

Wednesday  
September 28, 1988

# Estuaries



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# 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.

## DEPARTMENT OF AGRICULTURE

### Federal Grain Inspection Service

#### 7 CFR Part 802

#### Official Performance and Procedural Requirements for Grain Weighing and Inspection Equipment and Related Grain Handling Systems

**AGENCY:** Federal Grain Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** In compliance with the requirements for periodic review of existing regulations, the Federal Grain Inspection Service (FGIS) is revising the regulations under the United States Grain Standards Act, as amended, concerning the Official Performance and Procedural Requirements for Grain Weighing and Inspection Equipment and Related Grain Handling Systems. This action incorporates by reference the applicable requirements of National Bureau of Standards' (NBS) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," 1988 edition (Handbook 44), and revises the test weight requirement for non-automatic hopper scales to 10 percent of the scale's capacity.

**EFFECTIVE DATE:** October 28, 1988. The incorporation by reference of certain publications listed in the regulations was approved by the Director of the Federal Register as of February 20, 1986.

**FOR FURTHER INFORMATION CONTACT:** Lewis Lebakken, Jr., Management Improvement and Information Programs, USDA, FGIS, Room 0628, South Building, P.O. Box 96454, Washington, DC 20090-6454, telephone (202) 475-3428.

#### SUPPLEMENTARY INFORMATION: Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

#### Regulatory Flexibility Act Certification

W. Kirk Miller, Administrator, FGIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most users of the official inspection and weighing services and those entities that perform these services do not meet the requirements for small entities.

#### Final Action

Part 801 of the regulations, Official Performance Requirements for Grain Inspection Equipment, prescribes specifications, tolerances, and other technical requirements for official grain inspection equipment and related sample handling systems used in performing official services.

Part 802 of the regulations, Official Performance and Procedural Requirements for Grain Weighing Equipment and Related Grain Handling Systems, sets forth certain procedures, specifications, tolerances, and other technical requirements for grain weighing equipment and related grain handling systems used in performing Class X and Class Y weighing services.

This review of the regulations concerning Official Performance and Procedural Requirements for Grain Weighing and Inspection Equipment and Related Grain Handling Systems (7 CFR 801.1-801.11 and 7 CFR 802.0-802.1) included a determination of continued need for and consequences of the regulations. An objective of the review was to ensure that the regulations were serving their intended purpose, the language was clear, and the regulations were consistent with FGIS policy and authority. FGIS has determined that, in general, these regulations are serving their intended purpose, are consistent with FGIS policy and authority, and should remain in effect. FGIS determined, however, that the 1985 edition of NBS Handbook 44, which had been incorporated by FGIS in 1986, is outdated. Therefore, FGIS is

incorporating by reference the applicable sections of the 1988 edition of Handbook 44.

FGIS also determined that the Handbook 44 requirement concerning test weights used to test non-automatic hopper scales (section N.3 of the Scales Code) is too costly, of limited benefit, and not conducive to effective elevator operation. Hence, FGIS is adding section N.3 to the list of Handbook 44 requirements that are not incorporated by reference. FGIS will reinstate the 10 percent test weight requirement, which was used by FGIS until 1986, by a revision to the FGIS Weighing Handbook.

FGIS had previously incorporated by reference all of the provisions in NBS Handbook 105-1, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices" (1985 edition). Handbook 105-1 has not been revised by NBS. Accordingly, the current edition of Handbook 105-1 remains incorporated by reference.

FGIS proposed these revisions in the May 17, 1988, Federal Register (53 FR 17471). Two comments were received on the proposed changes, both of which favored the changes in their entirety. The changes which appear in this final rule are the same as those proposed, except references to the "Scale Code" and the "(New) Scale Code" are changed to "Scales Code" and "New Scales Code," respectively.

This final rule revises these sections as follows:

1. Section 802.0 (a), *Applicability*, by revising the edition of Handbook 44 that is incorporated by reference from the 1985 edition to the 1988 edition.

2. Section 802.0 (b), *Applicability*, by revising the list of Handbook 44 sections that are not incorporated by reference as follows:

a. Delete Scales Code (2.20) sections N.2.1.1, T.3.8.3, and T.3.8.4. because the code in which these sections were located is not in the 1988 edition of Handbook 44.

b. Delete the title "New Scales Code (2.20)" because this code is known as the "Scales Code (2.20)" in the 1988 edition of Handbook 44.

c. Delete New Scales Code (2.20) section T.N.8. because the requirements for humidity have been eliminated from this section in the 1988 edition of Handbook 44.

d. Add Scales Code (2.20) section N.3. because this requirement does not improve the evaluation of weighing systems or their subsequent performance and therefore is deemed not practical for FGIS grain scales.

e. Add Scales Code (2.20) section T.N.3.7. because "in motion weighing", regardless of the kind of scale used, has been deemed unacceptable for grain weighing.

#### List of Subjects in 7 CFR Part 802

Administrative practice and procedure, Export, Grain, Incorporation by reference.

For the reasons set out in the preamble, 7 CFR Part 802 is amended as follows:

1. The authority citation for Part 802 continues to read as follows:

**Authority:** Pub. L. 94-582, 90 Stat. 2867, as amended, (7 U.S.C. 71 *et seq.*)

2. Section 802.0 is revised to read as follows:

#### § 802.0 Applicability.

(a) The requirements set forth in this Part 802 describe certain specifications, tolerances, and other technical requirements for grain weighing equipment and related grain handling systems used in performing Class X and Class Y weighing services and inspection services under the Act. All scales used for official grain weight and inspection certification shall meet applicable requirements contained in the FGIS Weighing Handbook, the General Code, the Scales Code, the Automatic Bulk Weighing Systems Code, and the Weights Code of the 1988 edition of National Bureau of Standards' (NBS) Handbook 44, "Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices" (Handbook 44); and NBS Handbook 105-1, "Specifications and Tolerances for Reference Standards and Field Weights and Measures" (Handbook 105-1). Pursuant to the provisions of 5 U.S.C. 552(a), with the exception of the Handbook 44 requirements listed in paragraph (b), the materials Handbooks 44 and 105-1 are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the *Federal Register*. The NBS Handbooks are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20403. These are also available for inspection at the Office of the *Federal Register*, Room 8401, 1100 L Street NW., Washington, DC.

(b) The following Handbook 44 requirements are not incorporated by reference:

#### Scales Code (2.20)

N.3.	Recommended weights	minimum	test
N.3.1.1	Test train		
T.1.9.	Railway track scales weighing in motion		
T.N.3.6.	In motion weighing		
T.N.3.6.1.-4.	In motion weighing		
T.N.3.7.	In motion weighing		

Dated: September 8, 1988.

D.R. Galliat,

Acting Administrator.

[FR Doc. 88-22240 Filed 9-27-88; 8:45 am]

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#### Agricultural Marketing Service

##### 7 CFR Part 906

[Docket No. FV-88-122]

#### Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas; Authorization of an Additional Container

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule.

**SUMMARY:** This interim final rule authorizes an additional container for bulk shipments of Texas oranges and grapefruit to retailers. This action is needed by the Texas orange and grapefruit industry to more successfully market their crop.

**DATES:** Effective September 28, 1988. Comments which are received by October 28, 1988 will be considered prior to issuance of the final rule.

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

#### FOR FURTHER INFORMATION CONTACT:

Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone: (202) 475-3918.

#### SUPPLEMENTARY INFORMATION:

This interim final rule is issued under Marketing Order No. 906, as amended (7 CFR Part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. This order is effective under the Agricultural Marketing Agreement Act of the 1937, as amended (7 U.S.C. 601-674), hereafter referred to as the Act.

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

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

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

There are approximately 22 handlers of Texas oranges and grapefruit subject to regulation under the Texas citrus marketing order and approximately 3,000 orange and grapefruit producers in Texas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of these handlers and producers may be classified as small entities.

Handlers may market their Texas orange and grapefruit in containers specified in § 906.340 *Container, pack, and container marking regulations*. This rule revises paragraph (a)(1) of § 906.340 to authorize the use of a third container for bulk shipments of Texas oranges and grapefruit. This container is a fiberboard crib, either rectangular or octagonal in shape, with approximate dimensions of 46 inches to 47½ inches in length, 37 to 38 inches in width, and 36 inches in height. The container must have a Mullen or Cady test of at least 1,300 pounds and must be used only once for shipment of citrus fruit. This container was used on an experimental basis last season, and it was found acceptable. The major use of this crib is for bulk

shipments of fruit to retailers. This action was unanimously recommended by the Texas Valley Citrus Committee, which administers the order, at its meeting on June 29, 1988.

This rule also removes obsolete language pertaining to a container no longer authorized but still listed in paragraph (a)(1)(iii) of § 906.340, makes minor language changes for clarity in the introductory text and paragraph (a)(1) of § 906.340, and rennumbers several paragraphs within paragraph (a)(1).

The Department's view is that the impact of this action would be beneficial to producers and handlers because it would provide handlers with more flexibility in marketing Texas oranges and grapefruit.

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

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

Pursuant to 5 U.S.C. 553, it is also found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* because: (1) This action relaxes container requirements currently in effect for Texas orange and grapefruit; (2) handlers of these fruits are aware of this action which was recommended unanimously by the committee at a public meeting and they will need no additional time to comply with the requirements; (3) shipment of the 1988-89 season Texas orange and grapefruit crops is expected to begin by late September; and (4) the rule provides a 30-day comment period, and any comments received will be considered prior to issuance of a final rule.

#### List of Subjects in 7 CFR Part 906

Marketing agreements and orders, Texas grapefruit, oranges.

For the reasons set forth in the preamble, 7 CFR Part 906 is amended as follows:

#### PART 906—ORANGES AND GRAPEFRUIT GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR Part 906 continues to read as follows:

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

2. Section 906-340 is amended by revising the introductory text in paragraph (a) and paragraph (a)(1) to read follows:

#### § 906.340 Container, pack, and container marking regulations.

(a) No handler shall handle any variety of oranges or grapefruit grown in the production area unless such fruit is in one of the following containers, and the fruit is packed and the containers are marked as specified in this section.

(1) *Containers.* (i) Closed fiberboard carton with inside dimensions of 13¼ x 10½ x 7¼ inches: *Provided*, That the container has a Mullen or Cady test of at least 200 pounds;

(ii) Closed fully telescopic fiberboard carton with inside dimensions of 16½ x 10¾ x 9½ inches, described in Freight Container Tariff 2G as container No. 6506;

(iii) Closed fiberboard carton with inside dimensions of 20 x 13¼ inches and of a depth from 9¼ to 10¼ inches: *Provided*, That the container has a Mullen or Cady test of at least 250 pounds and the container is used only for the shipment of eight five-pound bags or five eight-pound bags of fruit;

(iv) Bags having a capacity of five or eight pounds of fruit: *Provided*, That fruit packed in such bags shall be handled only when packed in the number and container specified in paragraph (a)(1)(iii) of this section;

(v) Bags of mesh or woven type having a capacity of 18 pounds of fruit;

(vi) Wire crib with inside dimensions of 46½ x 37 x 30 inches: *Provided*, That such cribs be constructed of either 4 x 4 inch mesh wire at least 0 gauge, or 2 x 2 inch mesh wire at least 2 gauge, and that a new liner is placed in this container each time it is filled for shipment;

(vii) Rectangular or octagonal bulk fiberboard crib with approximate dimensions of 46 to 47½ inches in length by 37 to 38 inches in width by 36 inches in height: *Provided*, That this container has a Mullen or Cady test of at least 1,300 pounds, and that it is used only once for shipment of citrus fruit;

(viii) Rectangular or octagonal ¾ fiberboard crib with dimensions of 46 inches long, 38 inches wide, by 24 inches high: *Provided*, That the crib has a Mullen or Cady test of at least 1,300 pounds, and that it is used only once for the shipment of citrus fruit; and

(ix) Such other types and sizes of containers as may be approved by the committee for testing in connection with a research project conducted by or in cooperation with the committee:

*Provided*, That the handling of each lot of fruit in such test containers shall be subject to prior approval and under the supervision of the committee.

\* \* \* \* \*

Dated: September 22, 1988.

Robert C. Keeney,  
Acting Director, Fruit and Vegetables  
Division.

[FR Doc. 88-22103 Filed 9-27-88; 8:45 am]  
BILLING CODE 3410-02-M

#### 7 CFR Part 1098

[DA-88-118]

#### Milk in the Nashville, TN, Marketing Area; Order Terminating Provisions of the Order

AGENCY: Agricultural Marketing Services, USDA.

ACTION: Final rule.

**SUMMARY:** This action permits a cooperative association to be the responsible handler for milk of nonmembers that is delivered for the cooperative's account to pool plants of other handlers under the Nashville order. The action was requested by Dairyman, Inc., a cooperative association that represents most of the producers supplying the market. Interested parties were invited to comment on the proposed action. No views in opposition to the proposed termination were received. The termination order adapts the order to a recent change in milk assembly practices in the market whereby a cooperative is handling the milk of some nonmember producers.

**EFFECTIVE DATE:** September 28, 1988.

**FOR FURTHER INFORMATION CONTACT:** Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-2089.

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action will lessen the regulatory impact of the order on certain milk handlers and will tend to ensure that dairy farmers who

were shifted to the market to meet the fluid milk requirements of handlers supplying the market will have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This action has been reviewed under Executive Order 12291 and Department Regulations 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

This order of termination is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the order regulating the handling of milk in the Nashville marketing area.

Notice of proposed rulemaking was published in the *Federal Register* on August 26, 1988 (53 FR 32624) concerning this termination of certain provisions of the order. Interested parties were afforded opportunity to file written data, views, and arguments thereon. No views in opposition to the proposed action were received.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In § 1098.9(c), the provision "of its producer members".
2. In § 1098.73(c), the provision "of its members".

#### Statement of Consideration

This action allows a cooperative association to be the responsible handler on milk of producers who are not members of the cooperative when such milk is delivered to pool plants of other handlers for the account of the cooperative association. The order now limits the cooperative to being the responsible handler on milk of its producer members.

The request for termination action was submitted by Dairymen, Inc., a cooperative association representing producers who deliver milk to pool plants in the market. The cooperative requested that the termination action be effective August 1988.

Interested parties were invited to submit comments on the proposed termination. No views in opposition to the proposed action were received.

The termination action is warranted to accommodate the handling of nonmember producer milk that the cooperative had been marketing under the Louisville-Lexington-Evansville order, but was shifted to the Nashville market on August 1, 1988. The termination order would apply to milk marketed on and after August 1, 1988.

The termination order will result in the bulk-tank handler and payments to cooperative associations provisions of the Nashville order conforming with such provisions in most other Federal milk orders. The action will facilitate the handling of milk of nonmembers in those instances in which the nonmembers elect to have a cooperative association market their milk. One of the advantages of the change in the handler definition is that the milk of members and nonmembers can be commingled on the same farm-to-market routes, thereby resulting in greater efficiency in the farm-to-market delivery of milk. In addition, the action also eliminates the need for the duplicate reports now required of plants for nonmember milk that is delivered for the account of a cooperative association.

It is hereby found and determined that thirty days' notice of the effective date hereof are impractical, unnecessary and contrary to the public interest in that:

- (a) The termination is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that the action will tend to lessen the reporting requirements of certain handlers who operate plants under the Nashville order. In addition, such action will ensure that dairy farmers who were shifted to the Nashville market to meet the fluid milk requirements of handlers in the market would have their milk priced under the order and thereby receive the benefits that accrue from such pricing;
- (b) This termination does not require of persons affected substantial or extensive preparation prior to the effective date; and
- (c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this termination. No comments in opposition were received.

Therefore, good cause exists for making this order effective upon publication in the *Federal Register* for milk marketed under the Nashville order on and after August 1, 1988.

#### List of Subjects in 7 CFR Part 1098

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the aforesaid provisions in §§ 1098.9(c) and 1098.73(c) of the Nashville order are hereby terminated.

#### PART 1098—MILK IN THE NASHVILLE, TENNESSEE, MARKETING AREA

1. The authority citation for 7 CFR Part 1098 continues to read as follows:

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

#### § 1098.9 [Amended]

2. In § 1098.9(c), the provision "of its producer members" is removed.

#### § 1098.73 [Amended]

3. In § 1098.73(c), the provision "of its members" is removed.

Signed at Washington, DC, on September 21, 1988.

Kenneth A. Gilles,

Assistant Secretary of Agriculture, Marketing and Inspection Services.

[FR Doc. 88-22105 Filed 9-27-88; 8:45 am]

BILLING CODE 3410-02-M

#### 7 CFR Part 1240

[Docket No. AMS-FV-88-071]

#### Honey Research, Promotion and Consumer Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

**SUMMARY:** This rule amends the rules and regulations issued under the Honey Research, Promotion and Consumer Information Order to conform to the Harmonized Tariff System (HTS), the new numbering system of identifying imported merchandise which is being implemented by the U.S. Customs Service. The number which identified imported honey and honey products under the old Tariff Schedule of the United States (TSUS) is being replaced by a new identifying number under HTS.

**EFFECTIVE DATE:** January 1, 1989.

**FOR FURTHER INFORMATION CONTACT:** Perry R. Letson, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone: (202) 447-4140.

#### SUPPLEMENTARY INFORMATION:

This final rule is issued under the Honey Research, Promotion and Consumer Information Order (7 CFR Part 1240) (order). The order is effective under the Honey Research, Promotion and Consumer Information Act (7 U.S.C. 4601 et seq.) (Act).

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action

will not have a significant economic impact upon a substantial number of small entities. This final rule is technical amendment to the existing provisions of the General Rules and Regulations issued under the order and will impose no additional costs on persons or entities affected or regulated by the order.

The Act and the order provide that honey producers who produce 6,000 pounds of honey or more, producer-packers who produce and handle 6,000 pounds or more, and honey importers importing 6,000 pounds of honey or more per year pay an assessment on honey entering channels of commerce in the United States. Assessments are paid to the National Honey Board (Board) which administers a program designed to improve the position of honey in the marketplace. Honey handlers are required to act as collection agents for honey producers subject to the provisions of the order. The U.S. Customs Service (USCS) collects the assessments on honey, and honey products where honey is the principal ingredient, imported under its tariff schedule. Such assessment is collected at the time of entry or withdrawal for consumption and is forwarded to the Board as per the agreement between the USCS and USDA.

The U.S. Customs Service has been using a numerical system of identifying imported merchandise known as the Tariff Schedule of the United States (TSUS). Under this system, the identifying number assigned to honey and honey products has been 155.70. However, the USCS is implementing a new numbering system, the Harmonized Commodity Description and Coding System, otherwise known as the Harmonized Tariff System (HTS) to replace the current TSUS numbering system. The HTS numbering system will become effective January 1, 1989.

The purpose of this final rule is to reflect the change from the old TSUS numbering system to the new HTS numbering system. Under the new HTS system, honey and honey products are assigned the heading number 0409.00.00. This action will provide current information to honey importers, customs brokers, etc. as to the proper identification of honey and honey products under the HTS, and will permit the U.S. Customs Service to continue to collect assessments due on imported honey and honey products in conjunction with its regular importation processing and collection system. Pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and

other public procedure with respect to this action is impracticable unnecessary, and contrary to the public interest, because this final rule makes a technical, administrative revision to an existing provision in the regulations.

#### List of Subjects in 7 CFR Part 1240

Honey, Agricultural research, Reporting and requirements, Market development, Consumer information.

For the reasons set forth in the preamble, 7 CFR 1240 is amended as follows:

#### PART 1240—HONEY RESEARCH, PROMOTION AND CONSUMER INFORMATION ORDER

1. The authority citation for 7 CFR Part 1240 continues to read as follows:

Authority: Honey Research, Promotion and Consumer Information Act, Secs. 1-13, 98 Stat. 3115; 7 U.S.C. 4601-4612.

2. Section 1240.115 is amended by revising paragraph (e) to read as follows:

#### Subpart—General Rules and Regulations

##### § 1240.115 Levy of assessments.

(e) The U.S. Customs Service (USCS) will collect assessments on all honey or honey products where honey is the principal ingredient imported under its tariff schedule (HTS heading number 0409.00.00) at the time of entry or withdrawal for consumption and forward such assessment as per the agreement between the USCS and USDA. Any importer or agent who is exempt from payment of assessments pursuant to § 1240.42 (a) and (b) of the Order may apply to the Board for reimbursement of such assessments paid.

Dated: September 23, 1988.

Robert C. Keeney,  
Deputy Director, Fruit and Vegetable  
Division, Agricultural Marketing Service.  
[FR Doc. 88-22215 Filed 9-27-88; 8:45 am]  
BILLING CODE 3401-02-M

#### Rural Electrification Administration

##### 7 CFR Part 1787

#### REA Privatization Demonstration Program

AGENCY: Rural Electrification Administration, USDA.

ACTION: Interim Rule with Request for Comments; Amended.

**SUMMARY:** The Rural Electrification Administration (REA) is issuing an interim rule to amend 7 CFR Chapter XVII by amending Part 1787, REA Privatization Demonstration Program. Part 1787 established policies and procedures to implement the provisions of section 311 of the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) (The "RE Act"). Section 311 of the RE Act provides authority to establish a privatization demonstration program whereby borrowers in the State of Alaska are permitted to prepay, on favorable terms, certain loans held by the Federal Financing Bank ("FFB"), a wholly-owned government instrumentality under the supervision of the Secretary of the Treasury, and guaranteed by REA; provided that the borrower prepays all outstanding loans made or guaranteed under the RE Act. A direct or insured loan prepaid under section 311 may be prepaid by the borrower at the lesser of the outstanding principal balance due on the loan or the loan's present value discounted from the face value at maturity at a rate set by the Administrator. A Rural Telephone Bank loan made pursuant to the RE Act may be prepaid by paying the outstanding principal balance due on the loan.

Subject to certain exceptions, neither the borrower nor others serving the area served by a borrower which prepays loans under section 311 will be eligible for loans, loan guarantees or other financial assistance pursuant to the RE Act.

Part 1787 permits a borrower to use a 90 percent REA guaranteed loan to prepay its FFB loans. The amendments to Part 1787 explicitly permit a borrower who prepays its FFB loans pursuant to section 311 to utilize internally generated funds in connection with the prepayment.

**DATE:** Amendments to the Interim Rule effective on September 28, 1988; written comments must be received by REA no later than October 28, 1988.

**ADDRESSES:** Submit written comments to Mr. Laurence V. Bladen, Financing Policy Specialist, Rural Electrification Administration, Room 1235, South Building, U.S. Department of Agriculture, Washington, DC 20250-1500. Comments may also be inspected at Room 1235 between 8:30 a.m. and 5:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Mr. Laurence V. Bladen, Financing Policy Specialist, Rural Electrification Administration, Room 1235, South Building, U.S. Department of

Agriculture, Washington, DC 20250-1500, telephone number (202) 382-9558.

**SUPPLEMENTARY INFORMATION:** Pursuant to the RE Act, REA hereby proposes to amend 7 CFR Chapter XVII by amending Part 1787, "REA Privatization Demonstration Program."

These amendments to the regulation are issued in conformity with Executive Order 12291, Federal Regulations. They will not (1) have an annual effect on the economy of \$100 million or more; or (2) result in a major increase in costs or prices for consumers, individuals, industries, Federal, state, or local government agencies or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity, and have been determined not to be "major".

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this amended Interim 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 as 10.850, Rural Electrification Loans and Loan Guarantees and 10.851, Rural Telephone Loans and Loan Guarantees. For the reasons set forth in the final rule related Notice to 7 CFR Part 3015 Subpart V in 50 FR 47034 (November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

#### Paperwork Reduction Act

The reporting requirements contained in this amended Interim Rule are not subject to the provisions of the Paperwork Reduction Act of 1980, as amended or the provisions of 5 CFR Part 1320, since no more than six entities will be affected by the Interim Rule (5 CFR 1320.7).

#### Background

On January 22, 1987, REA published an Interim Rule with Request for Comments to add a new Part 1787 to 7 CFR Chapter XVII. The Interim Rule set forth the REA policy and procedures implementing section 311 of the RE Act which provides authority to establish a privatization demonstration program whereby borrowers in the State of Alaska are permitted to prepay, on favorable terms, certain loans held by the Federal Financing Bank ("FFB"), a wholly-owned government

instrumentality under the supervision of the Secretary of the Treasury, and guaranteed by REA; provided that the borrower prepays all outstanding loans made or guaranteed under the RE Act. A direct or insured loan prepaid under section 311 may be prepaid by the borrower at the lesser of the outstanding principal balance due on the loan or the loan's present value discounted from the face value at maturity at a rate set by the Administrator.

Subject to certain exceptions, neither the borrower nor others serving the area served by a borrower which prepays loans under section 311 will be eligible for loans, loan guarantees or other financial assistance pursuant to the RE Act.

Heretofore, REA has required applicants for a prepayment pursuant to section 311 to obtain the funds for the FFB prepayment from a private sector loan guaranteed by REA. However, REA has been advised that this requirement could be very burdensome for those borrowers whose existing financial structures effectively precludes them from obtaining private sector borrowings using a REA guarantee under the terms and conditions required by the previously issued interim regulations. One such borrower which proposes to participate in the Privatization Demonstration Program has indicated that it desires to utilize internally generated funds in connection with the prepayment of its outstanding loans in order to avoid these problems.

REA does not believe that Congress intended to preclude this category of borrower from participating in the Privatization Demonstration Program. Indeed it would be counterproductive to interpret legislation authorizing a privatization demonstration program as requiring REA to force utilities to take on federally guaranteed loans in circumstances where they do not need them and do not want them. Such unwanted loans would almost certainly be prepaid in short order. REA also notes that the approach which this Alaska borrower has

proposed advances the Congressional objective that " \* \* \* rural electric and telephone systems \* \* \* achieve the financial strength needed to enable them to satisfy their credit needs from their own financial organizations and other sources. \* \* \* (Pub. L. 93-32, § 1; 87 Stat. 65.)

Therefore, in order to permit a borrower who prepays its FFB loans pursuant to § 311 to utilize internally generated funds in lieu of using a 90 percent REA guaranteed loan, Part 1787 is being amended by adding a new definition of Internally Generated Funds

and a new paragraph § 1787.6(e), Prepayments Without a Guarantee.

#### Comments

In the Interim Rule, REA invited interested parties to file comments on or before February 23, 1987. Although some comments were received after that date all responses have been considered in preparing these Amendments to the Interim Rule.

Seven different organizations or groups commented on the Interim Rule. They are:

1. The National Rural Electric Cooperative Association,
2. The National Telephone Cooperative Association,
3. Smith Barney,
4. Alaska Electric Generation and Transmission, Inc.,
5. Chugach Electric Association, Inc.,
6. Green River Electric Corporation, and
7. Tri-State Generation and Transmission Association, Inc.

For the purposes of discussion, the comments of these organizations have been categorized.

A number of the organizations voiced their objections to concept of the privatization of the rural electrification program and stated that the Privatization Demonstration Program should not be expanded, and should be repealed. REA continues to support the existence of a privatization demonstration program for borrowers in Alaska.

One organization stated that the Privatization Demonstration Program should not apply to rural telephone borrowers in the State of Alaska, since the statute contains the phrase, " \* \* \* shall apply only to the rural electrification program in the State of Alaska." REA believes that term "rural electrification program" refers generically to both the rural electric and the rural telephone loan programs.

Some organizations submitted comments requesting specific changes in the regulations in order to make a prepayment utilizing a specific financing structure. Since section 311 established a demonstration program, REA believes that it is impossible to anticipate all the financing structures that may be used by borrowers making prepayments pursuant to section 311. Therefore, specific terms and conditions of the prepayment arrangements should be considered at the time a specific proposal submitted by a borrower.

In order to consummate prepayment transactions contemplated by section 311 under the provisions of part 1787, while continuing to solicit public

comments on this Privatization Demonstration Program, REA has decided to amend the Interim Rule. These amendments are being made to permit the use of internally generated funds in connection with a prepayment and public comments on the amendments are requested.

#### List of Subjects in 7 CFR 1787

Administrative Practice and Procedure, Electric utilities, Telephone utilities, Guaranteed Loan Program—Energy, Guaranteed Loan Program—Telephony, Insured Loan Program—Energy, Insured Loan Program—Telephony, Rural Telephone Bank Loans, Discounted prepayments on REA notes, Privatization Demonstration Program.

In view of the above, 7 CFR Chapter XVII is being amended by making the following revisions and amendments to Part 1787:

#### PART 1787—REA PRIVATIZATION DEMONSTRATION PROGRAM

1. The Table of Contents for Part 1787 is revised as follows:

Sec.	
1787.1	Purpose.
1787.2	Policy.
1787.3	Definitions.
1787.4	Demonstration Program.
1787.5	REA Guarantee.
1787.6	Qualifications.
1787.7	Loan Security.
1787.8	Prepayment of REA and RTB Notes.
1787.9	Application Procedure.
1787.10	Future Eligibility under the RE Act.
1787.11	Settlement Procedure.
1787.12	Other Prepayments.

2. The authority citation for Part 1787 continues to read as follows:

Authority: 7 U.S.C. 901-950b; Pub. L. 99-591; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

3. Section 1787.3 is amended by revising the definition of FFB Loan and adding two new definitions, FFB Note and Internal Generated Funds, to read as follows:

#### § 1787.3 Definitions.

"FFB Loan" means one or more advances made by FFB on a FFB Note.  
 "FFB Note" means a promissory note executed in favor of the FFB by a borrower and guaranteed by REA pursuant to section 306 of the RE Act (7 U.S.C. 936).

"Internally Generated Funds" means money belonging to the borrower other

than: (1) Proceeds of loans made or guaranteed under the RE Act or (2) funds on deposit in the cash construction trustee account maintained pursuant to the terms of the REA loan agreement;

4. Section 1787.6 is amended by revising paragraph (a)(2), adding a new sentence at the beginning of paragraph (c), removing paragraphs (c)(4) through (c)(6), redesignating paragraphs (c)(7) through (c)(9) as (c)(4) through (c)(6) respectively, and adding a new paragraph (e) as follows:

#### § 1787.6 Qualifications.

(a) \* \* \*  
 (1) \* \* \*  
 (2) Must prepay the FFB Loan by using a Refunding Loan with a Guarantee, or by using Internally Generated Funds;

(c) *Refunding Loans.* A qualifying borrower may at its option elect to use a Refunding Loan to make a prepayment pursuant to this Part. \* \* \*

(e) *Prepayments Without a Guarantee.* A qualifying borrower may utilize Internally Generated Funds without a Guarantee to prepay an FFB Loan pursuant to this Part or may utilize a combination of a Refunding Loan with a Guarantee and Internally Generated Funds without a guarantee.

4. Section 1787.9 is amended by revising paragraph (a)(6) to read as follows:

#### § 1787.9 Application procedure.

(a) \* \* \*  
 (6) In the event the borrower proposes to utilize a Refunding Loan with a Guarantee in connection with the FFB prepayment, a proposal for the Refunding Loan from a Lender selected by the borrower.

Date: September 22, 1988.

Harold V. Hunter,

Administrator.

[FR Doc. 88-22216 Filed 9-27-88; 8:45 am]

BILLING CODE 3410-15-M

#### FEDERAL RESERVE SYSTEM

#### 12 CFR Part 225

[Regulation Y; Docket No. R-0637]

#### Limitations on Nonbank Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

**SUMMARY:** The Board has adopted rules and an interpretative ruling to implement provisions of the Competitive Equality Banking Act of 1987 ("CEBA") (Pub. L. No. 100-86), relating to so-called nonbank banks. CEBA amended the definition of "bank" in the Bank Holding Company Act (the "BHC Act" or the "Act") to include certain banking institutions that had previously been outside that definition (so called "nonbank banks"). CEBA also contained a grandfather provision that permitted nonbanking companies that controlled nonbank banks as of March 5, 1987, to retain control of the institution and not be treated as a bank holding company for purposes of the BHC Act if the company and its subsidiary nonbank bank observe certain restrictions. These limitations generally restrict nonbank banks from commencing new activities or certain cross-marketing programs with affiliates after March 5, 1987, increasing their assets at an annual rate of more than 7 percent during any 12-month period commencing after August 10, 1988, or permitting overdrafts by affiliates or incurring overdrafts on behalf of affiliates at a Federal Reserve Bank. 12 U.S.C. 1843(f) (2) and (3).

To implement these limitations, the rules and interpretation: (1) discuss how the term "activity" will be applied; (2) clarify the scope of the cross-marketing limitation; (3) describe how compliance with the 7 percent annual asset growth rate will be determined; and (4) define the restrictions on overdrafts.

This rule also amends the definition of "bank" in Regulation Y to reflect the changes in that definition made by CEBA.

**EFFECTIVE DATE:** This regulation is effective September 28, 1988, except for § 225.52 which will be effective January 1, 1989, and § 225.145, which will be effective October 28, 1988.

#### FOR FURTHER INFORMATION CONTACT:

For information regarding §§ 225.2, 225.51 and 225.145, contact J. Virgil Mattingly, Deputy General Counsel (202/452-3430), Robert D. Frierson, Senior Attorney (202/452-3711), or Thomas M. Corsi, Attorney (202/452-3275); for information regarding section 225.52, contact Oliver I. Ireland, Associate General Counsel (202/452-3625); or Elaine M. Boutilier, Senior Attorney (202/452-2418), Legal Division, Board of Governors of the Federal Reserve System; or for the hearing impaired *only*: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

**SUPPLEMENTARY INFORMATION:** CEBA amended the Bank Holding Company

Act of 1956 ("BHC Act") by expanding the definition of "bank" to include any bank the deposits of which are insured by the Federal Deposit Insurance Corporation ("FDIC") as well as any other institution that accepts demand deposits or accounts with third party payment capabilities and that is engaged in the business of making commercial loans. This new definition covers certain institutions that had not previously been covered by the BHC Act ("nonbank banks") and prevents banking and nonbanking companies from forming new nonbank banks.

CEBA also contains a grandfather provision that permits a nonbanking company that controlled a nonbank bank on March 5, 1987, to retain the nonbank bank and not be treated as a bank holding company if the company and its subsidiary nonbank bank observe certain limitations designed to prevent unfair competition with banks owned by bank holding companies and to reduce risks posed to the payments system by nonbank banks. With certain limited exceptions, the grandfathered parent company may not after March 5, 1987, acquire control of an additional bank or thrift institution or more than 5 percent of its assets or shares. The grandfathered nonbank bank may not—

(1) Engage in any activity after March 5, 1987, unless it was lawfully engaged in that activity as of March 5, 1987;

(2) Offer or market products or services of an affiliate that are not permissible for bank holding companies under the BHC Act or permit its products or services to be offered or marketed by an affiliate engaged in activities not permissible for bank holding companies under the BHC Act, unless the specific cross-marketing activity was conducted as of March 5, 1987, and then only in the same manner as conducted as of that date;

(3) Permit an overdraft (including an interday overdraft) by an affiliate, or incur an overdraft in its account at a Federal Reserve Bank on behalf of an affiliate; and

(4) Increase its assets at an annual rate of more than 7 percent during any 12-month period beginning after August 10, 1988.<sup>1</sup>

On June 3, 1988 (53 FR 21,462, June 8, 1988), the Board issued for comment proposed rules to implement these provisions of CEBA. In response to this request for comment, the Board received 92 public comments from interested individuals and organizations. Approximately 52 percent of these commenters (48) favored adoption of the

regulations as proposed or with slight modifications. Forty-two of the commenters opposed the proposed regulations and suggested that they be substantially changed before being adopted as final rules.

During the regulatory comment period, the Board received several requests for a hearing. In response to these requests, the Board conducted a full-day informal hearing on July 29, 1988, to permit interested parties an additional opportunity to express their views on the proposal. The comments on the proposal received during the comment period and the informal hearing are summarized below.

The comments generally centered on the proper interpretation of the Congressional purposes in enacting CEBA and the appropriate degree of restrictiveness in the implementation of CEBA's limitations.

Commenters in favor of the proposed rule, principally from banking organizations and their trade groups, argue that the CEBA limitations should be adopted as written and that the impact of the rules on nonbank banks should not be ameliorated by administrative action. In their view, it was the overwhelming, if not uniform, view of Congress that nonbank banks present a serious potential for damage to the nation's banking system and that the CEBA limitations were intended to restrict the operations of nonbank banks in order to prevent to the extent possible these adverse effects, even at the risk of making nonbank banks less competitive or viable. For example, the chairman of the Senate Banking Committee stated that in establishing the CEBA restrictions, Congress rejected the testimony of nonbank banks that these limitations would impair competition, impede desirable innovation, jeopardize bank safety and soundness and increase risk to the FDIC. These commenters contend, based upon the statutory findings in CEBA, that the proposed rule properly implements the legislative intent to hold nonbank banks in place until Congress can formulate a permanent policy.

Comments unfavorable to the proposed rule, predominantly from the affected nonbank banks, interpret CEBA and its legislative history as reflecting a balancing approach intended to permit nonbank banks to be competitive. They contend that, although Congress chose to constrain grandfathered nonbank banks in significant and unprecedented ways, the limitations were not intended to be implemented in such a manner as to prevent nonbank banks from continuing to compete in the marketplace. These commenters

maintain that the actual balance achieved by CEBA cannot be fully appreciated unless the language of the statute is considered in light of its legislative history, including particularly, statements by the chairman of the Senate Banking Committee during the Senate's consideration of CEBA.

As explained in the interpretive ruling, the Board resolved this issue with respect to particular provisions of the CEBA limitations with reference to the terms of the statute and the stated intent of the statute to minimize the potential for conflicts of interest, unsound banking practices, unfair competition, partiality in the credit-granting process and other adverse effects that would be associated with the grandfathered affiliations of federally insured nonbank banks and companies engaged in activities forbidden to regulated bank holding companies. Based on the statutory findings, the Board has not accepted the view of the unfavorable commenters that the nonbank bank restrictions must be applied to permit nonbank banks to maintain their unique competitive position.

The principal issues raised by the comments and at the public hearing regarding the proposed rules and the Board's resolution of these issues are discussed in the following sections as well as in the interpretive ruling:

1. *Activity Limitation:* CEBA provides that a nonbank bank may not—

engage in any activity in which such bank was not lawfully engaged as of March 5, 1987  
\* \* \* 12 U.S.C. 1843(f)(3)(B)(i).

The proposed rule defined the term "activity" as applying to discrete lines of banking or nonbanking business and, consistent with legislative history of the provision, pointed out that this definition did not envision a product-by-product approach. To implement this definition, the proposed rule focused on five major categories of activities: deposit taking, lending, trust services, payment and clearing services, and nonbanking activities. Within these categories, examples of separate activities were set forth for purposes of applying the grandfather limitation. For example, deposit-taking activities were separated into demand deposits, non-demand checkable deposits, and time or savings deposits; and lending was divided into commercial lending and types of consumer lending (credit card, mortgage banking and other consumer loans).

Favorable comments considered these differentiations to be consistent with the express language in the statute and representative of recognized lines of

<sup>1</sup> 12 U.S.C. 1843(f) (2) and (3).

banking or nonbanking activity, although some commenters urged the Board to narrow certain of the activities.

Commenters unfavorable to the proposal characterized the approach as being overly narrow and contradictory of legislative intent not to define activity on a product-by-product or customer-by-customer basis. In their view, Congress only intended to prevent grandfathered entities from becoming full-service banks or altering their basic character. As an alternative, these comments generally proposed to delete the subcategories within each major category of banking activity except where further differentiation was necessary to prevent a nonbank bank from becoming a full-service commercial bank. Thus, the commenters would favor the following categories based on so-called "core" banking activities: (1) deposits (differentiating between demand deposits and other deposits), (2) lending (differentiating between commercial loans and other types of lending), (3) trust services (including products and services incidental thereto), and (4) nonbanking (or non-core banking) activities permissible for the bank under state law, such as travel agency, real estate development or general insurance brokerage. Some of these commenters would also include clearing and payment services, as a separate activity, while others regarded this activity as incidental to offering transaction accounts.

For the reasons stated in the interpretive ruling, the Board believes the term activity should be interpreted and applied with reference to prior Board and judicial precedent regarding this term as it appears in section 4 of the BHC Act, except in instances where CEBA requires modification of this analysis, as in the case of deposit-taking and lending activities. This approach is implemented through the following revised major categories of activities: deposit taking, lending, trust services and other activities consistent with recognized activities under section 4 of the BHC Act.<sup>2</sup>

Deposit-taking would include three activities: demand-deposit taking, non-demand deposits that the depositor may withdraw by check or similar means for payment to third parties, and other time and savings deposit-taking activity. Thus, an institution that did not offer demand or other transaction accounts

on March 5, 1987, could not begin to offer these services after March 5. As explained in the interpretation, consistent with the Board's decisions under the activity provisions of section 4, lending would include the following activities: commercial lending, consumer mortgage lending, consumer credit card lending and other consumer lending.<sup>3</sup>

Some commenters stated that deposit-taking activity should be broken down only to reflect the distinction in the "bank" definition before CEBA between demand deposits and other deposits and that the Board should not treat non-demand transaction accounts as a separate activity. They rely on the fact that in *Board of Governors v. Dimension Financial Corp.*,<sup>4</sup> the Supreme Court held that NOW accounts may not be treated as a "deposit that the depositor has a legal right to withdraw on demand" under the pre-CEBA bank definition. As explained in the interpretive ruling, the treatment of transaction accounts as a separate activity from non-transaction account deposit-taking is consistent with the structure of the BHC Act, Board decisions regarding the term activity in section 4, and banking practice.

In this regard, the Board notes that the *Dimension* decision did not overturn the Board's decision that the taking of NOW accounts was a separate activity under section 4 of the Act. The decision ruled only that a NOW account was not "a deposit that the depositor has a legal right to withdraw on demand" in the pre-CEBA bank definition in the BHC Act. Indeed, in CEBA, Congress amended the bank definition in the BHC Act to treat the taking of transaction accounts as separate and distinct from the taking of non-transaction deposits, thus recognizing that transaction deposits have characteristics such that they should be viewed in the same manner as demand deposits for purposes of the bank definition and not as traditional non-checkable savings or time deposits. This distinction between these types of deposits was carried over into the credit-card, trust company and certain other exceptions from the Act's definition of bank. The Board believes these amendments support the view that transaction accounts are a separate activity in the case of a nonbank bank that did not offer such a service as of March 5, 1987.

The Board has also considered the views of certain commenters that the reference in the proposed rules to section 225.25(b) of the Board's Regulation Y as a guide for defining activities other than lending or deposit services is inappropriate in that these provisions identify activities that the Board considers to be closely related to banking. These commenters contend that CEBA's activity restrictions, on the other hand, are applicable to core banking services and not activities closely related thereto. They also state that many of the activities identified in Regulation Y are incidental elements to core banking functions and should not be considered separate activities under CEBA. Moreover, the nonbanking activities list contains, for these commenters, duplication and overlap. Other commenters, including nonbank banks, stated that use of this regulation as a reference point for activities under CEBA was appropriate.

As noted in the interpretive rule, if Congress had intended the activity limitation in CEBA to distinguish only between demand deposit and commercial lending activity, Congress would have used the restriction it used in another section of CEBA dealing with nonbank banks owned by bank holding companies, which has this result. See 12 U.S.C. 1843(g). In accordance with the ordinary meaning of the term, the placement of the CEBA activity limitation in a section of the Act dealing with the activities of banking organizations, and the legislative history of the provisions, the Board believes the view of the term set out in the interpretive ruling is appropriate.

The Board believes that the commenters are mistaken in their view that reference to the activity limitation of section 4 is not appropriate in the case of activities conducted by banking companies. The Board's decisions and regulations under section 4 authorize deposit-taking, lending and associated banking functions for companies that do not qualify as banks, but, like the nonbank banks, are federally insured, operate under bank thrift or other depository institution charters, and exercise many of the powers of banks. See e.g. *U.S. Trust Corporation*, 70 Federal Reserve Bulletin 371 (1984); *Citizens Fidelity Corporation*, 70 Federal Reserve Bulletin 231 (1984); *Citicorp/Fidelity Federal Savings & Loan Association*, 68 Federal Reserve Bulletin 656 (1982). Finally, the Board also notes that the courts have set out standards by which one activity would be viewed as incidental to another under section 4. *National Courier Ass'n*

<sup>2</sup> Payment and clearing services, which were considered as a separate category of activity under the original proposal, have been deleted as a separate activity and will be considered under the general principles set out in the interpretation regarding other activities.

<sup>3</sup> The Board's decisions under section 4 have not generally differentiated between types of commercial lending. Accordingly, the Board believes that commercial lending should be viewed as a single activity under the CEBA limitation.

<sup>4</sup> 474 U.S. 361 (1986).

v. *Board of Governors*, 516 F.2d 1229 (1975).

(a) *Meaning of "Engaged In"*. Under the proposed rule, a nonbank bank must demonstrate that it had a program in place to provide a particular product or service associated with the grandfathered activity to a customer and that it was in fact offering the product or service to the customer as of March 5, 1987. Comments in favor of this proposal stated that it carried out the Congressional intent of placing limitations on the activities of grandfathered entities by requiring an established program rather than a program in its planning stages. Unfavorable comments to the proposal stated that the rule should permit more flexibility in its concept of program and offered various approaches that were less formal than the standard proposed. Several commenters expressed concern over the proposed rule's provision that an isolated transaction may not be sufficient to demonstrate that a grandfathered entity was engaged in a particular activity as of the grandfather date. In their view, this statement suggests that the Board is imposing a quantitative test.

