements, and body sway (Moskowitz, 1985). A battery of cognitive tests also revealed performance decrements that were additive when marijuana and alcohol were combined (Chesher, 1986).

Based on evaluations of a variety of actual and simulated driving performance tasks under the influence of marijuana, one study noted that subjects intoxicated on marijuana appeared to realize that they were impaired and compensated for this impairment on task performance whenever they could. Such compensation is obviously not possible in unpredictable or emergency situations (Smiley, 1986).

One study notes that when the subject is intoxicated due to marijuana, even though the subjective feeling of being "high" may no longer be present, performance decrements may still exist, possibly lasting several hours. Thus an operator may be impaired without realizing that his or her performance is still being affected by marijuana intoxication (Blum, 1984).

Factors such as dosage, degree of impairment, and age and experience of the operator must be considered when generalizing from clinical results to work settings (Fehr and Kalant, 1983). Other factors for consideration include the type of task to be performed and the environment in which it is performed.

Studies of the long-term or chronic effects of marijuana use on behavior are sparse. However, one study notes that heavy chronic cannabis users exhibit behavior labeled as "amotivational Syndrome". Characteristics of amotivational syndrome include apathy, reduced drive and ambition, impaired ability to carry out complex tasks, failure to pursue long-term plans, reduced tolerance to frustration, diminished communication skills, neglect of personal appearance, and sluggish mental responses. These characteristics are not specific to chronic cannabis use; they are found with a number of psychoactive drugs, primarily those of a sedative-hypnotic nature, and may be labeled "chronic cannabis intoxication" (Fehr and Kalant, 1983).

Lasting effects of marijuana use may impair the transfer of new information into long-term memory storage (Fehr and Kalant, 1983). There is increasing evidence that long-term, chronic use of marijuana may lead to adverse health effect in the individual (Cohen, 1986). However, empirical evidence linking the effects of chronic use to decreased performance is not as well developed as research on the acute effects of recent use or intoxication. Marijuana can induce acute memory impairment that directly affects learning through a dysfunction of normal storage and retrieval mechanisms (See discussion, Walsh, 1987).

2. *Physical Signs of Abuse.* Symptoms of marijuana use are chronic fatigue and lethargy, chronic dry irritating cough, chronic sore throat, chronic conjunctivitis (red eyes), or dilated pupils (Blum, 1984).

3. *Tolerance and Withdrawal.* Tolerance to cannabis is complex. It is know that tolerance to tetrahydrocannabinol (THC) develops with prolonged use. Novice users have a moderate degree of tolerance which actually decreases with repeated use. Tolerance then increases with heavy use. There is no definitive evidence that chronic users require increasing amount of THC to maintain the same effects. Experienced users do withstand higher doses than novices, though, and it is evident that chronic marijuana users develop tolerance to the effects of THC (Agurell and Hollister, 1986; Blum, 1984).

Withdrawal symtoms after marijuana intoxication are mild, such a lassitude or mild headache. Withdrawal symptoms after chronic marijuana use is halted (e.g., headaches, stomach cramps, feelings of lassitude) are attributed to psychological dependence (Murray, 1986).

4. *Discussion.* The studies to date have focused upon the observable short-term effects of marijuana intoxication. These studies of marijuana intoxication show significant effect on cognitive and physical task performance. The findings are not entirely conclusive; there are inconsistencies, for instance, on the findings regarding memory and learning. This is attributed to the methodology of the studies as well as the unique characteristics of cannabis, which is a complex psychoactive substance. The majority of studies suggest, however, that the more complex a physical or cognitive task becomes, the greater the likelihood that detectable marijuana intoxication will significantly affect or impair performance. Certainly, the performance of both routine and emergency-related tasks in a nuclear power plant would usually qualify as complex.

Long-term studies of chronic marijuana use are less conclusive. This is attributed to the general inadequacy of reported data in clinical studies; poor sample sizes; and a lack of adequate differentiation between intoxication, withdrawal, and residual effects. There is also an absence of before-and-after longitudinal studies or regular users (Fehr and Kalant, 1983). Evidence is accumulating that marijuana may also have long-term health effects which directly affect performance, such as impaired memory (Murray, 1986). Long-term adverse health effects due to chronic use, such as physiological damage, are increasingly evident (Cohen, 1986).

Cultural and socioeconomic factors may influence the definition and identification of adverse effects, especially those related to complex emotional or cognitive functions (Fehr and Kalant, 1983). For example, impaired performance due to marijuana intoxication is more likely to be recognized in a control room operator than a janitorial worker.

Cannabis use is usually combined with tobacco and alcohol, and less frequently with cocaine, phencyclidine (PCP), and other drugs. When combined with other drugs, the effects of cannabis on the user can be influenced by the other drugs; cannabis can also affect the reaction of other drugs in the system (Fehr and Kalant, 1983).

Marijuana is known to impair human judgment, short-term memory, and psychomotor functions such as driving an automobile (Murray, 1986). Research in the complex psychoactive and behavioral effects of marijuana has produced somewhat limited and qualified conclusions. It is known, however, that marijuana can significantly impair performance during intoxication. Impairment due to hangover effects, chronic use, and withdrawal are also possible.

B. Cocaine

1. *Background.* Cocaine is a central nervous system (CNS) stimulant. Cocaine has many behavioral and pharmacological properties which are similar to amphetamines (Fischman, NIDA Research Monograph #50, 1984). Cocaine primarily affects brain functions. Cocaine can induce feelings of euphoria, relieve fatigue and boredom, and produce effects which are similar to local anesthetics (Washton and Gold, 1987). Given cocaine's recent elevation to the status of a major drug of abuse, cocaine psychopharmacology and studies of the general behavioral effects of its consumption by human beings are not as well developed as studies of other drugs of abuse (Jones, NIDA Research Monograph #50, 1984). Methods of consumption and amounts of dosage vary widely. Cocaine consumption has risen dramatically in the United States throughout the 1980s. Cocaine is listed as second among the top 20 controlled substances in 1986, or a percentage increase of 253 percent for

emergency room admissions in a 6-year period (Frank, 1987). Cocaine is a powerful drug; single doses have been known to induce seizures (Washton and Gold, 1987).

2. *Effects on Performance.* The primary physiological effects of cocaine are cardiovascular: heart rate, blood pressure, and body temperature are significantly raised following ingestion (Byck, 1987). The effects caused by cocaine are relatively short in duration. Cocaine heightens mental stimulation (Jones, NIDA Research Monograph #50, 1984). Many cocaine users believe that cognitive and psychomotor task performances are heightened under the influence of cocaine. Studies do not support this contention (Fischman, NIDA Research Monograph #50, 1984). Subjective mood profiles of individuals under the influence of cocaine revealed heightened confusion, anxiety, friendliness, vigor, elation, arousal, and positive disposition, i.e., moods characteristic of stimulant or amphetamine use (Fischman, NIDA Research Monograph #50, 1984).

Cocaine intoxication dramatically affects vision. Studies have demonstrated that vision is impaired during cocaine intoxication; subjects reported increased sensitivity to light, halos around bright objects, and difficulty focusing the eyes (Siegel, 1987). During one study which measured driving performance of subjects while intoxicated on cocaine, 100 percent of the subjects reported lapses of attention while driving and ignoring relevant stimuli, such as changes in traffic signals (Siegel, 1987). Cocaine can increase irritability, hyperexcitability, and startle responses (Davis, 1985; Siegel, 1987). Sudden sounds, such as horns or sirens, caused violent responses in intoxicated subjects (i.e., rapid steering or braking while driving an automobile).

Studies have demonstrated that cocaine intoxication interferes with the acquisition of new behavior patterns that require learning (Fischman, NIDA Research Monograph #50, 1984). Impairment in learning has been evidenced in the first 10–15 minutes after intravenous administration of cocaine; these effects are seen only in the short-term immediately after administration (Fischman, 1984; Walsh, 1987).

The belief that cocaine enhances work performance because Inca Indian workers chewed coca leaves and supposedly worked harder is not supported by recent research. The subjective perception of working harder is present, yet there is no measurable improvement in performance (Fischman, NIDA Research Monograph #50, 1984). It should be noted that current routes of administration (intravenous, nasal, smoked) and dose concentrations are much more intense in effects than chewing coca leaves and may preclude an accurate comparison other than anecdotal observations.

Tests which measured subjects' hand-grip strength and reaction time under the influence of cocaine showed no significant enhancement or decrement in performance (Fischman, NIDA Research Monograph #50, 1984).

Substantial data exist that demonstrate cocaine's similarities to amphetamines in that performance in non-sleep deprived subjects is neither enhanced nor impaired with normal dosages; these drugs are effective, however, in returning sleep-deprived subjects to pre-deprivation performance levels. For example, inhalation of up to 96 mg of cocaine allowed a sleep-deprived subject to return to pre-deprivation performance levels (Fischman, NIDA Research Monograph #50, 1984).

Cocaine is often used with other drugs such as alcohol, opiates, or CNS depressants; this polydrug use can affect complex performance, however, specific performance effects have not been adequately studied (Byck, 1987). Cocaine use with alcohol may mask alcohol's effects, i.e., a person may feel sober and alert under the influence of cocaine and alcohol though he or she may be significantly impaired (Stone, et al., 1984; Siegel, 1987).

Depression is symptomatic of withdrawal or abstinence from cocaine abuse. This is coupled with irritability, anxiety, hypersomnolence, episodic unconsciousness, and attentional dysfunction and ataxia during the initial phase. Cocaine smokers in one study reported impaired driving during this time; several were involved in separate collisions resulting in major injuries (Gawin and Kleber, 1986; Siegel, 1987).

3. *Physical Signs of Abuse.* Psychological and behavioral symptoms of cocaine abuse are marked by irritability, decreased or dysfunctional attention, restlessness, hypervigilance, paranoia, and hallucinations (Siegel, 1987). Chronic or habitual use produces unacceptable irritability, paranoid and delusional thinking, and other unpleasant effects (Jones, NIDA Research Monograph #50, 1984). Cocaine psychosis may occur with prolonged high-dose cocaine use (Fischman, NIDA Research Monograph #50, 1984).

Acute physical symptoms of cocaine use include increased blood pressure and heart rate, hypertension, blurred vision, increased muscle tension, tremors, palpitations, slurred speech, dysarthria, thirst, anorexia, mydrisis, increased body temperature with sweating, headaches, dizziness, nausea, and diarrhea (Siegel, 1987).

4. *Tolerance and Withdrawal.* Tolerance develops quickly in cocaine users. The effects on the central nervous system which are sought for the cocaine "high" are rapidly lessened in frequent or regular cocaine users (Washton and Gold, 1987). In a recent study, the subjective euphoric effect increased in intensity to a peak one hour after intravenous cocaine injection, then declined toward the baseline at four hours despite the presence of constant plasma cocaine levels. This rapid tolerance development is acute in persons who use cocaine on a regular basis. Tolerance development is quantified as an exponential process based on the findings of the study (Ambre, et al., 1988). This acute tolerance development accounts for the progressive alteration of the cocaine concentration/effect relationship in individuals (Ambre, et al., 1988).

Symptoms of withdrawal from cocaine can occur even with relatively high doses of cocaine still present in the user's system. Due to acute tolerance development, increasing the frequency or size of the doses failes to produce the desired effects. The euphoric effects are consistently replaced by dysphoria and global sensations of "feeling bad" (Ambre, et al., 1988).

Withdrawal following complete cessation of cocaine use is marked by disturbance and changes in sleep patterns. One study suggests that these changes are inadequately explained by the term "psychological dependence" (Jones, NIDA Research Monograph #50, 1984). These withdrawal symptoms pose a strong negative incentive that makes it very difficult to quit using cocaine as long as the drug is available (Jones, NIDA Research Monograph #50, 1984; Jones in Washton and Gold, 1987). Further use following withdrawal can produce irritability, paranoia, delusional and confused thinking, and other unpleasant effects leading to a cycle of ceasing and resuming the use of cocaine known as the "run" (Jones in Washton and Gold, 1987). The nature of cocaine abuse in the workplace will presumably be cyclical within individuals over time (DuPont in Washton and Gold, 1987).

5. *Discussion.* Acute tolerance development and severe and unpleasant withdrawal symptoms pose a two-fold problem for cocaine users: increasing amounts of cocaine are required to maintain the euphoric "high" which becomes harder to achieve; and

cessation of cocaine use is a difficult and painful process which casts serious doubts upon terming addiction to cocaine as merely "psychological dependence."

Acute tolerance development hinders accurate studies of cocaine effects on cognitive and psychomotor task performance. Many single-dose studies have been conducted, yet their applicability to regular users (e.g., multiple use on a daily basis) is questionable. Cocaine has been much less studied than other drugs of abuse such as marijuana or heroin. This is partly due to the pharmokinetics of the drug itself, and partly due to the inattention given to the drug until the late 1970s, when cocaine became very popular.

Cocaine is a relatively fast-acting drug and is quickly metabolized and excreted from the body. Peak effects are usually experienced 10 to 20 minutes after ingestion, and total effects last no more than 40 to 50 minutes (Walsh and Yohay, 1987). Cocaine'e effects are similar to amphetamines in that it stimulates the CNS and produces feelings of euphoria. It has been shown that cocaine does not significantly enhance performance nor does it always create significant performance decrements in normal dosages; however, acute tolerance development definitely complicates the concentration/drug effect equation, making "normal" dosages and consequent effects of cocaine difficult to define. As with amphetamines, cocaine use appears to return sleep-deprived subjects to normal pre-depreivation performance levels.

Cocaine causes paranoia and aggressiveness. Cocaine abusers tend toward violence, suspiciousness, and paranoia. There are serious implications for users of cocaine in the workplace at all levels. Social interaction is presumably worsened by cocaine use. Cyclical "runs" of cocaine use by a worker create withdrawal and recurrent use symptoms such as irritability and lassitude followed by the previously mentioned symptoms of chronic use. Thus, while the immediate effects of the drug on the central nervous system may not necessarily cause impairment, the overall effects on the individual and his or her interaction with others are likely to create performance problems in the nuclear power plant setting. The behavioral effects of cocaine during all phases of use—intoxication, hangover, dependence, and withdrawal—directly and indirectly impact performance.

C. Opiates

1. *Background.* Opiates, or opioids, encompass natural drugs derived from the opium poppy and synthetic drugs that possess distinct chemical structures, but similar pharmacological characteristics to natural opium products. The term "narcotics" is used to describe this class of drug (Woolf, in Bennett, Vourakis, and Woolf, 1983).

Opioids are used both for medical treatment and personal (recreational) reasons. Opioids primarily affect the Central Nervous System (CNS). Opioids are among the most effective drugs known to relieve pain. Common effects include mood changes, mental clouding, or more commonly, euphoria. Natural opioid drugs include opium, heroin, codeine, and morphine. Synthetic opioids include hydromorphone (Dilaudid) oxymorphone (Numorphan), oxycodone (in Percodan), hydrocodone (in Hycodan), methadone, propoxyphene (Darvon), meperidine (Demerol), and other synthetic variations. Though these various opioids have subtle differences in the duration of effects, withdrawal patterns, and absorption, the pharmocologic characteristics of these drugs can be described for the group as a whole (Woolf, in Bennett, Vourakis, and Woolf, 1983). Opioids are ingested intravenously, orally, and by inhalation.

Heroin overdose ranks first among the top 20 controlled substances based on national estimates of emergency room admissions, a 108 percent increase since 1980; codeine combinations and Percodan (licit use) are listed as 5th and 14th (Frank, 1987).

2. *Effects on Performance.* There are many known effects of opioids. Opioids produce mental clouding, promote faulty judgment, reduce hunger, induce feelings of euphoria, reduce the ability to concentrate, reduce sex drive, produce drowsiness, produce apathy, reduce activity, and reduce aggressive drives (Woolf, in Bennet, Vourakis, and Woolf, 1983).

Cognitive and psychomotor performance are generally impaired by narcotic-like drugs, although the duration and extent of the impairment depends on the type of opioid, the dose, and the experience and drug history of the user. Ingestion of low to moderate amounts produces a short-lived feeling of euphoria followed by a state of physical and mental relaxation which persists for several hours (Walsh and Yohay, 1987).

Use of other drugs with opioids can produce additive effects: combining alcohol with opioids produces marked sedation and respiratory depression due to the sedative effects of these drugs on the CNS; this can lead to unconsciousness or death (Woolf, in Bennett, Vourakis, and Woolf, 1983).

3. *Physical signs of Abuse.* Opioid use may produce side effects of drowsiness, constipation, nausea, vomiting, and orthostatic hypotension (Woolf, in Bennett, Vourakis, and Woolf, 1983).

Characteristics of opioid users include pupillary constriction, depression, apathy, or lethargy. Flu-like symptoms are common symptoms of opioid withdrawal, e.g., watery eyes, nausea and vomiting, muscle cramps, loss of appetite, and other symptoms (Blum, 1984).

4. *Tolerance and Withdrawal.* Selective tolerance may develop with opioid use; tolerance may develop to one effect of an opioid but not to others (Woolf, in Bennett, Vourakis, and Woolf, 1983). Tolerance decreases rapidly following cessation of the drug. Chronic users may abstain from opioid use for short periods of time to regain the "high" which they lost due to increased tolerance.

All opioids are physically and psychologically addictive. All produce withdrawal symptoms with individual differences in type and severity. The degree to which addiction occurs varies among the opioids. Withdrawal symptoms can be violent. For instance, withdrawal from morphine produces the following symptoms in order of severity and progression (4 to 10 weeks) after cessation of drug use: runny nose, extreme yawning, nausea, vomiting, diarrhea, sweating, cold/hot flashes, aching joints, muscles, and bones, twitchings, tremor, muscle spasm, elevated temperature, goose flesh, dilated pupils, blurred vision, high blood pressure, restlessness, anxiety, irritability, increased respiration, and insomnia (Woolf, in Bennett, Vourakis, and Woolf, 1983).

If an opioid user is addicted and tolerant of the effects of one opioid, he or she will usually be tolerant of another. If one opioid is substituted for the effects of another, then withdrawal symptoms will cease until the second opioid is withdrawn (Woolf, in Bennett, Vourakis, and Woolf, 1983).

5. *Discussion.* The opioids are a large class of drugs primarily derived from the poppy. Opioid drugs are either natural or synthetic. Opioids affect CNS functions, primarily acting as a pain reliever, or, in larger doses, a hallucinogen. Cognitive and psychomotor performance are generally impaired during opioid intoxication. Opioids are physically and psychologically addictive, with severe withdrawal symptoms during abstention, lasting up to 4–10 weeks (Woolf, in Bennett, Vourakis, and Woolf, 1983).

Particular attention should be given to licit use on the job of opioid-based products, such as pain relievers or other prescription and over-the-counter drugs. Sufficient dosages can impair on-the-job performance, especially when combined with other drugs such as alcohol (Moskowitz, 1985).

D. Phencyclidine

1. *Background.* Phencyclidine, commonly known as PCP, was first introduced in 1957. It is now a major drug of abuse and is listed as 8th among the top 20 controlled substances based on national estimates of emergency room admissions (Frank, 1987). PCP has a variety of effects on the central nervous system (CNS), making an adequate classification of the drug difficult. It is best understood as a hallucinogen (Holbrook, in Bennett, Vourakis, and Woolf, 1983). PCP can cause CNS stimulation and depression with a great deal of variability depending upon the dose and type of PCP. PCP intoxication begins several minutes after ingestion of the drug and usually lasts up to 8 hours or more (Walsh and Yohay, 1987). PCP is well known for producing unpredicable side effects following intoxication, such as acute psychosis or fits of agitation and excitability. Intoxication in low doses of 5 to 20 mg of PCP resembles an acute confused state (Marwah and Pitts, NIDA Research Monograph #64, 1986). Higher doses in excess of 20 mg can elicit serious neurological, cardiovascular, and psychotic reactions. In fact, PCP-induced psychosis is similar in effects to clinical schizophrenia (Marwah and Pitts, NIDA Research Monograph #64, 1986).

There have been relatively few studies of the behavorial effects of PCP in humans due to the volatility and unpredictability of the side effects of PCP. Also, PCP's opularity as a drug of abuse is relatively recent. However, there are sufficient clinical studies, criminal cases, and behavioral observations that conclusively demonstrate PCP's erratic and serve behavioral effects.

2. *Effects on Performance.* The behavioral effects associated with PCP use are variable and often dependent upon both the person and the environment. Clincal studies have identified four phases of PCP abuse that may appear in successive stages. The first phase is termed acute PCP toxicity. Behavioral effects include combativeness, catatonia, convulsions, and coma, all of which are dose related. Visual disturbances, particularly distortion of size, shape, and distance perception are common. The first phase may last up to 72 hours. The second phase is characterized by grand mal seizures, coma, and death due to respiratory depression following sufficiently high doses. The second phase may last up to 7 days or longer. The third phase is characterized by schizophrenia which may last a month or longer. The fourth phase is characterized by PCP-induced depression, especially serious due to the high likehihood of suicide at this time (Holbrook, in Bennett, Vourakis, and Woolf, 1983). Performance impairment at any of these levels is highly probable. Clinical cases have documented the severe debilitating physical and psychological effects of PCP abuse and the extremely unpredictable behavior that the drug causes. Persons under the influence of PCP may precipitate life-threatening situations due to the disorienting and hallucinogenic effects of PCP intoxication (Holbrook, in Bennett, Vourakis, and Woolf, 1983).

Studies have demonstrated that PCP can also elicit behavioral effects in users similar to barbiturates or other sedative/anesthetics (Balster, NIDA Research Monograph #64, 1986). It is obvious that heavy users of PCP would exhibit motor impairment. Task performance requiring motor coordination, such as driving an automobile, would be signficantly disrupted by PCP (Balster, NIDA Research Monograph #64, 1986). In fact, several fatal accidents involving PCP-intoxicated drivers highlighted severe coordiantion impairment, acute confusional state, and an inability of the intoxicated driver to think abstractly or make rational decisions (Lerner and Burns, NIDA Research Monograph #64 1986).

In combination, PCP significantly enhances the effects of classical depressant drugs, including barbiturates and ethanol (Balster and Wessinger, 1983; Balster, NIDA Research Monograph #64, 1986). Use of PCP with other depressants such as alcohol is a potentially lethal combination which has an additive effect on PCP intoxication, and may explain some behavioral observations of PCP intoxication (Balster, NIDA Research Monograph #64, 1986).

PCP users have reported unique intoxicating effects of the drug unlike those of other drugs of abuse. However, self-administration studies of PCP reveal that patterns of abuse similar to barbiturate and alcohol abuse: dosage intake is sufficiently high to cause marked behavioral effects (Balster, NIDA Research Monograph #64, 1986).

3. *Physical Signs of Abuse.* PCP intoxication is marked by difficulties in coordination; severe confusional or agitated state; inexplicable mood changes between lassitude and extreme agitation; moods such as suspicion, anger, or terror; and erratic of violent actions (Balster, NIDA Research Monograph #64, 1986; Holbrook, in Bennett, Vourakis, and Woolf, 1983).

4. *Tolerance and Withdrawal.* Animal studies have shown tolerance development following continuous use of PCP (Balster, NIDA Research Monograph #64, 1986). Tolerance develops in human subjects with mildly frequent (daily) use (Holbrook, in Bennett, Vourakis, and Woolf, 1983), although implications of long-term use are not yet fully understood (Jain, et al., 1977; Marwah and Pitts, NIDA Research Monograph #64, 1986).

Animal studies have shown dramatic withdrawal symptoms following the termination of PCP use, such as vocalizations; hyperactivity; lassitude; tremors; and, in one case, convulsions (Balster, NIDA Research Monograph #64, 1986). These symptoms appeared within 8 hours of abstinence and were most severe at 24 hours (Balster, NIDA Research Monograph #64, 1986). PCP has not been reported to produce physical dependence even with chronic use in humans. However, psychological dependence is reported frequently among chronic users (Holbrook in Bennett, Vourakis, and Woolf, 1983).

5. *Discussion.* PCP is a complex hallucinogenic drug with diverse, and often dangerous or lethal, behavioral effects on humans. The understanding of PCP's physiologic and psychologic effects on humans is still relatively new. It is well known, however, that PCP is an unusually dangerous psychoactive substance with unpredictable behavioral effects.

Long-term adverse health effects of PCP use are significant. Irreversible memory loss, personality changes, and thought disorders have been documented. Spontaneous recurrences of drug effects (flashbacks) are possible. Numerous fatalities due to PCP intoxication have been documented (Walsh and Yohay, 1987). Obviously, these characteristics of PCP intoxication, chronic use, and withdrawal have serious job performance implications. It may be assumed that any use of PCP will significantly impair the abuser's short-term, and perhaps permanent, cognitive and psychomotor capabilities.

E. Amphetamines

1. *Background.* Amphetamines are central nervous system (CNS) stimulants. The term "amphetamine" is generic and applies to the group of synthetic compounds derived from ephedrine (Holbrook in Bennett, Vourakis, and Woolf, 1983). Examples of common trade name amphetamines are Benzedrine (racemic amphetamine); Dexerdrine (dextroamphetamine); and Desoxyn (methamphetamine). The behavioral effects of amphetamines are similar to cocaine; however, the two types of stimulants differ in that amphetamines have a longer duration of behavioral effect and greater toxicity than cocaine (Holbrook; see Bennett, Vourakis, and Woolf, 1983). Amphetamines are found in licit and illict form. In general, amphetamines stimulate pulse; heart beat; blood pressure; respiration; perspiration; and, at higher doses, increase body temperature and basal metabolism rate (Caldwell, 1980).

2. *Effects on Performance.* Amphetamines are widely used to increase alertness and fight fatigue. Studies have shown that in therapeutic doses, amphetamines increase alertness, decrease fatigue, elevate mood, and frequently produce euphoria. Motor activity is increased and physical performance of simple tasks is improved. Sleep patterns are distrubed and total sleep time is decreased (Holbrook in Bennett, Vourakis, and Woolf, 1983). Users of small doses experience a heightened sense of well-being, sharp attentiveness, an increaed acuity of reflexes, and idealization (Caldwell, 1980).

The effects of amphetamines on cognitive and psychomotor task performance are well documented. Amphetamines improve short-term physical performance in a variety of areas, such as vigilance performance (the ability to attend to sensory input); motor performance (swimming, running, etc.); learning or acquisition of motor skills; and reaction time. With controlled doses, the adverse effects on physical performance were minimal (NUREG/CR-3916, 1983). Simple short-term cognitive performance, such as performing repetitive tasks which elicit fatigue or boredom; simple math tests; verbal ability tests; learning of visual information; and enhanced ability to read and understand a foreign language improves with controlled doses (NUREG/CR-3196, 1983). Tests of cognitive tasks requiring relatively more complex skills such as calculus did not show performance changes under the influence of amphetamines (NUREG/CR-3196, 1983). High doses of amphetamines, however, produce an exaggerated sense of well-being, high energy, restlessness, urgency, overideation, and gross temporal distortion (Caldwell, 1980).

Cognitive and psychomotor task performance decrements due to amphetamine use on a regular basis are highly likely: "runs" or cycles similar to cocaine runs of abuse and abstinence are also characteristic of amphetamine abuse. Behavioral effects due to these cycles of abuse would directly impact cognitive and psychomotor task performance. Secondary effects of amphetamine abuse such as hangovers, rebound depressions, and insomnia directly impact cognitive and psychomotor task performance. Amphetamine abuse among truck drivers is cited as one example (Caldwell, 1980).

Because of acute tolerance development, there are fewer performance decrements experienced by regular users of amphetamines than by initial users. One study revealed, however, that after the establishment of tolerance and sustained drug levels throughout a 24-hour period, drug cessation produced the following performance effects: performance impairment initially decreased as the drug level in the subject declined, followed by increased impairment as the adverse effects of drug withdrawal—hyperexcitability and/or delirium—appeared (Ellinwood and Nikaido, 1987).

3. *Physical Signs of abuse.* With high doses, gastrointestinal function may be altered, and nausea, vomiting, diarrhea, and cramping may occur. Cardiovascular signs of heavy use include headache, hypertension, pallor, palpitations. CNS signs of heavy use include hyperreflexia, restlessness, talkativeness, insomnia, violence, and increased libido (Caldwell, 1980). High dose may result in amphetamine psychosis, which resembles a true paranoid schizophrenia in the clinical sense. Amphetamine addiction is probable with continued or frequent use (Holbrook in Bennett, Vourakis, and Woolf, 1983).

Evidence of stimulant intoxication in the form of hyperexcitability and deterioration of driving skills occurs with increasing doses (Ellinwood and Nikaido, 1987). Aggression and violence are potential side effects of higher doses of stimultants. Highly toxic doses can induce hallucination, delirium, and delusions (Ellinwood, 1971; Ellinwood and Nikaido, 1987).

4. *Tolerance and Withdrawal.* Similar to cocaine, amphetamine tolerance development is rapid (Caldwell, 1980). Chronic use of the amphetamines leads to development of a tolerance for the stimulant and appetite-suppressant effects of amphetamines, even when administered in low therapeutic doses. Chronic abuse leads to high tolerance (Holbrook in Bennett, Vourakis, and Woolf, 1983).

Amphetamines are psychologically addictive. Though no physical withdrawal symptoms occur following abrupt discontinuation of use, psychological changes, such as apathy, long periods of sleep, irritability, depression, and disorientation, may be prominent for several months. Paranoia may follow the first seven days of withdrawal following the abrupt cessation of heavy use; delusions may persist for up to a year (Holbrook in Bennett, Vourakis, and Woolf, 1983).

5. *Discussion.* Amphetamines stimulate the CNS and cardiovascular system. Short-term physical and simple cognitive task performance is heightened to a minor degree by the use of amphetamines. Complex cognitive task performance is not heightened by the use of amphetamines. Small and moderate doses of amphetamines enhance cognitive and psychomotor task performance on specific and simple tasks, such as vigilance, but these performance enhancements are lost as the complexity of the task increases (Ellinwood and Nikaido, 1987). Significant performance decrements occur as a result of acute tolerance development, hangover effects, and withdrawal symptoms. Thus, many short-term gains in cognitive and task performance are outweighed by the adverse performance effects due to regular use of amphetamines.

Secondary effects of amphetamine abuse such as "runs" and withdrawal "crashes" may adversely affect cognitive and psychomotor task performance. If used frequently, amphetamine addiction is likely. Chronic users of amphetamines are likely to develop tolerance to the CNS effects of amphetamines as well as psychological dependence. Withdrawal symptoms are psychological and produce a variety of adverse behavioral effects which directly impact cognitive and psychomotor task performance. Similar to cocaine abuse, the nature of amphetamine abuse in the workplace will presumably be cyclical within individuals over time (Hurst, 1987).

F. Summary

Use of any of the five listed drugs in the preceding discussion can directly and indirectly affect or impair on-the-job

performance through intoxication, hangover, dependence, or withdrawal effects.

Emphasis should be placed upon examining all phases of drug use in the workplace, since drug-seeking behavior, administration, acute and chronic intoxication, hangover, and withdrawal phases of drug usage may all have detrimental effects on individual and team performance (Walsh, 1987).

The present ability to predict the behavioral consequences of drug use is limited; the ability to accurately predict the specific behavioral performance of an individual under the influence of a certain drug is minimal (Walsh, 1987).

One applicable measure of drug-induced impairment in the nuclear industry may be injury rates. As one researcher states, "A common but incomplete and poorly understood thread that passes through injury reports is the frequency with which alcohol and drugs are involved" (Walsh, 1987).

A multiplicity of variables complicates the drug dosage/impairment relationship: the type and potency of the drug, patterns of consumption, the individual's physical and psychological characteristics, the environment in which the drug is used, and group interaction. However, three generalizations may be made regarding the drug dosage/impairment relationship: high doses generally have greater behavioral effects than low doses, well-learned tasks are less affected by drugs than novel tasks, and motivation regarding the task is an important factor (Walsh, 1987). Further, the studies conclusively demonstrate certain behavioral effects of drug use that impair the user in a variety of cognitive, psychological, and social performance areas.

A clear relationship has been demonstrated among drug use (nonspecific dosage), general behavioral effects, and impairment. It is obvious from the research that use of any of these five drugs or types of drugs alone or in combination has the overwhelming potential to impair workers in the performance of their duties. The question is not whether drugs impair performance, but how they do so under given circumstances.

II. Alternatives to Urinalysis

The Commission considered techniques for analyzing blood, breath, saliva, fingernails, and brainwave patterns and concluded that there is no viable substitute for urinalysis in the near future, either technically or practically.

A. Analysis of Blood Plasma

The analysis of blood has some significant advantages over urinalysis. The main advantage is that there is a much more direct relationship between blood levels of a drug and impairment, since levels in the blood are more directly reflective of effects on the CNS. In the case of alcohol, of course, legal limits defining probable impairment have been established in state law. Equivalent standards for other drugs are not generally available, but an analysis of blood can identify the extreme cases where there is no doubt of impairment. However, current data are insufficient to establish cutoff levels to distinguish between impaired and unimpaired individuals (Consensus Report, Nov. 8, 1985). Blood tests are useful in post-accident analyses if the subjects can be sampled quickly. Another minor advantage of blood testing is that tests can usually deal directly with the drug of interest, rather than one of its metabolites (in urine), and may thus avoid some of the problems with cross reaction.[1]

There are problems with testing blood or plasma, however. One of the most significant is the higher level of intrusiveness (Dogoloff and Angarola, 1985). The drawing of blood involves pain and trauma for some; concern about AIDS would heighten the anxiety, though unreasonably. The collection of samples would be more expensive, requiring trained medical personnel (Walsh and Yohay, 1987).

There are also particular substances, such as cocaine, with such a short half-life in the blood that the chances of identifying users through blood tests are substantially reduced (Washton and Gold, 1987). Also, the concentration of metabolites in urine is sometimes higher than the concentration of the drug in plasma, as in the case of amphetamines (Nelson and Moffat 1980, in *Amphetamines and Related Stimulants*) and cocaine (Washton and Gold, 1987). In general, drugs and their metabolites can be identified over a longer period of time through urinalysis (Washton and Gold, 1987).

B. Analysis of Saliva

The analysis of saliva is receiving considerable attention. Radioimmunoassay (RIA) procedures for testing saliva exist; also there is a commercial kit available for testing saliva. If technically feasible, the use of saliva would avoid some of the intrusiveness and embarrassment of urinalysis. While clinical studies using saliva have been conducted for a number of years (Caddy, 1984), saliva testing currently does not represent a viable alternative to urinalysis (Walsh and Yohay, 1987). Analyses of saliva for purposes of detecting marijuana use, for example, have found that such things as food consumption and mode of ingestion can dramatically affect the ability of assays to detect marijuana use (Hawks, 1982). Also, there is rarely a large enough volume of specimen for confirmation purposes.

C. Analysis of Hair

One drug testing technique involves the use of hair. Hair can be used to identify where there has been a past history of drug use. In fact, it can provide information on drug use over a much longer period than can urinalysis (Baumgartner, Black, Jones, and Blahs, 1982). However, "hair analysis has not been validated extensively enough in clinical studies to make an adequate assessment of its suitability for general drug screening. (Walsh and Yohay, 1987)." (Puschel, Thomasch, and Arnold 1983). This is a very expensive test, which would prohibit its use for a large volume of tests, especially the initial screening tests. A more appropriate application may be for objective diagnosis of a patient's drug history.

D. Analysis of Speech

Another technique involves the analysis of speech to determine the state of a person's intoxication. Since drugs affect the neurotransmitters and receptors in the brain, the speech of the alcohol or drug user is affected accordingly. The measure of impairment is derived from the time and frequency of spoken numerical digits. This technique is intended to be a measure of impairment of a subject at the time of examination, and should avoid challenges based on invasion of privacy. It is not a test for prior use of drugs where measurable impairment no longer exists. Since the impairing effects of drugs are usually of briefer duration than the detectable levels in urine, the opportunities for detection of drug use are somewhat less than with urinalysis.

E. Analysis of Other Specimens

Other techniques are at the experimental or developmental stages. For example, breathalizers are being developed for testing for marijuana smoking. Generalized tests are being developed for body fluids ranging from sweat to mucous from the eyes. Techniques are being developed to analyze brainwave patterns and

[1] Cross reaction occurs when a substance other than the drug or drug matabolite being tested for in a specimen creates a positive test result.

measure eye movement. Anaylsis of fingernails is also being considered. However, a review of the literature indicates that the technical basis does not yet exist to support a legally defensible, wide scale use of these techniques either for screening or confirmatory purposes. Since urinalysis testing appears feasible in the short run, other techniques will not be considered at this time. The Commission will continue to monitor developments in other testing technologies to determine when and if they offer an improvement over urinalysis.

III. Random Testing and Alternatives

Random testing (unannounced drug testing imposed in a statistically random manner) serves two purposes: detection and deterence. It would appear that any form of *unannounced* testing that would be administered so that a person completing a test is immediately eligible for another unannounced test would satisfy criteria for deterrence. Several potential alternatives were considered, including employee awareness, other types of testing (preemployment, announced periodic, for-cause, etc.), reliance on behavioral observations and the Employee Assistance Program, various security measures, and combinations of these alternatives.

One goal of the Commission in proposing this rule is to bring about a nuclear power plant workplace free from the effects of drugs. Such a workplace would ensure, to a large measure, that impairment of function from drug use would not adversely affect the safety of nuclear power plant operations. A workplace free from the effects of drug use would also help assure the reliability of the nuclear power plant workforce to properly perform activities that require scrupulous adherence to rules and procedures. Random testing appears to be an effective means of achieving this goal. The Commission concludes that unannounced random testing is a strong deterrent to drug use, is a necessary element of an effective fitness-for-duty program, and that no alternative or combination of alternatives would provide an acceptable level of both detection and deterrence.

Systematic data on the efficiency of random testing are only available from the various programs implemented by the Department of Defense. Illicit drug use in the Army has been reported as dropping from 29 percent in 1980 to 11.5 percent in 1986 (Raezer, 1987). In the Navy, rates have been reported to have dropped from 47 percent in 1981 to around 4 percent in 1986 (cited in *C & EN*; June, 1986). Rates among U.S. Coast Guard personnel are down from 10 percent in 1983 to 3 percent in 1986; this decrease is attributed to a random drug testing program (Bureau of National Affairs, 1987). In all three cases, the reduction was measured by the rates of confirmed positive tests during random drug testing, and the observed decrease in rates followed the implementation of the random drug testing program. This pattern is consistent with what would be expected if random drug testing was to have a strong deterrent effect. Although other factors, such as drug education programs, negative press associated with drug abuse, stringent disciplinary action, and a better selection (hiring) process, may be affecting the results, available data indicate that there are substantial reductions in drug use associated with the implementation of a random drug testing program.

The Department of Transportation (DOT) has been the leading federal agency in implementing drug testing programs for private sector employees subject to federal regulatory jurisdiction. None of the agencies in the Department currently requires random drug or alcohol testing of private sector employees, but such requirements are being actively considered through proposed rulemaking.

The Federal Railroad Administration (FRA) has detailed regulations covering alcohol and drug use by railroad employees whose working hours are regulated under the Hours of Service Act (15 U.S.C. 61). Under the provisions of 49 CFR Part 219, employees are prohibited from using, possessing, or being impaired by alcohol or controlled substances while on duty. Blood and urine samples of employees involved in railroad accidents are to be taken and preserved. Railroad companies may require breath or urine tests from employees when there is reasonable cause for suspecting prohibited use of alcohol or drugs. Railroads are required to administer a drug test to new employees covered under the Act.

The Federal Highway Administration (FHA) prohibits interstate commercial truck drivers from using amphetamines, narcotics, or any habit-forming drugs, and also requires that they have no current clinical diagnosis of alcoholism (49 CFR 391.41). FHA is preparing a notice of proposed rulemaking that will propose a comprehensive drug control program applicable to all drivers in interstate commerce (See entry in Unified Agenda of Federal Regulations published on October 26, 1987; 52 FR 40630).

The Federal Aviation Administration (FAA) prohibits flight crewmembers from being under the influence of alcohol or drugs. Tests must be taken within four hours of acting as a crewmember when there is a reasonable basis to suspect a violation. The FAA has suggested that random and scheduled drug and alcohol testing may be needed for flight and certain ground crewmembers to protect the public safety (December 9, 1986; 51 FR 44433). A DOT proposed rule that would require random testing of airline employees involved in flight operations and maintenance has been published in the **Federal Register** (53 FR 8386).

The U.S. Coast Guard (USCG) is the primary maritime law enforcement agency for the U.S. It has proposed regulations prohibiting operation of a vessel while intoxicated (February 9, 1987; 52 FR 4116). For commercial operators, intoxication is defined to be .04 percent by weight or more alcohol in the blood or when the effect of alcohol or an illegal drug on the operator's manner or behavior is apparent. For recreational operators, the only difference is that the applicable percentage is 0.1 percent. The USCG is preparing a notice of proposed rulemaking covering use of dangerous drugs by merchant marine personnel. The option being considered is a requirement that individuals applying for licenses, certificates of registry, and merchant mariner's documents provide the results of drug tests before issuance or renewal (See entry in Unified Agenda of Federal Regulations published on October 26, 1987; 52 FR 40582). The proposal also addresses the need for random drug testing.

The potential alternatives to random unannounced drug testing are many and varied. They include the following:

- Take no alternative action;
- Testing before employment or badging;
- Periodic drug testing (announced testing);
- "For-cause" drug testing;
- Behavioral Observation Program;
- Medical Screening;
- Employee Assistance Programs (EAPs);
- Access Authorization Program;
- Workplace security measures; and
- Employee awareness and education programs.

Although systematic data do not exist to compare the efficacy of these approaches, the literature and the findings of the staff's data-gathering activities do suggest some advantages and disadvantages for each. These are discussed below:

A. Take no Alternative Action

The first alternative to random drug testing to be considered is to take no alternative action. This is clearly not a viable alternative. Statistics available on drug use in the workplace indicate that a significant minority of workers have or are currently abusing drugs or alcohol in the workplace (Neuner, 1985). While the exact statistics vary from one source to another, a middle range estimate is that approximately 10–25 percent of American workers abuse drugs and alcohol in the workplace. While the incidence of drug abuse in the nuclear industry can be expected to be lower, based in part on the existing security measures at power plant sites and the relatively aggressive fitness-for-duty programs that characterize the industry, the potential for drug abuse still exists. The fact that approximately two-thirds of the power plant licensees have not implemented random testing programs, some because of union intervention or prohibition by State laws, suggests that significant reductions in the abuse of drugs by nuclear utility workers could be realized when the preventive and deterrent effects of industry-wide random testing programs are realized.

B. Testing Before Employment or Badging

Testing before employment or badging is conducted by many employers to ensure that individuals who cannot meet fitness-for-duty standards are not placed into sensitive jobs. Considered by industry as the first line of protection against drug problems, preemployment testing is specifically used to detect and identify the nature of drug use, if any, by job applicants, and to identify abusers prior to hiring. Although screening has focused on drug abuse, most large industrial companies now include tests for alcohol as part of preemployment testing (Willette, 1986). Individuals with positive results generally do not receive further consideration for employment (McClellan, 1984). Preemployment testing is currently the most prevalent type of drug testing (Hanson, 1986). Virtually every nuclear power utility currently employees this type of testing.

Preemployment testing has some disadvantage. As part of a company's hiring policy, it will certainly be known to most applicants. This knowledge removes any element of surprise, essentially making it an announced test and, therefore, allows applicants to be prepared for the test. A sophisticated or "street smart" drug abuser may be able to avoid detection, and less frequent users may be likely to abstain long enough to guarantee a "clean" sample. New testing techniques are in the process of being developed that may be capable of identifying previous (several months) drug use. However, these techniques have not yet been refined. Consequently, the ability of preemployment to detect substance abusers currently is limited. Even so, licensees report that, typically, 5 percent or more of applicants for employment or unescorted access to a power reactor are tested positive.

The primary disadvantage to using preemployment testing as an alternative to random drug testing is that it in no way addresses substance abuse or dependency problems among the workforce subsequent to employment. Applicants who pass the preemployment testing and become employees may never face testing again. The deterrence factor, implicit in random drug testing programs, is absent. Preemployment testing is probably most effective when it is directed to keeping individuals currently experiencing chemical dependency out of the workforce, and is thus a necessary part of a total fitness-for-duty program but is not sufficient in itself.

C. Periodic Drug Testing (Announced Testing)

Periodic Testing appears to have few, if any, advantages over random testing. Periodic testing, whether announced or unannounced, may be perceived by employees as less discriminatory than random testing in that, on a given date *all* available employees are tested. In a random testing program, some employees are selected at random and tested. Because it may be impractical to test the entire body of employees on any given day, utilities may opt to use a random testing program. Under random testing, some employees may coincidentally be tested more frequently than others, and the utility may be required to prove that the selection process is truly random in reponse to a legal challenge. If testing is announced and scheduled at regular intervals, however, all employees would be tested equally, at least theoretically.

Further, if selection for random testing is truly random, an employee could, strictly through chance, not be selected for testing for an extended period of time. As a result, employees with substance abuse problems may not be detected in a timely manner, and their abuse problems may increase in severity before they are detected in the random testing program or the behavioral observation program. Periodic testing could ensure that all employees are tested with adequate frequency.

Should the testing be announced, immediate, pronounced disciplinary action could be taken without concern that the action is inappropriately severe, because any employee who cannot remain drug- or alcohol-free for an announced test most likely has a severe substance abuse problem and displays an obvious disregard for the safety of the public, co-workers, and self.

It is apparent that announced, periodic tests would not identify some drug abusers that periodic or random unannounced testing would identify, and that the deterrent value of announced testing would only be short-term. Announced, periodic testing would be less effective in detecting abuse of drugs that are rapidly metabolized, such as cocaine. It is expected, however, that an announced, periodic program would identify some regular users of prescription drugs, and users of slowly metabolized drugs such as marijuana. Because announced, periodic testing would potentially allow many employees who abuse drugs to escape detection, it seem clear that announced tests would be less effective than random tests at identifying and deterring the occasional drug users. None of the industries surveyed in NRC's review of other regulated industries or those described in literature have adopted this approach.

D. For-cause Drug Testing

A for-cause testing program has several positive features. In a properly implemented program, when there is cause for a supervisor or co-worker to suspect that an employee is unfit or the employee has been involved in an on-the-job accident, the employee is given a complete physical examination which includes drug testing. This examination may identify health problems other than drug abuse that have diminished the employee's ability to perform safety-related responsibilities. The examination can also include testing for legal drugs of potential abuse, such as alcohol, over-the-counter drugs, and prescription drugs.

A for-cause program may have fewer legal problems than a random testing program becaus there is a specific reasonable cause for the individual test. In a random testing program, the legal justification is that there is a possibility that impaired employees are present who represent a potential risk to the safety of themsleves, their co-workers, or the public. However, when a for-cause test is conducted, the employee in question presents an individualized suspicion of illegal conduct. Further, if the motivation for testing is the

investigation of an accident, the utility has a clear responsibility to do everything possible to identify the cause of the accident to ensure that similar accidents are prevented in the future. There is a body of legal precedent in support of for-cause testing from various industries with safety concerns, including railroads, transportation companies, and the aviation industry.

Some of the leading cases supporting for-cause testing include: *Schmerber* v. *California*, 384 U.S. 757 (1966), (blood tests for alcohol on drunk driving arrest); *Division 241 Amalgamated Transit Union* v. *Suscy*, 538 F. 2d. 1264 (7th Cir. 1976), cert. denied, 429 U.S. 1029, (blood and urine testing of bus drivers after an accident upheld); *Shoemaker* v. *Handel*, 795 F. 2d 1136 (3rd Cir.), cert. denied, 107 S. Ct. 577 (1986), (urine and breath test for licensed jockeys upheld); *McDonnell* v. *Hunter*, 809 F. 2d. 1302 (8th Cir. 1987), (testing of prison guards); of *RLEA* v. *Burnley*, ____F. 2d ____, (9th Cir., decided February 11, 1988).

A random testing program can be expected to be a stronger deterrent to chronic drug use than would a for-cause testing program. When drug tests are administered to all employees on a random basis, a chronic drug user can expect, sooner or later, to be identified through the progrma. Some literature on chronic abusers indicates that they can effectively hide their drug or alcohol problems from supervisors and fellow employees for a considerable length of time. On the other hand, an occasional drug user could hope to escape being detected by a random drug test, expecially if both the tests and the employee's drug use are infrequent. In either case, if supervisors are highly proficient in observing probable impairment, the drug-abusing employee may have little expectation that he or she could be impaired on duty and avoid a for-cause test. Knowing that fellow workers are disciplined for on-the-job impairment also can be expected to deter employees from being impaired on the job. Therefore, for-cause testing might be more effective in deterring users from being impaired on the job than would a random testing program alone.

There are two principal disadvantages of for-cause testing as a substitute for random testing. First, for-casue testing, as discussed above, is likely to be a less effective deterrent against chronic drug use. Second, if managers are unable to identify impaired employees, for-cause tests will only be administered after a gross indicator, such as an accident, shows that the tests are warranted; i.e., the test will be after the fact and not preventative. Therefore, with the exception of post-accident testing, the value of for-cause testing is highly dependent on managers' and co-workers' abilities to idenfity employees who are impaired and an organizational culture which allows managers to require testing without disrupting employer/employee relationships or incurring adverse consequences. Thus, enhanced supervisor proficiency in behavioral observation through training and experience, and strong support from company management, is important in the administration of for-cause testing.

While for-cause drug testing is an important element of a fitness-for-duty program, it does not appear to be an acceptable alternative to random testing.

E. Behavioral Observation Program

Behavioral observation programs are intended to enable supervisors to detect changes in an employee's behavior and to initiate the appropriate corrective action, usually a referral to the Employee Assistance Program (EAP) for initial evaluation and for-cause testing.

Supevisory referrals typically occur when a job performance problem becomes apparent. In these cases, the supervisor is responsible for identifying and documenting the job performance decrement. In addition, he or she meets with the employee to describe the problem, to refer the employee to the EAP, and to indicate that continued impaired performance is likely to lead to disciplinary action or termination from employment. The supervisor is discouraged from trying to diagnose the root cause of the problem or from trying to provide any counseling (Trice & Beyer, 1984; Hoffman & Roman, 1984). The EAP counselor takes the responsibility for these tasks and for referring the employee to appropriate resources (the same procedure is followed when an employee self-refers to the program). If the employee's job performance does not improve, then disciplinary action is taken.

The training that supervisors receive, usually from the EAP staff, in observing employee behavior may allow them to detect problems that may be missed altogehter by a drug screening program or that are obvous to everyone once the problem has reached severe proportions. Whereas a sophisticated and "street smart" drug abuser may be able to avoid detection from drug tests, he or she is unlikely to be able to maintain satisfactory levels of job performance on a day-to-day basis. As a witness to the employee's daily functioning, the supervisor represents a significant opportunity for identifying and removing from duty the emloyee whose job performance may adversley affect public health and safety.

There are several disadvantages to relying on behavioral observation alone. The primary disadvantage is the reliance on supervisors' behavioral assessment skills to identify persons unfit for duty and on their willingness to confront troubled employees. The reliance on supervisors' behavioral assessment skills can be undermined by the fact in the course of a regular work day, supervisors have little, if any, opportunity to exercise the skills they have received through training. If training is provided on an annual basis only, the skills can become rusty and heighten any reticence the supervisors may have initially experienced in utilizing these skils. Also, while the behaviors displayed by an individual intoxicated by alcohol are obvious and recognizable to most observers, the various effects of the wide spectrum of drugs currently abused may be less familiar to supervisors, further disminishing any confidence in recognizing impairment, or allowing impairment to escape notice (Wrich, 1988).

Several barriers to supervisory referral have been identified in the literature. These include (1) the supervisor's desire to help the impaired employee, rather than expose him or her to potential disciplinary action, (2) a belief that the formal system [i. e., the Employee Assistance Program (EAP)] should be used only as a last resort, and (3) the attempt on the supervisor's part to counsel the impaired employee (Hoffman & Roman, 1984). The possibility that an employee could lose his or her job, nuclear safety responsibilities, or unescorted access clearanace if found to be unfit for duty may make supervisors in the nuclear industry just as reluctant to refer the employee as supervisors in other industries in similary circumstances..

A number of program components that can encourage supervisors to make referrals have been identified in the literature. In addition to a clear company policy and strong management support for the EAP, the importance of thorough and ongoing supervisory training has been consistently emphasized in studies designed to identify factors that increase EAP effectiveness (Gregoire, 1979; Morgan-Janty, 1982; Martin, Heckel, & Long, 1984). Providing consultation services by EAP counselor for supervisors and continued program promotional efforts (e.g., posters and notices in company newsletters) have also been suggested

as a means of encouraging supervisory referrals (Hobson, 1981).

While an effective behavioral observation program is an important element of a fitness-for-duty program, it does not appear, alone, to be an acceptable alternative to random testing.

F. Medical Screening

A method currently used by one licensee is a medical evaluation for fitness of randomly selected employees to establish a basis for the collection and testing of urine.

The employee is medically evaluated in three areas: chemical use or dependency, physical well-being, and psychological well-being. Chemical use or depencency is established by using eye evaluation techniques covering such items as pupil size, pupil reaction to light, and the ability of the eyes to converge on an object coming toward the nose or to track an object from side to side and around the face. In addition, the condition of a patient's skin, nose and mouth, coordination, and reflex response are evaluated. Some of the evaluation is quite similar to field sobriety tests conducted by local law enforcement agencies. Physical well-being is reviewed through a complete evaluation of vital signs, including blood pressure, temperature, pulse, respiration, and heart rate. A medical history survey is also conducted to determine the current medical status of the employee. Psychological well-being is determined through a question-and-answer session evaluating mental awareness, depression, paranoia, self-esteem, anxiety and job stress, abnormal personality traits, and major life changes.

There have not been sufficient data collected by the licensee to establish the effectiveness of the medical screening approach. There has been a relatively low rate of testing and, of those few actually submitting urine specimens for testing, less than one half tested positive.

It would seem that a strong behavioral observation program with highly trained and proficient supervisors would have advantages over infrequent medical screening because the supervisor would have opportunities to observe more people more frequently. It would appear that the medical screening alternative would be less effective than random testing at detecting and deterring occasional use of drugs.

Medical screening does not appear to be a currently viable alternative to random testing.

G. Employee Assistance Programs

A preliminary review of the literature pertaining to Employee Assistance Programs (EAPs) indicates that EAPs can play a significant role in assuring that persons with unescorted access to nuclear power plants are fit to perform their duties. The major advantages of the EAP approach is that the EAP can respond to a broad spectrum of fitness-for-duty problems, such as psychological stress, that cannot be addressed in a random drug testing program alone. There are several disadvantages to this approach, however, that suggest that the NRC may now want to rely on EAPs alone to assure a workplace free of the effects of alcohol and drugs.

EAPs have been defined as "systems to provide professional care to employees whose job performance is or may be adversely affected by alcoholism, drug dependence, emotional problems, family difficulties, legal issues, eating disorders, and similar personal problems that not only threaten the employee's effectiveness on the job but also tend to trigger a whole range of health problems" (Blair, 1985). Thus, the EAP alternative is relevant of the entire range of fitness-for-duty problems.

The EAP literature describes several program elements necessary to the successful resolution of employee personal problems (McGaffey, 1978; Sonnenstuhl & O'Donnell, 1980; Foote & Erfurt, 1981; Phillips & Older, 1981; Roman, 1981; Bierman, 1982; Walsh, 1982; Gam, Sauser, Evans, & Lair, 1983; Wrich, 1988). The "ideal" EAP has been described as including:

- Management support for the EAP in the form of a written policy statement describing the program and explicit written procedures for implementing the program,
- Support for the EAP and cooperation from employee unions,
- Clearly defined job performance standards,
- Well-trained supervisory staff and knowledge of the EAP among employees,
- A recognition by management that performance problems can result from many different causes,
- Program staff who provide problem diagnoses, appropriate referrals, treatment coordination, and follow-up,
- Comprehensive treatment resources,
- Health insurance coverage that is compatible with the EAP or company provided treatment funds.
- A program evaluation process,
- An adequate budget.

Employees typically gain access to EAP services through two routes, self-referrals and supervisory referrals. When the employee self-refers, he or she may contact the EAP counselor directly or seek assistance from a supervisor to make the contact. The EAP counselor then meets with the employee to assess the nature of the problem and to determine what resources are needed to resolve it. The counselor may provide the required assistance in some cases, but more frequently will refer the employee to existing resources in the community. The EAP counselor maintains contact with the employee during the problem resolution phase and often acts as a coordinator between the employee and his or her supervisor while the employee receives inpatient treatment and when the employee returns to work.

As discussed previously under the Behavioral Observation Program, supervisory referrals typically occur when a job performance problem becomes apparent. The EAP counselor is responsible for diagnosing the root cause of the problem and for referring the employee to appropriate resources (the same procedure is followed when an employee self-refers to the program). If the employee's job performance does not improve, then disciplinary action is taken.

Although the literature suggests that an EAP can serve as a valuable tool in assuring that employees in the nuclear industry are fit for duty, the primary benefit of an EAP lies in the potential it represents for assisting employees to overcome personal problems that are not alcohol or drug related but that may interfere with job performance. For example, the psychological stress associated with marital or financial difficulties can impair performance of job responsibilities but will obviously not be detected with drug testing.

The EAP staff is typically responsible for conducting employee awareness training, and for training supervisors in behavioral observation techniques. There are regarded by the NRC staff as important elements of an effective program.

The EAP literature typically discusses program effectiveness in terms of the benefits accrued from program implementation compared to the costs of the program. A number of studies have documented benefits along several dimensions. These dimensions include reduced employee turnover (Gam, Sauser, Evans and Lair, 1981), reduced training and employee replacement costs (Starr & Byram, 1985) reduced employee utilization of insurance benefits (Foote, Erfurt, Strauchy, & Gazzardo, 1978), reduced costs

associated with incidental absence (Gaeta, Lynn, & Grey, 1982), and reduced disability payments (Shore, 1984). Although the NRC cannot be primarily concerned with these cost savings to the industry, these data suggest that implementation of an EAP can have significant positive effects on employee availability and so may improve plant safety indirectly by contributing to adequate staffing.

Of greater relevance to the NRC's concern with public safety are data pertaining to reductions in on-the-job accidents. Rowland Austin of General Motors reports, "We have found that those who participate in the employee assistance program, as a group, reduce their on-the-job accidents upward of 50 percent" (1983). A study done by the Firestone Tire and Rubber Company found drug users almost four times as likely to be invoved in plant accidents (cited in *Journal of American Insurance*, 1984–85); AT&T found that of 110 participants in EAP, 26 had been involved in accidents in the 2 years before participation and only 5 were involved in accidents after participation (Gaeta, 1982). The U.S. Postal Service also reports that the rate of on-the-job accidents has been significantly reduced since implementation of their EAP (Business Insurance, 1983). To the extent that accidents in the nuclear industry are related to impaired employee performance, the existence and use of an EAP by troubled employees may directly improve the safety of plant operations.

Data are not currently available that directly assess the effectiveness of EAP's in reducing drug abuse with objective measures. Therefore, the relative effectiveness of EAP's and random drug screening programs on direct measures of drug use cannot be compared.

There are several disadvantages in relying on the EAP approach alone to assure that employees in the nuclear industry are fit for duty. The primary disadvantage of the EAP approach alone is its reliance on supervisors' behavioral observation skills to identify persons unfit for duty and on their willingness to confront troubled employees. (See related discussion on Behavioral Oberservation Programs.)

There are two additional disadvantages of the EAP approach used alone. First, the deterrent effect thought to result from random drug screening will be absent, although fear of supervisory detection in some cases may serve a similar deterrent function. Second, an EAP without random follow-up drug testing lacks any objective means of ensuring that employees who have entered treatment for drug or alcohol abuse problems have been rehabilitated and can be considered reliable.

While there are drawbacks on the EAP approach alone, the merits suggest that EAPs would perform a vital role in assuring fitness for duty in the nuclear industry. An EAP's ability to address potential employee impairment caused by problems that are not alcohol or drug related justifies careful consideration. It is also apparent that an EAP can play a significant function in detecting substance abuse problems that may otherwise continue undetected through a drug testing program, as the EAP-trained supervisor can have frequent opportunity to identify on-the-job impairment and a diminishing job performance.

H. Access Authorization Program

The NRC is considering promulgation of an access authorization program to govern the granting of unescorted access to employees in nuclear power plants. The proposed program, contained in a policy statement issued for public comment on March 9, 1988 (53 FR 7534), would require background investigations, psychological assessments (i.e., testing and interviews), and an ongoing behavioral observation program for employees with unescorted access. The behavioral observation program that would be implemented, should the proposed policy statement become effective, is the same behavioral observation program that would be implemented in accordance with this proposed fitness-for-duty rule. The requirement in this proposed rule for licensees to conduct a suitable inquiry to determine if a person has a history of fitness-for-duty problems is compatible with the background investigation that would be conducted under the access authorization program.

The program under consideration would expect the licensee to determine whether the individual considered is not only reliable (ie., fit for duty) but also can be trusted with access to nuclear facilities. There are a number of advantages as well as disadvantages to this approach when compared to implementing a random drug testing program.

The unique benefit provided by the access authorization program is that the background investigations and psychological assessments are intended to detect an individual with a history of, or potential for, drug or alcohol abuse or other problems that might make him or her unfit for duty before the person is granted unescorted access.

The background investigations and psychological assessments, of course, do not deter drug abuse and would not detect individuals who develop substance abuse problems after they have been granted access. The behavioral observation component of the proposed program is designed to improve the probability that unreliable and untrustworthy persons are detected.

Background investigations, psychological assessments, and behavioral observation programs, although sometimes controversial in terms of effectiveness, are well accepted for sensitive positions in various industries and types of government service. The disadvantages of sole reliance on the access authorization approach, however, include a relatively weak deterrent to drug abuse in comparison to that provided by random drug testing, and a lack of any preemployment drug testing or ongoing objective assessment of drug use.

I. Workplace Security Measures

This approach to assuring that employees with unescorted access are fit for duty includes such techniques as searches of the workplace. The advantage of this approach over random drug testing is that employees are likely to be deterred from possessing or selling illegal drugs onsite to a greater degree than with random drug testing, because these security measures directly detect possession while random drug testing only assesses recent use. The disadvantages are that it cannot establish use of drugs, and it cannot address other types of fitness for duty concerns. Therefore, workplace security measures, although important elements to an effective program, should not be considered an adequate substitute for random drug testing.

J. Employee Awareness and Education Programs

Any fitness-for-duty program based solely on employee awareness and education about the deleterious effects of drug abuse is likely to be ineffective. Behavior is notoriously resistant to change on the basis of knowledge alone. Consequently, this approach is not likely to provide a powerful deterrent to drug abuse. As an adjunct to other fitness-for-duty approaches, however, employee awareness and education can contribute to a drug-free workplace.

An employee awareness and education program is a necessary component of drug testing and employee assistance programs (EAPs). Employees must be informed about the rationale for drug testing and about procedures for

making referrals to the EAP. Employee awareness and education also provide further evidence of the seriousness with which management views fitness-for-duty issues.

In addition to these benefits, an employee awareness and education program can be developed to make use of the troubled employee's co-workers to detect potential fitness-for-duty problems. With training in behavioral observation, co-workers may be able to spot unusual behavior even before the employee's supervisor notices it. In addition, co-workers may hear of drug use, alcohol abuse, or other employee problems that would not be detected by the supervisor until the problem had become so severe that public health and safety had been jeopardized. Although co-workers may be reluctant to report unusual behavior or potentially damaging information in a public manner, the availability of a confidential hotline can encourage them to report and provide management with an opportunity to investigate the problem. Knowing that his or her co-workers are trained to identify aberrant behavior also may serve to deter an employee from substance abuse.

IV. Rate of Random Tests

The purpose of random (unannounced) testing is to provide reasonable assurance that employees are fit for duty by identifying current drug users and by deterring drug users from further use or potential users from initial use. The frequency with which an individual is tested is relevant to both the identification and deterrence goals of the drug testing program. Generally, the more frequent the testing, the greater the deterrent effect and the better the detection capabilities. However, very frequent testing may result in unacceptable economic or social costs. Although there is no research upon which the testing frequency may be based, it seems reasonable to assume that:

- Any form of *unannounced* testing would provide some level of deterrence.
- There would be little deterrent if the testing dates were predictable and the drug user knew he was not immediately susceptible to another test.
- Testing each day would provide more of a deterrent than testing once each week or month, especially if the daily activity was highly visible.
- Deterrence is related to either the actual or perceived probability of detection.
- The actual probability of detection is related to the type of drug, dose, frequency of use, rate of metabolism and excretion from the body, and the frequency of testing.
- The perceived probability of detection is related to the frequency of testing, the "publicity" given positive findings and sanctions imposed, and the abuser's knowledge of the rate of metabolism and actual probability of detection.

For example, the probability of detecting the use of marijuana, since it is metabolized slowly, is much greater than for alcohol, which is excreted in a matter of hours. Chronic users of marijuana would probably have the greatest probability of detection.

An individual ingesting a "typical" dose [2] of marijuana (e.g., one cigarette) once each month would have a probability of detection of about six percent if the workforce were randomly tested using a cutoff level of 100 ng/ml at a rate equal to 100 percent during the year. By selecting persons for testing daily at that rate, approximately 63 percent of the workforce actually would be tested. Lowering that cutoff level to 20 ng/ml would increase the probability of detection to about 22 percent. More chronic or heavier use (i.e., once each week or 2 or 3 cigarettes each month) would raise the probability of detection to near 63 percent. If the workforce were randomly tested using a cutoff level of 100 ng/ml at a rate equal to 75 percent during the year, the probabilities of detection would be about 2 percent for monthly use and 50 percent for chronic use. If the rate of random testing were equal to 125 percent of the workforce, the probabilities of detection would be about 9 percent and 72 percent respectively.

An individual ingesting a "typical" dose of cocaine, i.e., 50-100 mg, once each week would have a probability of detection of about 13-15 percent if the workforce were randomly tested at a rate equal to 100 percent during the year. If the workforce were randomly tested during the year at a rate equal to 75 percent, the probability of detection for weekly use of cocaine would be about 7 percent. If the workforce were randomly tested at a rate equal to 125 percent, the probability of detection would be about 18–23 percent.

With less frequent testing (e.g., 10 to 20 percent of workforce each year) the probability of detection for an individual becomes unacceptably small even for relatively frequent use. It should be noted that those utilities currently using random testing report between one and two percent positives associated with various rates of testing of the workforce. The DOT proposed anti-drug program proposes that each employer annually test, randomly 125 percent of all airline employees involved in flight operations and maintenance (53 FR 8368).

At the upper end of the scale, the individual U.S. Navy commands typically test randomly at a rate of 20 to 25 percent each month (approximately 300 percent per year). The evidence from the military experience shows that there is an increasing deterrent effect from increasing the frequency of testing (Stoloff, 1985). Increasing the rate to as high as 700 percent of the workforce continues to show increasing deterrence. However, most of the deterrent effect is realized below 300 percent. The nuclear workforce may have different characteristics than the military workforce. The same factors that bear on favorable rehabilitiation outcomes, discussed in Section VIII.C., may also lead to deterrence at lower testing rates.

In addition to the need to conduct random tests at a rate that will provide both suitable deterrence and detection, the Commission desires to use a sampling strategy that assures that a high percentage of the population is tested once per year, and that a low percentage of individuals is tested more than once each year.

The selection of a sampling strategy is guided by several objectives. The two primary objectives, deterrence and detection, have been discussed above. An effective testing strategy must assure that all workers subject to the rule are continuously subject to testing at a rate suitable for deterrence. The strategy should not be overly burdensome to either the licensee or the employee. The strategy should be cost effective and easy to administer. Specific individuals should not be tested overly frequently (unless they have had a confirmed positive test). The strategy should be nondiscriminatory; it should be administered fairly across all individuals and categories of individuals to minimize negative effects on employee morale. While it can be demonstrated that different categories of workers may be more inclined to drug abuse (e.g., males versus females, younger versus older, contractor personnel versus utility employees), considerations of perceived fairness suggest that all categories of workers be tested at the same rate.

In selecting from among the various strategies, however, some compromise among the various objectives will be necessary. For example, decreasing the testing rate relieves some of the burden on the licensee and the individual

[2] Since there are no quality controls in the drug culture, the quantity and purity of doses vary considerably.

worker. However, decreasing the rate too far jeopardizes the deterrent and detection objectives of the program.

A strategy that combines a high testing rate for workers not yet tested in a given calendar period, with a relaxed testing rate for already tested workers (those with negative test results), provides for a reasonable balance among the program objectives. Several alternative models were considered.

- A model that tested at a flat rate of 100, 125, 150, 200 and 300 percent of the population for the year (see Table 1).
- A model that tested at the rate of (e.g.) 100 percent per year of the population for the first period and continued at this rate of testing for subsequent periods for those not yet tested. However, the rate of testing of the already tested population was reduced to a lower rate during subsequent periods of the testing year. Variations of the model were considered using:

—Monthly, quarterly, and semi-annual periods for adjusting the tested population.

—Testing rates for the untested population of 100, 125, and 200 percent per year of the *total* population.

—Testing rates for the actual tested population of 10 and 30 percent per year. (See Table 2 for these variations.)

In Tables 1 and 2, estimates were based on an assumption of 1,000 workers in the population subject to testing. Estimates based on larger populations and populations as low as 200 workers would generate figures essentially equivalent to those shown in the tables.

TABLE 1.—PROBABILITIES ASSOCIATED WITH VARIOUS SAMPLING RATES

Sampling rates	Probability of being selected				
	100%	125%	150%	200%	300%
Not at all	0.37	0.29	0.22	0.13	0.05
At least once	0.63	0.71	0.78	0.87	0.95
At least twice	0.26	0.36	0.44	0.60	0.80
At least three times	0.08	0.13	0.19	0.32	0.58

TABLE 2.—PROBABILITIES ASSOCIATED WITH VARIOUS SAMPLING STRATEGIES [2]

Probability of being selected	Base 1	Base 2	Case 1	Case 2	Case 3	Case 4	Case 5	Case 6	Case 7	Case 8	Case 9	Case 10
	100% flat rate	200% flat rate	100/ 10/S	200/ 10/S	100/ 10/Q	200/ 10/Q	100/ 10/M	100/ 30/Q	125/ 10/Q	125/ 30/Q	100/ 30/M	125/ 30/M
Not at all	0.37	0.13	0.26	0.02	0.18	Nearly 0.00	0.09	0.18	0.07	0.07	0.09	Nearly 0.00
At least once	0.63	0.87	0.74	0.98	0.82	Nearly 1.00	0.91	0.82	0.93	0.93	0.91	Nearly 1.00
At least twice	[1] 0.26	0.60	0.21	0.57	0.16	0.46	0.12	0.22	0.28	0.36	[1] 0.21	0.30
Total tests 1,000 workers	1,000	2,000	1,020	2,032	1,032	2,053	1,043	1,097	1,288	1,368	1,128	1,443

Key: 100/10 means 100% rate for untested/10% for tested, other numbers indicate rates chosen for that case.
S = Adjusted semiannually.
Q = Adjusted quarterly.
M = Adjusted monthly.
[1] The figures for "at least three times" are .03 for Base 1 and .062 for Case 9.
[2] These figures were developed using methods based on approximations.

An evaluation of the alternatives indicated that strategies can be developed that achieve an acceptable balance among the program objectives. For example, Case 9 in Table 2 would have the following characteristics and advantages:

- Test at a rate equal to 100 percent/year for the first month. (For a population of 1,000, about 83 tests)
- For the part of the population that remains untested at the end of a month, test at a rate equal to 100 percent/year of the entire population. (That is, continue at 83 tests per month on the successively reduced untested population.)
- For the part of the population that has been tested prior to the start of a given month, test at a rate equal to 30 percent per year (2 ½ percent per month) of the already tested population. (For a total population of 1,000, this would mean 2 additional tests in the second month increasing to about 20 additional tests in the 12th month for the previously tested population.) A testing rate of 30 percent per year for individuals already tested at a rate of 100 percent or more would provide a modest level of detection and deterrence while relieving some of the burden from the individuals who have been tested and found free of drugs at the time of the test. However, it should be noted that the deterrent effect potentially will be reduced for the tested population. A testing rate of 10 percent per year was judged so low that a deterrent effect was questionable.

This strategy results in only a few more total tests than testing at a flat, 100 percent rate, and substantially increases the percent of the workforce sampled during the year (from about 63 percent to about 91 percent). Further, the amount of retesting done on particular individuals is not excessive, given the need to retain some deterrent effect, even for the already tested population.

While Case 9 of Table 2 achieved an acceptable balance among the program objectives, it may not be the only method which does. To allow a reasonable amount of flexibility in program inplementation, the Commission proposes, as one alternative, to state performance based objectives rather than a specific methodology in the rule. Alternative A of the rule as proposed would require random tests to be administered in a way that at least 90 percent of the

individuals within the scope of the rule are tested each year, that testing is performed through the year and that testing rates for individuals already tested with negative results not be lower then 30 percent per year (2½ percent per month) for the remainder of the testing year. Alternative B of the proposed rule would require random tests to be administered at an annual rate equivalent to 30 percent of the population subject to such testing.

Other approaches were also considered including:

- Occasional, unannounced, mass testing.
- Testing as a part of the annual medical exam.
- Testing "windows" of a few months duration associated with an annual event, such as a birthday.

However, these approaches were considered to provide too little assurance that testing would be truly random, and individuals would not be subject to testing through the calendar year.

V. Cutoff Levels

The selection of cutoff levels for declaring the results of a drug test to be "positive" and to take some personnel action is as much an issue of policy as science. Whereas the technologies of the test may permit very low cutoff levels under ideal situations, a cutoff level set slightly higher than the lowest that is technically feasible provides generally adequate sensitivity to identify abusers while providing a sufficient buffer to withstand challenges.

Prior to implementing a program to test urine for drugs of abuse, it is important to understand what information urine tests provide and how the results can be interpreted. Simply stated, urine test results provide information about the concentration of particular substances in the urine. The concentration of a drug or drug metabolite in the urine does not provide much information about pharmacologically active drugs in a person's system, nor does it provide information about impairment (Hawks, 1982). The concentration of a drug or drug metabolite in the urine is influenced by several factors; these include the dose of the drug taken, the route of administration, frequency of use, and the time lapse from drug use to urine collection (Manno, 1986, Hawks & Chiang, 1986). The concentration is also influenced by several factors unrelated to drug use such as amount of liquid recently consumed, time since previous void, time of day (urine is more concentrated in the morning than later in the day), and recent dehydrating exercise. Hence, a positive *confirmed* test result indicates only that an individual has recently ingested the drug. A positive result does not provide information about frequency of drug use, pattern of use, drug dependence, legitimacy of use, or whether the person was impaired when the urine sample was collected (Manno, 1986). Similarly, a negative test result only means that a person's urine sample did not have the drug or drug metabolite in sufficient concentration to give positive results (Manno, 1986). It does not necessarily provide information about whether or not the individual has ever used the drug or whether someone currently uses the drug infrequently (Hawks, 1986).

Because of the numerous factors that influence both the concentration of a drug or drug metabolite in the urine and the levels of impairment experienced by individuals at various concentrations (see previous discussion under section I, Impairment and reliability), it is not possible within the current state of the art to set cutoff levels that relate to a precise measurement of performance impairment. Research has been initiated and sometime in the future it may be possible to address determination of impairment based on serum analyses.

In determining the cutoff levels specified in the proposed rule, The NRC considered what levels of the drug would probably be found several days after use and the sensitivities of the various analytical methods available. For example, the longest time reported (actual times are shorter) that a "heavy" user of marijuana would display detectable quantities at a cutoff level of 100 ng/ml would be 2 weeks; should the cutoff level be lowered to 20 ng/ml, the "detection time" would be increased to 4 weeks, significantly increasing the probability of detection and deterrence. For an occasional user of marijuana, the longest detection time at a cutoff level of 100 ng/ml would be 3 days; lowering the cutoff level to 20 ng/ml would extend the detection time to 10 days. For cocaine, a typical dose of 50–100 mg would be detectable for 37–45 hours at a cutoff level of 300 ng/ml. Heavy or occasional use would not result in significant differences in detection periods.

The NRC also considered the cutoff levels established by the Departments of Health and Human Services (HHS), Defense (DOD), and Transportation (DOT). The NRC has concluded that the cutoff levels described in the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" issued by HHS on April 11, 1988 (53 FR 11970) should be adopted. Some authorities believe that lower cutoff levels for initial screening tests of marijuana are appropriate, as discussed below. The Commission has decided not to take exception to the cutoff level for initial screening tests of marijuana for the sake of consistency with the federal guidelines. The Commission invites comments on this matter.

The Commission understands that all of the test levels set by HHS are subject to change as warranted by advances in technology or other conditions. Any changes to the HHS Guidelines subsequent to final NRC rulemaking of fitness-for-duty programs will be considered an appropriate rulemaking taken to amend the NRC rules. It should be clearly understood that the Commission regards the HHS Guidelines as minimum standards. Licensees, at their discretion, may implement programs with more stringent standards (e.g., lower cutoff levels).

Considerations relating to the cutoff levels for each drug are discussed below.

A. Marijuana Metabolites

An issue frequently raised when testing for marijuana metabolites is that a true positive test may result from passive inhalation. The cutoff level of 100 ng/ml for initial screening tests was set by HHS to ensure that tests would not result in positives due to passive inhalation. It should be noted that there is some disagreement on the level at which passive inhalation is a problem. While some authorities believe that a cutoff level of 209 ng/ml may be a problem, others believe that a cutoff level of 5 ng/ml would not encounter significant passive inhalation problems. Recent studies indicate that only under the most extreme conditions (prolonged exposure to high concentrations of marijuana smoke) would passive inhalation lead to a positive result at 20 ng/ml (Cone, E.J., et al., 1987).

Assay reliability at 20 ng/ml has been raised as another potential problem. The early Enzyme Multiplied Immunoassay Technique (EMIT®) tests were capable of detecting 50 ng/ml of marijuana metabolites in urine with 95 percent confidence (Peat, Finkle, and Deyman, 1982). Improvements have been made in the EMIT® test, however, and a number of clinical studies indicate that false positives are no longer a problem at 20 ng/ml level (McBurney, Bobbie, and Sepp, 1986). In fact, some studies show an unnecessarily high level of false negatives when higher cutoff levels are used (Kogan, Razi, Pierson, and Wilson, 1986).

B. Cocaine Metabolites

The initial and confirmatory cutoff levels as set forth by HHS (300 ng/ml initial; 150 ng/ml confirmatory) are sufficiently low due to detect regular users who would test at a much higher level, e.g., 10,000 ng/ml at peak concentration for a normal user of cocaine. The EMIT[r] tests currently used by most licensees will result in a positive for 18–27 hours after use (Vereby, 1987).

C. Opiates

The fundamental problem with opiate testing is dietary consumption of legal substances (e.g., poppy seeds) and the use of over-the-counter drugs that yield true positives. Testing someone who took some cough syrup or ate a poppy seed roll prior to the test could yield a true positive that was not due to drug use. For instance, a person who consumed a normal dosage of cough syrup prior to the test could have concentrations of 10,000 ng/ml in their urine. A person who ate a moderate amount of poppy seeds could have opiate concentrations of 1,700 ng/ml.

The cutoff level for initial screening tests for total opiate metabolites was set by HHS at 300 ng/ml; with free morphine set at 25 ng/ml. Regular users would have much higher concentrations. For example, a person who has been given morphine as medication would have an approximate level of 4,000 ng/ml; for codeine medication the level would be 2,000 ng/ml.

The NRC concluded that lower cutoff levels greatly increase the risk of true positives due to dietary consumption of an opiate, not necessarily connected with illicit drug use. Chronic drug users of opiates would be likely to have much higher concentrations in their systems, e.g., for codeine the level would be 30,000 ng/ml. To provide further protection against true positives due to dietary consumption of an opiate, the Commission is proposing that a Medical Review Officer review and interpret positive confirmatory test results as provided in the HHS Guidelines.

D. Phencyclidine (PCP)

A typical user would have concentrations of 500–600 ng/ml. As with cocaine, the HHS specified cutoff level of 25 ng/ml is sufficiently low to permit detection for a few days. Many licensees are currently conducting initial screening tests onsite using the EMIT[r] test with a cutoff level of 75 ng/ml for PCP.

E. Amphetamines

The fundamental problem with cutoff level determinations for amphetamines is the potential for cross-reactivity and true positives due to over-the-counter drugs. In light of this, HHS has set the cutoff levels at 500 ng/ml for confirmatory tests. Assay techniques are sensitive well below this level. A regular user of amphetamines would have urinary concentrations of 5,000–20,000 ng/ml.

F. Alcohol

Alcohol is a drug whose effects are well known and documented, yet different jurisdictions have set different levels between 0.05 and 0.10 percent alcohol in the blood at which one is considered legally impaired. Studies have shown that impairment depends on many factors unique to each individual, that impairment can exist at 0.04 or 0.05 percent alcohol in the blood, and that an upper limit of 0.05 percent is reasonable given the impairing effects of alcohol.

The effects of alcohol may be felt prior to reaching peak blood alcohol concentration (BAC) levels in the body. In one study, researchers found that the time to peak BAC was an average of 24 minutes later than the time to peak alcohol effect (Radlow and Hurst, 1985).

Performance decrements due to alcohol consumption can occur at relatively low BAC levels. One study which measured cognitive performance (divided attention and information processing) at low BAC levels showed evidence of impairment beginning at 0.015 percent BAC and increased impairment with increasing BAC levels (Moskowitz, et al., 1985). One interesting note on this study is that the subjects were 10 males averaging 25 years of age, all moderate drinkers. According to epidemiological studies this group is relatively resistent to the effects of alcohol; thus it is anticipated that greater degrees of impairment at BAC levels between 0.015 and 0.06 percent would typically exist for younger, older, and less frequent drinkers (Moskowitz, et al., 1985).

A review of literature on physiological studies of low BAC levels show that the amplitude and velocity of smooth pursuit eye movements and saccadic eye movements are reduced by alcohol. These changes are physiologically significant at a BAC level of 0.05 percent (Linnoila, et al., 1986). Smooth eye pursuit and saccadic eye movements have been shown to play a significant role in visual information processing (Flom, et al., 1976).

In a recent review of the literature for the aviation industry it was concluded that significant impairment is generally noticed at the 0.04 to 0.05 percent levels and that experience did not compensate for performance degradation resulting from alcohol use. The review also included studies of simulated aviation flight, which showed that decremental effects on performance occurred in terms of aircraft position errors and procedural errors during the approach phase of landing, instrument flight involving standard maneuvers, and other work load measures at all BAC levels between 0.02 and 0.09 percent BAC (Ross and Ross, 1985). Another study (Clayton, 1980) reported significant impairment of driving skills at the 0.04 to 0.05 percent levels, while a more recent study (Moscowitz, 1985) reports significant impairment of perception at even lower levels of blood alcohol.

The FAA prohibits any person from acting as a crewmember of an aircraft while having 0.04 percent by weight or more alcohol in the blood (14 CFR 91.11). In addition, the Council on Scientific Affairs of the American Medical Association has endorsed the 0.05 percent cutoff limit for driving (COSA, 1986). In one recent analysis of the deterrent effects of reducing the legal limits for blood alcohol from 0.08 to 0.05 percent, a 14 percent reduction in fatalities associated with drinking and driving was noted.

Several statements may be made regarding the BAC level of 0.05 percent and consequent impairment:

- BAC levels in general are highly correlated with accident risk and are a major causal factor of serious accidents (O'Hanlon, et al., 1986).
- There is growing consensus that a BAC level of 0.05 percent impairs cognitive and psychomotor task performance in a variety of measurable forms.
- Performance decrements at low BAC levels (0.015–0.06 percent) in a dose-related manner have been demonstrated (cf. Moskowitz, et al., 1985). BAC levels above 0.04 percent are associated with an accelerated risk of causing accidents (O'Hanlon, et al., 1986). However, it may be reasonably assumed that even lower BAC levels (0.01–0.05 percent) potentially increase the risk of accident. Some researchers have recommended that a zero BAC level be established for tasks requiring complex cognitive and physical performance.
- Accident rates among persons with a BAC level of 0.05 percent are significant as measured by automobile accidents, aviation accidents, industry surveys, as well as general population

studies, experimental research, and clinical studies.

• Impairment of cognitive and task performance at the BAC level of 0.05 percent and higher has significant implications for power plant safety, and is thus a legitimate concern for fitness-for-duty policy development.

While the potential adverse effects of alcohol cannot be discounted, based upon industry commitments made to the Commission, the NRC believes that programs already established to meet the Commission's Policy Statement (51 FR 27921) and the Edison Electric Institute's "EEI Guide to Effective Drug and Alcohol/Fitness-for-duty Policy Development," adequately address this matter without prescriptive NRC regulation. These programs include the following attributes for coping with alcohol:

• All licensees have policies which prohibit alcohol on company property and, at a minimum, state that use of alcohol that adversely affects job performance is not acceptable. Violation of the company's policy may result in disciplinary action up to and including termination.

• All licensees have Employee Assistance Programs that include treatment of alcohol abuse.

• All supervisors, and other key employees, are trained in behavioral observation techniques, which include detection of symptoms of alcohol abuse.

• Testing for alcohol is included in for-cause tests. Cutoff levels are usually consistent with state law regarding driving while intoxicated. However, the Commission invites comment on whether the NRC should specify a cutoff level for alcohol.

• Licensees have identified and taken action on a number of fitness-for-duty problems caused by abuse of alcohol.

G. Issues Regarding Test Reliability at Very Low Cutoff Levels

Although current assay techniques can accurately test for substance presence at much lower levels than set by the HHS Guidelines, there are issues concerning test reliability at very low cutoff levels. A well publicized issue is that the presence of target substances due to the ingestion of legal substances, or in the case of marijuana, passive inhalation, can be detected through low cutoff levels. These alternate sources for true positive results are important to consider in setting legally defensible cutoff levels.

In addition, there are fundamental questions concerning quality controls of applied testing on a massive scale; e.g., test reliability, carryover from one assay to another, and sample handling and storage. For example, the gas chromatography coupled with mass spectrometry (GC/MS) method essentially produces a fingerprint of the drug or metabolite. However, the assay requires an "internal standard"—a deuterated sample [3] of the drug or metabolite. Some percentage of this added internal standard (approximately 7 percent) will not have been deuterated and will thus show up as a drug or metabolite. This can be subtracted out of the reading but at low cutoff levels this adjustment may exceed reasonable/normal deviations for the test itself. Thus, the purity of the internal standard poses problems for using very low cutoff levels. Also there is variation in the extraction procedures, and only 75-80 percent of the drug or metabolite may be extracted. The internal standard can be used to adjust for this variation but within limits.

Finally, technical and legal implications of these issues could pose a problem. For example, THC (marijuana) deteriorates in samples even when stored properly. The process of establishing low cutoff levels must address the problem of sample deterioration and reconfirmation at a later date. In general, the lower the cutoff level, the more difficult it will be to reconfirm. Although assay technology is sufficiently precise in a controlled and regulated setting, the fundamental issue is whether the technology can be performed at 100 percent of its capability at all times. A general rule of thumb used by the DOD for determining legally defensible and practical cutoff levels is to double the detection limit of the specific assay technique. That is, the DOD requires that an essay be able to detect concentrations of drug or metabolite in the urine at 50 percent of the set cutoff level. While not "scientific" in its basis, it is probably practical in its anticipation of problems in the legal process.

VI. Number of Positive Tests

A significant policy issue associated with fitness-for-duty programs involves the question of how many confirmed positive tests should be allowed on any one individual before mandating action, such as removal from a safety sensitive job.

One approach is to establish a "zero tolerance" for drugs; any involvement with drugs results in mandatory removal from nuclear safety duties. With this approach, all violations of policy are treated with equal severity; onsite use would have the same consequences as offsite use. Furthermore, any previous offsite use admitted during Employee Assistance Program (EAP) counseling would also result in mandatory removal, which would have a severe adverse impact on the effectiveness of the EAP.

Another approach is to permit licensees to determine on a case-by-case basis what sanctions, if any, will be imposed. Inconsistencies in the actions taken would probably result at the site level or between licensees, and leave fitness-for-duty programs vulnerable to challenges through legal proceedings.

The NRC believes public health and safety can be well served if employees are encouraged to voluntarily seek help before their problem is manifested in observable abnormal behavior.

The approach proposed by the NRC is a "zero tolerance" for any involvement with illegal drugs within protected areas; i.e., any use, possession or sale of illegal drugs within a protected areas would result in removal from activities within the scope of the rule for a minimum of five years. Any offsite use of drugs would result in mandatory removal from activities within the scope of the proposed rule until such time as a determination is made that the person is fit for duty. A second positive test would result in the removal from activities within the scope of the proposed rule for a minimum of three years. To ensure that personnel actions are based upon accurate information and to provide safeguards for employees, the NRC proposed final review of test results by a Medical Review Officer as described in the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" issued by HHS (April 11, 1988; 53 FR 11970).

VII. Reinstitution of Unescorted Access

The NRC has a strong interest in assuring that among nuclear power plant personnel who test positive, or are otherwise determined to be involved with impairing substances, only those who have succeeded in treatment are allowed to regain their unescorted access authorization. Consequently, the Commission believes that it is appropriate to require some time period to elapse to assure, before the individual is returned to unescorted access following the first confirmed positive test result, that licensees have obtained a high confidence that the problem has been resolved and that the individual does not constitute a threat to safety.

[3] A sample that is deuterated is a pure drug altered in order to increase its molecular weight without changing how the substance behaves under extraction, derivation, or chromotography procedures. The technique involves replacing a few hydrogen atoms on the drug molecule with deuterium atoms.

One approach to this issue is to establish a relative lengthy period, such as 90 days or longer, during which the individual is not permitted unescorted access while he or she successfully completes treatment. Another approach is to establish a shorter period of sufficient duration (e.g., two weeks) to permit the individual to be referred to the EAP for assessment and development of a treatment plan. With this approach, return of the person's unescorted access authorization depends upon the judgment that the individual will not pose a threat to plant safety by a medical professional qualified in the analysis and treatment of substance abuse disorders.

Drug abuse "careers" vary to a great extent between individuals; furthermore, research indicates that a relapse to substance abuse can occur at any time after an apparently successful treatment episode. Therefore, treatment programs need to be tailored to the individual. To ensure that utilities carefully assess the nature of the individual's substance abuse problem and develop plans for appropriate treatment and future employment, the proposed rule would require removal for a minimum of 14 days. A discussion of these issues in greater detail follows.

A. Substance Abuse Careers

The treatment and recovery literature indicates that an individual's pattern of substance abuse can best be viewed as a cycle that includes both recovery and relapse (Senay, 1984; Tims and Leukefeld, 1986; Maddux and Desmond, 1986). The cycle, which has been described as the "substance abuse career" by Maddux and Desmond (1986), ranges from no use to recreational/social use, to problem use, to dependence with the inability to abstain. Patterns within this cycle vary not only from individual to individual, but over time in a given person. Substance abuse careers differ in terms of the type and number of substances used, whether they are used sequentially or concurrently, and in terms of the intensity of use, whether episodic or continuous. Little is understood about the sources of these differences. Research has not yet provided a valid set of predictors that would allow individuals to be screened for susceptibility to substance abuse.

Those individuals who meet the diagnostic criteria for dependence will most likely experience successive cycles of abstinence, occasional use, daily use, and treatment. "Dependence" refers to both the altered physiological state resulting from continued use of a substance, and to the behavior indicated by regular compulsive use (Maddux and Desmond, 1986).

Substance abuse appears to not fit the usual medical treatment model of a disease that is responsive to a singular treatment episode (Senay, 1984). Rather, the recovery research indicates that there is no one point in time that an individual can be considered "cured." However, attempts have been made to identify a point in time since treatment at which an individual can be considered fully recovered. For example, the Americans Medical Association has developed criteria for recovery that include three years of abstinence from the primary drug of abuse and no abuse of other substances. Other investigators have recommended five years of abstinence as a reasonable benchmark. As will be discussed below, however, longitudinal studies have failed to isolate a threshold for length of abstinence that determines permanent recovery.

Consequently, recovery is most accurately described as a process rather than as a state. Recovery can be defined as the process by which substance abuse and related behaviors become decreasingly problematic for the affected individual. Alcoholics Anonymous developed their 12-step recovery model on this premise; members refer to themselves as "recovery alcoholics," recognizing that they are always at risk for relapse (Senay, 1984; Maddux and Desmond, 1986: Wesson, Havassy and Smith, 1986). Because recovery represents a process rather than a state, and because an individual's progress through that process cannot be predicted by elapsed time since last treatment, revocation of an employee's unescorted access for an arbitrary period of time following a confirmed positive test result alone would not ensure that that the individual would remain drug free.

B. Relapse Rates

"Relapse" has been defined as the "return to substance use, following a period of voluntary or enforced abstinence, at a level of intensity comparable to that attained before abstinence" (Babor, Cooney, Lauerman, 1986, pg. 20). Relapse to the use of alcohol and opioids has been extensively studied. Far less information is available on the substance abuse careers of those who primarily abuse marijuana, cocaine, phencyclidine, or other categories of drugs (Jaffe, 1984), because abuse of those substances is a relatively new phenomenon.

It is noteworty, however, that the alcohol and drug treatment community has recognized for several years that a combined approach to drug and alcohol treatments is most effective, as the recovery process is similar across the various substance categories (Cole, et al., 1981; Waldorf and Biernacki, 1981; McClellan, 1984). Current research supports this belief: The behaviors associated with dependence and relapse to alcohol and opiates are highly similar (Rounsaville, 1986).

Many studies are available that address the occurrence of alcohol relapse on both a short-term and long-term basis. The short-term studies, defined by tracking of post-treatment individuals for a period of two years or less, indicate that relapse rates for alcohol are quite high. For example, one study that followed 685 post-treatment individuals found that 63 percent were abusing alcohol when contacted at the two year mark. A second two-year study found a 67 percent relapse rate (Vaillant, 1983).

The relapse rates for opiates are dramatically similar to those of alcohol. One study found 67 percent of opiate dependent individuals to be readdicted within the first six months following treatment (Maddux and Desmond, 1986). In a follow-up study of 2,009 post-treatment opiate addicts, 56 percent to 77 percent had resumed daily use at one year post-treatment (the variance occurred due to individual measurement of treatment groups) (Simpson & Sells, 1982).

A comparison of the longitudinal studies (i.e., studies that have followed alcohol and opiate clients for a period of five years or longer after the initial treatment episode) again shows a significant similarity in patterns.

For the majority of individuals, multiple episodes of relapse are followed by periods of abstinence (Maddux and Desmond, 1986; Simpson and Marsh, 1986). However, the most critical finding suggests that while multiple episodes of the abstinence/replapse cycle tend to occur, relapse does decrease as the period of abstinence increases (Simpson and Marsch, 1986).

Although there are fewer studies of other drug types, what research has been conducted suggests that relapse patterns to other substances are similar to those for alcohol and opioids. A further study conducted by Hubbard and Marsden (1986) compared the relapse rates of four drug categories: heroin, other narcotics, cocaine, and other non-narcotics which include amphetamines, sedatives, barbiturates, and the minor tranquilizers. The study reviewed the post-treatment history of 2,280 clients, randomly selected from 41

different treatment facilities representing the full spectrum of treatment modalities (i.e. methadone maintenace, detoxification, therapeutic communities, inpatient facilities, outpatient drug free counseling). The timing of relapse was similar for all four categories. Two-thirds of those who relapsed did so within the first 90 days after leaving treatment. A widely cited study that reviewed relapse rates over 12 months following treatment showed that smokers, alcoholics, and heroin addicts are alike in having relapse rates greater than 50 percent in the first three months post-treatment, and 60 percent relapse within the first year post-treatment (Rounsaville, 1986).

In summary, the literature suggests that patterns of relapse may be consistent across drug types among substance-dependent individuals. It is critical in the interpretation of the relapse and recovery literature to understand, however, that the primary focus of study has been the seriously dysfunctional alcoholic or drug abuser. The reasons for this are several. First, alcohol and opiate abuse have been the focus of the community-based treatment system, and a high percentage of the individuals who elect to participate in publicly funded treatment are also recipients of public assistance. The employed and educated middle class with employer-paid medical benefits have typically sought treatment in private facilities or with private practitioners. Private facilities, unfortunately, generally do not participate in published research. Hence, most of the research literature is based upon the publicly funded client, and may not directly apply to the types of individuals employed in the nuclear industry. As will be discussed below, however, there are a number of factors that may contribute to the effectiveness of treatment for individuals with unescorted access that are not present for seriously dysfunctional substance abusers. Thus, although relapse to substance abuse is likely for dependent individuals and can occur at any time post-treatment, there is evidence to suggest that early detection of a developing substance abuse problem and treatment may prevent relapse among nuclear workers.

C. Treatment Effectiveness

Within the context of the substance abuse cycle, treatment remains the most likely means by which the successive cycle will be broken. As mentioned above, treatment may also serve to prevent relapse in those individuals whose substance abuse problems are still in the developing stage.

The effectiveness of treatment is well documented, although it remains unclear as to why treatment works. Numerous longitudinal studies have shown that pre-treatment levels of substance abuse are generally higher than those of post-treatment abuse (cf. Jaffe, 1984). Consequently, the goal of the NRC to ensure fitness for duty will be enhanced by treatment.

Of particular importance to the NRC is the suggestion by the treatment literature that the critical factor in obtaining a positive outcome is not the type of treatment, but the amount of treatment contact (Simpson, 1984; Senay, 1984). In fact, several large-scale treatment follow-up studies have shown that the treatment outcomes for those participating in such diverse treatment protocols as outpatient drug-free counseling, methadone maintenance, and therapeutic communities are statistically indistinguishable (Rounsaville, 1986, Simpson, 1984).

Although the evaluation of treatment effectiveness in regarded by the research community as in an evolutionary stage, several factors associated with positive outcomes have been identified. The most powerful determinant appears to be the individual's commitment to treatment and the recovery process (Simpson, 1984; Time and Leukfeld, 1986). Secondly, the therapeutic process itself can directly impact the treatment outcome. To be effective, the process should incorporate the individual's commitment to change, sustain the commitment, and translate it into action (Simpson, 1984), Third, the length of time in treatment has also been identified as a factor, with longer participation in treatment being positively related to treatment outcome (Simpson, 1984; Tims and Holland, 1984; Hubbard, et al., 1984).

In addition to the various factors associated with treatment, there are several personal characteristics of patients that are associated with a positive treatment outcome. These factors include a stable family background, an intact marriage or relationship, a stable and supportive job situation, minimal involvement with the criminal justice system, and limited psychological problems. Higher socioeconomic status is also a predictor. Those clients with the least severe problems, and the greatest social and psychological assets, tend to have the best prognosis (Goodwin, 1988; Rounsaville, 1986). While the typical worker within the nuclear industry cannot be assumed to have all of these characteristics, some or most will be applicable to licensee employees.

In summary, it appears that the prognosis for rehabilitation among licensee employees may be quite positive. The NRC believes that the utilities should emphasize these factors where appropriate to secure the greatest probability that an employee will remain drug free and not place public health and safety ar risk in the future.

D. Development of the Treatment, Follow-up and Future Employment Plans

During the period that unescorted access is withdrawn following the initial finding of a substance abuse disorder, the licensees should carefully assess the nature of the individual's substance abuse problem, and develop appropriate treatment, follow-up and employment plans. The goal of this process is to assure that the individual will regain unescorted access only after determination that the he or she is fit for duty, and that the risk is minimal that the individual will pose a future threat to public safety.

Prompt response to an initial confirmed positive test result in the form of a treatment and employment plan is likely to be effective in resolving substance abuse problems among the types of persons granted unescorted access.

The NRC recognizes that the evaluation of a substance abuse problem involves numerous factors unique to the individual, and that this task is appropriately left to the trained judgment of a medical professional qualified in substance abuse disorders. Consequently, any individual receiving a confirmed positive test result who is retained for potential return to unescorted access, will be referred immediately to the EAP for assessment of the substance abuse problem and formulation of treatment, follow-up and future employment plans. Since the success of this effort is contingent upon the reliability of the assessment, the NRC expects that each utility will engage qualified individuals for evaluating substance abuse problems. Additionally, the assessment process should utilize assessment tools that specifically identify the nature and extent of the individual's substance abuse problem. The diagnosis should directly trigger the development of the treatment, follow-up, and employment plans.

To be most effective, the treatment plan should be designed to meet the specific needs of the individual, giving consideration to the various factors discussed above. Individual attention is

especially critical in the light of the various possible meanings of a confirmed positive test result. The NRC recognizes that a positive test can indicate any stage of substance abuse along the substance cycle. For example, an appropriate treatment plan for a "recreational" user might require the completion of the EAP assessment and additional designated hours of drug education. Treatment may not be necessary. Instead, it may be more effective to place an emphasis on follow-up random drug testing (e.g., a weekly rate initially, gradually decreased to monthly for at least one year) and periodic EAP contact (e.g., sufficiently frequent over an appropriate period to achieve high confidence that the problem has been resolved). Under this approach, the employment plan would include a return of unescorted access authorization at the end of the two week revocation period, with minimal risk to plant safety.

At the other end of the spectrum, an appropriate treatment plan for an individual experiencing substance abuse dependency will be more complex. In this case, the EAP would likely make a referral to an inpatient facility, and the individual would not be allowed to regain unescorted access until intensive rehabilitation is completed. While several studies have suggested that emphasis should be placed on the length of treatment and not on the treatment type, these same studies further suggest significantly poorer outcomes for seriously dysfunctional individuals who receive an assessment only, without additional treatment, or who receive detoxification only, without additional counseling (Simpson and Marsh, 1986). More extensive treatment involvement appears to be necessary for these individuals.

Licensees should place emphasis on the development of a follow-up plan. Assurances cannot be made that plant safety is maintained unless the individual's progress is monitored once he or she has regained unescorted access. The relapse and recovery literature stresses the importance of after-care and follow-up monitoring to prevent relapse. Because the critical period for relapse falls during the first 90 days, frequent contract by the EAP, possibly weekly, will best assure that the individual continues to remain substance free. However, because most individuals who relapse do so within the first year, the follow-up should also provide for continued EAP contacts following the first 90 days, with decreasing frequency to perhaps one contact per month. Follow-up random testing, intensely at first, with gradually decreasing frequency as the patient progresses through the critical 90 day and one year periods and beyond to achieve a high confidence of full recovery, should also be emphasized in all follow-up plans. Follow-up testing will also serve to assure that the goal of public health and safety continues to be met.

The employment plan should be based upon any limitations that need to be placed on the individual being returned to work. The plan should help the individual's supervisor understand what his role is in the follow-up plan, and set conditions for full restoration to duty, where appropriate. To test and evaluate the individual's substance abuse disorders, develop the plans, and obtain assurances that an individual does not constitute a potential hazard to safety (in the case of a "recreational" user), should be accomplished within two weeks.

In summary, the NRC expects the two-week minimum mandatory revocation period to be used by the utilities in the following manner: Each individual receiving a first positive test result will be referred to the EAP for assessment of his or her substance abuse problem. The assessment will direct the development of the treatment and employment plan, which should be designed to meet the individual's specific fitness-for-duty needs. Finally, the process will be completed with the development of a follow-up plan that specifies the frequency of EAP contact and follow-up random drug testing.

Section-by-Section Analysis

The general objective of fitness-for-duty programs is to provide reasonable assurance that nuclear powerplant personnel are not under the influence of any substance, legal or illegal, or mentally or physically impaired from any cause, which in any way affects their ability to safely and competently perform their duties. To accomplish this objective, the Commission is proposing to amend its regulations by adding a new Part 26 to Title 10, Code of Federal Regulations. The following section-by-section analysis of the principal sections provide additional explanatory information.

Section 26.2 Scope.

This section sets out the Commission's proposal as to the employee and contractor population to whom the regulation, including random testing applies.

To achieve the general objective, the Commission proposes that the rule apply to all persons with unescorted access to protected areas, and to licensee or contractor personnel required to respond to the licensees' Technical Support Center (TSC) or Emergency Operations Facility (EOF). The rule would apply to these latter categories of personnel because of the potential impact on public health and safety that could arise from human failure on their part. The rule applies to all persons with unescorted access to protected areas because:

- Current programs are implemented in accordance with the Commission's Policy Statement (51 FR 27921) which applies to all persons within protected areas at nuclear powerplants.
- Such persons could introduce and sell drugs in the workplace.
- Any such person under the influence of any substance could cause a safety hazard, if not to the general public, to him or herself and to fellow workers.

Section 26.10 General performance objectives.

This section is intended to facilitate proper management of fitness-for-duty programs by establishing clear program goals.

Although fitness-for-duty programs are intended to provide reasonable assurance that individuals are not using or under the influence of any substance, or mentally or physically impaired from any cause that could adversely affect safety, the specific program elements and procedures contained in the proposed rule apply only to drugs. Specific measures for addressing abuse of alcohol, and legal drugs (prescription and over-the-counter) are to be developed by each licensee. Other factors that could affect fitness for duty such as mental stress, fatigue and illness are also expected to be addressed by licensee programs.

In this regard, the proposed rule does *not* specifically address the offsite sale or possession of drugs, the offsite use of drugs determined by means other than chemical testing, attempts to introduce alcohol or drugs onsite, nor what actions should be taken for drug events in the owner controlled area. Licensees are expected to take prudent measures to identify and correct such problems. These measures, at a minimum, should include for-cause testing, utilization of the access authorization program, and appropriate investigations and searches. Furthermore, licensees are expected to properly manage their programs and include elements such as audits and analysis of records to provide feedback on program performance.

The specific requirements described in the Program Elements and Procedures sections of the proposed rule are not intended to prohibit any licensee from adopting and enforcing more stringent standards.

Section 26.20 Written policy procedures.

This section requires the establishment and implementation of written policies and procedures to ensure that all persons clearly understand what is expected of them and what consequences may result from violation of company policy.

Section 26.21 Policy communication and awareness training.

This section requires appropriate training to ensure understanding of the policy, how the program will function, and the hazards associated with abuse of drugs. This section is intended to ensure that all persons understand and support the program and its implementation.

Section 26.22 Training of supervisors and escorts.

This section requires appropriate training of managers and supervisors to ensure they understand their role in the implementation of the fitness-for-duty program. In addition, all persons are required to be trained to ensure that they are sufficiently skilled to detect conditions that arise from abuse or presence of drugs, and to ensure that the proper action is initiated.

This section includes training in behavioral observation techniques which are also expected under the proposed Access Authorization Program policy statement (53 FR 7534). The NRC will ensure that the expectations in the proposed policy statement and the implementing industry guidelines and the requirements in this proposed rule are compatible prior to publication of any final rule in the **Federal Register**.

Section 26.23 Contractors.

This section requires that contractor personnel be subject to, and abide by, a fitness-for-duty program. Furthermore, contractors are required to not assign any personnel previously removed from any other nuclear power plant without the knowledge and consent of the licensee.

Section 26.24 Chemical testing.

This section requires that chemical testing be conducted to deter and detect drug abuse. The testing is required because the Commission is concerned with the possible impact on public health and safety if individuals, whose reliability is questionable because of impairment due to the use of drugs, are permitted to perform important tasks, such as manipulating control mechanisms or conducting maintenance on facility equipment or systems. Tests would be required.

- Immediately before the initial granting of unescorted access to protected areas or assignment to activities within the scope of this part.
- On a random basis. The Commission specifically invites comments on a rate of testing that would provide a suitable deterrent. Two alternatives are proposed; others would be considered.
- For-cause; and
- As a follow-up to verify abstention.

For-cause testing is required after accidents involving actual or potential substantial degradation of the level of safety of the plant. This is the level of event characterized by an "alert" emergency classification.

This section adopts the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" issued by the Department of Health and Human Services as minimum standards for procedures for collecting and testing of specimens and for ensuring the integrity of the testing program. This section also adopts the HHS standards for "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies." Licensees would be permitted to conduct preliminary tests to reduct the number of specimens forwarded to a contract laboratory for initial screening tests and confirmatory tests.

This section requires, through the HHS guidelines, that a medical review officer review and interpret positive, confirmatory test results.

Section 26.25 Employee Assistance Programs (EAP).

This section requires licensees to maintain an EAP designed to achieve early intervention and to encourage self-referral. This section stipulates that confidentiality shall be extended, except where safety considerations must prevail. In this regard, any licensee receiving direct or indirect federal financial assistance in any form, which may include revenue sharing or tax exempt status, may be required to maintain confidentiality of drug abuse patient records in accordance with 42 CFR Part 2. Although this law is intended to ensure that an alcohol or drug abuse patient in a federally assisted alcohol or drug abuse program is not made more vulnerable than a person who does not seek treatment, the determination of whether federal assistance is provided is much broader [42 CFR 2.12(b)]. Licensees who find that 42 CFR Part 2 applies, should inform the Commission and propose a method to accomplish the goals of the requirements set forth in the proposed rule.

Section 26.27 Management actions and sanctions to be imposed.

This section requires that management:

- Complete a suitable inquiry, i.e., verificaton of employment history, to determine if any person was ever removed from activities within the scope of the proposed rule or denied unescorted access due to not being fit for duty.
- As a minimum, remove from activities within the scope of the proposed rule for at least 14 days, and during any suspension period, refer for assessment and counseling, those persons having their first confirmed positive test. Treatment, follow-up and future employment plans must be developed, and any rehabilitation program deemed appropriate must be initiated, during such suspension period. Assurance of fitness must be obtained prior to return to duty.
- Remove from activities within the scope of the proposed rule for a minimum of three years, those persons having a second confirmed positive,
- Not assign to activities within the scope of the proposed rule for a minimum of five years, those persons determined to have been involved in the sale, use, or possession of illegal drugs within a protected area,
- Permanently deny unescorted access to those persons, who, having been restored unescorted access after the above three or five year periods, are subsequently found to be involved with illegal drugs.

Section 26.28 Appeals.

This section requires that there be an appeal process in accordance with due process and fundamental fairness considerations so that adverse findings as a result of the required testing program may be subject to further review at the instigation of the person found to test positive for proscribed substances. Rather than dictate what that appeal procedure should be, the Commisson has limited itself to proposing that there be an appeal procedure and notes that the grievance procedures contained in collective bargaining agreements may be suitable.

Section 26.29 Protection of information.

This section requires the licensee to ensure that personal privacy is protected to the extent possible, consistent with the need to carry out the fitness-for-duty program. Accordingly, specific exceptions to the information disclosure prohibition are provided. This list of exceptions is considered to be inclusive and no other disclosures should be made. If disclosure of the information is necessary for emergency medical purposes, it is assumed that the individual, or his/her representative, can provide the basis for such release. Regardless, it is not the intent of this provision to in any way create potential harm to anyone through nondisclosure during a medical emergency. It should be noted that 42 CFR Part 2 may prohibit licensees that receive federal financial assistance, from disclosing information to another licensee regarding the nature of a person's problem, if that person sought assistance on his own initiative.

Section 26.71 Recordkeeping requirements.

This section licensees to retain records to facilitate inquires to determine if a person had been made ineligible for assignment to activities within the scope of 10 CFR Part 26. This section also requires licensees to collect, compile and analyze program performance data and to take appropriate actions to correct any program weaknesses so identified. The collection and analysis of data is believed important for the following reasons:

- Although the proposed rule would require elements that constitute an effective program based on current information, fitness-for-duty programs are part of an evolving discipline; and lessons learned and advances in technology may warrant future revisions to the programs. The collection and analysis of data would support any future considerations in that regard, e.g., to add, relax, or strengthen a specific requirement. The program performance data would allow for empirical evaluation of alternative strategies.
- It is expected that some utilities will have elements of their overall fitness-for-duty program that differ from and/or exceed the minimum requirements of the rule. If performance data are available, the NRC could evaluate whether these other program characteristics are contributing to or detracting from the program goals.
- Trend analysis of the data would facilitate appropriate inquiry should there be indications of any problems, such as a possible failure in program design or implementation.

The NRC developed a list of data that appear to be appropriate based upon informed reviews by appropriate professionals in other organizations. To ensure consistency of data and to facilitate analysis, a draft form accompanies the proposed rule. The Commission may request the data on an as-needed basis.

Section 26.73 Reporting requirements.

This section requires licensee to inform the Commission by telephone, within 24 hours of discovery, of all significant fitness-for-duty events, including:

- Sale, use, or possession of illegal drugs within the protected area,
- Any acts involving the illegal sale, use or possession of a controlled substance (onsite or offsite) by any person licensed under 10 CFR Part 55 to operate a power reactor or by any supervisory personnel assigned to perform duties with the scope of this part. This includes the results of confirmed positive tests on such persons.

Written reports are required within 30 days documenting such notifications and specifying actions taken.

Section 26.80 Audits.

This section requires licensees to audit their fitness-for-duty program, including those sections implemented by contractors, and to take appropriate actions in response to the audit findings.

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Backfit Analysis

Because this rulemaking modifies a prior Commission position by adding a new rule, a draft backfit analysis has been prepared pursuant to 10 CFR 50.109 in which a preliminary finding is made that the rule will provide a substantial increase in the overall protection of public health and safety and that the direct and indirect costs of implementation are justified in view of the increased protection. As noted, the finding is preliminary and the Commission requests comments on application of the backfit rule to this rulemaking as presented in the draft analysis.

Under the backfit rule the Commission has two options with respect to backfits it believes are needed. The Commission can make the required finding of substantial increase in overall protection of public health and safety, or it can decide that the rule in question is necessary to provide adequate protection to the health and safety of the public and thus not subject to backfit analysis. Although the draft backfit analysis adopts the first option, the Commission also desires comment on which of these two options is the more appropriate for this rulemaking.

The draft backfit analysis is available for inspection and copying for a fee at the NRC Public Document Room at 2120 L Street NW. (lower level), Washington, DC. Single copies may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Public reporting burden for this collection of information is estimated to average 8 hours per response, including 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 Records and Reports Management Branch, Mail Stop P–530, Division of Information Support Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

An analysis of the costs and benefits of the proposed rule is included in the draft backfit analysis described above.

Environmental Assessment and Finding of No Significant Environmental Impact

Identification of Proposed Action: The proposed rule would require licensees authorized to operate nuclear power reactors to implement a fitness-for-duty program whose general objective is to provide reasonable assurance that activities associated with nuclear power plant operations are carried out in an environment which is free of the effects of drugs. Under the proposed rule, testing for impermissible drug use would be conducted prior to authorizing unescorted access to protected areas or assignment to other activities within the scope of the proposed rule, randomly for such licensee and contractor personnel, after certain operational events, based on reasonable cause, and to verify continued abstention. In addition, the proposed rule provides for other basic fitness-for-duty program elements such as the development of written policy and procedures, provisions for the training of supervisors and employees, standards for drug testing, management actions, and requirements for employee assistance programs and appeal procedures.

The Need for the Proposed Action: The Nuclar Regulatory Commission recognizes drug abuse problems to be a social, medical, and safety problem affecting every segment of our society. Given the pervasiveness of the problem, prudence indicates that the Commission consider measures that would continue to reasonably assure that the effects of drugs do not adversely affect the public health and safety.

The Commission recognizes and appreciates the significant efforts already undertaken by the Nuclear Utility Management and Resources Council (NUMARC), the Institute of Nuclear Power Operations (INPO), and the Edison Electric Institute (EEI), and each nuclear power reactor licensee in developing and implementing fitness-

for-duty programs for nuclear power plant personnel. Nevertheless, the Commission's evaluation of experience gained since its policy statement was published in the **Federal Register** on August 4, 1986, indicates that rulemaking is now appropriate to achieve further improvements.

Environmental Impacts of the Proposed Action: The proposed rule would require certain management actions and procedures intended to minimize the probability of human error that could endanger the public health and safety. Although these activities would have a social and economic impact, the impact on the environment would be positive in that there would be some reduction in the probability of a radioactive release due to human error by a person impaired from the effects of drugs.

Alternatives to the Proposed Action: The principal alternative would be to take no action and continue to use the Commission's policy statement of August 4, 1986 (51 FR 27921). Since the Commission has concluded that no adverse environmental effects are associated with this proposed action, any alternatives with equal or greater environmental impact need not be evaluated.

Alternative Use of Resources: This action involves the use of health care professionals and facilities not previously considered in connection with the Final Environmental Statements related to any licensed facilities.

Agencies and Persons Consulted: The NRC staff considered numerous documents which are listed in the above bibliography, and has met with representatives from NUMARC and four unions (The International Brotherhood of Electrical Workers, the International Union of Operational Engineers, the Oil, Chemical and Atomic Workers Union, and the Building and Construction Trades Department of the AFL–CIO), the Federal Aviation Administration, the National Institute on Drug Abuse, and Battelle Human Affairs Research Center.

Findings of No Significant Impact: The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required.

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. The proposed new 10 CFR Part 26 applies to certain owners and operators of civilian nuclear power reactors and their contactors. The companies that own these facilities do not fall within the scope of "small entities" set forth in the Regulatory Flexibility Act or the small business size standards set out in regulations issued by the Small Business Administration in 13 CFR Part 121. Any costs to the minor number of small entities affected, i.e., contractors, will apply only to those contractor employees working at the nuclear power reactors, and would probably be reimbursed through the contract.

List of Subjects in 10 CFR Part 26

Fitness for duty, Chemical testing, Drug abuse, Drug testing, Employee Assistance Program, Management actions, Sanctions, Appeals, Protection of information, Reporting and Recordkeeping requirements, Nuclear power reactors.

For the reasons set out on the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt a new 10 CFR Part 26.

1. Part 26 is added to 10 CFR Chapter I to read as follows:

PART 26—FITNESS FOR DUTY PROGRAMS

General Provisions

Sec.
26.1 Purpose.
26.2 Scope.
26.3 Definitions.
26.4 Interpretations.
26.6 Exemptions.
26.7 Information collection requirements: OMB approval.

General Performance Objectives

26.10 General performance objectives

Program Elements and Procedures

26.20 Written policy and procedures.
26.21 Policy communication and awareness training.
26.22 Training of supervisors and escorts.
26.23 Contractors.
26.24 Chemical testing.
26.25 Employee Assistance Programs (EAP)
26.27 Management actions and sanctions to be imposed.
26.28 Appeals.
26.29 Protection of information.

Inspections, Records and Reports

26.70 Inspections.
26.71 Recordkeeping requirements.
26.73 Reporting requirements.

Audits

26.80 Audits.

Enforcement

26.90 Violations.

Authority: Secs. 53, 81, 103, 104, 107, 161, 68 Stat. 930, 935, 936, 937, 939, 948, as amended (42 U.S.C. 2073, 2111, 2112, 2133, 2134, 2137, 2201); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

For the puroses of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273) §§ 26.20, 26.21, 26.22, 26.23, 26.24, 26.25, 26.27, 26.28, 26.29 and 26.80 are issued under secs. 161b and i, 68 Stat. 948, and 949 as amended [42 U.S.C. 2201(b) and (i)]; §§ 26.70, 26.71, and 26.73 are issued under sec. 161o, 68 Stat. 950, as amended [42 U.S.C. 2201(o)].

General Provisions

§ 26.1 Purpose.

This part prescribes requirements and standards for the establishment and maintenance of certain aspects of fitness-for-duty programs and procedures by the licensed nuclear industry.

§ 26.2 Scope.

(a) The regulations in this part apply to licensees authorized to operate a nuclear power reactor. Each licensee shall implement a fitness-for-duty program which complies with all sections of this part. The provisions of the fitness-for-duty program must apply to all persons granted unescorted access to protected areas, and to licensee or contractor personnel required to respond to a licensee's Technical Support Center (TSC) or Emergency Operations Facility (EOP) in accordance with licensee emergency plans and procedures. The regulations in this part do not apply to NRC representatives, law enforcement personnel, and offsite emergency fire and medical response personnel while on official duty.

(b) The requirements in this part must be implemented by each licensee authorized to operate a nuclear power reactor no later than (insert date 90 days after publication of final rule), except for the requirements to implement random drug testing contained in § 26.24, which must be implemented no later than (insert date 180 days after publication of final rule).

§ 26.3 Definitions.

"Aliquot" means a portion of a specimen used for testing.

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

"Confirmatory test" means a second analytical procedure to identify the

presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy.

"Confirmed positive test" means the result of a confirmatory test has confirmed the presence of concentrations of drugs or metabolites in a specimen above the "cutoff level."

"Cutoff level" mean the value set for designating a test result as positive.

"Drug abuse" means the use of a psychoactive substance for other than medical purposes which impairs the physical, mental, emotional or social well-being of the user.

"Follow-up testing" means chemical testing at unannounced intervals, during or as follow-up to treatment, to ensure that an employee is maintaining abstinence from the previously identified abuse of drugs.

"For-cause testing" means chemical testing at the request of a supervisor, or other responsible management official, based upon reasonable suspicion that a person is impaired or may have used drugs.

"Illegal drugs" means a controlled substance included in Schedule I or II of the Controlled substances Act, as amended, 21 U.S.C. 801, et seq. The term "illegal drugs"does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

"Impairment "means deficient or diminishing on-the-job performance resulting from physical or psychological stressors, that may include abuse of drugs or other substances.

"Initial screening test" means an immunossay screen to eliminate "negative" urine specimens from further consideration.

"Protected area" has the same meaning as in § 73.2(g) of this chapter, an area encompassed by physical barriers and to which access is controlled.

"Random test" means a system of unannounced drug testing imposed in a statistically random manner to a group so that all persons within that group have an equal probability of selection.

"Suitable inquiry" means verification of employment history for a minimum of the past five years, obtained through contacts with previous employers to determine if a person was, in the past, tested positive for illegal drugs, subject to a plan for treating drug abuse, removed from, or made ineligible for activities within the scope of 10 CFR Part 26, or denied unescorted access at any other nuclear power plant or other employment in accordance with a fitness-for-duty policy.

"Unannounced testing" means unannounced random tests.

§ 26.4 Intepretations.

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

§ 26.6 Exemptions.

The Committee may, upon application of 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.

§ 26.7 Information collection requirements: OMB approval.

The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part of 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_____.[1]

(b) The approved information collection requirements contained in this part appear in §§ 26.20, 26.21, 26.22, 26.23, 26.29, 26.71, 26.73, and 26.80.

General Performance Objectives

§ 26.10 General performance objectives.

Fitness-for-duty programs shall:

(a) Provide reasonable assurance that nuclear power plant personnel are not under the influence of any substance, legal or illegal, or mentally or physically impaired from any cause, which in any way adversely affects their ability to safely and competently perform their duties;

(b) Provide reasonable measures for the early detection of persons who are not fit to perform activities within the scope of this part; and

(c) Have a goal of achieving a drug-free workplace and a workplace free of the effects of such substances.

Program Elements and Procedures

§ 26.20 Written policy and procedures.

Each license subject to this part shall establish and implement written policies and procedures designed to meet the general performance objectives and specific requirements of this part. Each licensee shall retain a copy of the current written policy and procedures as a record until the Commission terminates each license for which the policy and procedures were developed and, if any portion of the policies and procedures are superseded, retain the superseded material for three years after each change. As a minimum, written policies and procedures shall address fitness for duty through the following:

(a) An overall description of licensee policy on fitness for duty. The policy shall address abuse of illegal drugs and legal drugs (e.g., alcohol, prescription and over-the-counter drugs). Licensee policy shall also address other factors that could affect fitness for duty such as mental stress, fatigue and illness. Written policy documents shall be in sufficient detail to provide affected individuals with information on what is expected of them, and what consequences may result from lack of adherence to the policy.

(b) A description of programs which are available to personnel desiring assistance in dealing with drug or other problems that could adversely affect the performance of activities within the scope of this part.

(c) Procedures to be utilized in testing for drugs, including procedures for protecting the employee and the integrity of the specimen, and the quality controls used to ensure the test results are valid and attributable to the correct individual.

(d) A description of immediate and follow-on actions which will be taken, and the procedures to be utilized, in those cases where employees or contractors assigned to duties within the scope of this part are determined to have been involved in the use, sale, or possession of illegal drugs.

§ 26.21 Policy communications and awareness training

(a) Persons assigned to activities within the scope of this part shall be provided with appropriate training to ensure they understand—

(1) Licensee policy and procedures, including the methods that will be used to implement the policy;

(2) The personal and public health and safety hazards associated with abuse of drugs;

(3) The effect of prescription and over-the-counter drugs and dietary conditions on drug test results, and the role of the Medical Review Officer;

(4) Employee assistance programs provided by the licensee; and

[1] [Editorial Note: Control number will appear in final regulation.]

(5) What is expected of them and what consequences may result from lack of adherence to the policy.

(b) Initial training must be completed prior to assigment to activities within the scope of this part. Refresher training must be completed on an annual basis, or more frequently where the need is indicated. A record of the training shall be retained for a period of at least three years.

§ 26.22 Training of supervisors and escorts.

(a) Managers and supervisors of activities within the scope of this part shall be provided appropriate training to ensure they understand—

(1) Their role and responsibilities in implementing the program;

(2) The roles and responsibilities of others, such as the personnel, medical, and Employee Assistance Program (EAP) staffs;

(3) Techniques for recognizing drugs and indications of the use, sale, or possession of drugs;

(4) Behavioral observation techniques for detecting degradation in performance, impairment, or changes in employee behavior (in the case of escorts, the behavioral observation techniques shall cover detection of impairment); and

(5) Procedures for initiating appropriate corrective action, to include referral of employees for counseling or treatment (in the case of escorts, this shall cover reporting to appropriate management).

(b) Persons assigned to escort duties shall be provided appropriate training to ensure they understand the matters contained in § 26.22(a)(3), (4), and (5).

(c) Initial training must be completed prior to assignment of duties within the scope of this part and within 3 months of initial supervisory assignment, as applicable. Refresher training must be completed on an annual basis, or more frequently where the need is indicated. A record of the training shall be retained for a period of at least three years.

§ 26.23 Contractors.

All contractor personnel performing activities within the scope of this part for a licensee must be subject to either the licensee's program relating to fitness for duty, or to a program, formally reviewed and approved by the licensee, which meets the standards of this part. Written agreements between licensees and contractors for activities within the scope of this part shall be retained for the life of the contract and will clearly show that—

(a) The contractor is responsible to the licensee for adhereing to the licensee's fitness-for-duty policy, or maintaining and adhereing to an effective fitness-for-duty program which meets the standards of this part; and

(b) Personnel having been denied access or removed from nuclear safety activities at any nuclear power plant for violations of fitness-for-duty policy will not be assigned to contracted work without the knowledge and consent of the licensee.

§ 26.24 Chemical testing.

(a) To provide a means to deter and detect drug abuse, the licensee shall implement the following chemical testing programs for persons subject to this part:

(1) Testing immediately before the initial granting of unescorted access to protected areas or assignment to activities within the scope of this part.

(2) Unannounced tests imposed in a random manner. The tests must be administered so that a person completing a test is immediately eligible for another unannounced test.

(i) Alternative A: The tests must be conducted in a manner that assures that at least 90 percent of the individuals within the scope of the rule are tested each year, that testing is performed throughout the year and that testing rates for individuals already tested with negative results not be lower than 30 percent per year (2½ percent per month) for the remainder of the testing year.

(ii) Alternative B: The tests must be administered throughout the year at an annual rate equivalent to 300 percent of the population subject to such testing.

(3) Testing for-cause, i.e., immediately following any observed behavior indicating possible drug abuse; after accidents involving a failure in individual performance resulting in personal injury, in a radiation exposure or release of radioactivity in excess of regulatory limits, or actual or potential substantial degradations of the level of safety of the plant; or after receiving credible information that an individual is abusing drugs.

(4) Follow-up testing on a random basis to verify continued abstention from the use of drugs.

(b) Testing for drugs shall, at a minimum, conform to the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" issued by the Alcohol, Drug Abuse, and Mental Health Administration of the Department of Health and Human Services [these guidelines are available for review at the Public Document Room, 2120 L St., NW., Washington, DC 20555, and will be published with the final regulations], hereinafter referred to as the HHS Guidelines. Licensees, at their discretion, may implement programs with more stringent standards (e.g., lower cutoff levels). Management actions with respect to persons who fail a more stringent standard, but do not test positive under the HHS Guidelines incorporated in this rule, would also be at the discretion of the licensee.

(c) Licensees shall test for all five drugs or classes of drugs described in paragraph 2.1(a) (1) and (2) of the HHS Guidelines. In addition, licensees shall consult with local law enforcement authorities and drug counseling services to determine whether other drugs are being used in the geographical locale of the facility and the local workforce. Where appropriate, other drugs so identified must be added to the list of drugs being tested. Conservative cutoff limits must be established by the licensee for these drugs.

(d) Licensees may conduct preliminary tests of an aliquot prior to forwarding selected specimens to a contract laboratory meeting the requirements of paragraph (e) of this section, provided the licensee's staff possesses the necessary training and skills for the tasks assigned, their qualifications are documented, and adequate quality controls are implemented. Quality control procedures for preliminary tests shall include the processing of blind performance test specimens and the submission to the contract laboratory of a sampling of specimens initially tested as negative.

(e) Quality controls and procedures for contract laboratories shall be consistent with the HHS standards for "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agenices." [these guidelines are available for review at the Public Document Room, 2120 L. St., NW., Washington, DC 20555, and will be published with the final regulations]. Contract laboratories shall conduct initial screening tests and confirmatory tests on all specimens forwarded for testing. Licensees shall submit blind performance test specimens to contract laboratories in accordance with paragraph 2.5(d) (2) and (3) of the HHS Guidelines.

§ 26.25 Employee Assistance Programs (EAP).

Each licensee subject to this part shall maintain an Employee Assistance Program to strengthen fitness-for-duty programs by offering assessment, short-term counseling, referral services, and treatment monitoring to employees with problems that could adversely affect the performance of activities within the

scope of this part. EAPs should be designed to achieve early intervention and provide for confidential assistance (except where safety considerations must prevail). EAP staff shall inform licensee management when a determination has been made that a self-referring individual's condition constitutes a hazard to himself or herself or others.

§ 26.27 Management actions and sanctions to be imposed.

(a) Prior to the initial granting of unescorted access to a protected area or the assignment to activities within the scope of this part to any person, the licensee shall obtain a written statement from the individual as to whether activities within the scope of this part were ever denied the individual and shall complete a suitable inquiry to determine if that person was, in the past, tested positive for illegal drugs, subject to a plan for treating drug abuse, or removed from activities within the scope of this part, or denied unescorted access at any other nuclear power plant in accordance with a fitness-for-duty policy. If such a record is established, the new assignment to activities within the scope of this part or granting of unescorted access must be based upon a management and medical determination of fitness for duty and the establishment of an appropriate follow-up testing program, provided the restrictions of paragraph (b) of this section is observed. To meet this requirement, the identity of persons denied unescorted access or removed under the provisions of this part and the circumstances for such denial or removal, including test results, will be made available in response to an inquiry by any company or its contractor falling under the scope of this part. Failure to list all previous employers and reasons for removal or revocation of unescorted access shall be cause for denial of unescorted access.

(b) Each licensee subject to this part shall, as a minimum, take the following actions. Nothing herein shall prohibit the licensee from taking more stringent action.

(1) Lacking any other evidence to indicate the use, sale, or possession of illegal drugs onsite, a confirmed positive test result shall be presumed to be an indication of offsite drug use. The first confirmed positive test shall, as a minimum, result in immediate removal from activities within the scope of this part for at least 14 days and referral to the EAP for assessment and counseling during any suspension period. Plans for treatment, follow-up, and future employment, shall be developed, and any rehabilitation program deemed appropriate must be initiated as appropriate, during such suspension period. Satisfactory management and medical assurance of the individual's fitness to adequately perform activities within the scope of this part shall be obtained before permitting the individual to be returned to these activities. Any subsequent confirmed positive test shall result in removal from unescorted access to protected areas and activities within the scope of this part for a minimum of three years from the date of removal.

(2) Any individual determined to have been involved in the sale, use, or possession of illegal drugs while within a protected area of any nuclear power plant shall be removed from activities within the scope of this Part. The individual may not be granted unescorted access to protected areas or assigned to activities within the scope of this part for a minimum of five years from the date of removal.

(3) Persons removed for periods of three years or more under the provisions of the above paragraphs for the illegal sale, use or possession of drugs and who would have been removed under the current standards of a hiring licensee, may be granted unescorted access and assigned duties within the scope of this part by a licensee subject to this Part only when the hiring licensee receives satisfactory medical assurance that the person has abstained from drugs for at least three years. Satisfactory management and medical assurance of the individual's fitness to adequately perform activities within the scope of this part shall be obtained before permitting the individual to peform activities within the scope of this part. Any person granted unescorted access or whose access is reinstated under these provisions, shall be given unannounced follow-up tests at least once every three months for three years after reemployment to verify continued abstinence from drugs. Any confirmed use of drugs through this process or any other determination of subsequent involvement in the sale, use or possession of illegal drugs shall result in permanent denial of unescorted access.

(c) Refusal to provide a specimen for testing and resignation prior to removal for violation of company policy concerning drugs shall be recorded as a removal for cause. Such records shall be retained for the purpose of meeting the requirements of § 26.27(a).

(d) If a license has reasonable belief that an NRC employee may be under the influence of any substance, or otherwise unfit for duty, the licensee may not deny access but may escort the individual. In any instance of this occurrence, the appropriate Regional Administrator shall be notified immediately by telephone. During other than normal working hours, the NRC Operations Center shall be notified.

§ 26.28 Appeals.

Each licensee subject to this part shall establish a procedure for employees and contractor/vendor employees to appeal fitness for duty determinations that could have an adverse effect on the individual's employment. The procedure must provide notice and an opportunity to respond and be consonant with fundamental principles of due process. Where applicable, grievance review procedures contained in collective bargaining agreements covering the bargaining unit of which the employee is a member will normallly meet this requirement, and they may be used for this purpose whether or not the administrative action taken is a grievable action under the contract.

§ 26.29 Protection of information.

(a) Each licensee subject to this part, who collects personal information on an employee for the purpose of complying with this part, shall establish and maintain a system of files and procedures for the protection of the personal information. Such system shall be maintained until the Commission terminates each license for which the system was developed.

(b) The licensee shall not disclose the personal information collected and maintained to persons other than assigned medical review officials, other licensees legitimately seeking the information as required by this part for employment decisions and who have obtained a release from current or prospective employees or contractor personnel, NRC representatives, appropriate law enforcement officials, the subject individual or his or her representative, or to those licensee personnel who have a need to have access to the information in performing assigned duties.

Inspections, Records and Reports

§ 26.70 Inspections.

(a) Each licensee subject to this part shall permit duly authorized representatives of the Commission to inspect its records, premises, activities, and personnel as may be necessary to accomplish the purposes of this part.

(b) Written agreements between licensees and their contractors will clearly show that the—

(1) Licensee is responsible to the Commission for maintaining an effective

fitness-for-duty program in accordance with this part; and

(2) NRC may inspect, copy, or take away copies of any licensee or contractor documents, records, and reports related to implementation of the licensee's or contractor's fitness-for-duty program under the scope of the contracted activities.

§ 26.71 Recordkeeping requirements.

Each licensee subject to this part shall—

(a) Retain records of inquiries conducted in accordance with § 26.27(a), that result in the granting of unescorted access to protected areas, until three years following termination of such access authorizations;

(b) Retain records of confirmed positive test results which are concurred in by the Medical Review Officer, and the subsequent personnel actions for a period of at least three years; and

(c) Retain records of persons made ineligible for three years or longer for assignment to activities within the scope of this part under the provisions of § 26.27(b)(1), (2), (3) or (c), until the Commission terminates each license under which the records were created.

(d) Collect and compile fitness-for-duty program performance data as described in NRC Form _____.[1] The data shall be analyzed and appropriate actions taken to correct program weaknesses. Such data and analysis shall be retained for three years and made available for inspection by the NRC.

§ 26.73 Reporting requirements.

(a)(1) Each licensee subject to this part shall inform the Commission of significant fitness-for-duty events including:

(i) Sale, use, or possession of illegal drugs within the protected area and,

(ii) Any acts involving the illegal sale, use or possession of a controlled substance by any person licensed under 10 CFR Part 55 to operate a power reactor or by any supervisory personnel assigned to perform duties within the scope of this part. This includes the results of confirmed positive tests on such persons.

(2) Such notifications shall be made to the NRC Operations Center by telephone within 24 hours of the discovery of the event.

(3) Written reports documenting such notifications and specifying actions taken shall be submitted within 30 days to the U.S. Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555. The licensee shall also submit one copy to the appropriate NRC Regional Office. Written reports shall not include the names of the individuals.

(b) Fitness-for-duty events shall be reported under this section rather than reported under the provisions of § 73.71.

Audits

§ 26.80 Audits.

(a) Each licensee subject to this part shall cause the fitness-for-duty program to be audited at least once every 13 months. In addition, audits shall be conducted, at least once every 13 months, of those portions of fitness-for-duty programs implemented by contractors. Licensees may accept audits of contractors conducted by other licensees and need not re-audit the same contractor for the same period of time. A copy of the audit report, to include findings, recommendations and corrective action must be provided to each sharing utility and made available on site for NRC inspection. Licensees retain responsibility for the effectiveness of contractor programs and the implementation of appropriate corrective action.

(b) Audits shall focus on the effectiveness of the program and be conducted by individuals qualified in the subject(s) being audited, and independent of both program management and personnel directly responsible for implementation of the fitness-for-duty program.

(c) The result of the audit, along with recommendations, if any, shall be documented and reported to senior corporate and site management. The resolution of the audit findings and corrective actions shall be documented. These documents shall be retained for three years and made available for NRC inspection.

Enforcement

§ 26.90 Violations.

(a) An injunction or other court order may be obtained to prohibit a violation of any provision of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974; or

(3) Any regulation or order issued under these Acts.

(b) A court order may be obtained for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act of 1954, for violations of—

(1) Section 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Act;

(2) Section 206 of the Energy Reorganization Act of 1974;

(3) Any rule, regulation, or order issued under these sections, or under section 161 of the Act;

(4) Any term, condition, or limitation of any license issued under these sections; or

(5) Any provisions for which a license may be revoked under section 186 of the Atomic Energy Act of 1954.

(c) Any person who willfully violates any provision of the Atomic Energy Act of 1954, as amended, or any regulation or order issued under the requirements of the Act, include regulations under this part, may be guilty of a crime and, upon conviction, may be punished by fine or imprisonment or both, as provided by law.

Dated at Rockville, Maryland, this 15th day of September, 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[**Editorial note:** This appendix will not appear in the Code of Federal Regulations]

Appendix to the Document

Fitness-for-Duty Program Elements Not Included in the Proposed 10 CFR Part 26

The Commission has decided not to include several matters in the proposed fitness-fot-duty rule, but seeks comments as to whether these matters should be added to the rule or included as recommendations in implementing guidance.

1. Expand the scope of the rule to include other activities directly related to nuclear safety by licensee and contractor personnel. This could include engineering and quality assurance activities performed outside a protected area and activities performed by escorted licensee or contractor personnel within a protected area which, if not properly performed, could contribute to facility conditions adverse to public or worker safety.

2. Require that licensees take specific measures to deter onsite sale, possession, or use of alcohol and drugs and to achieve early detection should these problems exist. These measures could include:

(a) Searches of the workplace, which would be unannounced and random,

(b) Investigations designed to determine whether there is an existing or potential problem,

(c) A mechanism for discreet expressions of concern regarding the condition of an employees' fitness for duty in a manner that can facilitate unrestricted flow of information, and

(d) Information collection from law enforcement authorities and drug

[1] [Editorial note: NRC Form number will be published in the final regulation]

counseling services concerning drug activity in the local community.

3. The NRC developed a list of data that appear to be appropriate based upon informed reviews by appropriate professionals in other organizations. To ensure consistency of data and to facilitate analysis, the draft form below could be utilized. The Commission seeks specific comments as to whether the data listed form a relevant basis for the evaluation of program performance, and whether there are any other data which would be important in this regard.

BILLING CODE 7590-01-M

FITNESS-FOR-DUTY PROGRAM PERFORMANCE DATA

Site: _____ Period: Jan-Jun 19__
Jul-Dec 19__

Contact Name: _____ Docket #'s _____

Telephone Number: (___) _____

Avg # of Employees: _____

Avg # of "Permanent" Contractor Employees: _____
(Contractor onsite 6 months or longer)

Avg # of Other Contractors: _____

I. TESTING	Employees (# POS)	Contractors (# POS)	Action Taken: Term	Rehab	Pend
A. Preemployment/Prebadging	( )	( )			
B. Unannounced Periodic	( )	( )			
C. Unannounced Random	( )	( )			
D. For Cause (Incl Post-Accident)	( )	( )			
E. Followup (Verify Abstention)	( )	( )			
F. Other (Describe: _____)	( )	( )			

G. Drugs Identified(#):

Marijuana _____ Amphetamines _____ Opiates _____ Others _____

Cocaine _____ Phencyclidine _____ Alcohol _____ (Describe) _____

II. PROACTIVE EFFORTS	#	Total Man-Hrs	# Subjects ID'd	Action Taken: Term	Rehab	Pend
A. Searches of Workplace	__					
B. Searches of Personal Vehicles	__					
C. Searches Using Dog	__					
D. Investigations by Licensee/Contractor	__					
E. Investigations/Arrests by Law Enforcement		XX				
F. # ID'd by Supervisor	XX	XX				
G. # ID'd thru Allegs. to Employer	XX	XX				
H. # ID'd thru Allegs. to others (NRC, Law Enforcement, etc.)	XX	XX				
I. Other (Describe: _____)	XX	XX				

Data should reflect only those persons confirmed to be using, possessing, or selling drugs. "Term" means terminated, "Rehab" means rehabilitated (or counseled) and returned to duty, "Pend" means final disposition is pending.

III. EAP PROGRAM USE (REFERRAL SOURCE)

	Employees	Contractors	Rehab	Disposition: Dropped Program	Disposition: Term	Disposition: Pend
A. Self						
B. Family						
C. Friends/Coworkers						
D. Union						
E. Supervisors						
F. Other (Describe:)						

IV. CAUSE OF BEHAVIORAL PROBLEM (REASON FOR REFERRAL)

	Employees	Contractors
A. Mental/Emotional		
B. Family/Relationship		
C. Job Related		
D. Medical		
E. Legal		
F. Financial		
G. Alcohol		
H. Drugs		
I. Other (Describe:)		

V. SUMMARY DESCRIPTION OF LESSONS LEARNED:

Briefly describe any program changes since last report; include additional drugs tested per 10 CFR 26.24(c)(2)(iv); describe any cutoff levels lower than in HHS Guidelines.

[FR Doc. 88-21415 Filed 9-21-88; 8:45 am]
BILLING CODE 7590-01-C

10 CFR Part 26

Fitness-for-Duty Program; Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Meeting.

SUMMARY: The NRC staff will conduct a meeting to further public understanding of a proposed rule that will require nuclear power plant licensees to implement a fitness-for-duty program. The proposed rule appears in this issue of the **Federal Register**.

DATE: October 17, 1988.

ADDRESS: Holiday Inn Crowne Plaza (Ballroom, Meeting Group No. 4836), 1750 Rockville Pike, Rockville, MD 20852. Telephone: (301) 468–1100, 1–800–638–5963.

FOR FURTHER INFORMATION CONTACT: Nancy Ervin, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–0946.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to provide a forum for discussion of issues raised by the Commission's proposed rule on fitness for duty, and in particular, aspects related to random urine tests for drugs.

The NRC wishes to facilitate the public comment process by providing an opportunity for members of the public to raise issues and have questions answered on the proposed rule.

The tentative meeting agenda is shown below:

Morning Session

9:00 am Opening Remarks (NRC)
9:20–9:30 Brief History and Purpose of Rule (NRC staff)
9:30–10:45 Guidelines for Drug Testing Programs (National Institute on Drug Abuse)
10:45–11:45 Provisions of the Proposed Rule and Issues (NRC staff and Attendees)
11:45–1:00 Lunch Break

Afternoon Session

1:00–3:30 Provisions of the Proposed Rule and Issues, cont. (NRC staff and Attendees)
3:00–4:30 Comments Requested by the Commission (NRC staff and Attendees)
4:30–4:45 Closing Remarks (NRC staff)

Dated at Washington, DC, this 8th day of September, 1988

For The Nuclear Regulatory Commission.
Brian K. Grimes,
Director, Division of Reactor Inspection and Safeguard, Office of Nuclear Reactor Regulation.

[FR Doc. 88–21414 Filed 9–21–88; 8:45 am]
BILLING CODE 7590–01–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C–2932]

National Indemnity Co., et al.

AGENCY: Federal Trade Commission.

ACTION: Notice of period for public comment on petition to reopen and set aside the order.

SUMMARY: National Indemnity Company and six subsidiary respondents in the order in Docket No. C–2932, filed a petition on August 30, 1988, requesting that the Commission reopen and set aside the order concerning the failure to comply with the Fair Credit Reporting Act.

DATE: Deadline for filing comments in this matter is October 14, 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: George T. O'Brien, Enforcement Division, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326–2972.

SUPPLEMENTARY INFORMATION: The order in Docket No. C–2932 was published at 43 FR 52467 on November 13, 1978. The petitioners are engaged in the underwriting and sale to the public of property and liability insurance throughout the United States. The order requires that in connection with the consideration of applications for insurance respondents disclose to the consumer that an investigative consumer report may be procured and that the consumer has the right to request a disclosure of the nature and scope of the report. The order modification requested by petitioners would set aside the order on the basis that they have complied with the order for 10 years and all but one of the petitioners no longer use investigative consumer reports. The petition was placed on the public record on August 30, 1988.

List of Subjects in 16 CFR Part 13

Fair Credit Reporting Act; utilizing consumer reports.

Donald S. Clark,
Secretary.

[FR Doc. 88–21659 Filed 9–21–88; 8:45 am]
BILLING CODE 6750–01–M

16 CFR Parts 801, 802, and 803

Premerger Notification; Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes amendments to the premerger notification rules that require the parties to certain mergers or acquisitions to file reports with the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, and to wait a specified period of time before consummating such transactions. The reporting and waiting period requirements are intended to enable these enforcement agencies to determine whether a proposed merger or acquisition may violate the antitrust laws if consummated and, when appropriate, to seek a preliminary injunction in federal court to prevent consummation. This notice seeks comments on one principal proposal and two alternative approaches to revising the rules, each of which is designed to eliminate unnecessary notification burdens and to reduce incentives to violate the rules. The principal proposal would exempt from the premerger notification obligations all acquisitions of 10% or less of an issuer's voting securities on the grounds that such acquisitions are unlikely to violate the antitrust laws. The alternative proposals would alter existing notification procedures for acquisitions of 10% or less of an issuer's voting securities. One would permit the purchase, but require that the securities be placed in escrow pending antitrust review; the other would eliminate the reporting requirement imposed on the target firm, thus freeing the acquiror of its obligation to give the target prior notice.

DATE: Comments must be received on or before November 21, 1988.

ADDRESSES: Written comments should be submitted to both (1) the Secretary, Federal Trade Commission, Room 136, Washington, DC 20580, and (2) the Assistant Attorney General, Antitrust Division, Department of Justice, Room 3214, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Davidson, Attorney, Evaluation Office, Bureau of Competition, Room 394, Federal Trade Commission, Washington, DC 20580. Telephone: (202) 326-3300.

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Act

Each of these proposed amendments to the Hart-Scott-Rodino premerger notification rules is designed to reduce the burden and improve the effectiveness of the premerger notification program. The Commission has determined that none of the amendments is a major rule, as that term is defined in Executive Order 12291. The amendments will not result in: an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in the domestic market. None of the proposed amendments expands the coverage of the premerger notification rules in a way that would affect small business. Therefore, pursuant to section 605(b) of the Administrative Procedure Act, 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96-354 (September 19, 1980), the Federal Trade Commission certifies that these rules will not have a significant economic impact on a substantial number of small entities. Section 603 of the Administrative Procedure Act, 5 U.S.C. 603, requiring a final regulatory flexibility analysis of some rules, is therefore inapplicable.

Paperwork Reduction Act

The Hart-Scott-Rodino Premerger Notification rules and report form contain information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501-3518. These requirements were reviewed and approved by the Office of Management and Budget (OMB Control No. 3084-0005). Because the proposed amendments would affect the information collection requirement of the premerger notification program, the proposed amendments have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act. The Supporting Statement accompanying the Request for OMB Review estimates the principal proposal would reduce the number of notifications required, on average, by 20 filings per year. This would reduce the existing burden estimate of 142,000 hours annually by about 800 hours. The two alternatives being considered would not materially change the current burden estimate. Each of those proposed procedures would be optional if adopted. Persons who wish to do so could continue to file notifications under existing procedures. Comments on the Commission's submission may be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Don Arbuckle, Desk Officer for the Federal Trade Commission.

Background

Section 7A of the Clayton Act ("the act"), 15 U.S.C. 18a, as added by sections 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain acquisitions of assets or voting securities to give advance notice to the Federal Trade Commission (hereafter referred to as "the Commission") and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (hereafter referred to as "the Assistant Attorney General"), and to wait certain designated periods before the consummation of such acquisitions. The transactions to which the advance notice requirement is applicable and the length of the waiting period required are set out respectively in subsections (a) and (b) of section 7A. This amendment to the Clayton Act does not change the standards used in determining the legality of mergers and acquisitions under the antitrust laws.

The legislative history suggests several purposes underlying the act. Congress wanted to assure that large acquisitions were subjected to meaningful scrutiny under the antitrust laws prior to consummation. To this end, Congress clearly intended to eliminate the large "midnight merger," which is negotiated in secret and announced just before, or sometimes only after, the closing takes place. Congress also provided an opportunity for the Commission or the Assistant Attorney General (who are sometimes hereafter referred to collectively as the "antitrust agencies" or the "enforcement agencies") to seek a court order enjoining the completion of those transactions that the agencies deem to present significant antitrust problems. Finally, Congress sought to facilitate an effective remedy when a challenge by one of the enforcement agencies proved successful. Thus, the act requires that the antitrust agencies receive prior notification of significant acquisitions. provides certain tools to facilitate a prompt, thorough investigation of the competitive implications of these acquisitions, and assures the enforcement agencies an opportunity to seek a preliminary injunction before the parties to an acquisition are legally free to consummate it, reducing the problem of unscrambling the assets after the transaction has taken place. Subsection 7A(d)(1) of the act, 15 U.S.C. 18a(d)(1), directs the Commission, with the concurrence of the Assistant Attorney General, in accordance with 5 U.S.C. 553, to require that the notification be in such form and contain such information and documentary material as may be necessary and appropriate to determine whether the proposed transaction may, if consummated, violate the antitrust laws. Subsection 7A(d)(2) of the act, 15 U.S.C. 18a(d)(2), grants the Commission, with the concurrence of the Assistant Attorney General, in accordance with 5 U.S.C. 553, the authority (A) to define the terms used in the act, (B) to exempt additional persons or transactions from the act's notification and waiting period requirements, and (C) to prescribe such other rules as may be necessary and appropriate to carry out the purposes of section 7A.

On December 15, 1976, the Commission issued proposed rules and a proposed Notification and Report Form ("the Form") to implement the act. This proposed rulemaking was published in the **Federal Register** of December 20, 1976, 41 FR 55488. Because of the volume of public comment, it became clear to the Commission that some substantial revisions would have to be made in the original rules. On July 25, 1977, the Commission determined that additional public comment on the rules would be desirable and approved revised proposed rules and a revised proposed Notification and Report Form. The revised rules and Form were published in the **Federal Register** of August 1, 1977, 42 FR 39040. Additional changes in the revised rules and Form were made after the close of the comment period. The Commission formally promulgated the final rules and Form, and issued an accompanying Statement of Basis and Purpose on July 10, 1978. The Assistant Attorney General gave his formal concurrence on July 18, 1978. The final rules and Form and the Statement of Basis and Purpose were published in the **Federal Register** of July 31, 1978, 43 FR 33451, and became effective on September 5, 1978.

The rules are divided into three parts, which appear at 16 CFR Parts 801, 802, and 803. Part 801 defines a number of the terms used in the act and rules, and

explains which acquisitions are subject to the reporting and waiting period requirements. Part 802 contains a number of exemptions from these requirements. Part 803 explains the procedures for complying with the act. The Notification and Report Form, which is completed by persons required to file notification, is an appendix to Part 803 of the rules.

Changes of a substantive nature have been made in the premerger notification rules or Form on six occasions since they were first promulgated. The first was an increase in the minimum dollar value exemption contained in § 802.20 of the rules. This amendment was proposed in the **Federal Register** of August 10, 1979, 44 FR 47099, and was published in final form in the **Federal Register** of November 21, 1979, 44 FR 60781. The second amendment replaced the requirement that certain revenue data for the year 1972 be provided in the Notification and Report Form with a requirement that comparable data be provided for the year 1977. This change was made because total revenues for the year 1977 broken down by Standard Industrial Classification (SIC) codes became available from the Bureau of the Census. The amendment appeared in the **Federal Register** of March 5, 1980, 45 FR 14205, and was effective May 3, 1980.

The third set of changes was published by the Federal Trade Commission as proposed rule changes in the **Federal Register** of July 29, 1981, 46 FR 38710. These revisions were designed to clarify and improve the effectiveness of the rules and of the Notification and Report Form as well as to reduce the burden of filing notification. Several comments on the proposed changes were received during the comment period. Final rules, which adopted some of the suggestions received during the comment period, but which were substantially the same as the proposed rules, were published in the **Federal Register** of July 29, 1983, 48 FR 34427, and became effective on August 29, 1983. The fourth change, replacing the requirement to provide 1977 revenue data with a requirement to provide 1982 data on the Form, was published in the **Federal Register** of March 26, 1986, 51 FR 10368.

The fifth set of changes to the rules and the Notification and Report Form was published by the Federal Trade Commission as proposed rules changes in the **Federal Register** of September 24, 1985, 50 FR 38742. Those thirteen proposed revisions were designed to reduce the cost to the public of complying with the rules and to improve the program's effectiveness. The Commission decided to adopt nine of the proposals, to reject one proposal and to defer action on the other three. Final rules, which adopted some of the suggestions received from public comments, were published in the **Federal Register** of March 6, 1987, 52 FR 7066 and became effective on April 10, 1987. These changes included revisions to the Notification and Report Form, found in 16 CFR 803 (Appendix). The Form had previously undergone minor revisions on two other occasions.

The sixth set of amendments to the premerger notification rules grew out of the comments on Proposal 1 of the September 24, 1985, **Federal Register** notice, the proposed "acquisition vehicle" rules. Upon reviewing the comments on the "acquisition vehicle" proposal, the Commission reconsidered its proposal and proposed a new approach that applies only to partnerships and other entities that do not have outstanding voting securities. On March 6, 1987, the Commission proposed in the **Federal Register**, 52 FR 7095, amendments to its premerger notification rules to implement this approach. The final rule was published in the **Federal Register** of May 29, 1987, 52 FR 20058, and became effective on July 4, 1987.

The current set of proposals grew out of efforts by the Commission to insure compliance with the antitrust premerger notification obligations. The Commission has investigated a number of transactions in which persons purchased voting securities without filing notification or waiting the requisite period. Few of these transactions raised any competitive issues. In addition, in almost every case, acquiring stock without notifying the issuer and at the lowest possible price, rather than escaping antitrust review, appears to have been the reason for avoiding the premerger notification process.