The Board believes that the rule as proposed requires the appropriate degree of formalization in the marketing activities of a grandfathered entity to carry out the legislative intent that an activity must be "engaged in" in order to qualify for grandfathered treatment. The Board also notes that this interpretation is consistent with the meaning given the term "engaged in" in other provisions of section 4 of the BHC Act. The isolated transaction example stated in the rule is not a quantitative test because the rule expressly states that it would be insufficient unless evidence was presented indicating the existence of a program associated with the transaction.

(b) *Meaning of "As Of"*. The rule as proposed stated that the grandfather date "as of March 5, 1987" as used throughout section 4(f)(3) should refer to activities engaged in on March 5, 1987, or a reasonably short period of time preceding this date not exceeding 13 months. This period of time is expressly confirmed by the legislative history during colloquy in the Senate debates. Proponents commented that this approach was consistent with the legislative history. Certain opponents, on the other hand, commented that this period was too short and should be generally more comprehensive in scope to include, for example, promotional activities or activities that had received regulatory approval.

In this instance, the Board finds that the legislative history provides the necessary clarification on the appropriate scope of the grandfather date and that the proposed rule accurately reflects the Congressional intent of the provision.

The interpretation has been clarified, however, to provide that a nonbank bank may not commence an activity that it had terminated within this period. For example, a nonbank bank that had terminated commercial lending to avoid bank status within 13 months of March 5, 1987, could not recommence that activity after March 5, 1987.

2. *Cross-Marketing Limitation*: CEBA's second limitation prohibits grandfathered nonbank banks from offering or marketing an affiliate's products or services unless they would be permissible for bank holding companies, or permitting the bank's products or services to be offered or marketed by an affiliate engaged in impermissible nonbanking activities. This prohibition is subject to a grandfather provision for cross-marketing activities engaged in as of the March 5 grandfather date, but only in the same manner as conducted as of that date. Unlike the activity limitation, which applies to separate lines of business, the language of the statute specifies that the cross-marketing limitations apply to products or services.

At the outset, it is important to note that the cross-marketing restriction does not limit in any manner the direct marketing activities of nonbank banks. Moreover, the restriction does not prevent a nonbank bank from marketing any product or service of an affiliate that bank holding companies may offer or from permitting the bank's products and services to be offered or marketed by affiliates engaged in activities permissible for bank holding companies.<sup>5</sup>

(a) *Products or Services*. The interpretation published for comment did not attempt to define "product or service," but rather illustrated the application of the grandfather provision with an example that a securities company that marketed automobile loans from an affiliated nonbank bank on the grandfather date could not begin to offer checking accounts without loss of the privilege. The draft interpretation also made clear that an institution could change the terms and conditions of the

product, referring to the statement of the chairman of the Senate Banking Committee during the debates on CEBA that a nonbank bank offering a three-year certificate of deposit through an affiliate could thereafter market a one-year certificate of a different amount and interest rate. 133 Cong. Rec. S3959 (daily ed. March 26, 1987).

Proponents of the proposed rule have stated that the express statutory focus of the cross-marketing limitations on specific products and services supports a narrow view of the limitation's scope. These commenters also argue that this approach is entirely consistent with the stated Congressional intent of the provision to prevent unfair competition with banks controlled by bank holding companies that may not offer such services and with the legislative history in which the broader approach for activities discussed above is contrasted with the more restrictive product-by-product approach.<sup>6</sup>

Opponents have countered that a narrow approach to the definition of product and service would be inconsistent with legislative intent and would limit innovation and competition. In their view, Congress intended product or service to be defined in functional terms and to be permitted to be changed in its character and design in response to market and technological innovations.<sup>7</sup> Under this approach, incidental aspects of products may be changed and enhancements may be developed. Finally, some comments suggested that the limitation should not apply to joint-marketing activities such as utilizing customer lists or back-office facilities that do not involve any public identification of the affiliate relationship in conducting the activities. The Board was also requested to provide for

<sup>5</sup> During the Senate debate on CEBA, Chairman Proxmire stated:

The word "activity" is not defined in the bill, however, I want to confirm that the meaning stated in the report is what is intended and that no effort to measure activity unduly narrowly on a product-by-product, customer-by-customer basis is intended, so that if a nonbank bank were engaged in offering any type of loans on March 5, it may offer that same type of loan thereafter. 133 Cong. Rec. S4054-5 (daily ed. March 27, 1987).

<sup>7</sup> These commenters rely on Chairman Proxmire's confirmation during the Senate debate on CEBA of Senator Dodd's understanding that under the cross-marketing restriction:

A grandfathered nonbank bank that was cross-marketing a specific product or service could at any time in the future cross-market a product or service which had been developed to reflect general changes in the grandfathered service's or product's character and design generated by competition, market innovation or technology. 133 Cong. Rec. S3957 (daily ed. March 26, 1987).

<sup>6</sup> Thus, for example, a nonbank bank may offer permissible credit-related insurance products of an affiliated insurance company. Similarly, the bank may offer any of its products and services through an affiliate engaged only in permissible activities, for example, through an affiliated consumer finance or mortgage banking company.

grandfathered treatment under the cross-marketing provisions if a grandfathered affiliate is reincorporated or otherwise subject to a corporate restructuring.<sup>8</sup>

The Board believes that the cross-marketing limitation in CEBA by referencing particular products and services is by its terms more restrictive in scope than the activity limitation. In this regard, the Board notes that all or nearly all of the commenters agree that an affiliate marketing one type of loan from a nonbank bank before the grandfather date would not be entitled to offer or market any other type of loan. The commenters, however, disagree over the precise degree of specificity required by CEBA's use of the term product or service. Some commenters have maintained that this formulation requires a narrow definition which, for example, distinguishes between automobile loans and boat loans. Other commenters have argued in favor of a general functional approach that would permit a product to evolve from one type of consumer lending to another type of consumer loan in response to market changes.

One commenter cited as an example of a change that would justify expansion of grandfathered cross-marketing the fact that after the changes in tax laws in 1986, many lines of credit offered by banks that were accessible by credit card or other means began to be secured by a home mortgage, so that the interest paid by the borrower is deductible for income tax purposes. This commenter stated that if a nonbank bank was cross-marketing credit cards on the grandfather date, it should consequently now be allowed to cross-market consumer home equity lines of credit.

As set forth more fully in the interpretive rule, the Board believes that the term product or service must be interpreted in light of its accepted ordinary commercial usage and the Congressional purpose underlying the limitation to minimize the potential for unfair competition and other adverse effects. To provide guidance as to the manner in which the limitation will be applied, the interpretation provides examples of the types of products and services covered by the cross-marketing

restrictions in the areas of deposit-taking and lending. In other areas, the rule provides that the determination as to what constitutes a product or service will have to be made on a case-by-case basis consistent with the general principles set out in the interpretation.

The interpretation permits general changes in the character of a product or service as the result of market or technological innovation to the extent that these modifications do not transform the grandfathered product into a new product. In the Board's view, however, this approach would not permit the evolution of credit card lending discussed in the commenter's example above because unsecured lending by credit card or otherwise is clearly a different product or service from that of secured lending. Indeed, several nonbank banks commenting on the proposal, whose activities would be directly affected by the proposal, stated in their comments that secured and unsecured consumer lending constitute distinct products for purposes of the cross-marketing restriction.

(b) *Cross-Marketing "Only in the Same Manner"*. With respect to CEBA's limitation that grandfathered products or services may be offered or marketed "only in the same manner," the proposed interpretation stated that the method of offering or marketing the product or service must remain the same. The interpretation illustrated this limitation by indicating that an affiliate not using direct mailings as a marketing technique for the particular product may not commence this activity after the grandfather date.

Proponents of the rule state that the limitation on cross-marketing to the same manner in which it was conducted on the grandfather date must be applied as written in order to minimize the potential for unfair competitive advantage. They contend that defining the term to include broad categories of marketing techniques would read the limitation out of the statute.

Opponents of the rule, however, disagreed with the Board's approach. Some commenters stated that it was inappropriate to consider the media or medium used to cross-market in applying the limitations. Other commenters suggested that, in light of the constitutional protections accorded commercial free speech, marketing methods should be broken down into broad categories, and if companies were using any market method within a particular category as of the grandfather date, then all of the methods in that category would be available under the limitation. Although different categories were suggested, the most commonly

suggested categories were: (a) mass media, (b) direct mail or direct response marketing, and (c) personal or face-to-face solicitation. Some commenters favored even broader categories: (a) mass marketing and (b) direct marketing.

As noted, the proposed interpretation did not define the term "in the same manner" other than to indicate that the means of offering or marketing the product or service must remain the same. Because a determination with respect to a particular cross-marketing effort under this standard would necessarily depend on the particular facts and circumstances in a given case, the revised interpretation indicates that the scope of the restriction would be applied based on a case-by-case basis consistent with the guiding principles set out in the interpretation.

3. *Eligibility for Grandfathered Nonbank Bank Status*: The proposed rule stated that institutions that had not commenced operations on August 10, 1987, could not qualify for grandfather privileges under CEBA. One affected company urged the Board to recognize grandfathered status if the company had received preliminary approval from its chartering authority and had established a plan for operation. For the reasons stated in the rule, the Board has decided to adopt the interpretation as proposed.

4. *Enforcement*: The proposed rule noted that under section 4(f) of CEBA, a company that controls a nonbank bank would lose its grandfathered status if it or a subsidiary nonbank bank acquires control of an additional bank or thrift, acquires more than 5 percent of voting shares of a bank or thrift (subject to certain exceptions), or violates the other CEBA limitations. Section 4(f)(4) of CEBA provides for the penalty of divestiture within 180 days of the loss of grandfather exemptions through failure to comply with the CEBA limitations.

Commenters argued that imposition of divestiture as the only sanction under these circumstances was unwarranted under the Act and its legislative history. According to these comments, both of these sources indicate that the Board has a range of administrative enforcement options to deal with CEBA violations. Some commenters urged the Board to clarify that divestiture would be reserved only for willful, material, recurring or wanton violations. Others requested the Board to apply this penalty only prospectively and provide prompt CEBA interpretations to requesters.

By its terms, the statute provides for loss of grandfather rights for violations of the CEBA limitations, and, in this

<sup>8</sup> In this regard, the Board notes that the legislative history indicates that the grandfather exception to the cross-marketing restriction applies "only to a specific company that was engaged in the activity as of March 5, 1987. An affiliate that was not engaged in a given joint-marketing activity as of March 5, 1987, may not commence that activity even if it was being conducted by another affiliate as of March 5, 1987." S. Rep. No. 100-19, 100th Cong., 1st Sess. 34-35 (1987).

regard, the Conference Report states that nonbank banks that violate the overdrafts provisions of CEBA "lose their grandfathered status". H.R. Rep. No. 100-261 at 127-128. The Conference Report, however, also indicates that the Conferees expected the Board to use its cease and desist or other supervisory authority as appropriate. *Id.* at 125.

The Board has deleted reference to the divestiture provision of CEBA as Board rules do not normally contain provisions relating to enforcement. The Board's responsibility under CEBA would be to enforce the statute and implementing rules in each case, taking into account the terms of the statute, its legislative history, and the particular facts and circumstances of the case. Taking these factors into account, the Board would use its prosecutorial discretion to determine the appropriate enforcement action.

The Board is prepared to provide prompt guidance in individual cases regarding the scope or application of the CEBA limitations.

**5. Seven Percent Growth Rate Limitation:** Under CEBA, a nonbank bank's asset growth is limited to an annual rate of 7 percent during any 12-month period beginning after August 10, 1988. Two principal issues are raised by this provision: the method for determining the base against which the 7 percent growth limit is to be applied during the initial 12-month period and the period over which the calculation will be made. In its proposed rule, the Board noted that under CEBA, the 7 percent growth limitation would not be applicable for one year following the date of enactment of CEBA. Accordingly, the proposed rule indicated that nonbank banks could, at their option, choose to use the actual amount of assets reported on their books on August 10, 1988, as the initial base or the average total assets reported on the call report for the quarter ending September 30, 1988. The latter option was provided in order to eliminate the need for additional reporting by permitting use of the quarterly report of condition for the bank.

The proposed rule stated that the growth limit would be applied on a rolling twelve-month basis, commencing initially on August 10, 1988, and thereafter at the start of each quarterly call report period (*i.e.* September 1, 1988, January 1, 1989, April 1, 1989, July 1, 1989, and so on). The rule proposed further noted compliance would be determined using the institution's average assets over the 12-month period

in accordance with the directive in the CEBA Conference Report.<sup>9</sup>

Under this approach, compliance with the 7 percent growth limit would be measured for the first 12-month period by comparing the average assets for the third quarter of 1989 as reported on Schedule RC-K of the Report of Condition<sup>10</sup> with either the assets on August 10, 1988, or the average assets for the third quarter of 1988, at the nonbank bank's option. Thereafter, growth would be measured by comparing the average assets for each quarter with the average assets for the previous quarter.

The alternate method of calculating the initial base figure by using the average assets for the third quarter of 1988 was not opposed, provided the final rule would continue to permit a nonbank bank to use its actual assets on the bank's books on August 10, 1988. Commenters opposed to the proposed rule stated that the proposed rolling 12-month method of measuring compliance was in conflict with the statutory language and the legislative intent that growth be measured on an annual average basis. They also argued that this method of measuring compliance could lock then into quarterly business patterns of growth and reduction that might be inconsistent with their normal growth patterns or cause them to make unsound business decisions solely to comply with this needlessly restrictive method of measuring growth. This approach would also inhibit successful marketing campaigns and restrict opportunities in the market place.

Finally, the comments from certain of the commenting nonbank banks urged the Board to avoid the "use it or lose it" result under the proposed rule's method of using each year's actual average annual assets as the base for measuring the following year's growth. To avoid this result, they proposed an annual asset cap that would be projected forward for each grandfathered nonbank bank from the bank's base figure, at 7 percent, compounded annually. Thus, an institution that failed to achieve a 7 percent growth rate in one year could make up for this in the following year by

increasing its growth rate by a corresponding amount above 7 percent.

The comments in favor of the rule supported the Board's approach, indicating that the alternate approach advocated by the nonbank banks, which would allow growth in excess of 7 percent, would by its terms violate CEBA's limitation on asset growth during any 12-month period to no more than 7 percent.

**(a) Initial Base for Growth Limit.** The revised rule retains both of the methods specified in the proposed rule for calculation of the initial base.

The Board has also provided a third option. A nonbank bank may, in its discretion, elect to use at its initial base its total assets over the four quarters ending September 30, 1988, as reported on Schedule RC-K of its report of condition. This option would avoid the problem of having to annualize growth during the first year and may be a desirable alternative for nonbank banks that experienced even or no growth during the year after August 10, 1987.

A nonbank must advise the Board by October 15, 1988 of the method it has chosen to calculate its base figure for the initial 12-month compliance period. If the nonbank bank elects to use its actual assets on August 10, 1988, as its initial base, it must report that figure to the Board by October 15, 1988, along with its average assets for the third quarter of 1988 prepared in accordance with the rules in Schedule RC-K of the Report of Condition. While not required, a nonbank bank electing to use the August 10, 1988 figure, may provide the Board with its assets at the end of the third quarter or any additional information it believes may be of assistance to the Board in reviewing the August 10 figure in light of the concerns over "window dressing" transactions discussed below.

The revised rule addresses concerns raised that an institution could effect "window-dressing" transactions on August 10, 1988, by engaging in extraordinary short-term transactions to inflate artificially its assets. The revised rule notes that if the Board determines that a reporting nonbank bank's assets have been inflated on August 10, 1988, without reference to the customary business activity of the institution, the Board would disallow the window-dressing transactions or require that the initial date for the first 12-month period be adjusted to a date following August 10, 1988. The Board believes these rules are consistent with the terms of the

<sup>9</sup> The Conference Report states that the Board should "in determining compliance with the 7 percent growth rate, [to] utilize a procedure that computes the grandfathered institution's growth rate on an average basis." H.R. Rep. No. 100-261 at 125.

<sup>10</sup> Banking institutions with \$100 million in assets or more must file with their reports of condition their average assets over the quarter calculated either on a daily basis or a weekly basis (*i.e.*, an average of the Wednesday of each week of the quarter). Institutions with less than \$100 million may report using an average of the four month-end figures.

statute<sup>11</sup> and the Board's authority to act to prevent evasions of the BHC Act. Comments from certain nonbank banks stated that such window-dressing transactions could be disallowed in determining the initial base.

(b) *Frequency of Measurement of Growth Limit.* After considering the public comments, the Board has decided to revise the rule to permit nonbank banks to measure compliance with the growth limitation once a year at the end of the third quarter of each year. Thus, compliance with the growth rate would be determined for 12 month periods beginning on October 1 of each year and ending on September 30 of the following year. The initial 12-month period would begin on October 1, 1988 and end of September 30, 1989.

After the first 12-month period, compliance for all nonbank banks will be determined by measuring the average assets over the four quarters during the year (e.g., the fourth quarter of 1989 and the first three quarters of 1990) with the average assets for the proceeding four quarters (e.g., the fourth quarter 1988 and the first three quarters of 1989). This approach would pose the least administrative burden while maintaining consistency with the intent of the statute to limit the overall asset growth of nonbank banks. Moreover, this approach avoids locking the nonbank banks into the same patterns of growth during the year.

Compliance with the growth limit for the initial 12-month period commencing October 1, 1988, will be determined by comparing the average total assets (as reported on Schedule RC-K) for the four quarters ending with the third quarter of 1989 with the initial based figure chosen by the nonbank bank.

—*Annualization Required for Initial 12-Month Period.* Because the nonbank bank's average assets over the initial year will be compared to its average assets over the immediately preceding quarter, or its assets on a single day in that quarter (August 10, 1988), the simple rate of asset growth between these periods will differ from the annual rate of asset growth as limited by the statute.<sup>12</sup> A 7 percent simple growth rate over this period would convert to

<sup>11</sup> The statute provides that the growth rate be applied during any 12-month period beginning after August 10, 1988. Thus, the Board need not start the first annual period on August 10, 1988, particularly where the record shows that the nonbank bank has manipulated its assets on the dated unrelated to its legitimate business activities.

<sup>12</sup> Because compliance during all subsequent 12-month periods will be determined by comparing comparable periods (i.e. average assets over a year to average assets over the preceding year), no annualization is required for those periods.

an annual rate of growth of over 10 percent. For example, a nonbank bank with assets in the amount of \$100 million on August 10, 1988, and which had average assets of \$107 million over the four quarters ending with the third quarter of 1989, would grow at a simple rate of 7 percent. At an annual rate, however, this growth would be 10.97 percent.

Adjusting the simple growth rate for this initial period is accomplished by using a factor that converts a simple growth rate into an annual growth rate.<sup>13</sup> This factor is calculated as the ratio of 365 days, the number of days in a year, to the number of days between the midpoint of the base period and the midpoint of the first compliance period, i.e., the four quarters ending with the third quarter of 1989.<sup>14</sup> The ratio is therefore based on comparable measurements (i.e., the midpoint of the third quarter of 1988 with the midpoint of the first 12-month period following the end of this quarter).

For a nonbank bank electing to use its assets on August 10, 1988 as its base figure for the initial 12-month compliance period, the annualizing ratio is 1.597 (365 days divided by 233 days from August 10, 1988 to March 31, 1989). The nonbank bank's average assets over the first 12-month period could not exceed its assets on August 10, 1988 by more than 7 percent divided by this annualizing ratio. In the previous example, the simple growth rate permissible during the initial period would be about 4.5 percent and assets could average no more than \$104.47 million over the first compliance period under this option.

Nonbank banks selecting the average assets over the third quarter of 1988 as the base figure for the initial 12-month period would apply an annualizing ratio

<sup>13</sup> Calculating annual growth rates requires three pieces of information: the value of the item whose growth is being measured for the initial or base period; the same information for the final period; and the length of time between these periods. The annual rate of growth then may be calculated as follows:

$$G = \frac{(F-I) \cdot 100 \cdot 365}{I \cdot L}$$

Where: G is the annual rate of growth, not compounded. F is the value of the quantity whose growth is being measured as of the final period. I is the value of the quantity whose growth is being measured as of the initial period. L is the length of time between the initial and final periods, expressed in days.

The first part of this formula,  $\frac{(F-I) \cdot 100}{I}$ , expresses the percent change in the series as a simple growth rate. The second term,  $\frac{365}{L}$ , converts the simple growth rate to an annual rate of growth, not compounded.

<sup>14</sup> The midpoint of the third quarter of 1988 is August 15, 1988 and the midpoint of the four calendar quarters ending with the third quarter of 1989 is March 31, 1989.

of 1.601 (365 days divided by 228 days from August 15, 1988 to March 31, 1989). The nonbank bank's average assets over the first 12-month period could not exceed the average total assets for the third quarter of 1988 by more than 7 percent divided by this annualizing ratio. In the previous example, the simple growth rate permissible during the initial period would be about 4.4 percent and assets could average no more than \$104.37 million over the first compliance period.

Nonbank banks electing to use the average total assets for the four calendar quarters ending with the third quarter of 1988 as the initial base period would not be required to annualize because like-periods, one year apart, are being compared. As noted, annualization for all 12-month periods after the initial period (ending September 30, 1989) is also not necessary because like periods, one year apart, are being compared.

—*Compliance on a Quarterly Basis.* The Board has also decided to permit a nonbank bank, at its option, to measure compliance with the 7 percent annual growth rate limitation under the rolling quarterly approach originally proposed. A nonbank bank deciding to elect this method must advise the Board of this decision by October 15, 1988.

Finally, escrow deposit accounts are treated as deposits for purposes of the call report (see Schedule RC-E) and the Board does not believe it appropriate to exclude such deposits from the asset base. The Board is also constrained by the terms of the statute from permitting a nonbank bank to grow at an annual rate greater than 7 percent during a 12-month period, because during some preceding period, the nonbank bank failed to achieve a 7 percent growth rate. Accordingly, the Board has decided not to adopt the view of certain commenters that the Board should permit a nonbank bank to establish an asset cap based on 7 percent of the nonbank bank's assets on August 10, 1988, projected forward.

6. *Overdrafts:* The fourth limitation on nonbank banks prohibits a nonbank bank from permitting an overdraft by an affiliate and from incurring an overdraft in its account with a Federal Reserve Bank on behalf of an affiliate.

CEBA states that a nonbank bank: shall not \* \* \* after the date of the enactment of [CEBA], permit any overdraft (including an intraday overdraft), or incur any such overdraft in such bank's account at a Federal Reserve bank, on behalf of an affiliate, other than an overdraft [due to an inadvertent accounting or computer error or a secured overdraft on behalf of an affiliate]

that is a primary dealer]. 12 U.S.C. 1843(f)(3)(B)(iii).

The language of this statute clearly prohibits overdrafts by affiliates on the books of nonbank banks.<sup>15</sup> The statute also prohibits overdrafts by the nonbank bank in its account at its Federal Reserve Bank on behalf of an affiliate. The language "on behalf of an affiliate" is unclear. To read this language to preclude only those overdrafts at a Federal Reserve Bank where the affiliate has also overdrawn its account at the nonbank bank would render the language unnecessary, because the overdraft by the affiliate is already specifically prohibited. As the rules of statutory construction generally disfavor interpretations that render statutory language meaningless, it is appropriate to resort to extrinsic aids, such as the legislative history, in order to interpret this language. The Conference Report to CEBA states:

Overdrafts in an affiliate's accounts at a nonbank bank are difficult to police, particularly in times of financial difficulty of the affiliate, when the potential for overdrafts resulting in losses is highest. Accordingly, the overdraft restrictions provide that nonbank banks lose their grandfathered status if they incur overdrafts at Federal Reserve banks. Federal Reserve banks are in a position to monitor such overdrafts on a real time basis. H.R. Rep. 100-261, pp. 127-128.

This report indicates that Congress contemplated that the Federal Reserve would monitor overdrafts by the nonbank banks in their accounts at Federal Reserve Banks, and that such an overdraft could result in the loss of the bank's grandfathered status.

CEBA and its legislative history indicate that Congress was concerned about overdrafts by nonbank banks' affiliates because of the risks they present to uninsured depositors and creditors of the bank, as well as the Federal Reserve and the FDIC, because a nonbank bank would be unable to make an independent evaluation of the creditworthiness of an affiliate making payments through the nonbank bank.<sup>16</sup>

<sup>15</sup> This overdraft prohibition does not prevent nonbank banks from making loans to affiliates consistent with other laws, e.g., sections 23A and 23B of the Federal Reserve Act, applicable bank lending limits, and CEBA's restriction on new activities. A nonbank bank that was not making commercial loans prior to March 5, 1987, would violate the new activity restrictions of CEBA by making loans to affiliates after that date. Where a debit is posted to an account, overdraws the account, and is not covered by a loan at that time, it is an overdraft.

<sup>16</sup> See, H.R. Rep. No. 100-261, 100th Cong., 1st Sess. 127-128; comments of Chairman Proxmire (floor manager), 133 Cong. Rec. S3801 (daily ed. March 25, 1987).

Congress also restricted overdrafts by the nonbank bank in its account with the Reserve Bank even though the affiliate's account at the nonbank bank had not been overdrawn. This latter restriction was included, in part, for ease of monitoring.

To implement the statutory language prohibiting overdrafts on behalf of affiliates by nonbank banks at Federal Reserve Banks, the proposed rule provided that an overdraft by a nonbank bank in the nonbank bank's account at a Federal Reserve Bank would be deemed to be on behalf of an affiliate whenever: (1) a nonbank bank holds an account for an affiliate from which third party payments can be made; and (2) the aggregate balance of all of an affiliate's accounts with the nonbank bank is less, at the time the nonbank bank incurred an overdraft in its account at a Federal Reserve Bank, than the aggregate balance of all of the affiliate's accounts maintained by the nonbank bank at the opening of business on the day on which the nonbank bank incurred the overdraft.

Thirty-five comments discussed this definition of when a nonbank bank overdraft at its Reserve Bank was "on behalf of an affiliate". Eight of the comments stated that *all* overdrafts by a nonbank bank should be prohibited. Of the remaining twenty-seven comments, twenty-one were opposed to the definition, and six supported the definition.

Those comments opposed to this section objected to the presumption that a drawdown by an affiliate at any time on the day a nonbank bank had an overdraft caused the overdraft. They requested that a clearer causal connection be made. Although some comments suggested that the statute merely intended to prohibit overdrafts by affiliates in their accounts with nonbank banks, this is clearly not the case because such interpretation would make the reference to overdrafts "on behalf of an affiliate" superfluous. To implement this language, yet clarify the causal connection, the revised rule defines an overdraft "on behalf of an affiliate" to occur when the posting of an affiliate's transaction to the nonbank bank's account at a Reserve Bank creates or increases the nonbank bank's overdraft at its Reserve Bank. The affiliate would not necessarily have to overdraw an account with the nonbank bank for an overdraft at the Reserve Bank to be deemed to be on its behalf; rather, the transaction would have to put the nonbank bank into an overdraft position at its Federal Reserve Bank or increase the amount of an already

existing overdraft by a nonbank bank in its account with the Federal Reserve Bank.

The Board recognizes that a decrease in an affiliate's account at its nonbank bank may cause a subsequent overdraft in the nonbank bank's account at its Federal Reserve Bank. Therefore, if a nonbank bank shows a consistent pattern of incurring overdrafts at its Federal Reserve Bank, after allowing an affiliate to draw down its account, the Board may view the pattern as evidence that the nonbank bank is evading the provisions of the Bank Holding Company Act.

To facilitate administration of this rule, under the proposal, nonbank banks were to be required to report to their Reserve Bank accounts held for affiliates from which third party payments could be made. All six comments received on this section opposed it as too burdensome and unnecessary. By dropping the reporting requirement, the Board will have to monitor overdrafts of all nonbank banks, instead of just those with transaction accounts for affiliate. Nevertheless, the Board believes that the overdraft restrictions can be implemented without this requirement, and has deleted the reporting requirement from the final regulation.

In addition to the CEBA overdraft restrictions, the Board considered imposing a zero "cap" for purposes of the Board's general risk reduction program on all nonbank banks that offer to their affiliates accounts with third party payment capabilities. Eighteen comments were received on this issue, and fourteen of those comments were opposed to it. Commenters objected to this proposal as discriminatory and unjustified. The Board has therefore determined that the zero cap should not be imposed at this time, but the question may be studied further under the ongoing large dollar risk reduction program.

Nevertheless, each Reserve Bank will pay particular attention to nonbank banks when monitoring the depository institutions in its District, but no specific procedures have been adopted for monitoring nonbank banks. Any nonbank bank that becomes a "problem" institution (as defined by a Federal Reserve Bank) will be monitored most closely.

—*Posting.* Posting is the procedure whereby the debit or credit adjustments resulting from payments transactions are made to the appropriate account. In order for nonbank banks to avoid overdrafts at Reserve Banks, they must know when entries will be posted to

their accounts. Similarly, posting rules are necessary to determine whether an overdraft has occurred at a nonbank bank. Without posting rules, nonbank banks could evade the purpose of the statute by posting entries at such times of the day as to mask overdrafts. Accordingly, the Board proposed posting rules for the accounts of nonbank banks at Federal Reserve Banks and affiliates' accounts at nonbank banks.

Sixteen comments discussed these proposed posting rules, with three in favor and 13 opposed. Those opposed considered them to be burdensome and unnecessary. The Board, however, believes that uniform posting rules are necessary to ensure equal treatment of all nonbank banks and their affiliates, because the posting procedures currently in place are not uniform throughout the industry. These rules only apply for the purposes of measuring overdrafts under CEBA and nonbank banks may continue to use other posting procedures for other purposes. These rules do not apply to depository institutions that are not nonbank banks covered by CEBA and are in addition to rules applicable to depository institutions' accounts at Federal Reserve Banks under the Board's general risk reduction policy.

This procedure differs from the posting rules used by the Board's ex post monitoring system under the risk reduction program. Although the ex post monitor method used in the risk reduction program is familiar to depository institutions, the Board believes that it is inappropriate to apply its posting rules to nonbank banks for the purposes of applying the CEBA overdraft restrictions. The ex post monitor posting rules were developed for a voluntary program which does not involve the serious divestiture (or loss of exemption, in the case of industrial banks) consequences that can result from an overdraft under CEBA. The Board is continuing to review the ex post monitor in light of this and other issues, and the Board wishes to note that changes may be made to the CEBA posting rules in conjunction with any future modification of the ex post monitor posting rules.

—*Posting by Federal Reserve Banks.* Reserve Banks will post funds and book-entry securities transfers as they are made. For check, ACH, and noncash transactions, net settlement entries, and nonelectronic transactions, all credits will be posted as of the opening of business and all debits at the close of business.

With regard to discount window loans, the Board proposed to post credits for discount window loans as of

the close of business on the day the loan is made, and to post debits for repayment of loans as of the close of business at the maturity of the loan. Commenters suggested that credit for discount window loans should be posted at the time of day the loan was actually made. In general, a discount window loan will be posted as of the close of business. However, it is within a Federal Reserve Bank's discretion to grant a discount window loan that is requested during the day to cover intraday transactions. Therefore, under the final rule where it is expressly agreed to by the Federal Reserve Bank at the time of the loan is made, a discount window loan may be posted prior to the close of business.

In addition to the posting rules, Reserve Banks will pay particular attention to depository transfer checks and ACH cash concentration debits used by affiliates of nonbank banks. These transactions are likely to present risks that are not addressed by the proposed posting rules. For example, where an affiliate of a nonbank bank deposits depository transfer checks with a nonbank bank in order to transfer funds to its account at the nonbank bank from its account at another depository institution, it is likely that the check will be returned in the event of failure of the affiliate. Failure of the affiliate, in turn, may precipitate failure of the nonbank bank. The returned check will come to the Federal Reserve after the day when the credits for these transactions are posted to a nonbank bank's account, and therefore the risks presented by these returns are not addressed by posting rules. Consequently, where appropriate to protect against risk of return of these transactions, nonbank banks may be required to establish a special clearing balance at their Reserve Bank to be maintained at all times at a sufficient level to protect against these risks.

—*Posting by Grandfathered Banks.* Because depository institutions' rights with respect to their customers differ from the rights that a Reserve Bank has with respect to transactions that it processes, particularly in the area of check and ACH transactions, the posting rules do not require nonbank banks to post all transactions for CEBA monitoring purposes at the same time that the transactions are posted by Reserve Banks. The regulation permits nonbank banks to post checks and ACH transfers at any time during the day of the transaction—i.e., settlement day for ACH transactions or the day of presentment or credit to the nonbank banks for check transactions—so long as debits are posted no later than the

time that the nonbank bank's account at the Reserve Bank is debited for the transaction for purposes of CEBA overdraft monitoring, and credits are posted no earlier than the time when the credit for the transaction is posted to the nonbank bank's account for purposes of CEBA overdraft monitoring.

Some commenters opposed the posting provisions, stating that they would be burdensome and unnecessary. One commenter suggested that any *bona fide* posting system should be acceptable unless it discriminated against nonaffiliates. The Board, however, continues to believe that posting rules are necessary to ensure equal treatment of all nonbank banks and their affiliates, because the posting procedures currently in place are not uniform throughout the industry.

A modification to the regulation has been made to accommodate the provisions of another title of CEBA—the Expedited Funds Availability Act—and state funds availability laws. These laws require that, in certain cases, funds from check deposits must be made available for withdrawal by the depositor prior to collection (posting). Therefore, in those situations where state or federal law requires a nonbank bank to make funds available to its affiliate prior to the "normal" posting time for such check deposits set by the proposed regulation, the nonbank bank may post the transaction to its affiliate's account as of the time availability must be provided under the Expedited Funds Availability Act or state law.

Another question raised by the comments was whether affiliates' accounts at a nonbank bank may be aggregated for determination of whether an affiliate had incurred an overdraft at the nonbank bank. Aggregation of the accounts of separate affiliates is not permitted by the regulation, but a nonbank bank that has a legal right to offset one affiliate's account against another could post transactions that would overdraft an individual affiliate's account to another affiliate's account. A nonbank bank may aggregate the separate accounts of an individual affiliate for the purpose of determining whether that affiliate has incurred an overdraft.

Nonbank banks may keep two sets of books for posting: one for affiliates for CEBA purposes and another for other purposes. No posting to an affiliate's account is necessary for CEBA purpose if a nonbank bank returns a check or an ACH debit transfer in accordance with applicable law.

One concern of the commenters on the posting issue was the receipt of timely

account information from the Federal Reserve Bank. As set out more fully below, nonbank banks currently have access to sufficient information to monitor their account balances. In addition, in mid-1989, the Federal Reserve Banks expect to offer a service allowing institutions to check their actual balance in their reserve account on a real-time basis.

—*Exemptions.* CEBA provides two exemptions from the restriction on overdrafts. One exemption is for overdrafts on behalf of an affiliate that is a primary dealer, where the overdraft is fully secured;<sup>17</sup> and the other exemption is for inadvertent computer or inadvertent accounting errors that are beyond the control of both the grandfathered nonbank bank and the affiliate.

—*Primary Dealers.* CEBA defines a primary dealer as one that is recognized as a primary dealer by the Federal Reserve Bank of New York. Currently, there are 42 such primary dealers, but only eight are affiliated with nonbank banks. Some of these eight primary dealers do not currently clear book-entry securities transfers through their nonbank banks.

The overdraft prohibition in CEBA does not prohibit primary dealers from incurring overdrafts at affiliated nonbank banks and the affiliated nonbank banks from incurring overdrafts at their Federal Reserve Bank on behalf of the primary dealer affiliate, provided that these overdrafts are fully secured, "as required by the Board, by bonds, notes, or other obligations which are direct obligations of the United States or on which the principal and interest are fully guaranteed by the United States or by securities and obligations eligible for settlement on the Federal Reserve Book, entry system."<sup>18</sup> The proposed regulation defined "fully secured" as secured by a perfected security interest in specific, identified obligations listed in the statute with a market value that, in the Reserve Bank's judgment, is sufficiently in excess of the amount of the overdraft to provide a margin of protection against a volatile market or the chance that the securities would need to be liquidated quickly.

Eleven comments were received on the Board's proposed implementation of the primary dealer exception. Only one comment supported the proposal. The

remaining comments expressed concern about the discretion given to the Reserve Bank to determine what constitutes "fully secured". In general, the commenters expressed the belief that any "haircuts" on collateral should be set the same as for collateral posted by other depository institutions. The Board believes that generally haircuts should be based on the quality of the collateral offered rather than the institution offering the collateral. Haircuts for discount window lending have historically been the province of the Federal Reserve Banks, and the Board believes that it is inappropriate to specify haircuts by regulation absent a compelling reason. Nevertheless, the Board believes that Federal Reserve Banks should be encouraged to adopt comparable collateral valuation procedures for book entry securities for nonbank banks and other depository institutions.

One primary dealer was particularly concerned about the interaction of the definition of overdrafts "on behalf of an affiliate" and the collateralization requirement for primary dealer overdrafts. This commenter believed that due to the drafting of the proposal, a primary dealer faced the possibility that nonaffiliate securities overdrafts would be deemed to be on its behalf and consequently requiring collateralization. The regulation has been revised to clarify that it does not require collateralization of overdrafts by customers other than affiliates.

The Board proposed establishing a cap or ceiling on the level of securities-related overdrafts to be permitted by any one nonbank bank. Such a cap was to be set through self-evaluation procedures similar to those used in the risk reduction program, and nonbank banks exceeding the cap would be counseled or subject to other action by their Federal Reserve Bank, in accordance with the Board's risk reduction policy. Only two comments were received on this question—one in favor and one opposed. After further consideration, the Board has determined that a cap should not be imposed in conjunction with the CEBA overdraft regulation.

—*Inadvertent Errors.* CEBA also exempts from the overdraft restrictions those overdrafts resulting from inadvertent computer or inadvertent accounting errors that are beyond the control of both the nonbank bank and the affiliate. An inadvertent accounting error is an error involving the recordation of entries to an account of a nonbank bank or affiliate resulting in an overdraft that was not reasonably

foreseeable or preventable by the nonbank bank or the affiliate. A misposting of an entry by a Reserve Bank would not result in an overdraft in a nonbank bank's account because no extension of credit had been made. Similarly, a misposting of an entry by a nonbank bank to an affiliate's account would not result in an overdraft.

An inadvertent computer error is an error resulting from a computer malfunction or from computer processing of adjustments in an account that results in an overdraft that was not reasonably foreseeable or preventable. Such errors would include problems where a nonbank bank or affiliate could not avoid book-entry securities overdrafts from inbound securities transfers, because it could not originate off-setting outbound transfers of securities or where a nonbank bank received a book-entry securities transaction sent to it in error. On the other hand, if a Federal Reserve Bank's computer should go down so as to prevent a Fedwire funds transfer from being sent to the nonbank bank, any overdraft due to outbound Fedwire funds transfers would be within the control of the nonbank bank, because the nonbank bank could have waited until it had sufficient funds in its account to cover the outbound transfer.

Sixteen commenters argued that this definition of inadvertent error should be broadened to include overdrafts where the nonbank bank executes a transaction on behalf of an affiliate that results in a debit to its account, and incurs an overdraft because an anticipated transaction that would have created an offsetting credit to its account is delayed because of Federal Reserve Bank computer problems. The Board believes that it would be inappropriate to broaden the definitions of inadvertent error to this extent. Nonbank banks should be responsible for controlling their own accounts. Although some nonbank bank commenters argued that they had a responsibility to make some transfers to prevent the customer's default on an obligation, customer account agreements between banks and their customers generally permit banks to delay customer transactions where necessary.

The posting rules and the Federal Reserve's advice services enable a nonbank bank to monitor its account balance. Under the posting rules, generally the only debits that are posted intraday result from funds and securities transfers. Credits for other transactions are posted in the morning and debits at the end of the day. A nonbank bank can

<sup>17</sup> This exemption does not apply to industrial banks.

<sup>18</sup> An overdraft is on behalf of a primary dealer affiliate only to the extent that the primary dealer has drawn down its accounts; the overdraft does not include any drawdown or overdraft on the books of the nonbank bank by a nonaffiliate of the nonbank bank.

get its opening balance each day from its Federal Reserve Bank at the time Fedwire opens for business in its district. The nonbank bank will know the amount of any ACH credits for which it has previously received advices, all its cash letters sent for collection, and the amount of any ACH debits that it originated and can add these credits to its opening balance. A Federal Reserve bank gives an automatic advice to on-line institutions of each funds or securities transfer when it is posted to the reserve account. Those institutions that are not on-line can have a standing request for a telephone advice for each such transfer. Therefore, the nonbank bank can adjust its balance throughout the day to reflect funds and securities transfers. And when the cash letter and ACH tape are presented to the nonbank bank, it can make the debit adjustments to its account as of the close of business. Thus, the nonbank bank should be able to closely monitor its balance with the Federal Reserve Bank according to the regulation's posting rules.

Finally, if the inadvertent error provision is expanded to cover Federal Reserve Bank computer outages, it would be difficult to justify not expanding it to cover outages at other banks. Staff believes that such a definition would lead to extremely complex inquiries into individual overdrafts and should be rejected. Nevertheless, staff recommends that the definition of an inadvertent error be expanded to include overdrafts due to the receipt of book entry securities transfers that are promptly returned as erroneous transfers.

**7. Definition of Bank:** The proposed rules amended the definition of bank in Regulation Y to reflect the changes to the bank definition in the BHC Act made by CEBA. They also added the definition of "affiliate" from CEBA and a definition of nonbank bank. The Board received no comment on the bank and affiliate definitions and is adopting them as proposed. The Board is adopting the nonbank bank definition to describe those institutions that were covered by the CEBA amendments.

**Conclusion:** Except for the limitation on overdrafts (§ 225.52) which is effective in 90 days, these amendments to Regulation Y are effective immediately. The amendments to section 225.2 merely set forth the definition of "bank", "nonbank bank", and "affiliate" that are provided in CEBA. The new section 225.51 defines the limitation on the asset growth of nonbank banks established by CEBA.

The Board finds good cause to make these amendments effective

immediately. The amendments to the section on definitions conform the regulation to the change in the statute. As a result of the enactment of CEBA, these definitions are already effective. The addition of section 225.51 is effective immediately because CEBA requires that grandfathered nonbank banks limit their annual asset growth for 12-month periods after August 10, 1988. This new section sets forth the means by which the Board will measure this growth. Because the statutory annual growth rate requirement is already in effect, the Board finds that there is good cause to make the regulation implementing that requirement effective immediately to allow nonbank banks to plan their business activities so as to conform to the method the Board will use to measure compliance with the limitation.

#### Paperwork Reduction Act Notice

The Board finds good cause for instituting a new collection of information without providing an opportunity for public comment. The new collection of information is a one-time occurrence. To comply with the statutory requirements of CEBA, nonbank banks must report the base asset figure against which the 7 percent limitation on growth will be measured. The rules provide that the nonbank banks with three options for determining their initial base figure. The nonbank bank must advise the Board by October 15, 1988 of the method elected. Should a nonbank bank elect to use the August 10, 1988 base date, it must file a report of that asset figure by October 15, 1988, along with its average assets for the third quarter of 1988. (Should a nonbank bank elect to use the third calendar quarter 1988 data or the average assets for the four quarters ending September 30, 1988, the information is already collected in Schedule RC-K of its Report of Condition.)

A nonbank bank electing to measure compliance with the growth rate on a rolling quarterly basis as permitted by the Board's rules, must report that election to the Board also by October 15, 1988.

The new collection of information must be instituted quickly and public participation in the approval process would substantially interfere with the Board's ability to perform its statutory obligation of enforcing the 7 percent growth limitation set forth in CEBA.

The information to be collected from nonbank banks is contained in a new information collection, the "Report by Nonbank Banks of Total Assets on August 10, 1988" (form FR 3050; OMB No. 7100-0236). This information

collection consists of a free-form voluntary report of the method chosen by the nonbank banks to calculate their initial base figure and the total assets of these institutions on August 10, 1988, if this method for calculating the annual base is elected along with the institution's average assets for the third quarter of 1988. This report was approved by the Board under delegated authority from the Office of Management and Budget ("OMB") at the same time the Board approved this final rule. The Board estimates that the disclosure requirement will result in a one-time reporting burden of 28 hours.

#### Final Regulatory Flexibility Act Analysis

Of the items required to be obtained in a final regulatory flexibility analysis by 5 U.S.C. § 604(a), the first (a statement of the need for and objectives of the rule) and the second (a summary of the issues raised by the commenters, the Board's assessment of the issues, and the changes made to the proposed rule in response to the comments) are contained elsewhere in this preamble.

The third item required for a final regulatory flexibility analysis is a description of the significant alternatives to the rule consistent with the objectives of applicable statutes and designed to minimize any significant economic effect of the rule on small entities considered by the Board, and why these were rejected.

The Board proposed that all requirements of the amended rules be applicable to all nonbank banks and industrial banks subject to the rules regardless of size. The small entities most likely to be affected by this rulemaking are the industrial banks that are subject to the limitations on overdrafts. No comments were received requesting exemption of industrial banks due to their small size. According to Board records on overdrafts under the current risk reduction policy, very few industrial banks reporting to the Board have incurred overdraft since the enactment of CEBA. Thus, it does not appear that a substantial number of industrial banks will be affected by the rule.

No comments were received stating that the new rules impose burdens specifically on small banks. Some comments stated that certain requirements, such as the posting rules, were burdensome and should not be required, but rather, that the Board should accept any *bona fide* posting system that did not discriminate against nonaffiliated depositors. As stated elsewhere in this preamble, the Board

considered this comment but determined that uniform posting rules are necessary to ensure equal treatment of all industrial banks, nonbank banks and their affiliates, because the posting procedures currently in place are not standardized throughout the industry.