The Commission recognizes that premerger notification obligations can create delay even for acquisitions that do not raise competitive concerns, and that this delay can impose significant burdens on buyers and sellers. However, this interruption does not reflect a Congressional decision that the Commission should regulate generally the acquisition of voting securities or assets. It is, rather, the necessary consequence of preventing consummation while the antitrust agencies assess the likelihood that proposed transactions will violate the antitrust laws. The special treatment of cash tender offers in section 7A(b)(1)(B) of the Act illustrates Congressional concern to avoid unnecessary disruption of the operation of the market for corporate control. *See* 122 Cong. Rec. H. 10,293 (daily ed. Sept. 16, 1976). In addition, the Commission has tried to minimize any unnecessary disruptive effect of premerger review by the design of its procedures and the speed with which it reviews proposed transactions. In addition, whenever the Commission can determine that a class of transactions is unlikely to violate the antitrust laws, it has sought, with the concurrence of the Assistant Attorney General for Antitrust, to exempt such transactions from all notification obligations and the delay inherent in premerger review. Accordingly, the Commission is exploring whether, consistent with its antitrust responsibilities, it can modify its premerger notification rules so as to: (1) Substantially reduce the non-antitrust-related incentive to evade the obligations of the program; (2) eliminate any unnecessary burden on the parties; and (3) avoid any unneeded interference with the securities laws' disclosure requirements and the market for corporate control.

This Notice discusses in some detail the nature of the transactions in which the compliance problems have arisen, laws and regulations that affect the non-antitrust related incentives not to comply with the Commission's rules, and the extent to which these and other purchases of minority interests have competitive significance. It then offers one principal and two alternative methods of modifying the rules that would diminish the avoidance incentive and explains what the Commission believes are the advantages and disadvantages of each. The Commission has undertaken the somewhat unusual step of presenting an extended discussion of the problem and proposing two alternatives in addition to the principal proposal because this area involves numerous issues and each of the proposed solutions appears plausible.

The Commission, therefore, invites interested persons to submit comments on the nature and scope of the problems described, on the desirability of each of the proposed amendments, and on other alternatives.

Statement of Basis and Purpose for the Commission's Proposed Revision of its Premerger Notification Rules

The purpose of section 7A of the Clayton Act is clear: to give the antitrust agencies an opportunity to determine whether a proposed acquisition might violate the antitrust laws and an

opportunity to challenge any such transaction prior to consummation. It is solely in order to meet this objective that section 7A requires advance notification to federal antitrust agencies of proposed acquisitions.

The Act was never intended to generate public disclosure of stock acquisitions. To the contrary, Section 7A(h) sets forth a rigorous confidentiality standard. Nonetheless, in order to assure that premerger notification and information are received from the acquired person, in circumstances in which the acquired person might not otherwise be aware of its filing obligation (*e.g.*, open market stock purchases), the antitrust premerger notification rules require that the acquiring person disclose its holdings and intentions to the acquired person at an early stage-before the $15 million reporting threshold is crossed. (See 16 CFR 803.5.)

The securities laws have as their purpose investor protection and the efficient functioning of capital markets. There has been vigorous and continuing debate over the years as to when Congress should require public disclosure of stock acquisitions through the securities laws.

The antitrust review procedures can require disclosure to the issuer whose stock is being acquired before any disclosure to a takeover "target" can be very costly, both in terms of driving up the price of the stock and more generally by enabling the target to undertake defensive maneuvers. As a result, it appears that some purchasers have used various techniques to avoid their antitrust notification obligation. Their aim has evidently been to buy stock immediately and secretly and to delay notice to the issuer at least until public disclosure is required by securities laws.

The Commission rejects the view that violation of the premerger notification requirements may be justified by the non-antitrust-related incentive to avoid disclosure to a takeover target or the public until required by the securities laws. The Commission will continue to require compliance with its rules. Nevertheless, it may be the case that certain aspects of the Commission's rules that require filing notifications create an incentive to avoid that obligation, but do not play any significant role in the effective operation of the premerger review. It may be possible, therefore, to broaden the circumstances in which voting securities may be purchased without prior notification to the antitrust agencies or prior notice to the target. In particular, the Commission believes that the premerger notification rules should be amended if they can be changed in a way that would reduce compliance problems and reduce filing burdens while maintaining the program as an effective antitrust enforcement tool. If such changes can be made, a major benefit would be the freeing up of Commission resources currently expended on compliance investigations regarding transactions that lack antitrust significance.

This Notice seeks public comment on three alternative means of achieving these ends. The principal proposal would exempt any acquisition of 10 percent or less of an issuer's voting securities, regardless of value. The Commission's experience, particularly its eight years experience reviewing premerger notifications, supports the conclusion that such acquisitions are unlikely to violate the antitrust laws. This exemption would subsume the "solely for the purpose of investment" exemption in section 7A(c)(9) of the act (15 U.S.C. 18a(c)(9)), and, as a result, eliminate the need for the parallel provision in § 802.9 of the rules. The two alternatives propose procedures designed to address the apparently unlikely possibility that an anticompetitive acquisition of 10 percent or less might occur. One procedure would allow an acquiror to purchase up to 10 percent of an issuer's voting securities without reporting to the enforcement agencies, provided that the stock remains in escrow until the agencies have completed their antitrust review. The other would enable a purchaser of up to 10 percent of the voting securities of an issuer to meet the premerger notification requirements without notifying the target firm. For certain non-consensual transaction, it would eliminate the reporting requirement currently imposed on the target firm if the acquiring person submits specified information not required by the existing notification and report form.

I. The Compliance Problem

Experience with the premerger notification program demonstrates a persistent problem in obtaining full compliance with notification obligations for acquisitions of 10 percent or less of an issuer's voting securities. As outlined above, those compliance problems are largely, if not entirely, the result of non-anti-trust related economic incentives to avoid the notification procedures. In order to describe and assess these proposals more fully, it is important to understand the operation of the antitrust notification procedures and the securities laws, the point at which their requirements result in disclosures, and the types of transactions that are most affected by these requirements.

A. Hart-Scott-Rodino Requirements

The Hart-Scott-Rodino Antitrust Improvements Act of 1976 requires that certain acquisitions be reported to the Commission and Department of Justice prior to consummation. Assuming all other criteria are satisfied and not exemptions are applicable, an acquisition of voting securities or assets must be reported to the enforcement agencies and a waiting period must be observed before consummation if the transaction is valued at $15 million or more, or if the transaction would result in the acquiring person holding 50 percent or more of the voting securities of an issuer with sales or assets of $25 million or more. Section 7A(a)(3)(B) of the Clayton Act, 15 U.S.C. 18a(a)(3)(B), and § 802.20. The Commission's regulations eatablish three additional "notification thresholds" for acquisitions of voting securities valued at more than $15 million. *See* § 801.1(h). The next thresholds are 15 percent; 25 percent; and, finally, 50 percent. The regulations impose a potential filing and waiting requirement for each threshold that will be crossed. However, subsequent filings can be avoided if the initial filing is for the highest threshold the acquiror will meet. *See, e.g.*, § 802.21 and examples.

The waiting period prior to consummation of an acquisition is the keystone of the act. During this 30-day period (15 days in the case of a cash tender offer) the antitrust agencies can examine whether the proposed transaction is likely to violate the antitrust laws. *See* section 7A(b) of the act. They are authorized to require additional information from the parties and extend the waiting period up to another 20 days (10 in the case of cash tender offers) to review the additional submission. *See* section 7A(e) of the act. Armed with the information developed while the waiting period preserves the status quo, the agencies can and do challenge proposed mergers. *See* section 7A(f) of the act. They thereby avoid the complex remedial problems of undoing anticompetitive transactions.

Typically, however, the waiting period is less than the statutory maximum. Few transactions need to be challenged, and only a small percentage receive requests for additional information. For most transactions, the agencies complete their antitrust review within about two weeks and terminate the waiting period in less than half of the maximum time allowed by statute.

The filing obligation for a typical acquisition of voting securities contains

two notification obligations. The acquiring person must file the Notification and Report Form with the antitrust agencies. *See* § 803.2. It also must notify the issuer of the voting securities, if the shares are to be bought from a third party. *See* §§ 801.30 and 803.5. The acquiror must serve this notice on the issuer prior to notifying the enforcement agencies. *See* § 803.5.

The prior notice of the target, therefore, is a precondition to the initiation of the waiting period for an acquisition of voting securities from a person other than the issuer. Pursuant to § 801.30, the waiting period begins when the acquiring person files its notification. The acquired person must file its notification within the 15 days (10 if the transaction is a cash tender offer) thereafter. Without notice from the acquiring person, the acquired person might not know that its voting securities were being acquired, that it might have a filing obligation, or when it is required to file. Section 803.5(a), therefore, requires the acquiring person to inform the target firm of the following:

(i) The identity of the acquiring person;

(ii) The fact that the acquiring person intends to acquire voting securities of the issuer;

(iii) The specific classes of voting securities of the issuer sought to be acquired; and if known, the number of securities of each such class that would be held by the acquiring person as a result of the acquisition or, if the number is not known, the specific notification threshold that the acquiring person intends to meet or exceed; and, if designated by the acquiring person, a higher threshold for additional voting securities it may hold in the year following the expiration of the wating period;

(iv) The fact that the acquisition may be subject to the act, and that the acquiring person will file notification under the act with the Federal Trade Commission and Assistant Attorney General;

(v) The anticipated date of receipt of such notification under § 803.10(c).

One exception to these filing requirements should be noted. Congress declared in section 7A(c)(9) that acquisitions of up to 10 percent of an issuer's voting securities would not be subject to the Act's obligations if made solely for the purpose of investment. The Commission has broadened the solely-for-investment exemption and permits institutional investors to acquire up to 15 percent of an issuer's voting securities without filing notification. *See* § 802.64.

At this point in the discussion, then, the class of transactions of interest comprises acquisitions of voting securities that are valued at more than $15 million and are not made solely for the purpose of investment. These proposed transactions must be reported regardless of the percentage acquired, unless another exemption is applicable. For acquisitions of the stock of large, publicly-traded firms relatively small acquisitions in terms of percentage acquired may therefore be reportable. If a firm's outstanding voting securities are valued at $1 billion, a $15 million purchase would constitute only 1.5 percent of the outstanding shares. It would require $50 million to acquire a 5 percent share or $150 million to acquire a 15 percent share.

B. Securities Laws

The Williams Act, passed in 1968 as a series of amendments to the Securities Exchange Act of 1934, had as its primary objective the regulation of tender offers. Pub. L. 90–439, 82 Stat. 454 (1968). It requires acquiring persons to disclose publicly, at the time of making a tender offer, who the acquiring persons are, where they will raise the money for the purchase, what their plans for the company are, and whether they have special agreements with other shareholders of the target management. Acquirors are required to keep the office open to all shareholders for a minimum of 20 business days. *See* section 14(d) of the Securities Exchange Act of 1934, 15 U.S.C. 78m(d) and the rules thereunder. The Williams Act also requires any person who acquires beneficial ownership of more than 5 percent (reduced in 1970 from the original 10 percent) of an issuer's voting securities to make a similar public disclosure within 10 days *after* acquiring more than 5 percent. *See* section 13(d) of the Securities Exchange Act of 1934, 15 U.S.C. 78m(d).

In some respects, Williams Act disclosures parallel antitrust premerger requirements. The securities law disclosures concerning tender offers, like the antitrust premerger notifications, take place prior to the acquisition of shares. Thus, the § 803.5 notice given in connection with a tender offer provides no new information to the target firm.

The requirement to disclose beneficial ownership under section 13(d), however, does not apply to purchases of 5 percent or less, and the required disclosures for larger purchases need not be made until after the 5 percent threshold has been crossed. Consequently, an acquiror may buy 5 percent without any disclosure. The § 803.5 notice to the target can thus reveal an acquiror's otherwise secret plans. These acquirors have an incentive not to comply with the premerger notification rules in order to purchase shares more cheaply in secret.

In addition, although the section 13(d) disclosure obligation is triggered by the acquisition of more than a 5 percent interest, an acquiror may accumulate a substantially larger percentage of the target's shares before making the disclosures. For example, the acquiror conceivably might, through block purchases, obtain a majority or even all of the target's shares before making its public disclosure. Moreover, section 13(d) permits the acquiror to continue buying shares during the 10 days it has to make the disclosures.

The percentage of shares an acquiror is likely to purchase initially and during this 10-day period is significant for determining whether the level of purchases at which secrecy is maintained under the Williams Act can be matched under the antitrust rules without compromising the effectiveness of the premerger review program as an antitrust enforcement tool. If purchasers typically acquire enough voting securities to transfer working control of target firms before they make their acquisitions public, the Commission would be unable to bring its rules into close harmony with section 13(d). The enforcement agencies must have information in advance from both the acquiring and the acquired firm to evaluate adequately the antitrust implications of a transfer of control. If, however, purchasers more typically limit their non-public acquisitions to a lower percentage of voting securities—one that is unlikely to allow them to influence the firm's management—it may be possible to revise the premerger notification requirements to accommodate the level at which Congress permitted secrecy under the securities laws.

Analysis of a random sample of one hundred Schedule 13D disclosures of beneficial interest filed with the Securities and Exchange Commission shows that 59 of the acquirors held less than 10 percent of the target's securities. Of the remainder, it appears that none of the acquirors had an incentive to violate their premerger notification obligations. Those acquisitions exceeding 10 percent fell into several categories: exempt from premerger notification obligations (because the acquisitions were valued at $15 million or less or were stock options); otherwise not reportable; made by the issuer's managers who had little reason to hide their transactions from the issuer; or made after filing the required antitrust notification. A conclusion that acquisitions of more than 10 percent are less likely to be involved in antitrust notification compliance problems would

also be consistent with the Commission's experience under the Hart-Scott-Rodino act described in the following section.

There appear to be a least two reasons that holdings greater than 10 percent are often not amassed before filing a Schedule 13D, despite existence of the "10 day window" between the crossing of the 5 percent threshold and the mandatory disclosure. First, it may be difficult or unduly expensive to acquire such holdings during that time period. Second, section 16(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78p(b), may discourage purchases beyond the 10 percent level. Section 16(b) requires a person holding more than 10 percent of a company's shares to disgorge to the company any profits that person makes on the sale of company shares held for less than six months. Thus, persons whose plans contemplate, as one possibility, selling shares within the six-month period may limit their acquisitions to less than 10 percent. If, for example, there objective is to obtain control, acquirors may prefer to seek additional shares through a tender offer that conditions acceptance of additional shares on having a specified percentage of shares tendered. Then the acquiror can be sure of obtaining control when it buys the tendered shares or, it the acquisition plan fails because too few shares are tendered, the acquiror risks loss only on the 10 percent holding and can retain any gain if it sells those shares at a profit.

The ability of acquirors to amass holdings greater than 5 percent without disclosure may be significantly reduced as a result of legislation introduced in Congress to alter the Williams Act requirements. One approach would narrow the "10 day window" or close it entirely by forbidding purchases beyond 5 percent until disclosure had been made. *See, e.g.*, Tender Offer Reform Act of 1987, H.R. 2172, 100th Cong., 1st Sess. (1987). Another proposal would, in addition, lower the disclosure threshold to 3 percent or less. Tender Offer Disclosure and Fairness Act of 1987, S 1323, 100th Cong., 1st Sess. (1987).

C. Experience under the Hart-Scott-Rodino Act

The Commission's experience with the permerger notification program suggests that acquiring persons have in a number of instances sought, through various devices, to avoid filing premerger notifications. These acquirors appear to have done so not in order to escape or delay antitrust review but, rather in order to acquire voting securities prior to informing the issuer. Acquirors have tried at least two ways to argue under the Commission's rules that purchases of a small percentage of an issuer's voting securities were exempt: (1) They acquired shares directly and claimed the transaction was exempt under § 802.9, because the shares were acquired "solely for the purpose of investment;" and (2) they acquired shares "indirectly" through brokers under what were described as option agreements, claiming an exemption under § 802.31. In most of these instances the acquiring person held less than 10 percent of the issuer's voting securities. Furthermore, in a number of these instances the acquirors had actually filed or declared an intention of file the antitrust notifications for shares purchased subsequent to disclosing their beneficial ownership under the securities laws. This experience and our assessment of the current stituation under the securities laws set forth above suggest that the secrecy-based incentive to avoid filing premerger notifications is greatest for acquisitions of less than 10 percent.

Accordingly, the Commission believes that most acquirors would submit additional purchases to an antitrust premerger review, if they could acquire up to 10 percent without prior notice to the issuer. The question raised in this Notice is whether the Commission can alter its premerger notification rules in a way that will reduce this incentive while maintaining an effective antitrust enforcement mechanism. The answer to that question depends in large part on the antitrust significance of acquisitions of up to 10 percent of an issuer's voting securities.

II. The Antitrust Significance of 10 Percent Acquisitions

The Commission has examined three sources of guidance in considering the antitrust implications of acquisitions of 10 percent or less: antitrust chase law, experience with antitrust premerger filings, and federal statutory presumptions. All three indicate that acquisitions of up to 10 percent are less likely to violate the antitrust laws than acquisitions of greater percentages.

A. Antitrust Case Law

Section 7 of the Clayton Act prohibits acquisitions where the effect "may be substantially to lessen competition, or to tend to create a monopoly." 15 U.S.C. 18. It requires courts to predict whether a stock acquisition may give the acquiring person the power to influence target management in an anticompetitive manner. *United States v. E.I. du Pont de Nemours and Co.*, 353 U.S. 586 (1957).

An acquiring person does not need to purchase as much as 50% of another company's stock to violate section 7. *See, e.g., Denver & R.G.W.R.R. Co. v. United States*, 387 U.S. 485 (1967); *United States v. E.I. du Pont De Nemours and Co., supra.* In *Du Pont*, the court stated that an acquisition of "any part of the stock of another corporation, * * * is within reach of the Section whenever the reasonable likelihood appears that the acquisition will result in a restraint of commerce of in the creation of a monopoly * * *" 353 U.S. at 592. The court held that Du Pont's 23% share of General Motors securities violated section 7.

Other antitrust cases have recognized the influence on a target's management that the holder of a 20 percent interest can exert. *See, e.g., Crane v. Briggs*, 280 F.2d 747 (6th Cir 1960) (22% and the power to elect two directors enjoined as a violation of section 7); *Jacobson Manufacturing Co. v. Sterling Precision Corp.*, 282 F. Supp 598 (E.D. Wisc. 1968) (a 22% owner "is going to be in position to exercise some form of control"). Other courts have indicated that it would be appropriate to enjoin an acquisition that would result in the acquiror holding 20 percent of a target's shares. *See, e.g., Gulf and Western Industries, Inc. v. Great A&P Tea Co., Inc.* 476 F.2d 687 (2d Cir. 1973) (19% share); *Hamilton Watch Co. v. Benrus Watch Co.*, 114 F. Supp 307 (D. Conn.), *aff'd*, 206 F.2d 738 (2d Cir. 1953) (24% share).

Acquisitions of under 10 percent have received a mixed appraisal in cases not involving section 7. For example, in *Dan River, Inc. v. Unitex, Ltd.*, 624 F.2d 1216 (4th Cir. 1980), a securities law case, the court noted that 20 percent is "frequently regarded as control of a corporation * * * [but] at this point in their purchase program when they have but some eight percent of Dan River's stock, they could not hope to exercise control." 624 F.2d at 1225. However, the Civil Aeronautics Board has declared that a carrier may be in a position to exert control over another carrier at any percentage. *See, e.g., Toolco-Northeast Control Case*, 42 C.A.B. 822, 825 (1965); *Allegheny Airlines*, 41 C.A.B. 743, 744–5 (1964). With the agreement of incumbent management, an acquisition of only a few percent of shares sometimes has been the basis of a transfer of control to the acquiror. *See generally Matter of Caplan v. Lionel Corp*, 14 N.Y.2d 679 (1964), *aff'g*, 20 A.D.2d 301 (1964); *cf. Essex Universal Corp v. Yates*, 305 F.2d 572 (2d Cir. 1962).

There has apparently been no section 7 case that addressed directly and in

detail the implications of an acquisition of less than 10 percent of the target's voting securities. There are two cases, however, that suggest that acquisitions of less than 10 percent may violate section 7. In the first, a district court issued a preliminary injunction against an acquisition of 9.9 percent of the target's shares. While this injunction was vacated on appeal, *Kennecott Copper Corp v. Curtiss-Wright Corp.*, 584 F.2d 1195 (2d Cir. 1978), the reversal appears to rest on the inadequate definitions of product and geographic markets not on the ground that a 9.9 percent holding and the power to elect one director was insufficient to trigger section 7. In *Vanadium Corp. of America v. Susquehanna Corp.*, 203 F. Supp. 686 (D. Del. 1962), the court enjoined Susquehanna, its president and related interests from voting their combined 19.7 percent block of shares in Vanadium on the grounds that the exercise of those voting rights would probably lessen competition in the vanadium market. It issued the injunction notwithstanding that no person or entity in the Susquehanna group held as much as 10 percent of Vanadium's shares. Consequently, it appears that a court might also enjoin the acquisition of shares by individual members of a group even where no individual's holdings would be sufficient alone to influence the target management.

Finally, in one instance an acquisition of under 10 percent resulted in an interlocking directorate which the Commission found illegal under section 8 of the Clayton Act. In *Borg-Warner Corp. v. Federal Trade Commission*, 746 F.2d 108 (2d Cir. 1984), Bosch GmbH had placed two of its directors on the board of Borg-Warner after acquiring 9.5 percent of Borg-Warner's shares. The Commission held that the presence of common directors on both corporate boards violated both section 8 of the Clayton Act and section 5 of the Federal Trade Commission Act, because the firms competed in three lines of business. The Second Circuit reversed the Commission's order, but only on grounds of mootness (competition between the two firms had ceased as a result of divesting the competing business line, and the firms no longer had common directors).

These decisions indicate that although there are circumstances in which the acquisition of 10 percent or less of an issuer's voting securities may violate the antitrust laws, the occurrence of actual anticompetitive acquisitions in this range has been rare or non-existent. In addition, there are reasons why anticompetitive acquisitions of under 10 percent would be unusual. Anticompetitive acquisitions appear to be of two principal types: acquisitions conferring control of an issuer, and acquisitions that facilitate collusion by obtaining the power to elect a member of the issuer's board of directors. Ten percent is not enough to guarantee control without the agreement of the issuer's management; a person seeking control is therefore likely to purchase more shares individually or set up a group to purchase the requisite shares. The former would not be protected by an exemption (or other rules modification) that was limited to holdings of 10 percent or less. The latter would require a public disclosure under the securities laws and would risk liability under section 1 of the Sherman Act as well as under section 7 of the Clayton Act. Obtaining a seat on the board of directors might be an efficient way to facilitate collusion between the parties, but it too would normally be a public act likely to incite unwanted scrutiny by the antitrust agencies. Accordingly, it appears probable that nearly all acquisitions of 10 percent or less will have no antitrust significance.

The same reasoning applies even more forcefully to voting security acquisitions of 5 percent or less. Obtaining control or a seat on the board is even less likely, while all the risks of unwanted antitrust scrutiny from using a group or obtaining the seat are the same. Moreover, even the sparse precedent for finding antitrust violations for acquisitions of less than 10 percent evaporates for acquisitions of less than 5 percent of an issuer's voting securities. *Kennecott, Vanadium,* and *Borg-Warner* all involved acquirors of more than 5 percent. We are aware of no case in which a tribunal at any level found a violation of section 7 for an acquisition of less than 5 percent, apart from acquisitions by a person operating as a member of a group.

B. Antitrust Enforcement Activities

Available records indicate neither of the antitrust agencies has ever challenged an acquisition of 10 percent or less of an issuer's voting securities as a violation of section 7. (In *Borg-Warner*, though, the Commission challenged under § 8 an interlocking directorate achieved through a 9.5 percent acquisition.) The complete absence of section 7 actions by federal enforcement agencies is not surprising. Rather, it is consistent with the conclusion of the preceding section that acquisitions of 10 percent or less do not appear to have presented competitive problems.

This conclusion is further supported by an even more sensitive preliminary indicator of antitrust enforcement interest. The Commission maintains records of two levels of preliminary enforcement interest on all transactions filed under the premerger notification program: "clearance," the first indication of antitrust concern, initiates a procedure by which the two antitrust agencies decide which agency will begin an in-depth review of a transaction, and "second requests," the procedure under the act for obtaining additional information from the parties that generally indicates a higher level of concern. We have complete statistics for the years 1981–1984 (see table below), and these demonstrate a much lower than average level of enforcement interest in acquisitions of 10 percent or less. Overall, the percentage of clearances for these transactions was under 10 percent, which is less than two-thirds the percent in which clearances were sought for all transactions. The more recent but incomplete data for 1985 and 1986 show, for 1986, a higher number of transactions reported and a higher percentage of clearances. The larger number of transactions involving acquisitions of up to 10 percent probably reflects the larger number of transactions reported overall that year. The higher percentage of clearances may be just a chance variation.

ENFORCEMENT INTEREST IN SELECTED PREMERGER TRANSACTIONS

Calendar year	Transactions	Total clearances granted (FTC & DOJ)		Second requests issued (FTC & DOJ)		Transactions as a percentage of annual total adjusted transactions
		Number	Percent	Number	Percent	
A. Voting Securities Acquired—10% and Less:						
1981	16	1	6.3	0	-	2.1
1982	10	1	10.0	0	-	1.4
1983	36	3	8.3	1	2.8	4.0

ENFORCEMENT INTEREST IN SELECTED PREMERGER TRANSACTIONS—Continued

Calendar year	Transactions	Total clearances granted (FTC & DOJ)		Second requests issued (FTC & DOJ)		Transactions as a percentage of annual total adjusted transactions
		Number	Percent	Number	Percent	
1984	12	2	16.7	0	-	1.1
1985	26	2	7.7	1	3.8	N.A.
1986	45	12	26.7	0	-	N.A.
1981-1986 Total	145	21	14.5	2	1.4	N.A.
1981-1984 Total	74	7	9.5	1	1.4	8.6
B. Voting Securities Acquired—5% and Less:						
1981	11	1	9.1	0	-	1.4
1982	1	0	-	0	-	0.1
1983	22	1	4.5	1	4.5	2.4
1984	5	1	20.0	0	-	0.4
1985	14	1	7.1	0	-	N.A.
1986	25	6	24.0	0	-	N.A.
1981-1986 Total	78	10	12.8	1	1.3	N.A.
1981-1984 Total	39	3	7.7	1	2.6	4.3
C. All Transactions (Adjusted) [1]:						
1981	762	166	21.8	78	10.2	
1982	713	137	19.2	42	5.9	
1983	903	129	14.3	51	5.6	
1984	1,119	175	15.6	71	6.3	
1981-1984 Total	3,497	607	17.4	242	6.9	

[1] Data not available for calendar years 1985 and 1986.

Even more significant are the "second request" data that show virtually no interest in these transactions beyond the most preliminary stage. The two second requests on the table involved special circumstances. Both transactions were subject to second requests because the securities were being received in exchange for the independently reported acquisition of 100 percent of the acquiror's assets. In other words, the concern that generated the second request was the merging of the two businesses, not the acquisition of a small amount of voting securities by what would become a shell corporation. Had the acquisition of voting securities in these two instances been exempt from reporting obligations, the asset acquisitions would still have been reported and the agencies' investigations, which included issuance of second requests, would not have been impeded. Apart from these transactions we know of no second requests issued that were for acquisitions of 10 percent or less since the program was established in 1978.

The small number of transactions reported in these categories and the low degree of enforcement interest should be interpreted with some caution. Because a premerger notification remains in effect for a year, acquirors generally file for the highest threshold they expect to cross. Otherwise, an additional filing and waiting period would be required if a subsequent acquisition would increase the acquiror's holdings over the 15, 25, or 50 percent thresholds. Thus, it is possible that a clearance or second request recorded in these statistics at a higher threshold level might have been sought by the enforcement agencies if the percentage of voting securities intended to be held were 10 percent or less. There is, however, no indication of whether this is the case in any of these transactions.

In addition, historical data on enforcement interest may not always be of great value in assessing whether a rules change would be likely to let anticompetitive transactions go unreported. If all acquisitions up to 10 percent were exempt, more persons might be encouraged to make initial acquisitions within this range before making a filing, and it is possible that some of these acquisitions would raise competitive issues. Nonetheless, the central fact that we are unable to uncover any instance of either of the antitrust agencies ever challenging a stock acquisition of less than 10 percent under section 7 alleviates this concern.

The enforcement interest statistics, like the case law, indicate that there has been relatively little antitrust interest in acquisitions of small percentages of an issuer's voting securities. The enforcement agencies' interest has been demonstrated only at the "clearance" level and even at that level the interest has been must lower than for other transactions. There have been no relevant second requests. Moreover, neither antitrust agency has ever challenged an acquisition of 10 percent or less of an issuer's voting securities as a violation of section 7.

C. Federal Statutory Presumptions

There are a number of federal statutes that establish reporting and other regulatory requirements based on the percentage of securities a person holds. They frequently reflect an implicit or explicit assumption that below the stated percentage the acquiror is unlikely to control the issuer or above that percent it is likely to control the issuer. While not determinative for the premerger rules, the generalizations in those laws provide a useful perspective.

Federal regulatory statutes have generally used three percentages as benchmarks: 5, 10, and 25. Most common is a presumption of control at a 25 percent holding: Bank Holding Company Act of 1956, 12 U.S.C. 1841 *et seq.*; Federal Deposit Insurance Act, 12 U.S.C. 1811 *et seq.*; Savings and Loan Insurance Corporation Act, 12 U.S.C. 1730(q)(8)(B); National Housing Act, 12 U.S.C. 1730a (a)(2)(B); and the Investment Company Act of 1940, 15 U.S.C. 80a–2 *et seq.* Another significant group of statutes use 10 percent either to presume control or the possibility of control or more simply as a notification threshold: Federal Aviation Act of 1953, 15 U.S.C. 1378(f); Securities Exchange Act of 1934, 15 U.S.C. 78p(a); and Public Utilities Holding Company Act of 1935, 15 U.S.C. 79(b)(a)(9) and (10). Still other statutes have used a 5 percent holding as a notification threshold without any

necessary implication of control: Bank Holding Company Act of 1956, 12 U.S.C. 1841(a)(2); Securities and Exchange Act of 1934, 15 U.S.C. 78m(d). Finally, several acts have established a presumption that control does not exist for holdings of less than 5 percent: Bank Holding Company Act of 1956, 12 U.S.C. 1841(a)(3); Federal Deposit Insurance Act, 12 U.S.C. 1817(j)(1)(A).

The legislative history of the securities laws, especially of section 13(d) of the Securities Exchange Act of 1934, includes extensive discussion of whether a holder of 5 percent or less is likely to control an issuer. The purpose of section 13(d) is to alert the marketplace to rapid accumulations of securities which might represent a potential shift in control. *Mosinee Paper Corp. v. Rondeau*, 500 F.2d 1011 (7th Cir. 1974); *GAF Corp. v. Milstein*, 453 F.2d 709 (2d Cir. 1971). An acquisition which reaches the 5% level signals "the earliest possible moment of the potential for a shift in control." *Mosinee Paper*, 500 F.2d at 1016.

As noted earlier, section 13(d) was amended in 1970 to reduce from 10 percent to 5 percent the threshold level at which an acquisition of shares must be disclosed. The principal reason for the change was evidence presented to Congress that companies limited their open market purchases to just below 10 percent as a means of avoiding the prior disclosure requirement applicable to tender offers. Pub. L. 91–567, 84 Stat. 1497 (1970). Because of the "ten day window," during which additional shares may be bought prior to disclosure, the amendment may not have achieved its objective. However, the legislative history shows Senator Williams' concern that "even 5 percent, can involve large amounts of money and can have a significant impact on corporate control." *Hearings of S. 336 and S. 3431 Before the Subcommittee on Securities of the Senate Committee on Banking and Currency*, 91st Cong., 2d Sess. 1 (1970).

On the other hand, the Chairman of the Federal Securities Acts Committee of the Investment Bankers Association, who also spoke in favor of the amendment to decrease the section 13(d) threshold, stated, "We believe it has not been demonstrated that ownership of less than 10 percent of the equity securities of any company constitutes "control" of the company in any way, even in the case of large corporations where the value of 9 percent of the equity securities would be many millions of dollars." *Hearings, supra*, at 115.

If other federal statutes imply that holders of 10 percent or less of an issuer's voting securities are unlikely to control the issuer, the legislative history of the Hart-Scott-Rodino Act tends more to the opposite view. Congress was aware that the premerger notification program would require filing for far smaller percentage acquisitions of voting securities than those covered by other statutes. Representative Hutchinson responded to a criticism that the notification requirements of the act—$15 million or 15 percent—were not strict enough: "If the percentage test were the only test of substantiality, the cited statutes might provide appropriate guidance. But the [$15] million figure, in effect, operates to reduce the percentage required as the transaction gets larger. Thus, the two-pronged committee test is both more flexible and more exact than the other statutory test." *Id.* Cong. Rec. H–8140 (daily ed. Aug. 2, 1976).

When Congress considered a *de minimis* exemption for voting security acquisitions, it limited the exemption to acquisitions that (1) were "solely for the purpose of investment," and (2) constituted 10 percent or less of the outstanding voting securities of the issuer. Section 7a(c)(9) of the act. The Commission could and did broaden this exemption using its authority under section 7A(d)(2)(B) to exempt "transactions which are not likely to violate the antitrust laws." Section 802.64 exempts an acquisition of up to 15 percent of an issuer's voting securities by an institutional investor if made solely for the purpose of investment. Neither this nor any of the other exemptions in the rules are based on other federal statutory presumptions about control of corporations.

Overall, these other statutory presumptions support the proposition that acquisitions of up to 10 percent are less likely to confer control or create competitive problems than acquisitions of greater percentages. Similarly, they indicate that any such problems are even less likely for holdings of 5 percent or less. In contrast, the $15 million reporting threshold in the Hart-Scott-Rodino Act and the "solely for the purpose of investment" qualification to its voting securities exemption indicate a Congressional interest in subjecting some types of acquisitions of 10 percent or less to premerger review. At the same time, however, Congress gave the enforcement agencies broad authority in the act to exempt classes of transactions that are unlikely to violate the antitrust laws.

III. Proposed Solutions

The proposals outlined below are directed at acquisitions of 10 percent or less of an issuer's outstanding voting securities. In part because the antitrust agencies appear never to have challenged such an acquisition, such acquisitions appear unlikely to violate the antitrust laws. As the foregoing discussion makes clear, the Commission has identified the 10 percent level based also in part on marketplace incentives related to the securities laws. If the federal securities laws are amended, the Commission may want to focus on a different threshold level. At present, though, the 10 percent level seems appropriate in light of both the securities laws and antitrust enforcement interest.

There are basically two approaches to reducing the conflict between the acquiror's desire to purchase small percentages of voting securities in secret, which is permitted by the securities laws, and the obligation to notify the issuer contained in the premerger rules. The first is simply to exempt small percentage acquisitions from all premerger obligations. The second is to alter the notification procedures in a way that removes the obligation to notify the target but assures that the antitrust agencies receive the information they require and have an opportunity to review it before consumers are harmed or remedial options are lost or become unworkably complex.

The principal proposal follows the first approach and would exempt all acquisitions of 10 percent or less of an issuer's outstanding voting securities. The alternative proposals follow the other approach and are designed to prevent competitive harm in those apparently unlikely instances when an acquisition of 10 percent or less would be anticompetitive. One would permit an acquiror to purchase 10 percent or less of an issuer's voting securities without filing notification, provided the securities are held in escrow until the antitrust agencies have completed their review. The other would permit an acquiror to file its prior notification for an acquisition of 10 percent or less without notifying the issuer (who would not have a filing obligation), provided the acquiror supplies certain information about the transaction and the issuer that is not now required. Under this proposal, the enforcement agencies would retain the authority to seek information from the issuer if necessary.

The Commission presents these alternatives with the recognition that there are disadvantages, as well as advantages, to each of the proposals. It requests comments on the provisions of each proposal. It would also welcome suggestions for other proposals as well as comments on the problems described

in this Notice and the proposals set out below. In addition, the Commission would appreciate comments on several specific issues. Those that relate to a particular proposal are stated after the discussion of that proposal. The following questions concern all the proposals

1. Is promulgation of any one of these proposals likely to change significantly existing patterns of acquiring voting securities? Would, for example, many more persons make acquisitions of up to 10 percent of the voting securities of an issuer?

The dearth of antitrust cases involving acquisitions of 10 percent or less suggests that it is unlikely that such acquisitions will raise competitive problems. It is possible, however, that some acquisitions of more than 10 percent that were found to be anticompetitive would also have had significant anticompetitive effects if they had involved 10 percent or less. Special treatment of acquisitions of 10 percent or less could encourage some acquirors who might not otherwise have done so to limit their initial or total purchases to 10 percent. Under what circumstances might acquirors be so influenced, and in what situations would such small acquisitions be likely to violate the antitrust laws?

2. Under any of these proposals, will a substantial number of purchasers typically seek to acquire more than 10 percent of the voting securities of an issuer before notifying the target? If so, is it likely that any of these proposals will effectively reduce the Commission's burden of policing compliance with the premerger rules?

Analysis of the random sample of Schedule 13Ds filed with the Securities and Exchange Commission discussed earlier indicates that few acquirors with an antitrust notification obligation exceed the 10 percent level without first previously satisfying their antitrust premerger notification obligations. The Commission's own experience also suggests that most, but not all, such acquirors file with the SEC and this Commission before exceeding the 10 percent level.

Even for those who seek to acquire more, however, it appears that the incentive to avoid the rules would be diminished if the Commission eliminated notice to the target for a lower percentage than the acquiror had intended to accumulate. For example, assume that for $15 million an acquiror could purchase one percent of the voting securities of an issuer. Assume further that the acquiror expects to obtain a $1.5 million profit upon resale of the shares and that the expected costs and profits are proportional for acquisitions of 5 and 10 percent, provided the acquiror does not notify the issuer prior to these acquisitions. Finally, assume that the acquiror can buy 11 percent of the shares before the securities laws would require a public disclosure. In deciding how much to buy under the current premerger rules, the acquiror must balance a no risk $1.5 million profit on 1 percent of the stock against a risky $16.5 million profit on 11 percent. (This profit is risky because it can be achieved only by violating the rules, which may result in substantial civil penalties.) If, under any of these proposals, the acquiror could buy 5 percent of the shares without notifying the target, the acquiror would face a different choice, balancing a $7.5 million profit without any risk of violating the rules, against the riskier $16.5 million profit option. If the rules permitted the acquisition of 10 percent without notice to the target, the choice would be between the risky $16.5 million profit and a legal profit of $15 million. In that case the incentives appear to be very different.

Are there other factors which would affect a purchaser's decision?

3. If Congress amends the securities laws to eliminate the "ten day window," how should that change be reflected in these proposals?

Under those circumstances, should all the proposals be restricted to voting security acquisition of 5 percent or lower? Would applying any or all of these proposals to acquisitions of 5 percent (or percent), rather than 10 percent, of an issuer's voting securities be a better approach even without changes in the securities laws? In this regard, it should be noted that all relevant transactions identified by the staff to date as being possible violations of the premerger notification requirements have involved acquisitions of more than 5 percent.

4. Should the Commission revise the other voting securities thresholds of § 801.1(h) if it exempts acquisitions of 5 percent or 10 percent of the voting securities of an issuer?

For example, if a 10 percent exemption were adopted, would it make sense to retain the 15 and 25 percent reporting thresholds? Would the program be diminished or enhanced by replacing those with 10 and 20 percent thresholds?

A. The Principal Proposal: An Unrestricted Exemption

Proposed § 802.24 would exempt from the obligations of the act the accumulation by any persons of up to 10 percent of any issuer's voting securities. Acquirors would not have to suspend consummation of transactions during a waiting period nor would they be required to notify the antitrust agencies or the target of their acquisitions before or after consummation. This proposal appears to address most directly the non-antitrust-related incentive to avoid premerger notification obligations that acquirors face prior to the point when § 13(d) of the Securities Exchange Act of 1934 requires them to disclose their beneficial ownership. The Commission will also consider whether a lower percentage exemption, such as 5 percent, might be appropriate, particularly if the provisions of the securities laws are amended.

Acquirors are reluctant to file premerger notifications because both the delay imposed by the waiting period and informing the target could increase the cost to them of acquiring the issuer's voting securities. In general, this class of persons would not acquire more than 10 percent of a target's voting securities because of the strictures on short-swing profits imposed by section 16(b) of the Securities Exchange Act of 1934 and because of the difficulties of acquiring more shares at low prices in the ten-day Williams Act period. Where such persons do seek to acquire more than 10 percent of the shares, the Commission expects that they would comply voluntarily with the obligations of the premerger notification program. Unless the securities laws are changed, a 5 percent exemption would reduce but not eliminate this non-antitrust-related incentive to avoid premerger notification requirements for most persons.

Currently, acquisitions of voting securities valued at more than $15 million, but which constitute 10 percent or less of an issuer's voting securities, are exempt under § 802.9 if the shares are held "solely for the purpose of investment." That exemption is not now available if the securities are purchased "with the intention of influencing the basic business decisions of the issuer, or with the intention of participating in the management of the issuer." *See* letter of Bureau Director Thomas J. Campbell dated August 19, 1982, included as Exhibit D in the Commission's Sixth Annual Report to Congress on the Hart-Scott-Rodino Act (July 26, 1983). This proposal would subsume that exemption by eliminating the filing requirement for all acquisitions of 10 percent or less of an issuer's voting securities, regardless of the intent of the acquired person.

In 1978 when the premerger rules were originally adopted, the Commission rejected the suggestion "that investment intent should be disregarded and that all acquisitions below the 10 percent level

should be exempt." 43 FR 33490, July 31, 1978. The Commission's current consideration of an unrestricted 10 percent exemption is based on eight years experience reviewing premerger notifications which supports the view that such acquisitions are unlikely to violate the antitrust laws. It also responds to persistent problems enforcing filing obligations for acquisitions of 10 percent or less, an continued suggestions for some type of unrestricted exemption for acquisitions of small percentages of voting securities. See Comment 20 to the proposed "acquisition vehicle" rule 50 FR 38742, September 24, 1985 and comment 4 to the proposed "partnership control" rule, 50 FR 7095, March 6, 1987, promulgated 50 FR 20058, May 29, 1987.

The Commission, with the concurrence of the Assistant Attorney General, is authorized to "exempt, from the requirements of [the act], classes of * * * transactions which are not likely to violate the antitrust laws." Section 7A(d)(2)(B) of the act. The finding required by the statute can be demonstrated in different ways. The Commission can exempt a class of transactions on the grounds that that type of transaction is inherently unlikely to be anticompetitive. For example, § 802.30 and section 7A(c)(3) exempt acquisitions of voting securities by persons who already own 50 percent or more of an issuer. Given that such an acquiror already controls the issuer it is possible, but not likely, that as a result of the acquisition the issuer will act in a way that significantly diminishes competition in any relevant market. The Commission relied in part on this rationale when it adopted § 802.35 which permits Employee Stock Option Plans (ESOPs) to acquire shares in their employer's firm if the employer controls the ESOP by a contractual right to appoint the plan's trustees.

Exemptions can also be based on enforcement experience and statistics. In 1985 the Commission proposed to raise the § 802.2(b) "controlled issuer" annual net sales and total assets thresholds. That proposal was based on the observation that few of the reportable "controlled issuer" transactions have raised competitive problems, not that they could not do so. The proposal rested on the grounds that many persons, whose transactions typically raised no competitive problems, were unnecessarily burdened by reporting obligations because of the possibility that statistically unlikely anticompetitive transactions might occur.

It is not possible to say that voting securities acquisitions of 10 percent or less, or 5 percent or less, cannot violate the antitrust laws. The proposed exemption is rather based on the evidently low likelihood that "the class of transactions" will violate the antitrust laws. The statistics compiled by the Commission, discussed earlier, demonstrate a much lower level of enforcement interest in acquisitions of 10 percent or less than in other transactions. Our review of antitrust litigation and inability to find any section 7 cases filed by the agency with 10 percent or less ownership provides even stronger support for the exemption. The conclusion that the class of transactions is unlikely to violate the antitrust laws is also supported both by the reasons that make it likely that persons who have anticompetitive objectives would not acquire only small percentages and the likelihood that the antitrust agencies would become aware of such anticompetitive transactions even without premerger notifications. Of course, such anticompetitive transactions occur, the proposed exemption would provide no basis for arguing the legality of the transaction.

The advantages of proposed § 802.24 are clear. The exemption directly reduces the non-antitrust-related incentives to avoid filing. Its criteria are objective—10 percent or less of an issuer's voting securities—and therefore easy to administer. The antitrust agencies would not have to devote their resources to determining whether particular acquisitions were made solely for the purpose of investment.

The disadvantages of proposed § 802.24 are also evident. The antitrust agencies would not have the benefit of prior notice, information about the parties to a transaction, or the waiting period to prevent any anticompetitive acquisitions of 10 percent or less of an issuer's voting securities. In addition, the Commission may continue to have a significant compliance problem with persons who seek to acquire more than 10 percent of the voting securities of issuers without prior disclosure to the target companies. However, as discussed at some length above, it appears unlikely that an acquisition of 10 percent or less of the voting securities of an issuer will violate the antitrust laws. And the Commission's experience has shown that most reportable acquisitions without notice to the target have been at or below the 10 percent level.

The Commission has considered the foregoing but has not finally evaluated the merits of proposed § 802.24. Its further consideration would be aided by comments on the following matters.

1. When would the antitrust agencies likely learn of an acquisition of 10 percent or less of the voting securities of an issuer if the acquisition were anticompetitive?

The Commission could of course monitor Schedule 13D filings, but most of those are not transactions that would have antitrust notification obligations and, in any case, do not contain adequate information to do a quick screening.

2. Should the Commission consider some limitation on the 10 percent exemption?

The Commission might, for example, specifically exclude transactions that enable the acquiror to elect a director or that include an agreement to appoint one or more directors to the issuer's board.

3. Should the Commission reconsider using the group concept from the securities laws if it exempts acquisitions of 5 percent or 10 percent of the voting securities of an issuer?

One aspect of the antitrust interest in 5 percent holdings is raised by the decision in *Susquehanna* discussed above that enjoins the exercise of rights to 2 percent of the issuer's voting securities. That decision was premised on the collective exercise of rights held by a "group" holding 19 percent of the shares. While such groups can act anticompetitively, the antitrust premerger notification rules have not used the group concept, perhaps because the $15 million criterion effectively lowers the percentage threshold in large transactions. The Commission never used the securities law group concept in defining the acquiring person, and formally deleted the term "group" from the definition of "entity" in a 1983 amendment to § 801.1(a)(2). 48 FR 34428, July 29, 1983. It should be noted that if such a group formed an entity that was not controlled under § 801.1(b) and used that entity to make an acquisition, the transaction probably would not be reportable if, pursuant to § 801.11(e) the entity did not itself meet the minimum size-of-person test.

4. Would a 5 percent exemption unduly complicate the rules by creating for acquisitions of voting securities a 5 percent unrestricted exemption under proposed § 802.24, on top of a 10 percent "investment only" exemption under § 802.9, and the 15, 25 and 50 percent reporting thresholds of § 801.1(h)?

B. The Escrow Proposal

Proposed § 801.34 would permit acquirors to purchase, but not take possession of, up to 10 percent of an issuer's voting securities without filing a notification. The shares purchased would be placed in escrow and voted by the escrow agent in proportion to the votes cast by all other shares. The acquiror would be required to file and observe the waiting period prior to purchasing more than 10 percent of an issuer's voting securities or prior to taking the shares out of escrow. Like the unrestricted exemption, this proposal directly addresses the source of the incentive not to file antitrust premerger notifications. Both permit the purchase of shares without delay or prior notification to the target. The acquiror can thereby obtain the economic benefit of acquiring in secret. Thus, unless it would acquire more than 10 percent prior to making its securities law disclosures, the acquiror has no confidentiality reasons to avoid its subsequent antitrust premerger obligations.

The excrow proposal, unlike the unrestricted exemption, would not necessarily require a conclusion by the Commission that holdings of 10 percent or less are unlikely to violate the antitrust laws. Rather the proposal could be based in part on the judgement that in the relatively rare event such antitrust enforcement actions must be undertaken, the escrow arrangement normally will be an effective guard against competitive harm and preserve the opportunity for effective remedies. This procedure would not be available for acquisitions through tender offers. Because tender offers are announced in advance, there is no interest served in delaying the antitrust review.

The primary advantage of this proposal is that the antitrust agencies will learn of an acquisition and have an opportunity to review it before the purchaser can vote its shares. Its weakness is that this opportunity occurs after the shares have been separated from the prior holder(s).

The Commission has considered whether it has the authority under the act to promulgate the proposed treatment of voting securities held in escrow. The question arises because this proposal creates a procedure under which the filing and waiting requirements of the act would be met before shares are taken out of escrow but after they are purchased. In contrast, the act explicitly prescribes procedures which provide for the antitrust review to be completed before an acquisition takes place. The Commission has concluded that its authority under the act to "define terms," exempt certain "categories of transactions," and prescribe other rules "necessary and appropriate to carry out the purposes" of the act (section 7A(d)(2) of the act, 15 U.S.C. 18a(d)(2)) would enable it to establish the procedures prescribed in proposed § 801.34 as a solution to the problem described in this Notice.

The treatment of acquisitions under proposed § 801.34 parallels the treatment of tender offers under the Commission's rules. Section 801.33 establishes what steps in the acquisition process may be undertaken in a tender offer prior to the end of the waiting period without violating the act: the offer may be made, the tender pool may be established and the shares may be tendered, but the acquiror may not accept the shares for payment. Thus, § 801.33 establishes acceptance for payment as the consummation of an acquisition. Similarly, proposed § 801.34 would determine the steps in the acquisition process that may be undertaken prior to filing by defining when consummation of an acquisition occurs for certain escrow purchases.

In one respect, though, the proposed treatment of these escrow purchases differs from the treatment of tender offers. Proposed § 801.34 would permit payment and complete termination of the previous shareholder's rights without antitrust review. In this respect it is more like the acquisition of convertible voting securities. Under § 802.31 the acquisition of unconverted securities, including the termination of the previous shareholder's rights, in exempt. Section § 801.32 requires a filing only when the shares are subsequently exchanged with the issuer for voting securities.

The Commission has previously created other procedures to permit escrow purchases before filing in limited circumstances. Section § 801.31 allows persons who tender their shares in a non-cash tender offer to accept in payment shares from the offeror, if those shares are placed in escrow during the pendency of their waiting period. Also, the Premerger Notification Office staff has permitted cash tender offerors seeking control of an issuer to consummate acquisitions after the expiration of their waiting periods even if the target held a reportable amount of another issuer's securities. The staff has allowed in appropriate transactions the reportable secondary acquisition on the condition that the secondary target's shares be placed in escrow pending expiration of the waiting period for the secondary acquisition.

It should be noted here, however, that the circumstances in which the Commission has permitted purchases in escrow have been very limited. The antitrust enforcement agencies have opposed escrow agreements and continue to believe that, in general, purchases in escrow or hold separate agreements do not adequately protect against interim competitive harm or ensure adequate relief. *See, e.g., FTC v. PPG Industries*, 798 F. 2d 1500 (D.C. Cir. 1986) and *Application of Texas Air Corporation*, U.S. Department of Transportation, Order 86-3-48 (March 14, 1986). The use of the escrow procedures proposed here may be justified because the small percentages of voting securities involved make it likely that there will be no competitive harm and that divestiture will be available as an effective remedy.

Other agencies operating under similar statutes have also permitted purchases to be made and kept in escrow before the agencies exercised their power to examine the transactions. For example, one airline may not acquire control of another until the proposed acquisition had been reviewed and approved by the Civil Aeronautic Board and now the Department of Transportation. 49 U.S.C. 1378(a)(5). Beneficial ownership of 10 percent or more of the voting securities of an airline creates a rebuttable presumption of control. 49 U.S.C. 1378(f). Nevertheless, the Department of Transportation after a case by case review, permits the prior acquisition of stock and requires only that it be placed in a voting trust while the acquisiton is under review.

The fact that other agencies permit escrow purchases offers some support for the view that the Commission may be justified in establishing a similar procedure. There are, however, significant differences in the procedures they use and the statutes they enforce. The CAB, for example, had extensive regulatory authority over airlines when it developed the escrow policy. Different programmatic needs or legislative expectations may have different implications for the appropriateness of escrow procedures.

The Hart-Scott-Rodino Act and its legislative history unequivocally emphasize the requirement and expectation of antitrust review prior to an acquisition. The focus on prior review reflects the Congressional commitment to creating a program which would assure that transactions could be evaluated and, if necessary, prevented, before businesses become so intertwined as to make it impossible to

restore effective competiton. However, none of the examples in the Congressional debate illustrating the need for prior review included an acquisition of a small percentage of voting securities. And none of the debates about establishing the $15 million/15 percent of voting securities reporting threshold mentioned problems of formulating antitrust remedies for such transactions. The Commission has drafted the proposed procedures for escrow purchases in light of the clear Congressional concern specifically to prevent the scrambling of businesses by assuring that the shares cannot be voted. And, because the proposal is limited to purchases of 10 percent or less of the voting securities of an issuer, there would appear to be little problem in obtaining an effective divestiture if that became necessary.

In evaluating the merits of the escrow purchase proposal, the Commission is considering—in addition to issues discussed above—the following propositions and welcomes comment on them.

1. Is there a significant possibility of competitive harm during the time the stock would be placed in escrow given that acquirors will not be able to acquire more than 10 percent of an issuer's voting securities?

There is of course, the possibility of harm to the issuer from the fact of purchase and the concern about more to come. Employees may leave, or customers or suppliers may alter their plans based on expectations of events following release of the securities from escrow. These effects seem, however, to be of much the same character as those resulting from a tender offer or a definitive contract to buy shares, both of which can be made, under the rules, prior to filing.

2. Would the acquisition of a small percentage of shares, held in escrow, prevent an effective antitrust remedy?

Because no intermingling of assets or businesses seems likely during the escrow period, any remedy for an antitrust violation would be the sale of the voting securities. In most instances to maintain or fully restore competition it ought not be necessary to return these shares to their former owners, even if those owners were, de facto, in control of the business. The likelihood of the remaining instances in which the transaction would both violate the antitrust laws and require resale to the former owner seems small.

The Commission is also considering as an alternative to a 10 percent escrow proposal, a 5 percent escrow proposal, for the reasons and in the circumstances described in the unrestricted exemption proposal.

C. The Optional Notification Proposal

The optional notification proposal would establish a separate system for antitrust premerger notifications for certain transactions in which the acquiring person would hold 10 percent or less of the outstanding voting securities of an issuer. This optional system would require the acquiror to submit specified public documents describing the entity to be acquired, but would not require that the issuer be given notice of the intended acquisition. The optional form would thus be available only for the acquisition of 10 percent or less of the voting securities of firms that file Schedule 10Ks with the Securities and Exchange Commission and have publicly available annual reports. While the acquired person would not be required to file an initial notification, the antitrust agency reviewing the filing would remain authorized to seek information from the acquired person either informally or through a formal request for additional information.

The optional notification proposal would reduce the incentive to avoid filing the antitrust premerger notification by eliminating the prior notice to the issuer of the voting securities. Like the other two proposals, its provisions limit the special treatment to acquisitions of up to 10 percent of the voting securities of an issuer. Like the escrow proposal, but unlike the unrestricted exemption proposal, the notification alternative does not rely necessarily on a finding by the Commission that acquisitions of 10 percent or less of the voting securities of an issuer are unlikely to violate the antitrust laws. Like the other proposals, it would be likely to reduce the non-antitrust-related incentive to violate the Commission's rules.

The primary strength of this proposal is that it provides prior notice to the antitrust agencies of transactions. It maintains the full statutory period to review and, in appropriate instances, challenge them before there is any change in the status quo. The proposal has, however, several possible drawbacks. The antitrust agencies may contact the target during the waiting period, so that acquirors seeking secrecy still may be reluctant to file. In addition, this proposal maintains the full waiting period, so that those who may be more concerned about the ability to buy the moment the price is right, may still be inclined to avoid filing. Moreover, the proposal is likely to reduce the initial information available to the antitrust agencies because the target will not file a Notification and Report Form.

The Optional Notification and Report Form attempts to mitigate this last disadvantage by significant revisions to the requirements of items 4 and 7. The Optional Form would require the acquiror to submit certain information and documents relating to the issuer. Items 4(d) and 4(e) would require that the acquiror provide copies of Schedule 10Ks and annual reports of the issuer. This will assure some independent verification of the characteristics of the target firm. The instructions to the Optional Form would state that if the issuer is not required to submit periodic reports to the Securities and Exchange Commission so that the documents listed in item 4(d) do not exist, then the acquiror cannot take advantage of the alternative procedure allowed by § 801.30(c) by submitting the Optional Form. The actual documents must be submitted; no incorporation by reference to previous filings would be acceptable for either item 4(d) or 4(e). Item 4(c) would also be expanded. It would require that the acquiror submit all information it has developed about the target or used in consideration of the takeover, not merely the information prepared for officers or directors.

In addition, the form would require the acquiror to develop information about the issuer. Item 7 would require the acquiring person to determine for each product or service it offers, whether the target produces a competing product or service. The form details a series of minimum efforts that the acquiror must make to identify the target's businesses. For each competing product or service, the Optional Form requires the acquiror to identify the geographic areas in which it or the issuer operates. If the acquiror concludes that the acquiror and the issuer produce no competing products or services, then Item 7 requires that the acquiror detail the search upon which it based that conclusion. An acquiror who does not conduct the necessary search or submit the required information for this item may not use the Optional Form.

Item 6 would also be expanded to require the acquiror to submit additional information about the issuer. Items 6(d), 6(e), and 6(f) would require a description of entities included within the isuer, shareholders of the issuer, and holdings of the issuer, the same information the acquiror must submit about itself in Items 6(a), 6(b), and 6(c).

The Optional Form requires the acquiror to assemble or compile information about the issuer because the antitrust agencies will not have the

benefit of a form from the issuer. This requirement could be burdensome in some instances. In such instances the acquiror is free to use the existing procedures under § 801.30(b).

The Optional Form and instructions would differ from the existing form and instructions in a number of other, less significant areas. Because the optional form could be used only for an acquisition of 10% or less of the voting securities of an issuer, references to other types of transactions and questions soliciting information with respect to other types of transactions would be deleted. For example, questions regarding a cash tender offer, formation of a joint venture, or an acquisition of assets would be omitted. The question requiring identification of the threshold to be crossed as a result of the acquisition would also be deleted.

Finally, reference in the instructions to the requirement that notice be served on the target issuer regarding its probable filing obligation would also be deleted; in § 801.30(c) transactions the target issuer would have no filing obligation and the acquiror would not be required to notify the target of the acquisition.

In addition to an Operational Notification and Report Form, this proposal would require a series of amendments to the rules. The following is a brief outline of the necessary changes:

Proposed Section 801.30(c). This provision would state that the 30-day initial waiting period will commence after an acquiring person that seeks to acquire 10 percent or less of the voting securities of an issuer, in a transaction other than a tender offer, files the Optional Notification and Report Form.

This provision together with § 803.5(c) would establish three central elements of this procedure. First, this procedure is optional. Second, the acquiring person need not give notice to the issuer (§ 803.5(c)). Third, the acquired person has no obligation to file a Notification and Report Form.

This proposal, like the escrow proposal, would not be applicable to acquisitions made through tender offers because securities laws require that such offers be made openly with advance notice. As a result, with respect to such transactions, acquirors do not have an incentive to avoid filing premerger notifications for the purpose of making acquisitions without giving notice to the issuer.

Proposed Section 802.25. This provision would exempt certain acquired persons from the obligation to file the Notification and Report Form. It would also make clear that the acquired person would not be exempt from a request for additional information.

Because section 7A(e)(1) authorizes the antitrust agencies to issue "second requests" to any person required to file a notification under section 7A(a), a quick reading of the statute may suggest the Commission lacks the authority to require additional information from persons it has exempted from the initial notification obligation. A closer examination suggests, however, that the determinative factor under paragraph (e)(1) is whether the person was obliged to file a notification under section 7A(a) of the act, not whether the Commission in its discretion exempted that person from that obligation.

Proposed Section 803.1. This provision would add reference to the Notification and Report Form.

Proposed Section 803.2(b)(3). This provision would reflect that the acquired person has no obligation to file if the waiting period is initiated by filing the Optional Form, and specify for what entities the acquiring person is to complete the Optional Form.

Proposed Section 803.3(e). This provision would state that the acquiring person must provide the copies of certain SEC documents and annual reports describing the acquired entity and required by items 4 (d) and (e) on the Optional Form. In contrast, the more usual standard requires only the acquiring person to submit what it knows about the issuer. Because the Commission would intend to do an initial review without contracting the issuer, it would insist that the acquiror supply at a minimum this information. Of course, the antitrust agencies would be free to contact the issuer for any information they may think relevant, but the expectation is that such instances would be rare. If the acquiror fails to include this required information about the issuer, then the filing will be deemed deficient and no waiting period will be initiated in accordance with § 803.10(c)(2).

Proposed Section 803.5(c). This provision would require the acquiror to submit an affidavit that it intends to make an acquisition of 10 percent or less of the outstanding voting securities. Section 803.5 is designed in part to make sure that the antitrust agencies do not review hypothetical transactions.

Proposed Section 803.20. This provision would reflect the fact the second requests may be issued to acquired persons that have been exempted, pursuant to proposed § 802.25, from the obligation to file a notification.

Proposed Part 803 Appendix. The amendment would add the Optional Notification and Report Form.

In evaluating the merits of the optional notification proposal, the Commission is considering the following propositions and welcomes comment on them.

1. It is likely that the optional notification system can significantly reduce the incentive to avoid notification, given the delay inherent in prior review?

2. Can the antitrust agencies conduct their premerger review without contacting the acquired person and other firms in the industry in most transactions?

In this connection, it should be noted Canada recently adopted a premerger notification program that allows for a confidential filing solely from the acquiror. Their early experience suggests it is possible to conduct some reviews in secret.

3. Would the adoption of the optional notification system require the antitrust agencies to impose even more stringent rules protecting the confidentiality of the information or monitor the stock transactions of persons who have access to information included on an Optional Form?

The antitrust agencies have an unblemished record in maintaining the confidentiality of information submitted pursuant to the premerger notification program. Most confidential information associated with premerger filings is either not easily exploitable or, like a decision to seek an injunction, valuable only for a very short time. The information contained in the Optional Form, however, is likely to come in well in advance of the typical price run up that precedes takeover announcements.

List of Subjects

16 CFR Parts 801 and 802

Antitrust.

16 CFR Part 803

Antitrust, Reporting and recordkeeping requirements.

IV. Proposals

The Commission proposes to amend Title 16, Chapter I, Subpart H, the Code of Federal Regulations as follows:

PARTS 801, 802 AND 803—[AMENDED]

1. The authority citation for Parts 801, 802 and 803 continues to read as follows:

Authority: Sec. 7A(d) of the Clayton Act, 15 U.S.C. 18a(d), as added by sec. 201 of the

Hart-Scott-Radino Antitrust Improvements Act of 1976, Pub. L. 94-435, 90 Stat. 1390.

2. In the amendments the Commission proposes below new language is indicated by arrows: (——>new language<——) and deleted language is indicated by brackets: [deleted language].

Proposal I

This proposal would amend the rules by revising § 801.15(b) and republishing the introductory text of § 801.15, removing § 802.9, and adding new § 802.24.

§ 801.15 Aggregation of voting securities and assets the acquisition of which was exempt.

Notwithstanding § 801.13, for purposes of section 7A(a)(3) and § 801.1(h), none of the following will be held as a result of an acquisition:

* * * * *

(b) Assets or voting securities the acquisition of which was exempt at the time of acquisition (or would have been exempt, had the act and these rules been in effect), or the present acquisition of which is exempt, under [section 7A(c)(9) and] §§ ——>802.24<——802.50(a)(2), 802.50(b), 802.51(b) and 802.64 unless the limitations contained in [section 7A(c)(9) or] those sections do not apply or as a result of the acquisition would be exceeded, in which case the assets or voting securities so acquired will be held;

* * * * *

§ 802.9 [Removed]

——>§ 802.24 De minimis acquisitions of voting securities.

An acquisition of voting securities shall be exempt from the requirements of the act if as a result of the acquisition the acquiring person would hold ten percent or less of the outstanding voting securities of the issuer, regardless of the dollar value of the voting securities so acquired or held.<——

Proposal II

This proposal would amend the rules by adding new § 801.34.

——>§ 801.34 De minimis acquisitions of voting securities.

(a) An acquiring person shall not be considered to have consummated an acquisition of voting securities within the meaning of the act if:

(1) The acquiring person:

(i) Holds as a result of the acquisition ten percent or less of the issuer's outstanding voting securities;

(ii) Immediately places into escrow any voting securities whose acquisition is subject to the notification obligations of the act; and

(iii) Requires the escrow agent to vote and withhold from voting all such voting securities placed into escrow in the same proportion that all other voting securities of the issuer are voted and withheld from voting; and

(2) The acquisition is not the result of a tender offer.

(b) The release of such voting securities from escrow shall be considered consummation of an acquisition of those voting securities.<——

Proposal III

This proposal would amend the rules by:

1. Section 801.30 is amended by revising paragraph (b) introductory text and adding paragraph (c) to read as follows:

§ 801.30 Tender offers and acquisitions of voting securities from third parties.

* * * * *

(b) For acquisitions described by paragraph (a) of this section——>for which no notification has been filed pursuant to paragraph (c) of this section<——:

* * * * *

——>(c) For acquisitions described by paragraph (a) of this section, other than tender offers, that would result in the acquiring person holding 10 percent or less of the outstanding voting securities of an issuer, the acquiring person may file notification by submitting the Optional Notification and Report Form.

(1) The waiting period required under the act shall commence upon such filing of notification by the acquiring person as provided in § 803.10(a); and

(2) Pursuant to § 802.25, the acquired person is exempt from filing the notification required by paragraph (b)(2) of this section.

2. Section 802.25 is added to read as follows:

——>§ 802.25 Optional Notification and Report Form exemption.

For any acquisition in which the acquiring person filed an Optional Notification and Report Form pursuant to § 801.30(c), the acquired person is exempt from the obligation to file notification described in § 801.30(b)(2), but is not exempt from the obligation to submit additional information or documentary material pursuant to section 7A(e) and § 803.20.<——

3. Section 803.1 is amended by revising paragraph (a) to read as follows:

§ 803.1 Notification and Report Form.

(a) The notification required by the act shall be the Notification and Report Form ——>or the Optional Notification and Report Form<—— set forth in the appendix to this Part (803), as amended from time to time. All acquiring and acquired persons required to file notification by the act and these rules shall do so by completing and filing the Notification and Report Form, or a photostatic or other equivalent reproduction thereof, in accordance with the instructions thereon and these rules ——>except that acquiring persons may choose to file instead the Optional Notification and Report Form for transactions described by § 801.30(c), in accordance with the instructions thereon and these rules.<—— Copies of the Notification and Report Form ——>and the Optional Notification and Report Form<—— may be obtained in person from the Public Reference Branch, Room 130, Federal Trade Commission, Sixth Street and Pennsylvania Avenue NW., Washington, DC, or by writing to the Premerger Notification Office, Room 303, Federal Trade Commission, Washington, DC 20580.

* * * * *

4. Section 803.2 is amended by revising the section heading and by adding (b)(3), a heading for (b)(1) and the phrase "and the Optional Notification and Report Form" to the introductory text of paragraph (c), the first sentence of paragraph (e), and paragraph (d) after the phrase "Notification and Report Form" to read as follows:

§ 803.2 Instructions Applicable to Notification and Report Form ——>and Optional Notification and Report Form<——

* * * * *

(b)(1) ——> *Notification and Report Form.* ——> * * *

——> (3) *Optional Notification and Report Form.* Except as provided in paragraph (c) of this section,

(i) An acquiring person responding to the request for information about the acquiring person in items 5–9 and the Appendix to the Optional Notification and Report Form must include information about itself and all entities included within the acquiring person;

(ii) An acquiring person responding to the request for information about the acquired person in item 6–8 and the Appendix to the Optional Notification and Report Form must include information about the issuer whose voting securities are to be acquired and

all entities controlled by such issuer. <——

* * * * *

(c) In response to items 5, 7, 8, and 9 and the appendix to the Notification and Report Form ——> and the Optional Notification and Report Form <——

* * * * *

(d) The term "dollar revenues" as used in the Notification and Report Form ——> and the Optional Notification and Report Form <——

* * *

(e) A person filing notification may incorporate by reference only documentary materials required to be filed in response to item 4a of the Notification and Report Form ——> and the Optional Notification and Report Form ——> * * *

5. Section 803.3 is amended by revising the introductory text and adding paragraph (e) to read as follows:

§ 803.3 Statement of reasons for noncompliance.

A complete response shall be supplied to each item on the Notification and Report Form ——> or Optional Notification and Report Form <—— and to any request for additional information pusuant to § 7A(e) and § 803.20. Whenever the person filing notification is unable to supply a complete response, that person shall provide, for each item for which less than a complete response has been supplied, a statement or reasons for noncompliance. The statement of reasons for noncompliance shall contain all information upon which a person relies in explanation of its noncompliance and shall include at least the followings:

* * * * *

——> (e) Provided, however, an Optional Notification and Report Form will be considered incomplete and deficient within the meaning of § 803.10(c)(2) if it is submitted without the information or documents required by item 4(d) and (e), regardless of the reason for non-compliance. <——

6. Section 803.5 is amended by revising paragraph (a)(1) introductory text and adding paragraph (c) to read as follows:

§ 803.5 Affidavits required.

(a)(1) *Section 801.30 acquisitions.* For acquisitions to which § 801.30 applies ——> and for which the acquiring person is not filing the Optional Notification and Report Form pursuant to § 801.30(c) <——, the notification required by the act from each acquiring person shall contain an affidavit, attached to the front of the notification, attesting that the issuer whose voting securities are to be acquired has received notice in writing by certified or registered mail, by wire or by hand delivery, at its principal executive offices, of:

* * * * *

——> (c) *§ 801.30(c) acquisitions.* For acquisitions to which § 801.30 applies and for which the acquiring person is filing the Optional Notification and Report Form in accordance with § 801.30(c), the notification required by the act from each acquiring person shall contain an affidavit attached to the front of the notification attesting the good faith intention of the acquiring person filing notification to make the acquisition described in the Optional Notification and Report Form. <——

7. Section 803.6 is amended by revising paragraph (b) to read as follows:

§ 803.6 Certification.

* * * * *

(b) Additional information or documentary material submitted in response to a request pursuant to section 7A(e) and § 803.20 shall be accompanied by a certification in the format appearing at the end of the Notification and Report Form ——> or Optional Notification and Report Form <—— completed in accordance with paragraph (a) of this section by the person or individual to whom it was directed.

* * * * *

8. Section 803.8 is amended by revising paragraph (a) to read as follows:

§ 803.8 Foreign language documents.

(a) Whenever at the time of filing a Notification and Report Form ——> or Optional Notification and Report Form <—— there is an English language outline, summary, extract or verbatim translation of any information or of all or portions of any documentary materials in a foreign language required to be submitted by the act or these rules, all such English language versions shall be filed along with the foreign language information or materials.

* * * * *

9. Section 803.20 is amended by revising paragraph (a)(1), designating the example in (a)(1) as 1 and revising it, and adding example 2 to read as follows:

§ 803.20 Requests for additional information or documentary material.

(a)(1) Persons and individuals subject to request. Pursuant to section 7A(e)(1), the submission of additional information or documentary material relevant to the acquisition may be required from one or more persons required ——> by section 7A(a) of the act <—— to file notification, and, with respect to each such person, from one or more entities included therein, or from one or more officers, directors, partners, agents, or employees thereof, if so required by the same request.

Example ——>s<——: ——>1.<—— A request for additional information may require a corporation and, in addition, a named officer or employee to provide certain information or documents, if both the corporation and the officer or employee are named in the same request. See sub-paragraph (b)(3) of this section.

——> 2. Where the acquiring person has filed an Optional Notification and Report Form pursuant to § 801.30(c), a request for additional information may require the acquired person to submit certain information or documentary material notwithstanding that § 802.25 exempts that person from the obligation to file notification, because pursuant to section 7A(a) the acquired person is a person required to file notification with respect to such acquisition.<——

* * * * *

10. The Appendix to Part 803 is amended by adding at the end, the Optional Notification and Report Form to read as follows:

BILLING CODE 6750-01-M

ANTITRUST IMPROVEMENTS ACT
OPTIONAL NOTIFICATION AND REPORT FORM
for Certain Mergers and Acquisitions

INSTRUCTIONS

GENERAL

The Answer Sheets (pp. 1-16) constitute the Optional Notification and Report Form ("the Optional Form") required to be submitted pursuant to § 803.1(a) of the premerger notification rules ("the rules"). Only those persons described in § 801.30 (c) of the rules may file this Optional Form. Filing persons need not, however, record their responses on the Optional Form.

These Instructions specify the information which must be provided in response to the Items on the Answer Sheets. *Only* the completed Answer Sheets, together with all documentary attachments are to be filed with the Federal Trade Commission and the Department of Justice.

Persons providing responses on attachment pages rather than on answer sheets must submit a complete set of attachment pages with *each* copy of the Optional Form.

The term "documentary attachments" refers to materials supplied in responses to Item 2(f)(i), Item 4 and to submissions pursuant to §§ 803.1(b) and 803.11 of the rules.

Information—The central office for information and assistance concerning the rules, 16 CFR Parts 801-803, and the Optional Form is Room 303, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, phone (202) 326-3100.

Definitions—The definitions and other provisions governing this Optional Form are set forth in the rules, 16 CFR Parts 801-803. The governing statute, the rules, and the Statement of Basis and Purpose for the rules are set forth at 43 FR 33450 (July 31, 1978), 44 FR 66781 (November 22, 1979) and 48 FR 34427 (July 29, 1983).

Affidavit—Attach the affidavit required by § 803.5 to page 1 of the Optional Form.

Responses—*Each answer* should identify the **Item** to which it is addressed. Use the reverse side of the corresponding answer sheet or attach separate additional sheets as necessary in answering each Item. Each additional sheet should identify at the top of the page the Item to which it is addressed. Voluntary submissions pursuant to § 803.1(b) should also be so identified.

Enter the name of the person filing notification appearing in Item 1(a) on page 1 of the Optional Form and the date on which the Optional Form is completed at the top of each page of the Optional Form, at the top of any sheets attached to complete the response to any Item, and at the top of the first or cover page of each documentary attachment.

If the issuer whose voting securities are to be acquired is not required to file periodic reports to the Securities and Exchange Commission, so that the documents listed in Item 4(d) are not available, then the Optional Form may not be submitted. Furthermore, if the person filing notification is unable to respond completely to Items 4(e) or 7 of the Optional Form, then the Optional Form may not be submitted. (See 16 CFR § 803.3(e)).

If unable to answer any other Item fully, give such information as is available and provide a statement of reasons for noncompliance as required by § 803.3. If exact answers to any Item cannot be given, enter best estimates and indicate the sources or bases of such estimates. Estimated data should be followed by the notation, "est." All information should be rounded to the nearest thousand dollars.

Year—All references to "year" refer to calendar year. If the data are not available on a calendar year basis, supply the requested data for the fiscal year reporting period which most nearly corresponds to the calendar year specified. References to "most recent year" mean the most recent calendar or fiscal year for which the requested information is available.

SIC Data—This Optional Notification and Report Form requests information regarding dollar revenues and lines of commerce at three levels with respect to operations conducted within the United States. (See § 803.2(c)(1).) *All persons* must submit certain data at the 4-digit (SIC code) *industry* level. To the extent that dollar revenues are derived from *manufactured operations* (SIC major groups 20-39), data must also be submitted at the *5-digit product class* and *7-digit product levels* (SIC based codes).

The term "dollar revenues" is defined in § 803.2(d).

References— In reporting information by "*4-digit (SIC code) industry*" refer to the 1972 edition of the *Standard Industrial Classification Manual* and its 1977 supplement published by the Executive Office of the President, Office of Management and Budget.

In reporting information by "*5-digit product class*" and "*7-digit product*" refer to one or both of the following reference publications published by the U.S. Bureau of the Census:

(a) Numerical List of Manufactured and Mineral Products, *1982 Census of Manufactures and Census of Mineral Industries* (MC82-R-1). Make sure that the Numerical List you use has MC82-R-1 printed on the cover.

Privacy Act Statement - Section 18a(a) of Title 15 of the U.S. Code authorized the collection of this information. The primary use of this information is to determine whether the merger or acquisition reported in the Optional Notification and Report Form may violate the antitrust laws. Furnishing the information on this Optional Form is voluntary. Consummation of an acquisition required to be reported by the statute cited above without having provided this information may, however, render a person liable to civil penalties up to $10,000 per day.

Note: Submit information using the codes in the columns labeled "Product code published." Do not submit information using the codes in the columns labeled "Product code collected."

(b) Volume II, "Industry Series," (MC82-1-20 A2-39D), *1982 Census of Manufactures.*

Note: Do not submit information by product codes ending in 00 if the Numerical List of Manufactured and Mineral Products listed above contains a further breakdown. Furthermore, when the Numerical List refers to Appendix C for detail collected in a specified Current Industrial Report ("CIR") for the following SIC code industries, you should provide revenue information using the 7-digit product codes listed in the CIR in the columns labeled "Published."

SIC 2392 (CIR MQ-23X) SIC 3261 (CIR MQ-34E)
SIC 3312, 3315, 3316 and 3317 (CIR MA-33B)
SIC 3357 (CIR MQ-33L) SIC 3431 (CIR MQ-34E)

Items 5, 7, 8, 9 and the Insurance Appendix —Supply information *only* with respect to operations conducted within the United States, including its commonwealths, territories, possessions and the District of Columbia. (See §§ 801.1(k), 803.2(c)(1).)

Information need *not* be supplied regarding assets or voting securities currently being acquired, when the acquisition is exempt under the statute or rules. (See § 803.2(c)(2).)

Limited or separate responses may be required from the person filing notification. (See § 803.2(b).)

Filing—Complete and return two notarized copies (with *one set* of documentary attachments) of this Optional Notification and Report Form to the Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, and *three* notarized copies (with *one* set of documentary attachments) to Director of Operations, Antitrust Division, Department of Justice, Room 3218, 10th and Pennsylvania Avenue, N.W., Washington, D.C. 20530.

ITEM BY ITEM

Affidavit—Attach the affidavit required by § 803.5 to page 1 of the Answer Sheets.

Applicability of § 801.30(c)—Put an X in the Yes box to indicate that § 801.30(c) is applicable to this acquisition; *i.e.*, that 10% or less of an issuer's voting securities will be acquired.

Early Termination—Put an X in the yes box to request early termination of the waiting period. Notification of each grant of early termination will be published in the Federal Register as required by § 7A(b)(2) of the Clayton Act.

ITEM 1

Item 1(a)—Give the name and headquarters address of the person filing notification. The name of the person is the name of the ultimate parent entity included within that person.

Item 1(b) —Give the name and headquarters address of the issuer whose voting securities are to be acquired in this acquisition.

Item 1(c)—Give the names of all ultimate parent entities of acquiring and acquired persons which are parties to the acquisition whether or not they are required to file notification.

Item 1(d)—State the value of voting securities held as a result of the acquisition. (Insert responses to Item 3(c).)

Item 1(e)—Put an X in the appropriate box to indicate whether the entity in Item 1(a) is a corporation, partnership, or other (specify).

Item 1(f)—Put an X in the appropriate box to indicate whether the entity in Item 1(b) is a corporation or other (specify).

Item 1(g)—Put an X in the appropriate box to indicate whether data furnished is by calendar year or fiscal year. If fiscal year, specify period.

Item 1(h)—Put an X in the appropriate box to indicate if this Optional Form is being filed on behalf of the ultimate parent entity by another entity within the same person authorized by it to file notification on its behalf pursuant to § 803.2(a), or if this Optional Form is being filed pursuant to § 803.4 on behalf of a foreign person. Then provide the name and mailing address of the entity filing notification on behalf of the reporting person named in Item 1(a) on the Optional Form.

Item 1(i)—If an entity within the person filing notification other than the ultimate parent entity listed in Item 1(a) is the entity which is making the acquisition, or if the voting securities of an entity other than the ultimate parent entity listed in Item 1(a) are being acquired, provide the name and mailing address of that entity and the percentage of its voting securities held by the person named in Item 1(a) above. (If control is effected by means other than the direct holding of the entity's voting securities, describe the intermediaries or the contract through which control is effected (see § 801.1(b)).

ITEM 2

Item 2(a)—*Description of acquisition.* Briefly describe the transaction. Include a list of the name and mailing address of each acquiring and acquired person, whether or not required to file notification. Indicate what consideration will be received by each party. In describing the acquisition, include the expected dates of any major events required to consummate the transaction (e.g., stockholders' meetings, filing of requests for approval, other public filings, terminations of tender offers) and the scheduled consummation date of the transaction.

If the voting securities are to be acquired from a holder other than the issuer (or an entity within the same person as the issuer) separately identify (if known) such holder and the issuer of the voting securities.

Item 2(b)—*Assets held by acquiring person.* If assets of the acquired person (see § 801.13) are presently held by the person filing notification, furnish a description of each general class of such assets in the manner required by Item 2(b)(i), and the dollar value or estimated dollar value at the time they were acquired.

Item 2(c)—*Voting securities to be acquired.* Furnish the following information separately for each issuer whose voting securities will be acquired in the acquisition:

Item 2(c)(i)—List each class of voting securities (including convertible voting securities) which will be outstanding after the acquisition has been completed. If there is more than one class of voting securities, include a description of the voting rights of each class. Also list each class of non-voting securities which will be acquired in the acquisition;

Item 2(c)(ii)—Total number of shares of each class of securities listed on page 3 which will be outstanding after the acquisition has been completed;

Item 2(c)(iii)—Total number of shares of each class of securities listed on page 3 which will be acquired in this acquisition. If there is more than one acquiring person for any class of securities, show data separately for each acquiring person;

Item 2(c)(iv)—Identity of each person acquiring any securities of any class listed on page 3. If there is more than one acquiring person for any class of securities, show data separately for each acquiring person;

Item 2(c)(v)—Dollar value of securities of each class listed on page 3 to be acquired in this transaction (see § 801.10). If there is more than one acquiring person of any class of securities, show data separately for each acquiring person; (If the exact dollar value cannot be determined at the time of filing, provide an estimated value and indicate the basis on which the estimate was made.)

Item 2(c)(vi)—Total number of each class of securities listed on page 3 which will be held by acquiring person(s) after the acquisition has been accomplished. If there is more than one acquiring person for any class of securities, show data separately for each acquiring person;

Item 2(c)(vii)—Percentage of each class of securities listed under 2(c)(vi) above which will be held by the acquiring person(s) after the acquisition has been completed (see § 801.12(b)). If there is more than one acquiring person for any class of security, show data separately for each acquiring person;

Item 2(c)(viii)—Dollar value (or estimated dollar value) of securities to be held as a result of the acquisition (see § 801.13).

Item 2(d)—Furnish copies of final or most recent versions of all documents which constitute the agreement among the acquiring person(s) and the person(s) whose voting securities or assets are to be acquired. (Do not attach these documents to page 4 of the Answer Sheets.)

ITEM 3

Assets and voting securities held as a result of the acquisition. State:

Item 3(a)- the percentage of the assets;

Item 3(b)- the percentage of the voting securities;

Item 3(c)- the aggregate total dollar amount of voting securities and assets of the acquired person to be held by each acquiring person, as a result of the acquisition (see §§ 801.12, 801.13, and 801.14).

ITEM 4

Furnish one copy of each of the following documents.

Item 4(a)—all of the following documents which have been filed with the United States Securities and Exchange Commission (or are to be filed contemporaneously in connection with this acquisition) by the person filing notification: the most recent proxy statement and Form 10-K, each dated not more than three years prior to the date of this Optional Notification and Report Form; all Forms 10-Q and 8-K filed since the end of the period reflected by the Form 10-K being supplied; any registration statement filed in connection with the transaction for which notification is being filed. For each entity included within the person filing notification which has prepared its own such documents different from those prepared by the person filing notification, furnish, in addition, one copy of each document from each such other entity.

Item 4(b)—the most recent annual reports and most recent annual audit reports (of person filing notification and of each unconsolidated United States issuer included within such person) and, if different, the most recent regularly prepared balance sheet of the person filing notification and of each unconsolidated United States issuer included within such person;

Item 4(c)—all studies, surveys, analyses and reports which were prepared for the purpose of evaluating or analyzing the acquisition with respect to market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets, and indicate (if not contained in the document itself) the date of preparation, the name and title of each individual who prepared each such document;

Item 4(d)—all of the following items which have been filed with the United States Securities and Exchange Commission by the entity whose voting securities are to be acquired (and, if different, for each issuer included within that entity): the most recent proxy statement and Form 10-K, each dated not more than three years prior to the date of this Optional Notification and Report Form; all Forms 10-Q and 8-K filed since the end of the period reflected by the Form 10-K being supplied; and

Item 4(e)-the most recent annual reports and the most recent annual audit reports of the entity whose voting securities are to be acquired (and of each unconsolidated United States issuer included within that entity) and, if different, the most recent regularly prepared balence sheet

of the entity whose voting securities are to be acquired and of each unconsolidated United States issuer included within that entity. The reports must be prepared in accordance with generally accepted accounting principles and certified as such.

NOTE: If the person filing notification does not have copies of documents responsive to Item 4(a) readily available, identification of such documents and citation to date and place of filing will constitute compliance; alternatively, the person filing notification may incorporate by reference documents submitted with an earlier filing as explained in the staff formal interpretations dated April 10, 1979, and April 7, 1981, and in § 803.2(e).

However, to comply with the act and the rules, a person electing to file this Optional Form must submit copies of documents responsive to Items 4(d) and 4(e). Neither identification of such documents and citation to date and place of filing nor incorporation by reference will be adequate.

Persons filing notification may provide an optional index of documents called for by Item 4 on page 5 of the Answer Sheets.

NOTE: If the person filing notification withholds any documents called for by Item 4(c) based on a claim of privilege, the person must provide a statement of reasons for such noncompliance as specified in the staff formal interpretation dated September 13, 1979, and § 803.3(d).

* * * *

ITEMS 5 through 9 and the Appendix

NOTE: *For Items 5 through 9 and the Appendix limited or separate responses may be required of the person filing notification. (See § 803.2(b) and (c).)*

ITEM 5

ITEMS 5(a) — 5(c): These Items request information regarding dollar revenues and lines of commerce at three levels with respect to operations conducted within the United States by the person filing notification. (See § 803.2(c)(1).) All persons filing notification must submit certain data at the 4-digit (SIC code) *industry* level. To the extent that dollar revenues are derived from *manufacturing operations* (SIC major groups 20-39), data must also be submitted at the 5-digit *product class* and 7-digit *product levels* (SIC based codes).

Note: See the "References" listed in the General Instructions to the Form. Refer to the 1972 edition of the *Standard Industrial Classification Manual* and its 1977 supplement for the 4-digit (SIC code) industry codes. Refer to the Numerical List of Manufactured and Mineral Products, *1982 Census of Manufactures and Census of Mineral Industries* (MC82-R-1) for the 5-digit product class and 7-digit product codes. Report revenues for the 5-digit and 7-digit codes using the codes in the columns labeled "Product code published." Do not report revenues using the columns labeled "Product code collected."

Insurance carriers (2-digit SIC major group 63) should supply the information requested only with respect to industries not within 2-digit major group 63. Credit agencies other than banks; security and commodity brokers, dealers, exchanges, and services; holding and other investment offices, and real estate companies (2-digit SIC major groups 61, 62, 67 and 65) should identify or explain the revenues reported (e.g., dollar sales, receipts).

Include the total dollar revenues for 1982 derived by all entities included within the person filing notification at the time this Optional Notification and Report Form is prepared (even if such entities have become included within the person since 1982). For example, if the person filing notification acquired an entity in 1984, it must include that entity's 1982 revenues in Items 5(a) and 5(b)(i).

Item 5(a)—*Dollar revenues by industry.* Provide aggregate 4-digit (SIC code) *industry* data for 1982.

Item 5(b)(i)—*Dollar revenues by manufactured product.* Provide the following information on the aggregate operations of the person filing notification for 1982 for each 7-digit product of the person in 2-digit SIC major groups 20-39 (manufacturing industries).

Do not provide 7-digit data for product codes ending in 00 if the Numerical List of Manufactured and Mineral Products contains a further breakdown. See also the 'NOTE' on page I of the these instructions concerning required references to Appendix C of the Numerical List.

Item 5(b)(ii)—*Products added or deleted.* Within 2-digit SIC major groups 20-39 (manufacturing industries), identify each product of the person filing notification added or deleted subsequent to 1982, indicate the year of addition or deletion, and state total dollar revenues in the most recent year for each product that has been added. Products may be identified either by 7-digit product code or in the manner ordinarily used by the person filing notification.

Do not include products added since 1982 by reason of mergers or acquisitions occurring since 1982. Dollar revenues derived from such products should be included in response to Item 5(b)(i). However, if an entity acquired since 1982 by the person filing notification (and now included within the person) itself has added any products since 1982, these products and the dollar revenues derived therefrom should be listed here. Products deleted by reason of dispositions of assets or voting securities since 1982 should also be listed here.

Item 5(b)(iii)—*Dollar revenues by manufactured product class.* Provide the following information about the aggregate operations of the person filing notification for the most recent year for each 5-digit *product class* of the person within SIC major groups 20-39 (manufacturing industries). If such data have not been compiled for the most recent year, estimates of dollar revenues by 5-digit product class may be provided if a statement describing the method of estimation is furnished.

Item 5(c)—*Dollar revenues by non-manufacturing industry.* Provide the following information concerning the aggregate operations of the person filing notification for the most recent year for each 4-digit (SIC code) industry in SIC major groups other than 20-39 in which the person engaged. If such data have not been compiled for the most recent year, estimates of dollar revenues by 4-digit industry may be provided if a statement describing the method of estimation is furnished. Industries for which the dollar revenues totaled less than one million dollars in the most recent year may be omitted.

NOTE: *This million dollar minimum is applicable only to Item 5(c).*

Insurance carriers (2-digit SIC major group 63) should supply the information requested only with respect to industries not within SIC major group 63, and, if voting securities of an insurance carrier are being acquired directly or indirectly should complete the Insurance Appendix to this Optional Form.

ITEM 6

Persons filing notification may respond to Items 6(a), 6(b), or 6(c) by referencing a "documentary attachment" furnished with this Optional Form if the information so referenced is a complete response and is up-to-date and accurate. Indicate for each Item the specific page(s) of the document that are responsive to that Item.

Item 6(a)—*Entities within person filing notification.* List the name and headquarters mailing address of each entity included within the person filing notification. Entities with total assets of less than $10 million may be omitted.

Item 6(b)—*Shareholders of person filing notification.* For each entity (including the ultimate parent entity) included within the person filing notification the voting securities of which are held (see § 801.1(c)) by one or more other persons, list the issuer and class of voting securities, the name and headquarters mailing address of each other person which holds five percent or more of the outstanding voting securities of the class, and the number and percentage held by that person. Holders need not be listed for entities with total assets of less than $10 million.

Item 6(c)—*Holdings of person filing notification.* If the person filing notification holds voting securities of any issuer not included within the person filing notification, list the issuer and class, the number and percentage held, and (optionally) the entity within the person filing notification which holds the securities. Holdings of less than five percent of the outstanding voting securities of any issuers, and holdings of issuers with total assets of less than $10 million, may be omitted.

Item 6(d)—*Entities within entity whose voting securities are to be acquired.* List the names and headquarters address of each entity included within the issuer whose voting securities are to be acquired. Entities with total assets of less than $10 million may be omitted.

Item 6(e)—*Shareholders of entity whose voting securities are to be acquired.* For each entity included within the issuer whose voting securities are to be acquired as well as the issuer itself the voting securities of which are held (see §801.1(c)) by one or more other persons, list the issuer and class of voting securities, the name and headquarters mailing address of each other person which holds five percent or more of the outstanding voting securities of the class, and the number and percentage held by that person. Holders need not be listed for entities with total assets of less than $10 million.

Item 6(f)—*Holdings of entity whose voting securities are to be acquired.* If the entity whose voting securities are to be acquired holds voting securities of any issuer not included within that entity, list the issuer and class, the number and percentage held, and the entity which holds the securities. Holdings of less than five percent of the outstanding securities of any issuers, and holdings of issuers with total assets of less than $10 million may be omitted.

ITEM 7

If, after a diligent search of all relevant information available to it (including, but not limited to, directories such as Standard & Poor's Corporate Records, Moody's Industrial Manual, Dun & Bradstreet Reference Book; indices such as Predicasts F & S Index; trade journals and publications; internal corporate files; and reports, studies, analyses, or memoranda completed internally or by outside consultants or advisors), the person filing notification concludes that it derived dollar revenues in the most recent year from operations in any 4-digit (SIC code) industries in which any other person which is a party to the acquisition also derived dollar revenues in the most recent year (or in which a joint venture or other corporation will derive dollar revenues), then for each such 4-digit (SIC code) industry:

Item 7(a)—supply the 4-digit SIC code and description for the industry;

Item 7(b)—list the name of each person which is a party to the acquisition which also derived dollar revenues in the 4-digit industry;

Item 7(c)—*Geographic market information for the person filing notification:*

Item 7(c)(i)—for each 4-digit industry within SIC major groups 20-39 (manufacturing industries) listed in Item 7(a) above, list the states (or, if desired, portions thereof) in which, to the knowledge or belief of the person filing notification, the products in that 4-digit industry produced by the person filing notification are sold without a significant change in their form, whether they are sold by the person filing notification or by others to whom such products have been sold or resold;

Item 7(c)(ii)—for each 4-digit industry within SIC major groups 01-17 and 40-49 (agriculture, forestry and fishing, mining, construction, transportation, communications, electric, gas and sanitary services) listed in Item 7(a) above, list the states (or, if desired, portions thereof) in which the

person filing notification conducts such operations;

Item 7(c)(iii)—for each 4-digit industry within SIC major groups 50-51 (wholesale trade) listed in Item 7(a) above, list the states, (or, if desired, portions thereof) in which the customers of the person filing notification are located;

Item 7(c)(iv)—for each 4-digit industry within SIC major groups 52-61, 70, 75, 78, and 80 (retail trade, banking, and certain services) listed in Item 7(a) above, provide the address, arranged by state, county and city or town, of each establishment from which dollar revenues were derived in the most recent year by the person filing notification.

Item 7(c)(v)—for each 4-digit industry within SIC major group 62, 64-67, 72, 73, 76, 79, and 81-89 (certain finance, insurance and real estate groups and certain services) listed in Item 7(a) above, list the states (or, if desired, portions thereof) in which establishments were located from which the person filing notification derived revenues in the most recent year; and

Item 7 (c)(vi)— for each 4-digit industry within SIC 63 (insurance) listed in Item 7(a) above, list the state(s) in which the person filing notification is licensed to write insurance.

Item 7(d)—*Geographic market information for the entity whose voting securities are to be acquired.*

Item 7(d)(i)—for each 4-digit industry within SIC major groups 20-39 (manufacturing industries) listed in Item 7(a) above, list the states (or, if desired, portions thereof) in which, to the knowledge or belief of the person filing notification, the products in that 4-digit industry produced by the entity whose voting securities are to be acquired are sold without a significant change in their form, whether they are sold by that entity or by others to whom such products have been sold or resold;

Item 7(d)(ii)—for each 4-digit industry within SIC major groups 01-17 and 40-49 (agriculture, forestry and fishing, mining, construction, transportation, communications, electric, gas and sanitary services) listed in Item 7(a) above, list the states (or, if desired, portions thereof) in which the entity whose voting securities are to be acquired conducts such operations;

Item 7(d)(iii)—for each 4-digit industry within SIC major groups 50-51 (wholesale trade) listed in Item 7(a) above, list the states, (or, if desired, portions thereof) in which the customers of the entity whose voting securities are to be acquired are located;

Item 7(d)(iv)—for each 4-digit industry within SIC major groups 52-61, 70, 75, 78, and 80 (retail trade, banking, and certain services) listed in Item 7(a) above, provide the address, arranged by state, county and city or town, of each establishment from which dollar revenues were derived in the most recent year by the entity whose voting securities are to be acquired.

Item 7(d)(v)—for each 4-digit industry within SIC major group 62, 64-67, 72, 73, 76, 79, and 81-89 (certain finance, insurance and real estate groups and certain services) listed in Item 7(a) above, list the states (or, if desired, portions thereof) in which establishments were located from which the entity whose voting securities are to be acquired derived revenues in the most recent year; and

Item 7(d)(vi)— for each 4-digit industry within SIC 63 (insurance) listed in Item 7(a) above, list the state(s) in which the entity whose voting securities are to be acquired is licensed to write insurance.

NOTE: Except in the case of those SIC major industry groups mentioned in Item 7(c)(iv) and 7(d)(iv) above, the person filing notification may respond with the word "national" if business is conducted in all 50 states.

NOTE: If, after the required search, the person filing notification concludes that it derived no dollar revenue from any 4-digit (SIC code) industries in which any person which is a party to this acquisition also derived dollar revenues in the most recent year, then the person filing notification shall provide a detailed description of the search it conducted, including, but not limited to, the sources it relied upon, the files it searched, and the name and title of all persons responsible for conducting the search.

ITEM 8

Item 8—Put an X in the appropriate box to indicate if the acquired person and an acquiring person maintained a vendor-vendee relationship during the most recent year with respect to any manufactured product which the vendee either resells or consumes in or incorporates into the manufacture of any product. Persons filing notification which are *vendees* of such product(s) should list each product purchased, identify each vendor which is a party to the acquisition from which the product was purchased and state the dollar amount of the product purchased from that vendor during the most recent year.

Manufactured products are those within 2-digit SIC major groups 20-39. Any product purchased from the vendor in an aggregate annual amount not exceeding $1 million, or the manufacture, consumption or use of which is not attributable to the assets to be acquired, or to the issuer whose voting securities are to be acquired (including entities controlled by the issuer), may be omitted.

ITEM 9

Item 9—*Previous acquisitions.* Determine each 4-digit (SIC code) industry listed in Item 7(a) above, in which the person filing notification derived dollar revenues of $1 million or more in the most recent year and in which the acquired issuer derived revenues of $1 million or more in the most recent year.

For each such 4-digit industry, list all acquisitions made by the person filing notification in the five years prior to the date of filing of entities deriving dollar revenues in that 4-digit industry. List only acquisitions of more than 50 percent of the voting securities or assets of entities which had annual net sales or total assets greater than $10 million in the year prior to the acquisition.

For each such acquisition, supply:
(a) the name of the entity acquired;
(b) the headquarters address of the entity prior to the acquisition;
(c) whether securities or assets were acquired;
(d) the consummation date of the acquisition;
(e) the annual net sales of the acquired entity for the year prior to the acquisition;
(f) the total assets of the acquired entity in the year prior to the acquisition; and
(g) the 4-digit (SIC code) industries (by number and description) identified above in which the acquired entity derived dollar revenues.

ITEM 10

Item 10(a)—Print or type the name and title, firm name, address, and telephone number of the individual to contact regarding this Notification and Report Form. (See § 803.20(b)(2)(ii).)

Item 10(b)—Foreign filing persons print or type the name and title, firm name, address, and telephone number of an individual located in the United States designated for the limited purpose of receiving notice of the issuance of a request for additional information or documentary material. (See § 803.20(b)(2)(iii).)

Certification—(See § 803.6.)

APPENDIX TO NOTIFICATION AND REPORT FORM: INSURANCE

Insurance carriers (2-digit SIC major group 63) are required to complete this Appendix if voting securities of an insurance carrier are being acquired directly or indirectly.

ITEM 1

Item 1(A)—*Life Insurance.* Provide for the most recent year the amount of premium receipts (calulated on the accrual basis) for each of the lines of insurance listed on page 16 of the Answer Sheets.

Item 1(B)—*New Business.* Provide for the most recent year the amount of new life insurance business issued in the United States (exclusive of revivals, increases, dividend additions and reinsurance ceded) for each of the lines of insurance listed on page 16 of the Answer Sheets.

ITEM 2

Item 2(A)—*Property Liability Insurance.* Provide for the most recent year the amount of direct premiums written in the United States for each line of insurance specified in Part 2 of the Underwriting and Investment Exhibit of your carrier's annual convention statement.

Item 2(B)—Provide for the most recent year the amount of net premiums written in the United States for each line of insurance specified in Part 2 of the Underwriting and Investment Exhibit of your carrier's annual convention statement.

ITEM 3

Item 3(A)—*Title Insurance.* Provide for the most recent year the amount of net direct title insurance premiums written in the United States.

Item 3(B)—Provide for the most recent year the amount of direct title insurance premiums earned in the United States.

16 C.F.R. Part 803 - Appendix

OPTIONAL NOTIFICATION AND REPORT FORM FOR CERTAIN MERGERS AND ACQUISITIONS

THE INFORMATION REQUIRED TO BE SUPPLIED ON THESE ANSWERS SHEETS IS SPECIFIED IN THE INSTRUCTIONS

► Attach the Affidavit required by §803.5 to this page.

FOR OFFICE USE ONLY
Transaction Number

IS THIS ACQUISITION SUBJECT TO § 801.30(c)?

☐ YES ☐ NO

☐ ETR

DO YOU REQUEST EARLY TERMINATION OF THE WAITING PERIOD? (*Grants of early termination are published in the Federal Register.*)

☐ YES ☐ NO

ITEM 1 1(a) NAME AND HEADQUARTERS ADDRESS OF PERSON FILING NOTIFICATION (*ultimate parent entity*)

(b) NAME AND HEADQUARTERS ADDRESS OF ENTITY WHOSE VOTING SECURITIES ARE TO BE ACQUIRED

(c) LIST NAMES OF ULTIMATE PARENT ENTITIES OF ALL ACQUIRING PERSONS

LIST NAMES OF ULTIMATE PARENT ENTITIES OF ALL ACQUIRED PERSONS

(d) VALUE OF VOTING SECURITIES TO BE ACQUIRED

(e) PUT AN "X" IN THE APPROPRIATE BOX TO DESCRIBE ENTITY FILING NOTIFICATION

☐ Corporation ☐ Partnership ☐ Other (*Specify*) _____

(f) PUT AN "X" IN THE APPROPRIATE BOX TO DESCRIBE ENTITY WHOSE VOTING SECURITIES ARE TO BE ACQUIRED

☐ Corporation ☐ Other (*Specify*) _____

(g) DATA FURNISHED BY

☐ calendar year ☐ fiscal year (*specify period*) _____ (*month/year*) to _____ (*month/year*)

(h) PUT AN "X" IN THE APPROPRIATE BOX AND GIVE THE NAME AND ADDRESS OF THE ENTITY FILING NOTIFICATION (*if other than ultimate parent entity*)

☐ NA ☐ This report is being filed on behalf of a foreign person pursuant to § 803.4 ☐ This report is being filed on behalf of the ultimate parent entity by another entity within the same person authorized by it to file pursuant to § 803.2(a).

(i) NAME OF ENTITY FILING NOTIFICATION

ADDRESS

THIS FORM IS REQUIRED BY LAW and must be filed separately by each person which, by reason of a merger, consolidation or acquisition, is subject to § 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. No. 94-435, 90 Stat. 1390, and rules promulgated thereunder (hereinafter referred to as "the rules" or by section number). The statute and rules are set forth in the *Federal Register* at 43 FR 33450; the rules may also be found at 16 CFR Parts 801-03. Failure to file this **Optional Notification and Report Form**, and to observe the required waiting period before consummating the acquisition in accordance with the applicable provisions of 15 U.S.C. § 18a and the rules, subjects any "person," as defined in the rules, or any individuals responsible for noncompliance, to liability for a penalty of not more than $10,000 for each day during which such person is in violation of 15 U.S.C. § 18a.

All information and documentary material filed in or with this Optional Form is confidential. It is exempt from disclosure under the Freedom of Information Act, and may be made public only in an administrative or judicial proceeding, or disclosed to Congress or to a duly authorized committee or subcommittee of Congress.

Complete and return *two* notarized copies (with *one* set of documentary attachments) of this **Optional Notification and Report Form** to Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580, and *three* notarized copies (with *one set* of documentary attachments) to Director of Operations, Antitrust Division, Room 3218, Department of Justice, Washington, D.C. 20530. The central office for information and assistance with respect to matters in connection with this *Optional Notification and Report Form* is Room 301, Federal Trade Commission, Washington, D.C. 20580, phone (202) 326-3100.

NAME OF PERSON FILING NOTIFICATION | DATE

(i) NAME AND ADDRESS OF ENTITY MAKING ACQUISITION IF DIFFERENT FROM THE ULTIMATE PARENT ENTITY IDENTIFIED IN ITEM 1(a)

PERCENT OF VOTING SECURITIES HELD BY EACH ENTITY IDENTIFIED IN ITEM 1(a)

ITEM 2

2(a) DESCRIPTION OF ACQUISITION

NAME OF PERSON FILING NOTIFICATION	DATE

2(b)(i) ASSETS HELD BY ACQUIRING PERSON

2(c) VOTING SECURITIES TO BE ACQUIRED

(c)(i) LIST AND DESCRIPTION OF VOTING SECURITIES AND LIST OF NON-VOTING SECURITIES:

(c)(ii) TOTAL NUMBER OF SHARES OF EACH CLASS OF SECURITY:

(c)(iii) TOTAL NUMBER OF SHARES OF EACH CLASS OF SECURITY BEING ACQUIRED:

(Item 2(c) continued on next page)

NAME OF PERSON FILING NOTIFICATION	DATE

(c)(iv) IDENTITY OF PERSONS ACQUIRING SECURITIES:

(c)(v) DOLLAR VALUE OF SECURITIES IN EACH CLASS BEING ACQUIRED:

(c)(vi) TOTAL NUMBER OF EACH CLASS OF SECURITIES HELD BY ACQUIRING PERSON AS A RESULT OF THE ACQUISITION:

(c)(vii) PERCENTAGE OF EACH CLASS OF SECURITIES HELD BY ACQUIRING PERSON AS A RESULT OF THE ACQUISITION:

(c)(viii) DOLLAR VALUE OF SECURITIES TO BE HELD AS A RESULT OF THE ACQUISITION

(d) SUBMIT A COPY OF THE MOST RECENT VERSION OF CONTRACT OR AGREEMENT (*or letter of intent to acquire*)

DO NOT ATTACH THIS DOCUMENT TO THIS PAGE. ATTACHMENT OR REFERENCE NUMBER OF CONTRACT OR AGREEMENT _____

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 3 ASSETS AND VOTING SECURITIES HELD AS A RESULT OF THE ACQUISITION

(A) PERCENTAGE OF ASSETS	(b) PERCENTAGE OF VOTING SECURITIES	(c) AGGREGATE TOTAL VALUE

ITEM 4 PERSONS FILING NOTIFICATION MAY PROVIDE BELOW AN OPTIONAL INDEX REQUIRED TO BE SUBMITTED BY ITEM 4 (SEE ITEM BY ITEM INSTRUCTIONS). THESE DOCUMENTS SHOULD NOT BE ATTACHED TO THIS PAGE.

(a) DOCUMENTS FILED WITH THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION BY PERSON FILING NOTIFICATION — ATTACHMENT OR REFERENCE NUMBER

(b) ANNUAL REPORTS, ANNUAL AUDIT REPORTS, AND REGULARLY PREPARED BALANCE SHEETS OF PERSON FILING NOTIFICATION — ATTACHMENT OR REFERENCE NUMBER

(c) STUDIES, SURVEYS, ANALYSES AND REPORTS BY PERSON FILING NOTIFICATION — ATTACHMENT OR REFERENCE NUMBER

(d) DOCUMENTS FILED WITH THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION BY ENTITY WHOSE VOTING SECURITIES ARE TO BE ACQUIRED OR BY ENTITY WITHIN WHICH THAT ENTITY IS INCLUDED

(e) ANNUAL REPORTS, ANNUAL AUDIT REPORTS AND REGULARLY PREPARED BALANCE SHEETS BY ENTITY WHOSE VOTING SECURITIES ARE TO BE ACQUIRED OR BY ENTITY WITHIN WHICH THAT ENTITY IS INCLUDED

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 5 (See the "References" listed in the General Instructions to the Optional Form. Refer to the 1972 edition of the *Standard Industrial Classification Manual* and its 1977 Supplement for the 4-digit (SIC Code) industry codes. Refer to the Numerical List of Manufactured and Mineral Products, *1982 Census of Manufactures and Census of Mineral Industries* (MC82-R-1) for the 5-digit product class and 7-digit product codes. Report revenues for the 5-digit and 7-digit codes using the codes in the columns labeled "Product code published." Do not report revenues using codes in the columns labeled "Product code Collected.")

5(a) DOLLAR REVENUES BY INDUSTRY

4-DIGIT INDUSTRY CODE *Product code published*	DESCRIPTION	1982 TOTAL DOLLAR REVENUES

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 5(b)(i) DOLLAR REVENUES BY MANUFACTURED PRODUCTS

7-DIGIT PRODUCT CODE *Product code published*	DESCRIPTION	1982 TOTAL DOLLAR REVENUES

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 5(b)(ii) PRODUCTS ADDED OR DELETED

DESCRIPTION (7-DIGIT PRODUCT CODE)	ADD	DELETE	YEAR OF CHANGE	TOTAL DOLLAR REVENUES

ITEM 5(b)(iii) DOLLAR REVENUES BY MANUFACTURED PRODUCT CLASS

5-DIGIT PRODUCT CLASS CODE *Product code published*	DESCRIPTION	YEAR / TOTAL DOLLAR REVENUES

(item 5(b)(iii) continued on page 9)

NAME OF PERSON FILING NOTIFICATION	DATE

5(b)(iii) DOLLAR REVENUES BY MANUFACTURED PRODUCT CLASS - CONTINUED

5-DIGIT PRODUCT CLASS CODE	DESCRIPTION	YEAR / TOTAL DOLLAR REVENUES

5(c) DOLLAR REVENUES BY NON-MANUFACTURING INDUSTRY

4-DIGIT INDUSTRY CODE	DESCRIPTION	YEAR / TOTAL DOLLAR REVENUES

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 6

6(a) ENTITIES WITHIN PERSON FILING NOTIFICATION

6(b) SHAREHOLDERS OF PERSON FILING NOTIFICATION

NAME OF PERSON FILING NOTIFICATION	DATE

6(c) HOLDINGS OF PERSON FILING NOTIFICATION

(d) ENTITIES INCLUDED WITHIN THE ENTITY WHOSE VOTING SECURITIES ARE TO BE ACQUIRED

(e) SHAREHOLDERS OF ENTITY WHOSE VOTING SECURITIES ARE TO BE ACQUIRED

(f) HOLDINGS OF ENTITY WHOSE VOTING SECURITIES ARE TO BE ACQUIRED

ITEM 7 DOLLAR REVENUES

7(a) 4-DIGIT SIC CODE AND DESCRIPTION

7(b) NAME OF EACH PERSON WHICH ALSO DERIVED DOLLAR REVENUES

NAME OF PERSON FILING NOTIFICATION	DATE

7(c) GEOGRAPHIC MARKET INFORMATION FOR PERSON FILING NOTIFICAION

(d) GEOGRAPHIC MARKET INFORMATION FOR ENTITY WHOSE VOTING SECURITIES ARE TO BE ACQUIRED

7(e) DESCRIPTION OF SEARCH

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 8 VENDOR-VENDEE RELATIONSHIP

☐ NO ☐ YES (*If yes and you are the vendee, complete the following*)

PRODUCT PURCHASES	VENDOR	DOLLAR AMOUNT

ITEM 9 PRIOR ACQUISITIONS (*to be completed by acquiring person only*)

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 10 IDENTIFICATION OF PERSON TO CONTACT REGARDING THIS REPORT

10(a) NAME OF CONTACT PERSON	TITLE OF CONTACT PERSON
FIRM NAME AND BUSINESS ADDRESS	BUSINESS TELEPHONE NUMBER

10(b) IDENTIFICATION OF AN INDIVIDUAL LOCATED IN THE UNITED STATES DESIGNATED FOR THE LIMITED PURPOSE OF RECEIVING NOTICE OF ISSUANCE OF A REQUEST FOR ADDITIONAL INFORMATION OR DOCUMENTS. (*See § 803.20(b)(2)(iii)*)

NAME	TITLE
ADDRESS	BUSINESS TELEPHONE NUMBER

CERTIFICATION

This **OPTIONAL NOTIFICATION AND REPORT FORM**, together with any and all appendices and attachments thereto, was prepared and assembled under my supervision in accordance with instructions issued by the Federal Trade Commission. Subject to the recognition that, where so indicated, reasonable estimates have been made because books and records do not provide the required data, the information is, to the best of my knowledge, true, correct, and complete in accordance with the statute and rules.

NAME (*Please print or type*)	TITLE
SIGNATURE	DATE

Subscribed and sworn to before me at the

City of _____, State of _____

this _____ day of _____, 19_____.

Signature _____

My Commission expires _____

[SEAL]

NAME OF PERSON FILING NOTIFICATION	DATE

APPENDIX: INSURANCE

ITEM 1

	YEAR	
A PREMIUM RECEIPTS		
1 LIFE INSURANCE		AMOUNT
1a. ORDINARY LIFE INSURANCE		
1b. GROUP LIFE INSURANCE (including Federal Employees' Group Life Insurance and Servicemen's Group Life Insurance, but excluding credit life insurance)		
1c. INDUSTRIAL LIFE INSURANCE		
1d. CREDIT LIFE INSURANCE		
2 ANNUITY CONSIDERATIONS		
2a. INDIVIDUAL ANNUITY CONSIDERATIONS		
2b. GROUP ANNUITY CONSIDERATIONS		
3 HEALTH INSURANCE		
3a. INDIVIDUAL HEALTH INSURANCE		
3b. GROUP HEALTH INSURANCE		
TOTAL		

B NEW BUSINESS	YEAR	
		AMOUNT
1 ORDINARY LIFE INSURANCE		
2 GROUP LIFE INSURANCE		
3 INDUSTRIAL LIFE INSURANCE		
4 CREDIT LIFE INSURANCE		
TOTAL		

ITEM 2 PROPERTY LIABILITY INSURANCE

LINE OF INSURANCE	A. DIRECT PREMIUMS	B. NET PREMIUMS

ITEM 3 TITLE INSURANCE

A. NET DIRECT PREMIUMS WRITTEN	B. DIRECT PREMIUMS EARNED	YEAR

BILLING CODE 6750-01-C

By Direction of the Commission.

Donald S. Clark,

Secretary.

Separate Statement of Commissioner Strenio

I am skeptical about whether the proposed amendments would confer net benefits. Nonetheless, these proposals are entitled to serious consideration and public comment should serve that end.

[FR Doc. 88-21524 Filed 9-21-88; 8:45 am]

BILLING CODE 6750-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-3450-3]

Intent to Delete the New Castle Steel Site From the National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region III announces its intent to delete a site from the National Priorities List (NPL) and requests public comments. The NPL is Appendix B to the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended.

DATE: Comments concerning the site may be submitted on or before October 24, 1988.

ADDRESSES: Comments may be mailed to the Regional Docket. Comprehensive information on the site is maintained and available through the EPA Regional Docket Clerk.

The Regional Docket is located at the U.S. EPA Region III office and is available for viewing by appointment only from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding holidays. Requests for copies of the information from the Regional public docket should be directed to the EPA Region III docket office.

Addresses for the Regional and Local Docket office are:

U.S. EPA Region III, 841 Chestnut Building, Philadelphia, PA 19107

Wilmington Library, 10th & Market Streets, Wilmington, Delaware 19801

DNREC, 715 Grantham Lane, New Castle, Delaware 19720.

FOR FURTHER INFORMATION CONTACT: Colleen Leden at (215) 597-8593.

For background information on the site, contact:

Leonard Nash, DELMARVA/DC/WV CERCLA, Remedial Enforcement Section (3HW16), U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107, (215) 597-0978.

SUPPLEMENTARY INFORMATION:

Table of Contents:

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

The Environmental Protection Agency (EPA) Region III announces its intent to delete the New Castle Steel site from the National Priorities List (NPL), Appendix B of the National Oil and Hazardous Substances Contingency Plan (NCP), and requests comments on this deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund ("Fund") financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that future conditions at the site warrant such action.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR § 300.66(c)(7), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider whether any of the following criteria have been met:

(i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or

(iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Before deciding to delete a site, EPA must first determine that the remedy (or no remedy if appropriate) is protective of public health, welfare, and the environment. In addition, section 121(f)(1)(c) of CERCLA requires State concurrence for deleting a site from the NPL.

Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future conditions warrant such actions. Section 105(e) of CERCLA states:

"Whenever there has been, after January 1, 1985, a significant release of hazardous substances or pollutants or contaminants from a site which is listed by the President as a 'Site Cleaned Up To Date' on the National Priorities List, the site shall be restored to the National Priorities List without application of the hazard ranking system."

III. Deletion Procedures

In the NPL rulemaking published in the **Federal Register** on October 15, 1984 (49 FR 40320), the Agency solicited and received comments on whether the notice and comment procedures followed for adding sites to the NPL should also be used before sites are deleted. Comments were also received in response to the amendments to the NCP that were proposed in the **Federal Register** on February 12, 1985 (50 FR 5862). Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. As is mentioned in Section II of this notice, Section 105(e) of CERCLA makes clear that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

EPA Region III will accept and evaluate public comments. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community are likely to be the most pertinent to deletion decisions. The following procedures were used for the intended deletion of this site:

1. EPA Region III has recommended deletion and has prepared the relevant documents.

2. The State of Delaware has concurred with the deletion decision.

3. Concurrent with this National Notice of Intent to Delete, a local notice has been published in local and community newspapers and has been distributed to appropriate federal, state, and local officials, and other interested parties. This local notice announces a thirty (30) day public comment period on the deletion package, which starts two weeks from the date of the notice, October 6, 1988, and will conclude on October 24, 1988.

4. The Region has made all relevant documents available in the Regional Office and local site information repository.

The comments received during the notice and comment period will be evaluated before the final decision to delete. The Region will prepare a Responsiveness Summary, which will address the comments received during the public comment period.

A deletion will occur after the Assistant Administrator for the Office of Solid Waste and Emergency Response places a notice in the **Federal Register**. The NPL will reflect any deletions in the next final update. Public notices and copies of the Responsiveness Summary will be made available to local residents by Region III.

IV. Basis for Intended Site Deletion

New Castle Steel Co. (Deemer Steel), New Castle, New Castle County, Delaware

The New Castle Steel Site is a 3-acre disposal dump located in New Castle, Delaware. The site received foundry wastes from the Deemer Steel Company which is located immediately across the street from the site. The New Castle Steel Site is divided into two parts by a city drainage channel. One portion of the site, the inactive disposal area, occupies 1.3 acres and the active area occupies 1.75 acres.

The operations began in 1907 Solid waste generated by the plant was piled and periodically spread over the surface of two disposal areas across the street from the Deemer Steel Company. The waste consisted primarily of black sand, which is the non-reclaimable portion of sand molds used in steel casting. The black sand may contain small quantities of bentonite or corn flour which are used as "binders" to allow the mold to be formed. About 1,800 cubic yards or 2,430 tons of black sand were generated each year. Other waste materials sent to the disposal areas and mixed with black sand included slag, coke from the old furnace operation, iron oxide scale from heat treatment, fine sand dust from the blasting room baghouse, and metal scrap.

In 1956, an electric furnace as put into operation, and in May 1973, a collection system and baghouse for pollution control dust from the furnace was installed. Electric furnace dust had been generated at a rate of 9.6 tons per year between 1973 and 1980. This dust was mixed with black sand and spread over the active waste area.

In June 1983, Deemer Steel hired a contractor to prepare and implement plans for the hydrogeological investigation at the site. On June 29, 1984, Earth Data submitted a completed hydrogeological report to EPA and the State for their review. The hydrogeological report showed that there was no effect on the aquifer used for drinking water in the New Castle area. This aquifer, the Potomac Aquifer, is protected from the site by fifty feet of low permeability clays. The report concluded that the leachate generated by the fill would not contain significant levels of any toxic constituents.

Based on the hydrogeological study, the state of Delaware proposed in January 1985 that the site be deleted from the National Priorities List. For deletion, the EPA required that the other potential modes of transmission of toxic materials including air, soils, and surface runoff be examined.

In January 1987, EPA collected additional waste, surface water, and sediment samples to characterize the extent of contamination at the site.

After the completion of all sampling, the EPA prepared en Endangerment Assessment report to evaluate the magnitude and probability of actual or potential threat to public health or welfare or the environment posed by the hazadous substances present at the site.

Based on the evaluation of all available information and data on the New Castle Steel site, it was determined that there exists no significant threat to human health or the environment. This is supported by a review of the site's history and operations, an evaluation of the environmental setting, and the data collected in the studies of the site.

EPA, with the concurrence of the State of Delaware, has determined that the New Castle Steel site poses no significant threat to public health or the environment and therefore has decided that implementation of remedial measures is not appropriate.

Date: August 17, 1988.

James Seif,

Regional Administrator.

[FR Doc. 88-21398 Filed 9-21-88; 8:45 am)

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. MM-88-376; FCC 88-252]

Improvement in the Quality of the AM Broadcast Service by Reducing Adjacent Channel Interference and by Eliminating Restrictions Pertaining to the Protected Daytime Contour

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rule Making.

SUMMARY: The Commission issued this Notice of Proposed Rule Making in response to comments received concerning two issues raised in the Notice of Inquiry in Mass Media Docket No. 87-267 and in response to a Petition for Rule Making submitted by the National Association of Broadcasters (RM-6147 received on November 6, 1987) requesting that the Commission mandate that AM broadcast stations use an audio standard developed by the National Radio Systems Committee.

DATES: Comments due on or before November 22, 1988 and Reply Comments due on or before December 22, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Hank VanDeursen, Mass Media Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, adopted July 20, 1988 and released September 12, 1988.

The full text of this Commission proposal is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Notice

The Commission is proposing to require that AM broadcast stations reduce emissions that cause adjacent channel interference and is also proposing to give AM applicants the option of proposing facilities whose coverage areas would be subject to some interference if no additional interference is caused to other stations. Specifically, the proposed revisions would:

(1) Require that stations comply with revised RF emission limitations (RF mask) developed by the National Radio Systems Committee (NRSC). The *Notice* explains in depth how the implementation of the RF mask should reduce the levels of adjacent channel interference experienced by current receivers and should be effective in prompting development of AM receivers capable of improved fidelity sound. The RF mask would be effective in dealing with potential problems involving overmodulation (a problem many commenters believe to be rather severe

in the AM service) while also providing licensees the flexibility in processing audio to achieve a distinctive, characteristic "station sound."

The Commission is, at the same time sensitive to concerns regarding cost of procuring new measurement equipment to determine compliance with the RF mask. However, the cost aspect may not be a problem as perceived by commenters since new types of relatively inexpensive measurement equipment are becoming available, and a single piece of measurement equipment may be shared among several licensees. In that regard however, extensive comments are also solicited on establishing a presumption that stations complying with the NRSC audio standard are also in compliance with the RF emission limitations.

(2) Permit applicants to accept some interference up to their 1 mv/m contour coverage area provided that no additional interference is caused to other stations. This would allow some stations to increase power that could permit significant improvements in signal quality by rendering the received signals in its service area more immune to man-made and natural interference.

Ex Parte

This is a non-restricted notice and comment rulemaking proceeding. See § 1.1231 of the Commission's rules, 47 CFR 1.1231, for rules governing permissible ex parte contacts.

Initial Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, this proceeding would benefit nearly 5,000 AM broadcast station licensees by reducing second and third adjacent channel interference. The cost of modifying transmitters to comply with the new emission standard may be on the order of several hundred dollars per station. Costs associated with an increase in station power are unknown, but would be incurred entirely on a voluntary basis. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Notice of Proposed Rulemaking.

Comments

Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419. Interested parties may file comments on or before November 22, 1988 and reply comments on or before December 22, 1988. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

Legal Basis

The Commission has authority to institute the proposed revisions contained within the attached appendix pursuant to section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

Federal Communications Commission.

H. Walker Feaster III,

Secretary.

It is proposed to amend 47 CFR Part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read:

Authority: 47 U.S.C. 154(i), 303(r).

2. Section 73.37, paragraph (b) introductory text would be revised to read as follows:

§ 73.37 Applications for broadcast facilities, showing required.

* * * * *

(b) An application for a new daytime station or a change in the daytime facilities of an existing station may be granted notwithstanding overlap of the proposed 0.5mV/m contour by the 0.025 mV/m contour of another cochannel station, provided that:

* * * * *

3. Section 73.44 would be revised to read as follows:

§ 73.44 Emission Limitations.

* * * * *

Effective January 1, 1990, the emissions of stations in the AM service shall be attenuated in accordance with the requirements specified in paragraph (a) of this section. Emissions shall be measured using a suitable swept-frequency RF spectrum analyzer using a 300 Hz resolution bandwidth, a peak hold duration of 10 minutes, and no video filtering. Alternatively, other specialized receivers or monitors with appropriate characteristics may be used to determine compliance with the provisions of this section; provided that any disputes over measurement accuracy are resolved in favor of measurements obtained by using a calibrated spectrum analyzer adjusted as set forth above.

(a) Emissions 10 kHz to 20 kHz removed from the carrier must attenuated at least 25 dB below the carrier level, emissions 20 kHz to 30 kHz removed from the carrier must attenuated at least 35 dB below the carrier level, emissions 30 kHz to 60 kHz removed from the carrier must attenuated at least [5+1 dB/kHz] below carrier level, emissions between 60 kHz and 75 kHz of the carrier frequency are attenuated at least 65 dB below carrier level, and emissions removed by more than 75 kHz must be attenuated at least 80 dB below carrier level.

(b) [Reserved].

[FR Doc. 88-21493 Filed 9-21-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Denial of a Petition for Rulemaking; Burke Communication Industries

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of a petition for rulemaking.

SUMMARY: This notice denies a petition filed by Burke Communication Industries requesting that this agency modify Federal Motor Vehicle Safety Standard (FMVSS) 125, *Warning devices*, to allow the company's Inflatable Safety Cone as an alternate warning device. NHTSA is denying this petition as no rationale nor data are provided documenting any failure of the existing Standard to meet the needs of the National Traffic and Motor Vehicle Safety Act, the need for Standard 125 to be amended, or the reasons why the Inflatable Safety Cone is alleged to be "inherently" superior to existing equipment. Further, the agency is concerned that, independent of the particular requirements of the existing standard, the Cone does not possess all of the qualities necessary for adequately performing the safety functions of a warning device.

FOR FURTHER INFORMATION CONTACT: Kevin Cavey, Crash Avoidance Division, Office of Rulemaking, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590, (202) 366-2720.

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard (FMVSS) No. 125, *Warning devices*, establishes requirements for devices, without self-contained energy sources, that are designed to be carried in motor vehicles and erected on the roadway to warn approaching traffic of the presence of a stopped vehicle. The standard requires the warning devices be triangular with an open center, covered with orange flourescent and red reflex reflective material, and capable of being erected on the roadway.

In a petition dated February 23, 1988, Burke Communication Industries (petitioner) requested that NHTSA amend Standard 125 to allow the company's Inflatable Safety Cone as an alternate warning device. The Cone consists of an inflatable cone mounted on a noninflatable, sand-filled base with a round bottom. When inflated, the Cone stands approximately eighteen inches high. the inflatable part of the Cone has three broad, alternating stripes, two of which are orange. Sandwiched between the orange stripes is a stripe which is a "reflective" silver color. The base is black.

Petitioner asserted that the Inflatable Safety Cone is equal to or superior than the devices available under Standard 125 by being "inherently safer and more visible." Burke Communication Industries stated its belief that Standard 125 is based in part on design characteristics, not only performance characteristics, and with certain modifications to Standard 125, the Inflatable Safety Cone would meet all requirements. Petitioner provided documentation which it stated supported its position.

NHTSA denies Burke Communications Industries' petition for the following reasons. First, Burke offers no evidence that Standard 125 fails to meet the requirements of the National Traffic and Motor Vehicle Safety Act. Contrary to the petitioner's suggestion that aspects of the standard are impermissibly design-oriented, the standard's provisions are consistent with the statutory requirement for performance-oriented standards. In keeping with existing case law, the agency has interpreted that requirement as mandating that standards be as performance-oriented or as broadly stated as possible, but permitting the standards that are more narrowly stated when necessary to secure a particular type of safety performance. In the agency's view, universal recognition of a uniform symbol is critical to the safety performance of a warning device.

Second, Burke offers no evidence that Standard 125 its present form fails to fulfill the goal of ensuring that warning devices attract the attention of and alert approaching drivers to the presence of a stopped vehicle. Further, there is no showing of any need for an alternate warning device, such as the Inflatable Safety Cone.

Third, Burke asserts the superiority of the Cone by stating that it contains no rigid parts which may injure pedestrians or cause damage to vehicles if struck and destroyed. NHTSA has no reports of injuries or damage from the use of existing warning devices and Burke has offered no such evidence.

Fourth, the agency is concerned that the Inflatable Safety Cone might not be as effective as warning devices complying with the existing Standard. One deficiency is that the Cone lacks the required type of triangular configuration. That configuration is internationally recognized as a symbol or warning of a slow moving vehicle or of a motor vehicle in distress. The Inflatable Safety Cone is not so recognized. If Standard 125 were amended to include performance characteristics with which the Cone can comply, the included devices may not uniquely warn of a motor vehicle in distress. The use of the Cone may even prove to be misleading or ambiguous because it is very much like plastic cones used to indicate road repair or construction.

Another possible deficiency involves the question of whether the Cone is sufficiently stable to ensure visibility under windy conditions. The standard addresses the issue of stability through S5.6, which requires in part that when a warning device is subjected to a horizontal wind of 40 miles per hour in any direction for 3 minutes, it shall not tilt more than 10 degrees from the vertical and no part of it shall slide more than 3 inches from its initial position. Part of the supporting documentation included results of tests conducted for Burke by Container-Quinn Testing Laboratories, Inc. which raise questions about the stability of the Cone. The findings included the fact that:

> When positioned along the shoulder of a 65 MPH controlled access highway, the cones will wobble when passed by passenger cars and light trucks, and will tip-over when passed by larger vehicles such as large trucks and buses.

Although the test results are not reported in the context of whether the Cone complies with the requirements of S5.6 of Standard 125, they raise doubts as to whether the Cone would meet those requirements and is sufficiently stable to ensure adequate visibility. Stability is important because if the Cone may readily tip over or wobble with passing traffic, making it difficult for motorists to see the device, its ability to attract the attention of and alert oncoming motorists may be seriously reduced.

For the preceding reasons, NHTSA denies the petition from Burke Communication Industries to amend Standard 125. (Secs. 103, 119, Pub. L. 98–563, 80 Stat. 718, [15 U.S.C. 1392, 1707]; delegations of authority at 49 CFR 1.50).

Issued on September 19, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88–21643 Filed 9–21–88; 8:45 am]

BILLING CODE 4910–59–M

Notices

Federal Register
Vol. 53, No. 184
Thursday, September 22, 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.

COMMISSION ON CIVIL RIGHTS

Colorado 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 the Colorado Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 3:00 p.m., on October 4, 1988, at the Grand Junction Holiday Inn, 755 Horizon Drive, Grand Junction, Colorado 81506. The purpose of the meeting is to gather information on the ballot measure which seeks to make English Colorado's official state language.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Maxine Kurtz or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office 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, September 16, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88–21645 Filed 9–21–88; 8:45 am]

BILLING CODE 6335–01–M

Colorado 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 the Colorado Advisory Committee to the Commission will convene at 9:15 a.m. and adjourn at 4:00 p.m., on October 7, 1988, at the Radisson Hotel Denver, 1550 Court Place, Denver, Colorado 80202. The purpose of the meeting is to gather information on the ballot measure which seeks to make English Colorado's official state language.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Maxine Kurtz or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office 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, September 16, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88–21646 Filed 9–21–88; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Materials Technical Advisory Committee; Partially Closed Meeting

A meeting of the Materials Technical Advisory Committee will be held October 20, 1988, 9:30 a.m., Herbert C. Hoover Building, Room B–841, 14th Street and Constitution Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to materials or technology.

Agenda: General Session

1. Opening Remarks by the Chairman & Commerce Representative.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Report on New Committee Members.
5. Summary of TAC Chairmen's Meeting.
6. Presentation of Sol-Gel Materials by University of Florida.
7. Discussion of 1989 Plans.

Executive Session

8. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Sbucommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202–377–4959.

Dated: September 15, 1988.

Betty A. Ferrell,

Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 88–21666 Filed 9–21–88; 8:45 am]

BILLING CODE 3510–DT–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 Workshop Committee will convene a public meeting on September 29, 1988, at 10 a.m., at the Pacific Fishery Management

Council's Conference Room (address below), to design a questionnaire on limited entry, review the first draft of a white paper and a press release, and to discuss composition of the workshop teams.

For further information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, 2000 SW. First Avenue, Suite 420, Portland, OR 97201; telephone: (503) 221–6352.

Dated: September 15, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–21660 Filed 9–21–88; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Groundfish Management Team (GTM) will convene a public meeting on October 5, 1988, at 8 a.m., at the Pacific Fishery Management Council's Conference Room (address below), to prepare the annual stock assessment report for the 1989 groundfish fishery. In addition, the GMT will review sablefish landings data for the various gear types and other technical information pertaining to establishment of a sablefish allocation agreement for the upcoming year. Other issues pertaining to management of the groundfish fishery also may be discussed. Recommendations arising from this meeting wll be presented to the Pacific Council at its November 16–18, 1988, meeting in Portland, OR. The public meeting will adjourn on October 7 at noon.

For further information contact Mr. Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 221–6352.

Date: September 15, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–21661 Filed 9–21–88; 8:45 am]

BILLING CODE 3510–22–M

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council's advisory bodies will convene public meetings at the South Atlantic Fishery Management Council's Office (address below), as follows:

Shrimp Committee and Plan Development Team—will convene on October 3, 1988, at noon to review the status and direction of the Shrimp Fishery Management Plan (FMP). The public meeting will recess at 5 p.m., reconvene on October 4 at 8:30 a.m., and will adjourn at noon. A detailed agenda will be available to the public on or about September 22, 1988.

Red Drum Plan Development Team—will convene on October 13, 1988, at 1 p.m., to review the draft red drum profile. The public meeting will recess at 5 p.m., reconvene on October 14 at 8:30 a.m., and will adjourn at 1 p.m. A detailed agenda will be available to the public on or about October 4, 1988.

Red Drum Committee—will convene on October 11, 1988, at 1 p.m., to discuss the Red Drum FMP objectives and possible management options. The public meeting will recess at 5 p.m., reconvene on October 12 at 8:30 a.m., and will adjourn at 3 p.m. A detailed agenda will be available to the public on or about October 4.

For further information contact Carrie R.F. Knight, Public Information Specialist, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571–4366.

Date: September 15, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–21662 Filed 9–21–88; 8:45 am]

BILLING CODE 3510–22–M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

September 14, 1988.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6–903,174 (4,756,800) Method for Producing Salts of Monoperoxysulfuric Acid and Simultaneously Bleaching Pulp

SN 6–904,533 (4,761,280) Additives Useful as Crystallization Inhibitors and Activity Extenders for Trimedlure, the Mediterranean Fruit Fly Attractant

SN 7–201,143 Control of Insects by Fungal Tremorgenic Mycotoxins

SN 7–207,461 Catalysts for Formaldehyde-Free Durable Press Finishing of Cotton Textiles with Polycarboxylic Acids

SN 7–207,588 Inhibition of Warmed-Over Flavor and Preserving of Uncured Meat Containing Materials

SN 7–207,592 Method for Screening Bacteria and Application Thereof for Field Control of the Weed Downy Brome

SN 7–212,641 Novel Virus Composition to Protect Agricultural Commodities from Insects

SN 7–215,091 Green Leaf Volatiles as Synergists for Insect Pheromones

Department of Commerce

SN 6–732,327 (4,764,863) Hardware Interpreter for Finite State Automata

SN 7–031,716 (4,765,750) Method of Determining Subsurface Property Value Gradient

SN 7–040,683 (4,760,743) Acoustic Scintillation Liquid Flow Measurement

SN 7–048,848 (4,765,754) Inclined Contact Recirculating Roller Bearing

Department of Health and Human Services

SN 6–824,848 (4,762,846) Metaphit and Related Compounds as Acylating Agents for the (3H)Phencyclidine Receptors

SN 7–110,305 Synthetic Peptides for the Production of Specific Keratin Proteins

SN 7–205,818 Novel Protein and Coding Sequence for Detection and Differentiation of SIV and HIV–2 Group of Viruses

SN 7–209,108 Activated Killer Monocytes: Tumoricidal Activity and Method of Monitoring Same

SN 7–216,088 Synthetic Vaccine Against P. Falciparum Malaria
SN 7–222,684 Synthetic Vaccine Against AIDS Virus
SN 7–222,882 Apparatus and Method for Transmitting Prosthetic Information to the Brain
SN 7–223,270 Cytotoxic Agent Against Specific Virus Infection

Department of the Air Force

SN 6–855,047 (4,739,200) Cryogenic Wound Rotor for Lightweight, High Voltage Generators
SN 6–856,907 (4,740,909) Real Time Data Reduction System Standard Interface Unit
SN 6–861,899 (4,738,181) Repetitive High-Current Opening Switch for Railguns
SN 6–913,789 (4,739,334) Electro-Optical Beamforming Network for Phased Array Antennas
SN 6–927,021 (4,739,290) Variable Analog Delay Line
SN 6–940,888 Split Two-Phased CCD Clocking Gate Apparatus
SN 7–048,110 (4,740,276) Fabrication of Cooled Faceplate Segmented Aperture Mirrors (SAM) by Electroforming
SN 7–063,369 Fluid Lock
SN 7–169,910 Normal Incidence Optical Switches Using Ferroelectric Liquid Crystals
SN 7–181,480 Large Angle Off-Axis Beam Steering of a Phased Telescope Array
SN 7–197,053 Three Dimensional Tactical Element Situation (3DTES) Display

Department of the Army

SN 7–188,934 Method of Making a Ferrite Element
SN 7–200,219 Method of Making a Cathode from Tungston & Iridium Powders Using a Bariumaluminoridiate as the Impregnant
SN 7–213,035 Method of Making a Long Life High Current Density Cathode from Tungsten and Osmium Powders Using Barium Osmiate as an Impregnant

Department of the Interior

SN 6–893,427 (4,752,383) Bubble Generator
SN 7–021,271 (4,756,509) Mobile Lifting Jack
SN 7–146,504 Soft Borehole Deformation Gague
SN 7–201,235 Electromagnetic Fire Warning System for Underground Mines
SN 7–211,650 Rock Fragmentation Method

Tennessee Valley Authority

SN 7–026,092 (4,743,438) Process for Producing Phosphoric Acid from Low Purity Phosphate Rock
SN 7–083,332 (4,743,289) Lignosulfonate as Granulation Aid-Particle Hardener

[FR Doc. 88–21621 Filed 9–21–88; 8:45 am]
BILLING CODE 3510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Permitting Entry of Certain Cotton, Wool, Man-Made Fiber Textile Products Produced or Manufactured in Mexico

September 19, 1988.

AGENCY: Committee for the Implementation of Textile Agreements(CITA).

ACTION: Issuing a directive to the Commissioner of Customs permitting entry of certain textile products.

EFFECTIVE DATE: September 26, 1988.

AUTHORITY: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Martin J. Walsh, Commodity Industry Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–3400.

SUPLEMENTARY INFORMATION: A copy of the current agreement between the Governments of the United States and the United Mexican States is available from the Textiles Division, Economic Bureau, U.S. Department of State, (202) 647–1998.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see Federal Register notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 32421, published on August 25, 1988.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 19, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of August 22, 1988 issued to you by the Chairman, Committee for the Implementation of Textile Agreements, concerning a visa arrangement and exempt certification for certain cotton, wool and man-made fiber textile products, produced or manufactured in Mexico.

Effective on September 26, 1988, you are directed to permit entry for consumption, or withdrawal from warehouse for consumption, cotton, wool and man-made fiber textile products, produced or manufactured in Mexico and exported from Mexico prior to September 15, 1988 regardless of the visa number shown, provided all other visa requirements are met.

All goods exported from Mexico on and after September 15, 1988, including those which would qualify for the Special Regime, shall be visaed using the standard nine digit/letter format beginning with one numeric digit for the last calendar year of export, followed by "MX," followed by the digit 1, 3, 5, 7 or 9 and then a five digit number, e.g., 8MX312345.

Shipments exported on and after September 15, 1988 using the visa format reserved for the Special Regime which will be effective for goods exported on or after January 1, 1989 (nine-digit number beginning with even numbers 2, 4, 6, or 8 after the "MX" country code), will be denied entry and shall require a new visa or visa waiver.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–21653 Filed 9–21–88; 8:45 am]
BILLING CODE 3510–DR–M

COMODITY FUTURES TRADING COMMISSION

Proposed Amendments Relating to New York Futures Exchange, U.S. Treasury Bond Futures and a Proposal to Recommence Trading in That Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The New York Futures Exchange ("NYFE") has submitted proposed rule amendments relating to the eligible maturity standards and other aspects of the U.S. Treasury bond futures contract. In accordance with section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commodity Futures Trading Commission ("Commission") Regulation 140.96, the Director of the Division of Economic Analysis, on behalf of the Commission, has determined that the proposed amendments are of major economic

significance. In addition, the NYFE has submitted a proposal to recommence trading in the U.S. Treasury bond futures contract which now is dormant within the meaning of Commission Regulation 5.2. On behalf of the Commission, the Division is requesting comment on these proposals.

DATE: Comments must be received on or before October 24, 1988.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the amendments to the NYFE U.S. Treasury bond contract.

FOR FURTHER INFORMATION CONTACT: Richard Shilts, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 (202) 254–7303.

SUPPLEMENTARY INFORMATION: The most significant amendments proposed by NYFE would reduce the minimum term of a deliverable U.S. Treasury bond from 20 years to 15 years, change the trading month cycle from the February to the March quarterly cycle, permit delivery throughout the expiration month, extend the trading hours on the last trading day, and alter the times for the issuance of delivery notices. The amended contract would be substantially similar to the U.S. Treasury bond futures contract traded on the Chicago Board of Trade.

The NYFE U.S. Treasury bond futures contract is not currently listed for trading and is dormant under Commission Regulation 5.2. Under Regulation 5.2, an exchange must submit for Commission review and approval, pursuant to section 5a(12) of the Commodity Exchange Act (Act) and Commission Regulation 1.41(b), an appropriate bylaw, rule, regulation or resolution to recommence trading in a dormant contract. Accordingly, the Exchange has submitted, pursuant to section 5a(12) of the Act and Commission Regulation 1.41(b), a proposal to list additional months in the contract.

Because the proposed amendments may affect the pricing basis of the Treasury bond contract, the Commission is seeking comment on the NYFE's proposal.

Copies of each of the Exchange's proposed amendment will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

The material submitted by the Exchange in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act of (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interest in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC, by the specified date.

Issued in Washington, DC on September 19, 1988.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 88–21618 Filed 9–21–88; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligency Agency Scientific Advisory Committee; Closed Meeting

AGENCY: Defense Intelligency Agency Scientific Advisory Committee, Defense.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92–463, as amended by section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been scheduled as follows:

DATE: October 17, 1988 (9:00 a.m. to 5:00 p.m.).

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20340–1328 (202/373–4930.

SUPPLEMENTARY INFORMATION: The entire meeting will be devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on tactical intelligence information handling systems.

Date: September 19, 1988.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88–21634 Filed 9–21–88; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

[CFDA 84.072A]

Notice Inviting Applications for New Awards Under the Indian Education Act of 1988; Indian-Controlled Schools for Fiscal Year 1989

Purpose: Provides grants for educational enrichment projects designed to meet the special educational and culturally related academic needs of Indian children in Indian-controlled elementary and secondary schools or local educational agencies.

Deadline for Transmittal of Applications: December 9, 1988.

Applications Available: October 14, 1988.

Available Funds: The appropriations conference committee agreed to an appropriation of $3,500,000 for this program for fiscal year 1989. Approximately $3,400,000 will be available for new awards. The appropriations bill must still be passed by the Congress and signed by the President.

Estimated Range of Awards: $70,000—$305,000.

Estimated Average Size of Awards: $136,000.

Estimated Number of Awards: 25.

Project Period: 12 or 24 months. It is anticipated that approximately 50 percent of the awards will be approved for 24 months.

Applicable Regulations: (a) The Indian Education Program Regulations, 34 CFR Parts 250 and 253, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 80.

For Applications or Information Contact: Elsie Janifer, U.S. Department of Education, 400 Maryland Avenue SW., Room 2166, Washington, DC 20202. Telephone: (202) 732–1918.

Program Authority: 25 U.S.C. 2602(c).

Dated: September 16, 1988.

Beryl Dorsett,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 88–21599 Filed 9–21–88; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84.061A]

Notice Inviting Applications for New Awards Under the Indian Education Act of 1988; Educational Services Projects for Fiscal Year 1989

Purpose: Provides grants (1) to State and local educational agencies, Indian tribes, Indian organizations and Indian institutions to serve Indian children through educational services that are not available in sufficient quantity or quality, and through innovative and exemplary approaches, methods, and techniques in the education of Indian children and (2) for programs that are operated by consortia of Indian tribes or tribal organizations, local educational agencies, and institutions of higher education to reduce dropout rates and encourage Indian students to acquire a higher education.

Deadline for Transmittal of Applications: December 9, 1988.

Deadline for Intergovernmental Review Comments: February 8, 1989.

Applications Available: October 14, 1988.

Available Funds: The appropriations conference committee agreed to an appropriation of $3,710,000 for this program for fiscal year 1989. Approximately $3,010,000 will be available for new awards. The appropriations bill must still be passed by the Congress and signed by the President.

Estimated Range of Awards: $78,000–$226,000.

Estimated Average Size of Awards: $131,000.

Estimated Number of Awards: 23.

Project Period: 12 or 24 months. It is anticipated that approximately 50 percent of the awards will be approved for 24 months.

Applicable Regulations: (a) The Indian Education Program Regulations, 34 CFR Parts 250 and 254, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, 79, and 80.

For Application or Information Contact: Elsie Janifer, U.S. Department of Education, 400 Maryland Avenue SW., Room 2166, Washington, DC 20202. Telephone: (202) 732–1918.

Program Authority: 25 U.S.C. 2621(a)(2), (c).

Dated: September 16, 1988.

Beryl Dorsett,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 88–21600 Filed 9–21–88; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84.062A]

Notice Inviting Applications for New Awards Under the Indian Education Act of 1988 Educational Services Projects for Fiscal Year 1989

Purpose: Provides grants to Indian tribes, Indian organizations, and Indian institutions for educational services projects designed to improve educational opportunities for Indian adults.

Deadline for Transmittal of Applications: December 9, 1988.

Deadline for Intergovernmental Review Comments: February 8, 1989.

Applications Available: October 14, 1988.

Available Funds: The appropriations conference committee agreed to an appropriation of $4,000,000 for this program for fiscal year 1989. Approximately $3,800,000 will be available for new awards. The appropriations bill must still be passed by the Congress and signed by the President.

Estimated Range of Awards: $35,000–$316,000.

Estimated Average Size of Awards: $122,000.

Estimated Number of Awards: 31.

Project Period: 12 to 24 months. It is anticipated that approximately 50 percent of the awards will be approved for 24 months.

Applicable Regulations: (a) The Indian Eduation Program Regulations, 34 CFR Parts 250 and 257, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, 79, and 80.

For Applications or Information Contact: Elsie Janifer, U.S. Department of Education, 400 Maryland Avenue SW., Room 2166, Washington, DC 20202. Telephone: (202) 732–1918.

Program Authority: 25 U.S.C. 2631(b).

Dated: September 16, 1988.

Beryl Dorsett,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 88–21601 Filed 9–21–88; 8:45 am]

BILLING CODE 4000–01–M

National Council on Indian Education; Executive Committee Meeting; Correction

AGENCY: National Advisory Council on Indian Education.

ACTION: Correction for notice of executive committee meeting.

SUMMARY: This notice corrects the location and telephone number for the partially closed Executive Committee meeting for the National Advisory Council on Indian Education which was printed on September 9, 1988, in 53 FR, Vol. 53, No. 175, page 35106. This document is intended to notify the general public that the meeting will be in Denver, Colorado at the LaQuinta Motor Inn-Airport and the correct telephone number is 303/371–5640.

ADDRESS: LaQuinta Motor Inn-Airport, 3975 Peoria Way, Denver, Colorado 80239 (303/371–5640 or 800/531–5900).

FOR FURTHER INFORMATION CONTACT: Gloria Duus, Acting Executive Director, National Advisory Council on Indian Education, 330 C Street, SW, Room 4072, Switzer Building, Washington, DC 20202–7556, (202/732–1353).

Date: September 19, 1988. Signed at Washington, DC.

Gloria Duus,

Acting Executive Director, National Advisory Council on Indian Education.

[FR Doc. 88–21847 Filed 9–21–88; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Procurement and Assistance Management Directorate; Determination of Noncompetitive Financial Assistance

AGENCY: Department of Energy (DOE).

ACTION: Notice of intent.

SUMMARY: DOE announces that, pursuant to 10 CFR 600.7(b)(2), it intends to renew, on a noncompetitive basis, a grant to Atlanta University to support the institution's efforts in improvement of the administrative infrastructure of the University's Center for Computational Sciences.

The grant is being renewed for a one-year period, effective September 30, 1988. DOE support is estimated at $164,369 with the institution cost sharing $105,379.

Procurement Request No.: 05–88OR21700.001.

Project Scope: This grant renewal will allow the recipient to continue efforts in improving the administrative infrastructure of the University's Center for Computational Sciences and, additionally, enhance the pool of minorities pursuing careers in this area of science. Objectives of the project are to improve technical support services; improve grants and fiscal management; augment library holdings and search capabilities; decentralize administrative polices and procedures; and enhance recruitment efforts. Accomplishments during the initial phase of the project

indicate that Atlanta University will successfully achieve these objectives with continued DOE funding and that competition for support would result in considerable delay in achieving some of the results anticipated during the upcoming phase of the project as well as inhibit the objectives of the DOE Minority Educational Institutional Assistance Program. Award is therefore restricted to Atlanta University.

FOR FURTHER INFORMATION CONTACT: Rufus H. Smith, DOE Project Officer, Personnel and Management Evaluation Division, Oak Ridge Operations, U.S. Department of Energy, P.O. Box 2001, Oak Ridge, TN 37831–8790, (615) 576–4988.

Issued at Oak Ridge, Tennessee, on September 15, 1988.

Peter D. Dayton,

Director, Procurement and Contracts Division, Oak Ridge Operations.

[FR Doc. 88–21688 Filed 9–21–88; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award to the State of Oregon, Department of Geology and Mineral Industries

AGENCY: Department of Energy, Idaho Operations Office.

ACTION: Notice of acceptance of an unsolicited application for a financial assistance award.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.14(e)(1), the U.S. Department of Energy (DOE), Idaho Operations Office gives notice that it plans to award on a noncompetitive basis, a $200,000 grant to the State of Oregon, Department of Geology and Mineral Industries (DOGAMI), 910 State Office Building, Portland, OR 97201. The pending award is based on an "Investigation of Thermal Regime of the Volanic Axis of the High Cascades, Oregon." The proposed grant will be a continuation of work previously performed by DOGAMI. The participant will obtain temperature gradient, heat flow, and hydrologic information along the axis of Cascade volcanism. Competing this effort would have a significant adverse effect on continuity of ongoing studies. The applicant has exclusive capability because of its previous effort to perform successfully the activity.

FOR FURTHER INFORMATION CONTACT: Trudy A. Thorne, Contract Specialist, U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402. Telephone: (208) 526–9519.

H. Brent Clark,

Director, Contracts Management Division, Idaho Operations Office.

[FR Doc. 88–21689 Filed 9–21–88; 8:45 am]

BILLING CODE 6450–01–M

Grants; Geothermal Resources Council

AGENCY: Department of Energy.

ACTION: Intent to Negotiate a Grant—Geothermal Resources Council, Grant No. DE–FG07–88ID12787.

SUMMARY: Establishment and Development of the International Geothermal Association. The U.S. Department of Energy (DOE), Idaho Operations Office (ID), intends to negotiate on a noncompetitive basis with Geothermal Resources Council (GRC)—P.O. Box 1350, Davis, CA 95617.

GRC shall promote the sale of U.S. goods and services to the international market through providing support toward the development of the International Geothermal Association. This shall include providing support to continue organizational efforts; to help in the drafting of a character and the approval thereof; and to select a location, preferable in Davis, California, to establish a secretariat. This action is to promote the sale of U.S. goods and services and will 1) comply with the requirement of the 1983 Renewable Energy Industry Development Act, 2) provide U.S. Companies easier access to international markets, 3) continue to keep the U.S. the focal point of knowledge on geothermal energy, 4) make the U.S. the center of geothermal education and research, and 5) help strengthen the U.S. worldwide leadership position in geothermal development.

The anticipated amount of the Grant is $28,300. GRC is obtaining support from other parties also to fund the total anticipated two year cost of $213,000. A Determination of Noncompetitive Financial Assistance (DNCFA) has been approved in accordance with DOE Financial Assistance Rules 10 CFR Part 600.7(b) (2)(i)(B) and (D); (B) the activity(ies) is (are) being or would be conducted by the applicant using its own resources or those donated or provided by third parties; however, DOE support of the activity would enhance the public benefits to be derived and DOE knows of no other entity which is conduction or is planning to conduct such an activity(ies); (D) the applicant has exclusive domestic capability to perform the activity successfully based upon unique equipment, proprietary data, technical expertise, or other such unique qualifications.

Public response may be addressed to the contract specialist stated below.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402, T. Wade Hillebrant, (208) 526–0547.

H. Brent Clark,

Director, Contracts Management Division.

[FR Doc. 88–21690 Filed 9–21–88; 8:45 am]

BILLING CODE 6450–01–M

Procurement and Assistance Management Directorate; Determination of Noncompetitive Financial Assistance

AGENCY: Department of Energy (DOE).

ACTION: Notice of intent.

SUMMARY: DOE announces that, pursuant to 10 CFR 600.7(b)(2), it intends to renew, on a noncompetitive basis, a grant to Texas A&I University to support the institution's efforts in strengthening the infrastructure and research activities of the South Texas Energy Research and Development (STERAD) Center.

The grant is being renewed for a one-year period, effective September 30, 1988. The total estimated cost is $345,955, which consists of DOE funding in the amount of $146,010 and recipient cost sharing of $199,945.

Procurement Request No.: 05–880R21703.001.

Project Scope: This grant renewal will allow the recipient to pursue its goal to promote energy-based science and technology research and development efforts at the University and the South Texas region and thereby increase the pool of minorities pursuing research careers in these areas. During this phase of the project, the recipient will focus on finalizing improvements to administrative procedures and target specific areas of research for development within the STERAD Center. Accomplishments during the initial phase of the project indicate that Texas A&I University will successfully achieve these objectives with continued DOE funding and that competition for support would result in considerable delay in achieving some of the results anticipated during the upcoming phase of the project as well as inhibit the objectives of the DOE Minority Educational Institution Assistance Program. Award is therefore restricted to Texas A&I University.