Other than the overdraft rules for which the posting rules were set, the limitations established by these rules apply only to nonbank banks. There are approximately 55 of these institutions, and less than half are small entities. The Board considered exempting small banks from the rule's requirements, but CEBA does not provide an exemption according to the size of the nonbank bank.

#### List of Subjects in 12 CFR Part 225

Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in this notice, and pursuant to the Board's authority under section 5(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844), the Board amends 12 CFR Part 225 as follows:

#### PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for Part 225 continues to read as follows:

**Authority:** 12 U.S.C. 1817(j)(13), 1818, 1843(c)(8), 1844(b), 3106, 3108, 3907 and 3909.

2. In § 225.2 paragraphs (a) through (f) and (g) through (l) are redesignated as paragraphs (b) through (g) and (i) through (n) respectively; new paragraphs (a) and (h) are added; and newly redesignated paragraph (b) is revised to read as follows:

#### § 225.2 Definitions.

(a) "Affiliate" means any company that controls, is controlled by, or is under common control with, a bank or nonbank bank.

(b)(1) "Bank" means:

(i) An insured bank as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)); or  
(ii) An institution organized under the law of the United States which both:

(A) Accepts demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others; and

(B) Is engaged in the business of making commercial loans.

(2) "Bank" does not include those institutions qualifying under the

exceptions listed in section 2(c)(2) of the BHC Act (12 U.S.C. 1841(c)(2)).

(h) "Nonbank bank" means any institution that:

(1) Became a bank as a result of enactment of the Competitive Equality Amendments of 1987 (Pub. L. No. 100-86), on the date of such enactment (August 10, 1987); and

(2) Was not controlled by a bank holding company on the day before the enactment of the Competitive Equality Amendments of 1987 (August 9, 1987).

3. The heading "Appendices to Subparts A through E" is revised to read "Appendices to Subparts." Subpart F, consisting of §§ 225.51 and 225.52, is added immediately following Subpart E to read as follows:

#### Subpart F—Limitations on Nonbank Banks

225.51 Seven percent growth limit for nonbank banks.

225.52 Limitation on overdrafts.

#### Subpart F—Limitations on Nonbank Banks

##### § 225.51 Seven percent growth limit for nonbank banks.

(a) *Period for determining compliance.* A nonbank bank's annual rate of asset growth for purposes of paragraph (b) of this section shall be determined for twelve-month periods that begin on October 1 of each year and end on September 30 of the following year, unless the bank elects to use the alternative method described in paragraph (c) of this section. The initial 12-month period shall commence on October 1, 1988, and expire on September 30, 1989, unless the Board establishes a different period pursuant to paragraph (d) of this section.

(b) *Computing annual rate of asset growth.*—(1) *Initial 12-month period.* For the initial 12-month period beginning on October 1, 1988, the average of the nonbank bank's Total Assets as reported on Schedule RC-K of its Report of Condition for the four quarters during this period may not increase by more than 7 percent of the nonbank bank's initial base. The nonbank bank may determine its initial base under any of the following methods:

(i) Its Total Assets as reported on Schedule RC-K of its Report of Condition for the quarter ending September 30, 1988, divided by 1.601; or

(ii) Its total assets on August 10, 1988, divided by 1.567, unless the Board determines pursuant to paragraph (d) that such amount may not be used; or

(iii) The average of its Total Assets as reported on Schedule RC-K of its Report of Condition for the fourth quarter of 1987 and the first three quarters of 1988.

(2) *Succeeding 12-month periods.* For each 12-month period after the initial period, the average of the nonbank bank's Total Assets as reported on Schedule RC-K of its Report of Condition for the four quarters during that period may not increase by more than 7 percent of the average of its Total Assets as reported on Schedule RC-K of its Report of Condition for the four quarters in the preceding 12-month period.

(c) *Alternative method to compute annual rate of asset growth.*—(1) *Quarterly measurement permitted.* In lieu of the methods for measuring compliance with the asset growth rate described in paragraph (b) of this section, a nonbank bank may elect to have its compliance with the growth rate determined in the following manner: its Total Assets as reported on Schedule RC-K of its Report of Condition for each quarter ending after August 10, 1989, may not increase by more than 7 percent of its Total Assets as reported on Schedule RC-K of its Report of Condition for the same quarter of the previous year.

(2) *Initial quarter.* In measuring compliance with the growth rate under paragraph (c)(1) of this section for the third quarter of 1989, the nonbank bank may elect to use its assets on August 10, 1988, as the base rather than the Total Assets for the third quarter of 1988 as reported on Schedule RC-K of its Report of Condition.

(3) *Notice required.* A nonbank bank electing to compute its asset growth pursuant to this paragraph shall notify the Board by October 15, 1988, of this election. The nonbank bank may not thereafter alter its election.

(d) *Determination of total assets on August 10, 1988.* If the Board determines that a nonbank bank has engaged in transactions that have artificially inflated its total assets on August 10, 1988, and that are unrelated to its normal business activities, the Board may require that—

(1) The nonbank bank exclude such amounts in calculating its total assets on August 10, 1988, for purposes of paragraph (b)(1)(ii); or

(2) The initial 12-month period for determining compliance with the 7 percent growth rate shall commence on a date later than August 10, 1988, and the institution's total assets on that later date shall be used instead of the bank's total assets on August 10, 1988, for purposes of measuring compliance with

the 7 percent growth rate under paragraph (b)(1).

(e) *Required reports.* (1) A nonbank bank shall file with the Board by October 15, 1988, a statement indicating the method it has elected to compute its initial base for purposes of paragraph (b)(1), of this section.

(2) A nonbank bank electing to use its actual total assets on August 10, 1988, as its initial base for purposes of paragraph (b)(1) of this section, shall report that figure to the Board by October 15, 1988, and the nonbank bank's Total Assets for the third calendar quarter of 1988 as required to be reported on Schedule RC-K of its Report of Condition for that quarter.

#### § 225.52 Limitation on overdrafts.

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

(1) "Account" means a reserve account, clearing account, or deposit account as defined in the Board's Regulation D (12 CFR 204.2(a)(1)(i)), that is maintained at a Federal Reserve Bank or nonbank bank.

(2) "Cash item" means (i) a check other than a check classified as a noncash item; or (ii) any other item payable on demand and collectible at par that the Federal Reserve Bank of the district in which the item is payable is willing to accept as a cash item.

(3) "Discount window loan" means any credit extended by a Federal Reserve Bank to a nonbank bank or industrial bank pursuant to the provisions of the Board's Regulation A (12 CFR Part 201).

(4) "Industrial bank" means an institution as defined in section 2(c)(2)(H) of the BHC Act (12 U.S.C. 1841(c)(2)(H)).

(5) "Noncash item" means an item handled by a Reserve Bank as a noncash item under the Reserve Bank's "Collection of Noncash Items Operating Circular" (e.g., a maturing bankers' acceptance or a maturing security, or a demand item, such as a check, with special instructions or an item that has not been preprinted or post-encoded).

(6) "Other nonelectronic transactions" include all other transactions not included as funds transfers, book-entry securities transfers, cash items, noncash items, automated clearing house transactions, net settlement entries, and discount window loans (e.g., original issue of securities or redemption of securities).

(7) An "overdraft" in an account occurs whenever the Federal Reserve Bank, nonbank bank, or industrial bank holding an account posts a transaction to the account of the nonbank bank, industrial bank, or affiliate that exceeds

the aggregate balance of the accounts of the nonbank bank, industrial bank, or affiliate, as determined by the posting rules set forth in paragraphs (d) and (e) of this section and continues until the aggregate balance of the account is zero or greater.

(8) "Transfer item" means an item as defined in Subpart B of Regulation J (12 CFR 210.25 *et seq.*).

(b) *Restriction on overdrafts.*—(1) *Affiliates.* Neither a nonbank bank nor an industrial bank shall permit any affiliate to incur any overdraft in its account with the nonbank bank or industrial bank.

(2) *Nonbank banks or industrial banks.* (i) No nonbank bank or industrial bank shall incur any overdraft in its account at a Federal Reserve Bank on behalf of an affiliate.

(ii) An overdraft by a nonbank bank or industrial bank in its account at a Federal Reserve Bank shall be deemed to be on behalf of an affiliate whenever:

(A) A nonbank bank or industrial bank holds an account for an affiliate from which third-party payments can be made; and

(B) When the posting of an affiliate's transaction to the nonbank bank's or industrial bank's account at a Reserve Bank creates an overdraft in its account at a Federal Reserve Bank or increases the amount of an existing overdraft in its account at a Federal Reserve Bank.

(c) *Permissible overdrafts.* The following are permissible overdrafts not subject to paragraph (b) of this section:

(1) *Inadvertent error.* An overdraft in its account by a nonbank bank or its affiliate, or an industrial bank or its affiliate, that results from an inadvertent computer error or inadvertent accounting error, that was not reasonably foreseeable or could not have been prevented through the maintenance of procedures reasonably adopted by the nonbank bank or affiliate to avoid such overdraft; and

(2) *Fully secured primary dealer affiliate overdrafts.* (i) An overdraft incurred by an affiliate of a nonbank bank, which affiliate is recognized as a primary dealer by the Federal Reserve Bank of New York, in the affiliate's account at the nonbank bank, or an overdraft incurred by a nonbank bank on behalf of its primary dealer affiliate in the nonbank bank's account at a Federal Reserve Bank; *provided:* the overdraft is fully secured by bonds, notes, or other obligations which are direct obligations of the United States or on which the principal and interest are fully guaranteed by the United States or by securities and obligations eligible for settlement on the Federal Reserve book-entry system.

(ii) An overdraft by a nonbank bank in its account at a Federal Reserve Bank that is on behalf of a primary dealer affiliate is fully secured when that portion of its overdraft at the Federal Reserve Bank that corresponds to the transaction posted for an affiliate that caused or increased the nonbank bank's overdraft is fully secured in accordance with paragraph (c)(2)(iii) of this section.

(iii) An overdraft is fully secured under paragraph (c)(2)(i) when the nonbank bank can demonstrate that the overdraft is secured, at all times, by a perfected security interest in specific, identified obligations described in paragraph (c)(2)(i) with a market value that, in the judgment of the Reserve Bank holding the nonbank bank's account, is sufficiently in excess of the amount of the overdraft to provide a margin of protection in a volatile market or in the event the securities need to be liquidated quickly.

(d) *Posting by Federal Reserve Banks.* For purposes of determining the balance of an account under this section, payments and transfers by nonbank banks and industrial banks processed by the Federal Reserve Banks shall be considered posted to their accounts at Federal Reserve Banks as follows:

(1) *Funds transfers.* Transfer items shall be posted:

(i) To the transferor's account at the time the transfer is actually made by the transferor's Federal Reserve Bank; and

(ii) To the transferee's account at the time the transferee's Reserve Bank sends the transfer item or sends or telephones the advice of credit for the item to the transferee, whichever occurs first.

(2) *Book-entry securities transfers against payment.* A book-entry securities transfer against payment shall be posted: (i) to the transferor's account at the time the entry is made by the transferor's Reserve Bank; and (ii) to the transferee's account at the time the entry is made by the transferee's Reserve Bank.

(3) *Discount window loans.* Credit for a discount window loan shall be posted to the account of a nonbank bank or industrial bank at the close of business on the day that it is made or such earlier time as may be specifically agreed to by the Federal Reserve Bank and the nonbank bank under the terms of the loan. Debit for repayment of a discount window loan shall be posted to the account of the nonbank bank or industrial bank as of the close of business on the day of maturity of the loan or such earlier time as may be agreed to by the Federal Reserve Bank and the nonbank bank or required by

the Federal Reserve Bank under the terms of the loan.

(4) *Other transactions.* Total aggregate credits for automated clearing house transfers, cash items, noncash items, net settlement entries, and other nonelectronic transactions shall be posted to the account of a nonbank bank or industrial bank as of the opening of business on settlement day. Total aggregate debits for these transactions and entries shall be posted to the account of a nonbank bank or industrial bank as of the close of business on settlement day.

(e) *Posting by nonbank banks and industrial banks.* For purposes of determining the balance of an affiliate's account under this section, payments and transfers through an affiliate's account at a nonbank bank or industrial bank shall be posted as follows:

(1) *Funds transfers.* (i) Fedwire transfer items shall be posted:

(A) To the transferor affiliate's account no later than the time the transfer is actually made by the transferor's Federal Reserve Bank; and

(B) To the transferee affiliate's account no earlier than the time the transferee's Reserve Bank sends the transfer item, or sends or telephones the advice of credit for the item to the transferee, whichever occurs first.

(ii) For funds transfers not sent or received through Federal Reserve Banks, debits shall be posted to the transferor affiliate's account not later than the time the nonbank bank or industrial bank becomes obligated on the transfer. Credits shall not be posted to the transferee affiliate's account before the nonbank bank or industrial bank has received actually and finally collected funds for the transfer.

(2) *Book-entry securities transfers against payment.* (i) A book-entry securities transfer against payment shall be posted:

(A) To the transferor affiliate's account not earlier than the time the entry is made by the transferor's Reserve Bank; and

(B) To the transferee affiliate's account not later than the time the entry is made by the transferee's Reserve Bank.

(ii) For book-entry securities transfers against payment that are not sent or received through Federal Reserve Banks, entries shall be posted:

(A) To the buyer-affiliate's account not later than the time the nonbank bank or industrial bank becomes obligated on the transfer; and

(B) To the seller-affiliate's account not before the nonbank bank or industrial bank has received actually and finally collected funds for the transfer.

(3) *Other transactions.*—(i) *Credits.* Except as otherwise provided in this paragraph, credits for cash items, noncash items, ACH transfers, net settlement entries, and all other nonelectronic transactions shall be posted to an affiliate's account on the day of the transaction (*i.e.*, settlement day for ACH transactions or the day of credit for check transactions), but no earlier than the Federal Reserve Bank's opening of business on that day. Credit for cash items that are required by federal or state statute or regulation to be made available to the depositor for withdrawal prior to the posting time set forth in the preceding paragraph shall be posted as of the required availability time.

(ii) *Debits.* Debits for cash items, noncash items, ACH transfers, net settlement entries, and all other nonelectronic transactions shall be posted to an affiliate's account on the day of the transaction (*e.g.*, settlement day for ACH transactions or the day of presentment for check transactions), but no later than the Federal Reserve Bank's close of business on that day. If a check drawn on an affiliate's account or an ACH debit transfer received by an affiliate is returned timely by the nonbank bank or industrial bank in accordance with applicable law and agreements, no entry need be posted to the affiliate's account for such item.

4. Section 225.145 is added to read as follows:

**§ 225.145 Limitations established by the Competitive Equality Banking Act of 1987 on the activities and growth of nonbank banks.**

(a) *Introduction.* Effective August 10, 1987, the Competitive Equality Banking Act of 1987 ("CEBA") redefined the term "bank" in the Bank Holding Company Act ("BHC Act" or "Act") to include any bank the deposits of which are insured by the Federal Deposit Insurance Corporation as well as any other institution that accepts demand or checkable deposit accounts and is engaged in the business of making commercial loans. 12 U.S.C. 1841(c). CEBA also contained a grandfather provision for certain companies affected by this redefinition. CEBA amended section 4 of the BHC Act to permit a company that on March 5, 1987, controlled a nonbank bank (an institution that became a bank as a result of enactment of CEBA) and that was not a bank holding company on August 9, 1987, to retain its nonbank bank and not be treated as a bank holding company for purposes of the BHC Act if the company and its subsidiary nonbank bank observe

certain limitations imposed by CEBA.<sup>1</sup> Certain of these limitations are codified in section 4(f)(3) of the BHC Act and generally restrict nonbank banks from commencing new activities or certain cross-marketing activities with affiliates after March 5, 1987, increasing their assets at an annual rate exceeding 7 percent during any 12 month period after August 10, 1988, or permitting overdrafts for affiliates or incurring overdrafts on behalf of affiliates at a Federal Reserve Bank. 12 U.S.C. 1843(f)(3).<sup>2</sup> The Board's views regarding the meaning and scope of these limitations are set forth below and in provisions of the Board's Regulation Y (12 CFR 225.51 and 52).

(b) *Congressional findings.* (1) At the outset, the Board notes that the scope and application of the Act's limitations on nonbank banks must be guided by the Congressional findings set out in section 4(f)(3) of the BHC Act. Congress was aware that these nonbank banks had been acquired by companies that engage in a wide range of nonbanking activities, such as retailing and general securities activities that are forbidden to bank holding companies under section 4 of the BHC Act. In section 4(f)(3), Congress found that nonbank banks controlled by grandfathered nonbanking companies may, because of their relationships with affiliates, be involved in conflicts of interest, concentration of resources, or other effects adverse to bank safety and soundness. Congress also found that nonbank banks may be able to compete unfairly against banks controlled by bank holding companies by combining banking services with financial services not permissible for bank holding companies. Section 4(f)(3) states that the purpose of the nonbank bank limitations is to minimize any such potential adverse effects or inequities by restricting the activities of nonbank banks until further Congressional action in the area of bank powers could be undertaken. Similarly, the Senate Report accompanying CEBA states that the restrictions CEBA places on nonbank banks "will help prevent existing

<sup>1</sup> 12 U.S.C. 1843(f). Such a company is treated as a bank holding company, however, for purposes of the anti-tying provisions in section 106 of the BHC Act Amendments of 1970 (12 U.S.C. 1971 *et seq.*) and the insider lending limitations of section 22(h) of the Federal Reserve Act (12 U.S.C. 375b). The company is also subject to certain examination and enforcement provisions to assure compliance with CEBA.

<sup>2</sup> CEBA also prohibits, with certain limited exceptions, a company controlling a grandfathered nonbank bank from acquiring control of an additional bank or thrift institution or acquiring, directly or indirectly after March 5, 1987, more than 5 percent of the assets or shares of a bank or thrift institution. 12 U.S.C. 1843(f)(2).

nonbank banks from changing their basic character \* \* \* while Congress considers proposals for comprehensive legislation; from drastically eroding the separation of banking and commerce; and from increasing the potential for unfair competition, conflicts of interest, undue concentration of resources, and other adverse effects." S. Rep. No. 100-19, 100th Cong., 1st Sess. 12 (1987). See also H. Rep. No. 100-261, 100th Cong., 1st Sess. 124 (1987) (the "Conference Report").

(2) Thus, Congress explicitly recognized in the statute itself that nonbanking companies controlling grandfathered nonbank banks, which include the many of the nation's largest commercial and financial organizations, were being accorded a significant competitive advantage that could not be matched by bank holding companies because of the general prohibition against nonbanking activities in section 4 of the BHC Act. Congress recognized that this inequality in regulatory approach could inflict serious competitive harm on regulated bank holding companies as the grandfathered entities sought to exploit potential synergies between banking and commercial products and services. See Conference Report at 125-126. The basic and stated purpose of the restrictions on grandfathered nonbank banks is to minimize these potential anticompetitive effects.

(3) The Board believes that the specific CEBA limitations should be implemented in light of these Congressional findings and the legislative intent reflected in the plain meaning of the terms used in the statute. In those instances when the language of the statute did not provide clear guidance, legislative materials and the Congressional intent manifested in the overall statutory structure were considered. The Board also notes that prior precedent requires that grandfather exceptions in the BHC Act, such as the nonbank bank limitations and particularly the exceptions thereto, are to be interpreted narrowly in order to ensure the proper implementation of Congressional intent.<sup>3</sup>

(c) *Activity limitation.*—(1) *Scope of "activity".* (i) The first limitation established under section 4(f)(3) provides that a nonbank bank shall not "engage in any activity in which such bank was not lawfully engaged as of March 5, 1987." The term "activity" as used in this provision of CEBA is not

defined. The structure and placement of the CEBA activity restriction within section 4 of the BHC Act and its legislative history do, however, provide direction as to certain transactions that Congress intended to treat as separate activities, thereby providing guidance as to the meaning Congress intended to ascribe to the term generally. First, it is clear that the term "activity" was not meant to refer to banking as a single activity. To the contrary, the term must be viewed as distinguishing between deposit taking and lending activities and treating demand deposit-taking as a separate activity from general deposit-taking and commercial lending as separate from the general lending category.

(ii) Under the activity limitation, a nonbank bank may engage only in activities in which it was "lawfully engaged" as of March 5, 1987. As of that date, a nonbank bank could not have been engaged in both demand deposit-taking and commercial lending activity without placing it and its parent holding company in violation of the BHC Act. Thus, under the activity limitations, a nonbank bank could not after March 5, 1987, commence the demand deposit-taking or commercial lending activity that it did not conduct as of March 5, 1987. The debates and Senate and Conference Reports on CEBA confirm that Congress intended the activity limitation to prevent a grandfathered nonbank bank from converting itself into a full-service bank by both offering demand deposits and engaging in the business of making commercial loans.<sup>4</sup> Thus, these types of transactions provide a clear guide as to the type of banking transactions that would constitute activities under CEBA and the degree of specificity intended by Congress in interpreting that term.

(iii) It is also clear that the activity limitation was not intended simply to prevent a nonbank bank from both accepting demand deposits and making commercial loans; it has a broader scope and purpose. If Congress had meant the term to refer to just these two activities, it would have used the restriction it used in another section of CEBA dealing with nonbank banks owned by bank holding companies which has this result, *i.e.*, the nonbank bank could not engage in any activity that would have caused it to become a

bank under the prior bank definition in the Act. See 12 U.S.C. 1843(g)(1)(A). Indeed, an earlier version of CEBA under consideration by the Senate Banking Committee contained such a provision for nonbank banks owned by commercial holding companies, which was deleted in favor of the broader activity limitation actually enacted. Committee Print No. 1, (Feb. 17, 1987). In this regard, both the Senate Report and Conference Report refer to demand deposit-taking and commercial lending as examples of activities that could be affected by the activity limitation, not as the sole activities to be limited by the provision.<sup>5</sup>

(iv) Finally, additional guidance as to the meaning of the term "activity" is provided by the statutory context in which the term appears. The activity limitation is contained in section 4 of the BHC Act, which regulates the investments and activities of bank holding companies and their nonbank subsidiaries. The Board believes it reasonable to conclude that by placing the CEBA activity limitation in section 4 of the BHC Act, Congress meant that Board and judicial decisions regarding the meaning of the term "activity" in that section be looked to for guidance. This is particularly appropriate given the fact that grandfathered nonbank banks, whether owned by bank holding companies or unregulated holding companies, were treated as nonbank companies and not banks before enactment of CEBA.

(v) This interpretation of the term activity draws support from comments by Senator Proxmire during the Senate's consideration of the provision that the term was not intended to apply "on a product-by-product, customer-by-customer basis." 133 Cong. Rec. S4054-5 (daily ed. March 27, 1987). This is the same manner in which the Board has interpreted the term activity in the nonbanking provision of section 4 as referring to generic categories of activities, not to discrete products and services.

(vi) Accordingly, consistent with the terms and purposes of the legislation and the Congressional intent to minimize unfair competition and the other adverse effects set out in the CEBA findings, the Board concludes that the term "activity" as used in section 4(f)(3) means any line of banking or nonbanking business. This definition does not, however, envision a product-by-product approach to the activity limitation. The Board believes it would

<sup>3</sup> Conference Report at 124-25; S. Rep. No. 100-19 at 12, 32; H. Rep. No. 99-175, 99th Cong., 1st Sess. 3 (1985) ("the activities limitation is to prevent an institution engaged in a limited range of functions from expanding into new areas and becoming, in essence, a full-service bank"); 133 Cong. Rec. S4054 (daily ed. March 27, 1987); (Comments of Senator Proxmire).

<sup>5</sup> Conference Report at 124-125; S. Rep. No. 100-19 at 32.

<sup>4</sup> *E.g., Maryland National Corporation*, 73 Federal Reserve Bulletin 310, 313-314 (1987). *Cf., Spokane & Inland Empire Railroad Co. v. United States*, 241 U.S. 344, 350 (1915).

be helpful to describe the application of the activity limitation in the context of the following major categories of activities: deposit-taking, lending, trust, and other activities engaged in by banks.

(2) *Deposit-taking activities.* (i) With respect to deposit-taking, the Board believes that the activity limitation in section 4(f)(3) generally refers to three types of activity: demand deposit-taking; non-demand deposit-taking with a third party payment capability; and time and savings deposit-taking without third party payment powers. As previously discussed, it is clear from the terms and intent of CEBA that the activity limitation would prevent, and was designed to prevent, nonbank banks that prior to the enactment of CEBA had refrained from accepting demand deposits in order to avoid coverage as a "bank" under the BHC Act, from starting to take these deposits after enactment of CEBA and thus becoming full-service banks. Accordingly, CEBA requires that the taking of demand deposits be treated as a separate activity.

(ii) The Board also considers nondemand deposits withdrawable by check or other similar means for payment to third parties or others to constitute a separate line of business for purposes of applying the activity limitation. In this regard, the Board has previously recognized that this line of business constitutes a permissible but separate activity under section 4 of the BHC Act. Furthermore, the offering of accounts with transaction capability requires different expertise and systems than non-transaction deposit-taking and represented a distinct new activity that traditionally separated banks from thrift and similar institutions.

(iii) Support for this view may also be found in the House Banking Committee report on proposed legislation prior to CEBA that contained a similar prohibition on new activities for nonbank banks. In discussing the activity limitation, the report recognized a distinction between demand deposits and accounts with transaction capability and those without transaction capability:

With respect to deposits, the Committee recognizes that it is legitimate for an institution currently involved in offering demand deposits or other third party transaction accounts to make use of new technologies that are in the process of replacing the existing check-based, paper payment system. Again, however, the Committee does not believe that technology should be used as a lever for an institution that was only incidentally involved in the payment system to transform itself into a

significant offeror of transaction account capability.<sup>6</sup>

(iv) Finally, this distinction between demand and nondemand checkable accounts and accounts not subject to withdrawal by check was specifically recognized by Congress in the redefinition of the term "bank" in CEBA to include an institution that takes demand deposits or "deposits that the depositor may withdraw by check or other means for payment to third parties or others" as well as in various exemptions from that definition for trust companies, credit card banks, and certain industrial banks.<sup>7</sup>

(v) Thus, an institution that as of March 5, 1987, offered only time and savings accounts that were not withdrawable by check for payment to third parties could not thereafter begin offering accounts with transaction capability, for example, NOW accounts or other types of transaction accounts.

(3) *Lending.* As noted, the CEBA activity limitation does not treat lending as a single activity; it clearly distinguishes between commercial and other types of lending. This distinction is also reflected in the definition of "bank" in the BHC Act in effect both prior to and after enactment of CEBA as well as in various of the exceptions from this definition. In addition, commercial lending is a specialized form of lending involving different techniques and analysis from other types of lending. Based upon these factors, the Board would view commercial lending as a separate and distinct activity for purposes of the activity limitation in section 4(f)(3). The Board's decisions under section 4 of the BHC Act have not generally differentiated between types of commercial lending, and thus the Board would view commercial lending as a single activity for purposes of CEBA. Thus, a nonbank bank that made commercial loans as of March 5, 1987, could make any type of commercial loan thereafter.

(i) *Commercial lending.* For purposes of the activity limitation, a commercial loan is defined in accordance with the Supreme Court's decision in *Board of Governors v. Dimension Financial Corporation*, 474 U.S. 361 (1986), as a direct loan to a business customer for the purpose of providing funds for that customer's business. In this regard, the Board notes that whether a particular transaction is a commercial loan must be determined not from the face of the instrument, but from the application of the definition of commercial loan in the

*Dimension* decision to that transaction. Thus, certain transactions of the type mentioned in the Board's ruling at issue in *Dimension* and in the Senate and Conference Reports in the CEBA legislation<sup>8</sup> would be commercial loans if they meet the test for commercial loans established in *Dimension*. Under this test, a commercial loan would not include, for example, an open-market investment in a commercial entity that does not involve a borrower-lender relationship or negotiation of credit terms, such as a money market transaction.

(ii) *Other lending.* Based upon the guidance in the Act as to the degree of specificity required in applying the activity limitation with respect to lending, the Board believes that, in addition to commercial lending, there are three other types of lending activities: consumer mortgage lending, consumer credit card lending, and other consumer lending. Mortgage lending and credit card lending are recognized, discrete lines of banking and business activity, involving techniques and processes that are different from and more specialized than those required for general consumer lending. For example, these activities are, in many cases, conducted by specialized institutions, such as mortgage companies and credit card institutions, or through separate organizational structures within an institution, particularly in the case of mortgage lending. Additionally, the Board's decisions under section 4 of the Act have recognized mortgage banking and credit card lending as separate activities for bank holding companies. The Board's Regulation Y reflects this specialization, noting as examples of permissible lending activity: consumer finance, credit card and mortgage lending. 12 CFR 225.25(b)(1). Finally, CEBA itself recognizes the specialized nature of credit card lending by exempting an institution specializing in that activity from the bank definition. For purpose of the activity limitation, a consumer mortgage loan will mean any loan to an individual that is secured by real estate and that is not a commercial loan. A credit card loan would be any loan made to an individual by means of a credit card that is not a commercial loan.

(4) *Trust activities.* Under section 4 of the Act, the Board has historically treated trust activities as a single activity and has not differentiated the function on the basis of whether the customer was an individual or a

<sup>6</sup> H. Rep. No. 99-175, 99th Cong., 1st Sess. 13 (1985).

<sup>7</sup> See 12 U.S.C. 1841(c)(2) (D), (F), (H), and (I).

<sup>8</sup> S. Rep. No. 100-19 at 31; Conference Report at 123.

business. See 12 CFR 225.25(b)(3). Similarly, the trust company exemption from the bank definition in CEBA makes no distinction between various types of trust activities. Accordingly, the Board would view trust activities as a separate activity without additional differentiation for purposes of the activity limitation in section 4(f)(3).

(5) *Other activities.* With respect to activities other than the various traditional deposit-taking, lending or trust activities, the Board believes it appropriate, for the reasons discussed above, to apply the activity limitation in section 4(f)(3) as the term "activity" generally applies in other provisions of section 4 of the BHC Act. Thus, a grandfathered nonbank bank could not, for example, commence after March 5, 1987, any of the following activities (unless it was engaged in such an activity as of that date): discount securities brokerage, full-service securities brokerage investment advisory services, underwriting or dealing in government securities as permissible for member banks, foreign exchange transaction services, real or personal property leasing, courier services, data processing for third parties, insurance agency activities,<sup>9</sup> real estate development, real estate brokerage, real estate syndication, insurance underwriting, management consulting, futures commission merchant, or activities of the general type listed in § 225.25(b) of Regulation Y.

(6) *Meaning of "engaged in".* In order to be "engaged in" an activity, a nonbank bank must demonstrate that it had a program in place to provide a particular product or service included within the grandfathered activity to a customer and that it was in fact offering the product or service to customers as of March 5, 1987. Thus, a nonbank bank is not engaged in an activity as of March 5, 1987, if the product or service in question was in a planning state as of that date and had not been offered or delivered to a customer. Consistent with prior Board interpretations of the term activity in the grandfather provisions of section 4, the Board does not believe that a company may be engaged in an activity on the basis of a single isolated transaction that was not part of a program to offer the particular product or to conduct in the activity on an ongoing basis. For example, a nonbank bank that held an interest in a single

real estate project would not thereby be engaged in real estate development for purposes of this provision, unless evidence was presented indicating the interest was held under a program to commence a real estate development business.

(7) *Meaning of "as of".* The Board believes that the grandfather date "as of March 5, 1987" as used throughout section 4(f)(3) should refer to activities engaged in on March 5, 1987, or a reasonably short period preceding this date not exceeding 13 months. 133 Cong. Rec. S3957 (daily ed. March 26, 1987). (Remarks of Senators Dodd and Proxmire). Activities that the institution had terminated prior to March 5, 1988, however, would not be considered to have been conducted or engaged in "as of" March 5. For example, if within 13 months of March 5, 1987, the nonbank bank had terminated its commercial lending activity in order to avoid the "bank" definition in the Act, the nonbank bank could not recommence that activity after enactment of CEBA.

(d) *Cross-marketing limitation.*—(1) *In general.* Section 4(f)(3) also limits cross-marketing activities by nonbank banks and their affiliates. Under this provision, a nonbank bank may not offer or market a product or service of an affiliate unless the product or service may be offered by bank holding companies generally under section 4(c)(8) of the BHC Act. In addition, a nonbank bank may not permit any of its products or services to be offered or marketed by or through a nonbank affiliate unless the affiliate engages only in activities permissible for a bank holding company under section 4(c)(8). These limitations are subject to an exception for products or services that were being so offered or marketed as of March 5, 1987, but only in the same manner in which they were being offered or marketed as of that date.

(2) *Examples of impermissible cross-marketing.* The Conference Report illustrates the application of this limitation to the following two covered transactions: (i) products and services of an affiliate that bank holding companies may not offer under the BHC Act, and (ii) products and services of the nonbank bank. In the first case, the restrictions would prohibit, for example, a company from marketing life insurance or automotive supplies through its affiliate nonbank bank because these products are not generally permissible under the BHC Act. Conference Report at 126. In the second case, a nonbank bank may not permit its products or services to be offered or marketed through a life insurance

affiliate or automobile parts retailer because these affiliates engage in activities prohibited under the BHC Act. *Id.*

(3) *Permissible cross-marketing.* On the other hand, a nonbank bank could offer to its customers consumer loans from an affiliated mortgage banking or consumer finance company. These affiliates could likewise offer their customers the nonbank bank's products or services provided the affiliates engaged only in activities permitted for bank holding companies under the closely-related-to-banking standard of section 4(c)(8) of the BHC Act. If the affiliate is engaged in both permissible and impermissible activities within the meaning of section 4(c)(8) of the BHC Act, however, the affiliate could not offer or market the nonbank bank's products or services.

(4) *Product approach to cross-marketing restriction.* (i) Unlike the activity restrictions, the cross-marketing restrictions of CEBA apply by their terms to individual products and services. Thus, an affiliate of a nonbank bank that was engaged in activities that are not permissible for bank holding companies and that was marketing a particular product or service of a nonbank bank on the grandfather date could continue to market that product and, as discussed below, could change the terms and conditions of the loan. The nonbank affiliate could not, however, begin to offer or market another product or service of the nonbank bank.

(ii) The Board believes that the term "product or service" must be interpreted in light of its accepted ordinary commercial usage. In some instances, commercial usage has identified a group of products so closely related that they constitute a product line (e.g., certificates of deposit) and differences in versions of the product (e.g., a one-year certificate of deposit) simply represent a difference in the terms of the product.<sup>10</sup> This approach is consistent with the treatment in CEBA's legislative history of certificates of deposit as a product line rather than each particular type of CD as a separate product.<sup>11</sup>

<sup>10</sup> American Bankers Association, *Banking Terminology* (1981).

<sup>11</sup> During the Senate debates on CEBA, Senator Proxmire in response to a statement from Senator Cranston that the joint-marketing restrictions do not lock into place the specific terms or conditions of the particular grandfathered product or service, stated:

That is correct. For example, if a nonbank bank was jointly marketing on March 5, 1987, a 3 year, \$5,000 certificate of deposit, this bill would not prohibit offering in the same manner a 1 year, \$2,000 certificate of deposit with a different interest rate. 133 Cong. Rec. S3959 (daily ed. March 26, 1987).

<sup>9</sup> In this area, section 4 of the Act does not treat all insurance agency activities as a single activity. Thus, for example, the Act treats the sale of credit-related life, accident and health insurance as a separate activity from general insurance agency activities. See 12 U.S.C. 1843(c)(8).

(iii) In the area of consumer lending, the Board believes the following provide examples of different consumer loan products: mortgage loans to finance the purchase of the borrower's residence, unsecured consumer loans, consumer installment loans secured by the personal property to be purchased (e.g. automobile, boat or home appliance loans), or second mortgage loans.<sup>12</sup> Under this interpretation, a nonbank bank that offered automobile loans through a nonbank affiliate on the grandfather date could market boat loans, appliance loans or any type of secured consumer installment loan through that affiliate. It could not, however, market unsecured consumer loans, home mortgage loans or other types of consumer loans.

(iv) In other areas, the Board believes that the determination as to what constitutes a product or service should be made on a case-by-case basis consistent with the principles that the terms "product or service" must be interpreted in accordance with their ordinary commercial usage and must be narrower in scope than the definition of activity. Essentially, the concept applied in this analysis is one of permitting the continuation of the specific product marketing activity that was undertaken as of March 5, 1987. Thus, for example, while insurance underwriting may constitute a separate activity under CEBA, a nonbank bank could not market a life insurance policy issued by the affiliate if on the grandfather date it had only marketed homeowners' policies issued by the affiliate.

(5) *Change in terms and conditions permitted.* (i) The cross-marketing restrictions would not limit the ability of the institution to change the specific terms and conditions of a particular grandfathered product or service. The Conference Report indicates a legislative intent not to lock into place the specific terms or conditions of a grandfathered product or service. Conference Report at 126. For example, a nonbank bank marketing a three-year, \$5,000 certificate of deposit through an affiliate under the exemption could offer a one-year \$2,000 certificate of deposit with a different interest rate after the grandfather date. See footnote 11 above. Modifications that alter the type of

product, however, are not permitted. Thus, a nonbank bank that marketed through affiliates on March 5, 1987, only certificates of deposit could not commence marketing MMDA's or NOW accounts after the grandfather date.

(ii) General changes in the character of the product or service as the result of market or technological innovation are similarly permitted to the extent that they do not transform a grandfathered product into a new product. Thus, an unsecured line of credit could not be modified to include a lien on the borrower's residence without becoming a new product.

(6) *Meaning of "offer or market".* In the Board's opinion, the terms "offer or market" in the cross-marketing restrictions refer to the presentation to a customer of an institution's products or service through any type of program, including telemarketing, advertising brochures, direct mailing, personal solicitation, customer referrals, or joint-marketing agreements or presentations. An institution must have offered or actually marketed the product or service on March 5 or shortly before that date (as discussed above) to qualify for the grandfather privilege. Thus, if the cross-marketing program was in the planning stage on March 5, 1987, the program would not qualify for grandfather treatment under CEBA.

(7) *Limitations on cross-marketing to "in the same manner".* (i) The cross-marketing restriction in section 4(f)(3) contains a grandfather provision that permits products or services that would otherwise be prohibited from being offered or marketed under the provision to continue to be offered or marketed by a particular entity if the products or services were being so offered or marketed as of March 5, 1987, but "only in the same manner in which they were being offered or marketed as of that date." Thus, to qualify for the grandfather provision, the manner of offering or marketing the otherwise prohibited product or service must remain the same as on the grandfather date.

(ii) In interpreting this provision, the Board notes that Congress designed the joint-marketing restrictions to prevent the significant risk to the public posed by the conduct of such activities by insured banks affiliated with companies engaged in general commerce, to ensure objectivity in the credit-granting process and to "minimize the unfair competitive advantage that grandfathered commercial companies owning nonbank banks might otherwise engage over regulated bank holding companies and our competing commercial companies

that have no subsidiary bank." Conference Report at 125-126. The Board believes that determinations regarding the manner of cross-marketing of a particular product or service may best be accomplished by applying the limitation to the particular facts in each case consistent with the stated purpose of this provision of CEBA and the general principle that grandfather restrictions and exceptions to general prohibitions must be narrowly construed in order to prevent the exception from nullifying the rule. Essentially, as in the scope of the term "product or service", the guiding principle of Congressional intent with respect to this term is to permit only the continuation of the specific types of cross-marketing activity that were undertaken as of March 5, 1987.

(8) *Eligibility for cross-marketing grandfather exemption.* The Conference Report also clarifies that entitlement to an exemption to continue to cross-market products and services otherwise prohibited by the statute applies only to the specific company that was engaged in the activity as of March 5, 1987. Conference Report at 126. Thus, an affiliate that was not engaged in cross-marketing products or services as of the grandfather date may not commence these activities under the exemption even if such activities were being conducted by another affiliate. *Id.*; see also S. Rep. No. 100-19 at 33-34.

(e) *Eligibility for grandfathered nonbank bank status.* In reviewing the reports required by CEBA, the Board notes that a number of institutions that had not commenced business operations on August 10, 1987, the date of enactment of CEBA, claimed grandfather privileges under section 4(f)(3) of CEBA. To qualify for grandfather privileges under section 4(f)(3), the institution must have "bec[ame] a bank as a result of the enactment of [CEBA]" and must have been controlled by a nonbanking company on March 5, 1987. 12 U.S.C. 1843(f)(1)(A). An institution that did not have FDIC insurance on August 10, 1987, and that did not accept demand deposits or transaction accounts or engage in the business of commercial lending on that date, would not have become a "bank" as a result of enactment of CEBA. Thus, institutions that had not commenced operations on August 10, 1987, could not qualify for grandfather privileges under section 4(f)(3) of CEBA. This view is supported by the activity limitations of section 4(f)(3), which, as noted, limit the activities of grandfathered nonbank banks to those in which they were lawfully engaged as of March 5, 1987. A

<sup>12</sup> In this regard, the Supreme Court in *United States v. Philadelphia National Bank*, noted that "the principal banking products are of course various types of credit, for example: unsecured personal and business loans, mortgage loans, loans secured by securities or accounts receivable, automobile installment and consumer goods, installment loans, tuition financing, bank credit cards, revolving credit funds." 374 U.S. 321, 326 n.5 (1963).

nonbank bank that had not commenced conducting business activities on March 5, 1987, could not after enactment of CEBA engage in any activities under this provision.

Board of Governors of the Federal Reserve System, September 21, 1988.

William W. Wiles,  
Secretary of the Board.

[FR Doc. 88-21983 Filed 9-27-88; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration International Trade Administration

15 CFR Chs. III and VII

[Docket No. 80856-8156]

### Transfer and Redesignation of the Export Administration Regulations

AGENCY: Bureau of Export  
Administration, Commerce.

#### ACTION: Final rule.

**SUMMARY:** On October 1, 1987, the export control functions under the Export Administration Act of 1979, as amended, were transferred from the International Trade Administration to a new entity, designated the Bureau of Export Administration, within the U.S. Department of Commerce.

This rule transfers the Export Administration Regulations from Chapter III where the regulations of the International Trade Administration are published to a new Chapter VII under Title 15 of the Code of Federal Regulations. Formerly codified as 15 CFR Parts 368-399, the Regulations are redesignated as 15 CFR Parts 768-799.

**EFFECTIVE DATE:** October 1, 1988.

**FOR FURTHER INFORMATION CONTACT:**  
Joan Maguire, Regulations Branch,

Office of Technology and Policy  
Analysis, Bureau of Export  
Administration, Telephone: (202) 377-  
4479.

Accordingly, Title 15 of the Code of Federal Regulations is amended as follows:

### CHAPTER VII—BUREAU OF EXPORT ADMINISTRATION, DEPARTMENT OF COMMERCE

1. A new Chapter VII is established entitled "Chapter VII—Bureau of Export Administration, Department of Commerce."

1a. In Chapter III, Subchapter C is vacated and its contents are transferred to Chapter VII to be redesignated as shown in the table set forth below and all internal cross references in 15 CFR Parts 768-799 are amended to reflect the newly redesignated parts.

Part	Present 15 CFR Designation		Part	New 15 CFR Designation
None			700-767	[Reserved]
368	(§§ 368.1-368.4)	U.S. Import Certificate and Delivery Verification Procedure	768	(§§ 768.1-768.4)
369	(§§ 369.1-369.8)	Restrictive Trade Practice or Boycotts	769	(§§ 769.1-769.8)
370	(§§ 370.1-370.15)	Export Licensing General Policy and Related Information	770	(§§ 770.1-770.15)
371	(§§ 371.1-371.23)	General Licenses	771	(§§ 771.1-771.23)
372	(§§ 372.1-372.13)	Individual Validated Licenses and Amendments	772	(§§ 772.1-772.13)
373	(§§ 373.1-373.8)	Special Licensing Procedures	773	(§§ 773.1-773.8)
374	(§§ 374.1-374.9)	Reexports	774	(§§ 774.1-774.9)
375	(§§ 375.1-375.9)	Documentation Requirements	775	(§§ 775.1-775.9)
376	(§§ 376.1-376.18)	Special Commodity Policies and Provisions	776	(§§ 776.1-776.18)
377	(§§ 377.1-377.15)	Short Supply Controls and Monitoring	777	(§§ 777.1-777.15)
378	(§§ 378.1-378.8)	Special Nuclear Controls	778	(§§ 778.1-778.8)
379	(§§ 379.1-379.10)	Technical Data	779	(§§ 779.1-779.10)
380-384	[Reserved]		780-784	[Reserved]
385	(§§ 385.1-385.7)	Special Country Policies and Provisions	785	(§§ 785.1-785.7)
386	(§§ 386.1-386.10)	Export Clearance	786	(§§ 786.1-786.10)
387	(§§ 387.1-387.14)	Enforcement	787	(§§ 787.1-787.14)
388	(§§ 388.1-388.23)	Administrative Proceedings	788	(§§ 788.1-788.23)
389	(§§ 389.1-389.3)	Appeals	789	(§§ 789.1-789.3)
390	(§§ 390.1-390.7)	General Orders	790	(§§ 790.1-790.7)
391	(§§ 391.1-391.6)	Foreign Availability Procedures and Criteria	791	(§§ 791.1-791.6)
392-398	[Reserved]		792-798	[Reserved]
399	(§§ 399.1-399.2)	Commodity Control List and Related Matters	799	(§§ 799.1-799.2)

2. The authority citations for newly designated Parts 768, 769, 770, 774, 775, 776, 778, and 791 are revised to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, by Pub. L. 100-418 of August 23, 1988, and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

3. The authority citations for newly designated Parts 771, 772, 785, 786, 787, and 789 are revised to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, by Pub. L.