FOR FURTHER INFORMATION CONTACT: Rufus H. Smith, DOE Project Officer, Personnel and Management Evaluation

Division, Oak Ridge Operations, U.S. Department of Energy, P.O. Box 2001, Oak Ridge, TN 37831–8790, (615) 576–4988.

Issued at Oak Ridge, Tennessee, on September 15, 1988.

Peter D. Dayton,

Director, Procurement and Contracts Division, Oak Ridge Operations.

[FR Doc. 88–21691 Filed 9–21–88; 8:45 am]

BILLING CODE 6450–01–M

Bonneville Power Administration

Snohomish County Support Transmission Project; Floodplain Action

AGENCY: Bonneville Power Administration (BPA), DOE

ACTION: Notice of proposal to construct a transmission line within the Snohomish River floodplain, Snohomish County, Washington.

SUMMARY: To increase the capacity of the electrical transmission system serving Snohomish County, Washington, BPA is proposing to replace one of its 115-kilovolt (kV) transmission lines between Snohomish Substation and Beverly Park Substation (near Everett) with a double-circuit 230-kV line. A 1.8-mile length of the proposed project would be located within the 100-year floodplain of the Snohomish River.

FOR FURTHER INFORMATION CONTACT: Anthony R. Morrell, Assistant to the Administrator for Environment, Bonneville Power Administration, P.O. Box 3621–AJ, Portland, Oregon 97208; telephone (503) 230–5136. Information may also be obtained from Mr. Terence G. Esvelt, Puget Sound Area Manager, 2091 Queen Anne Avenue North, Suite 400, Seattle, Washington, 98109–1030, 206–442–4130.

SUPPLEMENTARY INFORMATION: The existing 115–kV transmission line that would be removed is supported on H-frame wood pole structures. It would be replaced with two 230-kV lines on one set of single-pole tubular steel structures. Crossing the Snohomish River floodplain is unavoidable because Snohomish Substation and Beverly Park Substation are on opposite sides of the floodplain. The proposed route uses an established utility corridor across the floodplain, thereby combining utility rights-of-way, and is the shortest, most direct route possible. Crossing the floodplain at a narrower location would require a roundabout route more disruptive of land uses and scenery. An environmental assessment (EA) is being prepared to fully evaluate the potential impacts of the proposed project and appropriate alternatives. The EA will be distributed in September 1988 for public review.

Issued in Portland, Oregon on September 15, 1988.

John S. Robertson,

Deputy Administrator.

[FR Doc. 88–21692 Filed 9–21–88; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

Final Consent Order With Anchor Gasoline Corp.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Final action on proposed consent order.

SUMMARY: The Department of Energy (DOE) has determined that a proposed Consent Order with Anchor Gasoline Corporation, including its wholly owned subsidiary, Canal Refining Company, (Anchor), which was published for comment in 53 FR 22694 (June 17, 1988), shall be made final with certain modifications. The Consent Order resolves matters relating to Anchor's compliance with the federal petroleum price regulations for the period August 19, 1973, through January 27, 1981. To resolve these matters, Anchor will pay a minimum of $9 million plus interest, as well as specified percentages of its annual adjusted net income for the next four consecutive fiscal years beginning May 1, 1989, The percentages of its annual adjusted net income which Anchor must pay range up to 50% of all adjusted net income in excess of $5 million.

FOR FURTHER INFORMATION CONTACT: Office of Chief Counsel for Enforcement Litigation, Economic Regulatory Adminstration, RG–30, U.S. Department of Energy, Washington, DC 20585 (202) 586–8900.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Comments
III. Analysis of Comments
IV. Modifications
V. Decision

I. Introduction

On June 17, 1988, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) published Notice in the **Federal Register,** Vol. 53 at page 22694 announcing the execution of a proposed Consent Order between DOE and Anchor which would resolve matters relating to Anchor's compliance with federal petroleum price regulations for the period August 19, 1973, through January 27, 1981. 53 FR 22694 (June 17, 1988). The Consent Order, which requires Anchor to pay a minimum of $9 million plus interest, as well as specified percentages of its annual adjusted net income for the next four consecutive years beginning May 1, 1989, is for the settlement of Anchor's maximum potential liability of approximately $54 million. Under the terms of the Consent Order, Anchor will pay $5 million ($5,000,000) to DOE within ten (10) days after the effective date of the Consent Order. Two million dollars ($2,000,000) will be paid on or before October 1, 1988, plus interest of 8.67% per annum on the unpaid balance of the $2,000,000 accrued from the effective date of the Consent Order. Seven hundred fifty thousand dollars ($750,000) will be paid on or before September 1, 1990, plus interest at the rate of 8.67% per annum on the unpaid balance accrued from the effective date of the Consent Order. Additionally, a minimum participation payment of one million two hundred fifty thousand dollars ($1,250,000) will be paid no later than September 1, 1994. Anchor will also pay specific percentages of its adjusted net income in excess of a prescribed minimum amount for the next four consecutive fiscal years beginning May 1, 1989. Anchor's total payment will not exceed $30 million. After the initial payment is made, ERA will petition the DOE's Office of Hearings and Appeals (OHA) pursuant to 10 CFR Part 205, Subpart V for appropriate distribution of the monies paid.

The June 17, 1988 Notice provided in detail the bases for ERA's preliminary view that the settlement is favorable to the government and in the public interest. The Notice solicited written comments from the public relating to the terms and conditions of the settlement and whether the settlement should be made final. The Notice also announced a public hearing for the purpose of receiving oral presentations on the settlement. The hearing was held on July 18, 1988, at the headquarters of DOE in Washington, DC.

II. Comments

ERA received four written comments, and two oral presentations were made at the July 18, 1988, public hearing. All of the written and oral comments were considered in making the decision as to whether the proposed Consent Order should be made final.

The written and oral comments addressed two principal subject categories. Written comments from the State of California addressed only the ultimate distribution of the Anchor

settlements funds. Written and oral comments on behalf of OXY USA Inc., formerly Cities Service Oil and Gas Corporation (hereinafter Cities), and written comments submitted by Kern Oil and Refining Corporation (Kern), and LaJet Petroleum Corporation and Texas Napco (LaJet), addressed only paragraph 503(a) of the Proposed Consent Order, which states the agreement of Anchor and the ERA to move jointly to expunge a magistrate's Report and Recommendation (hereinafter Recommendation) filed April 27, 1988, in *Canal Ref. Co. v. U.S. Dept. of Energy*, C.A. No. 87–C–294–E (N.D. Okla.) (hereinafter *Canal*). Oral comments on behalf of certain unspecified utilities, transporters and manufacturers addressed both matters.

III. Analysis of Comments

The June 17, 1988, Notice solicited written comments and provided for a public hearing to enable the ERA to receive information from the public relevant to the decision as to whether the proposed Consent Order should be made final as proposed, modified or rejected. To ensure public understanding of the bases for the proposed settlement, the June 17, 1988, Notice provided information regarding Anchor's potential overcharge liability and the considerations governing the ERA's preliminary agreement with the proposed terms. This settlement information enabled the public to address more specifically the areas in which questions or concerns may have existed.

A. Distribution of Refunds

The June 17, 1988, Notice (Notice) indicated ERA's determination that 60% of the funds remitted pursuant to the proposed Consent Order were attributable to alleged crude oil violations, to be distributed by OHA in accordance with the provisions of the Final Settlement Agreement in the Stripper Well case, *In re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. 378 (D. Kan.) (*Stripper Well Agreement*). Moreover, the Notice indicated ERA's determination to petition the OHA to distribute the remaining 40% of any amounts paid under the settlement to purchasers of Anchor's refined petroleum products who may have been harmed by the alleged regulatory violations. The State of California agreed with the attribution but urged that the text of the proposed Consent Order should include express reference to the fact that distribution by OHA of the 60% of the funds paid would be in accordance with the *Stripper Well Agreement*. Inasmuch as the manner of distribution of monies received by the DOE which are attributable to crude oil violations is already governed by the *Stripper Well Agreement* and is not the subject of a bargaining process, the DOE believes it is unnecessary to include such matters as a specific provision in a negotiated Consent Order.

The representative of certain unspecified utilities, transporters and manufacturers (hereinafter collectively referred to as end users) argued that because, in his view, the liability of Anchor relating to crude oil is much higher than $20 million (more precisely, $19.5 million, as discussed in the Notice) and bears a lower litigation risk than the case pending against Anchor, which involves refined petroleum products, at least 80%, or perhaps as much as 100%, of the steelement monies paid should be attributed to the crude oil voilations.

ERA's attribution of portion of the settlement monies to refined product and crude oil transactions was the result of consideration of the various litigation risks associated with the different cases, the linkage of certain refined product issues which would distinctly alter dollar liability amounts, and the relatively early stage of litigation for many of the refined product issues as compared to the crude oil pricing issues. The attribution urged by the end users, however, is advanced without any factual support. Therefore, the ERA has no reasoned basis to accept the end users' assumption that the crude oil violation amounts are higehr than the amounts discussed in the Notice. In fact, the amount of the alleged crude oil violations was adjudicated by the DOE's Office of Hearings and Appeals (OHA) and affirmed on appeal by the Federal Energy Regulatory Commission (FERC) based on a pricing theory, not based on an entitlements theory, as the end users surmise. *Canal Refining Company*, 37 FERC ¶ 61,329 (1986). The ERA does not beleive any persuasive evidence has been offered by counsel for end users to alter ERA's attribution of settlement proceeds to the refined product and curde oil issues. In any event, the OHA may ultimately decide the proration of the distribution. Moreover, no other objection to the attribution of 60% for alleged crude oil violations and the remaining 40% for alleged violations attributable to refined product sales as discussed in the Notice.

B. Paragraph 503(a)

Pursuant to paragraph 503(a) of the Proposed Consent Order, DOE and Anchor agreed to file a joint motion to expunge a magistrate's Recommendation which was filed April 27, 1988, in *Canal Ref. Co. v. U.S. Dept. of Energy*, C.A. No. 87–C–294–E (N.D. Okla.). The DOE received written comments from Cities, Kern, and LaJet, and oral comments from Cities, objecting to this provision of the proposed Consent Order. Oral comments were received from the representative of the end users, who also objected to this proposed Consent Order provision but urged a rationale entirely different from Cities, Kern, and LaJet.

In its lengthy oral and written comments regarding paragraph 503(a), Cities essentially argued, as did Kern and LaJet, that expunction of the Magistrate's Recommendation from the official docket in the *Canal* case would be contrary to basic Constitutional percepts and sound public policy. These general arguments, however, beg the very specific issues presented by this proposed Consent Order.

First, the only issue raised is whether the DOE should file the "joint motion" with the United States District Court for the Northern District of Oklahoma.[1] It would be for the court to determine whether or not the DOE's position requesting expunction is or is not contrary to sound public policy.

Second, the question presented to the court would be whether the peculiar circumstances presented by the Magistrate's Recommendation warrant an exercise of the court's inherent authority to supervise what properly constitutes the official record maintained by the clerk, as is the case with all motions for expunction, which are not uncommon.

Third, and most important, the DOE believes that its position on the motion is sound because Cities itself has already created the very mischief about which the parties were concerned, by *misciting* that Recommendation as "authority" in other proceedings. See letter dated April 29, 1988, from Mary Anne Sullivan to George Breznay, submitted in *Cities Service Company*, Case No. HRO–0285, pending before the Office of Hearings and Appeals.[2]

Nevertheless, the representative of certain unspecified end users contends that filing the motion to expunge could constitute an acknowledgment that the

[1] Despite the expression of conflicting opinions by various commenters in this proceeding, the pertinent subject in this proceeding in *not* the substantive infirmity of the Magistrate's Recommendation.

[2] The ERA also notes that Kern's written comments in the present proceeding mischaracterize the Magistrate's Recommendation as "adverse precedent." Comments of Kern Oil & Refining Co., July 14, 1988.

Recommendation itself would be injurious to the DOE's other litigation. The DOE disagrees. Rather, the joint motion is based on the recognition that the misrepresentation by others that the Recommendation has judicial effect or weight, when, as a matter of law, it has none, can be injurious.

In its oral presentation at the hearing and in its written comments, Cities also suggests that expunction is unnecessary because a remedy for abuse already exists: the other forum in which a miscitation might be presented could discipline offending members of the bar. In light of Cities' own misuse of the Recommendation before the Office of Hearings and Appeals, for the purpose of misleading that tribunal in its own case, the self-interested motivation for this comment is apparent.

As a theoretical matter, however, Cities' argument is not wholly without appeal. Nevertheless the reality is that other fora are likely to be saddled with the same disciplinary burdens unless the material is expunged from the docket of origin. Where there is actual misuse rather than the mere possibility, the court may, and the DOE believes the court should, decide that it is appropriate to act to prevent adverse consequences for judicial efficiency and economy.

Accordingly, the DOE has concluded that the motion should be filed and the United States District Court allowed to determine whether or not that motion is meritorious.

Finally, Cities argues that the 503(a) provision coupled with the public record of DOE's attempts to settle with Anchor evidence that the proposed settlement with Anchor described in the Notice was not based on Anchor's precarious financial condition, contrary to the ERA's statements in the Notice. Cities states that the public record shows that Anchor and Canal have been attempting to negotiate a settlement with ERA since September 1986, but previously ERA had been unwilling to settle *Canal* on terms that would allow Canal to continue in business. This assertion by Cities is completely false. The ERA has never attempted to negotiate a settlement with Anchor, including its wholly owned subsidiary Canal, that would prevent it from remaining in business. In fact, during the extended period of negotiations, the ERA repeatedly re-evaluated the company's financial conditions in light of changing circumstances in order to reach an agreement which afforded maximum fair recovery for the public by not jeopardizing the continuing operation of Anchor.

IV. Modifications

By agreements made on September 2, and 19, 1988, the parties have added a new paragraph 404(e) and inserted additional language in paragraphs 401 and 404(a). These modifications are explained below, and the paragraphs which are involved are set forth at the end of this notice.

In order to better monitor the status of Anchor's financial condition, the ERA has concluded that the reporting obligations regarding Anchor's financial conditions should be increased. Anchor and DOE have agreed to a modification of Anchor's reporting requirements by adding a new paragraph 404(e) which requires Anchor to provide DOE with quarterly financial reports.

The ERA has also concluded that paragraph 404(a) should be modified so as to make clear that the reduction in the DOE's claim in the event of bankruptcy of either Anchor or Canal relates only to the claim against the party in bankruptcy, and that the obligations prescribed by the Consent Order continue to apply to other parties. This follows from the joint and several nature of the liability of the entities defined collectively as "Anchor" in paragraph 203(c). The agreed modifications of paragraph 404(a) include the insertion of the words "against the party in bankruptcy" after the words "the DOE's claim" and the addition of a new sentence at the end of the paragraph. Additionally, to clarify the application of the definition of "Anchor" in paragraph 203(c) to the payment provisions of part IV of the Consent Order, the parties have agreed to modify paragraph 401 by inserting the phrase ", as defined in paragraph 203(c)(1), (2), and (3)," between the words "Anchor" and "agrees".

V. Decision

By this notice, and pursuant to 10 CFR 205.199J, the proposed Consent Order between Anchor and DOE executed on May 25, 1988, as modified on September 2, 1988, and as modified in two respects on September 19, 1988, is made a final order of the Department of Energy, effective on the date of publication of this notice in the **Federal Register**.

Issued in Washington, DC, on September 19, 1988.

Robert G. Heiss,

Deputy Chief Counsel for Operations, Office of Enforcement Litigation, Economic Regulatory Administration.

Modification to Consent Order

Paragraph 404(e) of the Consent Order is hereby modified in part to read as follows:

404(e). *Quarterly Reports.* Anchor shall provide to the DOE, on its fiscal year quarterly basis, a set of Anchor's internal Consolidated Balance Sheets reflecting Anchor's financial position at the end of each fiscal quarter and of Anchor's internal Consolidated Statements of Operations for each month during the fiscal quarter concerned. These quarterly submissions shall be provided no later than thirty (30) days after the close of each quarter of Anchor's fiscal years during the period from the effective date of this Consent Order to the termination of any payment obligations pursuant to this Consent Order.

Dated: September 1, 1988.

I, the undersigned, a duly authorized representative of Anchor Gasoline Corp. hereby agree to and accept on behalf of Anchor Gasoline Corp. the foregoing modification to paragraph 404(e) of the Consent Order.

David G. Wilson,

Anchor Gasoline Corp.

Dated: September 2, 1988.

I, the undersigned, a duly authorized representative of DOE, hereby agree to and accept on behalf of DOE the foregoing modification to paragraph 404(e) of the Consent Order.

Milton C. Lorenz,

Acting Deputy Administrator, Economic Regulatory Administration.

Modification to Consent Order

Paragraph 404(a) of the Consent Order is hereby modified in part to read as follows:

404(a). *Term of Agreement; Cap for All Payments.* The term of this Consent Order shall expire on the earlier of (i) the date on which the last payment pursuant to paragraphs 402 and 403 is made but in no event prior to September 1, 1993, or (ii) the date on which the firm has paid to the DOE a total of $30 million, exclusive of interest payments, provided, however, that in the event of either Anchor's or Canal's bankruptcy, the DOE's claim against the party in bankruptcy shall be reduced to $9 million, less all prior principal payments made pursuant to paragraphs 402(a) and 403 (a) and (b), plus all accrued unpaid Participation Payments, pursuant to paragraph 403(a), other than unpaid Participation Payments that reflect a failure to comply with the minimum payment requirements of paragraph 403(b), plus all unpaid Participation Payments in Sales or Other Transfers of Assets pursuant to paragraph 403(f), plus accrued unpaid interest. The reduction of the DOE's claim against a party in bankruptcy shall not affect the

obligations of any party not in bankruptcy under this Consent Order.

Dated: September 19, 1988.

I, the undersigned, a duly authorized representative of Anchor Gasoline Corporation, hereby agree to and accept on behalf of Anchor Gasoline Corporation the foregoing modification to paragraph 404(a) of the Consent Order.

David G. Wilson,

Anchor Gasoline Corporation.

Dated: September 19, 1988.

I, the undersigned, a duly authorized representative of DOE, hereby agree to and accept on behalf of DOE the foregoing modification to paragraph 404(a) of the Consent Order.

Robert G. Heiss,

Deputy Chief Counsel for Operations, Office of Enforcement Litigation, Economic Regulatory Administration.

Modification to Consent Order

Paragraph 401 of the Consent Order is hereby modified in part to read as follows:

401. In full and final settlement of all matters covered by this Consent Order, and in lieu of all other remedies which have been or might be sought by the DOE against Anchor for such matters under 10 CFR 205.199J or otherwise, Anchor, as defined in paragraph 203(c)(1), (2) and (3), agrees to pay to DOE not less than nine million dollars ($9,000,000) in the manner specified in the paragraphs below. Payments shall be by wire transfer, pursuant to directions to be provided in a timely manner to Anchor by DOE.

Dated: September 19, 1988.

I, the undersigned, a duly authorized representative of Anchor Gasoline Corporation, hereby agree to and accept on behalf of Anchor Gasoline Corporation, the foregoing modification to paragraph 401 of the Consent Order.

David G. Wilson,

Anchor Gasoline Corporation.

Dated: September 19, 1988.

I, the undersigned, a duly authorized representative of DOE, hereby agree to and accept on behalf of DOE the foregoing modification to paragraph 401 of the Consent Order.

Robert G. Heiss,

Deputy Chief Counsel for Operations, Office of Enforcement Litigation, Economic Regulatory Administration.

[FR Doc. 88-21855 Filed 9-21-88; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 88-54-NG]

Brymore Gas Marketing, Inc.; Application to Extend Blanket Authorization to Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for extension of blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on September 8, 1988, of an application filed by Brymore Gas Marketing, Inc. (BGMI), requesting that the blanket authorization previously granted in DOE/ERA Opinion and Order No. 148 (Order No.148), issued October 3, 1986 (ERA Dkt. No. 86-47-NG), be amended to extend its term for two years commencing on the date of first delivery under the extended import authorization. BGMI's existing blanket import authorization allows it to import up to a maximum of 200 Bcf of Canadian natural gas. Under the extension requested, BGMI would be authorized to import volumes not to exceed in the aggregate 200 Bcf of Canadian natural gas over a two-year period.

Quarterly reports filed with the ERA indicate that BGMI has imported 452 MMcf of natural gas under its current import authorization as of June 30, 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 (October 24, 1988.

FOR FURTHER INFORMATION CONTACT:
Linda Silverman, Natural Gas Division, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room 3F-094, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586-7249
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: BGMI is a Delaware corporation and has its principal place of business in Las Vegas, Nevada. The extension would cover Canadian natural gas imported on a short-term or spot basis by BGMI for resale to, or as agent for, undesignated U.S. purchasers. The specific terms of each import and sale would continue to be negotiated on an individual basis including the price and volumes. BGMI intends to use existing pipeline facilities to transport the gas.

In support of its application, BGMI asserts that the proposed extension of its existing blanket import authorization is not inconsistent with the public interest since the extension requested would assure gas consumers expanded access to competitively-priced Canadian gas.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

The ERA will condition any authorization issued in this proceeding on the filing of quarterly reports to facilitate ERA monitoring of the operation and effectiveness of the blanket program. Further, ERA may determine to start the two-year extension of BGMI's authorization upon the end of its existing authorization rather than upon the date of first delivery under the extension as requested by BGMI.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to inervene 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 3F-056, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.d.t., October 24, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto.

Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of BGMI's, application is available for inspection and copying in the Natural Gas Division Docket Room, 3F-056 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 15, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-21693 Filed 9-21-88; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3451-6]

The Solid Waste Dilemma: An Agenda for Action; Availability of a Draft Report and Announcement of Public Hearings

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability and public hearing dates.

SUMMARY: The Environmental Protection Agency (EPA) announces the availability of a draft report entitled: "The Solid Waste Dilemma: An Agenda for Action." The report is a draft of EPA's reponse to the nation's current solid waste management dilemma. Americans produce increasing amounts of garbage each year. This depletes natural resources used to produce products which become waste and depletes the capacity of facilities to properly handle the waste. Some areas of the nation are quickly running out of landfill space, and the siting of new landfills, incinerators, and recycling facilities is strongly resisted at the local level. EPA's "Agenda for Action" is a national strategy to deal with this problem. It calls for responsible action by all levels of government and by individual and corporate citizens to reduce the amount and toxicity of waste produced and to assume responsibility for waste produced. Consumers need to buy reusable and recyclable, rather than disposable, products. Manufacturers need to make products which, at the end of their useful life, result in waste of lower quantity and toxicity. Waste management costs should not be subsidized; rather, individuals and companies should be charged the full cost of handling the wastes which they generate. EPA solicits public comment on its draft strategy.

DATES: The Agency is seeking comment on the draft Agenda for Action at four public hearings which will be held in Saint Paul, Minnesota on September 27; Washington, DC, on October 12; Long Beach, California on October 12; and Atlanta, Georgia on October 17. EPA is requesting that all written comments be submitted to the Agency on or before November 21, 1988.

ADDRESSES: (1) *Public Hearings.* The public hearings will be held to receive comments on the draft Agenda for Action. Oral and written statements and additional information may be submitted at the public hearings for inclusion in the official record. Oral comments at the hearings should be limited to a maximum of 10 minutes for each participant. Written comments of any length will be accepted. The hearings will begin at 9:00 a.m. (registration will begin at 8:30 a.m.) and will conclude at 6:00 p.m. unless concluded earlier. The hearings will be held in the following locations:

September 27, 1988—The Landmark Center; Saint Paul, Minnesota
October 12, 1988—Sheraton National Hotel;Washington, DC
October 12, 1988—Hotel Queen Mary; Long Beach, California
October 17, 1988—Sheraton Century Center Hotel; Atlanta, Georgia

If you would like to present oral coments at one of the four public hearings, please notify in writing Ms. Gerri Wyer, EPA Municipal Solid Waste Task Force, P.O. Box 7219, Silver Spring, MD 20910 or call Ms Elizabth Oliver (toll-free) at 1-800-458-5886. Individuals will be scheduled on a first-come/first served basis. As time allows, individuals may also sign up during the registration time at the hearings.

The Agency scheduled these hearings in concert with hearings on the recently proposed rule: "Solid Waste Disposal Facility Criteria." That proposed rule deals with the disposal of municipal solid waste and is related to this draft solid waste strategy. The proposed rule and hearings schedule were published last month in the Federal Register. For information on the proposed rule and hearings, see 53 FR 33314-3342 (August 30, 1988).

(2) *Written comments.*—Commenters should send two copies of their comments and/or information to the following address: RCRA Docket Information Center, U.S. EPA (OS-305), 401 M Street SW., Washington, DC 20460. Comments should be identified by the docket reference number F-88-SWDA-FFFFF. The docket is located at EPA Headquarters (sub-basement) and is available for viewing from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding Federal holidays. Docket materials may be reviewed by appointment only. To make appointments, the public should call (202) 475-9327. The public may copy materials from the docket. Copies cost $.15 per page.

Additional Information. EPA developed a report which provides background information for the Agenda for Action. The report, entitled: "Background Document for The Solid Waste Dilemma: An Agenda for Action," is available for purchase from the National Technical Information Service (NTIS) at a cost of $32.95. When

ordering this report, please include the PB order number PB88–251137. Microfiche of the report is available at a cost of $6.95.

In addition, EPA developed appendices, "Appendices A–B–C," which summarize information on different municipal waste materials. These appendices are available from NTIS at a cost of $32.95 and the order number is PB88–251145. Microfiche of the appendices is available at a cost of $6.95.

The Agenda for Action is available from the U.S. EPA at no charge by calling the RCRA Hotline at 1–800–424–9346; in Washington, DC call 382–3000.

SUPPLEMENTARY INFORMATION:

I. Authority

The authority for the activities discussed in this notice are found in the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 *et. seq.* and in the Toxic Substances Control Act, as amended, 15 U.S.C. 2601 *et. seq.*

II. Background

Many areas of the United States are today facing very serious difficulties in safely and efficiently managing municipal solid waste. Americans relentlessly produce more and more solid waste each year. At the same time we generate more waste, we are running out of places to dispose of it. Although solid waste management is primarily a local responsibility, the problem is national in scope. In response to the recent rash of environmental and siting problems, EPA created a Municipal Solid Waste Task Force in February 1988 and directed it to fashion a strategy for improving the nation's management of municipal solid waste. (See **Federal Register**, Volume 53, No. 78, April 22, 1988, pg. 13316–13317.)

The report "The Solid Waste Dilemma: An Agenda for Action," was developed by the Task Force after numerous discussions with State representatives, various industries, environmental and other public interest groups, as well as at three public meetings held in early May, 1988. The report presents the Task Force's draft national action agenda to cope with the burgeoning problems associated with the nation's municipal solid waste.

III. Scope of the Agenda for Action

For purposes of the strategy, the Task Force considered "municipal solid waste" as primarily residential solid waste, with some contribution from commercial, institutional, and industrial sources. Americans generate municipal solid waste at a rate of over 3.5 pounds per capita per day; some 160 million tons nationally in 1986. The primary constituents of municipal solid waste are paper and paperboard, yard waste, food waste, rubber and textiles, metals, plastics, and glass. These and other components are addressed in the report. The report does not attempt to grapple with the issue of infectious waste, as this issue is the exclusive subject of a separate EPA Task Force.

The Municipal Solid Waste Task Force identified several objectives for a national agenda for action to address the municipal solid waste dilemma. These objectives, described below, relate directly to the overall goal of closing the gap between waste generation and safer handling of all wastes. These objectives also highlight the importance of participation and planning in order to achieve both national and local goals for integrated waste management. All parties have action roles and must assume responsibility: manufacturing industries, product distributors (e.g., retailers), the waste management industry, the secondary materials industry, consumers, and all levels of government.

The Objectives are:

1. Increase the waste planning and management information (both technical and educational) available to States, local communities, waste handlers, citizens, and industry.
2. Increase planning by waste handlers, local communities, and States.
3. Increase source reduction activities by manufacturing industry and citizens.
4. Increase recycling by government and individual and corporate citizens.
5. Improve the safety of municipal solid waste combustion.
6. Increase the safety of landfills.

The Agenda for Action discusses the need for "integrated waste management" for local communities. An integrated waste management system will contain some or all of the following components: source reduction, recycling of materials, combustion (incineration), and landfilling. In integrated waste management, all the elements work together to form a complete system for proper management of municipal waste. Every community can "custom-design" its integrated waste management system to emphasize certain management practices, consistent with the community's demographic and waste stream characteristics.

Everyone has a role in making integrated waste management work. Industry has a responsibility to consider source reduction and recyclability in designing products and packaging, and to use secondary materials in their manufacture. Every individual and corporate citizen should assume responsibility for waste disposal and adopt a "pay as you throw" attitude, recognizing and paying the true costs of handling the wastes which the citizen generates.

Units of State and local government are ultimately responsible for managing solid waste and planning the mix of management options that will effectively handle the waste stream. The Federal government should participate in municipal solid waste management by establishing national goals, developing education programs, providing technical assistance, and issuing regulations.

While the Agenda for Action offers a number of concrete suggestions for action by government at all levels, industry, and private citizens, it also underscores the need for a fundamental change in the nation's approach to producing, packaging, and disposing of consumer goods. In the past, "business as usual" has meant an accelerating trend toward disposal products, convenience packaging, and an "out-of-sight, out-of-mind" attitude toward solid waste. As a nation, we can no longer afford this kind of "business as usual."

IV. Issues

EPA is particularly interested in receiving comments and information on the following issues:

(1) *Activities.* The Agenda for Action suggests specific activities to be undertaken. EPA is interested in views on whether these activities are appropriate, whether others should be added, and which activities should be implemented first.

(2) *Toxic Constituents.* Lead and cadmium are heavy metals of particular concern to the Agency. Both have been found in high concentrations in municipal waste combustor ash and lechate from municipal solid waste landfills. EPA solicits information on whether these are appropriate constituents to pursue first and whether there are other toxic constituents to in municipal solid waste the Agency should be particularly concerned about. EPA is interested in the public's view on regulatory and non-regulatory approaches to this problem.

(3) *Heirarchy of Integrated waste Management.* The Agenda for Action discusses the heirarchy of solid waste management options. EPA is intersted in information to determine whether the approach is appropriate and can be applied at the local level.

(4) *Information on Incentive Programs.* The agenda for Action discusses economic incentives to

encourage industries in using or processing secondary materials, or purchasing recycled goods. EPA would welcome information and views on whether such measures would be appropriate and effective.

(5) *Clearinghouse for Information.* Commenters have suggested that EPA should help to establish a clearinghouse of information and assistance on solid waste issues. EPA is interested in pursuing this and solicits comment on how the clearinghouse should be funded (e.g., indusry contributions, fees, etc.). EPA would like information on existing clearinghouses which could serve this function. EPA is also interested in receiving information materials that the clearinghouse could make available to interested parties.

(6) *Operator Certification.* Operator certification programs are important in ensuring safe operation of waste management facilities and in raising public confidence in the protection of public health. The Agency would be interested in views of others regarding EPA's position.

(7) *More Procurement of Recycled Goods.* EPA is interested in the public's view on whether government should give preferential treatment to the procurement of recycled materials so as to help create markets for these goods.

(8) *Government and Industry Roles.* The Agenda for Action discusses the roles of government and industry in the management of municipal solid waste. Are appropriate government/industry roles identified?

(9) *Changes in Current Materials Use Patterns.* EPA solicits information on actions that can be taken to change current materials use patterns of industry and the public to help reduce the amount of solid waste being generated.

(10) *Changes in Packaging Practices to Enhance Recycling.* EPA solicits information on actions that can be taken to encourage industry to change their product lines and packaging practices to enchance recycling and increase the safety of combustion and landfilling.

(11) *Household Hazardous Wastes.* Household hazardous wastes, amounting to something less than 1% of the municipal solid waste stream, is not given a high priority in the Agenda for Action. Is this appropriate?

(12) *Interstate Transport.* Commenters have expressed an interest in possible Federal controls on the interstate transportation of municipal solid waste. EPA desires that local and State governments assume responsibility for the wastes generated within their jurisdictions, but EPA does not believe that this calls for restrictions on the transportation of wastes out of the originating jurisdictions. Such restrictions could stymie the concept of sub-state or multi-state regional solid wastes management solutions, which EPA also encourages. Thus, the Agenda for Action does not call for a Federal role regarding interstate transport of solid waste. Rather, EPA intends that sound State and regional planning should provide a framework within which interstate transportation can occur in an organized and logical manner to provide for proper handling of the waste. EPA is interested in the views of others on this position.

J. Winston Porter,

Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 88-21697 Filed 9-21-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[DA-88-1445]

Advisory Committee on Advanced Television Service Implementation Subcommittee

September 16, 1988.

A meeting of the Implementation Subcommittee of the Advisory Committee on Advanced Television Service will be held on: October 13, 1988, 2:30 p.m., Commission Meeting Room (Room 856), 1919 M Street NW., Washington, DC.

The agenda for the meeting will consist of:

1. Introduction—Chairman Tietjen
2. Approval of Minutes of Last Meeting
3. Report of Working Party 1; Policy and Regulation—Mr. Charles Jackson
4. Report of Working Party 2, Transition Scenarios—Mr. J. Peter Bingham
5. General Discussion
6. Other Business
7. Date and Location of Next Meeting
8. Adjournment.

All interested persons are invited to attend. Those interested also may submit written statements at the meeting. Oral statements and discussion will be permitted under the direction of the Implementation Subcommittee Chairman.

Any questions regarding this meeting should be directed to Dr. James J. Tietjen at (609) 734-2237 or David R. Siddall at (202) 632-7792.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-21607 Filed 9-21-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200153.

Title: San Francisco Terminal Agreement.

Parties:

Port of San Francisco
Stockton Terminal and Eastern Railroad Company (ST&E)

Synopsis: The agreement provides for the operation by ST&E of an inland annex to the Port on property leased by the Port in San Joaquin County, California. ST&E will provide inland receiving, delivery, storage, transloading, rail transfer, manipulation, consolidation and distribution services on foreign shipments moving through the Port's terminal facilities. The underlying lease agreement is filed and incorporated as a part of this agreement.

Agreement No.: 224-003856-002.

Title:

Atlantic and Gulf Terminal Conferences
Discussion Agreement

Parties: Mid-Gulf Seaports Marine Terminal Conference Terminal Operations Conference of Hampton Roads South Atlantic Marine Terminal Conference.

Synopsis: The proposed agreement is to permit Agreement No. T-3856 to continue in effect for an indefinite period.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: September 19, 1988.

[FR Doc. 88-21670 Filed 9-21-88; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interstate parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments and protests are found in § 560.7 and/or 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–200152.

Title: Puerto Rico Ports Lease Agreement.

Parties:

Puerto Rico Ports Authority (Port)
Island Stevedoring, Inc. (Lessee)

Filing Party: Zulma Rivera Colon, Contract's Supervisor, Puerto Rico Parts Authority, Apartado 2829, San Juan, Puerto Rico 00936.

Synopsis: The proposed agreement authorizes the lease of certain property (Pier D) at the Port to Lessee for its stevedoring operation.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: September 19, 1988.

[FR Doc. 88–21671 Filed 9–21–88; 8:45 am]

BILLING CODE 6730–01–M

GENERAL SERVICES ADMINISTRATION

Performance Review Board; Membership; Senior Executive Service

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Gregory Knott, Deputy Director of Personnel, General Services Administration, 18th and F Street NW., Washington, DC 20405 (202) 566–0398.

SUPPLEMENTARY INFORMATION: Section 4313(c)(1) through (5) of Title 5 U.S.C. requires each agency to establish in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The boards shall review the performance rating of each senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

The members of the Performance Review Board are:

1. David F. Godfrey, Acting Chief of Staff.
2. Robert C. MacKichan, Jr., General Counsel.
3. Francis A. McDonough, Deputy Commissioner for Federal Information Resources Management.
4. George P. Cordes Regional Administrator, Region 3.
5. Roger D. Daniero, Deputy Commissioner, Federal Supply Service.
6. Richard M. Hadsell, Regional Administrator, National Capital Region.
7. Duncan L. Howard, Commissioner, Public Buildings Service.
8. Earl E. Jones, Commissioner, Federal Property Resources Service.
9. Patricia A. Szervo, Commissioner, Information Resources Management Service.

Dated: September 16, 1988.

Gregory L. Knott,

Deputy Director of Personnel.

[FR Doc. 88–21619 Filed 9–21–88; 8:45 am]

BILLING CODE 6820–81–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N–0321]

International Drug Scheduling; Convention on Psychotropic Substances; Stimulant Substances, Certain Nonbarbiturate Sedatives, Certain Agonist/Antagonist Substances

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing interested persons with the opportunity to submit written comments and to request an informal public meeting concerning recommendations by the World Health Organization (WHO) to impose international manufacturing and distributing restirctions, pursuant to international treaties, on certain drug substances. The comments received in response to this notice and/or public meeting will be considered in preparing the U.S. position on these proposals for a meeting of the Commission on Narcotic Drugs (CND) in Vienna, Austria, in February 1989. This notice is issued pursuant to the Controlled Substances Act.

DATES: Comments by October 24, 1988. Requests for a public meeting and the reasons for such a request by October 7, 1988.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Requests for a public meeting and the reasons for such a request to Nicholas P. Reuter, Office of Health Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nicholas P. Reuter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION:

I. Background

The United States is a party to the 1971 Convention on Psychotropic Substances (the Convention). Article 2 of the Convention provides that if WHO has information about a substance which in its opinion may require international control or change in such control, it shall so notify the Secretary-General of the United Nations and provide the Secretary-General with information in support of its opinion. Section 201(d)(2)(A) of the CSA [21 U.S.C. 811(d)(2)(A)] provides that when the United States is notified under Article 2 of the Psychotropic Convention that the CND proposes to decide to add a drug or other substance to one of the schedules of the Convention, transfer a drug or substance from one schedule to another, or delete it from the schedules, the Secretary of State must transmit the notice to the Secretary of Health and Human Services (HHS). The Secretary of HHS must then publish the notice in the Federal Register and provide opportunity for interested persons to submit comments to assist HHS in preparing a scientific and medical evaluation concerning the international scheduling of the drug or substance.

In 1987, the Secretary received such a notification on 14 drug substances. A

notice published in the **Federal Register** of June 30, 1987 (52 FR 24344) solicited information on these substances that was eventually forwarded to WHO. This information was used by WHO to prepare reports on each substance. These reports were deliberated by WHO's 25th Expert Committee on Drug Dependence (ECDD) in April 1988. As detailed below, the ECDD recommended no change in the international scheduling status of 12 substances but recommended that two substances be added to the schedules of the Convention on Psychotropic Substances.

A. Substances Reviewed and Not Recommended for Control

The 25th session of the ECDD, which met April 18 through 22, 1988, decided not to recommend changing the international scheduling status of the following 12 substances: Bromisoval, butorphanol, carbromide, clonidine, dezocine, meptazinol, methaqualone, nalbuphine, pentazocine, paraldehyde, propylhexedrine, and pyrovalerone. The United States is not required to take any further action on these substances.

B. Substances Reviewed and Recommended for Control

1. Pemoline.

WHO has recommended that pemoline be added to Schedule IV of the Psychotropic Convention. Pemoline is marketed in the United States and is currently controlled in schedule IV of the CSA. The drug substance was previously evaluated for international control, beginning in 1983 (see 48 FR 41096, September 13, 1983; 49 FR 29273, July 19, 1984; and 50 FR 36486, September 6, 1985).

2. Buprenorphine.

WHO has recommended that buprenorphine be added to schedule III of the Psychotropic Convention. Buprenorphine is commercially available in the United States in an injectable formulation and is controlled under the CSA in schedule V. Buprenorphine belongs to a class of compounds called the agonist/antagonists which were reviewed by WHO in 1981, and 1982 through 1984 (see 46 FR 21447, April 10, 1981; 47 FR 38407, August 31, 1982; and 48 FR 37714, August 19, 1983).

The full text of the notification from the Secretary-General of the United Nations is provided below in section II of this notice. Section 201(d)(2)(B) of the CSA (21 U.S.C. 811(d)(2)(B)) requires the Secretary of HHS, after receiving a notification proposing scheduling to publish a notice in the **Federal Register**, to provide the opportunity for interested parties to submit information and comments on the proposed scheduling action.

II. United Nations Notifications

The formal United Nations notifications which identify the two drug substances and explain the basis for the recommendations are reproduced below.

A. Notification on Buprenorphine
Reference:

NAR/CL.18/1988
DND 411/1(2) WHO/ECDD 25

The Secretary-General of the United Nations presents his compliments to the Secretary of State of the United States of America and has the honor to inform the Government that the World Health Organization, pursuant to article 2, paragraphs 1 and 4, of the Convention on Psychotropic Substances, has notified the Secretary-General by note dated June 20, 1988 that it is of the opinion that 21-cyclopropyl-7-α-[(*S*)-1-hydroxy-1,2,2-trimethylpropyl]-6,14-*endo*-ethano-6,7,8,14-tetrahydrooripavin (hereinafter referred to as buprenorphine) should be included in Schedule III of that Convention.

In accordance with the provisions of article 2, paragraph 2, of the Convention, the Secretary-General hereby transmits the text of this notification as annex I to the present note.

The Director-General of the World Health Organization, in connection with this notification, has also submitted advance excerpts from the report of the Twenty-fifth WHO Expert Committee on Drug Dependence (April 18–23, 1988) which reviewed, *inter alia*, the substance buprenorphine. The excerpts from that report are hereby transmitted as annex II.

In accordance with the provisions of article 2, paragraph 2, of the Convention on Psychotropic Substances, the notification from the World Health Organization will be brought to the attention of the Commission on Narcotic Drugs at its next session in February 1989. Any action or decision taken by the Commission with respect to this notification, pursuant to article 2, paragraph 5, of the Convention, will be notified to States Parties in due course. Article 2, paragraph 5, reads as follows:

The Commission, taking into account the communication from the World Health Organization, whose assessments shall be determinative as to medical and scientific matters, and bearing in mind the economic, social, legal, administrative and other factors it may consider relevant, may add the substance to Schedule I, II, III, or IV. The Commission may seek further information from the World Health organization or from other appropriate sources.

Attention is drawn to the fact that by note NAR/CL.6/1987 dated May 13, 1987 the Secretary-General had already requested information on buprenorphine. In view of the notification from WHO, any additional up-dated information of the substance would be useful.

In order to assist the Commission in reaching a decision, it would moreover be appreciated if any economic, social, legal, administrative or other factors the Government may consider relevant to the question of the possible scheduling of buprenorphine could be communicated to the Secretary-General, c/o the Division of Narcotic Drugs, P.O. Box 500, A–1400 Vienna, Austria, by October 10, 1988.

Annex I

Note dated 20 June 1988 addressed to the Secretary General by the Director-General of the World Health Organization

The Director-General of the World Health Organization presents his compliments to the Secretry-General of the United Nations and has the honour to inform him that the World Health Organization, in conformity with Article 2, paragraphs 1 and 4 of the 1971 Convention on Psychotropic Substances, has reviewed information pertaining to 21-cyclopropyl-7-alpha-[(*S*)-1-hydroxy-1,2,2-trimethylpropyl]-6,14-*endo*-ethano-6,7,8,14-tetrahydrooripavine, and referred to as buprenorphine.

Buprenorphine meets the criteria of Article 2, paragraph 4 of the Convention, and there is sufficient evidence that the substance is, or is likely to be abused so as to constitute a public health and social problem warranting placing it under international control.

Therefore, the World Health Organization recommends that buprenorphine be added to Schedule III of the Convention on Psychotropic Substances, 1971.

Annex II

Summary of the Recommendations arising out of the 25th Expert Committee on Drug Dependence

The 25th ECDD met at headquarters between April 18–23, 1988. Since the report of this meeting will be published in due course of time in T.R. Series, this paper gives details of the recommendations made to the Director-General of WHO.

4.2 Buprenorphine

4.2.1 Substance identification

Buprenorphine (INN, CAS 52485–79–7), chemically 21-cyclopropyl-7-alpha-[(*S*)-1-hydroxy-1,2,2-trimethylpropyl]-6,14-*endo*-ethano-6,7,8,14-tetrahydrooripavine, is also known as Temgestic and Buprenex. Its structure is closely related to that of acetorphine and etorphine (controlled under Schedule I and IV of the Single Convention), but can not be easily converted into them. The number of theoretically possible stereoisomers is 128, but only two of them have been reported.

4.2.2 Similarity to already known substances and effects on the central nervous system

Buprenorphine can be classified pharmacologically as a partial-mu opioid receptor agonist; it is claimed that it also has antagonist activity at the kappa opioid receptor. It s analgesic potency is estimated to be 25 to 40 times that of morphine. The duration of action is longer probably because of the tighter receptor binding. With respect to both analgestic and subjective effects and respiratory depression there appears to be a ceiling effect so that as the dose is further increased there is not a proportionate increase in agonists effects. Respiratory depression cannot be reversed by the usual clinical doses of naloxone, but based on clinical reports it probably can be antagonized by very high doses of naloxone. Its pattern of subjective and side effects resembles those of low doses of full mu-agonist opioid drugs. However, dissimilarities between buprenorphine and prototypic mu-agonists such as morphine, methodone and meperidine are also worthy of note including the differences in the time course and intensity of physical dependence.

The drug has low degree of bioavailability after oral administration because of extensive first pass metabolism in the liver. It is promptly and well absorbed after sublingual administration, an important consideration in its clincial use as an analgesic.

4.2.3 Dependence potential

Buprenorphine precipitates a withdrawal syndrome in morphine-dependent monkeys and produces partial suppression or withdrawal signs in morphine-dependent monkeys only after 15 hours of withdrawal. Buprenorphine is self-administered by the monkey. Neither abrupt withdrawal nor challenges with the pure opiate antagonist, naloxone, produced an abstinence syndrome in monkeys chronically treated with buprenorphine. In man, little or no withdrawal is observed over the first 48 hours after the drug is discontinued, only mild signs of abstinance are noted from the third to the tenth day of drug withdrawal. In one study, among a few subjects, relatively marked withdrawal effects including nausea, vomiting, restlessness, insomnia, and diarrhoea were noted on the fourteenth day. Naloxone in doses up to 4 mg does not precipitate buprenorphine withdarwal in subjects given the buprenorphine chronically. Clinical reports suggest that higher doses of naloxone can reverse the effects of buprenorphine and, theoretically, should precipitate withdrawal. When buprenorphine has been administered to heroin addicts who are then challenged with large parenteral doses of prototypic mu agonists, the subjective effects of the latter are markedly attenuated, probably because buprenorphine on the nu receptors acts as an antagonist.

4.2.4 Actual abuse and/or liability (likelihood of abuse)

Abuse of buprenorphine has been reported in the medical and scientific literature in the United Kingdom, West Germany, New Zealand and Australia, and in the newspapers in Italy, Spain, Finland and Ireland. While most of these instances involved misuse by injection of buprenorphine by heroin addicts, members of the Committee were aware of some instances when buprenorphine was misused by individuals who were not already using heroin or other opioids. Because the number of such cases are relatively small, the patterns of abuse have not been clearly delineated.

4.2.5 Therapeutic usefulness

Buprenorphine is currently marketed as analgesic in injectable and sublingual preparations. Buprenorphine has been used in the management of acute pain and for intractable pain due to malignant disease. It is considered to be particularly useful because of its prompt onset of effect after sublingual administration, its duration of action which is longer than that of many other orally administered opioid analgesics, and because severe respiratory depression is very unlikely. Because abrupt withdrawal of buprenorphine produces only a mild abstinence syndrome with a delayed onset, and because it suppresses heroin use in herion addicts, and has reinforcing effects so that it is acceptable to opioid abusers, buprenorphine is currently being developed for possible use in the treatment and detoxification of heroin addicts by the National Institute on Drug Abuse of the United States.

4.2.6 Recommendation

On the basis of the available data concerning its pharmacological profile, dependence, potential and acutal abuse to date, the Committee rated the likelihood of abuse of buprenorphine to be moderate and the therapeutic usefulness to be moderate to high. The degree of the seriousness of the public health and social problems associated with the abuse of this drug to date were found to be not great in terms of numbers of individuals involved and the impact of the abuse on their well being. There is, however, a potential for problems of considerably greater magnitude as its reinforcing and opioid withdrawal suppressant effects become better known to those who are already abusing opioids such as heroin. The Committee judged that the potential for more widespread misuse by the parenteral route was serious enough to constitute a public health and social problem warranting the placing of the substance under international control. The Committee was also of the opinion that on the basis of our current understanding of its pharmacology, the distinctions between the partial mu-agonist buprenorphine and such prototypic mu-agonists as heroin, morphine and methadone warrant the use of the 1971 Psychotropic Convention. The Committee recommends placing the drug in Schedule III of the 1971 Convention.

B. Notification of Pemoline

Reference:

NAR/CL. 19/1988
DND 411/1(2) WHO/ECDD 25

The Secretary-General of the United Nations presents his compliments to the Secretary of State of the United States of America and has the honour to inform the Government that the World Health Organization, pursuant to article 2, paragraphs 1 and 4, of the Convention on Psychotropic Substances, has notified the Secretary-General by note dated June 2, 1988 that is is of the opinion that 2-amino-5-phenyl-2-oxazolin-4-one or 2-imino-5-phenyl-4-oxazolidinone (hereinafter referred to as pemoline) should be included in Schedule IV of that Convention.

In accordance with the provisions of article 2, paragraph 2, of the Convention, the Secretary-General hereby transmits the text of this notification as annex I to the present note.

The Director-General of the World Health Organization, in connection with this notification, has also submitted advance excerpts from the report of the Twenty-fifth WHO Expert Committee on Drug Dependence (April 18–23, 1988) which reviewed, *inter alia*, the substance pemoline. The excerpts from that report are hereby transmitted as annex II.

In accordance with the provisions of article 2, paragraph 2, of the Convention on Psychotropic Substances, the notification from the World Health Organization will be brought to the attention of the Commission on Narcotic Drugs at its next session in February 1989. Any action or decision taken by the Commission with respect to this notification, pursuant to article 2, paragraph 5, of the Convention, will be notified to States Parties in due course. Article 2, paragraph 5, reads as follows:

> The Commission, taking into account the communication from the World Health Organization, whose assessments shall be determinative as to medical and scientific matters, and bearing in mind the economic, social, legal, administrative and other factors it may consider relevant, may add the substance to Schedule I, II, III or IV. The Commission may seek further information from the World Health Organization or from other appropriate sources.

Attention is drawn to the fact that by note NAR/CL.6/1987 dated May 13, 1987 the United States Secretary-General had already requested information on pemoline. In view of the notification from WHO, any additional up-dated information on the substance would be useful.

In order to assist the Commission in reaching a decision, it would moreover be appreciated if any economic, social, legal, administrative or other factors the Government may consider relevant to the question of the possible scheduling of pemoline could be communicated to the Secretary-General, c/o the Division of Narcotic Drugs, P.O. Box 500, A–1400 Vienna, Austria, by October 10, 1988.

July 29, 1988.

Annex I

Note dated June 2, 1988 addressed to the Secretary-General by the Director-General of the World Health Organization

The Director-General of the World Health Organization presents his compliments to the Secretary-General of the United Nations and has the honour to inform him that the World Health Organization, in conformity with Article 2, paragraphs 1 and 4 of the 1971 Convention on Psychotropic Substances, has reviewed information pertaining to 2-amino-5-phenyl-2-oxazolin-4-one or 2-imino-5-phenyl-4-oxazolidinone and referred to as pemoline.

Pemoline meets the criteria of Article 2, paragraph 4 of the Convention, and there is sufficient evidence that the substance is, or is likely to be abused so as to constitute a public health and social problem warranting placing it under international control.

Therefore, the World Health Organization recommends that pemoline be added to Schedule IV of the Convention on Psychotropic Substances, 1971.

Annex II

Summary of the Recommendations arising out of the 25th Expert Committee on Drug Dependence

The 25th ECDD met at headquarters between April 18–23, 1988. Since the report of this meeting will be published in due course of time in T.R. Series, this paper gives details of the recommendations made to the Director-General of WHO.

* * * * *

5.2 Pemoline

Pemoline was first reviewed by the 22nd Expert Committee on Drug Dependence. The view of the Expert Committee at that time was pemoline was not liked to be associated with significant public health problems and was not recommended for control. Because of recent report of a significant illicit trafficking in Africa, Europe and South America, pemoline was recommended for re-evaluation and for possible scheduling.

5.2.1 Substance identification

Pemoline (INN, CAS 2152–34–3) exists in two tautomeric forms, 2-amino-5-phenyl-2-oxazolin-4-one or 2-imino-5-phenyl-4-oxazolidinone. It is also known as phenoxazole, phenylisohydantoin and phenylpseudohydantoin. There is one chiral carbon in the molecule. Thus, two stereoisomers and one racemate exist.

5.2.2 Similarity to already known substances and effects on the central nervous system

Pemoline has been classified pharmacologically as an amphetamine-like, indirect dopamine agonist. It increases locomotor activity in a variety of animal species. In man, it decreases appetite and produces central stimulant effects. It is not similar to amphetamine with respect to some neurochemical mechanisms but its psychotoxic effects can resemble those of amphetamine. In large doses it can produce motor stimulation, hyperactivity, dyskinesia, seizures, insomnia and hallucinations and may aggravate or produce psychosis.

Pemoline is metabolized partially to less active metabolites which are excreted as conjugates in the urine. It is not readily soluble in water and is usually administered orally as magnesium permoline. In contrast to the more rapid onset of action of amshetamine, peak CNS actions do not occur until 2 to 3 hours after oral ingestion.

5.2.3. Dependence Potential

Pemoline is not self-administered by rhesus monkeys and it does not act as a reinforcer. Recent studies in non-dependent human substance abusers demonstrate that the reinforcing properties of pemoline are quite limited. It is typically not reinforcing or euphorigenic at doses up to 37.5 mg and is toxic and dysphoric at doses of 150 mg. At doses of 75 mg it produces mild CNS effects about equivalent to those of 15 mg of amphetamine. Its euphoric effects at this dose are significantly less than those observed with 30 mg of amphetamine. In contract to the value placed on 15 mg of amphetamine subjects did not view any dose of pemoline as having any monetary value. Since the drug is not readily soluble, parenteral abuse of pemoline is not a reasonable likelihood. The dependence potential of pemoline in man has not been established and evidence for or against it are not convincing.

5.2.4 Actual Abuse and/or Liability (Likelihood of Abuse)

There are a few isolated case reports of dependence upon pemoline in the published literature. However, there have been reports of its abuse from the governments of Belgium, Federal Republic of Germany, Thailand and the United Kingdom and a few emergency room mentions by DAWN each year. In several psychiatric hospitals in Argentina, a few cases of pemoline abuse and dependence have been seen each year over the last few years. Pemoline is marketed illicitly "on the street" in the United Kingdom as "speed". Pemoline has been suspected as some cases of the drugging of athletes and in doping race horses. Over the past few years there have been reports of illicity trafficking in, and two seizures of pemoline.

In 1985 the Twenty-second Export Committee on Drug Dependence reviewed pemoline to determine the appropriateness of international control. At that time the Committee concluded

that "while pemoline has been in use in many countries, the available data do not indicate that the drug has been or is likely to be associated with significant public health problems". The Expert Committee felt that international control of pemoline was not necessary. However, since then there has been a significant increase in amount of pemoline shipped across national borders and of international illicit trafficking as judged by seizures by law enforcement authorities.

For example the seizures of pemoline in the United Kingdom increased from 12 (8,064 dosage units) in 1985 to 17 (1,818,240 dosage units) in 1987. Seizures have been reported in 10 other countries, including the recent seizures in the Netherlands during April 1988 of 6,750 kg. This large quantity which originated in Eastern Europe was destined for Africa via Western Europe. Exports of pemoline form one European country to Nigeria increased from 75 million dosage units in 1985 to 146 million in 1986 and 78 million in 1987. There is no apparent legitimate medical use of pemoline in Nigeria and the Ministry of Health of Nigeria has not authorized any importation of pemoline. The export from another European country increased from 7,768 kg in 1985 to 9,323 kg in 1986. These exports were shipped indirectly to Africa, Asia and South America. The method of payment and shipment was such as to clearly indicate an intention to distribute the drug for non-medical purposes. At present there is very little information on what happens to all this pemoline, and estimates of public health and social problems must remain inferences drawn from the quantities of drug moving in international non-medical channels. Despite the inferential nature of the basis for concern, the magnitude of the intenational traffic is now difficult to ignore.

5.2.5 Therapeutic Usefulness

Pemoline is available for medical use in a number of countries. Depending on the country it may be indicated in child and adult psychiatry for attention deficit disorders as has been tried in geriatrics for lethargy and depressive syndromes induced by medicines as well as by physical and mental fatigue. In some countries, concerns about abuse and/or severe restrictions on availability of other amphetamine-like agents have sometimes resulted in a relative increase in use of pemoline. The Committee rated the therapeutic usefulness of pemoline as low to moderate.

5.2.6 Recommendation

On the basis of the available data concerning its pharmacological profile, dependence potential and documented cases of actual abuse, the Committee rated the dependence potential as low. The apparent demand for the drug for non-medical purposes suggests that more data is required to resolve discrepancy between laboratory based-estimates of low abuse liability, and the higher abuse liability suggested from the illicit traffic and case reports. Reliable evidence of actual extensive abuse or serious public health problems related to the non-medical use of pemoline was not presented or uncovered by the Committee. However, given the extent of the documented amounts of drugs moving in international channels beyond any reasonable medical need, public health and social problems of serious degree are assumed to be developing, and are likely to become more evident if the current levels of non-medical use persist. The therapeutic usefulness of the drug is low to moderate. In the light of this assessment, the Committee recommends scheduling of the drug in Schedule IV of the 1971 Convention on Psychotropic Substances.

III. Discussion

Although WHO has made specific scheduling recommendations for each of the drug substances, the CND is not obliged to follow the WHO recommendations. Options available to the CND include: (1) Acceptance of the WHO recommendations; (2) acceptance of the recommendations to control but control the drug substance in a schedule other than that recommended; or (3) reject the recommendations entirely.

The substances recommended for control under the Conventions (pemoline and buprenorphine) are controlled under schedules IV and V, respectively, of the CSA. The proposed internantional drug scheduling actions, if adopted by the CND, will result in no greater degree of control of these substances than current domestic controls.

FDA, on behalf of the Secretary of HHS, invites interested persons to submit comments on the WHO notice concerning these two drug substances. FDA, in cooperation with the National Institute on Drug Abuse, will consider the comments on behalf of HHS in evaluating the WHO recommendations. Then, pursuant to section 811(d)(2)(B) of the CSA, HHS will recommend to the Secretary of State what position the United States should take when voting on the recommendations at the CND meeting in February 1989.

IV. Submission of Comments and Opportunity for Public Meeting

Interested persons may, on or before October 24, 1988, submit to the Dockets Management Branch (address above) written comments regarding this notice. FDA does not plan to hold a public meeting unless requested to do so. If any person believes that, in addition to its written comments, a public meeting would contribute to the development of the U.S. position on any of these two substances, a request for a public meeting and the reasons for such a request should be sent to Nicholas P. Reuter, Office of Health Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, on or before October 7, 1988. The short time period for the submission of comments and requests for a public meeting is needed to assure that HHS may, in a timely fashion, carry out the required action and be responsive to the United Nations. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice contains information and collection requirements that were submitted for review and approval to the Director of the Office of Management and Budget (OMB).

The requirements were approved and assigned OMB control number 0910–0226.

Dated: September 19, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–21663 Filed 9–21–88; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

[IOA–017–N]

Medicare Program; Meeting of the Advisory Committee on Home Health Claims

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the Advisory Committee on Home Health Claims for the purpose of studying the reasons for the increase in the denial of claims for home health services during 1986 and 1987, the ramifications of the increase, and the need to reform the process involved in these denials. The meeting will be open to the public.

DATE: The meeting will be held on October 13, 1988 from 9:30 a.m. to 4:30 p.m., EDT, and on October 14, 1988 from 9:00 a.m. to 2:00 p.m., EDT.

ADDRESS: The meeting will be held in the International Hotel at the Baltimore-Washington International Airport, Baltimore, Maryland.

FOR FURTHER INFORMATION, CONTACT: Wilhelm Pickens, (301) 966–7476.

SUPPLEMENTARY INFORMATION:

Purpose

On July 1, 1988, the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360) was enacted. Section 427 of Pub. L. 100–360 established the Advisory Committee on Medicare Home Health Claims. Additionally, section 427 requires the Advisory Committee to report by July 1, 1989 to the Administrator of the Health Care Financing Administration (HCFA) and to the Committees on Ways and Means and Energy and Commerce of the House of Representatives, and the Committee on Finance of the Senate, its findings on the denial of claims for home health services in 1986 and 1987. The Advisory Committee must study:

(1) The reasons for the increase in the denial of claims for home health services during 1986 and 1987;

(2) The ramifications of that increase; and

(3) The need to reform the process involved in the denials.

The Advisory Committee will address fully these three specified duties before it takes up any other questions. The recommendations of the Advisory Committee are intended to be used only at the option of HCFA and Congress.

Agenda

Agenda items for the meeting will include orientation, introduction of the Advisory Committee members, selection of the Chair, presentations from experts in the field of home health services, and discussions of directions and issues to be addressed at the following meetings.

Agenda items are suject to change as priorities dictate.

(Catalog of Federal Domestic Assistance Program No. 13.774; Medicare—Supplementary Medical Insurance)

Dated: September 1, 1988.

William L. Rober,

Administrator, Health Care Financing Administration.

[FR Doc. 88–21655 Filed 9–21–88; 8:45 am]

BILLING CODE 4120–01–M

[OIS–002–N]

Quarterly Listing of Program Issuances

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: General notice.

SUMMARY: This notice lists HCFA manual instructions, interpretative rules, and statements of policy that were published during April, May, and June 1988 that relate to the Medicare program. Section 4035(c) of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87) requires that we publish a list of our issuances in the **Federal Register** every three months. The notice contains information for individuals and organizations to determine the subject matter of publications. It also tells where they may review the documents in their entirety and how subscriptions can be obtained.

FOR FURTHER INFORMATION CONTACT:

Allen Savadkin (For Issuance Information Only), (301) 966–5265

Matt Plonski (For Regulation Information Only) (301) 966–4662.

SUPPLEMENTARY INFORMATION: The Health Care Financing Administration (HCFA) is responsible for administering the Medicare program, a program which pays for health care and related services for 33 million Medicare beneficiaries. Administration of the program involves effective communications with regional offices, State governments, various providers of health care, fiscal intermediaries and carriers who process claims and pay bills, and others. To effectively communciate interpretations of the various statutes on which the program is based, we issue regulations under authority granted the Secretary under section 1871 of the Social Security Act (the Act) and also issue various manuals, memoranda and statements necessary to administer the program efficiently.

Section 4035(c) of OBRA'87 added a new section 1871(c)(1) to the act that requires that we publish in the **Federal Register** no less frequently than every three months a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability. We published the first listing June 9, 1988, (53 FR 21730) and included in that listing materials issued since December 22, 1987, the effective date of OBRA '87. Although regulations published in accordance with section 1871(a) of the Act are not subject to the publication requirement of section 1871(c), for the sake of completeness of the listing of operational and policy statements we are including regulations (proposed and final) published.

This continuation notice lists the manual instruction and program memoranda and regulations published during April, May and June 1988. In this listing of recently published items we do not specifically identify interpretive and substantive rules. It is our policy that all substantive rules are included in regulations.

A. How To Use the Listing

This notice is organized so that a reader may review the subjects of all additional manual issuances, memoranda, or regulations published during this timeframe to determine whether any are of particular interest. To minimize repetition, we expect it to be read in concert with previously published notices. Most notably, those unfamiliar with a description of our manuals may wish to review Table I of the prior notice (53 FR 21731 to 21732) and those seeking information on the location of regional depository libraries may wish to review Table IV (53 FR 21376 to 21377). We have divided this current listing into three tables.

Table I gives a brief description of each of the additional manuals and memoranda that HCFA published during this timeframe. Our manuals and memoranda are organized according to the user of the materials, e.g., Hospital Manual, Skilled Nursing Facility Manual, Intermediary Manual. The summaries in Table I allow the reader to determine whether routine issuances are of interest. As discussed below, it is possible for members of the public or organizations to subscribe to our manuals and routinely receive all issuances. Paragraph B of this Supplementary Information includes information necessary to enter a subscription.

Table II lists, for each of the appropriate manuals, a transmittal number unique to that instruction and a brief statement of the subject matter included. The subject matter in a transmittal may consist of a single instruction or many. Holders of HCFA manuals substitute or add pages accompanied by the transmittal to existing manuals to bring other materials already in the manual up to date. While Table II lists the subject matter of the transmittal, often it is necessary to use information in a transmittal in conjunction with information currently in the manuals. Therefore, subjects listed in Table II may not be dealt with exhaustively. This table also includes program memoranda, program information letters, and

technical information letters. These memoranda and letters are not availabl in the subscription series.

Table III lists all Medicare regulations and general notices published in the **Federal Register** during this period. For each item we list the date published, the title of the regulation, and the Parts of the Code of Federal Regulations (CFR) which have changes.

B. How to Obtain Listed Material

• Manuals

An individual or organization interested in routinely receiving any manual and revisions to it may purchase a subscription to that manual. Those wishing to subscribe should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses: Superintendent of Documents, Government Printing Office, Washington, DC 20402. Telephone (202) 783–3238; National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA, 22161. Telephone (703) 487–4630.

In addition, individual transmittals listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want and contact NTIS. GPO or NTIS will give complete details on how to obtain a subscription.

• Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. Interested individuals may purchase individual copies or may subscribe to the Federal Register by contacting the Government Printing Office at the following address: Superintendent of Documents, Government Printing Office, Washington, DC 20402, Telephone (202) 783–3238. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

C. How To Review Listed Material

Individuals or organizations that do not wish to purchase subscriptions may review identified items at a local Federal Depository Library (FDL). Under the Federal Depository Library Program, government publications are sent to approximately 1400 designated libraries throughout the Untied States. Interested parties may examine the documents at any one of the Federal Depository Libraries. Some may have arrangements to transfer material to a local library not designated as an FDL. To locate the nearest FDL, individuals should contact any library.

In addition, individuals may contact regional depository libraries, which receive and retain at least one copy of nearly every Federal Government publication, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the closest regional depository library from any library.

D. General Information

It is possible that an interested party may have a specific information need and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. We are providing information contact persons to answer general questions concerning these items. Individuals are expected to procure copies either locally or as noted under section B.

Questions concerning items in Tables I or II, may be addressed to Allen Savadkin, Office of Issuances, Health Care Financing Administration, Room 688 East High Rise, 6325 Security Blvd., Baltimore, MD 21207; Telephone (301) 966–5265. Please do not use this contact to request copies of the listed items.

Questions concerning the regulations in Table III may be addressed to Matt Plonski, Regulations Staff, Health Care Financing Administration, Room 132 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (301) 966–4662.

Table I—Description of Manuals and Memoranda

An extensive descriptive listing of manuals and memoranda was previously published at 53 FR 21731. A transmittal was issued during the April-June quarter for the following manual not previously described.

State Buy-In Manual on Supplementary Medical Insurance Enrollment (HCFA-Pub. 24)

The State Buy-In Manual contains instructions States must follow for enrollment and payment of premiums on behalf of Medicare beneficiaries. These beneficiaries are eligible under the Supplemental Security Income or Medicaid programs to receive State assistance in meeting their Medicare insurance premiums.

TABLE II.—MEDICARE MANUAL INSTRUCTIONS, APRIL–JUNE 1988

Trans. No.	Manual/Subject/Publication Number
	Intermediary Manual, Part 2—Audits, Reimbursement Program Administration (HCFA-Pub. 13-2)
357	o Assessment of Benefit Savings Attributable to Medical Review Activities.
358	o Appendix B, An Approach to Contingency Planning.
359	o Maximum Payment Per Visit for Independent Rural Health Clinics.
360	o Provideers Involved in Bankruptcy Proceedings. Chain Provider Bankruptcy. Retenton of Documents and Records as Evidence in Litigation.
	Intermediary Manual, Part 3—Claims Process (HCFA-Pub. 13-3)
1378	o Fee Schedules. Adjusted Fee Schedule. Coordination with Carriers. Clinical Diagnostic Laboratory Services Subject to Fee Schedule. Packing and Mailing of Magnetic Tape. Notification of Intermediary Address and/or Corporate Name Change.
1379	o Intermediary Systems Testing Project (ISTP). Consistency Edit Testing.
1380	o Provider Liability. Medicare Paid the Provider for Noncovered Services, and the Provider Should Have Known That the Services Were Noncovered. Overpayments Which Resulted From Misinformation From an Official Source Concerning the Medicare Law or Regulations.
1381	o Claims Processing Timeliness.
1382	o Reduction in Reimbursement Due to Pub. L. 99-177, Pub. L. 100-119, and Pub. L. 100-203.
1381	o Medicare as Secondary Payer for Disabled Individuals.
1384	o Reprint to Correct Pagination.
1385	o Dentists. Inpatient Services in Connection With Dental Services. Dental Services Exclusion. Certification for Hospital Admissions for Dental Procedures. Applicability of Waiver of Liability to Items or Services Furnished by Providers of Services Payable Under Part A.
1386	o Items and Services Which a Non-Federal Provider Furnishes Pursuant to an Authorization Issued by a Federal Agency. Effect of VA Payments on Medicare Deductible and Utilization.
1387	o Billing Procedures Where Medicare Benefits Are Secondary to Employer Group Health Plans When Individuals Are Entitled to Benefits Solely on the Basis of ESRD.
1388	o Psychiatric Service Limitation.
1389	o Data Furnished in the Part B Query. Explanation of Part B Trailer Codes.
IM-88-2	o Conditional Payments When Medicare is Secondary for an ESRD Beneficiary.
IM-88-3	o Implementation of Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203).

TABLE II.—MEDICARE MANUAL INSTRUCTIONS, APRIL–JUNE 1988—Continued

Trans. No.	Manual/Subject/Publication Number
IM–88–4	o Implementation of Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203).
	Carriers Manual, Part 2—Program Administration (HCFA-Pub. 14–2)
102	o Functional Standards for Claims Processing Operations.
103	o Appendix B, An Approach to Contingency Planning.
104	o Functional Standards for Claims Processing Operations.
105	o HCFA Mandated Prepayment Controls, Other Considerations.
	Carriers Manual, Part 3—Claims Process (HCFA-Pub. 14–3)
1241	o United Mine Workers of America (UMWA). Other Procedures. Definitions. Services Reimbursable Under Liability Insurance. General Effect of Liability Insurance on Medicare Payments. Effect of Payment by Liability Insurer on Deductibles.
1242	o Customary Charge Screens for New Physicians and Suppliers. Changes in Compensation Agreements. Customary Charges for Physicians' Services in Outpatient Settings—Combined Billing Previously Used. Customary Charges for Physician Services in Outpatient Settings—Undifferentiated Charges Billed to Patients.
1243	o BMAD II File Renamed "The Prevailing Charge/Pricing File". BMAD Reporting of Physicians Assistants (PA). BMAD Reporting of Occupational Therapist Services. Procedure File (BMAD.1) Field #20 (Services Assigned). Provider and Beneficiary Files (BMAD III and IV). Inter Field Verification of BMAD Files. BMAD and Modifiers.
1244	o Determining Reasonable Charges for Anesthesia Services. Determining Reasonable Charges for Medically Directed Anesthesia Services Furnished On or After April 1, 1988.
1245	o Submittal of Overpayment Data to Physician/Supplier Overpayment Reporting System (PSOR).
1246	o Physician or Supplier Patient Identification Information. Laboratory. Anesthesiology Services.
1247	o Indirect Payment Procedure. Organizations That Qualify to Receive SMI Payment on Paid Bills. Monitoring the Maximum Allowable Actual Charge (MAAC). MAAC, MAAC–C and MAAC–A Violations.
1248	o Physician Liability. The Physician Billed For Items or Services Which He Should Have Known Were Not Covered.

TABLE II.—MEDICARE MANUAL INSTRUCTIONS, APRIL–JUNE 1988—Continued

Trans. No.	Manual/Subject/Publication Number
	Overpayments Which Resulted From Misinformation From an Official Source Concerning the Medicare Law or Regulations.
1249	o Medicare as Secondary Payer for Disabled Individuals.
1250	o Claim Review. Review of Relevant Information. Checking Carrier Records for Status. General Information About Communications Between Carriers and HCFA.
1251	o Detemining if a New Physician Provided Service in a Health Manpower Shortage Area (HMSA). List of HMSA. Calculating the Appropriate Customary Charge. New Physician Billing for Services Performed in a HMSA.
1252	o Economic Index Data for Physicians' Services and Maximum Allowances for Renal Transplantations.
1253	o List of Covered Ambulatory Surgical Center Procedures. Exceptions to Annual Deductible and Coinsurance. Payment for Physicians Services.
1254	o Indirect Payment Procedure.
1255	o Preparation of Payment Records for Bills Prepared for Certain Services, Ambulatory Surgical Centers (ASCs) or Hospital Outpatient Departments.
1256	o Postpayment Process Requirements. Physician/Supplier Action File and the MR Annual Report. Additional Review Requirements. MR Savings Credit for Sanctions and Civil Monetary Penalty Cases. Development of Prepayment Screens. HCFA Mandated Prepayment Screens and Parameters. Quarterly Carrier MR Report.
1257	o Outpatient Psychiatric Services Limitation—Expenses Incurred for Physicians' Services and Comprehensive Outpatient Rehabilitation (CORF) Services. Outpatient Psychiatric Services Limitation Computation. Applicability of the Limitation.
IM–88–2	o Who Can Bill and Receive Payment for Clinical Laboratory Tests. Physicians' Billings for Diagnostic Tests. Calculation of Fee Schedule Amounts. Adjusted Fee Schedule. National Limitation Amount.
IM–88–3	o Conditional Payments When Medicare is Secondary for an ESRD Beneficiary.
	Program Memorandum, Intermediaries (HCFA-Pub. 60A)
A–88–5	o Outpatient Code Editor (OCE) and ASC Pricer.
A–88–6	o Errors in the 1988 HCPCS Update Tape.
A–88–7	o Implementation of Revised HCFA–485/486/487 Forms.
A–88–8	o Changes in ICD–9–CM Coding Effective May 1, 1988.

TABLE II.—MEDICARE MANUAL INSTRUCTIONS, APRIL–JUNE 1988—Continued

Trans. No.	Manual/Subject/Publication Number
A–88–9	o Expanded EMC PRO Adjustment Records.
A–88–10	o Letter to Participating Hospitals on Establishing a Smoke-Free Environment in Medicare/Medicaid Participating Hospitals.
A–88–11	o Problems in Identifying Hospital Outpatient Surgery Claims Requiring HCPCS Coding.
A–88–12	o Impact of Provisions of Section 4012(a) of OBRA of 1987 Involving TEFRA Risk HMOs/CMPs.
	Program Memorandum Carriers (HCFA-Pub. 60B)
B–88–6	o Implementation of Section 4053 of OBRA 1987 (Elimination of 1975 Floor for Physician Prevailing Charges).
B–88–7	o Implementation of Sections 4048 (anesthesia service) and 4051 (purchased services).
B–88–8	o Counting Physicians, Limited License Practitioners, and Suppliers Who Have Elected to Participate in the Medicare Program Effective April 1, 1988.
B–88–9	o Telephone Directory Listings of Carrier Phone Numbers for Beneficiary Use in Obtaining Medicare Information.
B–88–10	o Implementation of OBRA 87 Provisions on Durable Medical Equipment (DME).
	Regional Office Manual, Medicare (HCFA-Pub. 23–2)
301	o The Contractor Performance Evaluation Program (CPEP). CPEP Review Completion Dates. Scoring Methodology. CPEP Review Report. Appeals. Recording and Reporting CPEP Scores. Reporting Scores. Corrective Action Plan (CAP).
	Regional Office Manual, (Standards and Certification) (HCFA-Pub. 23–4)
33	o Organ Procurement Organizations (OPOs). Organ Procurement Organizations Application Process. Organ Procurement Organizations Designation Requirement.
	Regional Office Manual (Peer Review Organization Manual) (HCFA-Pub. 19)
20	o Statutory and Regulatory Requirements. Request for Reconsideration. PRO Reconsiderations. Reconsideration Process. Appeals.
21	o Request for Hearing of PRO Denial Determination. Preparing the Acknowledgment Letter. Assembling the Hearing Claim File. Preparing Case Review. Routing the Hearing Claim File to the OHA. Reporting Requirements.

TABLE II.—MEDICARE MANUAL INSTRUCTIONS, APRIL–JUNE 1988—Continued

Trans. No.	Manual/Subject/Publication Number
	Hospital Manual (HCFA-Pub. 10)
535	o Fee Schedules. Adjusted Fee Schedule. Coordination With Intermediaries. Clinical Diagnostic Laboratory Services Subject to Fee Schedule.
536	o Review Protocol for Medicare Secondary Hospital Review.
537	o Notice to Beneficiary of PRO Review of Need for Continued Care.
538	o Heart Transplants.
539	o Claims Processing Timeliness.
540	o Reduction in Reimbursement Due to Pub. L. 99–177, Pub. L. 100–119, and Pub. L. 100–203.
541	o Definitions. General Effect of Liability Insurance on Medicare Payments. Effect of Payment by Liability Insurer on Deductibles and Utilization. Provider Billing Rights and Responsibilities. Provider Actions.
542	o Billing Procedures. Submitting Inpatient Bills in No-Payment Situations.
543	o Bill Preparation for Cost Reimbursement Hospitals Where Medicare Benefits are Secondary to Employer Group Health Plans When Individuals are Entitled to Benefits Solely on the Basis of ESRD.
IM–88–2	o Conditional Payments When Medicare is Secondary for an ESRD Beneficiary.
IM–88–3	o Implementation of Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203).
	Christian Science Sanatorium, Hospital Manual Supplement (HCFA-Pub. 32)
19	o Claims Processing Timeliness.
20	o Bill Preparation for Cost Reimbursement Hospitals Where Medicare Benefits are Secondary to Employer Group Health Plans When Individuals are Entitled to Benefits Solely on the Basis of ESRD. Home Health Agency Manual (HCFA-Pub. 11).
207	o Claims Processing Timeliness.
208	o Reduction in Reimbursement Due to Pub. L. 99–177, Pub. L. 100–119, and Pub. L. 100–203.
209	o Medicare Benefits are Secondary to Employer Group Health Plans When Individuals are Entitled to Benefits Solely on the Basis of ESRD.

TABLE II.—MEDICARE MANUAL INSTRUCTIONS, APRIL–JUNE 1988—Continued

Trans. No.	Manual/Subject/Publication Number
IM–88–2	o Conditional Payments When Medicare is Secondary for an ESRD Beneficiary. Skilled Nursing Facility Manual (HCFA-Pub. 12).
265	o Claims Processing Timeliness.
266	o Reduction in Reimbursement Due to Pub. L. 99–177, Pub. L. 100–119, and Pub. L. 100–203.
267	o Bill Preparation Where Medicare Benefits are Secondary to Employer Group Health Plans When Individuals are Entitled to Benefits Solely on the Basis of ESRD.
IM–88–2	o Conditional Payments When Medicare is Secondary for an ESRD Beneficiary. Rural Health Clinic Manual (HCFA-Pub. 27).
25	o Maximum Payment Per Visit for Independent Rural Health Clinics.
26	o Reduction in Reimbursement Due to Pub. L. 99–177, Pub. 100–119, and Pub. L. 100–203.
27	o Claims Processing Timeliness.
28	o Bill Preparation Where Medicare Benefits are Secondary to Employer Group Health Plans When Individuals are Entitled to Benefits Solely on the Basis of ESRD.
IM–88–1	o Conditional Payments When Medicare is Secondary for an ESRD Beneficiary.
	Renal Dialysis Facility Manual (Non-Hospital Operated) (HCFA-Pub. 29)
32	o Claims Processing Timeliness.
33	o Reduction in Reimbursement Due to Pub. L. 99–177, Pub. L. 100–119, and Pub L. 100–203.
34	Bill Preparation Where Medicare Benefits Are Secondary to Employer Group Health Plans When Individuals Are Entitled to Benefits Solely on the Basis of ESRD.
IM–88–1	Conditional Payments When Medicare is Secondary for an ESRD Beneficiary.
	Hospice Manual (HCFA-Pub. 21)
18	o Claims Processing Timeliness.
	Outpatient Physical Therapy and Comprehensive Outpatient Rehabilitation Facility Manual (HCFA-Pub. 9)
71	o Claims Processing Timeliness.

TABLE II.—MEDICARE MANUAL INSTRUCTIONS, APRIL–JUNE 1988—Continued

Trans. No.	Manual/Subject/Publication Number
72	o Reduction in Reimbursement Due to Pub. L. 99–177, Pub. L. 100–119, and Pub L. 100–203.
73	o Claims Processing Timeliness.
74	Medicare Benefits are Secondary to Employer Group Health Plans When Individuals are Entitled to Benefits Solely on the Basis of ESRD.
IM–88–1	Conditional Payments When Medicare is Secondary for an ESRD Beneficiary.
	Coverage Issues Manual (HCFA-Pub. 6)
24	o Extracorporeal Photophoresis.
25	o Heart Transplants.
26	o Supplies Used in the Delivery of Transcutaneous Electrical Nerve Stimulation (TENS) and Neuromuscular Electrical Stimulation (NMES). Health Maintenance Organization/Competitive Medical Plan Manual (HCFA Pub. 75).
IM–88–1	o Bill Processing Procedures. Inpatient Bill Processing.
	State Buy-In Manual on Supplementary Medical Insurance Enrollment (HCFA-Pub. 24).
10	o Chart 2, Buy-in Coverage Groups After December 1973. Deemed Cash Recipients (for State Buy-in Purposes Only). Termination and Withdrawal of SMI After Buy-in Ends. The Part B Premium. State Initiated Accretion of SSI Recipients in Auto-Accrete States. State Initiated Deletion of SSI Recipients in Auto-Accrete States. Erroneous PW Accretion. Mailing and Shipping Procedures for States. Buy-in Transaction Codes. State Initiated Change Record. HCFA Initiated Claim Number Change. Request for Resolution of Buy-in Problem Cases By Memorandum. Cases Involving Duplicate Billing. Table of Beneficiary Identification Codes for Medicare Qualfied Government Employees. Railroad Board Claims Numbers. U.S. Treasury Financial Communications System (TFCS) Procedures. Components Which Administer the Buy-in Program.

TABLE III.—REGULATIONS AND NOTICES PUBLISHED APRIL–JUNE, 1988

Publication date/Cite	CFR part	Regulation title
	Final Rules	
04/07/88 (53 FR 11504)	405, 416, 418, 442, 482	Medicare/Medicaid Program; Fire Safety Standards for Hospitals, Skilled Nursing Facilities, Hospices, Intermediate Care Facilities and Ambulatory Surgical Centers.
04/12/88 (53 FR 12010)	405, 434	Medicare/Medicaid Programs; Revisions in Reporting, Recordkeeping, and Other Requirements.
04/12/88 (53 FR 12016)	413	Medicare Program; Changes to the Return on Equity Capital Provisions for Outpatient Hospital Services.

TABLE III.—REGULATIONS AND NOTICES PUBLISHED APRIL–JUNE, 1988—Continued

Publication date/Cite	CFR part	Regulation title
05/06/88 (53 FR 16267)	400	Medicare/Medicaid Programs; OMB Control Numbers for Collection of Information Requirements Contained in HCFA Regulations (Correction published 06/09/88).
06/03/88 (53 FR 20448)	431, 435, 440, 442, 483	Medicare Program; Conditions for Intermediate Care Facilities for the Mentally Retarded.
06/17/88 (53 FR 22850)	405, 442, 488	Medicare/Medicaid Program; Long Term Care Survey.
Proposed Rules		
05/04/88 (53 FR 15857)	435	Medicaid Program; Eligibility of Qualified Severely Impaired Individuals Who Work.
05/27/88 (53 FR 19498)	412, 413	Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1989 Rates.
06/01/88 (53 FR 19950)	435, 440, 441	Medicaid Program; Home and Community-Based Services and Respiratory Care for Ventilator Dependent Individuals.
06/09/88 (53 FR 21696)	417	Medicare Program; Health Maintenance Organization and Competitive Medical Plans; Coordinated Open Enrollment.
06/13/88 (53 FR 22028)	412	Medicare Program; Effects of Appeals on the Hospital-Specific Portion of the Prospective Payment Rate.
06/15/88 (53 FR 22335)	405, 411, 489	Medicare as a Secondary Payer and Medicare Recovery Against Third Parties.
06/16/88 (53 FR 22506)	405, 482	Medicare/Medicaid Programs; Revisions to Conditions of Participation for Hospitals and Conditions for Coverage of Services of Independent Laboratories and Conditions for Coverge of Suppliers of End Stage Renal Disease Services.
06/16/88 (53 FR 22513)	405, 489, 1001, 1003	Medicare Program; Participation in CHAMPUS and CHAMPVA, Hospital Admissions for Veternas, Discherge Rights Notice, and Hospital Responsibility for Emergency Care.
06/27/88 (53 FR 24103)	440	Medicaid Program; Coverage of Personal Care Services.
Notices		
04/01/88 (53 FR 10565)		Medicare Program; Peer Review Organization Contracts; Solicitation of Statements of Interest from In-State Organizations (Corrects notice published 03/11/88).
04/05/88 (53 FR 11134)		Medicare Program; Fiscal Year 1988 Legislative Changes to the Inpatient Hospital Prospective Payment System.
04/12/88 (53 FR 12307)		Medicare Program; Discontinuation of Prevailing Charge Differentials for Specialists.
04/15/88 (53 FR 12641)		Medicare Program; Miscellaneous Changes Affecting Payment for Inpatient Hospital Service (Corrects the proposed rule published 03/22/88).
04/15/88 (53 FR 12641)		Medicare Program; Changes to the Lesser of Costs or Charges Provisions (Corrects the final rule published 03/29/88).
04/18/88 (53 FR 12681)		Medicaid Program; Payments to Institutions.
04/20/88 (53 FR 12945)		Medicaid Program; Conditions for Medicare Payment (Corrects the final rule published 03/02/88).
05/10/88 (53 FR 16550)		Medicaid Program; Treatment of Social Security Cost of Living Increases for Individuals Who Lose SSI Eligibility.
05/17/88 (53 FR 17507)		Meeting of the Advisory Panel on the Development of Uniform Needs Assessment Instrument(s).
05/26/88 (53 FR 18986)		Medicare/Medicaid Programs; Organ Procurement Organizations and Organ Procurement Protocols (Corrects the final rule published 03/01/88).
06/01/88 (53 FR 20023)		Hearing by Administrative Law Judges of Certain Medicare Claims.
06/09/88 (53 FR 21730)		Quarterly Listing of Program Issuances.

(Catalog of Federal Domestic Assistance Program No. 13.773, Hospital Insurance; and Program No. 13.774, Medicare-Supplementary Medical Insurance Program)

Dated: August 26, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 88–21654 Filed 9–21–88; 8:45 am]

BILLING CODE 4120–01–M

Privacy Act of 1974; Revision to Existing System of Records

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of revision of Privacy Act system of records.

SUMMARY: Notice is hereby given that HCFA is revising one of its systems of records, the Medicare Physician Indentification and Eligibility Systems (MPIES), HHS/HCFA/BPO No. 09–70–0525, most recently published at 53 FR 21920; June 10, 1988. The Notice is being revised to reflect a change in the Records Source Categories section of the system. The revision contains no new routine uses.

EFFECTIVE DATE: September 22, 1988.

FOR FURTHER INFORMATION CONTACT: Phillip Brown, Division of Operational Initiatives, Office of Program Administration, Bureau of Program Administration, Bureau of Program Operations, Health Care Financing Administration, Room 367 Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone 301–966–7158.

SUPPLEMENTARY INFORMATION: HCFA plans to identify physicians with a system comprised of unigue physician identification numbers and records entitled Medicare Physician Identification and Eligibility Records (MPIER). When the notice of this new system was published in June 1988, we indicated that information would be

submitted to each related individual physician for verification and signature before submission to HCFA for assignment of an identifier. HCFA has decided that the information we will use in MPIER is information currently available in carrier systems and which the physicians have already certified to our carriers when applying for a provider number. There is no need to verify the information directly with each individual physician.

Therefore, the applicable text of the system of records is revised to read as follows:

09-70-0525

SYSTEM NAME:

Medicare Physician Identification and Eligibility System (MPIES).

* * * * *

RECORDS SOURCE CATEGORIES:

HCFA obtains the identifying information in this system from carriers. Information in these records concerning physicians' eligibility for Medicare reimbursement is obtained either directly or through Medicare Regional Offices, contractors, and PROs; from the Department of Justice; State or local judicial systems; medical licensing and certification agencies or organizations; and medical societies and associations.

* * * * *

Dated: September 19, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 88-21602 Filed 9-21-88; 8:45 am]

BILLING CODE 4120-03-M

Health Resources and Services Administration

Program Announcement for Nursing Post-Baccalaureate Faculty Fellowship Grants

The Health Resources and Services Administration announces that applications for Fiscal Year 1989 Nursing Post-baccalaureate Faculty Fellowship grants will be accepted under the authority of section 830(b) of the Public Health Service Act, as amended.

Legislative authorization for this program expires September 30, 1988. For FY 1989 the Administration is proposing to consolidate the various health professions categorical programs into a single, flexible grant authority. This announcement is being made in the event that the Nursing Post-baccalaureate Faculty Fellowship Grants Program is reauthorized and funds are made available in FY 1989. Publication of this notice is a contingency measure that will assure that grants can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year.

In addition, programmatic changes may result from currently pending legislative action. Should such changes be necessary, all applicants will be notified at a later date.

Purpose

Section 830(b) of the Public Health Service Act, as amended, authorizes grants to public or private nonprofit schools of nursing to cover the costs of post-baccalaureate faculty fellowships to enable faculty to carry out studies in areas specified by the legislation or by the Secretary, Department of Health and Human Services.

Applicants

Public or private nonprofit schools of nursing are eligible to apply for grants to cover the cost of tuition and fees for faculty members who would qualify for a post-baccalaureate faculty fellowship. Stipends also may be requested for periods of full-time study. Only one application will be accepted from any one school of nursing. A school with separate departments or more than one type of program must submit a combined request. A school may request fellowship support for more than one faculty member.

Faculty Eligibility

To qualify for a fellowship a faculty member must:

(1) Hold a baccalaureate degree.

(2) Be employed by the applicant institution as a faculty member during the period of the awarded fellowship.

(3) Be enrolled in a master's program in nursing or in a doctoral program which requires a substantial study, master's thesis or doctoral dissertation, and anticipate meeting master's or doctoral degree requirements by August 31, 1990 or sooner.

(4) Undertake a reported study, thesis or dissertation focusing on:

a. An investigation of cost-effective alternatives to traditional health care modalities, with special attention to the needs of at-risk populations, such as the elderly, premature infants, physically and mentally disabled individuals, and ethnic and minority groups; or

b. Examination of nursing interventions that result in positive outcomes in health status, with attention to interventions which address family violence, alcohol and other drug abuse, the health of women, adolescent care, and disease prevention; or

c. Factors within the practice setting associated with retention of nursing personnel; or

d. Acute and long-term nursing care of patients with infectious diseases, particularly illness caused by the human immunodeficiency virus (HIV).

(5) Be licensed to practice as a registered nurse in a State.

Review

Applications will be reviewed for completeness and eligibility. The review has several components. First, applicant eligibility must be established and secondly, the eligibility of each faculty proposed for a fellowship must be determined. Information provided about each faculty and about the proposed study by the faculty member will be examined. Final determination for approval will depend upon the congruence of the study, thesis or dissertation with any of the announced study areas.

Funding Preference

A funding preference was published for public comment and implemented in Fiscal Years 1987 and 1988. This preference states that schools which have been successful in recruiting or retaining minority faculty will be given a funding preference. The Department is extending this preference for Fiscal Year 1989. All eligible applications, however, will be reviewed and given consideration for funding. The Department believes that continued efforts must be made to increase the number of minority faculty and students in schools of nursing.

Application Deadline

One review cycle will be held annually for Post-baccalaureate Faculty Fellowship grant applications. To receive consideration applications must meet the deadline of January 17, 1989. Applications shall be considered as meeting the deadline if they are either:

(1) *Received on* or before the deadline, or

(2) *Postmarked on* or before the deadline date, and received in time for submission for review. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications received after the deadline date will be returned to the applicant.

The standard application form PHS 6025-1, HRSA Competing Training Grant

Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget. The OMB clearance is number 0915–0060.

Requests for application materials should be directed to: Grants Management Officer (A–23), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–22, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone: (301) 443–6915.

For technical assistance and other information regarding this program, contact: The Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 5C–26, 5600 Fishers lane, Rockville, Maryland 20857. Telephone: (301) 443–6333.

This program is listed at 13.147 in the *Catalog of Federal Domestic Assistance* and is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: August 24, 1988.

David N. Sundwall,

Administrator, Assistant Surgeon General.

[FR Doc. 88–21657 Filed 9–21–88; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Office of Human Development Services

[Program Announcement No. HDS–88–3]

Fiscal Year 1989 Coordinated Discretionary Funds Program; Availability of Funds and Request for Applications

AGENCY: Office of Human Development Services, HHS.

- Administration for Children, Youth and Families
- Administration on Development Disabilities
- Administration for Native Americans

ACTION: Correction to Fiscal Year 1989 Coordinated Discretionary Funds Program Announcement published on August 31, 1988.

SUMMARY: This notice corrects the Office of Human Development Services' (HDS) Coordinated Discretionary Funds Program announcement published in the **Federal Register** on August 31, 1988 (53 FR 33686) by adding a section on matching requirements in Part II. This section should be designated section "C" and the current section "C" should be designated section "D."

DATES: The date by which applications should be submitted remains the same: November 10, 1988.

FOR FURTHER INFORMATION CONTACT: Department of Health and Human Services, HDS/Office of Policy, Planning and Legislation, Division of Research and Demonstration, 200 Independence Avenue, SW., Room 724–F, Washington, DC 20201. Telephone (202) 755–4560. To provide 24-hour coverage, calls to this number may be answered by an answering machine.

SUPPLEMENTARY INFORMATION: On August 31, 1988, HDS published in the **Federal Register** its Fiscal Year 1989 Coordinated Discretionary Funds Program announcement (53 FR 33686). The section on matching requirements was inadvertently omitted.

The omitted material is as follows:

C. Grantee Share of The Project

Under the Coordinated Discretionary Funds Program, HDS does not make grant awards for the entire project cost (with the exceptions described below). Successful applicants must contribute $1, secured from non-Federal sources, for every $3 received in Federal funding up to the maximum specified in the priority area description in this announcement. This grantee share amounts to at least 25% of the entire project cost.

The first exception relates to projects funded under the Native American Programs Act, where the grantee match must be 20% of the total cost of the proposed project ($1 match for every $4 requested from HDS). Additionally, applicants requesting funds under the Native American Programs Act may include in their applications a request to the Administration for Native Americans for a waiver of the non-Federal cost-sharing requirement for the project based on 45 CFR 1336.50. Such requests will be dealt with on a case-by-case basis according to applicable laws and regulations.

The second exception relates to applications orginating from American Samoa, Guam, the Virgin Islands or the Commonwealth of the Northern Mariana Islands. Applicants from these insular areas are covered by Section 510(d) of Public Law 95–134, which requires the Department to waive "any requirement for local matching funds under $200,000" for these territories.

The final exception relates to traineeship projects under priority areas 4.4A, 4.4C.1 and 4.4D.1, in which no match or cost-sharing is required.

The non-Federal share of total project costs for each budget period may be in the form of grantee-incurred costs and/or third party in-kind contributions. HDS strongly encourages applicants to propose a grantee share which is more than 25% of the project costs. HDS also encourages applications where the matching requirement will be met in cash (as opposed to in-kind contributions) from non-Federal funding sources.

If the required non-Federal share is not met by a grantee for each budget period during the project period, HDS will disallow any unmatched Federal dollars. The amount of non-Federal share required will be the amount proposed by the applicant. If the proposed share exceeds 25%, the applicant will be required to provide the additional cost-sharing or matching. Therefore, applicants should be sure of any amount proposed as match before including these funds in their budgets.

Dated September 19, 1988.

Sydney Olson,

Assistant Secretary for Human Development Services.

[FR Doc. 88–21681 Filed 9–21–88; 8:45 am]

BILLING CODE 4130–01–M

National Institutes of Health

National Cancer Institute; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Etiology on October 27–28, 1988. The meeting will be held in Building 31, C Wing, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public from 1 p.m. to recess on October 27 and from 9 a.m. to adjournment on October 28 for discussion and review of the Division budget and review of concepts for grants and contracts. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 9 a.m., to approximately 12 p.m. on October 27 for the review, discussion and evaluation of individual programs and projects conducted by the Division of Cancer Etiology. These programs, projects, and discussions could reveal personal information concerning individuals associated with the programs and projects, the disclosure of which would constitute a clearly

unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. David McB. Howell, Executive Secretary of the Board of Scientific Counselors, Division of Cancer Etiology, National Cancer Institute, Building 31, Room 11A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-6927) will furnish substantive program information.

Dated: September 13, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-21672 Filed 9-21-88; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Meeting (Division of Cancer Treatment Board of Scientific Counselors)

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, DCT, National Cancer Institute, National Institutes of Health, October 6-7, 1988, Building 31C, Conference Room 10, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on October 6 from 8:30 a.m. to approximately 5 p.m., and again on October 7 from 9:30 a.m. until adjournment, to review program plans, contract recompetitions and budget for the DCT program. In addition, there will be scientific reviews by several programs in the Division. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) fo Pub. L. 92-463, the meeting will be closed to the public on October 6 from 5 p.m. to approximately 6 p.m., and on October 7 from 8 a.m. to approximately 9:30 a.m., for the review, discussion and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301-496-5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Bruce A. Chabner, Director, Division of Cancer Treatment, National Cancer Institute, Building 31, Room 3A52, National Institutes of Health, Bethesda, Maryland 20892 (301-496-4291) will furnish substantive program information.

Dated: September 13, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-21673 Filed 9-21-88; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of N-Phenyl-2-Naphthylamine

The HHS' National Toxicology Program today announces the availability of the Technical Report describing the toxicology and carcinogenesis studies of N/phenyl-2-naphthylamine, formerly used as an antioxidant in the rubber industry.

Toxicology and carcinogenesis studies were conducted by feeding diets containing N-phenyl-2-naphthylamine (approximately 98% pure and containing less than 1 ppm 2-naphthylamine) at various concentrations to groups of F344/N rats and B6C3F$_1$ mice of each sex for 14 days, 13 weeks, or 2 years.

Under the conditions of these 2-year feed studies, there was no evidence of carcinogenic activity [1] for male or female F344/N rats fed diets containing 2,500 ppm or 5,000 ppm N/phenyl-2-naphthylamine. Decreased incidences of several neoplasms were observed in dosed rats: thyroid gland C-cell neoplasms in males and females and mononuclear cell leukemia, pituitary gland adenomas, and mammary gland fibroadenomas in females. There was no evidence of carcinogenic activity for male B6C3F$_1$ mice fed diets containing 2,500 or 5,000 ppm N/phenyl-2-naphthylamine. There was equivocal evidence of carcinogenic activity of N/phenyl-2-naphthylamine for female B6C3F$_1$ mice as indicated by the occurrence of two rare kidney neoplasms. Chemical-related nonneoplastic lesions (nephropathy, karyomegaly, and hyperplasia) occurred in the kidney of rats and mice.

The study scientist for these studies is Dr. Kamal M. Abdo. Questions or comments about the contents of this Technical Report should be directed to Dr. Abdo at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-7819; FTS: 629-7819.

Copies of *Toxicology and Carcinogenesis Studies of N-phenyl-2-naphthylamine in F344/N Rats and B6C3F$_1$ Mice (Feed Studies)* (TR 333) are available without charge from the NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Triangle Park, NC 27709. Telephone: (919) 541-3991; FTS: 629-3991.

Dated: September 14, 1988.

David P. Rall,

Director.

[FR Doc. 88-21674 Filed 9-21-88; 8:45 am]

BILLING CODE 4140-01-M

National Toxicology Program; Chemicals (6) Nominated for Toxicological Studies; Request for Comments

SUMMARY: On July 27, 1988, the Chemical Evaluation Committee (CEC) of the National Toxicology Program (NTP) met to review six chemicals nominated for toxicology studies and to recommend the types of studies to be performed, if any. With this notice, the NTP solicits public comments on the six chemicals.

FOR FURTHER INFORMATION CONTACT: Dr. Victor A. Fung, Chemical Selection Coordinator, National Toxicology Program, Room 2B55, Building 31, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-3511.

SUPPLEMENTARY INFORMATION: As part of the chemical selection process of the National Toxicology Program, nominated chemicals which have been reviewed by the NTP Chemical Evaluation Committee (CEC) are published with request for comment in the **Federal Register.** This is done to encourage active participation in the NTP chemical evaluation process, thereby helping the NTP to make more informed decisions as to whether to select, defer or reject chemicals for toxicology study. Comments and data submitted in response to this request are reviewed and summarized by NTP technical staff, are forwarded to the NTP Board of Scientific Counselors for use in their evaluation of the nominated chemicals, and then to the NTP

[1] The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of the evidence of carcinogenicity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"); one category for uncertain findings ("equivocal evidence"); one category for no observable effects ("no evidence"); and one category for experiments which cannot be evaluated because of major flaws ("inadequate study").

Executive Committee for decision-making. The NTP chemical selection process is summarized in the **Federal Register**, April 14, 1981 (46 Fr 21828), and also in the NTP FY 1987 Annual Plan, pages 17–19.

On July 27, 1988, the CEC met to evaluate six chemicals nominated to the NTP for toxicological studies. The following table lists the chemicals, their Chemical Abstract Service (CAS) registry numbers, and the type of toxicological studies recommended by the CEC at the meeting.

Chemical	CAS registry No.	Committee recommendations
Acrolein	107-02-8	Carcinogenicity Reproductive and developmental effects.
Acrylic acid	79-10-7	Carcinogenicity.
Aldicarb oxime	1646-75-9	Immunotoxicity.
Butanal oxime	110-69-0	Carcinogenicity.
Cyclohexanone oxime.	100-64-1	Carcinogenicity.
1,1,2,2,-Tetrabromo-methane.	79-27-6	Carcinogenicity.

Three of the six chemicals have been previously selected for other types of toxicology studies by the NTP. Acrolein was weakly positive in Salmonella, negative for sex-linked recessive lethal mutations in Drosophila, and negative for chromosomal aberrations and sister chromatid exchanges in Chinese hamster ovary cells. Acrylic acid was non-mutagneic in Salomonella. Aldicarb oxime was non-mutagenic in Salmonella, and was negative for chromosomal aberrations and sister chromatid exchanges in Chinese hamster ovary cells.

In other related action, the Chemical Evaluation Committee endorsed the NTP staff recommendation to conduct additional carcinogencity studies of pentacholorophenol in F344 rats based on the commercial importance of the chemical, the significant carcinogenic effects observed in the recently completed two year studies in mice, and the lack of adequate carcinogenicity data in rats. The previous carcinogoenesis studies in Sprague-Dawley rats were judged not to be fully adequate.

The Chemical Evaluation Committee also selected zearalanol for testing in Salmonella.

Interested parties are requested to submit pertinent information. The following types of data are of particular relevance:

(1) Modes of production, present production levels, and occupational exposure potential.

(2) Uses and resulting exposure levels, where known.

(3) Completed, ongoing and/or planned toxicologic testing in the private sector including detailed experimental protocols and results, in the case of completed studies.

(4) Results of toxicological studies of structurally related compounds.

Please submit all information in writing by October 24, 1988. Any submissions recevied after the above date will be accepted and utilized where possible.

Dated: September 19, 1988.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 88-21675 Filed 9-21-88; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-88-1854; FR-2556]

Enterprise Zone Development

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice provides (a) additional data to be used by States and local governments when determining their eligibility to nominate an area in their jurisdiction as an enterprise zone and (b) the time period during which State and local governments will be required to submit their nominations to HUD.

EFFECTIVE DATE: Nomination forms may be submitted to HUD Field Offices on September 22, 1988. The deadline for submitting the forms will be 45 days following the effective date of the final rule.

Under Title VII of the Housing and Community Development Act of 1987 (Act) (Pub. L. 100-242), the Secretary cannot designate any area before the first day of the first month following the month in which the effective date of the final rule occurs. The final rule was published in the **Federal Register** on August 16, 1988 (53 FR 30944). The rule's effective date will be announced following completion of the 30 congressional session-day waiting period required by section 7(o)(3) of the Department of Housing and Urban Development Act. HUD expects to announce the effective date early in October 1988.

FOR FURTHER INFORMATION CONTACT: Michael T. Savage, Deputy Director, Office of Block Grant Assistance, Room 7280, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755-6588. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

General

The Secretary is authorized to designate not more than 100 enterprise zones based entirely on rank order of distress.

As specified in the final rule, enterprise zone designations must be requested on the nomination forms (HUD Form 4003; OMB Approval Number 2506-0099) prescribed by HUD. The nomination forms may be obtained from any HUD Regional Office or Category A Field Office. (A listing of all HUD Regional and Category A Field Offices is attached.)

Urban Development Action Grant Eligibility

The final rule requires that each nominated jurisdiction must have current UDAG eligibility based on distress, and demonstrated results in providing low- and moderate-income housing, and equal opportunity in housing and employment as provided for in 24 CFR 570.452-570.453. The lists of jurisdictions which currently meet the UDAG minimum distress tests were published in the **Federal Register** on October 9 and 14, 1987.

Urban/Rural Designation

Under the final rule, jurisdictions will be considered rural if they are outside a metropolitan statistical area (MSA) and have a population of less than 50,000. For the purpose of these tests, MSAs are those designated by the Office of Management and Budget as of June 30, 1988. (All UDAG-eligible places outside of MSAs are rural, since they all have a current population of less than 50,000.)

The Secretary will also consider places that are located in MSAs to be rural if they are determined to be rural by the Bureau of Census. Rural places for each State are identified in the 1980 Bureau of Census publication titled: "Number of Inhabitants." The Secretary will also consider to be rural those Indian reservations which the Census Bureau indicates to be principally rural, even when located in MSAs.

Enterprise Zone Eligibility Data

One of the most important parts of the nomination process is the provision of data to document eligibility. The same data will be used to develop the rank order of the nominations which will be the basis for designations by the Secretary.

Because of the critical nature of the data for both eligibility and designation, HUD has worked extensively with the Bureau of Labor Statistics and the Census Bureau to identify data sources. In order to minimize questions regarding the data at the time of submission, any prospective nominee should immediately contact the HUD Field Office.

Applicants must submit estimates for all four of the selection criteria (even though some of the criteria may not be proposed as a basis for eligibility). The procedures and data sources for developing the estimates are described in the nomination form. Unless otherwise specified, the data are normally available through HUD Field Offices. The following summarizes the sources and date of the data required for each test:

(a) Population

The population of the smallest group of census-defined areas which include the zone must be at least 4,000 for an urban zone and 1,000 for a rural zone. The source of this population test shall be the 100% count for the 1980 census. If the nominated zone follows the census tract, block group or enumeration district boundaries, the applicant may use the 100% population count data as found in the HUD report "Poverty, Income and Unemployment Data." If the 1980 census area for this test needs to be at a block level, the population data may be found in 1980 "Block Statistics" microfiche available from State census data centers and major public libraries.

(b) Unemployment

The unemployment test will be based on 1987 unemployment estimates. The nominated zone must have a 1987 unemployment rate estimated to be at least 9.3 percent. This threshold is 1.5 times the national 1987 rate of 6.2 percent. Data that may be used in estimating 1987 unemployment are available in "Poverty, Income and Unemployment Data" and the BLS tabulations titled "Local Area Unemployment Statistics—Annual Average for 1987" and "1980 Employment and Unemployment Data" by State.

(c) Poverty

The poverty test will be based on data from the 1980 census. The 1980 poverty data for each census tract is available in the report "Poverty Income and Unemployment Data". If the area is untracted, the poverty data for the minor civil division or census county division will be available through the HUD Field Office from the 1980 census tabulation titled "Poverty Tracts and MCDS" and "Poverty CCDS".

(d) Low Income

The low income test shall be based on data from the 1980 census. The 1980 income data are available in the report "Poverty, Income, and Unemployment Data".

(e) Population Loss

The population loss test shall be based on a comparison of population count from the 1970 and 1980 census. Population counts from the 1980 census tracts, block groups and enumeration districts are in the report "Poverty, Income and Unemployment Data". If the census block level data are required, the population counts may be obtained from the Bureau of Census publications titled, "Block Statistics", available from any State census data center or major public library. The block data are in printed reports [Series HC(3)] for the 1970 census and on microfiche for the 1980 census.

Data Problems

If the applicant cannot locate the appropriate data or believe the data to be in error, the applicant should document what is believed to be the best estimate and the rationale for developing the estimate. The Bureau of Census and Bureau of Labor Statistics will review these rationales and advise HUD on the best data to be used.

Further Data Contacts

For general questions on the procedures or data to be used, contact the HUD Field Office. The appropriate State Employment Security Agency may be of further assistance in developing the unemployment estimate. If there are problems with locating census data, especially the 1970 population data, contact appropriate state census data centers, or state universities. For further guidance and referrals on data problems contact John Nagoski or Larry Blume, Data Systems and Statistics Division (202) 755–7390. (This is not a toll-free number.)

Date: September 15, 1988.

Jack R. Stokvis,

Assistant Secretary for Community Planning and Development.

Region I (Boston)

Boston Regional Office, Boston Federal Office Building, 10 Causeway Street, Boston, Massachusetts 02222–1092
Frank Del Vecchio (617) 565–5342
Hartford Office, 300 Main Street, Hartford, Connecticut 06106
Daniel Kolesar (203) 240–4508

Region II (New York)

New York Regional Office, 26 Federal Plaza, New York, New York 10278–0068
Joan Dabelko (212) 264–2885
Buffalo Office, Mezzanine, Statler Building, 107 Delaware Avenue, Buffalo, New York 14202–2986
Michael Merrill (716) 437–5768
Caribbean Office, Federal Building Federico Degetau, U.S. Courthouse, Room 428, Carlos E. Chardon Avenue, Hato Rey, Puerto Rico 00918–2276
Rafael Isern (809) 753–4935
Newark Office, Military Park Building, 60 Park Place, Newark, New Jersey 07102–5504
Frank Sagarese (201) 877–1776

Region III (Philadelphia)

Philadelphia Regional Office, Liberty Square Building, 105 S. 7th Street, Philadelphia, Pennsylvania 19106–3392
John Kane (215) 597–1918
Baltimore Office, The Equitable Building, 3rd Floor, 10 North Calvert Street, Baltimore, Maryland 21202–1865
Harold Young (301) 962–2417
Pittsburgh Office, 412 Old Post Office Courthouse Building, 7th Avenue and Grant Street, Pittsburgh, Pennsylvania 15219–1906
Jim Getsy (412) 644–5493
Richmond Office, 701 East Franklin Street, Richmond, Virginia 23219–2591
Stuart Siller (804) 771–2624
Washington, DC Office, Room 3174, 451 Seventh Street SW., Washington, DC 20410–5500
James McDaniel (202) 453–4520

Region IV (Atlanta)

Atlanta Regional Office, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, Georgia 30303–3388
Charles Straub (404) 331–5139
Birmingham Office, Daniel Building, 15 South 20th Street, Birmingham, Alabama 35233–2096
Jasper Boatwright (205) 731–1645

Columbia Office, Strom Thurmond Federal Building, 1835–45 Assembly Street, Columbia, South Carolina 29201–2480
Thomas O'Brien (803) 765–5565
Greensboro Office, 415 North Edgeworth Street, Greensboro, North Carolina 27401–2107
Charles Ferebee (919) 333–5711
Jackson Office, Federal Building, 100 West Capital Street, Suite 910, Jackson, Mississippi 39269–1096
Jimmy Wilson (601) 965–4750
Jacksonville Office, 325 West Adams Street, Jacksonville, Florida 32202–4303
Cleveland Talmadge (904) 791–3587
Knoxville Office, One Northshore Building, 1111 Northshore Drive, Knoxville, Tennessee 37919–4090
Virginia Peck (615) 558–1422
Louisville Office, 601 West Broadway, Post Office Box 1044, Louisville, Kentucky 40201–1044
Andrew Robertson (502) 352–6141

Region V (Chicago)

Chicago Regional Office, 547 West Jackson Boulevard, Chicago, Illinois 60606–5760
Richard Wilson (312) 353–1696
Columbus Office, 200 North High Street, Columbus, Ohio 43215–2499
John Riordan (614) 469–6743
Detroit Office, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, Michigan 48226–2592
Richard Paul (312) 226–4343
Indianapolis Office, 151 North Delaware Street, Indianapolis, Indiana 46204–2526
Robert Poffenberger (317) 269–5169
Milwaukee Office, Henry S. Reuss Federal Plaza, Suite 1380, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203–2290
Lana Vacha (414) 362–3113
Minneapolis-St. Paul Office, 220 Second Street, South, Minneapolis, Minnesota 55401–2195
Shawn Huckleby (612) 370–3019

Region VI (Fort Worth)

Fort Worth Regional Office, 1600 Throckmorton, Post Office Box 2905, Fort Worth, Texas 76113–2905
Victor Hancock (817) 885–5483
Little Rock Office, Savers Building, 320 West Capitol, Suite 700, Little Rock, Arkansas 72201–3523
Billy Parsley (501) 740–5868
New Orleans Office, 1661 Canal Street, New Orleans, Louisiana 70172–0288
Greg Hamilton (504) 589–7212
Oklahoma City Office, 200 NW 5th Street, Oklahoma City, Oklahoma 73102–3202
Katie Worsham (405) 231–4803
San Antonio Office, Washington Square, 800 Dolorosa Street, San Antonio, Texas 78207–4563
Robert W. Hicks (512) 229–6819

Region VII (Kansas City)

Kansas City Regional Office, Professional Building, 1103 Grand Avenue, Kansas City, Missouri 64106–2496
Miguel Madrigal (816) 374–3192
Omaha Office, Braiker/Brandies Building, 210 South 16th Street, Omaha, Nebraska 68102–1622
Joe Jones (402) 221–3839
St. Louis Office, 210 North Tucker Boulevard, St. Louis, Missouri 63101–1997
David H. Long (314) 425–4322

Region VIII (Denver)

Denver Regional Office, Executive Tower Building, 1405 Curtis Street, Denver, Colorado 80202–2349
Rodney Lorenzen (303) 844–3811

Region IX (San Francisco)

San Francisco Regional Office, Federal Building, 450 Golden Gate Avenue, Post Office Box 36003, San Francisco, California 94102–3448
Gordon McKay (415) 556–5576
Honolulu Office, 300 Ala Moana Boulevard, Room 3318, Honolulu, Hawaii 9850–4991
Calvin Lew (808) 541–1322
Los Angeles Office, 1615 West Olympic Boulevard, Los Angeles, California 90015–3801
Herbert Roberts (213) 251–7235

Region X (Seattle)

Seattle Regional Office, Arcade Plaza Building, 1321 Second Avenue, Seattle, Washington 98101–2054
John Peters (206) 442–0374
Anchorage Office, 701 "C" Street, Box 64, Anchorage, Alaska 99513–0001
William Melton (907) 271–4181
Portland Office, 520 Southwest Sixth Avenue, Portland, Oregon 97204–1596
John Bonham (503) 294–7018

Indian Program Offices

Office of Indian Programs, 300 South Waker Drive, Chicago, Illinois 60606–6765
Leon Jacobs (312) 353–1282
Office of Indian Programs, Murrah Federal Building, 200 NW. 5th Street, Oklahoma City, Oklahoma 73102–3202
Hugh Johnson (405) 231–4101
Office of Indian Programs, Executive Tower Building, 1405 Curtis Street, Denver, Colorado 80202–2349
Ron C. Bailey (303) 564–2963
Office of Indian Programs, One North First Street, Suite 400, Phoenix, Arizona 85004–2360
Gerry Hammon (602) 261–4197
Office of Indian Programs, Arcade Plaza Building, 1321 Second Avenue, Seattle, Washington 98101–2054
Jerry Leslie (206) 399–5298

[FR Doc. 88–21631 Filed 9–21–88; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395–7340.

Title: Tribal Bingo Management Contracts, 25 CFR 287.

Abstract: Respondents supply information related to specific contract provisions agreed to by tribes and private entities concerning the operation and management to tribal bingo facilities. This information is necessary to determine if contracts are legally sufficient to warrant Secretarial approval pursuant to 25 U.S.C. 81, and to prevent intrusion by major criminal elements into tribal Bingo activities.

Bureau Form Number: BIA–6834.

Frequency: Once every five years.

Description of Respondents: Indian tribes and private businesses which choose to contract for the operation and management of tribal gaming facilities; and individuals who qualify as "parties in interest" to a tribal gaming management contract.

Estimated Completion Time: 1,189 hours.

Annual Responses: 10.

Annual Burden Hours: 11,890.

Bureau Clearance Officer: Cathie Martin (202) 343-3577.

Ross O. Swimmer,

Assistant Secretary—Indian Affairs.

FR Doc. 88-21676 Filed 9-21-88; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[NV-930-08-4333-11; NV5-88-46]

Nevada; Temporary Closure of Certain Public Lands in the Las Vegas District for Management of the Snore 250 Off-Highway Vehicle (OHV) Race

ACTION: Temporary closure of certain public lands in Clark County, Nevada on and adjacent to the SNORE 250 race course, on September 24, 1988. Access will be limited to race officials, entrants, law-enforcement and emergency personnel, licensed permittees and right-of-way grantees.

SUPPLEMENTARY INFORMATION: Certain public lands in the Las Vegas District, Clark County, Nevada will be temporarily closed to public access from 0001 hours, September 24, 1988, to 2400 hours, September 24, 1988, to protect persons, property, and public land resources on and adjacent to the 1988 SNORE OHV race course. The Las Vegas District Manager is the authorized officer for the SNORE 250 OHV race and permit (NV5-88-46). These temporary closures and restrictions are made pursuant to 43 CFR Part 8364. The public lands to be closed or restricted are those lands adjacent to and including roads, trails and washes identified as the 1988 SNORE 250 OHV race course. The following public lands restricted or closed are described as: Goodsprings area; T.24S., R.60E., all of sections 30, and 31; T.24S, R.59E., all of section 36; T.25S., R.59E., all of sections 1, 2, 10, 11, 14, 15, 22, 28, and 33. The Ivanpah Valley area; T.26S., R.59E., all of sections 4, 5, 8, 9, 17, 20, 22, and 32. The above legal land descriptions are for public lands within Clark County, Nevada. A map showing specific areas closed to public access is available from the following BLM office: the Las Vegas District Office, 4765 Vegas Drive, P.O. Box 26569, Las Vegas, Nevada 89126, (702) 646-8800. Any person who fails to comply with this closure order issued under 43 CFR Part 8364 may be subject to the penalties provided in 43 CFR 8360.7.

Date: September 12, 1988.

Ben F. Collins,

District Manager, Las Vegas District.

[FR Doc. 88-21614 Filed 9-21-88; 8:45 am]

BILLING CODE 4310-HC-M

[NV-030-08-4333-13]; Closure Notice NV-030-88-01]

Closure of Public Lands in Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency Closure of Federal Lands.

SUMMARY: Notice is hereby given that all public lands in the vicinity of C-Hill on the southwest side of Carson City, Nevada, within the 1988 Kings Canyon Fire J835, are closed to all vehicles. This closure is necessary to ensure that seeding and other fire rehabilitation efforts are not damaged by vehicle use.

DATES: This closure goes into effect on September 8, 1988, and will remain in effect until the Carson City District Manager determines it is no longer needed.

FOR FURTHER INFORMATION CONTACT: John Matthiessen, Walker Resource Area Manager, Carson City District Office, 1535 Hot Springs Road, Sutie 300, Carson City, Nevada 89706. Telephone (702) 882-1631.

SUPPLEMENTARY INFORMATION: The authority for this closure is 43 CFR 8341.2 and 43 CFR 8364.1. Any person who fails to comply with a closure order is subject to arrest and fines of up to $1000 and/or imprisonment not to exceed 12 months.

This closure applies to all motorized vehicles and non-motorized vehicles, such as mountain bikes, excluding (1) any emergency or law enforcement vehicle while being used for emergency purposes, and (2) any vehicle whose use is expressly authorized in writing by the Walker Resource Area Manager.

The public lands affected by this closure are those lands involved in the Kings Canyon Fire J835 within:

Mount Diablo Meridian, Nevada

T.15 N., R. 19. E.,
Sec. 13;
Sec. 24;
Sec. 25.
T. 15 N., R. 20 E.,
Sec. 18;
Sec. 30.

Dated this 8th day of September, 1988.

James W. Elliott,

District Manager, Carson City District.

[FR Doc. 88-21609 Filed 9-21-88; 8:45 am]

BILLING CODE 4310-HC-M

[CA-940-08-4520-12; Group 898]

Filing of Plat of Survey; California

September 14, 1988.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Tehama County

T. 27 N., R. 4 E.

2. This plat representing the dependent resurvey of the west boundary, a portion of the north boundary, and a portion of the subdivisional lines, and the survey of a portion of the north boundary, and the metes-and-bounds survey of certain tracts, Township 27 North, Range 4 East, Mount Diablo Meridian, California, under Group 898 California, was accepted April 15, 1988.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Lassen National Forest, U.S. Forest Service.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 88-21610 Filed 9-21-88; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-08-4520-12; Group 938]

Filing of Plat of Survey; California

September 14, 1988.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Modo County

T. 47 N., R. 17 E.

2. This plat representing the dependent resurvey of a portion of the subdivisional lines, in Township 47 North, Range 17 East, Mount Diablo Meridian, California, under Group 938 California, was accepted April 7, 1988.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 88–21611 Filed 9–21–88, 8:45 am]

BILLING CODE 4310–40–M

[CA–940–08–4520–12; Group 986]

Filing of Plat of Survey; California

September 14, 1988.

1. These plats of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Alpine County

T. 10 N., R. 19 E. and
T. 15 N., R. 20 E.

2. These plats,

(1) Represents the dependent resurvey of a portion of the east boundary, and a portion of the subdivisional lines, the survey of the subdivision of section 24, and the metes-and-bounds survey of Lots 2 and 5 in section 24, Township 10 North, Range 19 East, Mount Diablo Meridian, California.

(2) Represents the dependent resurvey of a portion of the subdivisional lines, the survey of the subdivision of section 19, the metes-and-bounds survey of Lot 7 in Section 19, Township 10 North, Ranges 19 and 20 East, Mount Diablo Meridian, California, under Group No. 986 California, was accepted April 15, 1988.

3. These plats will immediately become the basic record of describing the land for all authorized purposes. These plats have been placed in the open files and is available to the public for information only.

4. These plats were executed to meet certain administrative needs of the Toiyabe National Forest.

5. All inquiring relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 88–21612 Filed 9–21–88; 8:45 am]

BILLING CODE 4310–40–M

[NM–940–08–4220–11; NM NM 012317]

Proposed Continuation of Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service proposes that a 1,515.45 acre withdrawal of National Forest System land for use in connection with the Carson National Forest continue for an additional 20 years. The land will remain closed to mining, and has been and will remain open to mineral leasing.

DATE: Comments should be received by December 21, 1988.

ADDRESS: Comments should be sent to: New Mexico State Director, P.O. Box 1449, Sant Fe, New Mexico, 97504–1449.

FOR FURTHER INFORMATION CONTACT: Clarence Hougland, BLM, New Mexico State Office, 505–988–6554.

The Forest Service proposes that portions of the existing land withdrawal made by Public Land Order No. 1120 be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

Carson National Forest

Agua Piedra Winter Sports Area and Campground (formerly Agua Piedra Sports Area)

T. 22 N., R. 13 E.,
Sec.4, lots 2, 3, 4, and those portions of SE¼SW¼,SW¼SE¼,SE¼sSE¼ within the Santa Barbara Grant Survey;
Sec. 23, lot 1, NW¼NE¼,E½NE¼NW¼, including that portion of the N½NE¼NE¼ within the Santa Barbara Grant Survey.

Capulin, La Sombra, and Cave Recreation Areas (formerly Capulin, La Sombra, and Cave Recreation Area)

T. 25 N., R. 14 E.,
Sec.29, S½NE¼SW¼,S½NW¼SW¼, NW¼NW¼SW¼;
Sec. 30, N½SE¼,S½SW¼NE¼.

Comales Campground (formerly Comales Forest Camp)

T. 22 N., R. 13 E.,
Sec.7, lot 1 and those portions of the E½NW¼NE¼,NE¼NE¼N½SE¼NE¼, SE¼SE¼NE¼ located within the Santa Barbara Grant Survey;
Sec. 8, that portion of the W½SW¼NW¼ located within the Santa Barbara Grant Survey.

Elephant Rock Campground (formerly Elephant Rock Forest Camp)

T. 29 N., R. 14 E.,
Sec. 33, SW¼NE¼.

Flechado Campground (formerly Flechado Forest Camp)

T. 22 N., R. 13 E.,
Sec.10, lot 4 and those portions of the S½SE¼ located within the Santa Barbara Grant Survey.

Cuchillo and Cuchillo Del Medio Campgrounds (formerly Forest Camp B—Cuchillo del Medio)

T. 27 N., R. 13 E.,
Sec.22, N½SW¼SE¼,E½NW¼SE¼, W½NE¼SE¼ excluding approximately .62 acres lying within the Wheeler Peak Wilderness Area (Pub. L. 96–550)

Goat Hill Campground (formerly Goat Hill Forest Camp)

T. 28 N., R. 13 E.,
Sec. 3, SE¼SE¼NW¼,NW¼NW¼SE¼, NE¼NE¼SW¼ excluding that portion of Patent No. 30740017.

Junebug Campground (formerly June Bug Mill Forest Camp)

T. 29 N., R. 14 E.,
Sec. 34, SE¼NW¼.

La Bobita Overflow Camp Area (formerly La Bobita Forest Camp)

T. 29 N., R. 14 E.,
Sec. 32, S½NW¼SE¼,N½SW¼SE¼.

Twining Picnic Ground and Trailhead and Taos Ski Valley Winter Sports Area (formerly Leroux and Twining Forest Camp)

T. 27 N., R. 14 E., (unsurveyed),
Sec. 4, S½S½S½, excluding that portion lying within Antoine Leroux Grant and that portion lying within Wheeler Peak Wilderness Area, (Pub. L. 96–550);
Sec. 5, SE¼SW¼SE¼,S½SE¼SE¼ excluding that portion in Patent No. 827477;
Sec. 8, N½NE¼NE¼,NE¼NW¼NE¼ except .52 acres in conflict with HES 82, and that portion lying within Wheeler Peak Wilderness Area (Pub. L. 96–550);
Sec. 9, NW¼NW¼NE¼,N½N½NW¼ excluding that portion lying within Antoine Leroux Grant.

Lower Hondo Campground (formerly Lower Hondo Forest Camp A)

T. 27 N., R. 13 E.,
Sec. 27, S½NW¼NW¼,N½SW¼NW¼ excluding that portion lying within Wheeler Peak Wilderness Area (Pub. L. 96–550).

Mallette Canyon Campground and Bitter Creek Summer Home Site (formerly Mallette Canyon Public Service Site)

T. 29 N., R. 14 E.,
Sec. 24, SE¼SE¼SW¼,SW¼SW¼SE¼, unsurveyed:
Sec. 25, NW¼NW¼SE¼,E½NW¼, S½NW¼SE¼,W½NE¼SE¼, SW¼SE¼,E½SW¼, excluding those portions in Patent No. 45811/MS 1274;
Sec. 36, lots 12, 14, 15, part of lot 13.

Manzanita Trailhead and Hondo Cabin Administrative Site (formerly Manzanita Forest Camp C)

T. 27 N., R. 13 E.,
Sec. 13, SE¼NW¼, SE¼NE¼NW¼, SW¼NW¼NE¼, NW¼SW¼NE¼, excluding approximately 16.40 acres of private land.

Santa Barbara Campground (formerly Santa Barbara Forest Camp)

T. 22 N., R. 12 E.,
Sec. 36, SE¼SE¼NE¼, E½E½SE¼.
T. 22 N., R. 13 E.,
Sec. 31, SW¼SW¼SW¼.

Taos Canyon Recreation Areas (formerly Taos Canyon Recreation Area)

T. 25 N., R. 13 E.,
Sec. 22, S½S½SE¼;
Sec. 23, N½SW¼SE¼, N½SE¼SW¼, SW¼SE¼SW¼, SW¼SW¼;
Sec. 27, NW¼NE¼, NE¼NW¼, S½NW¼NW¼.

Trucha Vista Point

T. 21 N., R. 11 E., (unsurveyed)
Sec. 18, SE¼NE¼NE¼, NE¼SE¼NE¼.

The areas described aggregate 1,515.45 acres in Taos and Rio Arriba Counties.

The purpose of the withdrawal is to protect the substantial capital investment on these sites located within the Jicarilla, Camino Real, and Questa Ranger Districts. The withdrawal segregates the land from location and entry under the mining law. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued, and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Larry L. Woodard,

State Director.

Dated: September 9, 1988.

[FR Doc. 88-21616; Filed 9-21-88; 8:45 am]

BILLING CODE 4310-FB-M

[OR-943-08-4220-11; GP-08-249; OR-22120(WASH), OR-22156(WASH), OR-22197-B(WASH), OR-22197-F(WASH), OR-22197-G(WASH), OR-22204(WASH)]

Proposed Continuation of Withdrawals; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of Transportation, U.S. Coast Guard proposes that six separate land withdrawals continue for an additional 25 years and requests that the lands involved remain closed to surface entry and mining. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: September 22, 1988.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

SUPPLEMENTARY INFORMATION: The U.S. Coast Guard proposes that the following identified land withdrawals be continued for a preirod of 25 years pursuant to Sectin 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The following described lands and projects are involved:

1. OR-22120(WASH), Executive Order of March 26, 1909, Tatugh Point (Blake Island) Light Station, .45 acre, Located in Kitsap County, on the northeasterly corner of Blake Island,
   T. 24 N., R. 3 E., W.M., Washington.
2. OR-22156(WASH), Executive Order No. 3664 of April 25, 1922, Eliza Rock Light Station, 1 acre, Located in Whatcom County, on Eliza Rock in Bellingham Bay,
   T. 36 N., R. 2 E., W.M., Washington.
3. OR-22197-B(WASH), Executive Order of July 15, 1875, Puffin Island Light Station, 5 acres, Located in Whatcom County, on a reef 350 yards east of Puffin Island,
   T. 38 N., R. 1 W., W.M., Washington.
4. OR-22197-F(WASH), Executive Order of July 15, 1875, Skip Jack Island Light Station, 12.25 acres, Located in San Juan County, on unsurveyed Skip Jack Isand,
   T. 38 N., R. 3 W., W.M., Washington.
5. OR-22197-G(WASH), Executive Order of July 15, 1875, Iceberg Point Light Station, 8.5+ acres, Located in San Juan County, on the south end of Lopez Island,
   T. 34 N., R. 2 W., W.M., Washington.
6. OR-22204(WASH), Executive Order No. 561 of February 12, 1907, Viti Rocks Light Station, 3 acres, Located in Skagit County, on Viti Rocks at the south end of Lummi Island,
   T. 36 N., R. 2 E., W.M., Washington.

The withdrawals currently segregate the lands from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. The Coast Guard requests no changes in the purpose of segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuations may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

B. Lavelle Black,

Chief, Branch of Lands and Minerals Operations.

Dated: September 14, 1988.

[FR Doc. 88-21617 Filed 9-21-88; 8:45 am]

BILLING CODE 4310-33-M

[MT-060-08-4410-02]

Meeting; Lewistown District Advisory Council, MT

AGENCY: Bureau of Land Management—Lewistown District Office, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Lewistown District Advisory Council will be held Thursday, October 6, 1988, at 8 a.m. in the Banquet Room of Jorgenson's Restaurant, 1720 Eleventh Avenue, Helena, Montana. The meeting is being held in Helena to allow the District Advisory Council to participate in a field tour to be conducted by the Butte District Office of the Bureau of Land Management on October 5. Following the meeting, there will be a round table discussion of multiple use issues with members of the Miles City and Butte District Advisory Councils. The agenda is as follows:

1. Approve minutes of last meeting.
2. Update on selected District programs
3. Status of Advisory Council nominations.
4. New business.
5. Opportunity for public comment.
6. Adjourn.

The meeting is open to the public. The public may make oral statements before the Advisory Council or file written statements for the council's consideration. Depending upon the number of persons wishing to make an oral statement, a per person time limit may be established. Summary minutes of the meeting will be maintained in the Bureau of Land Management District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: District Manager, Lewistown District, Bureau of Land Management, Airport Road, Lewistown, Montana 59457.

Date: September 14, 1988.

Wayne Zinne,

District Manager.

[FR Doc. 88-21680 Filed 9-21-88; 8:45 am]

BILLING CODE 4310-DN-M

[AZ-040-08-4322-02]

Safford District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92-463, that a meeting of the Safford District Grazing Advisory Board will be held.

DATE: Friday, October 14, 1988, 9:00 a.m.

ADDRESS: Safford District Office, 425 E. 4th Street, Safford Arizona 85546.

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes the following items: Introduction of the new board, Discussion between old and new members, Management Update, and business from the floor.

The meeting is open to the public. Interested persons may make oral statements to the Board. A written copy of the oral statement may be required to be provided at the conclusion of the presentation. Written statements may also be filed for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 425 E. 4th Street, Safford, Arizona 85546, by 4:15 p.m., Thursday, October 13, 1988.

Summary minutes of the Board meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within thirty (30) days following the meeting.

Date: September 16, 1988.

Ray A. Brady,

District Manager.

[FR Doc. 88-21679 Filed 9-21-88; 8:45 am]

BILLING CODE 4310-32-M

[NM-03-08-4410-08]

Intent To Prepare Resource Management Plan and Invitation To Participate in Identification of Issues and Planning Criteria

AGENCY: Bureau of Land Management, Las Cruces District, New Mexico.

ACTION: Notice of Intent to Prepare Resource Management Plan.

SUMMARY: The BLM, Mimbres Resource Area (formerly the Las Cruces/Lordsburg Resource Area), Las Cruces, New Mexico, is initiating the preparation of a Resource Management Plan (RMP) which will include an Environmental Impact Statement (EIS). The plan will guide and control future management actions on approximately 3.6 million acres of public land and mineral resources by the BLM's Mimbres Resource Area. The Code of Federal Regulations, Title 43, Supbpart 1600, will be followed for this planning effort. The public is invited to participate in the planning process, beginning with the identification of issues and planning criteria in June 1989.

DATE: Comments relating to the identification of issues and planning criteria will be accepted until July 11, 1989.

ADDRESS: Send comments to Scott Florence, RMP Team Leader, Bureau of Land Management, Mimbres Resource Area, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Tim Salt, Area Manager or Scott Florence, RMP Team Leader, Mimbres Resource Area, (505) 525-8228.

SUPPLEMENTARY INFORMATION: The planning area will include the public land and Federal mineral ownership in Dona Ana, Luna, Hidalog, and Grant Counties in southwestern New Mexico. This encompasses approximately 3.0 million acres of BLM-administered surface and 3.6 million acres of Federal minerals under Federal, State, or private surface in the four-county area. Anticipated issues to be addressed during development of the RMP include, but are not limited to, the following: (1) Which lands in the Mimbres Resource Area could be transferred to other than BLM administration or require further study, and which lands would be beneficial to BLM programs if acquired; (2) which public land requires special management practices to protect or enhance significant scenic, riparian, natural, cultural, plant, wildlife, or other values; (3) what public land should be designated as open, limited, or closed to motorized vehicle access, and what lands, if any, should be managed for intensive off-road vehicle use; (4) for what public land should legal access be acquired, and on which land should vehicular access be provided; and (5) which areas should be considered for competitive mineral materials sales and what areas, if any, should be closed to mineral material disposal. A number of management concerns will also be addressed in the RMP and include, but are not limited to, the following: (1) Rights-of-way exclusion-avoidance areas; (2) recreation management; (3) watershed management; (4) wildlife habitat management; (5) livestock grazing; and (6) management of the area along the U.S. Mexico border. These preliminary issues and management concerns are not final and may be further refined by direct input through active public participation.

The RMP will be developed by an interdisciplinary team using representation from the Team Leader, Technical Coordinator, Range Conservationist, Geologist, Realty Specialist, Wildlife Biologist, Natural Resource Specialist, Archeologist, Economist, and Writer-Editor with additional technical support to be provided by other specialists as needed. A comprehensive public participation plan has been prepared. It is intended to involve interested or affected parties early and continuously throughout the planning process. An individual may protest approval of a Proposed Plan only with respect to those items submitted in writing to the Area Manager during the planning process. The plan emphasizes localized one-to-one contacts, media coverage, direct mailings, and continued coordination with local, State, and other Federal agencies. Meetings to determine the scope of the RMP and to obtain input on issues and planning criteria will tentatively be held in Las Cruces, Deming, Lordsburg, Silver City, and El Paso in June and July 1989. A scoping package will be issued in early June 1989, giving the times and locations for these meetings.

Complete records of all phases of the planning process will be available to the public at the Mimbres Resource Area located in the Las Cruces District Office throughout development of the RMP. A Draft and proposed plan including a draft and final EIS will be published. This will be followed at the completion

of this project by the publication of a Record of Decision and Approved Plan.

Monte G. Jordan,

Associate State Director.

[FR Doc. 88-21678 Filed 9-21-88; 8:45 am]

BILLING CODE 4310-FB-M

[ES-940-08-4520-13; (ES-039056, Group 24)]

Missouri; Filing of Plat of Dependent Resurvey

September 13, 1988.

1. The plat of the dependent resurvey of a portion of the east boundary, Township 35 North, Range 1 East, a portion of the south boundary, Township 36 North, Range 1 East, and a portion of the subdivisional lines, Township 35 North, Range 1 East, Fifth Principal Meridian, Missouri, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on October 28, 1988.

2. The dependent resurvey was made at the request of the United States Forest Service.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey and survey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., October 28, 1988.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey and Support Services.

[FR Doc. 88-21677 Filed 9-21-88; 8:45 am]

BILLING CODE 4310-GJ-M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

September 19, 1988.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories.

Each entry contains the following information: (1) The 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 Public Law 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 reviewer, 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 possbile. The Department of Justice's Clearance Officer is Larry E. Miesse who can be reached on (202) 633-4312.

New Collection

(1) Petition for Temporary Worker or Trainee
(2) I-129H, Immigration and Naturalization Service
(3) On occasion
(4) Individual or households, businesses or other for-profit. This form will be used by an employer to apply for an H nonimmigrant visa classification for a foreign national to come temporarily to the United States to work or to receive training.
(5) 50,000 responsents at one hour each
(6) 50,000 estimated annual public burden hours
(7) Not applicable under 3504(h). An expedited clearance (less than 60 days) has been requested

Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or in the Method of Collection

(1) Application by Cuban Refugee for Permanent Residence
(2) I-485A, Immigration and Naturalization Service
(3) On occasion
(4) Individuals or households. Used by a Cuban refugee to apply for permanent resident status
(5) 22,224 annual respondents at .5 hours each
(6) 11,112 estimated annual burden hours
(7) Not applicable under 3504(h)

(1) Application for Petition for Naturalization
(2) N-455, Immigration and Naturalization Service
(3) On occasion
(4) Individuals or households. Used by an applicant for naturalization to request transfer of petition to another court
(5) 3,000 respondents at .166 hours each
(6) 498 estimated annual burden hours
(7) Not applicable under 3504(h)

(1) Guarantee of Payment
(2) I-510, Immigration and Naturalization Service
(3) On occasion
(4) Businesses or other for-profit. Used by the master or agent of a vessel or aircraft to guarantee payment for expenses incurred for an alien crewman who arrived in the U.S. and is afflicted with any disease or illness mentioned in section 255 of the Immigration and Nationality Act
(5) 2,500 respondents at .166 hours each
(6) 415 estimated annual burden hours
(7) Not applicable under 3504(h).

(1) Refugee/Asylee Relative Petition
(2) I-730, Immigration and Naturalization Service
(3) On occasion
(4) Individuals or households. Used to file a petition on behalf of the applicant's spouse and/or child who has never had refugee or asylee status, provided that the applicant's status existed prior to the approval of his/her refugee/asyless status
(5) 2,500 respondents at .083 hours each
(6) 207 estimated annual burden hours
(7) Not applicable under 3504(h).

Larry E. Miesse

Department Clearance Officer, Department of Justice.

BILLING CODE 4410-10-M

U. S. Department of Justice
Immigration and Naturalization Service

OMB # 1115-0000

Petition for Temporary Worker or Trainee

DO NOT WRITE IN THIS BLOCK

Case ID #	Action Stamp	Fee Stamp
A #		
G-28 or VOLAG #		
☐ H-1 ☐ H-2 ☐ H-3		
Petition Validity Period From To		

A. Information about this petition

1. This petition is being filed for (check one):
   - ☐ H-1 Alien of distinguished merit and ability
   - ☐ H-2 Alien to perform temporary services or labor
   - ☐ H-3 Alien trainee

2. This petition is a *(check appropriate boxes)*:
   - ☐ New Petition
   - ☐ Amended Petition
   - ☐ Individual
   - ☐ Accompanying Aliens
   - ☐ Group
   - ☐ Multiple Aliens

B. Information about employer/petitioner

1. Company Name
2. Address (Number and Street)

(Town or City) (State/Country) (ZIP/Postal Code)

3. Address where employee will work or receive training (if different)
4. IRS Employer ID Number
5. Date established and number of employees
6. Gross and Net annual income
7. Number of employees or trainees included in this petition
8. Description of business (nature)
9. Have you filed an immigrant visa petition or application for permanent labor certification in the alien's behalf?
   ☐ No ☐ Yes (If Yes, explain)
10. Have you filed any other nonimmigrant visa petition(s)on behalf of the alien?
    ☐ No ☐ Yes (If Yes, explain)

C. Information about employee or trainee

(See instructions for group or multiple aliens)

1. Name (Family Name in CAPS) (First) (Middle)
2. Address (Number and Street) (Apartment Number)

(Town or City) (State/Country) (ZIP/Postal Code)

3. Place of Birth (Town or City) (State/Country)
4. Date of Birth *(Month/Day/Year)* 5. Country of Citizenship
6. Profession or occupation and years of experience
7. Social Security Number
8. Alien Registration Number
9. Address in U.S. where alien will reside
10. Address to which prospective employee will return
11. Sex
    - ☐ Male
    - ☐ Female
12. Marital Status
    - ☐ Married
    - ☐ Widowed
    - ☐ Divorced
    - ☐ Single
13. Dates of prior periods of stay in the U.S. for the past 6 years and type(s) of visa

D. Information about the position offered

1. Job title 2. Hours per week 3. Wages per week Overtime rate
4. Other compensation (explain) Valued at (dollars per week) 5. Dates of intended employment or training *(Month/Day/Year)*
   From: To:
6. Give a nontechnical description of the services the prospective employee is to perform or the training the prospective trainee will receive

Initial Receipt	Resubmitted	Relocated		Completed		
		Received	Sent	Approved	Denied	Returned

Form I-129H (09/07/88)

E. Complete for H-1 Classification

Classification is being sought as:

1. ☐ Professional (Attach an explanation as to why the services to be performed require a person of H-1 caliber, and evidence to establish eligibility for H-1 classification checked below.)
   - ☐ U.S. degree
   - ☐ Foreign degree equivalent to a U.S. degree
   - ☐ State license to practice profession
   - ☐ Combination of college-level education and specialized training and or experience equivalent to a U.S. degree
2. ☐ Prominent alien or group (Attach an explanation as to why the services to be performed require a person or group of H-1 caliber, and evidence to establish eligibility for H-1 classification checked below.)
   - ☐ National or international acclaim and recognition
   - ☐ Recognition by experts as unique or traditional artist(s) of exceptional ability in the arts, cultural, or entertainment field
   - ☐ Exceptional career achievement in business
3. ☐ Accompanying alien to H-1 beneficiary (Attach an explanation of the essentiality to H-1 beneficiary)

F. Complete for H-2 Classification

Attach an explanation of your temporary need for the alien's services, and a Labor Certification from the U.S. Department of Labor (or the Governor of Guam, as appropriate) or notice that certification cannot be made. If certification cannot be made, also attach countervailing evidence, along with evidence of beneficiary(ies) qualifications to perform services.

1. Employment is:
   - ☐ Seasonal
   - ☐ Peakload
   - ☐ Intermittent
   - ☐ One-time occurrence
2. Temporary need is:
   - ☐ Unpredictable
   - ☐ Periodic
   - ☐ Recurrent annually

G. Complete for H-3 Classification

Attach a description of the training program to be provided.

1. Is the training you intend to provide or similar training available in the alien's country?
   ☐ No ☐ Yes (If yes, explain)
2. Will the training benefit the alien in pursuing a career abroad?
   ☐ No ☐ Yes (If yes, explain)
3. Does the training involve productive employment incidental to the training?
   ☐ No ☐ Yes (If yes, give percentage of time)
4. Does the alien already have skills related to the training?
   ☐ No ☐ Yes (If yes, explain)

H. Employees Present Status (check the appropriate box below and give the information required for the box you checked.)

1. ☐ Prospective employee is outside the United States and will apply for a visa abroad at the following American Consulate: (Name City and Country)
2. ☐ Prospective employee is exempt from obtaining a nonimmigrant visa and will apply for admission at the following U.S. port of entry: (Provide City and State)
3. ☐ Prospective employee is in the United States and is applying for change of nonimmigrant status. Form I-506 is attached.
4. ☐ Employee is in the United States and is applying for an extension. Form I-539 is attached for each employee.

Penalties: You may, by law, be fined up to $10,000 or imprisoned up to five year, or both, for knowingly and willfully falsifying or concealing a material fact or using any false document in submitting this petition.

Your Certification: I certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. Furthermore, I authorize the release of any information from my records which the Immigration Service needs to determine eligibility for the benefit that I am seeking.

Name (Type or Print) Title

Signature Date Phone Number

Certification of person preparing form if other than above: I declare that I prepared this document at the request of the person above and that it is based on all information of which I have any knowledge.

Name (Type or Print) Address

Name (Type or Print) Date

G-28 ID Number

Volag Number

Form I-129H (09/07/88)

[FR Doc. 88-21625 Filed 9-21-88; 8:45 am]

BILLING CODE 4410-10-C

Itemized Instructions for Completing Form I–129H, Petition for Temporary Worker or Trainee

Type or print legibly in ink. If extra space is needed, attach a continuation sheet, indicate the item number, and sign each sheet. Write N/A if the item does not apply.

Section A—Information About the Petition

Item 1. Classification sought. Check only one classification for which you wish INS to determine the alien's eligibility.

Item 2. Type of Petition. At least two boxes should be checked to show whether this petition is a new or amended petition for an individual, accompanying alien(s), group, or multiple aliens.

Section B—Information About Employer/Petitioner

Item 1. Name. Enter the petitioning organization's or individual's business name which intends to employ or train the alien. If an agent is the petitioner on behalf of multiple employers, enter the agent's business name.

Item 2. Address. Enter the location of the organization, individual, or agent which is filing this petition.

Item 3. Address where employee will work or receive training. Complete if this address is different from the petitoner's address. Attach an itinerary of locations when the alien will work or receive training at multiple locations.

Item 4. IRS employer ID number. Self explanatory.

Item 5. Date established and number of employees. Indicate the month and year that you began operating as a business and the number of persons employed by your business.

Item 6. Gross and net annual income. Indicate approximate income before and after expenses for the previous tax year.

Item 7. Number of employees/trainees indicated in this petition. Specify the number of aliens for whom classification is being requested on this petition. You must follow the procedures for including multiple aliens on a single petition.

Item 8. Description of business. Enter the nature of your business, such as hospital, university, financial institution, or auto manufacturer.

Item 9. Filing of an immigrant visa petition of application for permanent labor certification. Check no or yes to indicate whether you have taken one of these actions. If yes, explain the stutue of the immigrant visa petition and/or permanent labor certification application, where filed, the nature of the permanent employment, and final action, if any.

Item 10. Nonimmigrant visa petition(s) filed. Check no or yes to indicate whether you have filed any other H or L nonimmigrant visa petitions on behalf of the alien in the past six years. If yes, indicate dates of approval or denial and the INS office which approved or denied the petitions.

Section C—Information About Employee

Item 1. Name. When the petition is for an individual, indicate the individual's name. When the petition is for a group, indicate the group's professional name and attach a list of the names. Indicate each alien's name and addresss, date and place of birth, occupation, social security number, and dates of previous stays in the United States for the past six years. When the petition is for accompanying aliens or multiple H–2 or H–3 aliens, so indicate and attach a list of the names of the aliens and other identifying information as required above for members of a group. Skip items 2–13 if this petition is for a group, accompanying aliens, or multiple aliens.

Item 2. Address. Enter the alien's current address or place of residence whether in the United States or in a foreign country.

Item 3. Place of birth. Self explanatory.

Item 4. Date of birth. Self explanatory.

Item 5. Country of citizenship. Self explanatory.

Item 6. Profession or occupation and years of experience. Enter the title of the alien's occupation and the number of years of work experience and/or specialized training which the alien has in the occupation.

Item 7. Social security number. Enter if the alien has a U.S. social security numbr.

Item 8. Alien registration number. If INS has ever assigned the alien an "A" number, such as All 684 546, enter the number, if known.

Item 9. Address in the U.S. where the alien will reside. If known, enter the alien's intended U.S. address.

Item 10. Address to which alien will return. Enter the foreign address to which the alien will return after his or her temporary stay in the United States.

Item 11. Sex. Self explanatory.

Item 12. Martial status.

Item 13. Periods of stay in the U.S. for the past year and type(s) of visa held. Enter the dates of all periods of stay in the United States from six years ago to the present time and the type of visa held, i.e., 6/83 to 6/84 (B–1 visa), 2/86 to present (L–1 visa) or 9/84 to 12/84 (B–2 visa), 6/85 to 6/87 (H–1 visa).

Section D—Information About the Position Offered

Item 1. Job title. Enter the common name or payroll title of the job being offered.

Item 2. Hours per week. Enter the basic hours of work required each week and any anticipated ovetime.

Item 3. Wages per week. Enter the weekly wage or salary to be paid and the overtime rate in accordance with Federal, State, or local law.

Item 4. Other compensation and its dollar value. Specify other compensation offered, if any, in addition to the alien's salary, i.e., commissions bonuses, housing, or transportation. Estimate the weekly dollar value of such compensation.

Item 5. Dates of intended employment or training. Indicate the starting and ending dates of the period of intended employment or training. In the period of time requested, you may include appropriate time which the alien needs to be in the United States prior to the date employment or training actually starts for activities incidental to the employment or training, such as rehearsals, purchase or rental of equipment, of finding a place to live.

Item 6. Nontechnical description of services or training. Briefly describe the alien's intended job duties or training. Specify any special working or training conditions. Attach a separate sheet if additional space is needed.

Section E—H–1 Classification for Aliens of Distinguished Merit Ability

Item 1. Check to indicate that you are seeking H–1 classification for the alien as a professional and check which criterion the alien meets to qualify as a member of the professions. Attach documentation, such as copies of degrees, certificates, licenses, and references to show that the alien qualifies as a professional. In addition, explain why the work to be done requires the knowledge and skills of a professional.

Item 2. Check to indicate that you are seeking H–1 classification for a prominent alien or group and check

which criterion the alien or group meets to qualify as prominent. Refer to Part II, Section C of the instruction booklet for the type of documentation which you must attach to the petition to show that the alien or group is prominent. Explain why the work to be done requires the caliber of a prominent alien or group.

Item 3. Check if the petition includes accompanying alien(s). In a separate attachment, explain how the alien's support services are essential to successful performance of work by the H–1 individual or group and why the support services cannot be readily done by a United States worker.

Section F—H–2 Classification for Other Temporary Workers

Item 1. Check the box which describes the nature of your need for the work to be done. Also explain in a separate attachment why you need the alien's services for the temporary period requested.

Item 2. Check the box which describes the frequency of you need for the work to be done. Attach the labor certification or notice that certification cannot be made from the Department of Labor. If you are attaching a notice that certification cannot be made, you may include countervailing evidence. See Part III, paragraph (C)(4) of the instruction booklet. You must also provide evidence that the alien is qualified to do the work. The alien must have any education, training, and experience required in the job offer for labor certification.

Section G—H–3 Classification for Trainees

Item 1. If yes is checked, describe the training available in the alien's country and explain why you are proposing to train the alien in the U.S. A detailed description of the training program must be attached to the petition.

Item 2. If yes is checked, describe the alien's current job and qualifications and explain how the proposed training will benefit the alien in pursuing a career abroad.

Item 3. If the training program involved any productive work or on-the-job training, you must indicate what percentage of the alien's time will be spent in productive work or on-the-job training.

Item 4. If the alien has already skills related to the type of training to be provided, describe the extent of the alien's current skills.

IMPORTANT NOTICE

Please read the detailed instructions for filing an H petition carefully for the filing procedures and documentary requirements for each H classification.

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, seaching 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: U.S. Department of Justice, Immigration and Naturalization Service (Room 2011), Washington, D.C. 20536; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503

[FR Doc. 88–21625 Filed 9–21–88; 8:45 am]
BILLING CODE 4410–10–M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; Microelectronics and Computer Technology Corp.

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"), Microelectronics and computer Technology Corporation ("MCC") has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the membership of MCC. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act limiting the recovery of antitrust plantiffs to actual damages under specified circumstances.

On December 21, 1984, MCC and its shareholders filed their original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 17, 1985, 50 FR 2633. MCC and its shareholders filed additional notifications on March 29, 1985, October 21, 1985, July 30, 1986, November 7, 1986, December 23, 1986, February 25, 1987, December 23, 1987, and March 4, 1988. The Department published notices in the **Federal Register** in response to these additional notifications on April 23, 1985 (50 FR 15989), September 10, 1986 (51 FR 32263), December 8, 1986 (51 FR 44132), February 3, 1987 (52 FR 3356), March 19, 1987 (52 FR 8661), January 22, 1988 (53 FR 1859), and March 29, 1988 (53 FR 10159), respectively.

Effective on or about August 16, 1988, Allied Corporation and each of its subsidiaries are no longer parties to MCC.

Joseph H. Widmar,
Director of Operations Antitrust Division.

[FR Doc. 88–21622 Filed 9–21–88; 8:45 am]
BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 88–56]

James J. Kirkland, Dublin, GA; Hearing

Notice is hereby given that on April 27, 1988, the Drug Enforcement Administration, Department of Justice, issued to James J. Kirkland, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for a DEA Certificate of Registration.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, September 27, 1988, commencing at 10:00 a.m., at the National Labor Relations Board, 44 Broad Street, Suite 900, Atlanta, Georgia.

Dated: September 15, 1988.

John C. Lawn,
Administrator, Drug Enforcement Administration.

[FR Doc. 88–21604 Filed 9–21–88; 8:45 am]
BILLING CODE 4410–09–M

[Docket No. 88–6]

Plaza Pharmacy; Revocation of Registration

On December 15, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Plaza Pharmacy (Respondent), 1175 Glendale Drive, Salt Lake City, Utah, proposing to revoke its DEA Certificate of Registration AP3127316. The statutory basis for the Order to Show Cause was that the pharmacy's continued registration was consistent with the public interest.