100-418 of August 23, 1988, and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

4. The authority citations for newly designated Parts 773, 779, and 799 continue to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, by Pub. L. 100-418 of August 23, 1988, and by Pub. L. 99-

64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

5. The authority citation for newly designated Part 777 is revised to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, by Pub. L. 100-418 of August 23, 1988, and by Pub. L. 99-

64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); sec. 103, Pub. L. 94-163 of December 22, 1975 (42 U.S.C. 6212) as amended by Pub. L. 99-58 of July 2, 1985; sec. 101, Pub. L. 93-153 of November 16, 1973 (30 U.S.C. 185); sec. 28, Pub. L. 95-372 of September 18, 1978 (43 U.S.C. 1354); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976 as amended; sec. 201 and 201(1)(e), Pub. L. 94-258 of April 5, 1976 (10 U.S.C. 7420 and 7430(e)); Presidential Findings of June 14, 1985 (50 FR 25189, June 18, 1985); and sec. 125, Pub. L. 99-64 of July 12, 1985 (46 U.S.C. 466(c)).

6. The authority citation for newly designated Part 790 is revised to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, by Pub. L. 100-418 of August 23, 1988, and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12543 of January 7, 1986 (51 FR 875, January 9, 1986).

Dated: September 22, 1988.

Paul Freedenberg,

Under Secretary for Export Administration.

Dated: September 22, 1988.

Joan McEntee,

Deputy Under Secretary for International Trade.

[FR Doc. 88-22116 Filed 9-27-88; 9:29 am]

BILLING CODE 3510-DT-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 133

[Docket No. 86P-0436]

#### Mozzarella Cheeses; Amendment of Standards of Identity; Confirmation of Effective Date

**AGENCY:** Food and Drug Administration.  
**ACTION:** Final rule; confirmation of effective date.

**SUMMARY:** The Food and Drug Administration (FDA) is confirming the effective date for compliance with the final rule amending the standards of identity for mozzarella cheese, low-moisture mozzarella cheese, and, by cross-reference, part-skim mozzarella cheese and low-moisture part-skim mozzarella cheese to provide for the optional use of water buffalo milk; update the formats and language of the standards; and provide for functional group designations of safe and suitable optional ingredients.

**EFFECTIVE DATE:** April 11, 1988, for all affected products initially introduced or initially delivered for introduction into interstate commerce on or after this date.

**FOR FURTHER INFORMATION CONTACT:** Karen L. Carson, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0110.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of February 9, 1988 (53 FR 3742), FDA issued a final rule amending the standards of identity for mozzarella cheese (21 CFR 133.155) and low-moisture mozzarella cheese (21 CFR 133.156), and, by cross-reference, the standards of identity for part-skim mozzarella cheese (21 CFR 133.157) and low-moisture part-skim mozzarella cheese (21 CFR 133.158) to (1) provide for the optional use of water buffalo milk; (2) update the formats and language of the standards; and (3) provide for functional group designations of safe and suitable optional ingredients. This action was based on a petition from De Choix Specialty Foods Co., 58-25 52d Ave., Woodside, NY 11377.

Any person who would be adversely affected by the regulation could have, at any time on or before March 10, 1988, filed written objections to the final regulation and requested a hearing on the specific provisions to which there were objections. No objections or requests for a hearing were received.

#### List of Subjects in 21 CFR Part 133

Cheese, Food grades and standards.

#### PART 133—CHEESES AND RELATED CHEESE PRODUCTS

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Food Safety and Applied Nutrition (21 CFR 5.62), notice is given that the amendments of Part 133 that were set forth in the Federal Register of February 9, 1988 (53 FR 3742), became effective April 11, 1988.

Dated: September 16, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-22206 Filed 9-27-88; 8:45 am]

BILLING CODE 4160-01-M

#### 21 CFR Part 520

#### Oral Dosage Form New Animal Drugs Not Subject to Certification; Apramycin Sulfate Soluble Powder

**AGENCY:** Food and Drug Administration.  
**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Elanco Products Co., providing for revised specifications for apramycin sulfate soluble powder used in the drinking water of swine for control of porcine colibacillosis.

**EFFECTIVE DATE:** September 28, 1988.

**FOR FURTHER INFORMATION CONTACT:** John R. Markus, Center for Veterinary Medicine (HFV-142), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3442.

**SUPPLEMENTARY INFORMATION:** Elanco Products Co., a Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, filed supplemental NAD 106-964 providing for an additional size container for apramycin sulfate soluble powder used to make a medicated swine drinking water for the control of porcine colibacillosis (weanling pig scours) caused by strains of *E. coli* sensitive to apramycin (21 CFR 520.110(d)(1)). The new container provides for use of 48 grams of apramycin to medicate 128 gallons of drinking water in addition to the currently approved use of 37.5 grams to medicate 100 gallons. Both containers, when diluted as directed, will provide the equivalent of 0.375 gram of apramycin activity per gallon of drinking water. The supplement is approved and the specification in 21 CFR 520.110(a) is revised to provide for use of the equivalent of 0.375 gram of apramycin activity in each gallon of drinking water.

Approval of this supplement is for a revised marketing package which does not change the concentration of the reconstituted product or the dosage used. This approval does not affect the safety or effectiveness data supporting the original approval and does not require a revision of the freedom of information (FOI) summary.

#### List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food,

Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 520 is amended as follows:

**PART 520—ORAL DOSAGE FORM  
NEW ANIMAL DRUGS NOT SUBJECT  
TO CERTIFICATION**

1. The authority citation for 21 CFR Part 520 continues to read as follows:

**AUTHORITY:** Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83

2. Section 520.110 is amended by revising paragraph (a) to read as follows:

§ 520.110 **Apramycin sulfate soluble powder.**

(a) *Specifications.* A water soluble powder used to make a medicated drinking water containing apramycin sulfate equivalent to 0.375 gram of apramycin activity per gallon of drinking water.

Dated: September 21, 1988.

Robert C. Livingston,

*Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.*

[FR Doc. 88-22205 Filed 9-27-88; 8:45 am]

BILLING CODE 4160-01-M

**DEPARTMENT OF JUSTICE**

**28 CFR Part 14**

[Order No. 1302-88]

**Administrative Claims Under the  
Federal Tort Claims Act; Redelegation  
of Authority**

**AGENCY:** Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** This Order delegates authority to the Administrator of the Veterans Administration to settle administrative claims presented pursuant to the Federal Tort Claims Act where the amount of the settlement does not exceed \$100,000. It is being done to implement Pub. L. 100-322, 38 U.S.C. 233(a). This Order will alert the general public to the Administrator's new authority, and is being codified in the C.F.R. to provide a permanent record of this delegation.

**EFFECTIVE DATE:** September 28, 1988.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Axelrad, Director, Torts Branch, Civil Division, U.S. Department of Justice, Washington, DC 20530 (202) 724-9875.

**SUPPLEMENTARY INFORMATION:** This Order has been issued to delegate

settlement authority and is a matter solely related to division of responsibility between the Department of Justice and the Veterans Administration. It does not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). It is not a major rule within the meaning of the Executive Order No. 12291.

**List of Subjects in 28 CFR Part 14**

Authority delegations (government agencies), Tort claims.

By virtue of the authority vested in me, including 28 U.S.C. 509, 510, 5 U.S.C. 301, and Pub. L. 100-322, section 203(b), 38 U.S.C. 223(a), Title 28 of the Code of Federal Regulations is revised as follows:

1. The authority citation for Part 14 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 28 U.S.C. 509, 510, 2672; 38 U.S.C. 223(a).

2. Part 14 is amended by adding an Appendix at the end of the Part to read as follows:

**Appendix to Part 14—Redelegation of  
Authority to the Administrator of  
Veterans Affairs**

**Section 1. Authority to compromise tort  
claims**

(a) The Administrator of Veterans Affairs shall have the authority to adjust, determine, compromise and settle a claim involving the Veterans Administration, under Section 2672 of Title 28, United States Code or Section 4116 of Title 38, United States Code, relating to the administrative settlement of federal tort claims, if the amount of the proposed adjustment, compromise, or award does not exceed \$100,000. When the Administrator believes a claim pending before him presents a novel question of law or of policy, he shall obtain the advice of the Assistant Attorney General in charge of the Civil Division.

(b) The Administrator may redelegate in writing the settlement authority delegated to him under this section.

**Section 2. Memorandum.**

Whenever the Administrator settles any administrative claim pursuant to the authority granted by section 1 for an amount in excess of \$50,000 and within the amount delegated to him under section 1, a memorandum fully explaining the basis for the action taken shall be executed. A copy of this memorandum shall be sent to the Director, FTCA Staff, Torts Branch of the Civil Division.

September 21, 1988.

Dick Thornburgh,

*Attorney General*

[FR Doc. 88-22203 Filed 9-27-88; 8:45 am]

BILLING CODE 4410-01-M

[Atty. Gen. Order No. 1301-88]

**28 CFR Part 41**

**Nondiscrimination on the Basis of  
Handicap in Federally Assisted  
Programs; Suspension of Guidelines  
with Respect to Timeframe for  
Program Accessibility in Public  
Housing Programs**

**AGENCY:** Department of Justice (DOJ).

**ACTION:** Final Rule; suspension of guidelines.

**SUMMARY:** DOJ is suspending its coordination regulation for agency regulations implementing section 504 of the Rehabilitation Act of 1973, as amended, with respect to timeframes for completing structural changes in public housing programs in order to achieve program accessibility. This action affects the coordination regulation implementing Executive Order 12250, which requires DOJ to coordinate the implementation of section 504. The coordination regulation currently requires that structural changes necessary to achieve program accessibility be made as soon as practicable, but in no event later than three years after the effective date of the agency regulation. The Department of Housing and Urban Development's (HUD) section 504 rule provides for four years, rather than three, to make structural changes in case of public housing programs, and allows certain extensions. Suspension of the timeframe requirements will eliminate any apparent inconsistency between HUD's rule and DOJ's coordination regulation.

**EFFECTIVE DATE:** September 28, 1988.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Mather, (202) 724-2236 (voice or TDD) or Irene Bowen, (202) 724-2245 (voice or TDD).

**SUPPLEMENTARY INFORMATION:** Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), provides in part that

\*\*\* No otherwise qualified individual with handicaps in the United States \*\*\* shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance \*\*\*.

Executive Order 12250 charges DOJ to coordinate the implementation of section 504. 45 FR 72995, 3 CFR, 1980 Comp., p. 298. DOJ's coordination regulation requires recipients to operate each federally assisted program or activity so that, when viewed in its entirety, it is readily accessible to and usable by persons with handicaps. 28

CFR 41.57(a). The rule provides that structural changes necessary to achieve program accessibility must be made as soon as practicable, but in no event later than three years after the effective date of the agency regulation. *Id.* at 41.57(b). The regulation, including the timeframe, must "continue in effect until revoked or modified by the Attorney General." E.O. 12250 section 1-502.

HUD published a regulation implementing section 504 for its federally assisted programs in the **Federal Register** on June 2, 1988 [53 FR 20216 (to be codified at 24 CFR Part 8)]. Paragraph 8.24(a) of HUD's rule restates paragraph 41.57(a) of the coordination regulation, with respect to all existing housing programs [53 FR at 20239]. In addition, paragraph 8.24(a)(2) makes clear that a recipient is not required to take any action that it can demonstrate would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens [*id.*] This "undue burdens" language is based on the Supreme Court's decision in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), and the subsequent circuit court decisions interpreting *Davis* and section 504. See *Dopico v. Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association v. Lewis*, 655 F.2d 1272 (D.C. Cir. 1981); see also *Rhode Island Handicapped Action Committee v. Rhode Island Public Transit Authority*, 718 F.2d 490 (1st Cir. 1983). In *Davis*, the Supreme Court held that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and stated that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. See also *Alexander v. Choate*, 469 U.S. 287 (1985). DOJ interprets its coordination regulation and all existing agencies' section 504 regulations to include the *Davis* limitations on actions required of recipients, whether or not those limitations are explicitly stated in the regulations.

Section 8.25 of HUD's rule set forth specific requirements for public housing programs [53 FR 20239-40]. It provides that as expeditiously as possible, but within two years, each Public Housing Agency (PHA) must (1) assess the needs of eligible persons with handicaps for accessible housing in the area it serves and (2) develop a transition plan if the needs cannot be met within four years through development, alterations otherwise contemplated, or other PHA programs. The PHA must complete any necessary structural changes "as soon

as possible but in any event no later than four years after" the rule's effective date [*id.* at 20240 (to be codified at 24 CFR 8.25(c))]. The Assistant Secretary for Fair Housing and Equal Opportunity and the Assistant Secretary for Public and Indian Housing may extend the four-year period for a period not to exceed two years, on a case-by-case determination that compliance within the four years would impose undue financial and administrative burdens on the operation of the recipient's public housing program. Where the undue financial and administrative burdens continue to exist, the Secretary or Undersecretary may further extend this time period in "extraordinary circumstances" for up to one more year [*id.*]. With these possible extensions, the time period allowed by the HUD rule for structural changes in public housing programs can add up to a total of seven years.

Even with respect to public housing programs, the rule does not relieve recipients from the obligation to make structural changes as soon as possible. If the changes cannot be completed within four years, a recipient may receive limited extensions and only in carefully limited circumstances.

DOJ's coordination regulation is a redesignation of the coordination regulation originally issued by the Department of Health, Education, and Welfare (HEW) on January 13, 1978 [43 FR 2132]. When HEW issued its coordination regulation, it specifically commented upon the three-year period for achieving program accessibility in existing public housing projects. In its "Summary of Rule and Analysis of Comments," HEW recognized that special problems might be encountered in making public housing projects program accessible in a three-year period but deferred making any regulatory change pending further consultation with HUD and after re-examining whether circumstances warranted any change [*id.* at 2135-6].

DOJ officials have consulted extensively with representatives from HUD and believe that a suspension of DOJ's rule with respect to timeframe for public housing is appropriate.

Because this action is a suspension of application of part of a rule, and because there is involved a matter relating to grants, benefits, or contracts, DOJ has determined that the suspension shall be effective upon publication. DOJ has not solicited comment on this suspension because the issue of longer timeframes for making structural changes to public housing has been

adequately discussed in the extension rulemaking process conducted by HUD.

This action is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that the action will not have a significant impact on small business entities.

#### List of Subjects in 28 CFR Part 41

Discrimination, Handicap.

Accordingly, under the authority vested in me as Attorney General by E.O. 12250, application of § 41.57(b) of Title 28 of the Code of Federal Regulations to public housing timeframes is hereby suspended.

Dated: September 21, 1988.

Dick Thornburgh,  
Attorney General.

[FR Doc. 88-22202 Filed 9-27-88; 8:45 am]

BILLING CODE 4410-01-M

## NATIONAL LABOR RELATIONS BOARD

### 29 CFR Part 102

#### Procedural Rules

**AGENCY:** National Labor Relations Board.

**ACTION:** Final rules.

**SUMMARY:** The National Labor Relations Board is revising its rules that govern proceedings concerning compliance with Agency orders. These revisions are, in two instances, necessitated by Board decisions. Other changes are to conform terminology in the rules to Agency practice and to facilitate the handling of compliance issues.

**EFFECTIVE DATE:** November 13, 1988.

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

#### SUPPLEMENTARY INFORMATION:

As a result of the issuance of two decisions, *Ace Beverage Co.*, 250 NLRB 646 (1980), and *Earle Equipment Co.*, 270 NLRB 827 (1984), the National Labor Relations Board undertook a review of the rules and regulations that govern backpay proceedings, §§ 102.52-102.59. In *Earle Equipment Co.*, supra, the Board held that issuance of "a combined complaint, backpay specification, and notice of hearing" was inappropriate because a backpay specification could issue only "[a]fter the entry of a Board order" pursuant to § 102.52. In *Ace Beverage Co.*, supra, a dispute arose

between the charging party and the compliance officer as to the backpay formula used. Following a denial by the General Counsel of an appeal from the compliance officer's determination, the case was closed. In accepting jurisdiction over the charging party's motion for clarification or reconsideration of the remedy, the Board stated that, at the compliance stage, "the General Counsel does not act on his own initiative as he does in the issuance of complaints but as the Board's agent in effectuating the remedy ordered." 250 NLRB at 648. Therefore, the Board found "no jurisdictional bar to the review of the General Counsel's action in the compliance stage of this proceeding." Id.

In reviewing the rules, as an initial matter, the Board determined to change the title of the rules from "Backpay Proceedings" to "Compliance Proceedings." The present reference to "backpay" is imprecise in that it suggests the range of issues that can be covered in the supplemental portion of an unfair labor practice proceeding is far more limited than it is. The term "compliance" is broader and covers such issues as alter ego and successor employer status and good-faith bargaining determinations.

Section 102.52 establishes notification of parties to the proceeding of the Regional Director's compliance determination. Following receipt of the notice, the charging party may request a written statement of the basis for the compliance determination. Although the compliance determination may be verbal, the further request requires a written statement. This statement is intended only for use by the charging party in pursuing an *Ace Beverage* appeal.

Section 102.53 specifies an appeals process implementing *Ace Beverage*. The provision in § 102.53 for an appeal to the General Counsel prior to appeal to the Board accomplishes two purposes. First, review by the General Counsel, through the Office of Appeals, presents an opportunity to rectify errors in implementation of remedial orders at the Regional Office level. Second, the appeals process before the General Counsel ensures that the Board will have at least a minimal administrative record to review when it receives an appeal. Consistent with *Ace Beverage*, the appeal right extends to any aspect of a compliance determination.

Section 102.54(b) changes the compliance rules to provide for what the Board found in *Earle Equipment*, supra, the rules currently do not allow. The new provision states that a compliance specification may issue notwithstanding

that a Board order has not been issued. This provision permits the issuance of a consolidated complaint and compliance specification and, therefore, allows the issuance of a specification prior to the issuance of a Board order that is required in the present § 102.52. The effect of this rule change is to overrule the *Earle Equipment* decision.

The second part of § 102.54(b) is drafted to ensure that initiation of compliance proceedings will not preclude other administrative or judicial proceedings, i.e., contempt, where they would otherwise be appropriate.

The remaining rules reflect primarily the changes in the procedures to deal with compliance issues other than just backpay specifications. Particularly, § 102.55(b) specifies the contents of a specification when compliance issues other than backpay matters are involved. Section 102.56 states that the respondent shall file an answer to the allegations in the compliance specification.

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

#### List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Labor management relations.

Accordingly, 29 CFR Part 102 is amended as follows:

#### PART 102—RULES AND REGULATIONS

1. The authority citation for 29 CFR Part 102 continues to read as follows:

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

2. Sections 102.52 through 102.59 are revised to read as follows:

#### § 102.52 Compliance with Board order; notification of compliance determination.

After entry of a Board order directing remedial action, or the entry of a court judgment enforcing such order, the Regional Director shall seek compliance from all persons having obligations thereunder. The Regional Director shall make a compliance determination as appropriate and shall notify the parties of the compliance determination. A charging party adversely affected by a monetary, make-whole, reinstatement, or other compliance determination will

be provided, on request, with a written statement of the basis for that determination.

#### § 102.53 Review by the General Counsel of compliance determination; appeal to the Board of the General Counsel's decision.

(a) The charging party may appeal such determination to the General Counsel in Washington, DC, within 14 days of the written statement of compliance determination provided as set forth in § 102.52. The appeal shall contain a complete statement setting forth the facts and reasons upon which it is based and shall identify with particularity the error claimed in the Regional Director's determination. The charging party shall serve a copy of the appeal on all other parties and on the Regional Director. The General Counsel may for good cause shown extend the time for filing an appeal.

(b) The General Counsel may affirm or modify the determination of the Regional Director, or may take such other action deemed appropriate, stating the grounds for the decision.

(c) Within 14 days after service of the General Counsel's decision, the charging party may file a request for review of that decision with the Board in Washington, DC. The request for review shall contain a complete statement of the facts and reasons upon which it is based and shall identify with particularity the error claimed in the General Counsel's decision. A copy of the request for review shall be served on the General Counsel and on the Regional Director.

(d) The Board may affirm or modify the decision of the General Counsel, or make such other disposition of the matter as it deems appropriate. The denial of the request for review will constitute an affirmation of the decision of the General Counsel.

#### § 102.54 Initiation of formal compliance proceedings; issuance of compliance specification and notice of hearing.

(a) If it appears that controversy exists with respect to compliance with an order of the Board which cannot be resolved without a formal proceeding, the Regional Director may issue and serve on all parties a compliance specification in the name of the Board. The specification shall contain or be accompanied by a notice of hearing before an administrative law judge at a place therein fixed and at a time not less than 21 days after the service of the specification.

(b) Whenever the Regional Director deems it necessary in order to effectuate the purposes and policies of the Act or to avoid unnecessary costs or delay, the

Regional Director may consolidate with a complaint and notice of hearing issued pursuant to § 102.15 a compliance specification based on that complaint. After opening of the hearing, consolidation shall be subject to the approval of the Board or the administrative law judge, as appropriate. Issuance of a compliance specification shall not be a prerequisite or bar to Board initiation of proceedings in any administrative or judicial forum which the Board or the Regional Director determines to be appropriate for obtaining compliance with a Board order.

#### § 102.55 Contents of compliance specification.

(a) *Contents of specification with respect to allegations concerning the amount of backpay due.* With respect to allegations concerning the amount of backpay due, the specification shall specifically and in detail show, for each employee, the backpay periods broken down by calendar quarters, the specific figures and basis of computation of gross backpay and interim earnings, the expenses for each quarter, the net backpay due, and any other pertinent information.

(b) *Contents of specification with respect to allegations other than the amount of backpay due.* With respect to allegations other than the amount of backpay due, the specification shall contain a clear and concise description of the respects in which the respondent has failed to comply with a Board or court order, including the remedial acts claimed to be necessary for compliance by the respondent and, where known, the approximate dates, places, and names of the respondent's agents or other representatives described in the specification.

(c) *Amendments to specification.* After the issuance of the notice of compliance hearing but prior to the opening of the hearing, the Regional Director may amend the specification. After the opening of the hearing, the specification may be amended upon leave of the administrative law judge or the Board, as the case may be, upon good cause shown.

#### § 102.56 Answer to compliance specification.

(a) *Filing and service of answer; form.* Each respondent alleged in the specification to have compliance obligations shall, within 21 days from the service of the specification, file an original and four copies of an answer thereto with the Regional Director issuing the specification, and shall immediately serve a copy thereof on the

other parties. The answer to the specification shall be in writing, the original being signed and sworn to by the respondent or by a duly authorized agent with appropriate power of attorney affixed, and shall contain the mailing address of the respondent.

(b) *Contents of answer to specification.* The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) *Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.* If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

(d) *Extension of time for filing answer to specification.* Upon the Regional Director's own motion or upon proper cause shown by any respondent, the Regional Director issuing the compliance specification and notice of hearing may by written order extend the time within which the answer to the specification shall be filed.

(e) *Amendment to answer.* Following the amendment of the specification by the Regional Director, any respondent affected by the amendment may amend its answer thereto.

#### § 102.57 Extension of date of hearing.

Upon the Regional Director's own motion or upon proper cause shown, the Regional Director issuing the compliance specification and notice of hearing may extend the date of the hearing.

#### § 102.58 Withdrawal.

Any compliance specification and notice of hearing may be withdrawn before the hearing by the Regional Director upon his or her own motion.

#### § 102.59 Hearing; posthearing procedure.

After the issuance of a compliance specification and notice of hearing, the procedures provided in §§ 102.24 to 102.51 shall be followed insofar as applicable.

Dated, Washington, DC, September 23, 1988.

By direction of the Board.  
National Labor Relations Board.

Joseph E. Moore,  
Deputy Executive Secretary.  
[FR Doc. 88-22208 Filed 9-27-88; 8:45 am]  
BILLING CODE 7545-01-M

## VETERANS ADMINISTRATION

### 38 CFR Part 9

#### Servicemen's and Veterans' Group Life Insurance

AGENCY: Veterans Administration.

ACTION: Final regulation.

**SUMMARY:** The Veterans Administration (VA) is amending its regulations relating to Servicemen's and Veterans' Group Life Insurance to reflect that the law provides that members of the Individual Ready Reserve (IRR) and the Inactive National Guard (ING) are eligible to be issued Veterans' Group Life Insurance. Members of the IRR and ING will be able to obtain Veterans' Group Life Insurance (VGLI) by submitting an application together with the initial premium within 120 days of becoming a member of the IRR or ING. If the application and required premium are not submitted within the 120-day period, insurance may still be granted provided an application, the initial premium and evidence of insurability are submitted within one year of the expiration of the initial 120-day period.

**EFFECTIVE DATE:** September 28, 1988.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Paul F. Koons, Assistant Director for Insurance, Veterans Administration Regional Office and Insurance Center, P.O. Box 8079, Philadelphia, PA 19101, (215) 951-5360.

**SUPPLEMENTARY INFORMATION:**

On pages 17476 and 17477 of the *Federal Register* of May 17, 1988, (53 FR 17476), the VA published a proposed regulatory amendment to provide that members of the IRR and ING are eligible to be issued VGLI. Interested parties were given 30 days within which to submit written comments, suggestion, or objections regarding the proposed regulatory amendment. No written objections were received and the proposed regulation is hereby adopted without change except for an editorial change in § 9.12 to remove gender specific language.

The Administrator of Veterans Affairs hereby certifies that this final regulation will not have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b) this final regulation is, therefore, exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that this regulation will affect only certain VGLI applicants. It will, therefore, have no significant direct impact on small entities in terms of compliance costs, paperwork requirements or effects on competition.

The Agency has also determined that this final regulation is nonmajor in accordance with Executive Order 12291, Federal Regulation. This final regulation will not have a large effect on the economy, will not cause an increase of costs or prices, and will not otherwise have any significant adverse economic effects.

The Catalog of Federal Domestic Assistance Program Number for this regulation is 64.103.

**List of Subjects in 38 CFR Part 9**

Life insurance, Servicemen's and Veterans' Group.

Approved: September 12, 1988.

Thomas K. Turnage,  
Administrator.

38 CFR Part 9, Servicemen's Group Life Insurance and Veterans' Group Life Insurance, is amended as follows:

**PART 9—[AMENDED]**

1. In § 9.3, paragraph (f) is added to read as follows:

**§ 9.3 Applications.**

(f) Members of the Individual Ready Reserve and the Inactive National Guard are eligible to be granted Veterans' Group Life Insurance provided an application together with the initial premium are submitted to the administrative office within 120 days of becoming a member of either organization. If an application and the initial premium are not submitted within the 120-day period as set forth in this paragraph, Veterans' Group Life Insurance may still be granted provided an application, the initial premium and evidence of insurability are submitted within one year of the expiration of the initial 120-day period.

(Authority: 38 U.S.C. 777)

**§ 9.12 [Amended]**

2. In § 9.12 remove the word "he" where it appears and add, in its place, the words "the Administrator."

[FR Doc. 88-22142 Filed 9-27-88; 8:45 am]

BILLING CODE 8320-01-M

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[FRL-3446-2]

**Approval and Promulgation of State Implementation Plans; Visibility Protection; North Dakota**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rulemaking.

**SUMMARY:** In this action, EPA is approving the monitoring strategy and New Source Review (NSR) requirements for visibility protection in mandatory Class I Federal areas in a revision to the North Dakota State Implementation Plan (SIP). This action is a result of the July 12, 1985, rulemaking in which EPA disapproved SIPs of states which failed to comply with the provisions of 40 CFR 51.305 (visibility monitoring) and 51.307 (visibility NSR). EPA also incorporated these Federal plans and regulations into the SIPs of these states.

The Governor of North Dakota submitted a SIP revision for visibility protection on January 26, 1988. Review of the plan indicates that North Dakota has met the criteria of 40 CFR 51.305 and 51.307, and that these revisions will replace the Federal plans and regulations for visibility protection in the North Dakota SIP.

**DATES:** This action will be effective on November 28, 1988, unless notice is received by October 28, 1988, that

someone wishes to submit adverse or critical comments.

**ADDRESSES:** Copies of the State submittal are available for public inspection between 8:00 am and 4:00 pm, Monday through Friday, at the following locations:

Environmental Protection Agency,  
Region VIII, Air Programs Branch, 999  
18th Street, Suite 500, Denver,  
Colorado 80202-2405.

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

**FOR FURTHER INFORMATION CONTACT:**

Michael Silverstein, Air Programs  
Branch, Environmental Protection  
Agency, Region VIII, 999 18th Street,  
Suite 500, Denver, Colorado 80202-2405,  
(303) 293-1769, (FTS) 564-1769.

**SUPPLEMENTARY INFORMATION:****Background**

Section 169A of the Clean Air Act (Act), 42 U.S.C. 7491, requires visibility protection for mandatory Class I Federal areas where EPA has determined that visibility is an important value. ("Mandatory Class I Federal areas" (hereinafter Class I areas) are certain national parks, wilderness areas, and international parks, as described in section 162(a) of the Act, 42 U.S.C. 7472(a), 40 CFR 81.400-81.437.) Section 169A of the Act specifically requires EPA to promulgate regulations requiring certain states to amend their SIPs to provide for visibility protection.

On December 2, 1980, EPA promulgated the required visibility regulations at 45 FR 80084, codified at 40 CFR 51.300 *et seq.* The visibility regulations required the states to submit their revised SIPs to satisfy these provisions by September 2, 1981. (See 45 FR 80091, December 2, 1980, codified at 40 CFR 51.302(a)(1).) That rulemaking resulted in numerous parties seeking judicial review of the visibility regulations. In March 1981, the court stayed the litigation, pending EPA action on related administrative petitions for reconsideration of the visibility regulations filed with the Agency.

In December 1982, the Environmental Defense Fund (EDF) filed suit in the U.S. District Court for the Northern District of California (*EDF v. Gorsuch*, Number C82-6850 RPA) alleging that EPA failed to perform a nondiscretionary duty under section 110(c) of the Act to promulgate Visibility SIPs. A negotiated Settlement Agreement between EPA and EDF required EPA to incorporate Federal regulations in states where SIPs were deficient with respect to visibility

monitoring (40 CFR 51.305) and NSR (40 CFR 51.307). However, the Settlement Agreement allowed each State an opportunity to avoid Federal promulgation if it submitted a SIP by May 6, 1985. North Dakota was one of the states that did not meet this deadline. Final promulgation of Federal visibility monitoring and NSR regulations for all states, including North Dakota, having deficient SIPs was published on July 12, 1985 (49 FR 28544), and became effective August 12, 1985.

On January 26, 1988, North Dakota submitted a SIP revision to EPA which updated its SIP, and added new regulations and revised various State regulations. Although the submittal contained various SIP revisions, only visibility protection for Class I areas is addressed in this action. Chapter 6, "Air Quality Surveillance", of the SIP was amended to include new section 6.10 "Visibility Monitoring". Also, North Dakota's "Air Pollution Control Rules" of the SIP was amended to include new Chapter 33-15-19 "Visibility Protection". Included in the subject SIP amendments are plans and regulations which would replace the Federal provisions for visibility monitoring (40 CFR 51.305) and NSR (40 CFR 51.307).

#### Affected Areas

The following areas in North Dakota are Class I areas where visibility is an important value:

Lostwood National Wildlife Refuge  
Theodore Roosevelt National Memorial Park

#### Monitoring Strategy

Under 40 CFR 51.305, all states with visibility protection areas are required to have a monitoring strategy for evaluating visibility in any Class I area by visual observation or other appropriate monitoring techniques. The purposes of this requirement are: (1) To generate data for evaluating visibility impairment trends, (2) to determine potential impacts of new sources, (3) to assess the effectiveness of the visibility protection program, and (4) to identify major contributing sources. These requirements can be adequately addressed by determining the background visibility protection areas and documenting the extent of any visibility impairment that can be attributed by a source or small group of sources.

Visibility impairment is the human perception of the effects of natural or man-made conditions which reduce visual range or contrast, or change coloration (49 FR 42671, col. 1, para. 2, October 23, 1984). Thus, a visibility monitoring program should identify

these effects, as well as differentiate man-made effects from natural conditions. The program could generate various types of data, such as reports from human observers, photographs, and/or automated instruments. The minimum data collection technique that 40 CFR 51.305 requires is visual observation. However, other more objective techniques are available. (See "Interim Guidance for Visibility Monitoring", Office of Air Quality Planning and Standards, November 1980 (EPA 450/2-80-082).)

The goals of the North Dakota visibility program are: (1) To determine the background visibility conditions, (2) to identify and remedy any existing visibility impairment, and (3) to prevent future impairment of visibility in Class I areas. In order to carry out these goals, North Dakota will assemble and evaluate any visibility data supplied by the Federal Land Managers (FLMs), collected by the State, and compiled by any appropriate source through the visibility NSR program. North Dakota's visibility monitoring strategy meets EPA criteria as outlined in 40 CFR 51.305.

#### New Source Review

States are required by 40 CFR 51.307 to review new major stationary sources and major modifications prior to construction to assess potential impacts on visibility in any Class I area, regardless of the air quality status of the area in which the source is located. That is, sources locating in attainment areas (hereinafter Prevention of Significant Deterioration (PSD) stationary sources) and nonattainment areas must undergo visibility NSR. (See 40 CFR 51.307(a) and (b)(2), respectively.) These requirements ensure: (1) That the visibility impact review is conducted in a timely and consistent manner; (2) that the reviewing authority considers any timely FLM analysis demonstrating that a proposed source would have an adverse impact on visibility; and (3) the public availability of the permitting authority's conclusion.

There are two parts to Visibility NSR: PSD major stationary sources and major sources in nonattainment areas. Because there are no nonattainment areas in North Dakota, only the Visibility NSR requirements for PSD stationary sources are applicable at this time.

For all PSD stationary sources:

(1) The State must notify the FLM in writing not more than 30 days after receiving a permit application or advance notification of application from a proposed source that may impact a visibility protection area.

(2) This notification must take place at least 60 days prior to the public hearing

on the application and must contain any analysis of the potential impact of the proposed source on visibility.

(3) The State must consider any analysis concerning visibility impairment performed by the FLM and received not more than 30 days after the notification.

(4) If the State does not concur with the FLM's analysis that adverse visibility impairment will result from the proposed source, the State must provide, in its notice of public hearing on the application, an explanation of its decision or give notice as to where the explanation can be obtained.

(5) The State must have the ability to require a permit applicant to monitor visibility in or around the visibility protection areas.

Items 1 through 5 for PSD stationary sources are the procedural steps in visibility review as defined in 40 CFR 52.27(d). (The provisions of 40 CFR 52.27 were proposed in 49 FR 42670, October 23, 1984, and finalized in 50 FR 28544, July 12, 1985.)

Chapter 33-15-19-02 of the North Dakota Air Pollution Control Rules requires any emission permit applicant to demonstrate that emissions from the proposed source will not adversely impact visibility in a Class I area. The demonstration must be reviewed by the FLM, and any determination by the FLM must be considered by the North Dakota Department of Health (Department) in its decision to grant or deny the permit. The permit will be denied for sources proven to cause a potential impact.

The SIP commits to the notification timeframe requirements of the FLM. Chapter 33-15-19-02-4 allows the Department to determine independently if there is an adverse impact to visibility in Class I areas if the Department finds that the FLM's analysis does not satisfactorily demonstrate that an adverse impact on visibility will result in a Class I area due to emissions from a proposed source.

#### FLM Coordination

Under section 165(d) of the Act, the FLM is given an affirmative responsibility to protect air quality related values which includes visibility in Class I areas. The visibility regulations allow the FLM the opportunity to identify visibility impairment and to identify elements for inclusion in monitoring strategies. The FLM must maintain these areas consistent with congressional land use goals.

The State of North Dakota has accorded the FLM (through the National Park Service (NPS) and the Fish and

Wildlife Service (FWS)) opportunities to participate and comment on its Visibility SIP and regulations. Comments by the NPS and the FWS were considered and incorporated where applicable.

The State recognizes the expertise of the FLM in monitoring and in conducting new source applicability analyses for visibility. The FLMs will be given the opportunity to comment on any visibility monitoring plan contained within a proposed permit to construct or operate a PSD stationary source. Additionally, North Dakota will give the FLMs the opportunity to comment on the State's visibility monitoring program on an annual basis.

#### Final Action

EPA hereby approves the revisions to the North Dakota SIP for visibility monitoring and NSR because the requirements of 40 CFR 51.305 and 51.307, and the criteria discussed in 50 FR 28544 (July 12, 1985) are met. (See October 23, 1984 (49 FR 42670), for additional information.) The revisions were submitted by the Governor on January 26, 1988. The submittal will replace the Federal plans and regulations of 40 CFR 51.305 and 51.307 in the North Dakota SIP.

EPA finds good cause exists for making the action taken in this notice immediately effective because the implementation plan revisions are already in effect under State law or regulation and EPA's approval poses no additional regulatory burden.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of the Federal Register notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective November 28, 1988.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709, January 27, 1981.)

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the U.S. Court of

Appeals for the appropriate circuit by (60 days from publication). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2) of the Act.)

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

#### List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter, Incorporation by reference.

**Note:** Incorporation by reference of the State Implementation Plan for the State of North Dakota was approved by the Director of the Federal Register on July 1, 1982.

Date: September 8, 1988.

Lee M. Thomas,  
Administrator.

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

#### PART 52—[AMENDED]

##### Subpart JJ—North Dakota

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

Authority: 42 U.S.C. 7401-7642.

2. Section 52.1820 is amended by adding paragraph (c)(15) to read as follows:

##### § 52.1820 Identification of plan

\* \* \* \* \*

(c) \* \* \*

(15) A revision to the SIP was submitted by the Governor on January 26, 1988, for visibility monitoring and New Source Review.

(i) *Incorporation by reference.*

(A) In a letter dated January 26, 1988, Governor George A. Sinner submitted a SIP revision for visibility protection.

(B) The SIP revision for visibility protection, "Chapter 6, Air Quality Surveillance, Section 6.10, Visibility Monitoring" and "Chapter 33-15-19, Visibility Protection", became effective on October 1, 1987, through action by the North Dakota Legislative Council.

##### § 52.1831 [Amended]

3. Section 52.1831 is amended by removing paragraph (b) and by redesignating paragraph (c) as (b). [FR Doc. 88-21011 Filed 9-27-88; 8:45 am]

BILLING CODE 6560-50-M

#### 40 CFR Part 261

[SW-FRL-3455-8]

#### Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion and Denial

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA or Agency) today is granting a one-time final exclusion from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32 to U.S. Nameplate Company, Incorporated (Nameplate), Mount Vernon, Iowa. In addition, EPA also is denying a final exclusion for Nameplate's hazardous residues that were derived from the petitioned wastes prior to their retreatment. The effect of this final denial is to retain regulation of the unit under Subtitle C of the Resource Conservation and Recovery Act (RCRA), 40 CFR Part 265. These actions respond to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

**EFFECTIVE DATE:** September 28, 1988.

**ADDRESSES:** The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW., (sub-basement), Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The reference number for this docket is "F-88-USEF-FFFFF." The public may copy material from any regulatory docket at a cost of \$0.15 per page.

**FOR FURTHER INFORMATION CONTACT:** For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Robert Kayser, Office of Solid Waste (OS-343), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4536.

**SUPPLEMENTARY INFORMATION:****I. Background***A. Authority*

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine that (1) the waste to be excluded is not hazardous based upon the criteria for which it was listed, and (2) that no other hazardous constituents are present in the wastes at levels of regulatory concern.

*B. History of this Rulemaking*

U.S. Nameplate Company (Nameplate), Incorporated, located in Mount Vernon, Iowa, petitioned the Agency to exclude from hazardous waste control a specific waste that it generated. On December 18, 1984, Nameplate petitioned the Agency to exclude its wastewater treatment sludge contained in its unlined, on-site surface impoundment. On July 23, 1986, the Agency proposed to deny Nameplate's petition based on the fact that the impounded wastewater treatment sludge contained excessive total constituent concentrations of trichloroethylene (TCE) (see 51 FR 26428). As a result of the proposed decision to deny this petition, Nameplate attempted to reduce the waste's total constituent concentration of TCE through mechanical aeration of the impounded waste. During the public comment period, Nameplate requested that the Agency re-evaluate the retreated waste. On May 3, 1988, after evaluating the petition and the information submitted by Nameplate on the retreated waste, EPA proposed to exclude Nameplate's waste from the lists of hazardous waste under 40 CFR 261.31 and 261.32 (see 53 FR 15704). At the same time, EPA also proposed to deny final exclusion for those wastes residues that were derived from the petitioned wastes prior to their retreatment.

This rulemaking addresses public comments received on the proposal and finalizes the May 3, 1988 proposed exclusion and proposed denial. The Agency would also like to correct a minor error contained in the proposed exclusion (see 51 FR 15704). The volume of the petitioned (retreated) waste was correctly given as 422 cubic yards. However, this volume was estimated by EPA directly from a spot-check sampling visit to the site, and was not based on an estimate submitted by U.S.

Nameplate as stated in the May 3, 1988 proposal.

**II. Agency Response To Public Comments**

The Agency received only one public comment on the proposed rule. The commenter disagreed with the Agency's proposed decision to deny Nameplate's petition covering those wastes located in the waste management unit specified in the petition that are derived from the petitioned wastes prior to their retreatment. The commenter believed that the Agency's proposed decision to deny Nameplate an exclusion covering those wastes located in the waste management unit that are derived from the petitioned wastes prior to their retreatment, was wrong because no hazardous wastes exist at Nameplate's facility and because EPA's decision was "based on flawed input" and data subjected to re-evaluation to substantiate an earlier proposal to deny Nameplate's petition. The commenter also made numerous other comments, which are not germane to this petition.

When hazardous wastes are treated, remaining residue (e.g., leachate, sludge, and soil/sludge mixtures) containing or derived from the waste prior to treatment are hazardous, continue to be hazardous until excluded, and continue to constitute part of the waste management unit. See 40 CFR 261.3(c)(2)(i) and (d)(2). Therefore, a delisting decision applying only to the treated waste does not affect the regulatory status of the residual wastes (or the waste management unit) if the untreated waste was hazardous, and if waste residue containing or derived from the untreated waste may still be present or if the untreated waste already contaminated or is likely to contaminate the ground water in the future. Since Nameplate's original waste contained TCE at sufficient levels to contaminate ground water, and ground water contamination with TCE is present, (See 53 FR 15709 and 51 FR 26428), the Agency has reason to believe that the untreated waste was hazardous and that waste residue containing or derived from the untreated waste may still be present and likely to continue contaminating the ground water. Consequently, EPA will not delist the residual wastes.

EPA's proposed decision was not based on flawed data or other flawed input. As was discussed in the May 3, 1988 proposal, EPA's proposed decision was based on (1) analytical data supplied by Nameplate, (2) analytical data obtained through EPA's Region VII Office, and (3) analytical results obtained through EPA Headquarter's

August 12, 1986, spot-check sampling visit. All three sets of data support the Agency's decision to deny a portion of Nameplate's petition. See 51 FR 26428, July 23, 1986; 53 FR 15704, May 3, 1988; and 53 FR 22334, June 15, 1988 for a detailed explanation and evaluation of the analytical data submitted by Nameplate and obtained through EPA Region VII and EPA Headquarters.

In responding to the 1986 proposed denial decision, this commenter claimed that involvement by the Agency's Region VII office motivated the proposed decision. It is the Agency's long standing policy to coordinate fully with Regional Offices and States on delisting petitions, or for that matter, any issue of importance to these offices. Such coordination serves not only to inform responsible officials but also to elicit any information relevant to the issue(s) before the Agency. In this particular case, the Regional Office, which administers the RCRA program in Iowa, was fully consulted and provided analytic testing data and other information showing ground water contamination (in the absence of any such data supplied by the petitioner) which was subsequently verified by further testing noted earlier. In full accord with all applicable laws and relevant regulations, all contacts and information supplied to EPA Headquarters as a consequence of this coordination are in the RCRA docket for this decision and have been made available for public review on two separate occasions.

**III. Final Agency Decision***A. Retreated Waste*

For the reasons stated in the May 3, 1988 proposal, the Agency believes that Nameplate has successfully demonstrated that the retreated wastewater treatment sludge is not hazardous. Nameplate's retreated wastewater treatment sludge should be excluded from hazardous waste control. The Agency, therefore, is granting a final, one-time exclusion to U.S. Nameplate Company, Incorporated, located in Mount Vernon, Iowa for its retreated wastewater treatment sludge described in its petition as EPA Hazardous Waste No. F006. This one-time exclusion only applies to the retreated wastewater treatment sludge.

Although management of the Waste covered by this petition is relieved from Subtitle C jurisdiction, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage,

treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

#### B. Residual Waste at Nameplate's Surface Impoundment

For the reasons stated in the May 3, 1988 proposal, the Agency believes that Nameplate has not successfully demonstrated that the residues that were derived from the petitioned wastes prior to retreatment are not hazardous. The Agency is, therefore, limiting the scope of today's decision to grant an exclusion only to Nameplate's retreated waste, and not to exclude residual wastes, containing or derived from the treated waste that are still present at Nameplate's surface impoundment. The effect of this exclusion is that the retreated wastes are no longer subject to or regulated by Subtitle C and may be removed from Nameplate's surface impoundment and managed as non-hazardous wastes. Nameplate's unlined surface impoundment, having held a listed hazardous waste appears to have caused ground-water contamination and now holding residues from that waste which remain hazardous, will continue to be defined as a hazardous waste management unit and will continue to be regulated as such under 40 CFR Parts 260 through 268 and the permitting standards of 40 CFR Part 270.

#### III. Limited Effect of Federal Exclusion

The final exclusion being granted today is being issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally issued exclusion from taking effect in the State. Since a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the current status of their waste under State law.