Respondent, through counsel, requested a hearing on the issues raised in the Order to Show Cause in a letter dated January 14, 1988. The matter was docketed before Administrative Law Judge Mary Ellen Bittner. On January 21, 1988, Judge Bittner issued an order directing the agency to file a prehearing statement on or before February 10, 1988, and Respondent to file a prehearing statement on or before March 2, 1988. In the Order for Prehearing Statements, Judge Bittner stated that, "Respondent is cautioned that failure timely to file a prehearing statement as directed above may be considered a waiver of hearing and an implied revocation of a request for a hearing." Agency counsel timely filed its prehearing statement, however, Respondent did not file a prehearing statement. The Administrative Law Judge requested that agency counsel advise her of what course the agency intended to take in the matter. On March 2, 1988, agency counsel spoke to Respondent's counsel who indicated that the pharmacy was discontinuing business, that his client, the pharmacy's owner, was being sentenced following a conviction, and that he would advise the Administrative Law Judge of these facts. No information was forwarded by Respondent's counsel to the Administrative Law Judge or agency counsel. In addition, the pharmacy refused to surrender its DEA Certificate of Registration. The agency requested termination of proceedings before the Administrative Law Judge. This request was granted on March 29, 1988. Following the termination, Respondent's counsel sent a letter to Judge Bittner indicating that, "Dennis Robbins surrendered the DEA Certificate of Registration by following the instructions on DEA form 222." DEA forms 222 are order forms used to document the transfer of Schedule I and II controlled substances from one registrant to another.

Since proceedings have been terminated before the Administrative Law Judge, this matter was forwarded to the Administrator of DEA for a final determination. The Administrator finds that Respondent pharmacy has waived its right to a hearing by failing to file its prehearing statement, and now enters his final order in this matter without a hearing and based upon the record before him. 21 CFR 1301.57. The Administrator further finds that Respondent pharmacy has not surrendered its DEA Certificate of Registration. The forms which were sent to the DEA Denver Office by registered mail on March 14, 1988, were the pharmacy's unused DEA order forms, DEA form 222. This is apparently what Respondent's counsel referred to in his letter to the Administrative Law Judge. There were no other documents forwarded to DEA. Neither the Certificate of Registration, nor a statement or letter indicating that the registration was surrendered have been received by DEA.

The Administrator further finds that since the Order to Show Cause was issued on December 15, 1987, Mr. Dennis R. Robbins, owner of Respondent pharmacy, has been convicted, in the Third Judicial District Court, in and for Salt Lake County, State of Utah, on May 13, 1988, of unlawful distribution of a controlled substance for value, falsely filing a claim for public assistance, and conducting a pattern of unlawful activity, all felony violations of Utah law. Mr. Robbins was sentenced to five years in the Utah State Prison and ordered to pay a fine of $5,000.00.

The convictions arose from an investigation of Respondent pharmacy conducted by various law enforcement agencies. It was disclosed that the pharmacy was filling a large number of forged prescriptions for controlled substances. At least 25 prescriptions for Schedule II controlled substances seized from the pharmacy were found to be forgeries. Many prescriptions found at the pharmacy were not authorized by the physicians whose names appeared on them and many indicated refills far in excess of those permitted by law. These prescriptions were also billed for payment to Medicaid. Confidential sources of information had advised that they were receiving controlled substances from Mr. Robbins and another pharmacist employed at the pharmacy. A Salt Lake City Sheriff's Department Deputy made a series of nine undercover purchases of Tylenol #4 and Valium from the pharmacy. She presented an empty prescription vial to the pharmacist. On each of the nine occasions, extending from January 21, 1986 to June 16, 1986, the Deputy receivd 30 tablets of Tylenol with codeine #4 and 12 tablets of Valium. The Deputy had no prescription or authorization from a physician for the controlled substances. Six of the illegal dispensings were made by Mr. Robbins. On each occasion the Deputy was charged a different price for the same quantity and brand of drug.

A search warrant was served at the pharmacy on May 5, 1987. An audit of controlled substance records at the pharmacy for the period January 1, 1986 through May 5, 1987, revealed large discrepancies, including a shortage of over 15,000 dosage units of Percodan, a Schedule II narcotic controlled substance, and a shortage of over 14,000 dosage units of Valium, a Schedule IV controlled substance.

The Administrator concludes that lacking any explanation or mitigating evidence, the past violative history of handling controlled substances demonstrated by the pharmacy and its owner, Mr. Robbins, clearly requires that the pharmacy's registration be revoked as inconsistent with the public interest. DEA has consistently held that the registration of a pharmacy may be revoked as the result of a controlled substance related felony conviction or unlawful activity of the pharmacy's owner, majority shareholders, officers, managing pharmacist or other key employee. See: *White's Best Buy Drug*, Docket No. 87–41, 53 FR 7251 (1988); *Bourne Pharmacy, Inc.*, Docket No. 88–32, 49 FR 32816 (1984); *River Forest Pharmacy*, Docket No. 73–6, 38 FR 27417 (1973), *aff'd*, 501 F.2d 1202 (1974). The pharmacy's owner has been convicted of a felony relating to controlled substances. In addition, Respondent pharmacy was unable to account for large amounts of controlled substances. The evidence before the Administrator, which reveals that Mr. Robbins and the pharmacy totally disregarded their lawful responsibilities for the proper handling of controlled substances, compels the Administrator to conclude that Respondent pharmacy's DEA registration must be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registraion AP3127316, previously issued to Plaza Pharmacy, be, and it hereby is, revoked. Any pending applications for renewal of such registration are denied. This order is effective October 24, 1988.

John C. Lawn,

Administrator.

Dated: September 16, 1988.

[FR Doc. 88–21605 Filed 9–21–88; 8:45am]

BILLING CODE 4410–09–M

NATIONAL SCIENCE FOUNDATION

Undergraduate Faculty Enhancement Program

Closing dates: October 14, 1988 for projects beginning summer 1989; March 3, 1989 for projects beginning after summer 1989.

Copies of the program announcement and guidelines for the Undergraduate Faculty Enhancement Program are

available from the Forms and Publications Unit, National Science Foundation, 1800 G Street NW., Washington, DC 20550; (202/357–7452), request publication NSF 88–33. The program announcement contains all information and forms needed for submission of proposals.

I. Introduction

The teaching faculty are a key element in undergraduate education. It is important that they be intellectually vigorous and excited about their disciplines, that their knowledge of recent developments in their fields be up-to-date, and that they regard the teaching of undergraduates as an important and rewarding activity. To these ends, the National Science Foundation (NSF) provides leadership and financial assistance to encourage colleges and universities to take a systematic interest in the currency and vitality of the faculty who are primarily involved in undergraduate teaching and to assist them in enhancing their disciplinary capabilities and teaching skills.

This announcement describes the *Undergraduate Faculty Enhancement Program,* which makes grants for Undergraudate Faculty Seminars and Conferences. These provide opportunities for groups of faculty to learn about new techniques and new developments in their fields.

In addition, faculty may submit their own research proposals to the appropriate research programs at NSF, either as regular research proposals or through the *Research in Undergraduate Institutions* (RUI) activity (refer to the RUI announcement, NSF 85–59). They may also associate with an existing or proposed NSF-supported research program through the *Research Opportunity Awards* (ROA) activity (refer also to NSF 85–59).

II. Program Description

A. Purpose and Scope

The Undergraduate Faculty Seminars and Conferences activity makes grants to conduct regional or national seminars, short courses, workshops, or similar activities for groups of faculty members. Grants will be made for the development and implementation of ways to assist large numbers of faculty to learn new ideas and techniques in their fields, and to use the knowledge and experience to improve their undergraduate teaching abilities.

The purpose of the program is to meet the needs of faculty who teach primarily undergraduate students. These faculty need to be familiar with new experimental techniques and ways of incorporating them into undergraduate laboratories. They need to have experience with new instrumentation and to have the opportunity to evaluate its suitability for use at their home institutions. They need to be familiar with recent theoretical developments in their fields which bear on their undergraduate teaching. They need opportunities to synthesize knowledge which cuts across their own and other disciplines. Finally, they need opportunities to interact intensively with experts in the field and with colleagues who are active scientists and teachers, both during the course of a project and in a continuing way after the end of a project.

Projects must be regional or national in scope, and may include seminars, short courses, workshops, and conferences, or a series of such activities, but are not limited to these. Actual sessions may vary considerably in length, normally from a few days to a few weeks.

The kinds of activities which are encouraged include projects which—

- Allow participants to gain experience with recent developments in the field;
- Enable participants to work with innovative technologies relevant to their academic responsibilities and which allow them to evaluate the technology.
- Permit participants to work with experts who have had a part in originating the ideas which are the subject of the project or who have worked extensively with the ideas or techniques;
- Allow participants to work with industrial scientists, mathematicians, and engineers and to lean new industrial applications in the field;
- Permit participants to obtain personal experience working with new ideas and techniques, rather than just hearing about them;
- Encourage participants to develop instructional materials that include new ideas and techinques;
- Explore new methods of delivery of information, such as the use of computers or teleconferencing, either in work with other participants during the project or in participants' activities after the project;
- Encourage sustained interaction among the participants following the project and continued opportunities for learning about the topics of the project;
- Encourage the increased participation of underrepresented groups in science, mathematics, and engineering.
- Although the kinds of projects and activities described here are expected to include the majority of those supported through the Undergraduate Faculty Enhancement Program, proposals envisioning additional mechanism for enhancing the vitality of the undergraduate faculty will be considered by NSF.

B. Eligibility Criteria and Limitations

1. Eligible Activities

The aim of the program is to improve the technical capability of experienced faculty members in ways which will enhance their ability to teach up-to-date undergraduate courses and laboratories. Thus activities proposed must be justified explicity by their capacity to enhance participants' teaching activities for undergraduate students at one or more levals. It is not appropriate to propose activities which will primarily benefit a faculty member's research abilities. On the other hand, projects of a purely pedagogical nature which do not serve top enhance the faculty member's technical capability are not appropriate, either. Activities should be especially designed for experienced teachers and ordinarily should not duplicate parts of courses normally given by graduate departments.

The emphasis of the proposed project must be on the active involvement of the participants in working with the topic of the project and in interaction with scientists, engineers, and mathematicians experienced in the topic and with fellow participants. Thus, for example, in laboratory projects, participants must have access to equipment and facilities and have sufficient time to become familiar with experimental techniques and the experiments which may be done. In theoretical projects, participants must have sufficient opportunity to learn the theory and explore its implications. In all projects, participants must actually work extensively with the substance of the topic and interest with experts. Projects which are primarily lecture courses are therefore not appropriate in most cases.

The Foundation is concerned about the underrepresentation of women, minorities, and disabled persons in careers in science, mathematics, and engineering. Projects involving members of these groups as part of the staff or as target audiences are especially encouraged.

2. Eligible Organizations and Fields

The program will accept proposals from scientists, engineers, and

mathematicians representing appropriate organizations, including colleges and universities, national laboratories, professional societies, other non-profit organizations, for-profit industries with the scientific expertise and facilities, and other organizations which can conduct the described activities.

The project should have one director, who is responsible for its operation as well as for its planning and administration. Normally, the director will be an authority in the topic of the project and will devote full time to it during its operation. In some cases it may be appropriate to have an expert other than the director who is responsible for the substance of the project. Other senior personnel may also be involved if appropriate. In all cases it is desirable that there be sustained interaction between the project personnel and participants.

Proposals may be submitted for support in the fields of science engineering, and mathematics ordinarily supported by the Foundation, including the physical and biological sciences, social sciences, mathematics, computer and information sciences, and engineering, or for interdisciplinary projects which deal primarily with these fields. Specifically excluded from support are activities which are addressed to clinical fields associated with the sciences, such as medicine, nursing, clinical psychology, and physical education, as well as activities which primarily involve social work, home economics, business, the arts, and the humanities.

3. Types of Support Available and Cost Sharing

The Foundation will provide support for reasonable direct costs of operating the project, including salaries of senior personnel, clerical support, supplies, the cost of publications, postage and telephone charges, and computer services. The grantee institution is expected to provide facilities and equipment necessary to operate the project, and therefore no permanent equipment or facilities will ordinarily be supported. Indirect costs will be allowed.

Participant costs should be shared between the grant and the participating faculty member's home institution. It is expected that the home institution will bear travel costs; the cost of lodging and meals for participants may be requested from the grant. If there are other participant costs the proposal should describe them and request funds for them. No tuition or other fees may be charged to the participants. Participants also may receive a stipend of up to $250 per week of the project.

Projects may be operated in one or more continuous sessions. Although summer may be most convenient for many directors and participants, it may be appropriate to operate some projects during the academic year. Ordinarily, awards will be made for one year, although proposals with sufficient justification for projects which continue over two or three years will be considered.

4. Selection of Participants

After awards have been made by NSF, directors should publicize their project's availability widely to the intended audience. Faculty members who wish to participate in a particular project will apply directly to the project director. Directors, acting in consultation with a selection committee if desired, and within the guidelines established by NSF in this announcement, will be responsible for selecting participants for the project and making arrangement for its operation.

The program is intended for those whose primary duties lie in undergraduate teaching. Participants should ordinarily have a minimum of three years of undergraduate teaching experience by the beginning of the project. The participants must be drawn from a regional or national audience; where some participants come from the host institution, the grant will not pay participants support costs for local participants.

The number of participants in a project will depend on the facilities and equipment available and on the topic of the activity. A project should accommodate enough participants to enable it to have an impact on the teaching of a subject and to allow for diversity in the group of participants; a minimum of 10 participants is suggested. On the other hand, projects should be planned so that the number of participants is not so large that access to equipment and project personnel is unduly restricted.

III. Preparation of Proposals

This announcement sets forth basic information needed for proposal preparation. Proposers must also consult the publication Grants for Research and Education in Science and Engineering (GRESE) (NSF 83–57 rev. 11/87) for additional guidance. This publication is available from the Forms and Publications Unit, National Science Foundation, 1800 G Street NW., Washington, DC 20550. Proposers should use the forms contained in the Undergraduate Faculty Enhancement Announcement and Guidelines (NSF 88–33) not those in GRESE.

Except as modified by the guidelines, standard NSF guidelines on proposal preparation, submission, evaluation, NSF awards (general information and highlights), declinations and withdrawals contained in GRESE are applicable.

More comprehensive information is contained in the NSF Grant Policy Manual, Revised, (NSF 77–47) available for purchase at $12.00 from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. The Grant Policy Manual ordinarily is not needed in the process of preparing a proposal.

In the event that the submitting organization has never been the recipient of an NSF award, however, it is recommended that appropriate administrative officials become familiar with the NSF policies and procedures contained in the NSF Grant Policy Manual, Revised, which are applicable to most NSF awards. (If a proposal from such a institution is recommended for an award, the NSF Division of Grants and Contracts will reequest certain organizational, management, and financial information. These requirements are contained in Chaper III of the Manual.)

A proposal consists of the following parts:

1. Cover Sheet
2. Project Summary Form
3. Table of Contents
4. Narrative
5. Budget
6. Curriculum Vitae
7. Statement of Current and Pending Support
8. Summary of Results of Prior NSF Support
9. Appendices (optional)

1. *Cover Sheet* The first page of the proposal will be the cover sheet prepared in the form found in the announcement and guidelines. This cover sheet form should be duplicated and completed. The cover sheet must bear the signatures of the proposed principal investigator and of an administrative official who is empowered to commit the proposing organization to the conduct and prudent management of the project if NSF agrees to support it.

2. *Project Summary Form* The second page of the proposal will be the project summary form. The information provided on this form is used by the program staff for a variety of purposes, including the proper assignment of proposals to reviewers. Name of institution and project title must be written exactly as given on the cover sheet. Please enter the data requested in

the boxes according to the instructions on the back of the form. The information is requested in the indicated format to facilitate its input into the NSF data collection system.

The Summary of Proposed Work should be a concise description of the proposed activity suitable for publication by the Foundation to inform the general public about its awards. The text should not exceed 200 words in length. The summary should be a self-contained description of the activity which would result if the proposal is funded by NSF, not an abstract of the proposal. The summary should include a statement of the objectives of the project, a short description of its operation, and a statement of its significance to undergraduate teachers and their students. It should be written so that a technically literate reader can understand the use of Federal funds in support of the project.

3. *Table of Contents*: The proposal should be paginated continuously, and the beginning of each section noted in the table of contents.

4. *Narrative*: The narrative provides a detailed description of the proposed project, and it contains most of the information used to judge the suitability of the project for funding. Although no particular form is required, the description should cover the following points.

- What scientific, engineering, or mathematical topics will be covered during the project, and in what way? What is the significance of these topics in the field? To what extent will the coverage be experimental or theoretical?
- What are the qualifications of the staff, particularly the director, which make them especially qualified to conduct the project? What is the relationship between the topics and the director's professional activities? If other people are to take part in the operation of the project, what responsibilities will each take, and how do they fit into the overall project?
- What experience does the director or other staff or the organization have with instruction of faculty from other institutions? What provisions does the host institution plan to make that will maintain an intellectual setting that is conducive to learning by a group of mature professionals?
- How will the project be operated? What will be the structure of the project, and what will be required of participants during the project? One of the features to be addressed here will be the arrangements for sustained interaction of the participants with experts and among themselves during the course of the project and after its completion.
- In what ways are the topics particularly suitable for faculty who teach undergraduates? Projects should be designed to appeal to a large number of teachers of undergraduates, either within a single discipline or across several disciplines.
- What is the intended audience for the project? Although projects should not require highly specialized training from the participants, it is reasonable to require some background related to the topics covered. What prerequisites will there be?
- What information will be requested from applicants? How will participants be selected? Who will be involved in making the selection? What efforts will be made to recruit participants?
- What facilities and equipment are available for the project? This includes meeting rooms, scientific equipment, laboratories, and computers, and also the planned provision for participant housing, meals, and recreation.
- How will the project be evaluated?
- Other information needed to provide a complete description of the project may be included. The narrative section should be printed in a way which is easy to read and should not exceed 15 single-spaced or 30 double-spaced pages.

5. *Budget* The budget should be presented on the standard NSF form. The discussion in *GRESE*, pp 5–7, applies in general. The following considerations apply specifically to this program:

A. *Senior Personnel* There must be a single project director who will be primarily responsible for administration and operation of the project. Other senior personnel may be listed if appropriate, but proposers should keep in mind the desirability of sustanied interaction with an expert or experts in the topic to be covered.

B. *Other Personnel* Project directors will need secretarial help in handling applications for the project and assistance in arranging for the project's operation.

C. *Fringe Benefits* Allowable according to institutional policy.

D. *Equipment* Ordinarily not allowed.

E. *Travel* Allowed if necessary for the operation of the project, but not for participant travel to and from the project.

F. *Participant Support Costs* Reasonable costs for subsistence for participants are allowed. Include here also a stipend of up to $250 per week paid to each participant, pro rata for periods not an integral number of weeks.

G. *Other Direct Costs* Include here costs of supplies, publications, postage and telephone charges, and computer services as necessary. Include also estimated costs of publicizing the availability of the project to the intended audience.

H. *Indirect Costs.* Calculated according to the standard procedure outlined in GRESE, p. 7. Note that indirect cost agreements usually do not allow indirect costs to be charged on participant support costs (budget category F).

6. *Curriculum Vitae* A curriculum vitae should include a record of the director's education and professional experience, honors, and a list of relevant publications, particularly in the previous 5 years. Also include here vitae for other senior personnel who will have a substantial responsibility for the operation of the project.

7. *Statement of Current and Pending Support* All current and pending externally-funded support to the director and other senior personnel must be listed on the form found on page 00.

8. *Results of Prior NSF Support* If the project director has received support from NSF in the past 5 years, the proposal must include a section summarizing the results of that support. It must include—

- The NSF award number, amount, period of support, and project title.
- A summary of the results of completed work. (To facilitate review this summary should not exceed three pages.)
- A list of publications and formal presentations acknowledging the award. (Copies of publications should *not* be submitted with the proposal.)

9. *Appendices* Material supplemental to the rest of the proposal may be included as appendices. Appendices should be printed on colored paper to distinguish them from the text. It is important that appendices, if included, be brief and easy to read.

One copy of form 1225, Information about Principal Investigators, which provides data on sex, ethnic origin, and handicap is to be submitted. It should be attached to the signature copy of the proposal cover sheet. While providing the requested data is voluntary, *submitting this form is required by NSF. Omission of this form will cause considerable delay in processing the proposal.* Any individual not wishing to submit the information should check the box provided for this purpose. Data will be treated as confidential, and will be

maintained in secure data files in accordance with the Privacy Act of 1974. The information contained in this form will be available only to the NSF staff and will not be used in the external peer review process. All analyses conducted on the data will report aggregate statistical findings only and will not identify individuals.

IV. Review Criteria

NSF evaluates proposals on the basis of four general criteria:

1. Performance competence—This criterion relates to the capability of the investigator(s), the technical soundness of the proposed approach, the adequacy of the institutional resources available, and the proposer's recent science, engineering, or mathematics research and education performance.

2. Intrinsic merit—This criterion is used to assess the quality, currency, and significance of the scientific and technical content and related instructional activity of the project within the context of undergraduate science, engineering, and mathematics education.

3. Utility or relevance of the project—This criterion is used to assess the impact the project will have on the faculty participants and their undergraduate students.

4. Effect on the infrastructure of science, mathematics and/or engineering—This criterion relates to the potential of the proposed project to contribute to better understanding or to improvement of the quality, distribution, or effectivenesss of the Nation's scientific/engineering/mathematics research, education, and human resources base.

See page 9 of GRESE for an additional discussion of these criteria.

Grants are awarded on a competitive basis. In selecting propoals to be supported, the Foundation is assisted by peer reviewers, who are scientists, engineers, or mathematicians drawn primarily from the academic community and also from research organizations and professional associations.

V. Proposal Submission

A. Target Dates

Proposals for projects which are planned to begin during the summer of 1989 should be received in the Foundation no later than *14 October 1988* in order to allow time for review and evaluation. Proposals for projects to begin after the summer of 1989 should be received in the foundation by *3 March 1989*. Proposals received in March 1989 may be for projects which begin during the academic year 1989–90 or during the summer of 1990; submission at this time may allow greater opportunity for planning after the announcement of an award. Proposals received after these target dates will be reviewed, but decisions may be delayed by their late arrival.

B. Required Materials

One copy of Information about Principal Investigators, Form 1225; Fifteen copies of the complete proposal; Three extra copies of the Cover Sheet; Three extra copies of the Budget; Three extra copies of the Project Summary Form.

These materials should be submitted to: Proposal Processing Unit for Undergraduate Faculty Enhancement Program, National Science Foundation, Room 223, 1800 G Street NW., Washington, DC 20550.

The Foundation welcomes proposals on behalf of all qualified scientists and engineers and strongly encourages women, minorities and persons with disabilities to compete fully in any of the educational, research and research-related programs described in this document.

Facilitation Awards for Handicapped Scientists and Engineers (FAH) provide funding for special assistance or equipment to enable persons with disabilities (investigators and other staff, including student research assistants) to work on an NSF project.

See the FAH program announcement, or contact the FAH Coordinator in the Directorate for Scientific, Technological, and International Affairs.

In accordance with Federal statutes and regulations and NSF policies, no person on grounds of race, color, age, sex, national origin, or disability shall be excluded from participation in, denied the benefits of, or be subject to discrimination under any program or activity receiving financial assistance from the National Science Foundation.

NSF has TDD (Telephonic Device for the Deaf) capability which enables individuals with hearing impairment to communicate with the Division of Personnel and Management for information relating to NSF programs, employment, or general information. This number is (202) 357–7492.

The Foundation provides awards for research in the sciences and engineering. The awardee is wholly responsbile for the conduct of such research and preparation of the results for publication. The Foundation, therefore, does not assume responsibility for such findings or their interpretation.

Catalog of Federal Domestic Assistance Numbers:

47.041 Engineering
47.049 Mathematical and Physical Sciences
47.050 Geosciences
47.051 Biological, Behavioral and Social Sciences
47.053 Scientific, Technological and International Affairs
47.070 Computer and Information Sciences and Engineering
47.071 Undergraduate Science, Engineering, and Mathematics Education

Special Requirements for use of Animals, Human Subjects, Recombinant DNA.

If any activity in the proposed work is likely to involve using non-human vertebrate animals, human subjects, or recombinant DNA techniques, additional information must be supplied. Please see Grants for Research and Education in Science and Engineering, NSF 83–57, rev 11/87, page 16 or contact NSF for details.

Copies of the program announcement and guidelines for the Undergraduate Faculty Enhancement Program are available from the Forms and Publication Unit, National Science Foundation, 1800 G Street NW., Washington, DC 20550; (202/357–7452), request publication NSF 88–33. The program announcement contains all information and forms needed for submission of proposals.

Questions of a general nature not addressed in this publication may be directed to the NSF staff by contacting: Undergraduate Faculty Enhancement Program, Office of Undergraduate Science, Engineering, and Mathematics Education, Directorate for Science and Engineering Education, Room 639, National Science Foundation, Washington, DC 20550

Richard Quinn,

(Acting) Administrative Officer, USEME.

September 19, 1988.

[FR Doc. 88–21686 Filed 9–21–88; 8:45 am]

BILLING CODE 7555–01–M

Instrumentation and Laboratory Improvement Program

Closing date: November 21, 1988.

Copies of the program announcement and guidelines for the Instrumentation and Laboratory Improvement Program are available from the Forms and Publications Unit, National Science Foundation, 1800 G Street NW., Washington, DC 20550; (202/357–7452), request publication NSF 88–90. The program announcement contains all

information and forms needed for submission of proposals.

I. Program Description

A. Purpose and Scope

Undergraduate instruction is a vital element in the preparation of our Nation's future scientists and engineers, teachers, leaders in business and government and technically literate citizens. Students in undergraduate science, engineering and mathematics courses—majors and non-majors alike—must have laboratory and/or field experiences with suitable, up-to-date equipment in order to become involved in the work that is at the heart of scientific progress and understanding.

The goal of NSF's Instrumentation and Laboratory Improvement program (ILI) is to improve the quality of the undergraduate curriculum by supporting projects to develop new or improved instrument-based undergraduate laboratory courses in science, mathematics or engineering. (Whenever the word "laboratory" is used in this document, it is intended to include all laboratory-like activities for undergraduates that involve active student participation, whether conducted in a laboratory, in the field, in an observatory, or in some other suitable instructional setting.) ILI provides matching support for the instrumentation necessary to implement undergraduate instructional improvements at U.S. two-year and four-year colleges and universities.

ILI proposals are evaluated and funded collaboratively by NSF's education and research directorates. In this way, ILI is fully integrated into the ongoing research and education activities of the Foundation.

The specific objectives of ILI are to encourage and support the:

- Introduction of modern instruments to improve the education of undergraduate students in science, mathematics and engineering courses, laboratories, and field work;
- Interfacing of computers with scientific instrumentation and other appropriate uses of current technology in science, mathematics and engineering instruction;
- Development of new ways for using instrumentation to extend instructional capabilities; and
- Establishment of equipment-sharing capability via consortia or centers.

The strategy underlying the highly competitive nature of the Instrumentation and Laboratory Improvement program is to produce projects that will:

- Set standards for instrumentation and its instructional use against which other institutions can measure their own performance; standards which they will strive to equal or exceed;
- Yield products such as laboratory manuals, scholarly publications, etc., thus serving a common good as well as bringing local improvement.

The Program supports well-focused projects which will result in a clear improvement in the quality of undergraduate education. This may be done by providing for:

- Acquisition of new, often state-of-the-art instructional scientific equipment;
- Upgrading of obsolete or unreliable equipment with current models that significantly improve instructional capabilities.

Because the objective of the program is to improve the quality of instruction, projects based primarily on financial need or increased enrollments are not appropriate. Projects are expected to involve activities which go well beyond the basic level of support that the institution itself must provide in order to maintain a viable teaching program.

ILI seeks proposals that request funds for instuctional scientific equipment. A maximum of $100,000 may be requested from NSF; grantee institutions must provide an equal or greater matching contribution. (See the requirements for matching funds below.) The minimum grant request to ILI is $5,000 in NSF funds.

Grants in support of ILI activities routinely are made for a period of 30 months. It is expected that the requested equipent will be acquired during this time.

Presentation of the results of successful projects at professional meetings or in appropriate journals is highly encouraged in order that institutions other than the grantees also may benefit from ILI projects.

Although the categories of awards just described are expected to include the majority of projects supported through ILI, additional ideas and mechanisms will be considered by NSF.

B. Eligibility Criteria and Limitations

1. Eligible Institutions

Proposals to the Instrumentation and Laboratory Improvement program will be accepted from:

a. All two-year colleges, four-year colleges, and universities in the United States or its territories;

b. Any formally organized consortium of institutions which has an established central office and an approved fiscal management capability. Proposals from informal consortia of institutions are not eligible.

Proposals from a consortium should be submitted only in those instances when several institutions propose to make joint use of a single major piece (or an assemblage of closely related pieces) of equipment.

2. Eligible Fields

The Foundation will consider proposals for support of projects in:

- Any field of science, mathematics and engineering ordinarily supported by the National Science Foundation, including the mathematical, physical and biological sciences, the social sciences, computer science, and engineering.
- Interdisciplinary fields composed of overlapping areas of two or more eligible sciences.
- Multiple disciplines—as distinct from interdisciplinary fields. Multidisciplinary proposals should be submitted only in instances where several departments propose to make joint use of a single major piece of equipment, or an assemblage of closely related pieces of equipment. Departments are advised not to combine individual proposals in order to submit them in the multidisciplinary category; each department should submit its own proposal unless equipment is to be shared.

Specifically excluded from ILI support are:

- Projects addressed to clinical fields associated with the sciences, such as medicine, nursing, clinical psychology and physical education, and those which primarily involve social work, home economics, or the arts and humanities *EXCEPT THAT* projects involving fundamental scientific, mathematical, or engineering concepts within technical, professional or pre-professional programs are fully eligible. (The degree to which these latter projects are competitive will depend upon the quality and currency of the science which is to be taught.)

3. Eligible Departments and Individuals

- All science, mathematics and engineering departments in an eligible institution may participate in the ILI competition. ILI no longer imposes the constraint of "one proposal per department" that previously applied.
- NSF's College Science Instrumentation Program.
- Each principal investigator may submit only one ILI proposal per closing date. While one or more coprincipal investigators may be named, one specific individual must be identified on

the cover sheet as *the* principal investigator.

4. Eligible Activities

Although ILI proposals are encouraged for the improvement of formal courses and laboratories traditionally associated with undergraduate instruction for science, mathematics or engineering majors, in particular, creative improvements to introductory-level courses are needed. Examples of other equally welcome activities include:

- Projects aimed at acquainting nonscience majors with the principles and methods of science, mathematics and engineering, or with the impact of science and technology on society;
- Projects concerned with the undergraduate science education of prospective teachers that emphasize science content or teaching methods especially relevant to the sciences;
- Projects that involve fundamental scientific, mathematical or engineering concepts within technical, professional or pre-professional programs;
- Projects to improve undergraduate honors programs, student research and independent study. (See also the program announcements for Research Experiences for Undergraduates, NSF 88–28, and Research in Undergraduate Institutions, NSF 85–59).

Projects involving women, minorities, and/or disabled persons as part of the staff or as target audiences are especially encouraged, particularly if they represent models for increasing the numbers of qualified young people in these groups who may decide to choose careers in mathematics, science, and engineering.

5. Eligible Equipment

The types of equipment eligible for inclusion in an ILI proposal are listed under the section "Detailed Budget".

The primary use of each of the equipment items to be acquired must be to benefit of undergraduate science, mathematics and/or engineering instruction. Items may serve additional purposes in the department at those times when they are not being used for undergraduate instruction, but these ancillary uses neither form nor augment the justification required for ILI funding.

6. Ineligible Items

Neither NSF funds nor institutional matching funds may be used to purchase any of the ineligible items listed below:

- Teaching Aids (e.g., films, slides, projectors, "drill and practice" software), word-processing equipment, library reference materials, or expendables (e.g., glassware, chemicals);
- Faculty research instrumentation;
- Laboratory furnishings or general utility items such as office equipment, benches, tables, desks, chairs, storage cases, routine supplies and general consumables;
- Maintenance or service contracts—even when these are for equipment procured through the ILI program;
- Salaries, honoraria, consulting fees, travel, etc.;
- Institutional indirect costs or overhead;
- Costs of installation, building or laboratory modification, or construction; and,
- A flat percentage inflation allowance.

7. Eligible Project Size

As noted previously, no proposal may request more than $100,000 from NSF; project costs in excess of $200,000 must be funded by overmatching. Proposals requesting less than $5,000 from NSF (for a total minimum project cost of $10,000) are not eligible.

C. Requirements for Matching Funds

Prospective ILI grantees must agree to provide matching funds in an amount equal to or greater than the funds provided by the Foundation. The proposal budget must detail all expenditures for the project as a whole—that is, for the combined total of requested NSF funds and the institution's funds. Matching funds must be from non-Federal sources. Funds from an ILI grant, or the institutional matching contribution to it, may not be counted as an institutional contribution to another Federally supported project. If a grantee receives a gift of equipment from non-Federal sources that is identical or equivalent to items listed in the project's approved budget, the cash value of such gifts may be counted as institutional matching funds. So also may specifically negotiated "deep discounts" from vendors.

An institution may obligate its matching funds or receive gifts to be counted toward matching at any time following the closing date under which the awarded proposal was submitted, but before the grant expiration date specified in the grant document. This normally provides a period of nearly three years during which the institution must fulfill the agreement to match NSF funds. To count as matching, these funds must be used specifically for the equipment listed in the project's approved budget (or its equivalent).

II. Preparation and Submission of Proposals

A. General Information

This announcement sets forth basic information needed to initiate planning for proposal submission. Proposers must also consult the publication Grants for Research and Education in Science and Engineering (GRESE) (NSF 83–57 rev. 11/87), for additional guidance. This publication is available from the Forms and Publications Unit, National Science Foundation, 1800 G Street NW., Washington, DC 20550; (202/357–7452). ILI proposers must use the forms contained in the program announcement, not those in GRESE.

Except as modified by the guidelines set forth in this announcement, standard NSF guidelines on proposal preparation, submission, evaluation, NSF awards (general information and highlights), declinations and withdrawals contained in GRESE are applicable.

More comprehensive information is contained in the NSF Grant Policy Manual, Revised, (NSF 77–47) available for purchase at $12.00 from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. The Grant Policy Manual ordinarily is not needed in the process of preparing an ILI proposal.

In the event that the submitting organization has never been the recipient of an NSF award, however, it is recommended that appropriate administrative officials become familiar with the NSF policies and procedures contained in the NSF Grant Policy Manual, Revised, which are applicable to most NSF awards. (If a proposal from such an institution is recommended for an award, the NSF Division of Grants and Contracts will request certain organizational, management, and financial information. These requirements are contained in Chapter III of the Manual.)

B. Proposal Preparation

A successful proposal must outline the way in which the planned project will improve the present program of undergraduate science, mathematics or engineering instruction. Each proposal should demonstrate that:

- The plan is a logical step to take at this time toward developing the academic program in question;
- Informed, realistic planning already has taken place;
- The faculty are competent to carry out the project; and
- Provision of the requested equipment will make possible full

implementation of the improvements proposed.

The equipment requested must be appropriate for the project's objectives. Since the Foundation aims to support projects with maximum potential for continuing impact, each proposal should show how the equipment fits into the department's current holdings and give a clear outline of the institution's plans for the extended care and maintenance of the equipment.

C. Proposal Format

A proposal to ILI consists of the following parts:

1. Cover Sheet
2. Project Summary Form
3. Detailed Budget (Equipment List)
4. Narrative (Limited to 12 double-spaced pages)
5. Appendices

1. Cover Sheet

The first page of the proposal will be the cover sheet prepared in the form found in the ILI announcement and guidelines. The announcement (NSF 88–90) is available from Forms and Publications Unit, National Science Foundation, 1800 G Street NW., Washington, DC 20550; (202/357–7452). This form should be duplicated and completed. It must bear the signatures of the proposed principal investigator and of an administrative official who is empowered to commit the proposing organization to the conduct and prudent management of the project if NSF agrees to support it.

It is important that the cover sheet be completed with the full information requested. Most of the items are self-explanatory. Note that:

• Social security numbers are used by the Foundation to monitor and facilitate the receipt and processing of numerous proposals, as well as to maintain award data. The number is solicited pursuant to the general authority of the Foundation under the NSF Act of 1950, as amended. However, submission of social security numbers is voluntary and refusal to disclose a social security number will not affect any proposal's eligibility for an award.

• If funds for this project are being requested from another Federal agency or another NSF program, this must be indicated in the upper right hand section of the cover sheet. If they are not being so requested at the time of proposal submission, but are requested subsequently (prior to the Foundation's anticipated ILI announcement date), a letter so stating should be sent at that time to the ILI office. This letter should identify the proposal by its NSF number.

• Only one copy of form 1225, Information about Prinicipal Investigators, which provides data on sex, ethnic origin, and handicap is to be submitted. It should be attached to the signature copy of the proposal cover sheet. While providing the requested data is voluntary, SUBMITTING *THIS FORM* IS REQUIRED BY NSF. OMISSION OF THIS FORM WILL CAUSE CONSIDERABLE DELAY IN PROCESSING THE PROPOSAL. Any individual not wishing to submit the information should check the box provided for this purpose. Data will be treated as confidential, and will be maintained in secure data files in accordance with the Privacy Act of 1974. The information contained in this form will be available only to the NSF staff and will not be used in the external merit review process. All analyses conducted on the data will report aggregate statistical findings only and will not identify individuals.

2. Project Summary Form

The second page of the proposal will be the project summary form, which should follow the cover sheet. The information provided on this form is used by the program staff for a variety of purposes, including the proper assignment of proposals to reviewers. Name of institution and project title must be written exactly as given on the cover sheet. Please enter the data requested in the boxes according to the instructions on the back of the form. The information is needed in the indicated format to provide direct input to the NSF data collection system.

The Summary of Proposed Work should be a concise description of the project (not of the prosposal), limited to 22 pica or 18 elite lines. It should be single spaced. The summary should tell briefly the aim of the project, the major instruments which will be purchased, in what applications they will be used, and why the project is significant. Considerable care should be taken when writing the Summary. The Summary is the reviewers' first impression of the project's merit. If the project is supported, the Summary will be published by the Foundation to inform the general public about its programs. Accordingly, it should be written so that a scientifically literate lay person can understand the use of Federal funds in support of the project.

3. Detailed Budget

The third page of the proposal will be the budget prepared according, to the format found in the program announcement. This is a complete, detailed list of anticipicated equipment acquisitions showing list and discounted unit prices and discounted totals. The budget must be limited to the following categories, with a subtotal shown for each:

a. Scientific Equipment
b. Computing Tools
c. Construction of Equipment
d. Safety Equipment
e. Maintenance Equipment
f. Shipping Costs
g. Required taxes

Guidelines for the assignment of eligible items to the seven budget categories follow. Each item or functional unit of equipment must have a minimum unit acquisition cost of $500 (list) and a life expectancy of more than two years. (The specifics of a functional unit are discussed in note (ii), immediately following the seven budget categories.) Note that these guidelines and restrictions apply to equipment purchased with institutional matching funds as well as to that brought with NSF funds.

a. Scientific Equipment—to be used in any phase of undergraduate science, mathematics and/or engineering education.

b. Computing Tools—computers, peripherals, software or equipment that provides remote access to central computing systems. The equipment must be for use in specific curricular improvments; for example, interfacing with scientific instruments to assist student data acquisition and interpretation, or teaching computer science. Software essential to the scientific and educational objectives of the project is permitted. Each software package must be itemized, justified, and the cost indicated. Software ordered in conjunction with new computing equipment is regarded as part of a functional unit and, accordingly, need not cost $500 in order to be eligible.

c. Equipment Fabrication—including materials and labor. Sufficient jutification must accompany requests for equipment construction funds, such as a detailed explanation of the advantages of the proposed unts over commercially available items. Requests for equipment fabrication must be supported by drawings, diagrams, parts lists and estimates for labor charges, as appropriate. Any use of project funds (NSF of institutional matching monies) for the modification or construction of laboratories or other buildings, or for the installation of equipment, is specifically prohibited.

d. Safety Equipment—such as fire control devices, fume hoods, etc., may be purchased under this program where

necessary for the safe utilization of the equipment requested in the above categories.

e. Maintenance Equipment—unique items specifically required for calibration, repair and maintenance of the scientific equipment itemized in the categories a., b., and c. above. If such items are part of a "package" offered by the vendor at a comprehensive price, they may be folded into the basic item of equipment.

f. Shipping Costs—reasonable estimates should be used, as opposed to a flat percentage.

g. State Taxes—required taxes may be included if the institution cannot be exempted from paying them.

Following the total amount of project costs, list the actual dollar amount requested from NSF. The amount requested from the National Science Foundation may not exceed 50% of the total budget, or $100,000, and may not be less than $5,000.

Please note:

(i) It is important that reviewers be able to recognize the function of requested equipment. Therefore, the detailed budget should list all individual items by a descriptive name, and the probable brand, model, and price. (Such selections may be changed after an award.) Each category should be subdivided by function or by course so as to correspond as closely as possible to the narrative which is to follow. Each item should be lettered to be consistent with the categories above, and to facilitate reference to and from the justification presented in the narrative.

(ii) Budget items may be either single items meeting the minimum list cost requirement ($500), or part(s) of a functional unit where the sum of the components meets the minimum cost requirement. A functional unit is an assemblage of instruments, modules, and components which together perform a specific task and which, once assembled, ordinarily will be kept together as a unit. Examples of functional units would be an oscilloscope with appropriate probes, or a recording infrared spectrophotometer with a demountable cell assembly and appropriate windows, or a computer and software needed for it to achieve the curricular goals for which it is being purchased. A combination of independent instruments needed for some specific experiment or for a single laboratory station would not meet the definition of functional unit.

Each component of a functional unit must be itemized and the cost indicated; the subtotal for the entire unit should be entered as the unit cost (at least $500).

(iii) Many equipment manufacturers routinely offer educational or institutional discounts. In preparing the ILI budget, manufacturers or distributors should be contacted in order to obtain discounted prices. On the budget page, the list price should be shown, the standard educational discount noted and subtracted, and the discounted price used to compute the total cost of the project.

If the proposer is able to negotiate on an individual basis a special discount not routinely available to educational institutions, the usual discounted selling price should be listed in the project's budget. The amount by which the special discount exceeds the standard educational discount may be counted as matching funds.

4. Narrative

The narrative presents most of the information that determines whether or not a grant will be awarded. Proposals should be written to respond to criteria to be used by reviewers in judging the merit of the proposal. (See Proposal Evaluation)

The narrative must focus on one coherent project which would improve undergraduate instruction in a definite way. The narrative must show how the requested equipment is necessary for the project, and how the various pieces of equipment will be used together to implement it. A proposal seeking support for several unrelated projects or for a list of equipment that is to be used in unrelated ways is not appropriate.

The narrative section must not exceed 12 double-spaced pages. Pages must be numbered. Reviewers will not be responsible for reading additional narrative pages. Information applicable in more than one place may be referred to by page and paragraph. Appended information should be restricted to those appendices required in Section 5 below and to tabular presentations of items required to supplement the narrative. The use of tabular form for reporting details in encouraged. Such information should be cross-referenced to the appropriate portions of the narrative.

The narrative should conform to the following outline:

a. The Present Situation

This section should first present information about the institution and the department, and then should discuss the perceived deficiency that is to be addressed. It should open with a discussion of the institutional context: a brief description of the institution, the students it serves, the department, and the intended student clientele for the project being proposed. It also should discuss the curriculum of which the courses which will be served by the project are a part. (It cannot be assumed that the reviewers are acquainted with the institution and its science, mathematics or engineering programs.) Catalog descriptions of specific courses affected should be included in Appendix IV.

Second, this section should briefly describe the ongoing support from the institution to the department in order to answer the question: "Does the department have adequate resources and equipment to provide a sound program into which the present project will fit?" A list of major departmental equipment holdings should be included as Appendix IV.

Finally, this section should present the curricular deficiency which the project would remedy. It should answer the question: "What is currently missing from the curriculum or is not being done effectively?"

b. The Development Plan

This section should answer the question: "How is the course and/or curriculum to be improved by this project?" It should contain a detailed description of the specific developments intended. Specific experiments, student projects, or course work that would be conducted with the new equipment must be presented in terms of the scientific principles or phenomena to be taught, and in terms of the teaching methods to be employed. This portion of the narrative must enable a group of colleagues to judge the suitability of the planned change for the intended student audience, in the academic setting discribed. Both the scientific and pedagogical aspects of the proposed project will be weighed to assess the relative impact on science, mathematics or engineering education that would be realized through the funding of this project.

c. Equipment

(1) The Equipment Request

This section should answer the question: "Is each item of equipment requested actually needed to implement this development, is it the right piece of equipment for the job, and is the request appropriate for the department?" It should consist of some brief indication as to just how each major equipment item requested will be used to effect what instructional development. It should also include a discussion of why the particular equipment was chosen and what alternatives were considered and rejected, and why. Effort should not

be expended in telling reviewers what functions a given piece of equipment can perform. The crucial thing is for the proposer to describe just how the requested equipment is to be used in the instructional plan being proposed.

It is the purpose of this part of the proposal to establish the precise correlation between the subject-matter developments described in the previous sections and the items of equipment being requested. In the event of a grant, any items regarded as ineligible, not germane or inadequately justified will be deleted from the authorized list of purchases.

Logical groupings of items should be made to minimize repetition, with each entry cross-referenced to the item numbers given in the budget (equipment list). Special arguments may be needed to explain requests for apparatus of a quality or cost not usually encountered in undergraduate instruction, equipment which is to be fabricated rather than purchased as a unit, or purchases which might appear to be at variance with the academic setting in which the project would operate. Such statements must be keyed to developments desired in undergraduate instruction. Therefore, proposers are cautioned against providing arguments based on enhancements of graduate-level courses, improvement of faculty research capabilities, or other activities outside the scope of ILI. (cf. Research in Undergraduate Institutions Program Announcement, NSF 85-59.)

(2) The Equipment on Hand for the Project

This section should answer the question: "Has there been a thorough survey of the current equipment inventory and does the proposal plan to make full use of it?" It should consist of a list indicating major equipment on hand that will be available for the project, but that is not included in this request.

(3) Equipment Maintenance

This section should answer the question: "Is a reasonable plan presented to ensure a maximum usable lifetime for the equipment?" Each proposal should briefly but clearly outline the institution's plan for extended care and maintenance of the equipment.

d. Faculty Expertise

This section should answer the question: "Does the department presently have personnel with the expertise needed to complete the project successfully, or is there a firm commitment to make an appropriate hire?" It should contain enough information about the present faculty of the academic unit seeking support to convince reviewers that the technical expertise to carry out the proposed project will be present. Special attention should be given to the individual named to direct the project. Since the effective accomplishment of the project's goals depends in large measure on the principal investigator's knowledge of the discipline, the curriculum, and the equipment, this person must teach in the academic unit receiving support. A summary of experience must indicate that the principal investigator is an appropriate person to direct this particular project.

5. Appendices

Material that is supplementary to the text of the proposal should be included in the appendices, and may be single spaced. Each appendix should be printed on colored paper to make it easily distinguishable from the body of the proposal. The following seven appendices, if relevant to the project, are required. Their omission can delay processing or impede evaluation.

I. Curriculum vitae of the principal investigator (include a list of significant publications), plus a one-page resumé for each faculty associate who will particpate in the project.

II. Statement of current and pending support. All current and pending externally-funded support to the principal investigator and co-principal investigator (if any), including this proposed project, must be listed on the form found on page 22. This information is needed to assure that the project leaders will have time to carry out the project and that there is no duplication of support.

III. Statement of results of prior support. If either the prospective principal investigator or the co-principal investigator received support from NSF's College Science Instrumentation Program in 1985, 1986 or 1987, the proposal must include an Appendix III entitled "Results from Prior NSF Support". This appendix must describe the earlier CSIP project and its outcomes in sufficient detail to permit a reviewer to reach an informed conclusion regarding the value of the results achieved. The following information must be included in this summary statement:

- The NSF award number, amount, and period of support;
- Title of the project;
- A summary of the results of the completed work. (To facilitate review, this summary should not exceed—for ILI—three double-spaced pages); and
- A list of publications and/or formal presentations acknowledging the NSF award (copies of such papers are not to be submitted with the proposal).

Appendices IV through VII need provide no more information than should be readily available to a department. Please limit each to a maximum of two pages.

IV. A list of all major equipment held by the department, whether relevant to the proposed project or not, including model, date of purchase, and approximate cost. Where this equipment list is too extensive to include in two pages, list only the most expensive and most relevant items. Minor items of equipment may be listed, if so desired, by categories (e.g., "12 pH meters of various models").

V. A catalog description of each course directly affected by this project, the frequency of offering, approximate enrollment, and whether or not required of majors.

VI. (Only for projects which are intended for majors.) Summarize the number of majors graduated each year for the past five years. Provide an estimate of the number of graduates who went on to graduate or professional schools, and the number who went directly into the workforce. Where the information is available, list graduate schools attended and organizations which hired substantial numbers of graduates.

VII. (Only for projects which include a student research component.) A list of recent talks and papers involving undergraduate students in the department. Identify student authors with an asterisk.

Other appropriate appendices might include schematic diagrams of equipment, detailed description of specialized equipment, examples of experiments, etc. It is important that appendices be brief and easy to read. Voluminous appendices cannot be read by reviewers in the time available for proposal evaluation. It is inappropriate to include institutional catalogues, departmental curricula, whole laboratory manuals, or other general material.

D. Proposal Submission

Proposals must be received in the Foundation by 5:00 p.m. on November 21, 1988 to insure inclusion in the competitive review process established for this Program.

Materials required:

Fifteen legible copies of the complete proposal;

One copy of the NSF form, 1225 attached to the signature copy of the proposal only;
Three sets of extra forms, each stapled into a unit and containing
One copy of the Cover Sheet,
One copy of the Budget (Equipment List), and
One copy of the Project Summary Form.

These materials should be submitted to: Proposal Processing Unit for Instrumentation and Laboratory Improvement Program, Room 223, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

The following requirements also must be met:

- All materials submitted to the Foundation must be contained in a single package. Secure packaging is mandatory. The Foundation cannot be responsible for the processing of proposals damaged in transit;
- Each copy of the proposal should be on standard size paper of regular weight. It should be stapled only in the upper left corner. All pages must be numbered. The duplicating process should ensure legibility for at least 5 years; and
- One copy must be signed both by the principal investigator and by an administrative official who has been designated as an Authorized Institutional Representative.

Do Not:

- Staple the sets of extra cover sheets, project summary forms, and equipment budgets to a proposal;
- Put covers on the proposals; or
- Send separate "information" copies or several packages containing parts of a single proposal.

III. Proposal Evaluation and Award Selection

NSF evaluates proposals on the basis of four general criteria:

1. Performance competence—This criterion relates to the capability of the investigator(s), the technical soundness of the proposed approach, the adequacy of the institutional resources available, and the proposer's recent research/science, mathematics or engineering education performance.

2. Intrinsic merit—This criterion is used to assess the quality, currency, and significance of the scientific/technical content and related instructional activity of the project within the context of undergraduate science, mathematics, and engineering education.

3. Utility or relevance of the project—This criterion is used to assess the impact the project will have at the proposing institution, and the appropriateness of the project in the local context.

4. Effect on the infrastructure of science, mathematics and/or engineering—This criterion relates to the potential of the proposed project to contribute to better understanding or to improvement of the quality, distribution, or effectiveness of the Nation's scientific/mathematics/engineering research, education, and human resources base.

See page 9 of GRESE for an additional discussion of these criteria.

ILI grants are awarded on a competitive basis. In selecting proposals to be supported, the Foundation is assisted by merit reviewers who are mathematicians, scientists or engineers, drawn primarily from the academic community, and also from research organizations and professional associations.

IV. Announcement and Administration of Awards

- Decisions will be announced individually through written notices to the institution and to the principal investigator. Before such notice is dispatched, the Foundation can give no information concerning the probability that any particular proposal will be supported or declined. Proposers are urged to refrain from making premature inquiries.
- Grants are administered in accordance with the terms and conditions described in this announcement, the GRESE, and NSF F.L. 200, Grant General Conditions, copies of which may be requested from the NSF Forms and Publications Unit. More comprehensive information is contained in the NSF Grant Policy Manual (Revised) available through the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

The Foundation strongly encourages publication of research results and instructional experiments developed. The awardee, however, is wholly responsible for the conduct of the project and for preparation of the results for publication. The Foundation does not assume responsibility for project results or their interpretation.

Within 90 days after the expiration of a grant, the principal investigator is required to submit a Final Project Report (NSF Form 98A). Final expenditure information is supplied by the grantees through the Federal Cash Transaction Report (SF 272), normally submitted by the grantee's financial officer. Annual reports of progress are not required of ILI grantees.

If a Principal Investigator (PI) leaves a project before its completion, the grantee institution is expected to explain the circumstances in a letter to the ILI Program Officer named in the grant letter, and to nominate a suitable replacement. This letter should include the nominee's curriculum vitae, and must be signed by both the nominee and by an official authorized to act for the institution in such matters. The appointment of a new PI is not effective until confirmed by the NSF.

V. Check List

The following checklist of steps in completing an ILI proposal is provided for the convenience of the proposal writer.

A. Eligibility

Determined for
- Department
- Field and/or Project
- Equipment

B. Forms Completed

- Cover Sheet, Project Director's signature on one copy, Authorized Organizational Representative's signature on same copy.
- Form 1225 (Information about Principal and Co/Principal Investigators), submit only one copy, attached to signature copy. Submission of the *form* is required.
- Project Summary Form (Project Summary single-spaced)
- Budget (Equipment List) completed, using the required format.

Must contain no item with a unit list cost of under $500 (unless it is part of a functional unit)

Equipment items numbered and categorized Subtotals for categories indicated. Total cost for project indicated. Arithmetic checked for accuracy NSF request indicated (it may not exceed 50% of total project cost, nor be more than $100,000, nor be less than $5,000)

The Principal Investigator must have submitted NSF form 98A, Final Report, for all completed NSF-funded projects.

C. Narrative Completed

- All points covered
(a) Present situation
(b) Development plan
(c) Equipment
(d) Personnel
- Does not exceed 12 double-spaced, numbered pages

D. Appendices

I. Curriculum vitae
II. Statement of current and pending support

III. Statement of prior support results
IV. List of departmental equipment
V. Catalog description of courses affected
VI. Information on past graduates (needed if majors are to be affected)
VII. Student research papers and talks (needed if the project features a student research component)
VIII. Other necessary information, if any

E. Format Checked

- Sections in proper order
- Correct nubmer of copies of proposal and forms included

F. Submission

- All materials forwarded in a single package
- Materials submitted in time to reach NSF on or before November 21, 1988

VI. Other Programs

The NSF Guide to Programs (NSF 87–57) briefly describes all Foundation programs, most of which are open to all institutions. It is available at most institutions or may be obtained at no cost by contacting the Forms and Publications Unit, Room 232, NSF, Washington, DC 20550 (202/357–7861).

The ILI Staff often has occasion to provide informal guidance to prospective proposers. The following contain the essence of what we most often suggest to inquirers:

What makes a good proposal? A good proposal starts with a good idea, and, all other things equal, the better the idea the more likely a proposal is to result in an award. The best proposals are those to which the reviewers respond, "Of course. I wish I had thought of that!" While relatively few proposals are this striking and original, most begin with a good idea. Translating a good idea into a good ILI proposal requires careful planning and careful writing. It helps to pay close attention to points like these:

- Consider first what curricular improvement the project will make and what science the students will do, and then ask yourself what instrumentation will be needed. The two clearly interact, but focussing first on the curriculum helps insure that the instrumentation will take its proper place as the means for carrying out a significant curricular improvement.
- Read the Guidelines carefully and include the information they request. The Guidelines ask that proposers follow a particular format for the proposal. More importantly, they are intended as a guide to help write a proposal which will give reviewers and staff enough information to understand fully the quality of the proposed project. The Guidelines ask questions and raise points which should be addressed in every ILI proposal, whatever its form.
- Ensure that the proposal outlines a project possessing two features: First, it is an excellent way to teach which requires the requested equipment and, second, it is a clear improvement in the way the students who will use the equipment are to be taught. The keys here are both excellence and improvement. Projects which propose to strengthen a program by doing largely what everyone else already is doing, or projects which propose to add an instrument to a program which already is adequately equipped without making any significant improvement in what is to be taught, are less persuasive than those which provide both an excellent idea and significant improvement.
- Be explicit about how the equipment will be used to make the curricular improvement. The narrative must contain specifics. Reviewers want details of experiments and applications, both to show that planning has been done and to help them understand why the particular application you propose is better than others they see. Providing much detail in the short narrative ILI permits is difficult, but careful writing will allow you to give the reviewers enough for them to gain a sense of exactly what you plan to do, and why that plan is a good one. Remember that the reviewers already know what a particular instrument will do; what they want to read about is the proposer's explicit plan for applying that capability in a way that will solve a significant difficulty in teaching science, mathematics or engineering to undergraduates.
- Explain why the instruments chosen are particularly suitable for the project (and why others—especially less expensive alternatives—would not be equally useful). It often is a good idea to explain briefly what range of alternatives were considered and rejected: what simpler instruments are not adequate, and perhaps what more sophisticated ones exceed the current needs. Reviewers usually are willing to accept a carefully-argued choice.
- Describe why the project proposed is a good way to teach the subject (physics or biology or whatever) to the students who are to be affected on your campus, and ideally to students in other institutions. (It is quite desirable, though by no means necessary, that what is done in your ILI project be of potential interest to faculty and students at other institutions.)
- Mention what work has been done in preparation for the project, and specifically whether attempts have been made to try the proposed work on a small scale, or with less suitable equipment which may already be on hand or available through borrowing. Evidence of preliminary work shows the reviewers that careful planning has been done, and it may give them some added confidence that the project is likely to be successful.
- If possible, have someone not connnected with the proposal read a draft and ask questions or suggest clarifications. It's easy to get too close to a piece of work and to lose perspective!
- If the proposal is successful, rejoice, make the best possible use of the equipment, and then let other scientists who may be interested in your results learn about them through presentations of publications.

If unsuccessful, consider the reviews and NSF staff comments objectively, consult the staff if necessary and, if the feedback does not preclude it, submit a revised or new proposal the next year. Many awards made in CSIP's second and third years were to proposals that were revised thoughtfully and resubmitted after having been declined initially.

The Foundation welcomes proposals on behalf of all qualified scientists and engineers and strongly encourages women, minorities and disabled persons to compete fully in any of the educational, research and research-related programs described in this document.

Facilitation Awards for Handicapped Scientists and Engineers (FAH) provide funding for special assistance or equipment to enable persons with disabilities (investigators and other staff, including student research assistants) to wortk on an NSF project. See the FAH program announcement, or contact the FAH Coordinator in the Directorate for Scientific, Technological, and International Affairs.

In accordance with Federal statutes and regulations and NSF policies, no person on grounds of race, color, age, sex, national origin or disability shall be excluded from participating in, denied the benefits of, or be subject to discrimination under any program or activity receiving financial assistance from the National Science Foundation.

NSF has TDD (Telephonic Device for the Deaf) capability which enables individuals with hearing impairments to communicate with the Division of Personnel and Management for information relating to NSF programs, employment, or for general information. This number is (202) 375–7492.

The Foundation provides awards for research and education in science,

mathematics and engineering. The awardee is wholly responsible for the conduct of such work and the preparation of the result for publication. The Fundation, therefore, does not assume the responsibility for such findings or their interpretation.

Catalog of Federal Domestic Assistance Numbers:

47.041 Engineering
47.049 Mathematical and Physical Sciences
47.050 Geosciences
47.051 Biological, Behavioral and Social Sciences
47.053 Scientific, Technological and International Affairs
47.070 Computer and Information Sciences and Engineering
47.071 Science and Engineering Education

Animal Welfare

If any of the equipment listed in a ILI proposal is likely to be employed in conducting experiments using non-human vertebrate animals or in maintaining such animals in captivity, the "Animal Welfare" block on the cover sheet must be checked. In such proposals, the narrative must contain an assurance that the proposing institution complies with the relevant guidelines issued by the National Institutes of Health in the *Guide for the Care and Use of Laboratory Animals* (NIH Publication 85–23, Revised 1985). The particular attention of proposers is directed to "U.S. Government Principles for the Utilization and Care of Vertebrate Animals Used in Testing, Research and Training," to be found in the Appendix of that Guide. Individuals desiring a copy of these Guidelines can obtain one from the Division of Research Services, Building 31, Room 4B59, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892. (NSF does not maintain a supply of this document).

The Instrumentation and Laboratory Improvement Program (ILI) is an integral part of NSF's overall plan to strengthen U.S. undergraduate education. In fiscal year 1989, this support extends to instructional instrumentation, research opportunities for undergraduate students, faculty enhancement, and curriculum development in undergraduate calculus and engineering. ILI will be coordinated by the Office of Undergraduate Science, Engineering, and Mathematics Education (USEME) but proposals will be reviewed collaboratively and funded throughout NSF.

The magnitude of the fiscal year 1989 ILI Program will depend on the quality of proposals the Foundation receives and the availability of funds.

Inquiries

Copies of the program announcement and guidelines for the Instrumentation and Laboratory Improvement Program are available from the Forms and Publications Unit, National Science Foundation, 1800 G Street, NW., Washington, DC 20550; (202/357–7452), request publication NSF 88–90. The program announcement contains all information and forms needed for submission of proposals.

Questions of a general nature not addressed in this publication may be directed to the NSF staff by contacting:

Instrumentation and Laboratory Improvement Program, Office of Undergraduate Science, Engineering, and Mathematics Education, Directorate for Science and Engineering Education, Room 639, National Science Foundation, Washington, DC 20550.

Richard Quinn,

Acting Administrative Officer, USEME.

September 19, 1988.

[FR Doc. 88–21685 Filed 9–21–88; 8:45 am]

BILLING CODE 7555-01-M

Meeting; Earth Sciences Advisory Committee

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Earth Sciences.

Dates: October 17, 18, and 19, 1988.

Time:

9:00 a.m. to 5:30 p.m. October 17
8:30 a.m. to 5:00 p.m. October 18
8:30 a.m. to 4:00 p.m. October 19

Place: The National Science Foundation, Room 543, 1800 G Street NW., Washington, DC 20550.

Type of meeting:

Open

October 17—9:00 a.m. to 5:30 p.m.
October 19—8:30 a.m. to 12 noon

Closed

October 18—8:30 a.m. to 5:00 p.m.
October 19—1:30 p.m. to 4:00 p.m.

Contact Person: Dr. David H. Speidel, Section Head, Major Projects, Room 602, National Science Foundation, Washington, DC 20550, Telephone (202) 357–9591.

Summary minutes: May be obtained from the Contact Person at the above address.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for research and research-related activities in the Earch Sciences.

Agenda:

Closed—Oversight review of the Instrumentation and Facilities Program, including examination of proposals, reviewer comments, and other privileged material.

Open—Discussion on reorganization of the Committee, response to previous oversight reports, discussion of educational issues in Earth Sciences, review and adoption of the Long Range Plan for Earth Sciences, and general discussion.

Reason For Closing: The meeting will consist of a review of grant and declination jackets that contain the names of applicant institutions and principal investigators and privileged information contained in declined proposals. The meeting will also include a review of the peer review documentation pertaining to the applicants. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88–21699 Filed 9–21–88; 8:45 am]

BILLING CODE 7555-01-M

Meeting; Linguistics Advisory Panel

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Linguistics.

Date & Time: October 19–20, 1988 9:00 a.m. to 5:00 p.m. each day.

Place: National Science Foundation 1800 G Street NW., Rm 523, Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Paul G. Chapin, Program Director for Linguistics, Room 320, National Science Foundation, Washington, DC 20550; (202) 357–7696.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in linguistics.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within

exemptions (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Manager Officer.

[FR Doc. 88-21701 Filed 9-21-88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee For The Mathematical Sciences; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee for the Mathematical Sciences.

Date & Time:

October 17, 1988—10:30 a.m. to 5:30 p.m.
October 18, 1988—8:30 a.m. to 5:00 p.m.
October 19, 1988—8:30 a.m. to 3:30 p.m.

Place: Room 540, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting:

October 17: Open—10:30 a.m. to 12:00 noon
October 17: Closed—12:00 noon to 5:30 p.m.
October 18: Open—8:30 a.m. to 9:30 a.m. and 3:00 p.m. to 5:00 p.m.
October 18: Closed—9:30 a.m. to 3:00 p.m.
October 19: Open—8:30 a.m. to 3:30 p.m.

Contact Person: Dr. Judith S. Sunley, Division Director, Division of Mathematical Sciences, Room 339, National Science Foundation, Washington, DC 20550. Telephone (202) 357-9669. Anyone planning to attend this meeting should notify Dr. Sunley no later than October 14, 1988.

Purpose of Committee: To provide advice and recommendations concerning support for research in the mathematical sciences.

Agenda:

Monday, October 17, 1988—10:30 a.m. to 12:00 noon (open)

Introductory remarks
Final information on FY 1988
Information on FY 1989 budget
Overview of responsibilities for program oversight reviews

Monday, October 17, 1988—12:00 noon to 5:30 p.m. (Closed)

Program Oversight Reviews, including examinations of proposals, review comments, and other privileged material.

Tuesday, October 18, 1988—8:30 a.m. to 9:30 a.m. (Open)

Preliminary discussion of program oversight reviews.

Tuesday, October 18, 1988—9:30 a.m. to 3:00 p.m. (Closed)

Program Oversight Reviews.

Tuesday, October 18, 1988—3:00 p.m. to 5:00 p.m. (Open)

Progress on Advisory Committee recommendations
—Groups
—Math/biosciences
—Geometry
—Update of David Report
—Underrepresented groups
—Undergraduate education

Wednesday, October 19, 1988—8:30 a.m. to 3:30 p.m. (Open)

Preliminary discussions of program oversight reports
Subcommittee meetings
—Education and Human Resources
—Planning
—Overview of program oversight reports
Recommendations of Committee for future action
Other business.

Reason For Closing: The meeting will consist of a review of grant and declination jackets that contain the names of applicant institutions and principal investigators and privileged information contained in declined proposals. The meeting will also include a review of the peer review documentation pertaining to the applicants. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88-21702 Filed 9-21-88; 8:45 am]

BILLING CODE 7555-01-M

Meeting; Nuclear Science Advisory Committee

The National Science Foundation announces the following meeting:

Name: DOE/NSF Nuclear Science Advisory Committee.

Date and Time: Oct. 12, 1988; 4:00 pm-10:00 pm.

Place: Mesa Ballroom B, Hilton Hotel of Santa Fe, 100 Sandoval St., Santa Fe, NM.

Type of Meeting: Open.

Contact Person: Karl A. Erb, Program Director for Nuclear Physics, National Science Foundation, Washington, DC 20550 (202) 357-7993.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To advise the National Science Foundation and the Department of Energy on scientific priorities within the field of basic nuclear science research.

Agenda:

—NSF Budgets and Programs
—DOE Budgets and Programs
—NSF and DOE Responses to NSAC Nuclear Theory Report
—Status of Gammasphere, LCD, SNO Proposals
—Report on NSAC Instrumentation Subcommittee Activities
—Report on NSAC Activities Concerning KAON
—Discussion of Possible Update of Long Range Plan
—General Discussion and Comments

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88-21700 Filed 9-21-88; 8:45 am]

BILLING CODE 7555-01-M

Meeting; Population Biology and Physiological Ecology Advisory Panel

Name: Advisory Panel for Population Biology and Physiological Ecology.

Date and time: October 12-14, 1988—8:30 a.m. to 5:00 p.m. each day.

Place: Room 642, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact perons: Dr. Stephen T. Threlkeld, Program Director, Population Biology and Physiolgical Ecology (202) 357-9728, Room 215, National Science Foundation, Washington, DC 20550.

Summary minutes: May be obtained from the Contract Person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in systematic biology.

Agenda: Review and evaluation of research proposal and projects as part of the selection process of awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personnel information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88-21703 Filed 9-21-88; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-424]

Georgia Power Co., Et Al., Environmental Assessment and Finding of No Significant Impact

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirement of footnote d-2(c) of Appendix A to 10 CFR Part 20 to the Georgia Power Company, et al. (the licensee) for the Vogtle Electric Generating Plant, Unit 1 (Vogtle 1) located on the licensee's site in Burke County, Georgia.

Environmental Assessment

Identification of Proposed Action: The proposed action would relax the requirement in Footnote d-2(c) of Appendix A to 10 CFR Part 20 which states, "No allowance is to be made for the use of sorbents against radioactive gases or vapors." The exemption would allow the use of a radioiodine protection factor of 50 for certain respiratory protection canisters used by workers at the licensee's facility, Vogtle 1. The staff's technical evaluation of this request will be published in a report entitled "Safety Evaluation Report Related to the Use of Radioiodine Protection Factor for Sorbent Canisters at Vogtle 1."

The evaluation is responsive to the licensee's application for exemption dated August 26, 1988.

The Need for the Proposed Action: The proposed exemption is needed because the features described in the licensee's request are potential means to reduce occupational exposure to radiation for some tasks at Vogtle 1.

Environmental Impacts of the Proposed Action: The proposed exemption will most likely reduce the work effort and occupational exposure for some tasks at Vogtle 1. The utilization of air purifying respirators in lieu of air-supplied or self-contained apparatuses, where possible, can result in person-rem reductions estimated overall at 30% for tasks requiring radioiodine protection, in a range of from 25% to 50% for several major tasks. The light weight, less cumbersome air purifying respirators (i.e., sorbent canisters) can provide increased comfort and mobility in most cases, and result in increased worker efficiency and decreased time on-the-job.

With regard to potential radiological impacts to the general public, the proposed exemption involves features located entirely within the restricted areas defined in 10 CFR Part 20. It does not affect the potential for or consequences of radiological accidents and does not affect radiological plant effluents. Consequently, the Commission concludes that there are no significant radiological impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action: Because the staff has concluded that there is no significant environmental impact associated with the proposed exemption, any alternative to this exemption will have either no significantly different environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts as a result of plant operations.

Alternative Use of Resources: This action does not involve the use of resources not previosuly considered in connection with the "Final Environmental Statement related to the operation of the Vogtle Electric Generating Plant, Units 1 and 2" dated March 1985.

Agencies and Persons Consulted: The NRC staff has reviewed the licensee's request that supports the proposed exemption. The NRC staff did not consult other agencies or person.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for the exemption dated August 26, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Burke County Library, 412 4th Street, Waynesboro, Georgia 30830.

Dated at Rockville, Maryland, this 16th day of September 1988.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Project Direcorate II-3, Division of Reactor Projects I/II.

[FR Doc. 88-21647 Field 9-21-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-206]

Southern California Edison Co. and San Diego Gas and Electric Co.; San Onofre Nuclear Generating Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR-13 issued to Southern California Edision Company, et al., (the licensee), for operation of San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego County, California.

Environmental Assessment

Identification of Proposed Action: The proposed amendment would extend the interim authorization granted by Amendment No. 101 dated May 6, 1988 to permanently revise the steam generator tube plugging criteria to allow tubes with defects in the rolled region of the tube sheet to remain in service provided that the first inch of rolled tube contains no imperfections. The interim authorization expires at the end of the next refueling outage, approximately December 1988.

The Need for the Proposed action: The proposed amendment is required to allow steam generator tubes as described above to remain in serve, rather than to remove them from service by plugging.

Environmental Impacts of the Proposed action: The design basis accident would continue to be a complete severance of a steam generator tube. The proposed action would preserve the required margins of safety against tube pullout under both normal and accident conditions by adhering to the requirements of the ASME Code. Therefore, the proposed amendment continues to provide reasonable assurance that tube pullout will not occur. Consequently, the proposed amendment would not involve a significant change in the probability or consequences of an accident previously evaluated, and any radiological releases resulting from an accident would not be significantly greater than previously determined. Because the proposed amendment does not otherwise affect routine radiological plant effluents, the impacts of operation will be within those evaluated in the Final Environmental Statement.

Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment. The Commission also concludes that the proposed action will not result in a

significant increase in individual or cumulative occupational radiation exposure.

With regard to nonradiological impacts, the proposed amendment does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on May 16, 1988 (53 FR 17282). No request for hearing or petition for leave to intervene was file following this notice.

Alternatives to the Proposed Action: Because the Commission has concluded that there are no significant environmental impacts associated with the proposed action, there is no need to examine alternatives to the proposed action.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to operation of San Onofre Nuclear Generating Station, Unit 1, dated October 1973.

Agencies and Persons Consulted: The NRC has reviewed the licensee's request that supports the proposed amendment. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, The Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated March 10, 1988, as supplemented March 22 and 29, 1988. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 16th day of August 1988.

For the Nuclear Regulatory Commission.

Charles M. Trammell,

Senior Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-21648 Filed 9-21-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-327/328]

Tennessee Valley Authority; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the Type C testing requirements of Appendix J to 10 CFR Part 50 to the Tennessee Valley Authority (the licensee) for the Sequoyah Nuclear Plant, Units 1 and 2. The units are located at the licensee's site in Hamilton County, Tennessee. The exemption was requested by the licensee in its letter dated August 8, 1988.

Environmental Assessment

Identification of Proposed Action: The exemption will permit the licensee to exclude from Type C leak rate testing the spray check valves located in the residual heat removal spray system (RHRSS) and containment spray system (CSS). Appendix J requires that the licensee perform leak rate testing of valves that serve as containment isolation valves. The need for the exemption arose because the licensee had designated the affected valves as containment isolation valves.

Type C testing of these valves cannot be performed due to the lack of manual or remote-manual block valves in the line that are necessary to allow such testing.

The staff has completed its evaluation of the proposed exemption. The staff has concluded that the exemption has no adverse effect on the safe operation of the facility and does not significantly increase the probability or consequences of an accident.

The Need for the Proposed Action: The proposed exemption is needed to permit the licensee to operate the plant without being in violation of the Commission's requirements.

Environmental Impact of the Proposed Action: The Commission has completed its evaluation of the environmental impact of the propsed exemption to the testing requirements of Appendix J. The need for such testing is to ensure that containment isolation valves once closed do not leak following an accident. However, if leakage should occur, the leakage would be into closed systems which are not open to the environment. Therefore, the Commission concludes that the exemption does not involve a significant environmental impact.

With regard to potential nonradiological environmental impacts, the proposed exemption involves systems located within the restricted areas as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

With regard to potential radiological environmental impacts, the proposed exemption does not increase the radiological effluents from the facility and does not increase the occupational exposure at the facility. There is no significant increase in the environmental impacts of accidents assessed in the "Final Environmental Statement Related to the Operation of Sequoyah Nuclear Plants Units 1 and 2," dated July 1974. Therefore, the Commission concludes that there are no significant radiological impacts associated with the proposed exemption.

Therefore, the proposed exemption does not significantly change the conclusions in the "Final Environmental Statement Related to the Operation of Sequoyah Nuclear Plants Units 1 and 2," dated July 1974.

Alternative to the Proposed Action: Because the staff has concluded that there is no significant environmental impact associated with the proposed exemption, alternatives with equal or greater environmental impacts were not evaluated.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to the Operation of Sequoyah Nuclear Plant, Units 1 and 2" dated July 1974.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request for the proposed exemption. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission had determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the environmental assessment, we conclude that the proposed action will not have a significant adverse effect on the quality of the human environment.

For details with respect to this action, see the licensee's request for an exemption dated August 8, 1988, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC, and at the Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Dated at Rockville, Maryland, this 19th day of September 1988.

For the Nuclear Regulatory Commission.

Suzanne Black,

Assistant Director for Projects, TVA Projects Division, Office of Special Projects.

[FR Doc. 88-21649 Filed 9-21-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Advanced Reactor Designs; Meeting

The ACRS Subcommittee on Advanced Reactor Designs will hold a meeting on October 5, 1988, Room P-114, 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, October 5, 1988—8:30 a.m. until the conclusion of business.*

The Subcommittee will review the draft SER for the liquid metal reactor (LMR) Power Reactor Inherently Safe Module (PRISM) design.

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 therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Medhat El-Zeftawy (telephone 301/492-9901) 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: September 15, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88-21651 Filed 9-21-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-282 and 50-306]

Northern States Power Co., Prairie Island Nuclear Generating Plant, Units Nos. 1 and 2; Exemption

I

The Northern States Power Company (the licensee) is the holder of Facility Operating Licenses Nos. DPR-42 and DPR-60, which authorize operation of the Prairie Island Nuclear Generating Plant, Units Nos. 1 and 2, at a steady-state power level not in excess of 1633 megawatts thermal for each unit. The facilities are pressurized water reactors located at the licensee's site in Goodhue County, Minnesota. The licenses provide, among other things, that they are subject to all rules, regulations and orders of the nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

Appendix K of 10 CFR Part 50 specifies requirements and acceptable features of evaluation models for analyzing the heat removal from the reactor core during a loss of coolant accident (LOCA) by the emergency core cooling system (ECCS). Sections I.D.3 and I.D.5 are the subject of this exemption request. Specifically, Section I.D.3 is concerned with the calculation of the reflood rate for pressurized water reactors. This section requires that the ratio of the total fluid flow at the core exit plane to the total liquid flow at the core inlet plane (carryover fraction) shall be used to determine the core exit flow and shall be determined in accordance with applicable experimental data. Section I.D.5 deals with heat transfer analysis during the refill and reflood phase of a LOCA. This section specifically requires that for reflood rates of one inch per second or higher, the reflood heat transfer coefficients shall be based on applicable experimental data for unblocked cores including FLECHT results ("PWR FLECHT (Full Length Emergency Cooling Heat Transfer), Final Report," Westinghouse Report WCAP-7665, April 1971).