#### IV. Effective Date

This rule is effective immediately. The Hazardous and Solid Waste

Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this rule should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, Pursuant to 5 U.S.C. 553(d).

#### V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's list of hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous. There is no additional economic impact, therefore, due to today's rule.

#### VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and is limited to one facility. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This

regulation, therefore, does not require a regulatory flexibility analysis.

#### List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Date: September 21, 1988.

Joseph Cannon,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

#### PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

#### PART 261, APPENDIX IX—[AMENDED]

2. In Table 1 of Appendix IX, add the following wastestreams in alphabetical order:

#### Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
U.S. Nameplate Company, Inc.	Mount Vernon, Iowa.	Retreated wastewater treatment sludges (EPA Hazardous Waste No. F006) previously generated from electroplating operations and currently contained in an on-site surface impoundment after September 28, 1988. This is a one-time exclusion for the retreated wastes only. This exclusion does not relieve the waste unit from regulatory compliance under Subtitle C.

[FR Doc. 88-22183 Filed 9-27-88; 8:45 am]

BILLING CODE 6560-50-M

# DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Public Health Service

### 42 CFR Part 36

#### Suspension of Implementation of Final Rule Relating to Eligibility for Health Services From the Indian Health Service (IHS)

**AGENCY:** Indian Health Service, Public Health Service, HHS.

**ACTION:** Suspension of effective date.

**SUMMARY:** This notice suspends implementation of the new Indian Health Service (IHS) eligibility regulation. Because of concerns expressed by the Congress and the Indian Community the Department has decided to suspend implementation of the regulation until October 15, 1988.

**DATES:** The new effective date for the regulation is October 15, 1988.

**FOR FURTHER INFORMATION CONTACT:** Any question regarding this notice should be brought to the attention of: Richard J. McCloskey, Indian Health Service, Room 6A-20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

**SUPPLEMENTARY INFORMATION:** On September 16, 1987, (52 FR 35044), a final rule establishing new eligibility criteria for the Indian Health Service (IHS) program was published in the *Federal Register*. Congress delayed implementation of the new rule from March 16, 1988 to September 16, 1988 by a provision in the fiscal year 1988 appropriation statute (section 315 of Pub. L. 100-202). Both the Congress and the Indian community have continued to express concern over the new eligibility regulation and have recommended that the IHS conduct further studies on the impact and related costs. Consequently, by this notice we are announcing that the IHS will not implement the new rule on September 16, 1988 but will hold implementation of the rule in abeyance until October 15, 1988, while the IHS considers its available options with respect to implementation of the regulation.

Date: September 19, 1988.

Everett R. Rhoades,  
Director, Indian Health Service.

[FR Doc. 88-22023 Filed 9-27-88; 8:45 am]

BILLING CODE 4160-16-M

# FEDERAL EMERGENCY MANAGEMENT AGENCY

## 44 CFR Part 64

[Docket No. FEMA]

### List of Communities Eligible for the Sale of Flood Insurance; Correction

**AGENCY:** Federal Emergency Management Agency, FEMA.

**ACTION:** Final rule.

**SUMMARY:** This document makes correction to final rule, List of Communities Eligible for the Sale of Flood Insurance, published on August 30, 1988, at 53 FR 33136, Docket No. 6804. The City of Keytesville, Missouri is erroneously shown as a suspended community as of July 4, 1988. Remove the word "Suspension" and insert the word "Regular".

The City of Keytesville was enrolled directly into the Regular phase of the National Flood Insurance Program (NFIP) on July 4, 1988.

**FOR FURTHER INFORMATION CONTACT:** Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, SW., Washington, DC. 20472.

### List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

1. The authority citation for Part 64 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et. seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

Issued: September 21, 1988.

Harold T. Duryee,  
Administrator, Federal Insurance Administration.

[FR Doc. 88-22170 Filed 9-27-88; 8:45 am]

BILLING CODE 6718-21-M

# FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

[FCC 88-194]

### Policy Statement; Clarification of the Commission's Rules Pertaining to Broadcast Station Remote Control Operation

**AGENCY:** Federal Communications Commission.

**ACTION:** Policy statement.

**SUMMARY:** This action is taken to clarify rules relating to the remote control of broadcast stations. It is necessary in order for the Commission to efficiently respond to numerous inquiries

concerning the applicability of the broadcast remote control rules to specific types of remote control systems. Its intended effect is to reduce or eliminate misinterpretation of the rules during the design of transmitter remote control systems, particularly those which utilize dial-up telephone circuits.

**EFFECTIVE DATE:** September 28, 1988.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** James E. McNally, Jr., Mass Media Bureau, (202) 632-9660.

**SUPPLEMENTARY INFORMATION:** This is the complete text of the Commission's Public Notice adopted on June 8, 1988 and released on September 12, 1988.

### Clarification of The Commission's Rules Pertaining To Broadcast Station Transmitter Remote Control Operation

This notice is issued in response to the many questions received concerning use of the public switched telephone network for the remote control of broadcast transmitters, and to clarify the Emergency Broadcast System (EBS) equipment and operating requirements when off-premises remote control points are used.

A number of licensees have expressed uncertainty concerning the application of the Commission's remote control rules to telephone "dial-up" systems. The remote control rules are contained in §§ 73.1400 and 73.1410 of our Rules, and were published in MM Docket 84-110. (See *Report and Order*, 49 FR 47608, published December 6, 1984.) In formulating the new remote control rules, we recognized that transmitters had become more reliable, and that advancing technology had created very reliable remote control systems as well. Thus, we intended to lessen the equipment burden on licensees considerably and to provide for the maximum flexibility permitted under the Communications Act of 1934, as amended ("Act").

However, flexibility is somewhat limited by the statutory requirement of section 318 of the Act, which states that a licensed person must be on duty and in charge of the broadcast transmitter apparatus during periods of operation. This obligation is expressed in § 73.1860 of the Rules, and must apply to all remote control systems. In addition, broadcasters must comply with EBS requirements contained in §§ 73.926 through 73.937, regardless of the transmitter monitoring and control system used. Specific guidelines regarding remote control operation are contained in § 73.1410. These rules were

designed to be general enough so that they would cover all broadcast station transmitter remote control systems, regardless of the method used in performing monitoring and control functions, and to provide a regulatory framework within which broadcasters could design their remote control systems. We do not contemplate specifying all permissible remote control techniques. However, recognizing that it would be beneficial to clarify certain aspects of the remote control rules, particularly with regard to telephone dial-up systems, we believe the public interest would be served through publication of the following twelve guidelines.

1. The FCC does not specify the parameters that must be monitored or adjusted by remote control systems because these can vary from station to station depending on the nature of the facilities. A licensee bears full responsibility both to operate within the terms of the station authorization and all applicable rules. Thus, remote control and monitoring capability must be appropriate to the particular circumstances.

2. Dial-up telephone circuits, dedicated telephone circuits, special remote pickup unit (RPU) cue and control or microwave channels, and other systems are acceptable for metering, adjustments and control of broadcast station operations.

3. Authorized personnel (including the Chief Operator) may obtain technical data and adjust the transmission system by telephone from any location. However, this does not negate the requirement that stations have a designated operator on duty at a fixed position.

4. When a dial-up telephone circuit is used for transmitter remote control, the station licensee must either:

(a) Ensure that the dial-up circuit remains available at all times for the exclusive use of the duty operator; or,

(b) Provide a means for the operator to interrupt or preempt any other telephone access to the remote control equipment at the transmitter.

Alternatively, the station licensee may employ a method, independent of the basic dial-up circuit, which enables the duty operator to turn the transmitter off. Possible methods include, but are not limited to use of interruptions to program audio, a second dial-up circuit, microwave studio-to-transmitter links (STLs), or continuous radio frequency cueing and control circuits.

The duty operator must be in control of the transmitter at all times and the station must be able to meet its EBS responsibilities without delay.

5. Remote control systems that rely, either wholly or in part, on portable paging receivers or mobile telephones to contact the duty operator do not excuse the duty operator from the requirement to be continually present at the fixed remote control location, to have a positive means to interrogate the transmitter, to turn the transmitter off, and to monitor EBS alerts and to carry out EBS functions (if assigned to the duty operator). See §§ 73.1860(a) and 73.1410(a).

6. The duty operator can be located at any fixed location and employed in other duties that do not detract from continuous attendance and the ability to respond to operational requirements. For example, a disc jockey can be designated as the duty operator, provided that there is sufficient transmitter monitoring and control equipment in the studio. See § 73.1860(d). Also, EBS responsibilities may limit operator locations. See § 73.932.

7. Duty operators may be employed to supervise more than one station concurrently, provided such additional employment does not hamper their ability to respond to the transmission system operating requirements and the EBS requirements of each station.

8. Automatic alarms and warnings of out-of-tolerance conditions that may result in interference must be directed to the duty operator first. If a corrective response is not received by the remote control master equipment from the duty operator within five minutes, the remote control system must turn the transmitter off automatically. See § 73.1410(e).

9. Automatic alarms, warnings and indications must be unambiguous and of sufficient precision to enable the operator to properly assess an out-of-tolerance condition.

10. The licensee is responsible for ensuring that the remote control system is tested and calibrated as often as is necessary to ensure its proper operation. The test cycle will depend, in part, on the reliability and stability of the equipment used.

11. The licensee has three hours to restore remote monitoring of its operating parameters if its monitoring system fails. If monitoring has not been restored within three hours, either the station must have a duty operator in control of the transmitter at the transmitter site, or the station must shut down. The rules do not specify a certain time by which a licensee must be able to restore remote control capability if such capability is lost, provided that the monitoring system is functioning properly. However, if an out-of-tolerance condition having an

interference potential develops and the licensee cannot adjust the transmitter parameters to within the tolerances prescribed in the rules, the station is required to shut down immediately. The ability to turn the transmitter off must be available to the operator at all times, without exception.

12. Regardless of the remote control point in use, each station must comply with EBS requirements, which include the requirement that a staff member monitor the EBS receiver and have the capability to activate the EBS encoder promptly and broadcast EBS tests and emergency action announcements. The transmitter duty operator at a location other than the main studio (off premises) can also be responsible for the station's EBS obligations. That operator must have the monitoring receivers and the facilities needed to transmit the attention signal and make appropriate announcements and programming changes. Additionally, participating stations must have the capability to broadcast national emergency and presidential messages live as they are originated. (Nonparticipating stations are required to leave the air after transmitting the attention signal and the EBS sign-off message.) See §§ 73.932 and 73.933 in particular.

Mass Media Bureau contact—James E. McNally, Jr., 202-632-9660.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting, Remote control.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-22124 Filed 9-27-88; 8:45 am]

BILLING CODE 6712-01-M

## DEPARTMENT OF DEFENSE

### 48 CFR Parts 223 and 252

#### Department of Defense Federal Acquisition Regulation Supplement; Drug-Free Work Force

**AGENCY:** Department of Defense (DoD).

**ACTION:** Interim rule and request for comment.

**SUMMARY:** The interim rule states DoD's policy on a drug-free work force and provides a contract clauses for use with solicitations and contracts meeting specific criteria.

**EFFECTIVE DATE:** October 31, 1988, for solicitations and resulting contracts issued on or after that date that meet the criteria in section 223.7504. To the extent

possible, Contracting Officers should include the clause in solicitations issued before October 31, 1988.

**COMMENT DATE:** Comments on the interim rule should be submitted to the address shown below on or before November 28, 1988.

**ADDRESS:** Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD (P)/DARs, c/o OASD (P&L (MRS), Room 3D139, The Pentagon, Washington, DC, 20301-3062. Please cite DAR Case 88-83 in all correspondence related to this subject.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gurden E. Drake, Office of the Assistant General Counsel (Logistics), (202) 697-6921.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

The Secretary of Defense has issued policy concerning use of illegal drugs by the American work force as it affects defense contracts. This interim rule sets forth that policy and provides for use of a contract clause in those acquisitions involving access to classified information or where the contracting officer determines that such a clause is necessary in the interest of National Security, health or safety.

##### **B. Regulatory Flexibility Act**

This interim rule is not expected to have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the impact in context of the application criteria should be minimal on small businesses. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS Subpart will also be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DAR Case 88-610 in correspondence.

##### **C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because this rule does not impose any reporting or recordkeeping requirements or collection of information from offerors, contractors or members of the public which require OMB approval under 44 U.S.C. 3501 et seq.

#### **D. Determination to Issue an Interim Rule**

A determination has been made under the authority of the Secretary of Defense to issue this coverage. This action is necessary to implement policy from the Office of the Secretary of Defense in keeping with Federal goals to eliminate the use of illegal drugs and provide for a drug-free work force.

#### **List of Subjects in 48 CFR Parts 223 and 252**

Government procurement.

Charles W. Lloyd,  
*Executive Secretary, Defense Acquisition Regulatory Council.*

Therefore, 48 CFR Parts 223 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 223 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

#### **PART 223—ENVIRONMENT, CONSERVATION AND OCCUPATIONAL SAFETY**

2. A new Subpart 223.75, consisting of sections 223.7500 through 223.7504, is added to read as follows:

##### **Subpart 223.75—Drug-Free Work Force**

Sec.	
223.7500	Scope of subpart.
223.7501	Policy.
223.7502	Definitions.
223.7503	General.
223.7504	Contract clause.

##### **Subpart 223.75—Drug-Free Work Force**

###### **223.7500 Scope of subpart.**

This subpart prescribes policies and procedures concerning drug abuse as it impacts on the performance of defense contracts. Departments may establish special procedures as they determine necessary to satisfy their mission requirements.

###### **223.7501 Policy.**

It is the policy of the Department of Defense that defense contractors shall maintain a program for achieving a drug-free work force.

###### **223.7502 Definitions.**

"Illegal drugs," as used in this subpart, means controlled substances included in Schedule I and II, as defined by section 802(6) of Title 21 of the United States Code, the possession of which is unlawful under Chapter 13 of that Title. The term "illegal drugs" does not mean the use of a controlled

substance pursuant to a valid prescription or other uses authorized by law.

"Employee in a sensitive position," as used in this subpart, means an employee who has been granted access to classified information; or employees in other positions that the contractor determines involve National Security, health or safety, or functions other than the foregoing requiring a high degree of trust and confidence.

###### **223.7503 General.**

(a) The use of illegal drugs, on or off duty, is inconsistent with law-abiding behavior expected of all citizens. Employees who use illegal drugs, on or off duty, tend to be less productive, less reliable, and prone to greater absenteeism resulting in the potential for increased cost, delay, and risk to the government contract.

(b) The use of illegal drugs, on or off duty, by employees can impair the ability of those employees to perform tasks that are critical to proper contract performance and can also result in the potential for accidents on duty and for failures that can pose a serious threat to national security, health, and safety.

(c) The use of illegal drugs, on or off duty, by employees in certain positions can result in less than the complete reliability, stability, and good judgment that are consistent with access to sensitive information. Use of illegal drugs also creates the possibility of coercion, influence, and irresponsible action under pressure that may pose a serious risk to national security, and health and safety.

###### **223.7504 Contract clause.**

The contracting officer shall insert the clause at 252.223-7500 in all solicitations and contracts that meet the following criteria:

(a) All contracts involving access to classified information;

(b) Any other contract when the contracting officer determines that inclusion of the clause is necessary for reasons of national security or for the purpose of protecting the health or safety of those using or affected by the product of or the performance of the contract (except for commercial or commercial-type products (see FAR 11.001)).

(c) This clause does not apply to a contract, or to that part of a contract, that is to be performed outside of the United States, its territories, and possessions, except as otherwise determined by the contracting officer.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.223-7500 is added to read as follows:

### 252.223-7500 Drug-free work force.

As prescribed in 223.7504, insert the following clause:

#### Drug-Free Work Force (Sep 1988)

(a) Definitions. "Illegal drugs," as used in this clause, means controlled substances included in Schedule I and II, as defined by section 802(6) of Title 21 of the United States Code, the possession of which is unlawful under Chapter 13 of that Title. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

"Employee in a sensitive position," as used in this clause, means an employee who has been granted access to classified information; or employees in other positions that the contractor determines involve national security, health or safety, or functions other than the foregoing requiring a high degree of trust and confidence.

(b) The Contractor agrees to institute and maintain a program for achieving the objective of a drug-free work force. While this clause defines criteria for such a program, Contractors are encouraged to implement alternative approaches comparable to the criteria in paragraph (c) below that are designed to achieve the objectives of this clause.

(c) Contractor programs shall include the following, or appropriate alternatives:

(1) Employee assistance programs emphasizing high level direction, education, counseling, rehabilitation, and coordination with available community resources;

(2) Supervisory training to assist in identifying and addressing illegal drug use by Contractor employees;

(3) Provision for self-referrals as well as supervisory referrals to treatment with maximum respect for individual confidentiality consistent with safety and security issues;

(4) Provision for identifying illegal drug users, including testing on a controlled and carefully monitored basis. Employee drug testing programs shall be established taking account of the following:

(i) The Contractor shall establish a program that provides for testing for the use of illegal drugs by employees in sensitive positions. The extent of and criteria for such testing shall be determined by the Contractor based on considerations that include the nature of the work being performed under the contract, the employee's duties, the efficient use of Contractor resources, and the risks to public health, safety, national security that could result from the failure of an employee adequately to discharge his or her position.

(ii) In addition, the Contractor may establish a program for employee drug testing—

(A) When there is a reasonable suspicion that an employee uses illegal drugs; or

(B) When an employee has been involved in an accident or unsafe practice;

(C) As part of or as a follow-up to counseling or rehabilitation for illegal drug use;

(D) As part of a voluntary employee drug testing program.

(iii) The Contractor may establish a program to test applicants for employment for illegal drug use.

(iv) For the purpose of administering this clause, testing for illegal drugs may be limited to those substances for which testing is prescribed by section 2.1 of Subpart B of the "Mandatory Guidelines for Federal Workplace Drug Testing Programs," (53 FR 11980 (April 11, 1988)), issued by the Department of Health and Human Services.

(d) Contractors shall adopt appropriate personnel procedures to deal with employees who are found to be using drugs illegally. Contractors shall not allow any employee to remain on duty or perform in a sensitive position who is found to use illegal drugs until such time as the contractor, in accordance with procedures established by the contractor, determines that the employee may perform in such a position.

(e) The provisions of this clause pertaining to drug testing programs shall not apply to the extent they are inconsistent with state or local law, or with an existing collective bargaining agreement; provided that with respect to the latter, the Contractor agrees that those issues that are in conflict will be a subject of negotiation at the next collective bargaining session.

(End of clause)

[FR Doc. 88-22335 Filed 9-27-88; 8:45 am]

BILLING CODE 3810-01-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 644

[Docket No. 80625-8183]

#### Atlantic Billfishes

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

**ACTION:** Final rule.

**SUMMARY:** NOAA issues this final rule to implement the Fishery Management Plan for Atlantic Billfishes (FMP). This rule (1) prohibits the sale in the United States of blue marlin, white marlin, sailfish, and spearfish caught in specified portions of the Atlantic Ocean, (2) establishes minimum sizes for possession of blue marlin, white marlin, and sailfish shoreward of the outer boundary of the exclusive economic zone (EEZ), (3) prohibits possession of billfish shoreward of the outer boundary of the EEZ by pelagic longline and drift net vessels, (4) restricts the possession or retention of billfish shoreward of the outer boundary of the EEZ to those caught by rod and reel, and (5) requires

catch and effort reports from selected billfish tournaments. The intended effects of this rule are to reduce fishing mortality on billfish, maintain the highest availability of billfish to the U.S. recreational fishery, optimize the social and economic benefits to the Nation by reserving the billfish resource for the U.S. recreational fishery, and increase understanding of the condition of the billfish stock and the billfish fishery.

**EFFECTIVE DATES:** October 28, 1988, except § 644.7(g) and § 644.24(b) which are effective December 27, 1988. Sections 644.7(g) and 644.24(b) contain a collection of information requirement recently submitted to, and not yet approved by, the Office of Management and Budget (OMB). If that requirement is not approved by OMB before the latter effective date above, that date will be extended by further notice in the Federal Register.

**ADDRESSES:** Comments on the collection-of-information requirements should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: Desk Officer for NOAA) and to Rodney C. Dalton, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

**FOR FURTHER INFORMATION CONTACT:** Rodney C. Dalton, 813-893-3722.

**SUPPLEMENTARY INFORMATION:** The FMP was prepared jointly by the South Atlantic, New England, Mid-Atlantic, Gulf of Mexico, and Caribbean Fishery Management Councils (Councils). A notice of its availability was published in the Federal Register (53 FR 21501, June 8, 1988). This rule implements the FMP, which establishes a management regime for Atlantic billfishes shoreward of the outer boundary of the EEZ of the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea, and regulates the possession and sale in the United States of billfish harvested from specified areas of the Atlantic Ocean. The species addressed by the FMP are sailfish, *Istiophorus platypterus*; white marlin, *Tetrapturus albidus*; blue marlin, *Makaira nigricans*; and longbill spearfish, *Tetrapturus pfluegeri*.

The FMP objectives follow:

(1) Maintain the highest availability of billfish to the U.S. recreational fishery by implementing conservation measures that will reduce fishing mortality.

(2) Optimize the social and economic benefits to the Nation by reserving the billfish resource for its traditional use, which in the Atlantic EEZ is almost entirely a recreational fishery. In the Caribbean, where billfish are used as

food, there is both a recreational fishery and a small-scale handline fishery.

(3) Increase understanding of the condition of the billfish stocks and the billfish fishery.

One the basis of data presented in the FMP and in the "Source Document for the Fishery Management Plan for the Atlantic Billfishes" (March 1988; prepared by the South Atlantic Fishery Management Council in cooperation with the New England, Mid-Atlantic, Caribbean, and Gulf of Mexico Fishery Management Councils), the Councils concluded that the greatest overall benefit to the Nation would result from reserving, to the extent possible, billfish occurring shoreward of the outer boundary of the EEZ of the U.S. recreational fishery. Consequently, under the FMP, only traditional recreational fishing gear (i.e., rod and reel) may be used in a directed fishery for billfish shoreward of the outer boundary of the EEZ of the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea. The FMP will provide an exemption from prohibition of sale for a small-scale, artisanal handline fishery in Puerto Rico when certain conditions related to permitting and recordkeeping have been established and approved by the Councils.

History of the fishery, problems in the fishery, specification of optimum yield, and the management measures contained in the FMP were fully discussed in the proposed rule (53 FR 24462, June 29, 1988) and are not repeated here.

#### Comments and Responses

NOAA received 413 comments from recreational fishermen, sportfishing clubs, conservation organizations, and boat and tackle manufacturers in support of the FMP and proposed rule. Objections to various aspects of the proposed rule were made through a petition signed by over 100 handgear fishermen, 40 form letters from charterboat operators, and 11 sets of comments submitted by individuals, commercial fishing organizations, dissenting members of two fishery management councils, the Small Business Administration, a foreign fishing organization, a foreign fisheries agency, and two major taxidermy firms. Technical corrections to the proposed rule submitted by the U.S. Coast Guard are addressed in the Changes from the Proposed Rule section. Comments and responses, grouped by subject area, are summarized as follows.

#### Consistency with National Standards

Most commenters who opposed aspects of the FMP and the proposed

rule stated or implied that the prohibition of sale and the ban on possession of billfish by pelagic longline or drift net vessels would violate national standard 4. An organization representing commercial fishing interests suggested that the rule would also violate national standards 1, 2, and 5.

Under national standard 1, one commenter argued that the FMP does not establish an optimum yield (OY) which is consistent with the Magnuson Fisheries Conservation and Management Act (Magnuson Act) and that there is no evidence to suggest that allocation to the recreational sector maximizes benefits to the Nation. The Councils have defined OY as the greatest number of billfish that can be caught by the recreational fishery consistent with the provisions of the FMP. This definition recognizes that the directed fishery for billfish in the United States has traditionally been a recreational fishery with substantial economic and social value to the Nation. The FMP includes both qualitative and quantitative information indicating that the proposed measures, designed to achieve OY, will result in benefits that exceed costs. NOAA believes that the FMP is consistent with national standard 1 and that the defined OY is supportable. This commenter also stated that national standard 2 was violated because there is uncertainty regarding maximum sustainable yield estimates. The FMP acknowledges this and other limitations of available data. National standard 2 requires that management measures be based on the best scientific data available. Despite the referenced uncertainty, NOAA concludes that the best available data were used and that the management action is adequately supported.

National standard 4 requires that any allocation of fishing privileges must be fair and equitable to all fishermen, reasonably calculated to promote conservation, and carried out in such manner that no particular entity acquires an excessive share of such privileges. Several commenters suggested that the prohibition of sale, ban on possession of billfish by longline and drift net vessels, and overall allocation of the resource to the recreational sector violate the "fair and equitable" provision of national standard 4.

In judging an allocation against the fairness and equity standard, the national standard guidelines indicate that the allocation should be rationally connected to achievement of OY or an FMP objective. Further, an allocation may impose a hardship on one group if it

is outweighed by the benefits received by another group. NOAA believes that the cited measures are necessary to achieve OY and the primary FMP objective of maintaining the highest availability of billfishes to the recreational fishery. The FMP contains qualitative and quantitative information demonstrating that the relatively small adverse impact associated with eliminating sale or possession of the commercial bycatch is exceeded by benefits accruing to the traditional, directed recreational fishery. NOAA believes that the FMP is consistent with national standard 4.

One commenter concluded that the FMP violates national standard 5 because it arguably promotes wasteful discarding of dead billfish and advocates allocation based on economic factors. Several other commenters also raised the discard issue, but not in the context of national standard 5. Prohibiting the possession or sale of all billfish, including those dead, is wasteful but unavoidable. Allowing retention of dead billfish would create an enforcement loophole that could jeopardize effectiveness of the FMP; it would be impossible to verify the condition of a fish when it was caught. Research needs identified in the FMP include investigations of methods to reduce billfish bycatch. At present, NOAA concludes that enforcement considerations justify the requirement. NOAA does not agree that this rule results in allocations based solely on economic purposes. This rule will ensure the viability of a significant, traditional recreational fishery and provide substantial social benefits as well as contribute to conservation of the resource.

#### Economic Analyses

One commenter suggested that the economic analyses, particularly Scenario 2, were a "post hoc justification of the Councils' attempt to eliminate commercial retention of billfish." NOAA disagrees. The Councils prepared a quantitative analysis in response to comments from NMFS. The FMP clearly states the Councils' reservations about the applicability of the survey question and "willingness to pay" values associated with Scenario 1. Because of these concerns, the Councils prepared an alternative analysis (Scenario 2) and included results of both analyses and qualitative evaluations in the FMP.

Several commenters were critical of the cost-benefit analysis, suggesting that there was no basis for supporting the no-sale provision and the prohibition of

possession by certain gear types and that the assumptions and uncertainties regarding the data used resulted in dubious conclusions. One commenter recalculated the cost-benefit analysis using the lower survival rates associated with Japanese longlining and higher estimates of consumer losses. This revised analysis indicated significant losses would result from the no-sale provision. NOAA considers the substitution of the Japanese data to be inappropriate. The data used in the FMP were obtained by NMFS observers aboard U.S. longline vessels and are directly applicable. NOAA acknowledges, as does the FMP, that limitations of available data and uncertainties regarding the precise nature of basic relationships, such as that between fishing mortality and recreational success, have hindered quantitative analyses. Certain assumptions and value judgments were necessarily made and, in the absence of definitive data, may be subject to criticism. NOAA believes, however, that the FMP is generally based on the best available data and that the combination of quantitative and qualitative analyses presented provide a reasonable basis for the proposed actions. If subsequent FMP monitoring, data collection, and research reveal that modification of existing measures is warranted, appropriate refinements will be made through FMP or regulatory amendments.

#### *Minimum Size Limits*

Two taxidermy firms approximately 40 charterboat operators, one individual, and the Small Business Administration objected to the minimum size limits. Numerous letters from sportfishermen, boat and tackle manufacturers, and conservation organizations supported the minimum size limits. Those objecting to the size limits stated (1) that the FMP does not adequately evaluate the economic impacts on taxidermists, charterboat operators, and recreational fishermen; (2) size limits will reduce significantly the number of fish available for mounting (23 to 69 percent, depending on species); (3) replica mounts will not be acceptable to the public; (4) real fish are essential for mounts; (5) fish to be mounted should be exempt from size limits; (6) the small number of fish mounted would not impact the effectiveness of the FMP; and (7) size limits will not adequately protect female billfishes.

The information provided to the Councils by taxidermists prior to completion of the FMP was incorporated and indicated a maximum loss, if no replica mounts were made, of 13 to 20 percent to total revenue. The Councils

believe that acceptance of replica mounts and the benefits of increased billfish availability and larger average-sized fish will mitigate projected losses. Acceptance of replica mounts will depend largely upon efforts to inform the public of this alternative and to market it effectively. Although several taxidermists stated that real fish are necessary for making molds and are used in most mounts, another taxidermist testified that a single master mold can be used to generate numerous additional molds, thus, greatly reducing the need for real billfish. This firm also manufactures and sells replica mounts exclusively. The Councils determined that a "mounting" exemption for a substantial number of undersized billfishes would be inconsistent with the primary objective of the FMP and was unnecessary, given the alternative of using replica mounts. NOAA concurs.

Information regarding potential impacts on charterboat operators was not available during FMP development. Form letters received during the public comment period estimated annual impacts in categories ranging from \$0—\$1,000, to \$10,000—\$15,000, per operator, with 50 percent of respondents indicating a \$1,000—\$3,000 loss. Responses from recreational fishermen were overwhelmingly in support of minimum sizes, with only one objection. The FMP analysis of minimum size limits indicates that the measure would reduce recreational fishing mortality by 30 to 50 percent, depending on the species. According to the analysis, minimum sizes will contribute more to the primary objective of the FMP (i.e., increasing availability of billfishes) than will the restrictions on commercial fishing. Further, requiring release of undersized billfishes is consistent with the conservation ethic evolving within the recreational community as evidenced by the increasing number of tournaments that have adopted minimum sizes or implemented "no kill" policies. Regarding the effectiveness of the minimum sizes for protecting female billfishes, all minimum sizes are above the size of sexual maturity for both males and females and will ensure the opportunity for reproduction prior to harvest. NOAA acknowledges, as does the FMP, that minimum sizes are likely to result in significant impacts, at least initially, on affected small business entities; however, this measure is an important factor in achieving the principal objective of the FMP.

#### *Scope of Regulatory Authority*

Two commercial fishing organizations, dissenting members of one fishery management council, and a

foreign fisheries agency and fishing association argued that the FMP's management units for the four species and the prohibition on sale and on commercial possession of billfishes apply to fish harvested beyond the EEZ and, therefore, exceed the authority of the Magnuson Act. The stocks of billfishes available to U.S. recreational fishermen are not contained solely within the EEZ. Harvest of billfish from the same stock (i.e., management unit) addressed by this FMP will affect availability to U.S. recreational fishermen. Application of the no-sale and no-commercial-possession restrictions within the United States to billfishes harvested from management units (defined in the regulations) is necessary and appropriate to achieving the objective of maximizing the availability of billfishes. This broader application is also essential to enforce the measures within EEZ effectively, because there is no practical means of determining where a billfish was harvested. Although these measures may have an impact beyond the EEZ, they do not regulate fishing outside the EEZ. NOAA believes that these provisions of the rule contribute to conservation of the resource, are necessary to the effectiveness of the FMP, and are within the authority of the Magnuson Act.

#### *General Agreement on Tariffs and Trade (GATT)*

Several commenters, including commercial fishing organizations, foreign fishing interests, and minority members of a fishery management council claimed that the sale restriction, as it applies to imported billfishes, would violate GATT. Articles XI and XX of GATT exempt restrictions on imports relating to conservation of the resource if similar restraints are imposed on domestic fishermen. The prohibition on sale, including imports, is designed to reduce fishing mortality on billfish stocks that are believed to be fully exploited (i.e., marlins); therefore, the measure is related to conservation. The prohibition on sale applies equally to billfish harvested by domestic and foreign vessels. If billfish harvested from the management unit could be imported into the United States, U.S. fishermen could circumvent the no-sale provision by landing billfishes in foreign ports for subsequent importation. The restriction on imports is, therefore, necessary for enforcement of a measure to restrict quantities of the like domestic product. For these reasons, NOAA concludes that the restriction on the imports is consistent with GATT.

### Prohibitions of Handgear

Member of the New England Handgear Alliance and dissenting members of a fishery management council objected to the ban on use of handgear, other than rod and reel, to harvest billfishes. These commenters stated that handlines and harpoons have been used traditionally to harvest billfishes in the New England area. The Councils considered and rejected a request to exempt handgear fishermen from the no-sale provision. Because the handgear fishery was believed to consist almost exclusively of fishermen who sold their catch, there was no further consideration of allowing handgear for recreational fishing only. Evidence of a true recreational handgear fishery would warrant reconsideration of this issue and possible inclusion through FMP amendment.

### Caribbean Exemption

Dissenting members of one fishery management council opposed the exemption of the Puerto Rican artisanal handline fishery from the no-sale provision because they believed it was discriminatory and would be difficult to monitor. A Puerto Rican government natural resources management agency suggested that the conditional requirements for establishing the exemption be deleted. NOAA believes that the exemption, with the conditional requirements which were adopted in the final FMP, is supportable. This exemption is unique because, when the conditions specified in the FMP are met, it will apply to billfish caught incidentally by traditional, artisanal fishermen. The few billfish caught may constitute a significant portion of the income of these fishermen. The requirements for monitoring are necessary to avoid significant enforcement problems.

### Area closures

A foreign fishing association commented that the time and area restrictions applicable to foreign tuna vessels should not be incorporated into the FMP because there is no conservation justification for them and domestic tuna vessels are not restricted. These measures were justified previously under the Preliminary Fishery Management Plan for Atlantic Billfishes and Sharks on the basis of documented gear conflicts. Continuation of these restriction under the FMP imposes no additional burden. Restrictions on domestic tuna fishermen may be considered if substantial conflicts are documented.

### Data Collection

The Small Business Administration suggested that the proposed data collection requirements were not adequate to address billfish bycatch in the tuna fishery or to provide information necessary for stock assessment. One individual opposed mandatory reporting. Tuna longliners are required to maintain logbooks, including data on billfish bycatch, under the Atlantic swordfish regulations (50 CFR Part 630). NOAA believes that the combination of tournament reporting proposed total recreational catch estimates, and recommended research will contribute significantly to meeting stock assessment information needs. Only selected billfish tournaments will be required to report catch and effort information. Data required are routinely collected by most tournaments and should not result in a significant burden. NOAA concludes that the proposed reporting requirements are necessary and appropriate.

### Need for Regulation

Several commenters stated that there is no evidence of a need to regulate the billfish fishery, i.e., no evidence of overfishing or of any impact of commercial fishing on recreational fishing. Some suggested that the FMP does nothing to conserve the resource and could not conserve it without an international management effort.

Although there are no definitive stock assessments, blue marlin and white marlin are believed to be fully exploited. Concerns have been expressed through the International Commission for the Conservation of Atlantic Tunas (ICCAT) about the expanding longline fisheries, with incidental catches of billfishes, in the Gulf of Mexico and Caribbean. In recent years, the swordfish and domestic tuna longline fisheries have increased significantly. Limited observer data indicate that 137 billfish were caught in 160 longline sets from 21 observed longline trips. A rough estimate of current, potential billfish bycatch can be obtained by extrapolating the observer data to the permitted longline fleet, which exceeds 600 vessels. The extrapolated values indicate that incidental billfish catch by the longline fleet could be more than twice as large as the estimated total recreational catch. Even considering that, on average, only 40 percent of incidentally caught billfish are dead and that the extrapolation may tend to overestimate, there is a reasonable basis to conclude that commercial longlining is adversely affecting availability of billfishes to the recreational sector.

The FMP is designed to manage and conserve, within the constraints of Magnuson Act authority, those portions of the billfish stocks available to U.S. fishermen. Restrictions on commercial fishing will reduce the potential for increased fishing mortality on stocks believed to be fully exploited, and minimum size limits are projected to reduce recreational retention of billfishes by 30 to 50 percent, depending on species. It is acknowledged that only a small percentage of each billfish stock is within the EEZ. The FMP recommends that a complementary international management plan be implemented to ensure management throughout the range of these species. NOAA believes that the proposed management measures are necessary and will contribute to conservation of this important fishery resource.

### Changes from the Proposed Rule

The term "Science Director" used in the proposed rule is changed to "Science and Research Director" to conform to the official title of the Science and Research Director, Southeast Fisheries Center, NMFS.

In response to a comment from the U.S. Coast Guard, § 644.7(d) is revised to state more clearly the prohibition of possession or retention of a billfish by a vessel with a pelagic longline or drift net aboard, whether or not such vessel harvested the billfish, as specified in § 644.22.

NOAA determined that the burden of documenting the origin of a billfish, as required by § 644.24(b), could be lessened without jeopardizing the no-sale provision which it supports. Specifically, lack of documentation accompanying a billfish landed in a Pacific State (including the island States) and remaining in the State of landing would not create difficulty in enforcing the no-sale provision. Accordingly, an exception is made in § 644.24(b) for a billfish so landed and not shipped interstate. In addition, the focus of the documentation requirement is placed on commercial seafood dealers and processors, instead of on importers, as being more appropriate to the no-sale provision. A corresponding change is made to the prohibition (§ 644.7(g)) which supports this management measure. Paragraph 644.24(b) is also changed to clarify that the documentation requirement applies to a billfish harvested from outside its management unit. Since the origin of a billfish cannot be ascertained by appearance or test, the presumption that a billfish possessed by a seafood dealer or processor was harvested from its

management unit is essential to the effectiveness of the ban on sale in the United States of a billfish harvested from its management unit. The requirement for documentation is considered the least burdensome means to overcome that presumption. Furthermore, although the documentation requirement could be viewed as a restriction on trade, it is consistent with GATT because it supports the underlying conservation purpose of the no-sale provision applying to a billfish harvested from its management unit, and applies equally to billfish harvested by domestic and foreign vessels.

#### Classification

The Secretary of Commerce determined that the FMP is necessary for the conservation and management of the billfish fishery and that it is consistent with the Magnuson Act and other applicable law.

The Councils prepared a final environmental impact statement for this FMP; a notice of availability was published on September 16, 1988 (53 FR 36118).

The Under Secretary for Oceans and Atmosphere, NOAA, determined that this rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. The Councils prepared a regulatory impact review (RIR) for this rule. A summary of the economic effects was included in the proposed rule published at 53 FR 24462, and is not repeated here.

The Councils prepared a regulatory flexibility analysis as part of the RIR, which concludes that this rule will have significant effects on small entities. A summary of effects was included in the proposed rule and is not repeated here.

Section 644.5 of this rule concerning billfish tournament recordkeeping and reporting contains a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by OMB, OMB Control Number 0648-0031.

Paragraphs 644.7(g) and 644.24(b) of this rule, concerning documentation requirements for seafood dealers or processors possessing billfish, contain a collection-of-information requirement subject to the Paperwork Reduction Act. A request to collect this information has been submitted to OMB for approval. The public reporting burden for this collection of information is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and

reviewing the collection of information. Send comments regarding this reporting burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to NMFS and OMB (see ADDRESSES).

The Assistant Administrator for Fisheries, NOAA, determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of the States in the five-Council area. This determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. Thirteen of those agencies agreed with this determination. Six failed to comment within the statutory time period and, therefore, consistency is automatically implied.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

In accordance with the FMP, the effectiveness of § 644.7(g) and § 644.24(b) is delayed until December 27, 1988, with approval of the collection-of-information requirement by OMB and the issuance of a Control Number by then. This delay is to enable commercial seafood dealers and processors possessing frozen or processed billfishes to dispose of those billfishes that are not accompanied by documentation that they were harvested from an area other than their management units.

#### List of Subjects in 50 CFR Part 644

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 23, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR is amended by adding a new Part 644 to read as follows:

### PART 644—ATLANTIC BILLFISHES

#### Subpart A—General Provisions

- |       |                                   |
|-------|-----------------------------------|
| Sec.  |                                   |
| 644.1 | Purpose and scope.                |
| 644.2 | Definitions.                      |
| 644.3 | Relation to other laws.           |
| 644.4 | Permits and fees. [Reserved]      |
| 644.5 | Recordkeeping and reporting.      |
| 644.6 | Vessel identification. [Reserved] |
| 644.7 | Prohibitions.                     |
| 644.8 | Facilitation of enforcement.      |
| 644.9 | Penalties.                        |

#### Subpart B—Management Measures

- |        |                                |
|--------|--------------------------------|
| 644.20 | Fishing year.                  |
| 644.21 | Size limits.                   |
| 644.22 | Gear limitations.              |
| 644.23 | Incidental catch restrictions. |
| 644.24 | Restrictions on sale.          |

644.25 Specifically authorized activities  
Authority: 16 U.S.C. 1801 *et seq.*

#### Subpart A—General Provisions

##### § 644.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for Atlantic Billfishes prepared jointly by the South Atlantic, New England, Mid-Atlantic, Gulf of Mexico, and Caribbean Fishery Management Councils.

(b) This part regulates fishing for billfish by a person fishing on, and possession of billfish by, a vessel of the United States shoreward of the outer boundary of the EEZ in the Atlantic Ocean (including the Gulf of Mexico and the Caribbean Sea), and regulates the possession and sale in any State of a billfish harvested from its management unit.

##### § 644.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

*Billfish* means sailfish, *Istiophorus platypterus*; white marlin, *Tetrapturus albidus*; blue marlin, *Makaira nigricans*, and longbill spearfish, *Tetrapturus pfluegeri*.

*Billfish tournament* means any fishing competition involving billfish in which participants must register or otherwise enter or in which prize or award is offered for catching billfish.

*Councils* means the following Regional Fishery Management Councils:

(a) South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407-4699;

(b) New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, MA 01906;

(c) Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 300 South New Street, Dover, DE 19901-6790;

(d) Gulf of Mexico Fishery Management Council, 5401 W. Kennedy Boulevard, Suite 881, Tampa, FL 33609;

(e) Caribbean Fishery Management Council, Suite 1108, Banco de Ponce Building, Hato Rey, PR 00918-2577.

*Drift net*, sometimes called a drift entanglement net or drift gill net, means a flat, unmoored net suspended vertically in the water that entangles the head or other body parts of fish that attempt to pass through the meshes.

*Eye-fork length (EFL)* means the straight-line measurement from the eye to the fork of the caudal fin, as shown in Figure 1.

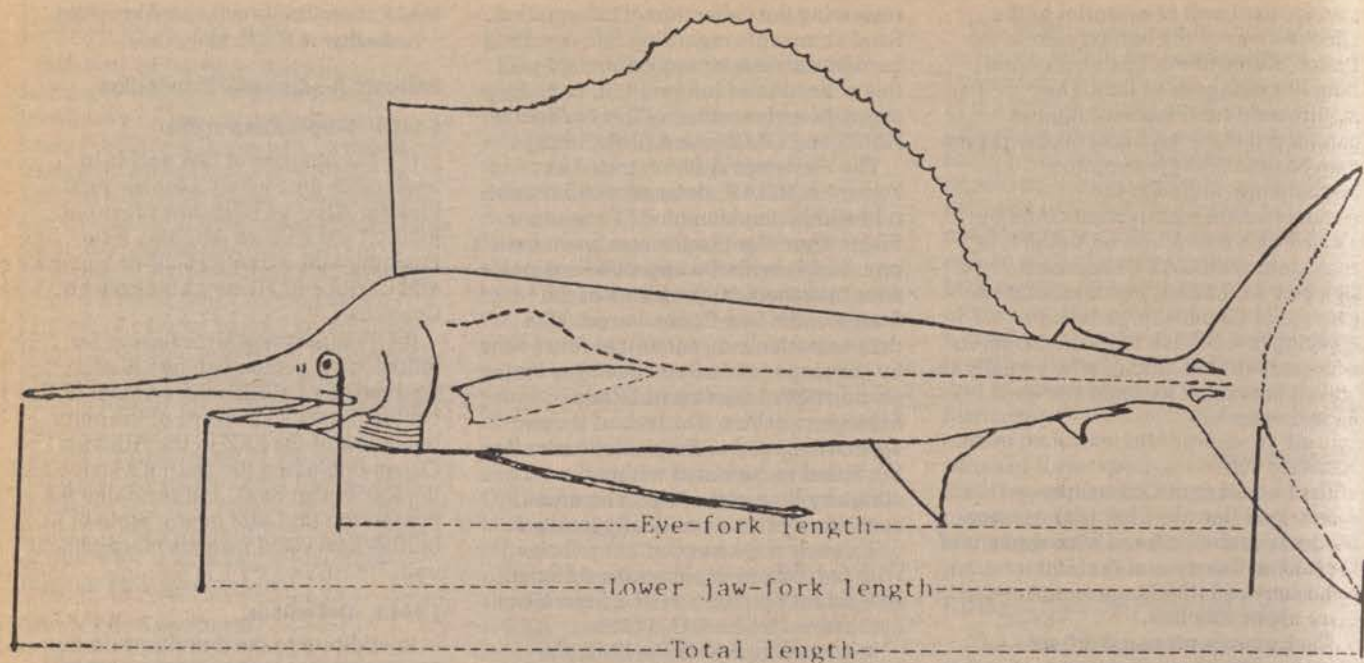


Figure 1. Billfish length measurements.

*Lower jaw-fork length (LJFL)* means the straight-line measurement from the tip of the lower jaw to the fork of the caudal fin, as shown in Figure 1.

*Management unit* means—

(a) For blue marlin and white marlin, the waters of the North Atlantic Ocean (including the Gulf of Mexico and the Caribbean Sea) north of 5°N. latitude;

(b) For sailfish, the waters of the North and South Atlantic Oceans (including the Gulf of Mexico and the Caribbean Sea) west of 30°W. longitude; and

(c) For longbill spearfish, the waters of the entire North and South Atlantic Oceans (including the Gulf of Mexico and the Caribbean Sea).

*Pelagic longline* means a type of fishing gear consisting of a length of line suspended horizontally in the water above the bottom from lines attached to surface floats and to which gangions (leaders) and hooks are attached.

*Regional Director* means the Director, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702, telephone 813-893-3141, or a designee.

*Rod and reel* means a hand-held (includes rod holder) fishing rod with a manually or electrically operated reel attached.

*Science and Research Director* means the Science and Research Director,

Southeast Fisheries Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149, telephone 305-361-5761, or a designee.

*Total length (TL)* means the straight-line measurement from the tip of the upper jaw to the plane of the more extended tip of the caudal fin when in its natural position, as shown in Figure 1.

#### § 644.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraph (b) of this section.

(b) Regulations governing fishing in the EEZ by vessels other than vessels of the United States appear at 50 CFR Part 611, Subpart A, and §§ 611.60 and 611.61.

#### § 644.4 Permits and fees. [Reserved]

#### § 644.5 Recordkeeping and reporting.

A person conducting a billfish tournament from a port in an Atlantic, Gulf of Mexico, or Caribbean State, and who is selected by the Science and Research Director, must maintain and submit a fishing record on forms available from the Science and Research Director for each day of fishing in the tournament. Forms must be submitted so as to be received by the Science and Research Director within 10 days of the conclusion of the tournament and must

be accompanied by a copy of the tournament rules.

(a) The following information must be included on each form:

- (1) Tournament name;
- (2) Recorder's name and telephone number;
- (3) Date for which the information is recorded;
- (4) Hours fished (time from first line in the water to last line out of the water);
- (5) Name of each vessel fishing that day;
- (6) For each vessel listed, the species of each billfish boated or released;
- (7) The weight and length of each billfish brought ashore;
- (8) The name, address, and signature of the tournament director; and
- (9) The date signed.

(b) In addition to the information required to be reported by paragraph (a) of this section, the following information is desired, but is not mandatory:

- (1) Prevailing weather conditions on the day reported, such as wind speed and direction, and sea height and direction; and
- (2) Whether a tag was attached before the billfish was released.

(Information collection requirements approved by the office of management and Budget under Control no. 0648-0031)

**§ 644.6 Vessel identification. [Reserved]****§ 644.7 Prohibitions.**

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Falsify or fail to report information required to be submitted, as specified in § 644.5.

(b) Possess a billfish less than the minimum size limit specified in § 644.21(a).

(c) Fail to release a billfish in the manner specified in § 644.21(b) or § 644.23.

(d) Possess or retain a billfish by a vessel with a pelagic longline or drift net aboard or harvested by gear other than rod and reel, as specified in § 644.22.

(e) Purchase, barter, trade, or sell a billfish harvested from its management unit, as specified in § 644.24(a).

(f) Falsify information submitted in accordance with § 644.24(b).

(g) As a commercial seafood dealer or processor, possess a billfish without the documentation, or with incomplete or falsified documentation, specified in § 644.24(b).

(h) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

**§ 644.8 Facilitation of enforcement.**

See § 620.8 of this chapter.

**§ 644.9 Penalties.**

See § 620.9 of this chapter.

**Subpart B—Management Measures****§ 644.20 Fishing year.**

The fishing year is January 1 through December 31.

**§ 644.21 Size limits.**

(a) The following minimum size limits, expressed in terms of lower jaw-fork length (LJFL), apply for the possession of billfish:

(1) Blue marlin—86 in.

(2) White marlin—62 in.

(3) Sailfish—57 in.

(4) Longbill spearfish—no minimum size.

(b) A billfish under the minimum size limit must be released by cutting the line near the hook without removing the fish from the water.

(c) The following approximations of the minimum size limits for blue marlin, white marlin, and sailfish, expressed in terms of EFL, LJFL, TL, and whole, live weight, are provided for the convenience of fishermen. These approximations may not be substituted for the minimum size limits expressed in terms of LJFL specified in paragraph (a) of this section.

	Eye-fork length (in.)	Lower jaw-fork length (in.)	Total length (in.)	Whole, live wt. (lbs.)
Blue marlin...	75	86	110	200
White marlin...	53	62	81	50
Sailfish....	49	57	76	30

**§ 644.22 Gear limitations.**

(a) The possession or retention shoreward of the outer boundary of the EEZ of a billfish harvested by gear other than rod and reel is prohibited.

(b) The possession or retention shoreward of the outer boundary of the EEZ of a billfish by a vessel with a pelagic longline or drift net aboard is prohibited.

**§ 644.23 Incidental catch restrictions.**

A billfish harvested by gear other than rod and reel shoreward of the outer boundary of the EEZ must be released in a manner that will ensure maximum probability of survival. A billfish caught by a pelagic longline shoreward of the outer boundary of the EEZ must be released by cutting the line near the hook without removing the fish from the water.

**§ 644.24 Restrictions on sale.**

(a) A billfish harvested from its management unit may not be purchased, bartered, traded, or sold in any State.

(b) Except for a billfish landed in a Pacific State and remaining in the State of landing, a billfish that is possessed by a seafood dealer or processor will be presumed to have been harvested from its management unit unless it is accompanied by documentation that it was harvested from outside its management unit. Such documentation must contain the following:

(1) The information specified in 50 CFR Part 246 for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce;

(2) The name and home port of the vessel harvesting the billfish;

(3) The port and date of offloading from the vessel harvesting the billfish; and

(4) A statement signed by the dealer attesting that each billfish was harvested from an area other than its management unit.

**§ 644.25 Specifically authorized activities.**

The Secretary may authorize, for the acquisition of information and data, activities otherwise prohibited by these regulations.

[FR Doc. 88-22193 Filed 9-23-88; 4:20 pm]

BILLING CODE 3510-22-M

# Proposed Rules

Federal Register

Vol. 53, No. 188

Wednesday, September 28, 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

### Animal and Plant Health Inspection Service

#### 7 CFR Part 302

[Docket No. 85-368]

#### District of Columbia; Movement of Plants and Plant Products

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We propose to revise the regulations concerning movement of plants and plant products into and out of the District of Columbia by deleting requirements for (1) inspection of plants and plant products moved into the District, and (2) certification of nursery stock, herbaceous perennials, bulbs, and roots moved out of the District. These revisions are necessary to improve the effectiveness and efficiency of our regulatory operations concerned with District of Columbia-related plant and plant product movements. Our proposal should also make the regulations easier to understand, thereby increasing compliance.

**DATE:** Consideration will be given only to comments postmarked or received on or before November 28, 1988.

**ADDRESS:** Send an original and three copies of written comments to Regulatory Coordination, APHIS, USDA, Rm. 728 Federal Bldg., 6505 Belcrest Rd., Hyattsville, MD 20782. Please state that your comments refer to Docket No. 85-368. Comments received may be inspected at USDA, 14th and Independence Avenue SW., Room 1141-South Bldg., between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. E.E. Crooks, Port Operations Staff, PPQ, APHIS, USDA, Room 670, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8249.

#### SUPPLEMENTARY INFORMATION: Background

Part 302, "District of Columbia; Movement of Plants and Plant Products," Title 7, Code of Federal Regulations, contains inspection and certification requirements governing the movement of plants and plant products into and out of the District of Columbia (DC). Throughout the following discussion, this part is referred to as "the regulations."

By revising the regulations, which have been in effect since 1959, we hope to remove unnecessary restrictions on the interstate movement of plants and plant products, and to clarify the regulations for persons who must comply with them.

The following table presents an overview of the organizational changes we are proposing for Part 302. It graphically indicates the deletions, additions, and redesignations contained in our proposed revision:

Current section	Proposed section
302.1	302.2
302.2	302.1
302.3	Deleted
302.4(a) & (b)	302.3(a) & (b)
302.4(c)	Deleted
302.5	302.3(c)
302.6(a) & (d)	Deleted
302.6(b) & (c)	302.4
N/A	302.5

Those proposed changes that alter the regulations in substantive ways are:

#### Definitions

We propose to add definitions for the terms "Administrator," "Infected," "Infested," "Plant Protection and Quarantine," "Plants and plant products," "Regulated article," "State," "State plant protection official," and "You" in order to clarify use of these terms in the regulations and increase understanding and compliance.

Under our proposal, the terms "herbaceous perennial plants, bulbs, and roots" and "nursery stock" would not be used in the regulations and their current definitions would be merged within the proposed definition for "Plants and plant products."

Our proposed definition of "Plants and plant products" includes any parts of woody and herbaceous perennials capable of propagation, *except* seeds. Roots, buds, grafts, bulbs, tubers, and corns need to be inspected, and are

therefore included under the definition, because they are occasionally taken from uncultivated plants that may be diseased. Seeds do not need to be inspected, and are therefore excluded from the definition, because we believe that the seeds used by District of Columbia residents are commercially packaged varieties. These seeds are grown in controlled environments and are subject to close scientific scrutiny and other seed industry safeguards to assure that they are disease-free.

We also propose to delete the definition for "annual plants." Our proposed regulations do not contain this term because our experience with annuals moved into and out of the District of Columbia is that virtually all are houseplants and backyard vegetable garden plants are grown and maintained in a manner that precludes their being a medium for the spread of pests or diseases capable of endangering trees and other perennials in District of Columbia parklands.

#### Plants and Plant Products Moved Into DC

We propose to delete the requirement in current § 302.4(c) for inspection of all plants and plant products moved into DC. There is no farmland or commercial agricultural production for us to protect in DC. Further, the very few serious plant pests or diseases discovered during 25 years of inspecting this traffic do not justify the monetary and staffing costs of our continuing to inspect every domestic plant and plant product shipment entering DC.

In order to protect DC's extensive parklands from destructive plant pests and diseases not currently found in DC, our proposed § 302.3 contains certification and packaging requirements, as well as authority for inspectors to stop and inspect any vehicles or property that they suspect may contain infested or infected articles.

#### Plants and Plant Products Moved Out of DC

We are also proposing to delete the requirement, in current § 302.6, for certification of nursery stock, herbaceous perennials, bulbs, and roots moved out of DC. The only pest of agricultural concern found within DC's borders is the gypsy moth, and interstate movement of plants and plant parts that

might be infested by this pest is already restricted under federal gypsy moth regulations (7 CFR 301.45 *et seq.*).

#### Compliance Information

We propose to add new §§ 302.4 and 302.5 to the regulations. These proposed sections contain information on how and where to obtain certificates, the need for advance notification when obtaining inspector services, and responsibility for costs and charges incident to compliance with the proposed revision of Part 302.

#### Miscellaneous

We propose to delete current § 302.3. Since any article not specifically named in the regulations is unrestricted, we believe that this section's list of "unrestricted articles" is redundant.

We have made nonsubstantive changes to present the provisions of this rule more clearly.

#### Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than \$100 million; would not cause a major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The primary effect of our proposed revision of the current regulations would be internal, because it would relieve inspectors of the requirement to perform inspections and certifications that are not necessary to protect agriculture from plant pests or diseases. Eliminating these restrictions would not, on the other hand, increase trade movements or sales since certificates are routinely issued for the interstate movement of the articles involved. Any industry savings resulting from elimination of inspections would be small when measured against the overall production, maintenance, and transportation costs for these articles.

Our remaining proposed changes should simplify and clarify current provisions, rather than significantly altering the existing regulations. If our proposed revisions were adopted, the volume of plants and plant products

moving into and out of DC would not be changed, we would continue to provide adequate protection against entry of destructive plant pests and diseases into DC, and we would still make certification services available to those who need them.

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

#### Executive Order 12372

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

#### List of Subjects in 7 CFR Part 302

Agricultural commodities, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

Accordingly, we propose to revise Part 302 as follows:

#### PART 302—DISTRICT OF COLUMBIA: MOVEMENT OF PLANTS AND PLANT PRODUCTS

##### Sec.

- 302.1 Definitions.
- 302.2 Restrictions and prohibitions.
- 302.3 Movement of plants and plant products into the District of Columbia.
- 302.4 Issuance of certificates.
- 302.5 Costs and charges.

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 161, 162, and 164-167; 7 CFR 2.17, 2.51, and 371.2(c).

##### § 302.1 Definitions.

In this part, the following definitions apply:

**Administrator.** The Administrator of the Animal and Plant Health Inspection Service or any employee of the United States Department of Agriculture to whom the Administrator has delegated authority to act in his or her stead.

**Certificate.** A document issued by an inspector for a regulated article, representing that the article has been inspected and found free of injurious plant pests and diseases and that it may be moved interstate to any destination.

**Infested.** The presence of a destructive plant disease or the existence of circumstances that make it reasonable for an inspector to believe that a destructive plant disease is present.

**Infested.** The presence of a destructive plant pest or the existence of

circumstances that make it reasonable for an inspector to believe that a destructive plant pest is present.

**Inspector.** Any employee of Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, authorized by the Administrator to enforce the provisions of this part.

**Moved.** Shipped, offered for shipment to a common carrier, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved by any means.

**Plant Protection and Quarantine.** Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture.

**Plants and plant products.** Woody and herbaceous perennials, such as trees, shrubs, vines, and other plants having persistent above-the-ground woody stems or whose roots persist 2 or more years. Also, any of their plant parts, except seeds, that are capable of propagation, including roots, buds, grafts, bulbs, tubers, and corms.

**Regulated article.** An article whose interstate movement is prohibited or restricted by federal statutes, quarantines, or regulations.

**State.** The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any state, territory, or possession of the United States.

**State plant protection official.** Any state official responsible for plant pest and disease quarantine, control, or eradication programs.

**You.** Any association, company, corporation, firm, individual, joint stock company, partnership, society, or other organized group or agent acting for any organized group or individual.

##### § 302.2 Restrictions and prohibitions.

You may move a regulated article into the District of Columbia only if you comply with the conditions explained in this part.

##### § 302.3 Movement of plants and plant products into the District of Columbia.

(a) You may move plants and plant products into the District of Columbia only if they are accompanied by a certificate.

(b) Each container or other package containing plants and plant products moved into the District of Columbia must be plainly marked with the following information:

(1) Names and addresses of the consignor and consignee;

(2) Common names of all plants enclosed;

(3) Types of plant parts that are enclosed, including roots, buds, grafts, bulbs, tubers, and corms; and

(4) Whether any soil has been enclosed.

(c) Inspectors are authorized to stop you and to inspect your property and means of conveyance in accordance with 7 U.S.C. 150ff and 164a.

#### § 302.4 Issuance of certificates.

(a) An inspector will issue you a certificate to move plants and plant products originating in the District of Columbia, if such plants and plant product comply with inspection and certification requirements of other applicable federal regulations.

(b) You should contact an inspector as far in advance as possible of the desired date for movement <sup>1</sup> to arrange for issuance of certificates.<sup>2</sup>

#### § 302.5 Costs and charges.

The services of the inspector during normal business hours are furnished without cost. The U.S. Department of Agriculture will not be responsible for any other costs or charges.

Done in Washington, DC, this 23rd day of September 1988.

James W. Glosser,  
Administrator, Animal and Plant Health  
Inspection Service.

[FR Doc. 88-22217 Filed 9-27-88; 8:45 am]

BILLING CODE 3410-34-M

### 9 CFR Part 78

[Docket No. 88-121]

#### Brucellosis in Cattle; Interstate Movement of Cattle from Class B and Class C States and Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

**SUMMARY:** We are proposing to amend the regulations governing the interstate movement of cattle because of brucellosis by imposing additional restrictions on the interstate movement of certain cattle from Class B states and areas and from Class C states and areas. We believe this action is warranted in order to help reduce the risk of the interstate spread of

brucellosis and to further our goal of eradicating the disease.

**DATE:** Consideration will be given only to comments postmarked or received on or before October 13, 1988.

**ADDRESSES:** Send an original and three copies of written comments to Regulatory Coordination, APHIS, USDA, Room 728 Federal Building, 6505 Belcrest Rd., Hyattsville, MD 20782. Please state that your comments refer to Docket No. 88-121. Comments received may be inspected at USDA, 14th and Independence Ave., SW., Room 1141-South Bldg., between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. Hugh E. Metcalf, Senior Staff Veterinarian, Program Planning Staff, VS, APHIS, USDA, Room 841, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8713.

#### SUPPLEMENTARY INFORMATION:

##### Background

Brucellosis is a serious infectious and contagious disease caused by bacteria of the genus *Brucella*. It affects both animals and man. The Secretary of Agriculture is authorized to cooperate with the states in conducting a brucellosis eradication program and in preventing the interstate spread of brucellosis. The regulations in 9 CFR Part 78 (referred to below as the regulations) govern the interstate movement of cattle, bison, and swine in order to help prevent the interstate spread of brucellosis.

The regulations provide a system for classifying states or portions of states according to the rate of brucella infection present, and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C can be placed under federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for states or areas with the highest rate of brucellosis. Class B and Class A fall between these two extremes. Restrictions on moving cattle interstate become less stringent as a state approaches or achieves Class Free status.

##### Classification of Herds Within States

Herds of cattle are classified as either "known to be affected" or "not known

to be affected." A "herd known to be affected" is defined in the regulations as any herd in which any animal has been classified as a brucellosis reactor and which has not been released from quarantine. A "herd not known to be affected" is defined as any herd in which no animal has been classified as a brucellosis reactor or any herd in which one or more animals have been classified as brucellosis reactors but which has been released from quarantine. Herds not known to be affected may qualify for certified brucellosis-free herd status if certain testing requirements are met.

#### Interstate Movement of Cattle From Herds Not Known To Be Affected in Class C States and Areas

Section 78.9(d) of the regulations sets forth the conditions under which test-eligible cattle which originate in Class C States or areas, are not brucellosis exposed, and are from a herd not known to be affected may be moved interstate from Class C States or areas. The age at which cattle are considered test-eligible generally coincides with the age at which they reach sexual maturity. Test-eligible cattle are defined, for purposes of interstate movement, to include non-vaccinates 18 months of age or over, except steers and spayed heifers; official calfhood vaccinates 18 months of age or over which are parturient or postparturient; official calfhood vaccinates of the beef breeds with the first pair of permanent incisors fully erupted (2 years of age or over); and official calfhood vaccinates of the dairy breeds with partial eruption of the first pair of permanent incisors (20 months of age or over).

With respect to the interstate movement of these cattle, § 78.9(d) of the regulations provides:

Test-eligible cattle which originate in Class C States or areas, are not brucellosis exposed, and are from a herd not known to be affected may be moved interstate from Class C States or areas only under the conditions specified below:

(1) *Movement to recognized slaughtering establishments.* (i) Such cattle may be moved interstate from a farm of origin or a nonquarantined feedlot directly to a recognized slaughtering establishment without restriction under this subpart.

(ii) Such cattle may be moved interstate from a farm of origin directly to an approved intermediate handling facility without restriction under this subpart.

(iii) Such cattle may be moved interstate from a nonquarantined feedlot directly to an approved intermediate handling facility and then directly to an approved intermediate handling facility and then directly to a

<sup>1</sup> Forty-eight hours will usually be adequate; however, circumstances may dictate a need for a longer advance-notice period. For example, plants susceptible to certain diseases must be inspected only during their growing season, when symptoms will be visible.

<sup>2</sup> You may apply for a certificate by contacting Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, BARC-East, Building 320, Beltsville, MD 20705; Telephone (301) 344-2527.

recognized slaughtering establishment if they are accompanied by a permit or "S" brand permit.

(iv) Such cattle may be moved interstate from a farm of origin or a nonquarantined feedlot directly to a specifically approved stockyard and then to a recognized slaughtering establishment if:

(A) They are negative to an official test conducted at the specifically approved stockyard and are accompanied by a certificate or "S" brand permit which states, in addition to the items specified in § 78.1, the test dates and results of the official tests; or

(B) They originate from a certified brucellosis-free herd and identity to the certified brucellosis-free herd is maintained; or

(C) They are "S" branded at the specifically approved stockyard, accompanied by an "S" brand permit, and moved directly to a recognized slaughtering establishment; or

(D) They are moved from the specifically approved stockyard accompanied by an "S" brand permit in vehicles closed with official seals applied and removed by a Veterinary Services representative, a State representative, an accredited veterinarian, or an individual authorized for this purpose by a Veterinary Services representative. The official seal numbers must be recorded on the accompanying "S" brand permit.

(v) Such cattle may be moved interstate from a farm of origin or a nonquarantined feedlot directly to a specifically approved stockyard and then to an approval intermediate handling facility and then directly to a recognized slaughtering establishment if:

(A) They are negative to an official test conducted at the specifically approved stockyard and are accompanied by an "S" brand permit which states, in addition to the items specified in § 78.1 the test dates and results of the official tests; or

(B) They originate from a certified brucellosis-free herd, identity to the certified brucellosis-free herd is maintained, and they are accompanied by a certificate or "S" brand permit; or

(C) They are "S" branded at the specifically approved stockyard, accompanied by an "S" brand permit, and moved directly to an approved intermediate handling facility.

(vi) Such cattle from other than a farm of origin or a nonquarantined feedlot may be moved interstate to a recognized slaughtering establishment only if:

(A) They are negative to an official test within 30 days prior to such interstate movement and are accompanied by a certificate or "S" brand permit which states, in addition to the items specified in § 78.1, the test dates and results of the official tests; or

(B) They originate from a certified brucellosis-free herd and identity to the certified brucellosis-free herd is maintained; or

(C) They are "S" branded, accompanied by an "S" brand permit, and moved directly to a recognized slaughtering establishment; or

(D) They are accompanied by an "S" brand permit and moved in vehicles closed with official seals applied and removed by a

Veterinary Services representative, a State representative, an accredited veterinarian, or by an individual authorized for this purpose by the Veterinary Services representative. The official seal numbers must be recorded on the accompanying "S" brand permit.

(vii) Such cattle from other than a farm of origin or a nonquarantined feedlot may be moved interstate to an approved intermediate handling facility and then directly to a recognized slaughtering establishment only if:

(A) They are negative to an official test within 30 days prior to such interstate movement and are accompanied by a permit or "S" brand permit which states, in addition to the items specified in § 78.1, the test dates and results of the official tests; or

(B) They originate from a certified brucellosis-free herd, identity to the certified brucellosis-free herd is maintained, and they are accompanied by an "S" brand permit; or

(C) They are "S" branded, accompanied by an "S" brand permit, and moved directly to an approved intermediate handling facility.

(2) *Movement to quarantined feedlots.*

(i) Such cattle may be moved interstate from a farm of origin directly to:

(A) A quarantined feedlot if such cattle are "S" branded upon arrival at the quarantined feedlot; or

(B) A specifically approved stockyard and then directly to a quarantined feedlot if such cattle are "S" branded upon arrival at the specifically approved stockyard and are accompanied to the quarantined feedlot by an "S" brand permit.

(ii) Such cattle from other than a farm of origin may be moved interstate to a quarantined feedlot if:

(A) They are negative to an official test within 30 days prior to such movement and are accompanied by a certificate which states, in addition to the items specified in § 78.1, the test dates and results of the official tests; or

(B) They are "S" branded, accompanied by an "S" brand permit, and moved directly to a quarantined feedlot.

(3) *Movement other than in accordance with paragraphs (d)(1) or (2) of this section.* Such cattle may be moved interstate other than in accordance with paragraphs (d)(1) or (2) of this section only if:

(i) Such cattle originate in a certified brucellosis-free herd and are accompanied interstate by a certificate which states, in addition to the items specified in § 78.1, that the cattle originated in a certified brucellosis-free herd; or

(ii) Such cattle

(A) Are negative to two consecutive official tests at least 60 days apart, with the first test not less than 60 days nor more than 1 year before interstate movement and the second test not more than 30 days before interstate movement;

(B) Are accompanied by a certificate which states, in addition to the items specified in § 78.1, the test dates and results of the official tests; and

(C) Have been issued a permit for entry; or

(iii) Such cattle

(A) Are official vaccinates of the beef breeds 24 months of age or over, or of the dairy breeds 20 months of age or over;

(B) Are negative to an official test within 30 days prior to the date of interstate movement;

(C) Are accompanied by a certificate which states, in addition to the items specified in § 78.1, the test dates and results of the official tests; and

(D) Have been issued a permit for entry; or

(iv) Such cattle

(A) Are negative to an official test not less than 60 days nor more than 1 year before the interstate movement;

(B) Are moved from a farm of origin directly to a specifically approved stockyard and are subjected to an official test upon arrival at the specifically approved stockyard prior to losing their identity with the farm of origin; and

(C) Are accompanied by a document which states the test dates and results of the official tests conducted prior to the interstate movement; or

(v) Such cattle are official vaccinates of the beef breeds 24 months of age or over, or of the dairy breeds 20 months of age or over; are moved from a farm of origin directly to a specifically approved stockyard, and are subjected to an official test upon arrival at the specifically approved stockyard prior to losing their identity with the farm of origin; or

(vi) Such cattle are from a farm of origin and are negative to a herd blood test within 1 year prior to interstate movement, provided no cattle are added to the herd for at least 120 days before the herd blood test or between the time of the herd blood test and movement. If the herd blood test is not conducted within 30 days prior to interstate movement, such cattle must be negative to an official test within 30 days prior to movement. The cattle must have been issued a permit for entry and be accompanied by a certificate which states, in addition to the items specified in § 78.1, the test dates and results of the official tests and the cattle also must be accompanied by a written statement signed by the owner and an accredited veterinarian, or other documentation, which establishes that the cattle originated from a herd to which no cattle had been added for at least 120 days before the herd blood test or between the time of the herd blood test and movement; or

(vii) Such cattle are moved interstate from a farm of origin or are returned interstate to a farm of origin in the course of normal ranching operations, without change of ownership, directly to or from another premises owned, leased or rented by the same individual, and

(A) The cattle being moved originate from a herd in which (1) all the cattle were negative to a herd blood test within 1 year prior to the interstate movement; (2) Any cattle added to the herd after such a herd blood test were negative to an official test within 30 days prior to the date the cattle were added to the herd (3) None of the cattle in the herd have come in contact with any other cattle; and

(B) The cattle are accompanied interstate by a document which shows the dates and results of the herd blood test and the name of the laboratory in which the official tests were conducted.

Under §§ 78.9 and 78.10 of the current regulations, cattle in Class C States or

areas which are not test-eligible and are from herds not known to be affected may be moved interstate without further restriction except for certain female cattle that must be officially vaccinated as required in § 78.10. Section 78.10(b) of the regulations imposes vaccination requirements for the interstate movement from Class C States or areas of female cattle born after January 1, 1984, which are four months of age or over, unless they are moved interstate directly to a recognized slaughtering establishment or quarantined feedlot or directly to an approved intermediate handling facility and then directly to a recognized slaughtering establishment.

#### **Interstate Movement of Brucellosis Exposed Cattle**

Section 78.8 of the regulations sets forth the conditions under which brucellosis exposed cattle may be moved interstate. The regulations include conditions for movement to recognized slaughtering establishments, to quarantined feedlots, and for other purposes. These provisions currently include conditions allowing the interstate movement of certain brucellosis exposed cattle from herds known to be affected in Class B States or areas and in Class C States or areas.

#### **Proposed Action**

We propose to restrict the interstate movement of brucellosis exposed female cattle from Class B States or areas by limiting movement of these animals to recognized slaughtering establishments and quarantined feedlots only. Under the proposal, brucellosis exposed female cattle which originate in Class B States or areas could not move interstate under the provisions of § 78.8(c)(1). Male cattle from herds known to be affected that are under 6 months of age would continue to move interstate under the provisions of § 78.8(c)(1) (i) and (ii), because there is no scientific evidence that they can transmit brucellosis. Female cattle of any age can be carriers of brucellosis.

We also propose to limit the movement of female cattle from Class C States or areas and of test-eligible male cattle from Class C States or areas by allowing interstate movement of these animals only if they originate in certified brucellosis-free herds, except for movements to recognized slaughtering establishments and quarantined feedlots. Under the proposal, test-eligible cattle which originate in Class C States or areas, are not brucellosis exposed, and are from a herd not known to be affected would continue to move interstate from Class C States or areas to recognized slaughtering

establishments and quarantined feedlots under the conditions set forth in § 78.9(d) (1) and (2), respectively, above. We also propose that female cattle which originate in Class C States or areas, that are not test-eligible, are not brucellosis exposed, and are from a herd not known to be affected, be moved interstate from Class C States or areas to recognized slaughtering establishments and quarantined feedlots only under the applicable conditions in § 78.9(d) (1) and (2).

As stated above, female cattle of any age can be carriers of brucellosis. However, male cattle that have not reached sexual maturity would not present any risk of spreading the disease. Accordingly, the proposed restriction on the movement of certain cattle from Class C States and areas would apply to female cattle without respect to age, but only to male cattle old enough to be considered test-eligible. This is because the age at which male cattle are considered to be test eligible generally coincides with reaching sexual maturity. The requirement would continue that cattle from certified brucellosis-free herds be accompanied interstate by a certificate which states, in addition to the items specified in the definition of "certificate," that the cattle originated in a certified brucellosis-free herd.

Steers and spayed heifers would continue to be moved interstate without restriction, as stated in § 78.6 of the regulations. Also, the proposal would not preclude the movement interstate directly back to the farm of origin for cattle moved interstate from a farm of origin directly to a specifically approved stockyard and subsequently determined to be brucellosis exposed (§ 78.8(c)(2)). Further, no changes are proposed to preclude movement directly back to the farm of origin for cattle which are moved interstate to a specifically approved stockyard but fail to comply with the requirements of the regulations for release from the specifically approved stockyard (§ 78.11(a)).

The proposed changes would reduce the risk of interstate spread of brucellosis by reducing the disease risk posed by cattle moving interstate from Class B States or areas and Class C States or areas. On a disease risk spectrum, there is a higher incidence of the disease in cattle which originate in Class C States or areas than in cattle from other States or areas. There is also a greater likelihood that cattle from herds not known to be affected in Class C States or areas would be infected with the disease than is so for cattle from other Classes because of the higher

incidence of the disease in general. For this reason, we are limiting our proposal to restrict the interstate movement of cattle from herds known to be affected to cattle which originate in Class C States or areas.

Properly certified cattle moving interstate from herds only qualified as herds not known to be affected would present a greater risk of being brucellosis carriers than cattle from certified brucellosis-free herds. This is because the brucellosis-free status of certified brucellosis free herds has been established positively based on testing, while the status of a herd not known to be affected is based only on the absence of information that the herd is known to be affected. No animal in the herd needs to be tested for the status to be applied. The regulations are designed to prevent the interstate spread of brucellosis, and thereby help eradicate brucellosis, by regulating the interstate movement of cattle. As the eradication effort progresses, we believe that it is necessary to strengthen the regulations in order to protect States and areas that have achieved eradication.

Under the proposed rule, all female cattle and test-eligible male cattle from herds other than certified brucellosis-free herds in Class C States or areas could only be moved interstate to recognized slaughtering establishments and quarantined feedlots.

The United States Animal Health Association (USAHA) has recommended this proposed action. The USAHA is a nongovernmental organization dedicated to the betterment of livestock health and the livestock industry. It is composed of livestock industry organizations and individuals, as well as state and federal animal health officials.

#### **Executive Order 12291 and Regulatory Flexibility Act**

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than \$100 million; would not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The effect of this proposed action would be to further restrict the interstate movement of cattle from Class B States and areas and from Class C States and areas. Currently, only one state and a portion of another state are classified as Class C. We anticipate that both will qualify for Class B status within a few months after this proposed change becomes effective, if adopted. Since the prevalence of brucellosis is decreasing in other states, as well, we do not anticipate any other states or areas being classified as Class C. At present there are 5 states and a portion of another state classified as Class B.

According to the Department's most recent data, there are approximately 326,088 herds in the 5 states and 1 area classified as Class B. As of April 1988, cattle farmers in the Class B States and area owned 1,591 herds known to be affected. This is the only type of herd in the Class B States and area that would be affected by the proposed action. Approximately, 1,187 herd owners, fewer than one percent of all herd owners in the Class B States and area, are small entities according to the Small Business Administration's criteria of revenues up to \$100,000. (The average selling price per head of cattle or calves sold in the Class B States and area is \$483.79. Accordingly, cattle owners who sell fewer than 207 head per year from their herd may be small entities. We have considered all such owners to be small entities for the purpose of this analysis.)

There are approximately 37,871 herd owners in the Class C State and area affected by this proposal, according to the Department's most recent data. Approximately 97 percent of all herd owners in the Class C States and area are considered small entities, using the SBA criteria. (The average selling price per head of cattle or calves sold in Class C States and areas is \$275.66. Accordingly, cattle owners who sell fewer than 363 head from their herd may be small entities. We have considered all such owners to be small entities for the purpose of this analysis.) Of all herd owners in the Class C State and area affected by the proposed action, approximately 29,834 owned herds not known to be affected, 1,866 owned certified brucellosis-free herds, and 924 owned herds known to be affected. Approximately, 370 owners of the herds known to be affected are considered small entities.

Some owners of cattle from herds not known to be affected or from Class Free or Class A States or areas could receive slightly higher prices for their cattle from buyers who do not want to

deal with the additional restrictions that would be imposed upon interstate movement of certain cattle from Class B and Class C States and areas. However, some owners of cattle who would be restricted in interstate movement by this proposal would consider spaying as an alternative, since spayed cattle move interstate without restrictions. Some cattle owners would experience costs associated with handling the animals, such as for spaying female cattle. However, their cattle could then be sold at prices that are competitive with cattle from Class Free and Class A States or areas. The cost of spaying heifers on an average ranges from \$5 to \$10 per head and would be the principal cost of compliance with the proposed regulations. This cost, as compared with the average price per head for cattle and calves sold from Class B and C States and areas, is small. Furthermore, since spayed heifers do not need to be vaccinated for brucellosis, this cost would be offset.

We estimate that probably close to 90 percent of the cattle moved from the states and areas primarily affected by the proposed changes are moved interstate for feeding purposes. These animals currently move to both quarantined and nonquarantined feedlots. There are currently 526 quarantined feedlots in the United States. One hundred eighty nine quarantined feedlots are located in Class B States and areas and 6 are located in the Class C State and area affected by the proposed action. The Department does not maintain statistics on nonquarantined feedlots, except for those located in the 13 major feeding states.

Cattle from herds known to be affected in Class B States and areas, fewer than one percent of all cattle and calves in Class B States and areas, could continue to be moved interstate to quarantined feedlots, either directly or to a specifically approved stockyard and then directly to a quarantined feedlot. Cattle from herds that only qualify as herds not known to be affected in Class C States or areas could continue to be moved to quarantined feedlots. However, only cattle from certified brucellosis-free herds, steers, spayed heifers, and males that are not test-eligible, which originate in the state and area classified as Class C, could be qualified for movement to nonquarantined feedlots. Also, all female cattle from a farm of origin and from herds that do not qualify as certified brucellosis-free in Class C States or areas, would have to be "S" branded either before leaving the farm

of origin or upon arrival at a quarantined feedlot or specifically approved stockyard, and, in some circumstances, be accompanied by an "S" brand permit for interstate movement to quarantined feedlots.

Some cattle feeders that depend on heifer calves from Class B and Class C States or areas might decide to qualify their nonquarantined feedlots as quarantined feedlots. Most of the other cattle moved interstate strictly for breeding purposes from the Class C State and area primarily affected by the proposal originate from certified brucellosis-free herds. We do not anticipate that the number of cattle moved interstate to slaughter from the affected Class B and Class C States and areas would change as a result of this rule.

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

#### Paperwork Reduction Act

Information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 0579-0064.

#### Public Comment

Dr. James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that this rulemaking proceeding should be expedited by allowing a 15-day comment period on this proposal. This comment period would allow the Agency to promulgate and implement a final rule on an expedited basis. Earlier implementation of a final rule will reduce the risk of additional spread of brucellosis. It will protect owners of animals that are not affected with the disease by restricting contact with exposed or affected animals, and will minimize the risk of re-introducing the disease into areas where eradication efforts have succeeded.

#### Executive Order 12372

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

**List of Subjects in 9 CFR Part 78**

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

**PART 78—BRUCELLOSIS**

Accordingly, we propose to amend 9 CFR Part 78 as follows:

1. The authority citation for Part 78 would continue to read as follows:

Authority: 21 U.S.C. 111-114a-1, 114g, 115, 117, 120, 121, 123-126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

**§ 78.8 [Amended]**

2. In the introductory text of § 78.8(c)(1), the phrase "other than female cattle which originate in Class B States or areas or Class C States or areas," would be added immediately before the word "may."

3. In § 78.8(c)(2) "78.9(d)(3)(iv), or 78.9(d)(3)(v)" would be removed and "or 78.9(d)(3) of this part" would be added in their place.

4. In § 78.9, the first sentence of the introductory paragraph would be revised to read as follows:

**§ 78.9 Cattle from herds not known to be affected.**

Male cattle which are not test eligible and are from herds not known to be affected may be moved interstate without further restrictions. Female cattle which are not test eligible and are from herds not known to be affected may be moved interstate only in accordance with § 78.10 of this part and this section.

5. In § 78.9 the introductory text of paragraph (d) and paragraph (d)(3) would be revised to read as follows:

**§ 78.9 Cattle from herds not known to be affected.**

(d) *Class C States/areas.* All female cattle and test-eligible male cattle, which originate in Class C States or areas, are not brucellosis exposed, and are from a herd not known to be affected may be moved interstate from Class C States or areas only under the conditions specified below:

(3) *Movement other than in accordance with paragraphs (d)(1) or (2) of this section.* Such cattle may be moved interstate other than in accordance with paragraphs (d)(1) or (2) of this section only if such cattle originate in a certified brucellosis-free and are accompanied interstate by a certificate which states, in addition to the items specified in § 78.1 of this part, that the cattle originated in a certified brucellosis-free herd.

6. In § 78.10, the heading and paragraph (b) would be revised and a new paragraph (c) would be added to read as follows:

**§ 78.10 Official vaccination of cattle moving into and out of Class B and Class C states or areas.**

(b) Female cattle born after January 1, 1984, which are 4 months of age or over must be official vaccinates to move into a Class C State or area <sup>4</sup> unless they are moved interstate directly to a recognized slaughtering establishment or quarantined feedlot or directly to an approved intermediate handling facility and then directly to a recognized slaughtering establishment. Female cattle eligible for official calfhood vaccination and required by this paragraph to be officially vaccinated may be moved interstate from a farm of origin directly to a specifically approved stockyard and be officially vaccinated upon arrival at the specifically approved stockyard.

(c) Female cattle born after January 1, 1984, which are 4 months of age or over must be official vaccinates to move interstate out of Class C State or area <sup>4</sup> under § 78.9(d)(3) of this part. Female cattle from a certified brucellosis-free herd that are eligible for official calfhood vaccination and required by this paragraph to be officially vaccinated may be moved interstate from a farm of origin directly to a specifically approved stockyard and be officially vaccinated upon arrival at the specifically approved stockyard.

Done in Washington, DC, this 23rd day of September 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-22218 Filed 9-27-88; 8:45 am]

BILLING CODE 3410-34-M

**SECURITIES AND EXCHANGE COMMISSION****17 CFR Part 240**

[Docket No. 34-26100; File No. S7-20-88]

**Municipal Securities Disclosure**

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

<sup>4</sup> Female cattle imported into the United States may be exempted from the vaccination requirements of this paragraph with the concurrence of the State animal health official of the State of destination. This concurrence is required prior to importation of the cattle into the United States.

**SUMMARY:** The Securities and Exchange Commission is publishing for comment proposed Rule 15c2-12, which would require that municipal securities underwriters review and distribute to investors issuer disclosure documents. The proposed rule would require that underwriters obtain and review a nearly final official statement prior to bidding on or purchasing an offering of municipal securities in excess of ten million dollars. An underwriter participating in an offering of a new issue of municipal securities in excess of ten million dollars also would have to contract with the issuer or its agents to obtain final official statements in sufficient quantities to make them available to purchasers in accordance with rules established by the Municipal Securities Rulemaking Board. In addition, underwriters would have to provide copies of preliminary and final official statements upon request. The Commission also is publishing its interpretation of the legal obligations of municipal underwriters. The interpretation, on which the Commission has invited comments, generally emphasizes that in conjunction with their review of offering documents, municipal securities underwriters must have a reasonable basis for believing in the accuracy of key representations concerning any municipal securities that they underwrite. Finally, the Commission is requesting comment on a recent proposal by the Municipal Securities Rulemaking Board to establish a central repository to collect information concerning municipal securities.

**DATE:** Comments should be received on or before December 27, 1988.

**ADDRESS:** Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 6-9, Washington, DC 20549. Comment letters should refer to File No. S7-20-88. All comment letters received will be made available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

**FOR FURTHER INFORMATION CONTACT:** Catherine McGuire, Esq., Special Assistant to the Director, (202) 272-2790; Robert L.D. Colby, Esq., Chief Counsel, (202) 272-2848; Edward L. Pittman, Esq., Special Counsel, (202) 272-2848; or Beth E. Mastro, Esq., Branch Chief (regarding Part IV), (202) 272-2857; Division of Market Regulation, Mail Stop 5-1, Securities and Exchange Commission.

450 Fifth Street, NW., Washington, DC 20549.

## I. Introduction

### A. Background

The Securities and Exchange Commission ("Commission") is proposing for comment Rule 15c2-12 under the Securities Exchange Act of 1934 ("Exchange Act"),<sup>1</sup> which is designed to prevent fraud by improving the extent and quality of disclosure in the municipal securities markets. Proposed Rule 15c2-12 would require that underwriters of municipal securities offerings exceeding \$10 million obtain and review a nearly final official statement before bidding on or purchasing the offering. The rule also would require underwriters of municipal offerings exceeding \$10 million to contract with the issuer or its agents to obtain final official statements in sufficient quantities to permit delivery to investors in accordance with any requirements of the Municipal Securities Rulemaking Board ("MSRB") and, depending on the time of the request, to make available a single copy of the preliminary and final official statement to any person on request. In addition, the Commission is publishing an interpretive statement, on which it has invited comments, emphasizing the responsibility of municipal underwriters, after reviewing the issuer's official statement, to have a reasonable basis for belief in the substantial accuracy of key representations contained in the official statement, as well as any other recommendations that they make regarding the offering.

The Commission recognizes that Rule 15c2-12, if adopted as proposed, would impose new requirements on underwriters and also might have an impact on issuers. In particular, although the rule would place the direct burden of obtaining final official statements on the underwriter, an obvious consequence would be that underwriters would require some issuers to make available official statements at a time when, or in quantities in which, they currently might not be produced. The rule is intended to stimulate greater scrutiny by underwriters of the representations made by issuers and the circumstances surrounding the offering. The Commission believes that it is worthwhile to explore the possibility that the imposition of these requirements will result in benefits both to the municipal securities markets as a whole and to individual investors.

The Commission's decision to propose Rule 15c2-12 at this time reflects its concern about the current quality of disclosure in certain municipal offerings. At the time the securities laws first were enacted, the market for most municipal securities largely was confined to limited geographic regions. The localized nature of the market arguably allowed investors to be aware of factors affecting the issuer and its securities.<sup>2</sup> Moreover, municipal securities investors were primarily institutions, which in other instances have been accorded less structured protection under the federal securities laws. Since 1933, however, the municipal markets have become nationwide in scope and now include a broader range of investors.

Today, state and local government obligations are a major factor in the United States credit markets. Currently, over \$720 billion of municipal debt is held by investors.<sup>3</sup> Moreover, while new offerings of municipal securities declined in 1987 compared to previous years, they nevertheless accounted for \$114 billion.<sup>4</sup> Households now are significant investors in municipal securities. On average, households, including unit investment trusts, have accounted for slightly over one-third of the direct holdings of municipal securities in recent years. Up to an additional 21% of municipal holdings are owned indirectly by households, in the form of mutual fund shares.<sup>5</sup>

At the same time that the investor base for municipal securities has become more diverse, the structure of municipal financings has become increasingly complex. In the era preceding adoption of the Securities Act of 1933 ("Securities Act")<sup>6</sup> municipal offerings consisted largely of general obligation bonds. Today, however, municipal issues include a greater proportion of revenue bonds that are not backed by the full faith and credit of a governmental entity and which, in many cases, may pose greater credit risks to investors. In addition, more innovative

forms of financing have focused increased attention on call provisions and redemption rights in weighing the merits of individual municipal bond investment opportunities. Among other instruments, municipal issuers have utilized tax-exempt commercial paper, tender option bonds, and compound interest bonds in an effort to satisfy the needs of investors and assure efficient funding of municipal projects. Moreover, municipal issuers recently have begun to import financing techniques developed in the corporate debt markets to sell asset-backed securities.<sup>7</sup>

In 1975, Congress, recognizing that changes had occurred in the municipal securities markets, enacted a self-regulatory scheme for these markets.<sup>8</sup> The Securities Acts Amendments of 1975<sup>9</sup> created the MSRB and provided a system of regulation for both municipal securities professionals and the municipal securities markets. At the same time, however, a financial crisis experienced by the City of New York revealed serious disclosure problems in offerings of New York City's municipal securities. In 1977, the Commission released a lengthy staff report presenting the results of an investigation of the distribution of debt securities issued by New York City.<sup>10</sup>

The New York City Staff Report revealed that from October 1974 through April 1975, a period during which underwriters distributed approximately \$4 billion in short-term debt securities, New York City had serious, undisclosed financial problems. Moreover, a number of proposals concerning the need to modify or increase disclosure about the City's problems were rejected by the underwriters for fear that accurate disclosure would render the securities unmarketable.<sup>11</sup> Even when a decision was made to disclose potential problems in the face of the worsening budget crisis, some underwriters denied that they had any duty to "rummage around" to determine whether, in fact, there would be revenues available to retire a contemplated offering of notes.<sup>12</sup> The

<sup>2</sup> See *Final Report in the Matter of Transactions in the Securities of the City of New York*. Submitted to the Senate Committee on Banking, Housing and Urban Affairs, 96th Cong., 1st Sess. (Comm. Print 1979) reprinted in [1979 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 81,936 ("New York City Final Report" or "Final Report").