III

By letter dated July 28, 1988, the licensee requested exemption from he requirements of Sections I.D.3 and I.D.5 of Appendix K, as these requirements apply to a new evaluation model for the LOCA analyses dealing with the two-loop Westinghouse plants such as the Prairie Island Nuclear Generating Plant, Units Nos. 1 and 2. In the past, because of modeling difficulties, the evaluation model for the LOCA analyses for the Westinghouse two-loop plants such as Prairie Island assumed that treating the low pressure upper plenum injection water as injected into the lower plenum in the same manner as for the three and four-loop plants would provide reasonable results for a two-loop plant. However, the new model found acceptable (Reference 1) by the Commission's staff, assumes injection of the low pressure water directly into the upper plenum as would actually occur in the plant in the event of a LOCA. This more accurate representation, however, entails deviation from some modeling assumptions requried by 10 CFR Part 50, Appendix K. The acceptability of the exemption request is addressed below.

IV

Section I.D.3 of Appendix K of 10 CFR Part 50 assumes that a carryover fraction of the liquid entering the core inlet plane at the lower plenum as defined above would exit the reactor core and through the loop pipe. In a upper plenum injection plant, the liquid enters above the reactor core and exits through the lower plenum as well as through the loop piping. Therefore, the carryover fraction for the upper plenum injection plants provides no physicial meaning nor can it be defined by the existing codes (i.e. WCOBRA/TRAC) used in the licensing calculations. In addition, the licensee's new evaluation model makes use of revised codes which have been demonstrated, via comparison to appropriate experimental data, as capable of calculating the core exit liquid flow without the use of the carryover fraction as defined in Section I.D.3. Thus, although the carryover fraction has not been calculated, the intent of the requirement is met by establishing the core exit flow during reflooding.

Section I.D.5 of Appendix K of 10 CFR Part 50 requires that for reflood rates of one inch per second or higher, the heat transfer coefficients shall be demonstrated to be more conservative than experimental data, including the FLECHT results. In cases where refill and reflood rates of less than one inch per second, the heat transfer coefficients shall be based on steam cooling taking into account any calculated flow blockage. These requirements were based on limited test data, at the time of rulemaking, simulating the liquid entering the core from the lower plenum. For a reactor with upper plenum injection, the entire flow pattern is different than that assumed at the time the requirement was developed. In the case of upper plenum injection, the reactor vessel is filled with liquid falling or channeling through the core into the lower plenum, and the fuel assemblies are cooled by a combination of cocurrent downflow, cocurrent upflow, and counter current flow film boiling and radiation. In the case where liquid enters the lower plenum, the fuel assemblies are cooled by dispersed cocurrent upflow film boiling and radiation. During the refill phase in the reactor that has upper plenum injection, the water will fall into the core and contribute cooling, and therefore the assumption of only steam cooling discussed in Section I.D.5 is inappropriate. In addition, the one inch per second flooding rate threshold for steam cooling during reflood was based on lower plenum injection blockage heat transfer data that is not applicable for the upper plenum injection mode of cooling. Although the licensee's new evaluation model found acceptable by the Commission's staff (Reference 1) does not contain the limitations of I.D.3 and I.D.5, the new evaluation model contains heat transfer models have been verified and validated with proper experimental data for the refill and reflood heat transfer coefficients for upper plenum injection. The experimental data include the upper head injection tests at the Westinghouse G–2 test facility and the large scale reflood upper plenum injection tests at the Japanese Cylindrical Core Test Facility (CCTF). The G–2 separate effect experiments provide information on a full length rod bundle film heat transfer in both cocurrent and counter-current flow with a pressure range between 20 and 100 psia which is typical range for upper plenum injection flooding situations. The integral CCTF experiments provide information on the core thermal hydraulic and system responses for upper plenum injection. Four CCTF reflood tests were analyzed which include a cold leg injection reference test and three combined injection tests with various upper plenum injection flow rates and injection configurations simulation symmetric and skewed upper plenum injections. The comparisons with these data indicate that the new evaluation model provides a reasonably accurate description of the local phenomena and heat transfer calculation for the complex film boiling situation as well as the system response for an upper plenum injection plant. Although the new model deviates from Appendix K in these two particulars, it employs more accurate modeling assumptions for a two-loop plant, and the models have been validated by comparison with appropriate experimental data. Thus, the underlying intent of the rule—to assure that ECCS evaluation models properly reflect applicable experimental data—has been satisfied.

V

Based on the above evaluation, the Commission's staff considers the licensee's alternative, due to the difference in the method of injecting liquid during LOCA conditions, to be equivalent to that achieved by conformance with Sections I.D.3 and I.D.5 of Appendix K to 10 CFR Part 50. Therefore, the licensee's request for exemption from Sections I.D.3 and I.D.5, as these requirements relate to injection of emergency cooling directly into the upper plenum of the reactor, may be granted.

Accordingly, the Commission has determined pursuant to 10 CFR 50.12(a), that the requested exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Further, the Commission finds that special circumstances are present for this exemption in that application of the regulation in this particular circumstance is not necessary to achieve the underlying purposes of Sections I.D.3 and I.D.5 of Appendix K to 10 CFR Part 50, and that the underlying purpose of these requirements is satisfied by the revised model. The licensee's alternative methods as discussed in IV above for performing the thermal/hydraulic analysis are capable of performing the same demonstration. Therefore, the Commission hereby grants the exemption request identified in Section III above.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this exemption will have no significant impact on the environment (53 FR 35940).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 16th day of September 1988.

For The Nuclear Regulatory Commission.

Gary M. Holahan, Acting Director,

Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

Reference I

Letter from Ashok C. Thadani (NRC) to W. J. Johnson (Westinghouse) "Acceptance for Referencing of Licensing Topical Report WCAP–10924, Westinghouse Large-Break LOCA Best Estimate Methodology, August 29, 1988.

[FR Doc. 88–21650; Filed 9–21–88; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street NW., Washington, DC 20549.

Revised

Rule 204–2 [17 CFR 275.204–2], File No. 270–215

Rule 206(4)–3 [17 CFR 275.206(4)–3], File No. 270–218

Rule 206(4)–4 [17 CFR 275.206(4)–4], File No. 270–304

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval proposed amendments to Rule 204–2 (17 CFR 275.204–2), Rule 206(4)–3 (17 CFR 275.206(4)–3), and Rule 206(4)–4 (17 CFR 275.206(4)–4), under the Investment Advisers Act of 1940 ("Act").

Rule 204–2 is the recordkeeping rule applicable to registered investment advisers ("advisers"). There are approximately 10,200 advisers that would still be subject to the recordkeeping rule which requires approximately 224 burden hours per year per adviser.

Rule 206(4)–3 provides restrictions on cash payments for client solicitations. It is applicable to all registered investment advisers. There are approximately 216 advisers that would still be subject to

this rule which requires approximately 7 burden hours per year per adviser.

Rule 206(4)–4 requires advisers to disclose certain financial and disciplinary information to clients. Approximately 350 advisers would still be subject to this rule which requires approximately 7.5 burden hours per adviser.

The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to Robert Neal at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–6004, and Robert Neal, Clearance Officer, Office of Management and Budget, Room 3228, New Executive Office Building, Washington, DC 20503.

September 16, 1988.

[FR Doc. 88–21667 Filed 9–21–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–26079; File No. SR–AMEX–88–22]

Self-Regulatory Organizations; Proposed Rule Change by the American Stock Exchange, Inc.; Relating to Changing the Exercise Style of Major Market Index Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 9, 1988, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. ("AMEX") hereby proposes to change the exercise feature of its options on the Major Market Index ("XMI") from American-style to European-style. This change would permit exercise of XMI options only at expiration.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Since 1983, the Amex has been trading options on XMI, a broad-based stock index based on twenty-leading blue chip stocks with an American-style exercise feature. The Amex now proposes to change the exercise feature of XMI options from American-style to European-style. American-style exercise permits holders of put and call options to exercise their options on any Exchange business day up to and including the last trading day (expiration Friday) while European-style exercise permits exercise only on expiration Friday.

The Amex proposes to implement the change in exercise style on a prospective basis effective at the October 1988 expiration rollover. At that time, January 1989 expiration series will be listed with European-style exercise (to go along with the November and December 1988 American-style series which will be outstanding at that time). February and March European-style series will be added at subsequent expiration rollovers.

Currently Amex and other exchanges trade options on broad-based and/or industry indexes with European-style exercise feature. Accordingly, the proposed modification to XMI will give it a similar exercise feature and does not present any novel issues. The Exchange will advise its membership via circulars and other communications of the change to XMI's exercise feature and the method of phasing in new series.

The proposed change is consistent with section 6(b)(5) of the Securities Exchange Act of 1934 ("1934 Act") in that it will facilitate transactions in securities and protect investors and the public interest.

Therefore, the proposed rule change is consistent with section 6(b)(5) of the 1934 Act which provides, in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The AMEX believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Options Committee, a committee of the AMEX Board of Governors comprised of members and representatives of member firms, has endorsed the proposed rule change.

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the propsed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at

the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 13, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 15, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-21668 Filed 9-21-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26087; File No. SR-Phlx-88-25]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Foreign Currency Options Trading Hours

On August 8, 1988 the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, a proposed rule change modifying the hours that trading on foreign currency options may be conducted on the Exchange. Notice of the proposal appeared in the **Federal Register** on August 17, 1988.[1] No comments were received.

The proposal amends Phlx Rule 101 with respect to hours of business for dealings upon the Exchange. Specifically, the proposal provides that foreign currency option trading sessions shall be conducted at such times as the Board of Governors shall specify between 6:00 p.m. Sundays and 3:00 p.m. Fridays.[2] The proposed rule change provides the Exchange with the flexibility to conform its daytime trading segment hours to coincide with the opening of trading in the European foreign exchange markets. At this time, Phlx anticipates expanding the daytime segment through an earlier opening for foreign currency option trading, although it has not determined the precise early morning time that trading will commence. The Exchange, therefore, will file a proposed rule change under section 19(b)(3)(A) when it determines the time for the early morning opening.[3] The Exchange represents that it will provide foreign currency options participants and participant organizations with adequate notice of any such change in trading hours made as a result of implementation of the proposed rule change.[4]

Phlx states that the purpose of the rule change is to give it the ability to coordinate daytime trading segment business hours in foreign currency options with the active morning segment hours in the prime European foreign exchange markets. Phlx believes that by adjusting its hours it will be better able to meet the exchange rate risk protection and related hedging needs of European manufacturing, banking and other commercial firms.[5] Indeed, a survey of existing and potential users of Phlx foreign currency options conducted by the Exchange indicates that an estimated 82% of European brokers and 84% of European banks queried would utilize Phlx foreign currency options during extended daytime trading hours.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national Securities Exchange, and, in particular, the requirements of Section 6 and the rules and regulations thereunder. In 1987, in approving the Phlx evening trading segment for foreign currency options,[6] the Commission noted that the interbank currency markets effectively operate on a 24 hour basis and found that an evening session furthers the public interest and promotes the protection of investors by providing participants an opportunity to better protect themselves against 24-hour currency market fluctuations. The proposed rule change ensures that these purposes continue to be served by giving Phlx the flexibility to expand the hours of foreign currency options trading to meet the exchange rate risk protection and hedging needs of European-based market participants.

The Commission notes that since the initiation of the evening trading segment, each trading day has been deemed to commence at 7:00 p.m. and continue until 2:30 p.m. the following afternoon. Phlx has represented that the earlier opening of the daytime foreign currency options trading segment will not alter this arrangement. The extension of the opening of the daytime foreign currency options trading segment will be treated merely as an extension of the existing trading day, *i.e.*, the trading day will include the prior evening segment plus the expanded daytime trading segment. The Commission is satisfied, therefore, that the proposal should not affect Phlx rules with respect to position limits, exercise limits, and other rules dependent on the concept of a "trading day." For example, open interest and volume will continue to be calculated at the end of the daytime trading segment reflecting activity for the entire trading day and margin requirements will continue to be based upon net calculation of positions created throughout the entire trading day.[7]

Additionally, the Commission is satisfied that existing systems can accommodate an expanded daytime trading segment. Phlx represents that its real-time trade comparison system will be used throughout all trading segments. Phlx also represents that it will provide for the expanded daytime trading segment transactions by assigning additional market surveillance and operations staff personnel to cover the earlier daytime trading segment.

Options Clearing Corporation ("OCC") has represented that it, too, has the operational capacity to handle the expanded daytime trading segment. OCC has represented that it currently processes foreign currency options during off-peak hours and even a significant increase in volume would not adversely affect foreign currency option processing. Nevertheless, OCC has undertaken to monitor its processing performance and to respond to any degradation by committing more resources to this area.[8]

Finally, the Commission believes it is appropriate that any further modifications to foreign currency option trading hours within the parameters set by this filing be effective on filing pursuant to section 19(b)(3)(A). This will enable Phlx to implement the change

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[1] Securities Exchange Act Release No. 25991 (August 12, 1988), 53 FR 31129.

[2] Previously, Phlx Rule 101 provided for evening trading of foreign currency options between the hours of 6:00 p.m. and 11:00 p.m. Sundays through Thursdays and in the daytime from 8:00 a.m. to 2:30 p.m. Mondays through Fridays.

[3] Phlx has committed to make similar filings under section 19(b)(3)(A) any time it expands or changes foreign currency option trading hours in connection with Rule 101 as amended.

[4] Phlx anticipates making the first such time change on or around January 16, 1989. Phlx expects that the change will provide for a 4:30 a.m. (EST) opening of foreign currency option trading.

[5] The evening trading segment was designed to further this purpose in the Far East.

[6] *See* Securities Exchange Act Release No. 24652 (June 29, 1987), 52 FR 25680.

[7] The Commission understands that the proposal may impact the timing of the computation of deductions for net capital purposes, however, it will not affect the deductions. The timing will be coordinated with Phlx before implementation of the rule.

[8] Telephone conversation between John Hiatt, Senior Vice President, OCC, and Judith Poppalardo, Staff Attorney, Division of Market Regulation, SEC, on September 12, 1988.

immediately while preserving the Commission's ability to review specific changes that raise significant issues. For the foregoing reasons, the Commission believes the proposal is consistent with the Act and should be approved.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 16, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-21682 Filed 9-21-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26088; File No. SR-PHLX-88-26]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc., Order Approving Proposed Rule Change Relating to the Size of the Unit of Trading of British Pound Foreign Currency Options Contracts

On August 12, 1988, the Philadelphia Stock Exchange, Inc. ("PHLX" 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 that would increase the unit of trading respecting British pound foreign currency options contracts listed and eligible for trading on the PHLX from 12,500 pounds to 31,250 pounds.

The proposed rule change was noticed in Securities Exchange Act Release No. 26006 (August 18, 1988), 53 FR 32318 (August 24, 1988). No comments were received on the proposed rule change.

The purpose of the proposed rule change is to maintain the half-size ratio relationship between the unit of trading of the British pound foreign currency option contract traded on the PHLX and the British pound futures contracts traded on the Chicago Mercantile Exchange ("CME") and the Philadelphia Board of Trade ("PBOT"). The CME and the PBOT have both received approval from the Commodity Futures Trading Commission to increase the size of their British pound futures contracts from 25,000 to 62,500 pounds, prompting the PHLX to seek approval for an increase in its option contract size form 12,500 to 31,250 pounds. In addition, the rule change will bring the size of the British pound contract into a dollar range comparable to other foreign currency option contracts traded on the PHLX.[3]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and , in particular, the requirements of section 6.[4] Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act because it is designed to facilitate transactions in British pound foreign currency options contracts by allowing the Exchange to continue to trade options on the British pound which are one half the size of corresponding futures contracts traded on the CME and the PBOT, thereby maintaining the liquidity of the primary and derivative markets for the British pound by facilitating arbitrage, spread and other hedging opportunities between the foreign currency options, futures and inter-bank markets. Although increasing the unit of trading on British pound options will increase the maximum position size that can be accumulated in this option, this position size is less than can be accumulated in Japanese yen options and is commensurate with the maximum allowable position sizes in Canadian dollar options and Australian dollar options.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof so that the Exchange can commence trading in British pound options contracts with units of trading of 31,250 pounds on September 18, 1988, when the larger British pound futures contracts will be traded on the CME and the PBOT. This would maintain the half-size ratio relationship between the Exchange listed British pound options contract and the corresponding future contracts traded on the CME and the PBOT.

It is therefore ordered, purusant to section 19(b)(2) of the Act,[5] that the proposed rule change (SR-PHLX-88-26) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 88-21683 Filed 9-21-88; 8:45 am]

BILLING CODE 8010-01-M

[File No. 81-772]

Application and Opportunity for Hearing: IEM, S.A. de C.V.

September 16, 1988.

Notice is hereby given that IEM, S.A. de C.V. (the "Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for an order exempting Applicant from certain reporting requirements under section 13 of the 1934 Act.

For a detailed statement of the information presented, all persons are referred to the application which is on file at the offices of the Commission in the Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

Notice is further given that any interested person not later than October 12, 1988, may submit to the Commission in writing his views or any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof. At any time after that date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-21669 Filed 9-21-88; 8:45 am]

BILLING CODE 8010-01-M

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1985).

[3] For example, a British pound foreign currency options contract of 31,250 pounds, at current exchange rates, represents a U.S. dollar value of $53,171.87, whereas the comparable ECU contract dollar value, for example, is $68,800.00, the Japanese yen contract dollar value is $46,706.25, the Canadian dollar contract value is $41,485.00, and the Australian dollar contract value is $40,160.00.

[4] 15. U.S.C. 78f (1982).

[5] 15 U.S.C. 78s(b)(2) (1982).

[6] 17 CFR 200.30-3(a) (12) (1986).

[Release No. IC-16563; File No. 811-3506]

Premier Money Market Fund, Inc.

September 16, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Premier Money Market Fund, Inc. ("Applicant").

Relevant 1940 Act Sections: Order requested under Section 8(f).

Summary of Application: Applicant seeks an order under Section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

Filing Date: The application was filed on April 1, 1988 and amended on July 20, 1988 and September 7, 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 October 11, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 5th Street NW., Washington DC 20549. Premier Money Market Fund, Inc., 4333 Edgewood Road NE., Cedar Rapids, Iowa 52499.

FOR FURTHER INFORMATION CONTACT: Cindy J. Rose, Financial Analyst (202) 272-2058 or Clifford E. Kirsch, Special Counsel (202) 272-2061 (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).

Applicant's Representations

1. The Applicant is an open-end, diversified management company. The Applicant filed a Notification of Registration on Form N-8A and its registration statement on Form N-1 on June 30, 1982. The registration statement on Form N-1 was made effective on July 1, 1983. No public offering of the Applicant's shares was ever made.

2. The Applicant did not transfer any of its assets to a separate trust within the last 18 months.

3. On December 31, 1987, the Fund distributed all of its remaining assets to its sole shareholder, Pacific Fidelity Life Insurance Company.

4. Applicant has no security holders and is not now engaged, nor proposes to engage, in any business activities other than those necessary for winding-up its affairs. No assets are retained by the Applicant. Applicant is not a party to any litigation or administrative proceeding.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-21684 Filed 9-21-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[CM-8/1217]

The U.S. Organization for the International Telegraph & Telephone Consultative Committee (CCITT), Integrated Services Digital Network (ISDN) and Study Group C; Meeting

The Department of State announces that the Integrated Service Digital Network (ISDN), Joint Working Party and Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on October 21, 1988 in Room B1B2 of the Bellcore Building, 2101 L Street NW., Washington, DC, beginning at 9:00 a.m.

The purpose of the meeting is to review corporate position papers and the results of agreed papers from the T1S1 Committee for submission to the first relevant official CCITT Study Group meeting to be held in the 1989-1992 Plenary Period. During the last Plenary Period, CCITT Study Group XI addressed the technical study areas that are the subject of review at this meeting. It is expected that Study Group XI will continue to address these studies during the next Plenary Period as well.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, those intending to attend should notify Bonnie Savage (201) 758-2468 no later than Monday, October 17, 1988, to gain access to the building.

Date: September 13, 1988.

Earl S. Barbely,

Director, Office of Telecommunications and Information Standards; Chairman, U.S. CCITT National Committee.

[FR Doc. 88-21624 Filed 9-21-88; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Notice 88-13]

Senior Executive Service Performance Review Boards (PRB); Membership

AGENCY: Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: DOT publishes the names of the persons selected to serve on the various Departmental Performance Review Boards (PRB) established by DOT under the Civil Service Reform Act.

FOR FURTHER INFORMATION CONTACT: Diana L. Zeidel, Director of Personnel, and Executive Secretary, DOT Executive Resources Board, (202) 366-4088.

SUPPLEMENTARY INFORMATION: Title 5 U.S.C. 4312 requires that each agency implement a performance appraisal system making senior executives accountable for organizational and individual goal accomplishment. As part of this system, 5 U.S.C. 4314(c) requires each agency to establish one or more PRBs, the function of which is to review and evaluate the initial appraisal of a senior executive's performance by the supervisor and to make recommendations to the final rating authority relative to the performance of the senior executive.

The persons named below have been selected to serve on one or more Departmental PRBs.

Issued in Washington, DC, on September 16, 1988.

Jon H. Seymour,

Assistant Secretary for Administration.

Senior Executive Service—Performance Review Boards

Office of the Secretary

Angelo P. Picillo
Deputy Director, Office of Administrative Services and Property Management

Barclay W. Webber
Assistant General Counsel for Environmental, Civil Rights and General Law

Thomas Herlihy
Assistant General Counsel for Legislation
Samuel Podberesky
Assistant General Counsel for Aviation Enforcement and Proceedings
Patrick V. Murphy
Deputy Assistant Secretary for Policy and Program Development
Eunice Thomas
Director, Office of Small and Disadvantaged Business Utilization
Carolina L. Mederos
Deputy Assistant Secretary for Safety
Katherine E. Collins
Director, Office of Budget
Glenda M. Tate
Director, Office of Management Planning
Erika Z. Jones
Chief Counsel, National Highway Traffic Safety Administration
Reginald Bourdon
Associate Administrator for Policy and International Affairs, Maritime Administration

Office of the Inspector General

Melissa J. Allen
Deputy Assistant Secretary for Administration, Office of the Secretary
Carolina L. Mederos
Deputy Assistant Secretary for Safety, Office of the Secretary
Susan Coughlin
Deputy Administrator, Federal Railroad Administration
Walter R. Somerville
Chief, Office of Civil Rights, United States Coast Guard
Joyce Blalock
Inspector General, Government Printing Office
Bill D. Colvin
Inspector General, National Aeronautics and Space Administration
Anthony J. McMahon
Chief Counsel, Federal Highway Administration
Gene Richardson
Assistant Inspector General for Investigations, Agency for International Development
Stephen A. Trodden
Assistant Inspector General for Auditing, Department of Defense
Alvin Tucker
Deputy Inspector General, Department of Housing and Urban Development

Urban Mass Transportation Administration

Edward Babbitt
Chief Counsel
Amparo B. Bouchey
Special Assistant for Policy and Minority Affairs, Office of the Secretary
Earnest Hawkins
Associate Administrator for Administration, Maritime Administration
Marilyn S. Marton
Director, Office of Acquisition and Grant Management, Office of the Secretary

United States Coast Guard

RADM T. T. Matteson
Chief, Office of Personnel
RADM R. T. Nelson
Chief, Office of Navigation Safety and Waterway Services
Michael M. Finkelstein
Associate Administrator for Research and Development, National Highway Traffic Safety Administration
Rosalind A. Knapp
Deputy General Counsel, Office of the Secretary
C. Shannon Roberts
Deputy Director, Office of Management Planning, Office of the Secretary
Leon C. Watkins
Director, Office of Civil Rights, Federal Aviation Administration
Mildred Webber
Deputy Assistant Secretary (Intergovernmental and Consumer Affairs), Office of the Secretary

Research and Special Programs Administration

George Tenley
Chief Counsel
Louis W. Roberts
Director, Transportation Systems Center
Melissa J. Allen
Deputy Assistant Secretary for Administration, Office of the Secretary
Michael M. Finkelstein
Associate Administrator for Research and Development, National Highway Traffic Safety Administration
Jeffrey R. Miller
Deputy Administrator, National Highway Traffic Safety Administration
Erika Z. Jones
Chief Counsel, National Highway Traffic Safety Administration
Susan Coughlin
Deputy Administrator, Federal Railroad Administration

Maritime Administration

Karl E. Bakke
Chief Counsel
Richard E. Bowman
Associate Administrator for Maritime Aids
Earnest Hawkins
Associate Administrator for Administration
William T. Hudson
Director, Office of Civil Rights, Office of the Secretary
Catherine A. Bedell
Deputy Assistant Secretary for Public Affairs (Mangement), Office of the Secretary
Amparo Bouchey
Special Assistant for Policy and Minority Affairs, Office of the Secretary
Joan W. Bauerlein
Assistant Administrator, Office of Government and Industry Affairs, Federal Aviation Administration

National Highway Traffic Safety Administration

Erika Z. Jones
Chief Counsel
George Parker
Associate Administrator for Enforcement
Howard Smolkin
Managing Director
Carolina L. Mederos
Deputy Assistant Secretary for Safety, Office of the Secretary
William T. Hudson
Director, Office of Civil Rights, Office of the Secretary
Cynthia M. Douglass
Administrator, Research and Special Programs Administration

Federal Highway Administration

George S. Moore, Jr.
Associate Administrator for Administration
Ronald E. Heinz
Associate Administrator for Engineering and Program Development
Edward W. Morris, Jr.
Director, Office of Civil Rights
Rosalind A. Knapp
Deputy General Counsel, Office of the Secretary
Melissa J. Allen
Deputy Assistant Secretary for Administration, Office of the Secretary
Erika Z. Jones
Chief Counsel, National Highway Traffic Safety Administration

Federal Railroad Administration

Joseph W. Walsh
Associate Administrator for Safety
Raymond J. Rogers
Associate Administrator for Administration
Philip Olekszyk

Deputy Associate Administrator for Safety
James T. McQueen
Associate Administrator for Passenger and Freight Services
Rosalind A. Knapp
Deputy General Counsel, Office of the Secretary
Jeffrey R. Miller
Deputy Administrator, National Highway Traffic Safety Administration
William T. Hudson
Director, Office of Civil Rights, Office of the Secretary
Janet Hale
Assistant Secretary for Budget and Programs, Office of the Secretary

Federal Aviation Administration

Wayne J. Barlow
Executive Director for System Operations
Joan W. Bauerlein
Assistant Administrator, Office of Government and Industry Affairs
Neal A. Blake
Deputy Associate Administrator for Engineering
Anthony J. Broderick, Jr.
Associate Administrator for Aviation Standards
Joseph M. Del Balzo
Director, Eastern Region
Robert L. Donahue
Associate Administrator for Airports
Arlene I. Feldman
Director, New England Region
Brooks C. Goldman
Associate Administrator for Administration
Kathleen M. Harrington
Assistant Administrator of Public Affairs
Edwin S. Harris, Jr.
Associate Administrator for Development and Logistics
Dale E. McDaniel
Deputy Associate Administrator for Policy and International Aviation
Herbert R. McLure
Associate Administrator for Human Resource Management
Clarence R. Melugin, Jr.
Executive Director for Regulatory Standards and Compliance
William H. Pollard
Director, Great Lakes Region
Keith Potts
Associate Administrator for Air Traffic
Quentin S. Taylor
Deputy Associate Administrator for Airports
Gregory S. Walden
Chief Counsel
Leon C. Watkins
Director, Office of Civil Rights
Robert Whittington
Executive Director for Policy, Plans and Resource Management
Carolina L. Mederos
Deputy Assistant Secretary for Safety, Office of the Secretary
Robert Collins
Deputy Assistant Secretary for Administration, Office of the Secretary
Wendy DeMocker
Assistant Secretary for Public Affairs, Office of the Secretary
Mildred Webber
Deputy Assistant Secretary (Intergovernmental and Consumer Affairs), Office of the Secretary
Marilyn S. Marton
Director, Office of Acquisition and Grant Management, Office of the Secretary
Eunice Thomas
Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary
William T. Hudson
Director, Office of Civil Rights, Office of the Secretary
Glenda M. Tate
Director, Office of Management Planning, Office of the Secretary

[FR Doc. 88-21596 Filed 9-21-88; 8:45 am]
BILLING CODE 4910-62-M

Federal Highway Administration

Environmental Impact Statement: Alexandria, VA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: George E. Kirk, Jr., District Engineer, Federal Highway Administration, P.O. Box 10045, Richmond, Virginia 23240-0045, Telephone (804) 771-2380.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Virginia Department of Transportation (VDOT), will prepare an environmental impact statement (EIS) on a proposal to construct a new interchange with Interstate 95 at the approved access point of Clermont Avenue in the City of Alexandria, Virginia. The proposed project will also address a connector(s) from Eisenhower Avenue to Duke Street.

The new interchange and connector(s) are considered necessary in order to provide greater accessibility to Eisenhower Avenue from I-95 and from Duke Street, and to alleviate traffic congestion in the vicinity of the existing interchanges at Telegraph Road (Exit 2) and Van Dorn Street (Exit 3).

Alternatives under consideration include: (1) Taking no action; (2) using alternate travel modes (mass transit); and (3) transportation system management improvements to the existing street system. Preliminary engineering design variations of grade and alignment will be incorporated into the study of the build alternative.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. A series of public meetings and a public hearing(s) will be held in the City of Alexandria. Public notice will be given of the time and place of the meetings and hearing(s). The draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meetings is planned at this time.

To ensure that full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action and the EIS should be directed to the FHWA at the address provided above.

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Issued on September 16, 1988.

George E. Kirk, Jr.,
District Engineer, Richmond, Virginia.

[FR Doc. 88-21627 Filed 9-21-88; 8:45 am]
BILLING CODE 4910-22-M

Environmental Impact Statement: Prince William County, VA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Cancellation of notice of intent.

SUMMARY: This notice rescinds the previous Notice of Intent issued on August 25, 1987 to prepare an environmental impact statement for a proposed highway project on Route 642 in Prince William County, Virginia. The proposal was to construct a new four-lane facility from the intersection of Route 234 to the intersection of existing

Route 641, for a total length of about six miles.

FOR FURTHER INFORMATION CONTACT: George E. Kirk, Jr., District Engineer, Federal Highway Administration, P.O. Box 10045, Richmond, Virginia 23240–0045, Telephone (804) 771–2380.

Issued on September 16, 1988.

George E. Kirk, Jr.,

District Engineer, Richmond, Virginia.

[FR Doc. 88–21628 Filed 9–21–88; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

[FRA Waiver Petition Docket No. PB–88–4]

Petition for Exemption or Waiver of Compliance; Association of American Railroads

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for an exemption from or waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in this proceeding by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with this proceeding since the facts do not appear to warrant a hearing. Any interested party desiring an opportunity for oral comment should notify FRA, in writing, before the end of the comment period and specify the basis for his or her request.

All communications concerning this proceeding should identify the appropriate docket number (here, Waiver Petition Docket Number PB–88–4) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Communications received before November 7, 1988 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning this proceeding are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

The FRA is considering a waiver request filed by the Association of American Railroads (AAR) requesting authority for its member railroads; all railroads owned by, controlled by, or affiliated with its member railroads; and all railroads owned by, controlled by, or affiliated with its other member companies to use the air flow method for train air brake qualification as an alternate to the leakage test. (Its member railroads and other member companies are listed in Appendix A.) Railroads affiliated with the AAR account for approximately 95 percent of the railroad train miles operated in the United States. These railroads are subject to the regulations governing the test and inspection of the train air brake system and have a vital interest in the establishment of regulations that permit the highest degree of productivity and efficiency consistent with the highest degree of safety. This petition seeks a waiver of certain provisions of the power brake regulations set forth in 49 CFR 232.12 and 232.13 relative to leakage limitations.

Among the tests and inspections of the air brake system required by the regulations is the test which quantifies the integrity of the brake system. This test determines that the continuity of the brake pipe, or train line, has been established by meeting the gradient requirement and that the air pressure throughout the brake pipe is not being dissipated by excessive leakage. Under the existing regulations, this leakage test is made on freight trains by first filling the brake pipe with compressed air to a pressure of within 15 pounds of the setting on the feed valve of the locomotive, but not less than 60 pounds as indicated by an accurate guage at rear end of train, and on a passenger train when charged to not less than 70 pounds. Once the brake pipe is charged, the brakes are then applied by making a 20-pound brake pipe reduction, and the supply of air to the brake pipe is stopped by cutting out, or lapping, the automatic brake valve. Finally, the brake pipe leakage is read from the locomotive brake pipe guage. For successful passage of the test, the leakage must not exceed five pounds per minute.

Leakage in the brake system affects train handling, and thus FRA rules have for many years established the maximum allowable brake pipe leakage and the maximum differential in brake pipe pressure (gradient) between the head end of the train and the rear of the train. The relative uniformity achieved by maintaining leakage within the prescribed 5-pound limit and the 15 pounds per square inch (psi) gradient produces the desired results for efficient and safe train handling.

Alternatively, by monitoring the rate of flow air releasd by the automatic brake valve to the brake pipe by means of a brake pipe flow indicator, the locomotive engineer can be assured of the ability of the automatic brake valve to control the brake system. On automatic brake valves with the pressure-maintaining feature, the brake pipe pressure is maintained at the desired level against the effects of brake pipe leakage. Thus, the brake system leakage is offset sufficiently if the rate of flow does not exceed a given level. Based on tests conducted in Canada and the United States, it has been determined that if the gradient does not exceed 15 psi and the air flow rate is maintained at or below 60 cubic feet per minute, the brake system sufficiently stabilized and within acceptable limits for safe and efficient train handling. Extensive testing has demonstrated that the limits of a 60 cubic-feet-per-minute air flow rate and a 15-psi gradient are practical and safe requirements for the qualification of train air brake systems.

The air flow method of train qualification is a more comprehensive test than the present leakage test. While the leakage method only measures the amount of leakage from the brake and branch pipes, the air flow method tests the entire brake system. Also, the leakage method does not test the capability of the pressure-maintaining feature of the 26L brake equipment. The air flow method, on the other hand, tests the brake system just as it is operated, with pressure-maintaining cut in.

The petitioner does not seek the elimination of the 5-pound leakage test; however, it is important to note that the leakage test does not reflect the capacity of the pressure-maintaining feature on the automatic brake valve to maintain a constant pressure in the brake pipe. Even though the pressure-maintaining feature on the automatic brake valve supplies sufficient air flow to safely compensate for leakage in excess of 5 pounds per minute on shorter trains, the arbitrary limit in the current rule precludes the full utilization of that feature. The petitioner is seeking a means for determining the most efficient length of a train for braking purposes based on the ability of the automatic control valve to compensate for the leakage rate.

The air flow method represents a much more discrete method of identifying the acceptable leakage rate relative to train length. While it does not measure the leakage rate, there is a demonstrable correlation between the leakage rate and train length for a given stabilized rate of flow into the brake pipe. Importantly, for the purpose of determining the capability of the brake system to perform as intended, it is only

necessary to know that the rate of air flow has stabilized at 60 cubic-feet-per-minute or lower.

Railroads have used brake pipe flow indicators for many years. These devices have been of great assistance in train handling since the 1950's. The device viewed by the locomotive engineer presents a semi-circular dial face with numbered markings and an indicator needle. The numbered markings represent a range of air flow in cubic-feet-per-minute. During the first charging of the brake system, the indicator needle will move to the extreme right, indicating a high rate of air flow while the train line is being charged. As the system becomes charged, the indicator needle will move to the left as the rate of air flow decreases. When the brake system is fully charged to the pressure preset by the regulating valve, the air flow will stabilize at the level necessary to maintain brake pipe pressure at the desired level by replacing the air lost through leakage in the brake system. Under the conditions of the requested waiver, the test would not be satisfactorily completed until the rate of air flow stabilized at or below 60 cubic feet per minute. The device is to be clearly marked to allow easy recognition of the rate of air flow. It is proposed that the device will be calibrated every 92 days. The petitioner has developed performance specifications for the air flow indicators and defined methods of calibration.

In 1975, the Canadian railroads (Canadian National and Canadian Pacific) became involved in examining the possibility of using the air flow method for qualifying train air brake systems. After several years of extensive testing, which used the expertise of the air brake manufacturers, determination was made that the air flow system was acceptable. In 1984, the Canadian government adopted the air flow system as an alternate to the leakage system and has completed rulemaking.

In 1981, the FRA became involved with the air flow method of train air brake qualification and authorized testing within the United States. Within the period from 1981 to the present time, FRA has granted test waivers to six major United States railroads. The FRA has been monitoring these tests being performed by the railroads and has reviewed their test data. During this test period approximately 200,000 train air brake tests have been conducted by the air flow method, and FRA has no evidence of related train-handling problems.

Issued in Washington, DC on September 14, 1988.

Philip Olekszyk,

Deputy Associate Administrator for Safety.

Akron & Barbeton Belt Railroad Company
Algoma Central Railway
Alton and Southern Railway Company
Amtrak
Association of American Railroads
Atchison, Topeka and Santa Fe Railway Company
Atlanta & Saint Andrews Bay Railway Company
Bangor and Aroostook Railroad Company
Belt Railway Company of Chicago
Bessemer and Lake Erie Railroad
Burlington Northern Railroad Company
Canadian National Railways
Canadian Pacific Limited
Central Vermont Railway Inc.
Chicago and Illinois Midland Railway Company
Chicago and North Western Transportation Company
Chicago and Western Indiana Railroad Company
CN Rail
Consolidated Rail Corporation
CP Rail
CSX Transportation
CSXT Inc.
Denver and Rio Grande Western Railroad Company
Detroit and Mackinac Railway
Duluth, Missabe and Iron Range Railway
Elgin, Joliet and Eastern Railway Company
Ferrocarril De Chihuahua Al Pacifico Sa
Ferrocarril Del Pacifico Sa De Cv
Ferrocarriles Nacionales De Mexico
Galveston, Houston and Henderson Railroad
Grand Trunk Western Railroad Company
Green Bay and Western Railroad Company
Houston Belt and Terminal Railway Company
Kansas City Southern Lines
Lake Superior and Ishpeming Railroad Company
Maine Central Railroad Company
Manufacturers Railway Company
McCloud River Railroad
Missouri-Kansas-Texas Railroad Company
Montour Railroad Company
Norfolk and Portsmouth Belt Line Railroad Company
Norfolk Southern Corporation
Ontario Northland Railway
Peoria and Pekin Union Railway Company
Pittsburgh and Lake Erie Railroad
Pittsburgh and Shawmut Railroad
Prescott and Northwestern Railroad
Richmond, Fredericksburg and Potomac Railroad Company
Soo Line Railroad
Southern Pacific Transportation Company
Texas Mexican Railway Company
The Texas Mexican Railway Company
Union Pacific Railroad
Union Railroad Company
Vermont Railway Inc.
Winston-Salem Southbound Railway Company

[FR Doc. 88-21598 Filed 9-21-88; 8:45 am]
BILLING CODE 4910-06-M

RIN 2130-AA32

[Docket No. RSSI 88-1, Notice No. 1]

Special Safety Inquiry; Locomotive Control Cab Safety

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of special safety inquiry.

SUMMARY: FRA is initiating a Special Safety Inquiry to examine engineering, environmental and technical factors affecting the safety and work environment of locomotive control cabs.

DATES: (1) FRA will hold public hearings on November 2 and 3, 1988, beginning at 9:30 a.m. at the Illinois Institute of Technology, Chicago, Illinois.

(2) Prepared statements to be made at the hearing should be submitted to the Docket Clerk at least five days before the hearing date (close of business, October 28, 1988). Parties not able to meet that deadline and those wishing to include technical exhibits in their presentations are encouraged to contact the FRA representatives listed below.

(3) Persons not desiring to testify, but wishing to submit written comments for inclusion in the safety inquiry docket should submit them to the Docket Clerk by December 3, 1988.

ADDRESSES: (1) Hearing location—Illinois Institute of Technology, Grover M. Herman Hall, 3241 S. Federal Street, Chicago, Illinois 60616.

(2) Docket Clerk, Office of Chief Counsel (RCC-30), Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590 (telephone 202-366-0817).

FOR FURTHER INFORMATION CONTACT: William E. Loftus, Executive Director, RED-1, 400 Seventh Street, SW., Washington, DC 20590 (telephone (202) 366-2257), or Clifford Gannett, Research and Development, Office of Safety, RRS-32, Federal Railroad Administration, 400 Seventh Street, SW.,

Washington, DC 20590 (telephone (202) 366–0466).

SUPPLEMENTARY INFORMATION:

Background

Locomotive cab safety has been an area of concern for industry, labor and government since passage of the Railroad Safety Act of 1970, which gave FRA broad powers to regulate in all matters affecting railroad safety. The Federal interest centers on the structural capability of the locomotive to sustain damage in most accident situations in order to minimize serious injuries or crew fatalities as well as in-cab factors that affect employee safety. FRA's approach to these issues has emphasized cooperative research programs that have resulted in significant changes in the safety design of control cabs and an improved working environment. However, these improvements have not been universally adapted.

The workplace of the locomotive engineer is the control cab of the lead locomotive. From that cab, he or she controls the movement of the train in response to instructions transmitted by various communication devices.

The workplace environment in the cab is affected by noise, fumes, visibility factors, and weather (heat or cold). The crew's vulnerability in a collision with other railroad equipment or in a collision with heavy highway vehicles at railway highway grade crossings is in part a function of the availability of emergency egress facilities and the cab's structural integrity.

FRA's primary interest is railroad safety; in this instance, the safe movement of the train and safety of the crew in the cab. For many years, the Federal Railroad Administration has encouraged railroads and locomotive manufacturers to examine all aspects of the locomotive cab work environment as a first step toward improving industry practices in the design, construction and maintenance of the locomotive cab.

Much of FRA's effort has been in research to analyze problems and identify solutions. The research has been conducted in close cooperation with railroads and labor organizations (Brotherhood of Locomotive Engineers and United Transportation Union) and, at times, with manufacturers.

The decision to hold a special safety inquiry on locomotive cab safety is consistent with FRA's view that a higher degree of employee safety and an improved, safer work environment can be achieved. It is FRA's intent to examine, with the active participation of all interested parties, the current state of locomotive cab design and construction; to identify problems and opportunities for improvement; and to seek consensus on strategies for improving future designs.

FRA views the locomotive cab safety issue as focusing on specific areas of concern which together make up the "system" of the locomotive cab workplace. Those areas of concern form the framework for this inquiry. They are: crashworthiness; work environment; and crash avoidance.

A substantial percentage of railroad employee fatalities and injuries occur when railroad equipment collides with other railroad equipment or with motor vehicles at highway grade crossings. Sixty-seven railroad employees were killed in train accidents over the past five years (1983–1987). Forty-seven, or 70 percent of these employees, were killed in collisions of railroad equipment, many of them in cabooses or locomotives. Another eight employees were killed when locomotives hit highway vehicles at grade crossings.

Railroad employees injured in collisions of railroad equipment during the same period totaled 632. Another 586 were injured in railroad highway grade crossing collisions with motor vehicles. Together, these injuries represent 57.6 percent of all railroad employees injured in train accidents.

While the number of head-on and rear-end collisions has declined since 1983, these accidents continue to represent a major safety concern given the resulting fatalities and the seriousness of the injuries associated with them.

This safety inquiry comes at a time of historic change in American railroading. An increasing amount of highly sophisticated operating and control equipment is coming on the market and being placed in the locomotive cab. Additional employees are being located in the cab due to the progressive removal of cabooses. There are currently no Federal regulations governing locomotive crashworthiness (other than certain commuter equipment regulations), nor are there Association of American Railroads standards concerning the subject. This is an opportune time to seek a consensus on those design elements and operating procedures that can provide a safer work environment.

We urge interested parties to share their views on the requirements of a safer, more environmentally acceptable workplace in their responses to the general and specific questions listed below. We stress, however, that our list is illustrative, not all-inclusive. We encourage the parties to present comments on any issue they identify as falling within the broad scope of this inquiry.

FRA is particularly interested in technical papers or presentations on crashworthiness designs and improved cab layouts and instrument location. Railroads and manufacturers are invited to locate prototype locomotives and static displays at the hearing site to demonstrate the technical and design concepts presented in formal papers and testimony. Another specific area of interest is the use of Advance Train Control System technology (ATCS) in crash avoidance and the ergonomic factors associated with introduction of ATCS devices into the locomotive cab.

Railroad employees who ride locomotives are among the users or consumers affected by the design of a locomotive. Their experiences can be very helpful in establishing priorities for locomotive changes. We invite the participation of the employees directly or through their employee organizations.

Crashworthiness

During the period 1976 to 1982, seven engineering studies were conducted to review accident data and make recommendations to improve the crashworthiness of locomotive cabs. In addition, rear-end and automobile collision tests were performed at the Transportation Test Center in 1975. The studies concluded the primary cause of fatalities and injuries was cab crushing due to impact and override. The secondary cause of the injuries and fatalities was occupants being thrown around in the cab and into fixed objects with protuberances or no padding.

The most recent study by National Space Technology Laboratories (NSTL) was completed in 1982 (Analysis of Locomotive Cabs), and summarized previous research and made general design recommendations.

The NSTL study reviewed accident data for the period 1974–1979. Similar data for the 1983–1987 period is shown in (Table I). NSTL's analysis of collision data in the study indicated all fatalities, and 96 percent of all injuries, occurred at 35 miles per hour or less.

An analysis of 147 National Transportation Safety Board (NTSB) railroad accident reports indicated that 61 percent of all accidents occurred during clear and dry conditions. In terms of override frequency and severity factors, a sample of 36 NTSB accident reports indicated 53 percent of the train collisions resulted in override with an accompanying injury or fatality.

The engineering studies identified seven means of improving the

crashworthiness of present locomotives. The studies also recommended improvements to the cab environment to reduce the probability of serious injury. During the course of the engineering studies, radically new designs of locomotive front ends were made. These new designs were directed toward providing adequate strength so that in the event of a grade crossing or rear-end collision and override of the cab by a caboose or freight car, the probability of loss of survivability space would be minimized. Unfortunately, these designs drastically increased the weight or proved undesirable for other reasons.

The seven recommended improvements to crashworthiness were: Top shelf couplers; anticlimbers with 200,000 pound capacity; the long hood anchored with adequate shear strength; high capacity 1,250,000 pound draft gears; increase vertical strength of cab to support loaded freight car; increase collision post strength to 500,000 pounds per post; and increase wall thickness of full width short hood to ⅜ inch and attenuate collision energy by attaching sandboxes to posts and deck plate.

There were also five recommended improvements for in-cab safety: Provide adequate emergency escape routes; provide a 1-to-2 inch layer of padding and eliminate sharp edges in the cab; replace the large control stand with a console; improve fire protection; and provide cab occupant restraint.

The Burlington Northern (BN) and the Canadian National Railway (CN) have adopted some of these recommendations. The BN ordered its 1980 purchased locomotives with an improved collision post design, now standard on Electro Motive Division SD locomotives. These collision posts reportedly can withstand 300,000 lbs. at the floor level without yielding. The BN short hood was made of ⅜" (.375") steel plate designed to address collision speeds below 15 m.p.h. Other short hoods are made of 11-gauge or .090" "thick steel." The BN design helps mitigate the override problem but does not provide roll-over protection.

The CN design provides collision posts each capable of withstanding a 500,000 lb. force at 30" above the deck. The General Electric Company (GE) recently completed an engineering analysis to verify that this can be accomplished on GE locomotives. The CN design includes a full-width short hood with a ½" steel plate. The locomotive is also equipped, as is the BN locomotive, with anticlimbers. The CN anticlimber is ½" thicker than the BN anticlimber, making it two inches thick. Recently, the Union Pacific placed an order for 137 locomotives that incorporate most of the CN's design improvements.

Federal regulations deal in certain design requirements for "multiple unit" (MU) electric locomotives in rail commuter service (49 CFR 229.141). Design requirements for MU locomotives call for two main vertical members (collision posts), each having an ultimate shear value of not less than 300,000 lbs. at a point even with the underframe. The design requirements also call for anticlimbers capable of a vertical load of 100,000 lbs.

Some but not all diesel electric locomotives are being built to meet or surpass this collision post standard. However, the collision force resistance of some EMD GP locomotives for both posts is only 96,000 lbs. About one-half of the major railroads order locomotives equipped with anticlimbers.

Some of the recommendations listed earlier would increase the weight of four-axle locomotives. This is not the case with six-axle locomotives. Ballast could be removed from these locomotives to compensate for added weight brought about by changes to improve crashworthiness. The extent of the problem of an increase in weight of four-axle locomotives needs to be assessed.

Work Environment

The in-cab environment of a locomotive has evolved from the open spartan, steel-framed cab of the steam days to the top-of-the-line cabs on some locomotives today that feature sound insulation, air conditioning, ergonomic-styled seats, console controls and video display devices for communications and information purposes. However, in-service locomotive cabs may have one or all of the following problems: noise, fumes, poor heat/cold controls, limited visibility, difficult egress and poor seating.

A Locomotive Control Compartment Committee was established in 1971, consisting of representatives of the railroad companies, Association of American Railroads (AAR), Brotherhood of Locomotive Engineers, United Transportation Union and FRA. The Committee's emphasis has been to improve the safety of the locomotive cab workplace.

An early outgrowth of the Committee's work were the "clean cab" design changes that the AAR adopted. These items included such improvements as non-skid floors, door closure bars, flexible hinge guard cushion pad for the door frame, a windshield wiper protective cover, a padded sun visor and improved seats. More recently, the Committee has concentrated on improved functional design of cab interiors, including the placement of controls and communication devices. The removal of cabooses from many trains and the placement of additional operating equipment in the cab requires consideration of changes to the conventional cab.

Amtrak has electric locomotives (AEM–7) in service that have a control console arrangement directly in front of the engineer. The Canadian National Railway has purchased diesel-electric locomotive units with a similar control console arrangement but incorporating additional cab changes. The floor space of the CN cab is approximately 25 percent larger, and an eight-inch speedometer is located conveniently for the fireman/brakeman and engineer to see. There is a centrally located radio speaker in the ceiling of the cab in addition to the one in the radio control head on the control console.

Installation of a control console brings the benefit of a noticeable sense of roominess in the cab. The person at the controls is not closed in and has easy access to or the ability to exit from the seat. Forward visibility is improved. Display panels for the "end of train" information system and "Pacesetter" slow speed control are placed above the console. The CN intends to provide some form of desk and adequate lighting for the conductor in the cab.

Improved visibility, lighting, air conditioning, noise control and anatomically designed seating are addressed and achieved in CN's new designs, as are improved toilet facilities.

Six parts of the Code of Federal Regulations, Part 49, apply directly to equipment specifications and the maintenance of diesel-electric locomotives. They are: Part 210, railroad noise emission compliance regulations; Part 223, safety glazing standards; and Part 229, railroad locomotive safety standards. Part 229 covers general items, inspection and tests, safety requirements including the brake system, draft, suspension and electrical systems, internal combustion equipment, steam generator and cabs and cab equipment.

Part 231 refers to railroad safety appliance standards such as handholds, etc. Part 232, railroad power brakes and drawbars, refers to the inspection and performance of the brake system. Part 236 contains rules and instructions for the interface of the locomotive and signaling systems.

Crash Avoidance

In all safety programs, prevention of accidents and, in the event of an accident, prevention of serious injury or death are primary goals. The principal purpose of railroad signal systems, operating rules and practices, communications, employee training and automatic warning and control systems is safe operation.

Alertness of the locomotive crew is a critical factor in crash avoidance. Post-accident investigations have, on several occasions, concluded that the crew was asleep at the time of a collision. Over the years, several devices have been used by railroads to make certain the locomotive engineer remains alert. These devices, ranging from the old style "deadman's" pedal to the sophisticated electronic systems used in high speed passenger and freight services, have not been entirely satisfactory. Some devices are said to be stressful to engineers and, at times, engineers have been able to circumvent the alertness-interrogation process. An alerter device should be tamperproof, reliable, inexpensive, unobtrusive and easily installed. FRA has funded research on one such device making use of ultrasonic hardware to survey the engineer's physical motion without being an intrusive element in train operation. This device is in the early stages of development but represents an effort to meet the performance criteria listed above, and will be on display at the hearing. Papers and comments concerning present and improved devices are welcome.

Safety is a prime objective of the ATCS project of the Railway Association of Canada and the Association of American Railroads. Through the use of specific, real-time information on train and track forces, train location, automated route and block interlocking and automated enforcement of speeds and authorities, safer operations are achieved. ATCS will space trains through the use of blocks (space intervals), similar to other block systems (manual, automatic and controlled-manual). However, it is an advanced method that will permit several trains to be in closer proximity on the same track at the same time than is now the case with conventional systems.

ATCS can eliminate the potential for train collisions when the full system becomes operational. The ATCS and the Advanced Railroad Electronics System (ARES) being developed by BN, will provide a means of controlling train speed in the event the engineer and other crew members are not alert. At present, some major railroads equip their locomotives with alerter devices to make certain the engineer is awake and attentive.

Installing ATCS will mean additional devices in the cab that will require the engineer's attention. The equipment will include video displays, keyboards, and radio equipment. The equipment must share space with rear-end monitoring equipment and, in some cases, radio equipment to control locomotive units in the train, as well as conventional control equipment.

Presently, some railroads have equipped locomotives with event recorders that record on magnetic tape the performance of the engineer in handling the train. The latest event recorders provide eight to ten channels of information on train performance and handling including train speed and brake applications during train movement. This equipment is particularly valuable in accident investigations. In accordance with the requirements of the Rail Safety Improvement Act of 1988, FRA intends to conduct a separate rulemaking on the use of event recorders.

Safety Statistics

While the number of rear-end and head-on collisions has decreased over the last five years, the potential for loss of life, injury, and property damage in a collision of heavy railroad equipment has not been eliminated. For the years 1983 through 1987, a total of 332 rear-end and head-on collisions occurred. Of this total, 56 percent were rear-end and 44 percent head-on collisions, resulting in combined damages of $74.4 million. Rear-end collisions accounted for $36.9 million and head-on collisions $37.5 million in damages. For that period, train collisions resulted in 47 deaths and 632 injuries. In addition, there were 586 employee injuries and 8 deaths due to railroad highway grade crossing accidents. During this five-year period, 1,416 employee injuries were incurred while operating on locomotives. A detailed listing of this data is shown in Table 1.

Technical Issues

We solicit specific comment on the following issues: (a) Achieving adequate collision post and short hood capability to attenuate a crash force; (b) achieving adequate anticlimbing capability and coupler strength; (c) lessening the potential for crushing of cab in an override accident or derailment rollover; (d) cab congestion of people and equipment; (e) safety features such as an emergency exit, occupant restraints, increased padding and removal of objects with sharp edges; and (f) need for a crew alerter device.

We ask you to address the following specific questions:

1. Would it be feasible for the major railroads, with the cooperation of locomotive manufacturers, to agree upon locomotive design standards that would enhance safety of cab occupants in the event of a collision or derailment?

2. Are there any technical barriers or other objections to increasing the crash attenuation capability of crash posts and short hoods on six-axle locomotives? On four-axle locomotives?

3. Are there technical barriers or other objections to providing a cab structure that will not crush under override or rollover conditions?

4. Are new locomotives presently being ordered equipped with anticlimbers? If not, why not?

5. What further improvements can be made to upgrade the work environment of the cab, especially regarding noise attenuation, fumes control, heating and air conditioning, seating comfort and support, and other ergonomic factors? Are technical or economic limitations involved?

6. Should the size of locomotive cabs be increased to accommodate additional crew members and equipment? Is this economically and technologically feasible?

7. In order to eliminate a source of injuries, should the large control stand be replaced with a differently designed console? Does the console design contribute to better visibility of in-cab devices and to the overall field of vision?

8. Have there been occasions when safety was adversely affected because crew members were not alert? What are the advantages and disadvantages to providing alerter devices in cabs.

9. Which of the changes suggested earlier do you feel are important or unimportant?

10. What would be your priorities in making design changes?

11. Do you believe adoption of an AAR Manual of Standards for design requirements for new locomotives would be effective in obtaining desirable industry-wide improvements?

Demonstrations and Exhibits

It is FRA's intention that the special safety inquiry be as comprehensive as possible in coverage of all aspects of the locomotive cab safety issue. Therefore, we encourage the use of static and working displays of new products and research projects directly applicable to the inquiry's purpose. Limited space is available in the hearing location, Grover

M. Herman Hall at the Illinois Institute of Technology, for display of mock-up models and graphic displays of new equipment that are also the subject of technical papers and direct testimony at the hearings. FRA is hopeful that track space at the AAR's Research and Test Department's Chicago Technical Center can be made available for the display of the latest locomotive designs now in prototype or in production. The hearing schedule will permit time for the attendees to visit the displays as a practical demonstration of papers or testimony previously presented.

Issued in Washington, DC, on September 16, 1988.

John H. Riley,

Administrator.

BILLING CODE 4910-06-M

TABLE 1

Accident Data -- 1983 to 1987

ACCIDENTS	1983	1984	1985	1986	1987	Total 5 Yrs.
Collisions:						
Rear end	40	52	30	36	28	
Head on	36	32	21	29	28	
Broken train	15	14	14	13	6	
Side and raking	326	321	301	242	225	
Railroad crossing	131	188	155	141	135	
Derailments	3,004	2,915	2,495	2,006	1,859	
Other train accidents	354	378	413	294	366	
Total	3,906	3,900	3,429	2,761	2,647	16,643
INJURIES AND FATALITIES-ACCIDENTS/INCIDENTS						
Collisions	151 (10)	130 (13)	119 (6)	114 (7)	118 (11)	632 (47)
Derailments	169 (4)	205 (4)	149 (1)	120 (2)	126 (1)	769 (12)
Rail highway crossings	103	155 (3)	136 (1)	79 (2)	113 (2)	586 (8)
Miscellaneous	43	30	23	17	13	126
Total	466 (14)	520 (20)	427 (8)	330 (11)	370 (14)	2,113 (67)
INJURIES WHILE OPERATING ON LOCOMOTIVE						
Striking body	51	50	61	49	55	
Struck by tool or other objects	11	17	13	10	10	
Unexpected movement	72	88	98	75	67	
Slack action	37	49	57	49	63	
Striking body, sudden stop	61	75	53	48	62	
Defective seat	15	2	30	25	23	
Adjusting seat	6	10	6	13	5	
Total	253	291	318	269	285	1,416
DAMAGE IN DOLLARS						
Collisions:						
Rear end	10,585,565	5,122,062	3,543,467	2,992,446	14,973,297	
Head on	5,953,882	13,639,529	6,468,965	5,396,780	6,315,115	
Broken train	382,415	778,706	975,817	1,711,809	220,000	
Side and raking	10,546,881	10,644,722	10,796,960	5,565,155	7,493,358	
Railroad crossing	5,614,114	11,076,297	8,718,772	7,220,262	9,787,985	
Derailments	164,659,964	190,265,177	145,634,901	135,903,081	125,683,151	
Other train accidents	10,607,635	8,936,021	11,878,940	9,480,409	12,712,446	
Total train accidents	208,350,456	240,482,514	188,017,822	168,269,942	177,185,352	982,306,086

SOURCE: FRA Annual Accident/Incident Bulletins

[FR Doc. 88-21629 Filed 9-21-88; 8:45 am]
BILLING CODE 4910-06-C

Research and Special Programs Administration

[Docket No. PS-96]

Denial of Petition for Reconsideration; Pipeline Safety; Boston Gas Co.

By letter of July 25, 1988, the Boston Gas Company petitioned for reconsideration of the final rulemaking action, Amendment 191-6, published in the **Federal Register** July 1, 1988, (53 FR 24942). In particular, the petitioner requested reconsideration of 49 CFR 191.23(a)(6), a rule which, with some exceptions, requires the reporting of leaks that constitute an emergency involving certain gas pipelines and LNG facilities. After reviewing the petition and letters of support by The New England Gas Association, the Bay State Gas Company, the Connecticut Light and Power Company, and the American Gas Association, the Research and Special Programs Administration (RSPA) finds that sufficient information or arguments have not been presented to justify granting the petition. Therefore, for the reasons set forth below, the petition is hereby denied.

Basically the petitioner argues that because the meaning of "emergency" is indefinite, enforcement personnel and operators will disagree over which leaks are reportable as emergencies. The petitioner further asserts that this situation is worsened by the lack of a reporting exception under § 191.23(b) for unsafe conditions that are mitigated by venting or other means before the filing deadline, but not corrected by repair or replacement until sometime later. To firm up the rule, the petitioner suggests the addition of a clarifying sentence that would narrowly define emergency leaks as those "caused by a natural disaster where gas in air exists inside a building that is beyond the flammable limit." However, the petitioner did not explain why this emergency should be the only one reportable under § 191.23(a)(6).

RSPA recognizes that "emergency" is not a precise term. It is not, however, a term foreign to the gas pipeline safety regulations. Under a rule in existence since 1976 (49 CFR 192.615), operators of gas pipelines are required to have written procedures to identify and respond to emergency events. Some of the pipeline emergencies the procedures must cover are identified in § 192.615(a)(3), while others are left to the operator to identify. Likewise, 49 CFR 193.2509 requires operators to identify and respond to emergencies involving LNG facilities. Experience in complying with these regulations will provide a solid basis for identifying emergency leaks that are reportable under § 191.23(a)(6).

An "emergency" connotes a hazardous situation demanding immediate corrective action to protect life or property compared to one where corrective action might be postponed. This distinction was emphasized in the preamble of Amendment 191-6, and examples were given to illustrate types of emergency leaks to which § 191.23(a)(6) applies. The preamble set forth that examples of leaks that may constitute an emergency are those that occur in residential or commercial areas in conjunction with a natural disaster, those where flammable vapor is detected inside a building, and those that involve response by police or fire departments (53 FR 24945). In addition, the preamble explained that § 191.23(a)(6) is aimed at leaks that are "glaring hazardous conditions" rather than leaks that require "prompt repair" as originally proposed in the notice.

While the grading of leaks as used in industry may be indicators of the gravity of the leak, they are not necessarily indicators of an emergency as described above. While certain leaks called "Grade 1" or "C" leaks in industry parlance require "prompt" action, they would not have to be reported unless they are emergencies, such as where a flammable vapor is detected at or near the lower explosive limit inside a building or have already involved a non-routine response by police or fire departments. OPS recognizes the value of accepted industry standard classifications for leaks and does not intend in this rule to discourage the use of established classification systems. There is no intent to cause a change in standard classificaitons merely for the purpose of identifying safety-related conditions.

Furthermore, leaks that are not emergencies may be mitigated by pressure reduction and venting. RSPA, in discussing reasons for not including pressure reduction and venting as an exception to reporting an unsafe condition (53 FR 24946), did not intend to preclude these mitigating measures for leaks that are not emergencies. As set forth in § 191.25(a), an operator would have to determine if a leak is an emergency and, if so, file a report within five days after the "determination" but no longer than 10 days after "discovery" of the leak.

Potential differences of opinion between operators and enforcement personnel over which leaks are reportable under § 191.23(a)(6) should be further minimized by instructions operators must add to their operating and maintenance (O&M) plans. Under the new § 192.605(f), operators must put in their O&M plans instructions enabling personnel to recognize conditions that potentially are reportable under § 191.23, including leaks that foreseeably could be emergencies reportable under § 191.23(a)(6).

In view of the long-standing requirements that operators have procedures to identify and respond to emergencies involving leaks in pipelines and LNG facilities, the clarifying statements included in the preamble of Amendment 191-6, and the requirement to describe in O&M plans leaks that may be emergencies, RSPA believes that operators will have little difficulty in applying § 191.23(a)(6). Similarly, there should be few disputes with enforcement personnel over which leaks constitute an emergency. Therefore, it does not appear that the petitioner's suggested amendment would enhance the general understanding of emergency leaks. Rather, it would confine § 191.23(a)(6) to a particular type of emergency, when such a restriction was clearly not intended.

(49 App. U.S.C. 1672, 49 CFR 1.53)

Issued in Washington, DC on September 16, 1988.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 88-21597 Filed 9-21-88; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: September 16, 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: New.

Form Number: 8804 and 8805.

Type of Review: New Collection.

Title: Withholding Agent's Transmittal of section 1446 Withholding and Foreign Partner's Partnership Income Subject to Section 1446 Withholding.
Description: Code section 1446 requires partnerships engaged in a trade or business in the United States to withhold on distributions made to foreign partners. Forms 8804 and 8805 are used by withholding agents to provide IRS and affected partners with data to assure proper withholding, crediting to partners' accounts and compliance.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 5,000.
Estimated Burden Hours Per Response/ Recordkeeping:

	8804	8805
Recordkeeping	29 min	29 min.
Learning about the law or the form.	12 min	2 hrs/11 min.
Preparing the form	17 min	37 min.
Copying, assembling, and sending the form to IRS.	20 min	20 min.

Frequency of Response: On occasion, Quarterly.
Estimated Total Recordkeeping/ Reporting Burden: 316,000 hours.
OMB Number: 1545–0086.
Form Number: 1040C.
Type of Review: Revision.
Title: U.S. Departing Alien Income Tax Return.
Description: Form 1040C is used by aliens departing the U.S. to report income received or expected to be received for the entire tax year. The data collected is used to insure that the departing alien has no outstanding U.S. tax liability. Affected public are aliens departing the U.S.
Respondents: Individuals or households.
Estimated Number of Respondents: 2,000.
Estimated Burden Hours Per Response: 3 hours 57 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 7,913 hours.
OMB Number: 1545–0090.
Form Number: 1040SS and 1040PR.
Type of Review: Revision.
Title: U.S. Self-Employment Tax Return, and Planilla Para La Declaracion De La Contribucion Federal Sobre El Trabajo Por Cuenta Propia-Puerto Rico.
Description: Forms 1040SS (Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands) and 1040PR (Puerto Rico) are used by self-employed individuals to figure and report self-employment tax under Internal Revenue Code chapter 2 of the Subtitle A, and provide credit to taxpayer's social security account.
Respondents: Individuals or households, Farms, Businesses or other for-profit.
Estimated Reporting of Respondents: 49,766.
Estimated Burden Hours Per Response: 1040SS: 1 hour 52 minutes.
1040PR: 4 hours 27 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 218,029 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) 395–395–6880, Office of Management and Budget, Room 3001, New Executive Officer Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports Management Officer.
[FR Doc. 88–21630 Filed 9–21–88; 8:45 am]
BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 184
Thursday, September 22, 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 ELECTION COMMISSION

[Federal Register No. 88-21152]

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, September 22, 1988, 10:00 a.m.

The Following Items Were Deleted From the Agenda

Draft AO 1988-33:
Jan W. Baran on behalf of the Republican Party of Florida and its Federal Political Committee.
Draft AO 1988-35:
Request Withdrawn by Requestor.

DATE AND TIME: Tuesday, September 27, 1988, 10:00 a.m.,

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, September 29, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Draft 1988-33:
Jan W. Baran on behalf of the Republican Party of Florida and its Federal political committee.
Draft 1988-40:
Ronald J. Brown on behalf of the Doug Walgren for Congress Committee.
FY '89 Management Plan
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,
Secretary of the Commission.
[FR Doc. 88-21763 Filed 9-20-88; 1:18 pm]
BILLING CODE 6715-01-M

UNITED STATES INSTITUTE OF PEACE—NOTICE OF MEETING

TIME AND DATE: 4:00-7:00 p.m. Wednesday, September 28, 1988.

PLACE: 1550 M Street NW., First Floor Meeting Room, Washington, DC 20005.

STATUS: Open.

PURPOSE AND AGENDA: The second of a series of Public Workshops scheduled by the growing United States Institute of Peace, "Pacifism and Citizenship" will address basic questions and fundamental issues concerning the relationship between pacifism (in both its strict and broad senses) and citizenship (in terms of both social and political responsibility) in the United States. Drs. Guenter Lewy and Elise Boulding will lead the discussion. Commentators include noted scholars and public figures concerned with pacifism, peacemaking, society, and politics.

CONTACT: Ms. Aileen C. Hefferren, Telephone (202) 457-1700.

Dated: September 19, 1988.

Samuel W. Lewis,
President.
[FR Doc. 88-21765 Filed 9-20-88; 1:18 pm]
BILLING CODE 3155-01-M

INTER-AMERICAN FOUNDATION

INTER-AMERICAN FOUNDATION BOARD MEETING—CANCELLATION

TIME AND DATE: September 26, 1988, 6:00-9:30 p.m.

PLACE: 1515 Wilson Boulevard, Fifth Floor, Rosslyn, Virginia 22209.

The Inter-American Foundation's Board meeting scheduled for September 26, 1988 has been cancelled. No new date has been set.

CONTACT PERSONS FOR MORE INFORMATION: Charles M. Berk, Secretary to the Board of Directors, (703) 841-3812.

Date: September 19, 1988.

[FR Doc. 88-21746 Filed 9-20-88; 1:18 pm]
BILLING CODE 7025-01-M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 8:00 a.m. on Tuesday, October 4, 1988, at the Richmond Division, U.S. Postal Service, 1801 Brook Road, Richmond, Virginia. The meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

There will also be a session of the Board on Monday, October 3, 1988, but it will consist entirely of briefings and is not open to the public.

Tuesday Session

October 4, 1988—8:00 A.M. (Open)

1. Minutes of the Previous Meeting, September 12-13, 1988.
2. Remarks of the Postmaster General.
3. Board of Governors 1989 Meeting Schedule.
4. Office of the Board of Governors 1989 Budget.
5. Review of Five-Year Strategic Business Plan Outlook, Part I. (Richard J. Strasser, Jr., Assistant Postmaster General, Planning Department)
6. Presentation of Five-Year Capital Investment Plan. (Comer S. Coppie, Senior Assistant Postmaster General, Finance Group)
7. FY 1989 Borrowing for Capital Investments. (Comer S. Coppie, Senior Assistant Postmaster General, Finance Group)
8. Capital Investments. (Stanley W. Smith, Assistant Postmaster General, Facilities Department)
   a. Cleveland, Ohio, Airport Mail Facility.
   b. Harrisburg, Pennsylvania, General Mail Facility.
   c. Palatine, Illinois, Mail Processing Facility.
9. Tentative Agenda for November 7-8, 1988, meeting in Washington, DC.

David F. Harris,
Secretary.

Paul J. Kemp,
Certifying Officer for the U.S. Postal Service.
[FR Doc. 88-21724 Filed 9-20-88; 11:02 am]
BILLING CODE 7710-12-M

federal register

Thursday
September 22, 1988

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91 and 135

Special Flight Rules in the Vicinity of the Grand Canyon National Park; Final Rule; Amendment

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91 and 135

[Docket No. 25149; SFAR No. 50-2]

Special Flight Rules in the vicinity of the Grand Canyon National Park

AGENCY: Federal Aviation Administration (FAA), Department of Transportation, (DOT).

ACTION: Final rule; amendment.

SUMMARY: On June 2, 1988, the FAA published a final rule that will restrict aircraft flights within a special flight rules area in the vicinity of the Grand Canyon National Park. This action amends the final rule to provide that commercial operators that provide air tours in the Special Flight Rules Area will continue their current tour routes through October 31, 1988. The extended time before the transition to the new tour routes will enhance safety by providing additional time for pilot training and certification. This amendment only delays the transition to the new routes by the commercial tour operators and does not affect the other portions of the rule which restrict operations by all other classes of operators other than commercial tour operators.

EFFECTIVE DATE: September 22, 1988.

FOR FURTHER INFORMATION CONTACT: David L. Bennett, Office of the Chief Council, AGC-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267-3491.

SUPPLEMENTARY INFORMATION: On May 27, 1988, the FAA issued Special Federal Aviation Regulation (SFAR) 50-2 (53 FR 20264, June 2, 1988), a special federal aviation regulation revising prior flight regulations in the vicinity of the Grand Canyon National Park. SFAR 50-2 substantially adopted the recommendations of the Secretary of the Interior, submitted to the FAA in accordance with section 3 of Pub. L. 100-91.

In summary, SFAR 50-2: (1) Establishes a Special Flight Rules Area from the surface to but not including 14,500 feet MSL in the area of the Grand Canyon; (2) prohibits flights below a certain altitude in each of five sectors of this area, with certain exceptions; (3) establishes flight-free zones from the surface to 14,500 feet MSL above large areas of the Park; (4) provides for routes for commercial tour operators and transient operators through the canyon area; and (5) retains certain existing terrain avoidance and communications requirements for flights in the area.

When SFAR 50-2 was published, the FAA requested comments on the final rule to provide interested persons an additional opportunity to comment on the details of the rule adopted.

By letter dated August 24, 1988, Scenic Airlines, Inc., and thirteen other operators, petitioned the Federal Aviation Administration (FAA) for exemption from Special Federal Aviation Regulation (FAR) SFAR 50-2 to exend the effective date of the regulation from September 22, 1988 to November 15, 1988. Other operators also submitted petitions to postpone the effective date of the rule to November 15, 1988.

Petitioners stated that the tour industry had no advance notice of the route changes under SFAR 50-2. The petitioners further stated that the majority of tour operators in the area will be unable to complete the training of their pilots by the effective date of the rule as originally proposed. Due to the inability of the tour operators to conduct the necessary training, the operators will not be able to satisfy the required FAA route checks in accordance with the operations specifications in order to operate in the Special Flight Rules Area within the Grand Canyon airspace by September 22, 1988.

The pilot training on the new routes is being conducted while the old routes are being flown by the commercial tour operators. The petitioners have expressed concern that the use of the two different routes simultaneously may cause conflicting traffic. They point to the fact that commercial tour operation traffic is quite heavy now, but should lighten in the next few months. Therefore, the extension of the time in which the new routes become effective will permit the pilots to train on the new routes in an environment where the air traffic will be less heavy, thereby minimizing any potentially, conflicting traffic.

Based on the representations by the petitioners as to the number of flights planned during September and October, the FAA finds that safety would be significantly enhanced by an extension of the time available for operators to prepare and train on the new routes in a period of decreased traffic, prior to the transition of these routes as required by SFAR 50-2. Therefore, for commercial air tour flights conducted in the Special Flight Rules Area in accordance with 14 CFR Part 135 operations specifications, the FAA agrees that a delay of the implementation of the new tour routes until November 1, 1988, is in the public interest. However, these operators must continue to operate in accordance with the operations specifications issued under SFAR 50-1 until November 1, 1988.

The Rule

This amendment amends Section 3(c) of SFAR 50-2 relating to those Part 135 operators whose operations specifications authorize air tour flights within the Grand Canyon National Park Special Flight Rules Area. The effect of the rule is to delay the transition to new tour routes under SFAR 50-2 for such operators until November 1, 1988.

In order to obtain the safety benefits of the delay in implementation of the new tour routes under SFAR 50-2, this amendment must be issued prior to September 22, 1988. This does not allow time for publication of a notice for proposed rulemaking and for a comment period. For this reason, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. For the same reasons, I find that good cause exists for making this amendment effective in less than 30 days.

Environmental Assessment

An environmental assessment of SFAR 50-2 and a Finding of No Significant Impact have been placed in the rules docket. As this amendment simply delays briefly the implementation date for the tour operators in the areas of the Grand Canyon, the FAA has determined that no significant environmental impact will result from the new rules.

Economic Evaluation

The Department of the Interior, in developing the recommendations submitted under Pub. L. 100-91, prepared a cost-benefit analysis of the proposal. This analysis was submitted with the DOI recommendations on December 29 and has been included in the FAA public docket for SFAR 50-2. The DOI analysis concluded that, on balance, in view of the minimal cost expected to the air tour operators and the significant benefits to park resources and visitors, the rules recommended by DOI would be cost-beneficial. This amendment does not affect that assessment.

Regulatory Flexibility

The Regulatory Flexibility Act of 1980 requires agencies to indentify rules that will have a significant economic impact on small entities, including small businesses. The annualized threshold of significant economic impact for a Part 135 air taxi with 9 or fewer aircraft is

considered by the FAA to be $3,700 (in 1986 dollars). For reasons discussed in the preamble to SFAR 50–2, the FAA cannot certify that SFAR 50–2 rule would not have a significant effect on a substantial number of small entities. The FAA has not conducted a regulatory flexibility analysis of the proposed rule because the provisions of Pub. L. 100–91 preclude the adoption of alternative measures.

For the reasons set forth above, the FAA has determined that this proposed amendment: (1) Is not a major rule under Executive Order 12291, and (2) is not considered significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11024; February 26, 1979).

Federalism Determination

The amendment set forth herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

List of Subjects in 14 CFR Parts 91 and 135

Aircraft, Aviation safety, Air taxi and commerical operators, Grand Canyon.

The Proposed Special Federal Aviation Regulation

For the reasons set out above, the Federal Aviation Administration is amending 14 CFR Parts 91 and 135 as follows:

PARTS 91 AND 135—[AMENDED]

1. The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421, 1422 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. The authority citation for Part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

3. By revising section 3(c) of Special Federal Aviation Regulation No. 50–2 and republishing the introductory text of section 3 to read as follows:

Section 3. *Aircraft operations: general.*

Except in an emergency, no person may operate an aircraft in the Special Flight Rules Area under VFR on or after September 22, 1988, or under IFR on or after April 6, 1989, unless the operation—

* * * * *

(c)(1) Prior to November 1, 1988, is conducted in accordance with a specific authorization to operate in that airspace incorporated in the operator's Part 135 operations specifications in accordance with the provisions of SFAR 50–1, notwithstanding the provisions of Sections 4 and 5; and

(2) On or after November 1, 1988, is conducted in accordance with a specific authorization to operate in that airspace incorporated in the operator's part 135 operations specifications and approved by the Flight Standards District Office in accordance with the provisions of SFAR 50–2.

* * * * *

Issued in Washington, DC, on September 20, 1988.

T. Allan McArtor,

Administrator.

[FR Doc. 88–21843 Filed 9–20–88; 4:47 pm]

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