<sup>3</sup> Source: Flow of Funds Accounts, First Quarter 1987.

<sup>4</sup> Source: Bond Buyer Data Base, published in *The Bond Buyer*, July 15, 1988, at 3. In 1986, new issues of municipal securities declined to \$162 billion from the 1985 record high amount of \$223 billion. *Id.* See also, Federal Reserve Bulletin—Domestic Financial Statistics for New Security issues.

<sup>5</sup> Source: Flow of Funds Accounts, First Quarter 1987; see also Peterson, *Retail Buyers Dominate Tax-Exempts*, Credit Week (June 20, 1988).

<sup>6</sup> 15 U.S.C. 77a-77aa.

<sup>7</sup> See generally Amdursky, *Creative State and Local Financing Techniques*, in *State and Local Government Debt Financing* (Gelfand ed. 1987).

<sup>8</sup> S. Rep. No. 75, 94th Cong., 1st Sess. 3-4 (1975).

<sup>9</sup> Pub. L. No. 94-29, 89 Stat. 97 (June 4, 1975) ("1975 Amendments").

<sup>10</sup> *Securities and Exchange Commission Staff Report on Transactions in Securities of the City of New York*, Subcommittee on Economic Stabilization of the House Committee on Banking, Finance and Urban Affairs, 95th Cong., 1st Sess. (Comm. Print 1977) (Hereinafter, "New York City Staff Report"). See also New York City Final Report.

<sup>11</sup> New York City Staff Report at ch. 5, pp. 39-65.

<sup>12</sup> New York City Staff Report at ch. 5, p. 51.

<sup>1</sup> 15 U.S.C. 78a-78jj.

underwriters reduced the size of their own positions in the City's debt and ceased purchasing the securities for fiduciary accounts, but they continued to sell them to the public.

The recently released Commission staff report concerning the Washington Public Power Supply System ("Supply System")<sup>13</sup> provides a second illustration of inadequate disclosure in an extremely large municipal debt offering. As discussed more fully therein, in 1983 the Supply System defaulted on \$2.25 billion in principal<sup>14</sup> on tax-exempt revenue bonds sold to finance the construction of two nuclear power plants. The default on the bonds was the largest payment default in the history of the municipal bond market. The staff's investigation of the default disclosed that the underwriters of the Supply System's offerings did not conduct a close examination of the issuer's disclosure to determine the substantial accuracy of statements made to investors at the time the bonds were sold.<sup>15</sup>

The Supply System's offerings took place over the course of four years, from 1977 to 1981. All but one of the 14 offerings by the Supply System during this period were underwritten on a competitive basis.<sup>16</sup> Only two selling groups, however, successfully bid on the offerings. Despite the magnitude, frequency, and size of the offerings, and the fact that only one or two syndicates were bidding on the offerings, the underwriters did not require their public finance units to conduct an investigation,<sup>17</sup> or retain underwriters'

counsel to conduct an investigation, as they would have done customarily in negotiated sales.<sup>18</sup>

The Commission recognizes that the Washington Supreme Court's decision<sup>19</sup> invalidating contractual agreements between the Supply System and a number of public utilities in the Pacific Northwest was the precipitating factor in the Supply System's default. The most critical nondisclosures relating to matters apart from legal validity occurred after the great majority of the offerings had gone forward. Nevertheless, serious questions exist concerning whether the official statements for the Supply System's bonds adequately disclosed significant facts. Among other things, facts existed that call into question the adequacy of disclosures regarding the estimated cost to complete the Supply System's projects, the ability of the Supply System to meet its growing financing needs, the projected demand for power in the Pacific Northwest, and the extent to which the participating utilities continued to support the Supply System project. The Commission is concerned that the underwriters did not investigate costs and delays in the project in a professional manner. Had they done so, it is possible that they would have uncovered disclosure deficiencies in the official statements for the later offerings, and could have brought to the attention of the public important information regarding delays in completing the power plants and cost overruns that might have affected individual investment decisions.

#### B. Need for Improvements

Notwithstanding the problems illustrated by the Supply System's disclosure, the Commission recognizes that significant changes have taken place in the practices associated with the distribution of municipal securities since the events that led to the release of the New York City Staff Report. Municipal issuers have increased substantially the quality of disclosure contained in official statements.<sup>20</sup> The

voluntary guidelines for disclosure established in 1976 by the Government Finance Officers Association ("GFOA"),<sup>21</sup> which are followed by many issuers, permit investors to compare securities more readily and greatly assist issuers in addressing their disclosure responsibilities.<sup>22</sup> Moreover, when an issuer voluntarily prepares disclosure documents, the MSRB's rules now require that the documents be distributed to investors.<sup>23</sup>

Other means of enhancing the disclosure provided to investors in the initial distribution of municipal securities are also under consideration. Two states, for example, have recently proposed laws requiring that official statements accompany or precede delivery of a confirmation for the sale of certain municipal securities, in the same fashion as corporate securities.<sup>24</sup> In addition, two other states recently have excluded from the definition of an exempt security, for state blue sky purposes, the securities of municipal issuers that have been in default.<sup>25</sup> Members of the municipal securities industry and the MSRB also have recommended the establishment of a central repository for official statements that would provide municipal securities dealers and others with rapid access to information, from a single source, concerning the details of an offering and the terms of any call provisions.<sup>26</sup>

Despite these developments, a number of commentators have recently expressed concern about a reduction of investor confidence in the municipal securities markets and have urged that mechanisms be established to improve the timeliness, dissemination, and

<sup>13</sup> *Securities and Exchange Commission Staff Report on the Investigation in the Matter of Transactions in Washington Public Supply System Securities* (1988) (Hereinafter, "Supply System Staff Report").

<sup>14</sup> *Id.* at 1.

<sup>15</sup> *Id.* at 15, 168.

<sup>16</sup> Sales of municipal bonds by issuers to underwriters can be on either a competitively bid or a negotiated basis. In a competitively bid sale, the issuer offers the bonds to underwriters in a sealed-bid auction, usually after circulating a preliminary official statement, and underwriting firms form syndicates to bid on the bonds. The syndicate offering the best bid, usually the lowest interest cost to the issuer, wins the auction and buys the bonds for resale into the market. In a negotiated sale, the issuer selects a lead underwriter, which then usually helps prepare the official statement and investigates the adequacy of disclosure in the official statement. The lead underwriter also advises on timing, price, and structure for the sale of the bonds. When the issuer agrees to the offering terms, the lead underwriter, and the syndicate that it has formed, buy the bonds from the issuer and sell them into the market. See generally *Supply System Staff Report* at 166-67.

<sup>17</sup> *Supply System Staff Report* at 171.

<sup>18</sup> *Supply System Staff Report* at 191-192.

<sup>19</sup> *Chemical Bank v. Washington Public Power Supply System*, 99 Wash. 2d 772, 666 P.2d 329 (Wash. 1983), *aff'd*, 102 Wash. 2d 874, 691 P.2d 524 (Wash. 1984), *cert. denied sub nom. Haberman v. Chemical Bank*, 471 U.S. 1065 (1985), and *Chemical Bank v. Public Utility Dist. No. 1*, 471 U.S. 1075 (1985).

<sup>20</sup> The New York City Staff Report revealed that there was little disclosure in the municipal securities market in 1975 and that investors had to rely primarily on the rating agencies. See New York City Staff Report at ch. 5, p. 5.

<sup>21</sup> The GFOA was known at the time as the Municipal Finance Officers Association, Inc.

<sup>22</sup> The GFOA's guidelines have been revised since 1976. The latest revision was published earlier this year. See *Disclosure Guidelines for State and Local Government Securities* (January 1988) ("GFOA Guidelines").

<sup>23</sup> See discussion *infra* at notes 51, 52 and accompanying text, regarding MSRB rule G-32.

<sup>24</sup> See Minn. Code Agency R. § 2875.2390 and proposed § 2875.0015 (except for general obligation bonds). See also A. 8100/S. 8093, amending N.Y. Gen. Bus. Law § 352 and adding §§ 357-a and 359-f (except for general obligation bonds) (still pending in New York State Assembly). Other states already have laws that require such disclosure for certain types of offerings. See, e.g., *Ariz. Rev. Stat. Ann.* §§ 44-1843.01 and 44-1896 (certain industrial development bonds). The Commission also has learned that draft rules are being circulated by the State of Texas that would require issuers to conform to the GFOA Guidelines.

<sup>25</sup> See § 517.051, Florida Securities and Investor Protection Act (unless default disclosed and described in compliance with Fla. Admin. Code, Rule 3E-400.003); New Jersey Uniform Securities Law, § 49.3-50.

<sup>26</sup> See discussion *infra* at Part IV.

quality of disclosure.<sup>27</sup> Although the recent measures by the MSRB, state regulators, and industry groups are significant, the Commission believes that further steps designed to encourage timely dissemination of disclosure to investors in large offerings of municipal securities, and to affirm baseline standards of underwriter review of this disclosure, warrant consideration.

In the absence of specifically mandated disclosure standards to which municipal issuers can adhere,<sup>28</sup> the underwriter's review of disclosure concerning the financial and operational condition of the issuer can assume added importance as a means of guarding the integrity of new offerings. The Commission understands that many municipal underwriters currently conduct an investigation of the issuer in negotiated municipal offerings that, in many respects, might be comparable to the investigation conducted by underwriters in corporate offerings. Nevertheless, the practices revealed in the Supply System Staff Report underscore the need to explore the benefits that would result from a specific regulatory requirement that underwriters of municipal securities be uniformly subject to a requirement to obtain and review a nearly final disclosure document and make disclosure documents available to investors in both negotiated and competitive offerings.

<sup>27</sup> See, e.g., Ciccarone, *Municipal Bondholders Need More Information*, Wall St. J., March 27, 1987, at 22, col. 3; Ciccarone, *We Need Better Muni Disclosure*, 13 Financial World, 156 (June 30, 1987); Ferris, *Muni Market Needs Policing and Guidelines for Disclosure*, The Bond Buyer, August 31, 1987, at 1; *Disclosure Takes Place Among Top Municipal Market Issues This Year*, The Bond Buyer, March 7, 1988, at 1.

<sup>28</sup> In the past, the Commission has supported the repeal of the exemption from registration under the Securities Act for industrial development bonds ("IDBs"). See Letter from John S.R. Shad, Chairman, Securities and Exchange Commission, to the Honorable Timothy E. Wirth, Chairman, House Subcommittee on Telecommunications, Consumer Protection, and Finance (March 12, 1988); 1978 Industrial Development Bond Act, S. 3323, 95th Cong., 2d Sess. (1978) (legislative proposal presented to Congress by the Commission). IDB financing was restricted substantially by recent amendments to the federal tax laws, which limit the types of facilities that may be financed, the percentage of proceeds that may be used for private purposes, and the amount of debt service that may be supported by payments from private persons. See Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2085 (Oct. 22, 1986). Under Rule 131 of the Securities Act, 17 CFR 230.131, taxable IDBs also must be registered if they amount to purely conduit financing for corporations. Nevertheless, to the limited extent IDB financing continues, the Commission continues that to support previous recommendations that would require registration of IDBs that are, in fact, corporate obligations. See *Disclosure in Municipal Securities Markets*, Remarks of David S. Ruder, Chairman, Securities and Exchange Commission, Before the Public Securities Association (Oct. 23, 1987) at 17-18.

The Commission understands that no amount of increased review of offering materials by municipal underwriters will prevent municipal defaults totally,<sup>29</sup> but the Commission believes that responsible review by underwriters of the information provided by municipal issuers, in both competitive and negotiated offerings, could encourage more accurate disclosure. Investors plainly depend on accurate disclosure in considering whether to buy the offered securities. Moreover, it is a common belief, which the Commission shares, that investors in the municipal markets rely on the reputation of the underwriters participating in an offering in deciding whether to invest.

As noted earlier, the complexity of municipal bonds recently offered to the public increases the value of accurate disclosure of the terms of bond offerings. For example, inadequate disclosure of call provisions has resulted in several recent incidents in which municipal issuers attempted to call bonds that had been traded in the secondary markets as escrowed-to-maturity.<sup>30</sup> Because these

<sup>29</sup> Of the approximately \$720 billion in municipal debt outstanding, it is estimated that approximately \$5 billion, or roughly 0.7 percent, is currently in default. Source: Bond Investors Association. While the Supply System's \$2.25 billion payment default represents the major portion of this amount, over 300 additional municipal issuers are also currently in default on their obligations. *Id.* In contrast, corporate issues are estimated to have roughly a 1.1% default rate. See Task Force Report, *infra* note 34, at 7.

Issuer defaults pose the most serious economic threat to investors. Nevertheless, investors also may suffer losses as a result of downgrades in ratings. In 1987 alone, one nationally recognized statistical rating organization, Moody's, lowered the ratings of 322 municipal bond issues. See *Municipal Bond Rating Revisions—1987*, Moody's Bond Survey, January 11, 1988, at 1. Moody's report indicated that almost half of the issues downgraded were concentrated in three states closely tied to mineral sectors. During the same period, Standard & Poors reduced ratings of 105 issues, amounting to \$17 billion. *Credit Watch* (Feb. 1, 1988), at 1. Although there is not a great deal of empirical data in this area, downgradings clearly affect the value of bonds. For example, yields to maturity on 30-year AAA general obligation bonds are 7.60% as compared to 8.30% for the same bonds rated Baa. The direct impact of downgrades, however, may depend upon the amount of other information that is available in the markets. See generally, e.g., Ederington, Yawitz & Roberts, *The Information Content of Bond Ratings*, 10 J. Fin. Res. 211 (Fall 1987) (discussing the relationship between ratings and yields on industrial bonds).

<sup>30</sup> Bonds are considered to be escrowed-to-maturity when the proceeds of a refunding bond offering are placed in an irrevocable escrow account, or trust, in an amount that will generate sufficient income to pay principal and interest on the bonds in accordance with specified payment schedules.

bonds had been sold to investors in the secondary market on the basis of the yields to a fixed maturity, the exercise of early call provisions in the outstanding bonds would have altered significantly the actual yield received by investors.<sup>31</sup>

Apart from concerns about the quality of disclosure, it appears that problems also exist with regard to the timely dissemination of disclosure documents. Currently, many issuers routinely prepare official statements that conform to the GFOA Guidelines for offerings exceeding one million dollars. The preparation and timely dissemination of official statements, in conjunction with a careful review of the issuer's disclosure by the underwriters, are important disciplines that benefit the participants as well as investors. The Commission is aware, however, that in some cases underwriters do not receive sufficient quantities of official statements, or do not receive official statements within time periods that would allow the underwriter to examine the accuracy of the disclosure and to disseminate copies to investors in a timely manner. In rule filings with the Commission, for example, the MSRB has indicated that the completion and delivery of official statements often is given a low priority by underwriters and financial advisors.<sup>32</sup> In addition, it appears that many public finance personnel are unfamiliar with the requirements of the MSRB regarding the delivery of official statements.<sup>33</sup> These information dissemination problems are evidenced by a recent report by the Public Securities Association, prepared after an extensive survey of its members, which concluded:

Based on consistent [\* \* \* responses] \* \* \* there appears to be a timing problem when the availability of disclosure

<sup>31</sup> The issuers ultimately abandoned their attempts to call the bonds. The Commission and its staff, along with the MSRB and other self-regulatory and industry organizations, have emphasized the need for clear and conspicuous disclosure of call provisions, particularly in refunding bond issues. See, e.g., letter from Richard G. Ketchum, Director, Division of Market Regulation, Securities and Exchange Commission, to H. Keith Brunnemer, Jr., Chairman MSRB (June 24, 1988); Securities Exchange Act Release No. 23856 (Dec. 3, 1986), 51 FR 44398. Moreover, the Commission understands that similar concerns exist with respect to disclosure of exercise periods for municipal put option bonds.

<sup>32</sup> See generally Securities Exchange Act Releases No. 21457 (Nov. 2, 1984), 49 FR 44835; No. 21968 (Apr. 30, 1985), 50 FR 18336; and No. 22374 (Aug. 30, 1985), 50 FR 36505 (concerning amendments to MSRB rules G-9 and G-32).

<sup>33</sup> *Id.* See also, generally, Picker, *The Disclosure Debate Gets Nasty*, Institutional Investor (April 1988) at 169 (discussing, among other things, problems in disseminating official statements).

documents are [sic] considered. The empirical evidence confirms what has been widely accepted by the marketplace as a problem in disclosure practices in the municipal securities market.<sup>34</sup>

The markets for municipal securities are vital to the financial management of our nation's state and local governments, and the availability of accurate information concerning municipal offerings is integral to the efficient operation of the municipal securities markets.<sup>35</sup> In the Commission's view, a thorough, professional review by underwriters of municipal offering documents could encourage appropriate disclosure of foreseeable risks and accurate descriptions of complex put and call features, as well as novel financing structures now employed in many municipal offerings. In addition, with the increase in novel or complex financings, there may be greater value in having investors receive disclosure documents describing fundamental aspects of their investment. Yet, underwriters are unable to perform this function effectively when offering statements are not provided to them on a timely basis. Moreover, where sufficient quantities of offering statements are not available, underwriters are hindered in meeting present delivery obligations imposed on them by the MSRB's rules.

For these reasons, the Commission has determined to propose a limited rule designed to prevent fraud by enhancing the timely access of underwriters, public investors, and other interested persons to municipal official statements. In the context of the assured access to offering statements provided by the proposed rule, the Commission also is reemphasizing the existence and nature of an underwriter's obligation to have a reasonable basis for its implied recommendation of any municipal securities that it underwrites.

## II. Discussion of Proposed Rule 15c2-12

Rule 15c2-12 is designed to prevent fraud by establishing standards for the procurement and dissemination by underwriters of disclosure documents, thus enhancing the accuracy and timeliness of disclosure to investors in large offerings of municipal securities. The rule's standards for obtaining disclosure documents are intended to assist underwriters in satisfying their responsibility to have a reasonable basis for recommending municipal securities that they underwrite. The rule also is designed to provide underwriters greater opportunity to fulfill their reasonable basis obligations by creating an express requirement for review of the mandated nearly final official statement.

The Commission believes that proposed Rule 15c2-12 may promote greater industry professionalism and confidence in the municipal markets. In the past, state and local governments have regarded regulation to enhance the municipal markets as beneficial, so long as there is no adverse impact on their capital-raising function.<sup>36</sup> Rule 15c2-12 is designed to strengthen the municipal markets and to benefit all participants, including issuers. The Commission wishes to emphasize, however, that the rule is not intended to inhibit the access of issuers to the municipal markets. For this reason, the Commission is particularly interested in receiving the views of municipal issuers on the provisions of proposed Rule 15c2-12.

### A. Scope of Rule 15c2-12

As proposed, the provisions of Rule 15c2-12 would apply only to underwriters participating in offerings of municipal securities that exceed \$10 million in face amount.<sup>37</sup> Data supplied by the Public Securities Association and the MSRB indicate that in 1987, 1,743 long-term municipal debt offerings, accounting for about 25% of total long-term municipal debt offerings, exceeded \$10 million. These offerings, however, raised over \$89 billion, or approximately

86% of the money borrowed annually by municipal issuers. Thus, the rule would apply only to the largest issues of municipal securities, where there is greatest reason to believe that additional costs the rule might impose by the establishment of specific standards would be justified by the potential protection provided to a large number of investors that otherwise might purchase securities on the basis of inaccurate or incomplete information.<sup>38</sup> By conditioning underwriters' participation in large offerings on the preparation and dissemination of official statements, the rule would provide dealers and investors with more timely access to disclosure of basic information about the issuer.<sup>39</sup>

Purpose	No. iss.	\$ amt. <sup>1</sup>	\$ aver- age <sup>1</sup>
Elec. Utility <sup>2</sup>	20	2,412	120.6
Retirement Housing	56	725	12.9
Ind. Lease Revenue	60	520	8.6
Nursing Homes	65	411	6.3
Hospitals	12	94	7.8
Pollution Control Revenue	5	343	68.6
Housing and Apt. Develop- ment	22	209	9.5
Other Types	59	523	8.8
All Types <sup>2</sup>	299	5,240	17.5

<sup>1</sup> In millions.

<sup>2</sup> Including the Supply System default.

The Commission requests comment on the proposed \$10 million threshold and whether alternative minimum levels would be more appropriate. Specifically, would some other minimum, such as \$1 million, \$5 million, \$20 million, or \$50 million, be warranted for the rule as a whole or for particular provisions? As noted earlier, in 1987, 25% of all new issues of long-term municipal bonds, comprising 38% of all revenue bond issues and 12% of all general obligation bond issues, exceeded the \$10 million threshold. These offerings accounted for 90% and 74% of the dollar amounts issued in revenue and general obligation bond offerings, respectively. The figures for alternative thresholds, as of 1987, were as follows:<sup>40</sup>

<sup>34</sup> Public Securities Association Municipal Securities Disclosure Task Force Report: Initial Analysis of Current Disclosure Practices in the Municipal Securities Market (June 1988) ("Task Force Report") at 21.

<sup>35</sup> The current problems with disclosure in municipal securities transactions are illustrated further by statistics on arbitration that are available from the MSRB. In 1987, roughly 84% of all customer complaints, and 49% of inter-dealer complaints, that were arbitrated through the MSRB alleged that inadequate information was provided concerning the securities. MSRB Arbitration Statistics on Allegations of Misdescriptions and Failures to Disclose Information about Municipal Securities: 1985-87 May 18, 1988 (unpublished).

<sup>36</sup> See S. Rep. No. 75, 94th Cong., 1st Sess. 44 (1975).

<sup>37</sup> While the Commission has set an objective threshold for the application of Rule 15c2-12, offerings under that amount would continue to be subject to the general antifraud provisions of the Exchange Act and the Securities Act, e.g., sections 10(b) and 15(c) of the Exchange Act, 15 U.S.C. 78j(b) and 78o(c), and the rules thereunder, and section 17(a) of the Securities Act, 15 U.S.C. 77q(a).

<sup>38</sup> Although Rule 15c2-12, as proposed, would apply to offerings exceeding \$10 million, the Commission is aware that many defaults are likely to occur in offerings below the \$10 million threshold. Information supplied by the Bond Investors Association suggests that the average dollar amount

of municipal defaults, by purpose, is as set forth below. The Commission requests comment on the distribution of defaults, by purpose, at various thresholds.

<sup>39</sup> Of course, dealers still would be required to comply with the provisions of MSRB rule G-15 concerning the disclosure of call and other material provisions in confirmations regardless of offering amount. See also discussion *infra* at Part IV, requesting comment on a proposal to create a central repository of official statements.

<sup>40</sup> IDD/PSA Municipal Database, including all municipal issues with a final maturity exceeding 13 months.

Offering over	Percent of revenue bond issues	Percent of gen. oblig. bond issues	Percent of total bond issues	Percent of revenue bond dollar amts. issued	Percent of gen. oblig. bond dollar amts. issued	Percent of total bond dollar amts. issued
\$1 million .....	87	72	79	99	99	99
5 million .....	56	26	44	96	85	93
10 million .....	38	12	25	90	74	86
20 million .....	25	7	16	81	67	77
50 million .....	10	3	7	60	53	58

The Commission requests comment on the range of costs under the rule for issuers and underwriters in offerings above and below the \$10 million threshold, and the impact that Rule 15c2-12 might have on underwriting spreads in the municipal market. Commentators also are invited to provide their views on the quality and timeliness of disclosure currently provided at various offering amounts.

The Commission recognizes that there may be a range of credit risk and disclosure concerns associated with municipal bonds that vary according to the type of bonds and their maturity. Accordingly, the views of commentators are requested regarding whether distinctions should be made according to the type of bonds, e.g., municipal revenue, general obligation, or private activity bonds,<sup>41</sup> the type of offering (e.g., competitive or Negotiated), or the extent to which innovative financing techniques, or unusual call provisions or redemption rights, are employed in the offering. Similarly, commentators also may address whether distinctions should be made that would exclude issues with shorter maturities.

The primary intent of the rule is to focus on those offerings that involve the general public, and which are likely to be traded in the secondary market. While the Commission recognizes that there may be reason to create an

exception from the rule for offerings that are similar to traditional private placements under section 4(2) of the Securities Act,<sup>42</sup> involving a limited number of financial institutions, the proposed rule does not contain such an exception.<sup>43</sup> In part, this reflects the Commission's concern that, in the absence of trading restrictions, the bonds could be resold immediately to numerous secondary market purchasers lacking the sophistication of the initial purchasers of the bonds.

In order to consider whether any rule that is adopted should contain some type of "private placement exemption," the Commission requests comment on this aspect of the rule. In particular, the Commission would like specific comments on whether and in what manner the rule's disclosure dissemination provisions should distinguish between offerings made to a limited number of sophisticated investors and those involving broader selling efforts. Comment is requested on whether a specific exemption from the rule should be created for offerings to fewer than 10, 25, 35, or 50 investors and whether an exemption should look to the institutional nature or sophistication of investors. In addition, should the underwriter be required to assure that initial purchasers acquire the bonds with investment intent, rather than to resell the securities into the secondary market, or should other restrictions, such as holding periods or transfer restrictions, be imposed? Finally, the Commission solicits comment on whether exceptions for limited offerings should be applied to all provisions of the rule or only to particular parts of the rule.

#### B. Receipt and Review of Preliminary Official Statements

Paragraph (b) of the rule would require that prior to bidding on or purchasing a municipal offering in

excess of ten million dollars, an underwriter, directly or through agents, obtain and review an official statement that is final, but for the omission of information relating to offering price, interest rate, selling compensation, amount of proceeds, delivery dates, other terms of the securities depending on such factors, and the name of the underwriter.<sup>44</sup> This provision would apply to both competitive and negotiated offerings. It is designed to assure that underwriters receive and avail themselves of the opportunity to review an official statement that contains complete disclosure about the issuer and the basic structure of the financing, before becoming obligated to purchase a large issue of municipal securities for resale to the public.

Many issuers currently are required by state and local law to solicit bids for offerings of municipal debt. Generally, announcements inviting bids are published in newspapers that are widely followed in the industry. In addition, underwriters may be contacted directly by issuers are invited to submit bids. The actual notice of sale itself often will contain significant information about the issuer and its securities. Moreover, as part of the bidding process, many issuers routinely make available more complete disclosure concerning an offering in the form of a preliminary official statement, which generally includes information concerning the issuer and the offered securities, but omits terms of the offering dependent on the results of the bid. In some cases, the issuer, subsequent to the bidding process, prepares a final official statement containing all the terms of the

<sup>41</sup> As a general matter, there is less evidence of problems of default on general obligation bonds than municipal revenue bonds. Similarly, from 1972 to 1983, there were only 10 reported note defaults, some of which involved obligations owed only to local banks. See generally Advisory Commission on Intergovernmental Relations, *Bankruptcies, Defaults, and Other Local Government Financial Emergencies* (March 1985) at 24-25. Although general obligation bonds as a rule have not presented default concerns, some distinction must be made with regard to the general obligation debt of small, special-purpose districts. From 1972-1984, eleven special purpose districts declared bankruptcy. *Id.* at 9. Some of these districts were the subject of Commission enforcement actions. See *SEC v. Reclamation District No. 2090*, Case No. C-76-1231 (N.D. Cal. Aug. 27, 1978); *SEC Litigation Release No. 7551* (Sept. 8, 1976) and No. 7480 (June 22, 1976); *SEC v. San Antonio Municipal Utility District No. 1*, Civ. Action No. H-77-1868 (S.D. Tex. 1977); *SEC Litigation Release No. 8195* (Nov. 18, 1977). In any event, the New York City problems did involve general obligation bonds in very large amounts. See *supra* notes 10 through 12 and accompanying text.

<sup>42</sup> 15 U.S.C. 77d(2).

<sup>43</sup> In this regard, proposed Rule 15c2-12 is consistent with the current requirements under MSRB rule G-32. Specifically, the MSRB has taken the position that G-32 applies to both public and private offerings. *Disclosure Requirements for New Issue Securities: Rule G-32*, MSRB Reports, Sept. 1986, at 17.

<sup>44</sup> Cf. Securities Act Rule 430A, 17 CFR 230.430A (form of prospectus filed as part of registration statement declared effective may omit information with respect to public offering price, underwriting syndicates, underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds, conversion dates, call prices and other items dependent on offering price, delivery dates, and terms of securities dependent on offering price). Although paragraph (b) would require that underwriters receive official statements that are nearly complete prior to bidding for or purchasing an offering, this would not prevent an underwriter from requesting even substantial changes to the document where necessary to assure complete and accurate disclosure.

offering. In other cases, the issuer releases a preliminary official statement prior to the date of sale, which, after pricing, underwriting, and other information is attached, is then regarded as the issuer's final official statement.

The Commission is aware, however, that some issuers do not provide preliminary official statements, so that prospective bidders must rely upon information contained solely in the notice of sale and on their general knowledge of the issuer.<sup>45</sup> Based upon this limited information, underwriters then solicit binding pre-sale orders or indications of interest from investors, and submit a bid to the issuer. In addition, although negotiated offerings provide the underwriter with greater opportunities to participate in drafting the disclosure documents, in some instances pressure to meet financing needs, or to take advantage of changes in tax laws or favorable interest rate "windows," have caused underwriters to agree to purchase securities in negotiated offerings at a time when disclosure documents were not complete.

Paragraph (b) would prevent the underwriter from submitting a bid in a competitive offering, or from committing to buy securities in a negotiated offering, until it has received and reviewed an official statement that is deemed final by the issuer, except for pricing, underwriting, and certain other specified information. This paragraph is designed to prevent fraud by providing the underwriter with information about the issue sufficient to determine, before becoming obligated to purchase the securities, whether changes to the disclosed information are needed and should be obtained before the bid is submitted.<sup>46</sup>

The requirement in paragraph (b) that underwriters obtain a nearly final official statement before bidding on an offering could have the consequence of altering the bidding or offering process employed by some issuers, if the issuer does not currently make available, prior to the bid or sale, a preliminary official statement as complete as required in the proposed rule. Accordingly, the Commission requests comment on the extent to which adequate information currently is available to underwriters during the negotiation or bidding process, and whether possible improvements in the availability of

information would outweigh the increased costs that could result from the rule. The Commission also requests comment regarding any timing difficulties and consequent economic burdens that might arise for issuers and underwriters as a result of the requirement that underwriters review the nearly final official statement prior to bidding on or purchasing the municipal securities.

#### *C. Public Dissemination of Preliminary Official Statements upon Request*

Proposed paragraph (c) would require that preliminary official statements be sent to any person promptly upon request.<sup>47</sup> The purpose of paragraph (c) is to provide potential investors<sup>48</sup> with access to any preliminary official statement prepared by the issuer for dissemination to potential bidders or purchasers at a time when it may be of use to investors in their investment decision. Because preliminary official statements frequently are used as selling documents, large investors often are provided copies when they are solicited to purchase securities in a municipal offering. Indeed, the Commission understands that some institutional investors will not agree to purchase securities in an offering without receiving a preliminary official statement. Even so, there does not appear to be a uniform practice among underwriters of providing preliminary official statements to all potential investors. Because sales efforts may be conducted in competitive offerings prior to the time that an underwriter is awarded a bid, and investors may not have access to a final disclosure document for an extended period of time following their commitment to purchase the securities, the Commission believes that confusion concerning the offering terms and the potential for misleading sales representations would be reduced if investors had the ability to obtain

information contained in the preliminary official statement.<sup>49</sup>

Comments are requested regarding the extent to which preliminary official statements are disseminated to investors presently, the likely demand by investors for these preliminary official statements under the proposed rule, and the estimated additional costs to underwriters that compliance with the rule would entail. In addition, the Commission requests comment on whether underwriters that provide preliminary official statements to investors on request should be excused from the requirement that final official statements also be provided to those investors, where the key representations contained in the preliminary official statement continue to be accurate.

#### *D. Distribution of Official Statements*

Paragraph (d) of proposed Rule 15c2-12 would require that underwriters contract with the issuer or its agent to obtain copies of final official statements within two business days after a final agreement to purchase the offered securities. That contract must be for sufficient copies to distribute in accordance with paragraph (e) of the proposed rule and any rules adopted by the MSRB. The purpose of paragraph (d) is to facilitate the prompt distribution of disclosure documents so that investors will have a reference document to guard against misrepresentations that may occur in the selling process. In addition, this paragraph would provide investors and dealers in the secondary market with static information concerning the terms of the issued securities.

Rule G-17 of the MSRB's rules requires municipal securities brokers and dealers to deal fairly with customers. The MSRB interprets this rule to require that a dealer disclose, at or prior to a sale, all material facts concerning the transaction, including a complete description of the security.<sup>50</sup> Moreover, MSRB rule G-32 requires that underwriters deliver to a customer, no later than settlement, a copy of any official statement that is prepared by or on behalf of the issuer. If no official statement is prepared by the issuer, a written notice of that fact must be provided to the customer. The Tower

<sup>45</sup> A recent survey indicated that official statements were prepared for 84% of municipal bond issues, including both competitive and negotiated offerings. Task Force Report, *supra* note 34, at 14.

<sup>46</sup> See also discussion *infra* in Part III.

<sup>47</sup> Absent unusual circumstances, this would require that a preliminary official statement be sent by first class mail or other equally prompt means, no later than the close of the next business day following the receipt of the request. Requests could be made orally or in writing.

<sup>48</sup> Although this requirement is intended primarily to benefit potential investors, the rule requires the preliminary official statement to be given to any person on request to eliminate underwriters' discretion in determining who in fact is a potential investor. Comment is requested on the facility with which analysts and other industry professionals currently can obtain copies of preliminary official statements directly from the issuer; whether the underwriters' obligation to provide these statements should be limited to potential investors; and how potential investors should be defined.

<sup>49</sup> Of course, where key representations made in the preliminary official statement are known to the underwriter to be no longer accurate, the underwriter would have to notify investors prior to the time that they make an investment decision and would have to provide copies of the amended final official statement.

<sup>50</sup> See, e.g., MSRB Manual (CCH) ¶ 3581.30.

Amendment <sup>51</sup> limits the authority of the MSRB, however, directly or indirectly to require municipal issuers to furnish disclosure documents. Thus, rule G-32 applies only where an official statement is prepared and does not mandate disclosure of any particular information to the investor in the official statement.

The Commission understands that it is currently the practice for issuers to state, in notices of sale, the number of official statements that will be provided to a successful bidder or that a "reasonable" number of official statements will be provided. If any official statements are prepared by the issuer, the MSRB has taken the position that the underwriter is required to produce sufficient copies to comply with rule G-32.<sup>52</sup> In most cases, issuers do prepare official statements. Both underwriters and investors have complained, however, that even when official statements are prepared by the issuer, there frequently is not an adequate supply, or sufficient time, to permit distribution to each investor at settlement.

Paragraph (d) of Rule 15c2-12 would require that an underwriter obtain an undertaking from the issuer or its designated agent to provide, within two business days after any final agreement to purchase or sell securities, final official statements in sufficient quantities to enable the underwriter to comply with paragraph (e) of the rule and any MSRB rules regarding the distribution of official statements. Thus, prior to submitting a bid for an offering, or otherwise agreeing to participate in a distribution, an underwriter, or the syndicate of which it is a member, would need to ascertain that it will be able to comply with Rule 15c2-12. If the issuer's notice of sale, bid form, or underwriting agreement does not provide specifically for production of official statements in accordance with Rule 15c2-12, an underwriter would violate the rule if it participates in the offering.<sup>53</sup> As a practical matter,

therefore, issuers would not be able to go forward with underwritten offerings exceeding the proposed \$10 million threshold, unless arrangements were made to provide official statements. As discussed below, however, the Commission does not believe that this requirement will affect most issuers.

The proposed rule requires that adequate copies of the official statements would need to be provided within two business days after final agreement is reached. Nevertheless, the issuer's undertaking may call for provision of the official statement to be made by designated agents. Thus, an undertaking would comply with Rule 15c2-12 by indicating that sufficient quantities of official statements will be made available from a printer designated by the issuer, or will be reproduced by the syndicate manager from those official statements that it receives from the issuer. Also, the rule would allow a reasonable fee to be requested by the printer, issuer, or syndicate members or investors.

As emphasized earlier, if the rule is adopted, underwriters would violate the requirements of Rule 15c2-12 if they proceed with an offering in excess of \$10 million without taking steps to assure the availability of official statements. Many issuers already routinely prepare official statements for offerings exceeding one billion dollars.<sup>54</sup> Thus, while the proposed rule will enhance disclosure to investors, it is not expected that the rule would inhibit the access of any issuers to the municipal markets. The only effect on most municipal issuers offering securities that exceed the proposed minimum thresholds in the rule would be that official statements would be required to be produced in a more expeditious fashion, and perhaps in greater quantities, than currently might be the case.

The Commission preliminarily believes that the costs imposed on issuers that are not now producing official statements for offerings in excess of \$10 million will be offset by the benefits that will inure both to the markets as a whole and to individual investors. The Commission requests comment on any practical problems that might be encountered by underwriters or issuers in attempting to comply with the requirements of the rule. In particular, does the two business day requirement pose a significant burden on issuers or underwriters? Should the delivery period be expanded to three or

four business days, or reduced to a single business day, or to the time that final agreement is reached?

The Commission would like to receive comments concerning the net costs that might be incurred by underwriters or issuers in reproducing official statements if Rule 15c2-12 is adopted. In the past, the Commission has received comments on proposed amendments to rule G-32 that estimated the expense of producing an official statement at from three to ten dollars per copy.<sup>55</sup> The Commission specifically requests comment on current procedures used in estimating the number of official statements to be produced; the estimated marginal costs of producing official statements in order to comply with proposed Rule 15c2-12; and whether, and at what price, those costs may effectively be passed on to recipients of official statements.

The Commission believes that paragraph (d) will allow the MSRB to use its expertise and familiarity with the municipal markets to draft regulations more finely tuned to the needs of the market. The Commission expects that, in the event that Rule 15c2-12 is adopted in its proposed form, the MSRB would amend rule G-32, where appropriate, to modify the standards governing the timeliness of official statement delivery. In this regard, the Commission also requests comment on whether it should regulate directly the timing and manner of disclosure provided to municipal securities investors.

#### *E. Public Dissemination of Official Statements upon Request*

Paragraph (e) of proposed Rule 15c2-12 would require that underwriters provide a copy of the final official statement to any person on request.<sup>56</sup> The purpose of this provision is to make the underwriter responsible for transmission of information to analysts, rating agencies, industry news services, and individuals who wish to analyze particular municipal securities offerings. In this regard, the Commission believes that increased availability of official statements, to potential investors,

<sup>51</sup> Exchange Act Section 15B(d), 15 U.S.C. 78b-4(d)(2). See discussion *infra* at text accompanying notes 64 to 69.

<sup>52</sup> The MSRB has stated that "if an issuer fails to supply a sufficient number of copies of official statements, it is incumbent on a dealer to reproduce the official statement at its own expense. These requirements apply to all municipal securities brokers and dealers who sell new issue securities, not solely to the underwriters of the issue." *Rules G-8, G-9, and G-32, MSRB Reports*, (Mar. 1984) at 3.

<sup>53</sup> Syndicate members also would need to assure themselves that their agreement with syndicate managers will provide for the prompt distribution of official statements.

<sup>54</sup> See, e.g., Forbes & McGrath, *Disclosure Practices in Tax-Exempt General Obligation Bonds: An Update*, 7 Mun. Fin. J. 207 (1986).

<sup>55</sup> See *supra* note 32. Specific comment is requested on the per copy cost of official statements for offerings at the various suggested thresholds for the rule, i.e., \$1 million, \$10 million, \$20 million, and \$50 million. See discussion *supra* at text accompanying note 40.

<sup>56</sup> The proposed rule requires that the offering statement be provided in a timely manner. For the first month following an offering, absent extraordinary circumstances, this would mean that a copy would be mailed within two business days of the request. Requests could be made orally or in writing. Later, reasonable time would be allowed to locate and duplicate requested documents.

analysts, and other persons willing to pay a reasonable fee for access to the information contained in the final official statement, will promote more accurate pricing in the secondary market and may facilitate the discovery of potentially fraudulent practices. Thus, in addition to making final official statements available to actual investors, paragraph (e) would require that other interested parties be provided with copies as well.

No specific time limitation currently is specified in proposed Rule 15c2-12. Comment is solicited on whether and under what circumstances a time period should be established, after which the obligation to provide information would no longer be applicable.<sup>57</sup> For example, if a central repository is developed, should this obligation expire after the repository receives and is in a position to disseminate the final official statement? The Commission also requests comment on whether a purchaser's ability under paragraph (e) of the rule to obtain an official statement on request for an unlimited time period reduces the need for the requirement imposed on the underwriters by MSRB rule G-32 to supply a final official statement to all purchasers. Finally, the Commission would like to receive comments on the potential costs to underwriters of complying with proposed paragraph (e). Specifically, what costs would be entailed in maintaining and disseminating copies of official statements required to be provided under paragraph (e)? Also, would it be possible, and at what price, for costs to be passed through effectively to recipients of the official statements?

#### F. Definitions

In addition to containing substantive requirements, proposed Rule 15c2-12 contains two definitions. Subparagraph (f)(1) of Rule 15c2-12 would define the term "final official statement" to mean a document prepared by the issuer or its representatives setting forth, among other matters, information concerning the issuer and the proposed issue of securities that is complete as of the final agreement to purchase or sell municipal

securities for or on behalf of an issuer or underwriter. A notice of sale would not be deemed a final official statement for purposes of the rule. The definition contained in subparagraph (f)(1) is based on the definition of official statement in MSRB rule G-32. By using a similar definition, the Commission is seeking to avoid any conflicts that may occur, because paragraph (d) would require that underwriters distribute copies of final official statements in accordance with MSRB regulations. The Commission requests comment on the proposed definition of "final official statement."

The Commission also requests comment on the definition of an "underwriter" used in subparagraph (f)(2) of the proposed rule. As proposed, the definition of an underwriter parallels the definition in section 2(11) of the Securities Act.<sup>58</sup> To ensure dissemination of documents by all professional participants in the offering, the definition includes managing underwriters, syndicate members, and selling group members that receive in excess of the usual seller's commission. Comment is requested on the proposed definition of "underwriter" and any foreseeable problems that dealers may encounter in complying with the rule. Comment also is requested concerning whether the definition of underwriter should be limited to the underwriters participating in the syndicate, as in the definition of "principal underwriter" in Rule 405 under the Securities Act.<sup>59</sup>

#### G. Legislative Background

In contrast to the registration and reporting requirements imposed on non-exempt corporate issuers under the federal securities laws, offerings of municipal securities are not subject to review by the Commission. When Congress adopted the federal securities laws, in addition to being influenced by the local nature of markets, the absence of demonstrated abuses, and the sophistication of investors in municipal securities, it was persuaded that direct regulation of the process by which municipal issuers and municipalities

raise funds to finance governmental activities would place the Commission in the position of a gate-keeper to the financial markets, a position inconsistent with intergovernmental comity. Nevertheless, Congress clearly made sales of municipal securities subject to the antifraud provisions of the federal securities laws.<sup>60</sup> Accordingly, broker-dealers misstating or omitting to disclose material facts about municipal securities or charging excessive mark-ups have been sanctioned for violating the antifraud provisions of the federal securities laws.<sup>61</sup>

The U.S. Supreme Court's interpretation of the scope of the Tenth Amendment has evolved significantly since the federal securities laws were first enacted in the 1930's. Most recently, in *South Carolina v. Baker*,<sup>62</sup> the Court affirmed the principle that the Tenth Amendment's limits on Congressional authority to regulate state activities are structural and not substantive. In doing so, it ruled that a provision of the Internal Revenue Code that required the registration of municipal bonds in order to maintain their tax exempt status was constitutional, since the municipal issuers had redress through the political process. Thus, a federal regulation affecting the manner in which securities are offered, adopted pursuant to Congressionally delegated authority, would not appear to violate the Tenth Amendment.<sup>63</sup>

In 1975, Congress revisited the application of the general antifraud provisions of the federal securities laws when it established the MSRB and provided for a system of regulation to prevent abuses in municipal securities. In adopting the 1975 Amendments,<sup>64</sup> Congress struck a balance between the need to protect investors and concerns about intergovernmental comity. This concern was reflected in section 15B(d)(1), which prohibits the Commission and the MSRB from requiring "any issuer of municipal securities, directly or indirectly through

<sup>57</sup> See, e.g., *In re New York Municipal Securities Litigation*, 507 F. Supp. 169 (S.D.N.Y. 1980); *S.E.C. v. Charles Morris & Associates*, 386 F. Supp. 1327 (S.D. Tenn. 1973); *Thiele v. Shields*, 131 F. Supp. 416 (S.D.N.Y. 1955) (Sections 17(a) of the Securities Act and 10(b) of the Exchange Act apply to sales of municipal securities).

<sup>61</sup> See discussion *infra* at Part III.

<sup>62</sup> — U.S. —, 56 U.S.L.W. 4311 (April 20, 1988).

<sup>63</sup> See also *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528, 556 (1985) (indicating that the appropriate inquiry in determining the boundaries of state immunity from federal regulation is whether "the internal safeguards of the political process have performed as intended").

<sup>64</sup> See *supra* note 8.

<sup>58</sup> The Commission recognizes that after a period of time, the disclosures contained in the official statement regarding an issuer no longer may be accurate. Accordingly, where the underwriter receives unsolicited requests for official statements, the Commission would not expect the underwriter to continue to update the disclosure to reflect inaccuracies that have resulted from intervening events. In responding to unsolicited requests, underwriters should indicate that the document contains dated information. The Commission requests comment on this aspect of the rule and any concerns that underwriters may have.

<sup>59</sup> 15 U.S.C. 77b(11). The definition of underwriter in section 2(11) of the Securities Act has been modified in one respect. Reference to a concession or allowance has been added to the definition to reflect the terms used in the municipal securities industry for a customary distributor's or seller's commission. The terms "concession" and "dealer's allowance," in the context of the sale of a new issue of municipal securities, refer to "the amount of reduction from the public offering price a syndicate grants to a dealer not a member of the syndicate, expressed as a percentage of par value." See *Glossary of Municipal Securities Terms* (MSRB 1985).

<sup>60</sup> 17 CFR 230.405.

a purchaser or prospective purchaser of securities from the issuer, to file with the Commission or the Board prior to the sale of such securities by the issuer any application, report, or document in connection with the issuance, sale, or distribution of such securities." <sup>65</sup>

At the same time, however, Congress more narrowly defined the authority of the MSRB. The so-called "Tower Amendment," which added section 15B(d)(2) to the Exchange Act, <sup>66</sup> also prohibits the MSRB from requiring municipal issuers, directly or indirectly, through municipal securities broker-dealers or otherwise, to furnish the MSRB or prospective investors with any documents, including official statements. The MSRB specifically is permitted, however, to require that official statements or other documents that are available from sources other than the issuer, such as the underwriter, be provided to investors.

While Congress limited the power of the MSRB to require that disclosure documents be provided to investors, it was careful to preserve and expand the authority of the Commission under section 15(c)(2) of the Exchange Act. <sup>67</sup> Section 15B(d)(2) expressly indicates that "[n]othing in this paragraph shall be construed to impair or limit the power of the Commission under any provision of this title." <sup>68</sup> Thus, although section 15B(d)(1) prevents the Commission from requiring that municipal issuers file reports or documents prior to the issuance of securities in the same fashion as corporate securities, Congress expanded the Commission's authority to adopt rules reasonably designed to prevent fraud, so long as the rules did not require documents to be filed with the Commission. <sup>69</sup> The

Commission believes that Rule 15c2-12 is consistent with its Congressional mandate to adopt rules reasonably designed to prevent fraud in the federal securities markets. <sup>70</sup>

### III. Municipal Underwriter Responsibilities

In connection with Rule 15c2-12's requirements to obtain and review a near-final official statement, the Commission wishes to emphasize the obligation of a municipal underwriter to have a reasonable basis for recommending any municipal securities and its responsibility, in fulfilling that obligation, to review in a professional manner the accuracy of the offering statements with which it is associated.

An underwriter, whether of municipal or other securities, occupies a vital position in an offering. The underwriter stands between the issuer and the public purchasers, assisting the issuer in pricing and, at times, in structuring the financing and preparing disclosure documents. Most importantly, its role is to place the offered securities with public investors. By participating in an offering, an underwriter makes an implied recommendation about the securities. Because the underwriter holds itself out as a securities professional, and especially in light of its position vis-a-vis the issuer, this recommendation itself implies that the underwriter has a reasonable basis for belief in the truthfulness and completeness of the key representations made in any disclosure documents used in the offerings.

Under the general antifraud provisions found in section 17(a) of the Securities Act and sections 10(b) and 15(c)(1) and (2) of the Exchange Act, <sup>71</sup> the courts and the Commission long have emphasized that a broker-dealer recommending securities to investors implies by its recommendation that it has an adequate basis for the recommendation. <sup>72</sup> For example, in

*Hanly v. SEC*, affirming the Commission's sanctions against securities salesmen who recommended the stock of a financially troubled issuer both by making false and misleading representations and by failing to disclose know or reasonably obtainable adverse information, the court stated:

In summary, the standards by which the actions of each [salesman] must be judged are strict. He cannot recommend a security unless there is an adequate and reasonable basis for such recommendation. He must disclose facts which he knows and those which are reasonably ascertainable. By his recommendation he implies that a reasonable investigation has been made and that his recommendation rests on the conclusions based on such investigation. <sup>73</sup>

This obligation to have a reasonable basis for belief in the accuracy of statements directly made concerning the offering is underscored when a broker-dealer underwrites securities. <sup>74</sup> A

*Corporation*, 44 S.E.C. 45 (1969); *Crow, Bourman & Chotkin, Inc.*, 42 S.E.C. 938 (1966); *Shearson Hammill & Co.*, 42 S.E.C. 811 (1965); *J.A. Winston & Co., Inc.*, 42 S.E.C. 62 (1964) (concerning transactions by dealers in the secondary market).

<sup>73</sup> 415 F.2d 589, 597 (2d Cir. 1969), affirming *Richard J. Buck & Co.*, 43 S.E.C. 996 (1968). See also, e.g., *Merrill Lynch Pierce, Fenner & Smith*, Securities Exchange Act Release No. 14149 (Nov. 9, 1977), 13 SEC Docket 646, 561 ("A recommendation by a broker-dealer is perceived by a customer as [and in fact it should be] the product of an objective analysis [which] can only be achieved when the scope of investigation is extended beyond the company's management"); *John R. Brick*, Securities Exchange Act Release No. 11763 (Oct. 24, 1975), 8 SEC Docket 240, 242 ("The professional \* \* \* is not an insurer. But he is under a duty to investigate and to see to it that his recommendations have a reasonable basis"); *M.G. Davis & Co.*, 44 S.E.C. 153, 157-58 (1970), *aff'd sub nom. Levine v. SEC*, 436 F.2d 88 (2d Cir. 1971) (broker-dealer registration revoked, because "representations and predictions" made and market letter relied on by registrant "were without reasonable basis," and "registrant could not reasonably accept all of the statements in the [market letter] without further investigation").

<sup>74</sup> The opportunity for the underwriters to require disclosure from the issuer, as well as the special selling pressures involved in the distribution of securities, generally have given rise to a heightened obligation on the part of underwriters. In *Sanders v. John Nuveen & Co.*, 524 F.2d 1064 (7th Cir. 1975), *vacated and remanded on other grounds*, 425 U.S. 929 (1976), *on remand*, 554 F.2d 790 (7th Cir. 1977), *rehearing denied*, 619 F.2d 1222 (7th Cir. 1980) *cert. denied* 450 U.S. 1005 (1981), for example, the Seventh Circuit considered a case involving an underwriter of commercial paper. The underwriter did not have a formal underwriting agreement with the issuer and was not subject to liability under section 11 of the Securities Act, 15 U.S.C. 77k. Nevertheless, the court noted that:

[A]n underwriter's relationship with the issuer gives the underwriter access to facts that are not equally available to members of the public who must rely on published information. And the relationship between the underwriter and its customers implicitly involves a favorable recommendation of the issued security. Because the public relies on the integrity, independence and expertise of the underwriter, the underwriter's participation significantly enhances the

<sup>65</sup> 15 U.S.C. 78o-4(d)(1).

<sup>66</sup> 15 U.S.C. 78o-4(d)(2).

<sup>67</sup> 15 U.S.C. 78o(c)(2).

<sup>68</sup> 15 U.S.C. 78o-4(d)(2).

<sup>69</sup> Section 15(c)(2) of the Exchange Act empowers the Commission with broad authority to adopt rules reasonably designed to prevent fraudulent, deceptive, or manipulative acts or practices. Prior to 1975, the Commission's regulation of municipal securities professionals had been limited largely to *post hoc* enforcement actions against fraud. The 1975 Amendments expanded the application of section 15(c)(2) to subject municipal securities and municipal securities dealers to the Commission's authority to adopt rules reasonably designed to prevent acts or practices that are fraudulent, deceptive, or manipulative.

Since Rule 15c2-11, 17 CFR 240.15c2-11, which requires brokers and dealers to obtain certain information about an issuer before initiating quotations, would have applied to municipal securities upon enactment of the 1975 Amendments, Congress indicated that the Commission should specifically exempt municipal securities from Rule 15c2-11 immediately upon their adoption. It was believed that, since Rule 15c2-11 was drafted with corporate securities in mind, municipal securities

dealers would not have been able to obtain sufficient information concerning municipal issuers to satisfy the rule's requirements. See S. Rep. No. 75, 94th Cong., 1st Sess. 48 (1975). See also Rule 15c2-11(f)(4), 17 CFR 15c1-11(f)(4) (provisions of rule do not apply to publication of submission of a quotation regarding a municipal security).

<sup>70</sup> Although denominated under section 15 of the Exchange Act, Rule 15c2-12 also is being adopted pursuant to the Commission's authority under sections 2, 3, 10, 15B, 17, and 23 of the Exchange Act, 15 U.S.C. 78b, 78c, 78j, 78o-4, 78q, and 78w.

<sup>71</sup> 15 U.S.C. 77q(a) and 15 U.S.C. 78j(b), 78o(c)(1), and 78o(c)(2), respectively.

<sup>72</sup> See, e.g., *Feeney v. SEC*, 564 F.2d 280 (8th Cir. 1977); *Nassar & Co.*, Securities Exchange Act Release No. 15347 (Nov. 22, 1978), 16 SEC Docket 222, *reprinted in* [1979 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶81,904, *aff'd without opinion*, 600 F.2d 280 (D.C. Cir. 1979); *Cortlandt Investing*

municipal underwriter's obligation extends to having a reasonable basis for belief in the truth of key representations in an official statement prepared by the issuer. An underwriter's failure to have a reasonable basis for believing key representations in offering documents has resulted in private damage actions under the general antifraud provisions and in enforcement action by the Commission under section 17(a) of the Securities Act. For example, in *Hamilton Grant & Co.*, the Commission found that an underwriter had violated sections 17(a)(2) and (3) of the Securities Act where the underwriter had "failed to make any substantial effort to obtain specific verification of management's key representations" and thus had "no basis for a reasonable belief in the truthfulness of the key representations made in the registration statement and prospectus."<sup>75</sup>

Although these cases have involved underwriters of corporate securities, which, unlike municipal securities, are subject to a comprehensive disclosure and liability scheme under the federal securities laws, the Commission has emphasized through its enforcement program that broker-dealers selling municipal securities are also subject to high standards. In particular, the Commission has stated that underwriters of municipal securities must have a reasonable basis for their recommendations concerning offerings.<sup>76</sup>

marketability of the security. And since the underwriter is unquestionably aware of the nature of the public's reliance on his participation in the sale of the issue, the mere fact that he has underwritten it is an implied representation that he has met the standards of his profession in his investigation of the issuer. 524 F.2d at 1069-70.

<sup>75</sup> Securities Exchange Act Release No. 24679 (July 7, 1987), 38 SEC Docket 1346, 1353. See also the following decisions concerning corporate underwriters: *Leonard Lazaroff*, 43 S.E.C. 43 (1966) (underwriter did not carry out its "duty to investigate the issuer diligently and ascertain the accuracy of the offering circular"); *Amos Treat & Co.*, 42 S.E.C. 99, 103-4 (1964) (underwriter sanctioned for knowingly using registration statement containing stale financial statements when recommending securities); *The Richmond Corporation*, 41 S.E.C. 398, 406 (1963) ("It is a well established practice, and a standard of the business, for underwriters to exercise diligence and care in examining into an issuer's business and the accuracy and adequacy of the information contained in the registration statement. By associating himself with a proposed offering, an underwriter impliedly represents that he has made such an investigation in accordance with professional standards" [footnote omitted]); *Brown, Barton & Engel*, 41 S.E.C. 59, 64 (1962) (underwriters "had a responsibility to make a reasonable investigation to assure themselves that there was a basis for the representations they made and that a fair picture including adverse as well as favorable factors, was presented to investors").

<sup>76</sup> *Walston & Co.*, Securities Exchange Act Release No. 8165 (Sept. 22, 1967), reprinted in [1966-

Similarly, both the Commission and the courts have indicated that municipal underwriters must exercise reasonable care to evaluate the accuracy of statements in issuer disclosure documents.<sup>77</sup>

In recognition of their responsibilities under the general antifraud provisions of the federal securities laws and the MSRB's general fair dealing rules,<sup>78</sup> for

67 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 77,474. This case involved a special assessment tax district consisting of one tract of undeveloped land owned by the promoter of the bonds. The manager of the bond department, but not the firm's salesmen, knew that the district consisted of one individual's land, but the firm had not inquired into the financial condition of the owner and developer. In that context, the Commission noted:

It is incumbent on firms participating in an offering and on dealers recommending municipal bonds to their customers as "good municipal bonds" to make diligent inquiry, investigation and disclosure as to material facts relating to the issuer of the securities and bearing upon the ability of the issuer to service such bonds. It is, moreover, essential that dealers offering such bonds to the public make certain that the offering circular and other selling literature are based upon an adequate investigation and that they accurately reflect all material facts which a prudent investor should know in order to evaluate the offering before reaching an investment decision.

<sup>77</sup> See, e.g., *Walston & Co.*, supra note 76; *Edward J. Blumenfeld*, Securities Exchange Act Release No. 16437 (Dec. 19, 1979), 18 SEC Docket 1379; *Shores v. Sklar*, 647 F.2d 462 (5th Cir. 1981), cert. denied, 455 U.S. 936 (1982) (underwriter of industrial revenue bonds could be liable for recklessness under "fraud on the market" theory under section 10(b) of Exchange Act, 15 U.S.C. 78j(b), where offering circular contained material omissions and underwriter had been aware of misrepresentations and omissions and had failed to look into true value of the issuer's assets); *Shores v. M.E. Ratliff Investment Co.*, No. CA 77-G-0604-5, reprinted in [1981-82 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 98,425 (N.D. Ala. 1982) (underwriter of industrial development bonds liable under Rule 10b-5, 17 CFR 240.10b-5, for using offering circulars not disclosing material facts and for failing to conduct reasonable inquiry); but see, *Ross v. Bank South, N.A.*, 837 F.2d 980 (11th Cir. 1988), vacated and reh'g en banc granted sub nom. *Ross v. Rice*, 848 F.2d 1132 (June 10, 1988) (granting rehearing to consider a case involving, among other things, application of the fraud on the market theory to sales of bonds in an undeveloped market).

<sup>78</sup> Apart from the general antifraud provisions of the federal securities laws, municipal securities brokers and dealers also must comply with the MSRB's rules. Rule G-17 of the MSRB's rules requires municipal securities brokers and dealers to deal fairly with investors and prohibits them from engaging in any deceptive, dishonest, or unfair practice. The MSRB has interpreted this rule to require that a dealer disclose all material facts known by the dealer to a customer at the time of the transaction. See supra note 50. In addition, rule G-19 requires that a municipal securities broker or dealer not recommend a transaction to a customer unless it has reasonable grounds, based upon its knowledge of the security, for believing that the transaction is suitable for that particular customer.

some time underwriters generally have undertaken an investigation of the issuer's disclosure in negotiated offerings of municipal securities.<sup>79</sup> Among other things, depending upon the nature of the issuer, this has included meetings with municipal officials, visits to physical facilities, and an examination of the issuer's records and current economic trends and forecasts that bear upon the ability of the issuer to repay its debt. In addition, underwriters usually require so-called "Rule 10b-5" letters from their counsel with respect to municipal offerings.<sup>80</sup>

Although general practice among municipal underwriters appears to recognize a responsibility to assess the accuracy of disclosure documents used in negotiated offerings, the Commission is not convinced that this practice is recognized universally or followed in all negotiated municipal offerings. Moreover, with respect to competitively bid municipal underwritings, some underwriters mistakenly consider themselves to have virtually no responsibility regarding the accuracy of the offering disclosure document. As the Commission noted in the New York City Final Report, there appears to be no clear understanding of an underwriter's responsibility to assure the accuracy of the information disclosed.<sup>81</sup> The Supply

<sup>79</sup> The recent report by the American Bar Association and National Association of Bond Lawyers on the disclosure roles of counsel in municipal offerings acknowledged that:

While issuer officials and underwriters are \* \* \* exempt from civil liabilities under section 11 of the 1933 Act, both the SEC and private litigants have taken the position that a duty exists under the antifraud provisions similar to, although perhaps not so severe as, the investigating activities which form the statutory "due diligence" defense under Section 11.

American Bar Association, Section of Urban, State and Local Government Law, and National Association of Bond Lawyers, *Disclosure Roles of Counsel in State and Local Government Securities Offerings* (1987), at 37 ("ABA-NABL Report").

<sup>80</sup> Rule 10b-5 letters are obtained by underwriters from their counsel to provide negative assurance concerning the disclosure document (e.g., "nothing has come to our attention that would indicate that the disclosure document contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading"). See 17 CFR 240.10b-5(b). Such letters generally provide a description of the investigation undertaken by the counsel on behalf of the underwriter which serves as a basis for those assurances.

<sup>81</sup> New York City Final Report, supra note 2. The Supplemental Staff Report, which was an appendix to the New York City Final Report, stated that:

The underwriters, those discussed in the Staff Report as well as several other national and local underwriting firms interviewed by the staff, can and do perform independent credit analyses of municipalities whose securities offerings they underwrite. The underwriters have generally stated,

Continued

System Staff Report also suggests that underwriters, even in nominally competitive bid offerings, view their responsibilities regarding the accuracy of the official statement as extremely limited.<sup>82</sup> The underwriters of the Supply System's bonds acknowledged no legal responsibility to read the official statements with a view to gauging their accuracy, much less to conduct a review to establish a basis for a reasonable belief in the accuracy of the key representations made in the offering statement.<sup>83</sup>

In light of the above, the Commission believes that further articulation of a municipal underwriter's obligations to the investing public in both negotiated and competitively bid offerings is appropriate at this time to encourage meaningful review of issue disclosure.<sup>84</sup> In the Commission's view, the reasonableness of a belief in the accuracy and completeness of the key representations in the final official statement, and the extent of a review of the issuer's situation necessary to arrive at this belief, will depend upon all the circumstances. In both negotiated and competitively bid municipal offerings, the Commission expects, at a minimum, that underwriters will review the issuer's disclosure documents in a professional manner for possible inaccuracies and omissions.<sup>85</sup> Beyond

however, that circumstances severely restrict their ability to conduct any "due diligence" inquiry in any competitive bid offering and that, in these circumstances, the inquiry may consist of nothing more than a perusal of the official statement or other information provided in connection with the offering or contained in their files. In contrast, the underwriters generally state that in any negotiated offering they do perform a "due diligence" inquiry in some ways similar to that conducted in underwriting corporate issues.

<sup>82</sup> Supply System Staff Report at 168-169. See also discussion *supra* at text accompanying notes 13 to 19.

<sup>83</sup> Unlike many competitively bid offerings, only two syndicates successfully bid on the Supply System's 14 offerings. Moreover, there appeared to be little uncertainty about which syndicate would be awarded a particular offering.

<sup>84</sup> As discussed above, these obligations arise out of the general antifraud provisions of the federal securities laws, particularly section 17 of the Securities Act and sections 10(b) and 15(c)(1) and (2) of the Exchange Act, and the rules thereunder. The factors set forth below do not change the applicable legal standards, e.g., scienter or negligence, and conduct in a specific case must be measured against these standards. Nor do they attempt to establish objective standards of recklessness for purposes of any scienter requirement.

<sup>85</sup> Proposed Rule 15c2-12 expressly would require that municipal underwriters review preliminary official statements in offerings of over \$10 million.

this baseline review, the Commission believes that a number of factors generally will be relevant in determining the reasonableness of a municipal underwriter's basis for assessing the truthfulness of the key representations in final official statements. These factors would include: The extent to which the underwriter relied upon municipal officials, employees, experts, and other persons whose duties have given them knowledge of particular facts;<sup>86</sup> the type of underwriting arrangement (e.g., firm commitment or best efforts); the role of the underwriter (manager, syndicate member, or selected dealer)<sup>87</sup>; the type of bonds being offered (general obligation, revenue, or private activity); the past familiarity of the underwriter with the issuer; the length of time to maturity of the bonds; the presence or absence of credit enhancements; and whether the bonds are competitively bid or are distributed in a negotiated offering.

In negotiated municipal offerings, where the underwriter is involved in the preparation of the official statement, the Commission believes that development of a reasonable basis for belief in the accuracy and completeness of the statements therein should involve an inquiry into the key representations in the official statement that is conducted in a professional manner, drawing on the underwriter's experience with the particular issuer, and other issuers, as well as its knowledge of the municipal markets. Sole reliance on the

<sup>86</sup> The Commission wishes to caution underwriters that this factor does not imply that an underwriter may merely rely upon formal representations by the issuer, its officials, or employees regarding the general accuracy of disclosure contained in the official statement. The underwriter must review the information submitted to it with a view to resolving inaccuracies and inconsistencies. Reliance on portions of a statement prepared and certified or authorized by an expert to be included in the document generally would be reasonable absent actual knowledge, or a reason to know, of the inaccuracy of those statements.

<sup>87</sup> In other contexts, the Commission and the courts have distinguished between the obligations of managing underwriters and syndicate members. See generally Securities Exchange Act Release No. 9671 (July 26, 1972) (discussing the responsibility of underwriters, brokers, and dealers trading in securities, particularly of high risk ventures). Generally, a participating underwriter in an offering of municipal securities need not duplicate the efforts of the managing underwriter, but must satisfy itself that the managing underwriter reviewed the accuracy of the information in the official statement in a professional manner and therefore had a reasonable basis for its recommendation. Nevertheless, in both competitive and negotiated offerings, the syndicate members, as part of forming their own recommendations to investors, must at least familiarize themselves with the information in the official statement and should notify the managing underwriters of any factors that suggest inaccuracies in disclosure or signal the need for additional investigation.

representations of the issuer would not suffice.<sup>88</sup> The role of the underwriter in assessing the accuracy of the issuer's key disclosures is of particular importance where the underwriting involves an unreasoned issuer.<sup>89</sup> Because of the varying types of municipal debt and extent of disclosure practices, the Commission is not attempting to delineate specific investigative requirements in this release. However, the Commission notes that commentators already have suggested a variety of investigative procedures to be followed by underwriters in connection with negotiated municipal securities offerings.<sup>90</sup>

With respect to competitively bid offerings of municipal securities, members of the municipal securities industry have argued that the uncertainty of the bidding process and time pressures associated with these offerings make it difficult for underwriters to conduct an investigation of the issuer or its statements.<sup>91</sup> The fact that an offering is underwritten on a competitive basis does not negate the responsibility that the underwriter perform a reasonable review. Nevertheless, the Commission recognizes that municipal underwriters may have little initial access to background information concerning securities that have been bid on a competitive basis. Therefore, the fact that offerings are competitively bid, rather than sold through a negotiated offering, is an element to be considered in determining the reasonableness of the underwriters' basis for assessing the truthfulness of key representations in final official statements. In this regard, the fact that an underwriting is nominally classified as competitive will not be relevant to the scope of an underwriter's review where there is little uncertainty about the choice of underwriters or where other factors are present that would command a closer examination.

<sup>88</sup> See, e.g., *Hamilton Grant & Co.*, *supra* note 75.

<sup>89</sup> *Charles E. Bailey & Co.*, 35 S.E.C. 33, 42 (1953) ("where, as here, an issuer seeks funds from the public to finance a new and speculative venture, the underwriter must be particularly careful in verifying the issuer's obviously self-serving statements as to its operations and prospects").

<sup>90</sup> See ABA-NABL Report, *supra* note 79, at 74-98; Doty, *The Disclosure Process and Securities Laws, State and Local Government Debt Financing* (D. Gelfand ed. 1986) ("Doty") at §§ 8-69, 8-71.

<sup>91</sup> See, e.g., *Municipal Securities Full Disclosure Act of 1976*, Hearing on S. 2969 and 2574 before the Subcommittee on Securities, Senate Committee on Banking, Housing and Urban Affairs, 94th Cong., 2d Sess. 126, 127 (1976) (statement of Richard Kezer, President of the Dealer Bank Association).

The Commission believes that in a normal competitive bid offering, involving an established municipal issuer, a municipal underwriter generally would meet its obligation to have a reasonable basis for belief in the accuracy of the key representations in the official statement where it reviewed the official statement in a professional manner, and received from the issuer a detailed and credible explanation concerning any aspect of the official statement that appeared on its face, or on the basis of information available to the underwriter, to be inadequate. In reviewing the issuer's disclosure documents, therefore, underwriters bidding on competitive offerings should stay attuned to factors that suggest inaccuracies in the disclosure or signal that additional investigation is necessary.<sup>92</sup> If these factors appear, the underwriter should investigate the questionable disclosure and, if a problem is uncovered, pursue the inquiry until satisfied that correct disclosure has been made.<sup>93</sup>

<sup>92</sup> In a competitively bid offering, the task of assuring the accuracy and completeness of disclosure is in the hands of the issuer, who usually will employ a financial adviser, which frequently is a broker-dealer. Ordinarily, financial advisers in competitively bid offerings publicly associate themselves with the offering, and perform many of the functions normally undertaken by the underwriters in corporate offerings and in municipal offerings sold on a negotiated basis. Thus, where such financial advisers have access to issuer data and participate in drafting the disclosure documents, they will have a comparable obligation under the antifraud provisions to inquire into the completeness and accuracy of disclosure presented during the bidding process. See generally Doty, *supra* note 90, at § 8-76. Although the underwriter may choose to rely upon the fact that a broker-dealer acting as a financial adviser is assisting the issuer, such reliance does not relieve the underwriter of its duty to investigate questionable disclosure.

<sup>93</sup> The Commission requests comment on the nature and extent of any problems experienced by underwriters and issuers involving underwriting agreements that do not contemplate a reasonable investigation by the underwriters. One commentator has suggested that issuers may attempt to retain good faith deposits if underwriters refuse to go forward with an offering where sufficient disclosure is not provided. See Doty, *Municipal Securities Disclosure*, 13 Rev. of Sec. Reg. No. 1 (January 16, 1980). The Commission believes that any problems previously experienced in this area may be avoided by proper drafting of purchase contracts or underwriting agreements. Moreover, issuers and underwriters should consider whether agreements that do not allow for a reasonable investigation would be voidable under Section 29(b) of the Exchange Act, 15 U.S.C. 78cc(b). Compare *Kaiser-Frazer Corp. v. Otis & Co.*, 195 F.2d 838 (2nd Cir. 1952), cert. denied, 344 U.S. 856 (1952) (invalidating an underwriting agreement under Section 14 of the Securities Act, 15 U.S.C. 77n, where inadequate disclosure was provided by the issuer); see also, generally, Gruenbaum & Steinberg, *Section 29(b) of the Securities Exchange Act of 1934: A Viable Remedy Awakened*, 48 Geo. Wash. L. Rev. 1 (1979).

While a municipal underwriter in a competitive bid offering may approach its reasonable basis obligation first through a professional review of the offering documents, it may not, of course, ignore other information regarding the issuer that it has available. Generally, underwriters receive notices of competitively bid offerings one week prior to the date bids must be submitted. During this period, they have the opportunity to review the issuer's preliminary official statement<sup>94</sup> and bring to bear any additional information they have about the issuer.

With respect to both negotiated and competitively bid offerings, apart from the information contained in the issuer's disclosure documents, an underwriter may have had opportunities to develop an independent reservoir of knowledge about an issuer. As noted above and in the Supply System Staff Report,<sup>95</sup> even in competitively bid offerings, underwriters may have access to information about the issuer that would allow them to reach some conclusion about the worth of its bonds and the validity of representations in the preliminary or final official statement. In addition, underwriters often engage in trading of other bonds of the issuer in the secondary market and acquire information on a continuing basis in their role as dealers of the bonds, regardless of whether they underwrite a particular offering. Moreover, many municipal issuers return to the market frequently to meet their financing needs. Underwriters that participate in multiple offerings for an issuer have a continuing opportunity to become familiar with the issuer's financial and operational condition. From each of these sources, an underwriter may develop a reservoir of knowledge about the issuer and its securities that should be used to assess the adequacy of disclosure.

An additional source of information is the underwriter's research department. The research units of municipal underwriters produce research on bonds sold by both competitively bid and negotiated offerings, and may assist in the sales activities of the underwriter. The research units also draft reports that are sent to potential customers, including institutional investors, and sometimes write more abbreviated information circulars for the direct use of the firm's salespersons in promoting the bonds. When an underwriter participates in an offering, the research

<sup>94</sup> The Commission expects that the responsibilities of municipal underwriters described above would require them, in most cases, to receive a preliminary offering statement in this time frame.

<sup>95</sup> Supply System Staff Report at 170-72.

unit may have substantive knowledge about the issuer and should be consulted by the underwriter in performing its investigation.<sup>96</sup>

The Commission believes that the provisions in Rule 15c2-12 also contribute to a municipal underwriter's ability to meet its "reasonable basis" obligation. In particular, paragraph (b) of Rule 15c2-12 would assist underwriters in complying with their reasonable basis obligation by providing that an underwriter receive a nearly final official statement prior to bidding for or purchasing an offering, which it then must review. In order to allow the underwriter to meet this obligation, issuers will have to begin drafting disclosure documents earlier and perhaps with greater care than in the past. Furthermore, this requirement should enable underwriters to receive, and if necessary influence the content of, the final official statement before committing themselves to an offering.

The Commission believes that the conduct of the underwriters in the Supply System offerings, and the position advanced by some members of the industry, with respect to their responsibilities in competitively bid offerings, raise serious concerns that warrant additional review. Although the legal standards stated above reflect the current Commission views based upon judicial decisions and previous administrative actions, the Commission is concerned that the standards applicable to municipal underwriters be articulated correctly. Accordingly, the Commission would like to receive views on the interpretation expressed above. In addition, the Commission would like to receive comment from underwriters and other members of the industry regarding current practices in both negotiated and competitively bid underwritings, and the extent to which they meet the standards articulated in this release. In this regard, the Commission requests comment on any problems experienced by underwriters in fulfilling their responsibilities that could be resolved through further Commission or MSRB rulemaking. Commentators also are invited to address whether a clearer articulation of an underwriter's responsibilities is desirable, either through additional Commission interpretation or rulemaking, or through amendment to the statutory provisions of the federal securities laws. Alternatively, should the MSRB adopt general guidelines or

<sup>96</sup> The Commission notes, however, that care should be taken to avoid the misuse of any material, non-public information by the firm or its clients.

interpretations to assist underwriters in determining the scope of their responsibilities?

#### IV. Creation of a Central Repository

In addition to soliciting views on proposed Rule 15c2-12, and the methods used to satisfy an underwriter's responsibility to have a reasonable basis for recommending the securities it underwrites, the Commission requests comment on a proposal advanced by the MSRB and members of the industry to create a repository of municipal securities disclosure documents. This proposal is intended to improve the flow of information to the municipal marketplace. Information concerning corporate offerings is available to the public at a single location, because most corporate issuers file registration statements with the Commission.<sup>97</sup> In addition, many corporate issuers are subject to the annual and periodic reporting requirements of the Exchange Act,<sup>98</sup> which provide a continual source of disclosure about the issuer to the secondary markets. No similar registration or reporting requirements exist for municipal issuers, however.

Although some repositories do collect information concerning municipal offerings,<sup>99</sup> there is no central and complete source of documentary information. Moreover, even when official statements are prepared, dealers may not retain copies following the distribution. Consequently, they may not have adequate access to complete descriptive information about an issuer's securities when trading in the secondary market. As noted earlier, lack of disclosure about important features of an issuer's securities has been a frequent complaint in MSRB arbitration

proceedings and has resulted in pricing and trading inefficiencies.<sup>100</sup>

In an effort to improve the quality of disclosure available to both the primary and secondary market, the MSRB recently has proposed the creation of a central repository of official statements and certain refunding documents.<sup>101</sup> As envisioned by the MSRB, participation in the repository by municipal issuers would be mandatory, and information concerning new issues would be made available to interested persons, for a fee, shortly after filing with the repository by the issuer. Among other things, the MSRB expects that the repository would alleviate current informational problems in the offering of municipal securities by allowing dealers executing transactions in new issues of securities to gain access to information contained in official statements through in-house computer screens. It is also expected that benefits would accrue to the secondary market. Rapid access to descriptive information concerning all issues would facilitate compliance with the MSRB's rules and would provide a more complete and reliable source of information than is available at this time.

While the concept of a central repository has been endorsed by elements of the municipal securities industry, the proposal has generated a number of issues that deserve careful study.<sup>102</sup> The issues range from technical and operational concerns to more fundamental policy considerations regarding the nature of information to be provided to the repository, and the role of the Commission, if any, in assisting in the creation of the repository.

The Commission requests comments concerning the creation of a central repository. In addition to general comments concerning the need for a repository, commentators should address the following issues: Should the repository be created by the industry or mandated by the Commission; should participation in a repository be voluntary or assisted by rulemaking efforts by the MSRB or the Commission; should the deposit requirement be

placed on issuers, underwriters, or dealers; what kind of information should be submitted to the repository (e.g., official statements, escrow agreements, annual financial reports); when should the information be submitted; should there be periodic reporting requirements to keep the information current; should data be submitted in summary or complete form, in hard copy (without restrictions as to the type font or format, or with restrictions designed to facilitate use of optical character recognition technology) or electronically; and, how should the repository be funded?

#### V. Effects on Competition and Regulatory Flexibility Act Considerations

Section 23(a)(2) of the Exchange Act<sup>103</sup> requires that the Commission, in adopting rules under the Act, consider the anticompetitive effects of such rules, if any, and balance any anticompetitive impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission is preliminarily of the view that proposed Rule 15c2-12 will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Commission requests comment, however, on any competitive burdens that might result from adoption of the rule. Although the rule applies equally to all underwriters of municipal securities, the Commission in particular is interested in receiving comments on the extent to which any of the proposed dollar thresholds would burden one segment of the industry more than another.

In addition, the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA"), pursuant to the requirements of the Regulatory Flexibility Act,<sup>104</sup> regarding the proposed rules. The IRFA indicates that Rule 15c2-12 could impose some additional costs on small broker-dealers and municipal issuers, particularly if a lower dollar threshold is adopted. Nevertheless, the Commission believes that many of the substantive requirements of the rule already are observed by underwriters and issuers as a matter of business practice, or to fulfill their existing obligations under the general antifraud provisions of the federal securities laws. The Commission requests comment on the extent to which current practice deviates from the requirements of the proposed rule, and the extent to which additional costs may

<sup>97</sup> Unless an exemption is available, Section 5 of the Securities Act, 15 U.S.C. 77e, requires a registration statement to be on file with the Commission prior to any offers of corporate securities, and that a registration statement have been declared effective prior to any sales. A statutory prospectus must accompany or precede the sale or delivery of a security. Registration statements are public at the time of filing with the Commission. 15 U.S.C. 77f(d). In contrast, municipal securities, which are exempt from section 5, may be offered and sold without filing with the Commission. Compare MSRB rule G-34 (requiring certain information concerning a new issue to be provided to the MSRB or its designee in order to obtain a CUSIP number).

<sup>98</sup> E.g., Sections 12 and 15(d), 15 U.S.C. 78j and 78o(d).

<sup>99</sup> Repositories for municipal securities information are maintained by the Bond Buyer in New York, under the name "Munifiche," and by Securities Data Company, Inc. While submission of documentary data to these repositories is voluntary, it has been strongly urged by the GFOA. See Procedural Statement No. 8, Dissemination of Information and Providing Statements, Reports, and Releases to a Central Repository, GFOA Guidelines at 91.

<sup>100</sup> See *supra* note 35.

<sup>101</sup> Letter from James B.G. Hearty, Chairman, MSRB, to David S. Ruder, Chairman, Securities and Exchange Commission (December 17, 1987).

<sup>102</sup> See Letter from Jeffrey L. Esser, Executive Director, GFOA, to David S. Ruder, Chairman, Securities and Exchange Commission (December 18, 1987); letter from James H. Cheek, III, Chairman, Committee on Federal Regulation of Securities, and Robert S. Amdursky, Chairman, Subcommittee on Municipal and Governmental Obligations, American Bar Association, to David S. Ruder, Chairman, Securities and Exchange Commission (March 30, 1988) (suggesting that a careful study be made of the issues raised by a central repository before any formal actions are taken).

<sup>103</sup> 15 U.S.C. 78w(a)(2).

<sup>104</sup> 5 U.S.C. 603.

be imposed on small municipal issuers and broker-dealers if the rule is adopted as proposed.

A copy of the IRFA may be obtained from Henry E. Flowers, Attorney, Office of Legal Policy, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Mail Stop 5-1, Washington, DC 20549, (202) 272-2848.

## VI. Statutory Basis and Text of Amendments

The Commission proposes to adopt § 240.15c2-12 in Chapter II of Title 17 of the Code of Federal Regulations as follows:

### List of Subjects in 17 CFR Part 240

Securities.

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is revised by adding the following citation:

Authority: Sec. 23, 48 Stat. 901, as amended; 15 U.S.C. 78w. \* \* \* § 240.15c2-12 also issued under 15 U.S.C. 78b, 78c, 78j, 78o, 78o-4 and 78q.

2. By adding § 240.15c2-12 as follows:

### § 240.15c2-12 Municipal securities disclosure.

(a) As a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts or practices, it shall be unlawful for any broker, dealer, or municipal securities dealer to act as underwriter in an offering of municipal securities with an aggregate offering price in excess of \$10,000,000 unless it complies with the requirements of paragraphs (b) through (e) of this section.

(b) The broker, dealer, or municipal securities dealer shall, prior to the time it bids for or purchases securities of the issuer, directly or through its designated agents, obtain and review an official statement that is complete, except for the omission of the following information: The offering price, interest rate, selling compensation, amount of proceeds, delivery dates, other terms of securities depending on such factors, and the identity of the underwriter.

(c) The broker, dealer, or municipal securities dealer shall send promptly by first class mail or other equally prompt means to any person, on request, a single copy of any preliminary official statement prepared by the issuer for dissemination to potential bidders or purchasers.

(d) The broker, dealer, or municipal securities dealer shall contract with the issuer or its designated agents to obtain,

within two business days after any final agreement to purchase or sell the securities, copies of a final official statement in sufficient quantities to comply with paragraph (e) of this section and the rules of the Municipal Securities Rulemaking Board.

(e) The broker, dealer, or municipal securities dealer, in a timely manner, shall send to any person, on request, a single copy of the final official statement.

(f) For the purposes of this section—

(1) The term "final official statement" means a document prepared by the issuer or its representatives setting forth, among other matters, information concerning the issuer and the proposed issue of securities that is final as of the date of the final agreement to purchase or sell municipal securities for, or on behalf of, an issuer or underwriter.

(2) The term "underwriter" means any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with the distribution of, any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission, concession or allowance from an underwriter, broker, dealer, or municipal securities dealer not in excess of the usual and customary distributors' or sellers' commission, concession or allowance.

By the Commission.

Dated: September 22, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-22228 Filed 9-27-88; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Parts 126 and 127

[CGD 88-049]

RIN 2115-AD06

### Liquefied Hazardous Gas Facilities

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking.

**SUMMARY:** The Coast Guard invites interested persons at the earliest possible time to participate in the development of regulations to provide standards for waterfront facilities that transfer bulk liquefied hazardous gases (other than liquefied natural gas (LNG))

to or from marine vessels. This rulemaking is a part of a Coast Guard effort to update the waterfront facility regulations. With early participation by the public, the Coast Guard expects to publish cost effective rules that protect the navigable waters and the resources therein from harm resulting from vessel or structure damage, destruction, or loss.

**DATES:** Comments must be received on or before November 28, 1988.

**ADDRESSES:** 1. Comments must be submitted to the Commandant (G-LRA-2/21), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001. Comments may be delivered to and will be available for inspection and copying at the Executive Secretary, Marine Safety Council (G-LRA-2), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, (202) 267-1477. Normal office hours are between 8:00 a.m. and 3:00 p.m. Monday through Friday, except Federal holidays.

2. Persons desiring to receive a copy of the LNG regulations as published in the February 5, 1988 issue of the *Federal Register* (53 FR 23884) may obtain one by contacting the persons listed below in **FOR FURTHER INFORMATION CONTACT.**

**FOR FURTHER INFORMATION CONTACT:** Mr. Kenneth J. Szigety, Office of Marine Safety, Security and Environmental Protection, (G-MPS-3), Room 1108, (202) 267-0491, between 7:00 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this early stage of rulemaking by submitting written views, data or arguments. Comments should include the name and address of the person making them, identify this notice (CGD 88-049) and the specific section of the proposal to which each comment applies, and give the reasons for the comments. If an acknowledgment is desired, a stamped, self-addressed postcard should be enclosed.

All comments received before the expiration of the comment period will be considered before proposed rules are drafted. No public hearing is planned, but one may be held at a time and place to be set in a subsequent notice in the *Federal Register* if written requests for a public hearing are received from interested persons raising genuine issues and desiring to comment orally at a public hearing, and if it is determined that the opportunity to make oral presentation will be beneficial to the rulemaking process.

### Drafting Information

The principal persons involved in drafting this proposal are: Mr. Kenneth J. Szigety, Project Manager, and Mr. Stanely M. Colby, Project Counsel, Office of Chief Counsel.

### Discussion

The Coast Guard presently regulates waterfront facilities transferring bulk liquefied hazardous gases, not including LNG, under 33 CFR Part 126.

"Waterfront Facilities" are defined by Part 126 as "all piers, wharves, docks, and similar structures to which a vessel may be secured; areas of land, water, or land and water under and in immediate proximity to them; buildings on such structures or contiguous to them and equipment and materials on such structures or in such buildings. This term does not include facilities directly operated by the Department of Defense." The basic standards for Part 126 were promulgated in the 1950's and 1960's and have been revised only slightly since that time. Thus, from a safety and technical standpoint, they do not contain adequate procedures for the many hazardous gases now transported in bulk by specialized vessels nor do they designate the type of facility equipment needed to safely transfer these gases. While many of these gases are liquefied petroleum and chemical gases which possess flammability and/or toxicity characteristics, Title 33, Code of Federal Regulations, lacks comprehensive regulations addressing the potential hazards associated with liquefied gas transfer operations.

It is the Coast Guard's position that, when potential hazards associated with similar marine operations affecting a port complex are found to be equivalent, consistent regulatory solutions should be taken. Accordingly, the objective of this rulemaking procedure is to develop suitable safety requirements for waterfront facilities that transfer in bulk any of the liquefied hazardous gases listed in the following paragraph and establish levels of safety and contingency measures similar to those now required for LNG. This would be part of an on-going effort by the Coast Guard to update its regulations for waterfront facilities handling hazardous materials.

To accomplish this the Coast Guard is considering using the basic structure of its regulations for LNG waterfront facilities (33 CFR Part 127) as the model for proposed requirements for facilities that transfer other bulk liquefied hazardous gases. Copies of the Coast Guard's LNG terminal regulations can be obtained from the person listed in

### FOR FURTHER INFORMATION CONTACT.

The specific gases that the Coast Guard is considering including within the applicability of the new requirements are the following:

acetaldehyde  
ammonia, anhydrous  
argon  
butadiene  
butane  
butylene  
carbon dioxide  
chlorine  
dichlorodifluoromethane  
dimethylamine  
ethane  
ethylamine  
ethyl chloride  
ethylene  
ethylene oxide  
methyl acetylene propadiene mixture  
methyl bromide  
methyl chloride  
monochlorodifluoromethane  
nitrogen  
propane  
propylene  
propylene oxide  
sulfur dioxide  
vinyl chloride

This listing is a compilation of those hazardous liquefied gases listed under Table 151.05 of 46 CFR Part 151 or Table 4 of 46 CFR Part 154 or both. It also includes each liquefied gas currently identified as a cargo of particular hazard in 33 CFR 126.10(d). The Coast Guard is considering removing the regulations for liquefied gases from Part 126 and expanding the applicability of 33 CFR Part 127 to include waterfront facilities at which transfer operations of liquefied hazardous gases listed in Table 151.05 of 46 CFR Part 151 or Table 4 of 46 CFR Part 154 or both are conducted. This is expected to help simplify the administration of Coast Guard requirements and ensure that hazardous bulk liquefied gas cargoes are subject to standardized minimum safety requirements when being transferred from marine vessels to waterfront facilities or vice versa. The Coast Guard encourages the public to comment on this contemplated reorganization.

If the applicability of Part 127 is expanded, the LNG waterfront facility regulations would be the model for any new requirements for the other gases. Many of the LNG requirements are administrative in nature and appear appropriate for facilities transferring other bulk liquefied hazardous gases (e.g. developing terminal Operations and Emergency Manuals). However, several sections of the LNG regulations, in particular Subpart B—"Design and Construction" and Subpart C—"Equipment," either contain detailed technical requirements or incorporate

National Fire Protection Association (NFPA) and other industry technical standards which may not be appropriate for facilities handling bulk liquefied gases other than LNG. The Coast Guard seeks comment from industry on the suitability of using the LNG regulations as a model for regulations concerning the transfer of other types of bulk liquefied hazardous gases, particularly those sections containing detailed technical requirements or incorporating specific industry technical standards. It is requested that any comment include the approximate cost to industry to comply with these contemplated requirements. Recommendations are encouraged on the use of more appropriate industry standards or other safety devices or systems in instances where the commenter believes that those specified in the LNG regulations are inappropriate. Any standard, safety device, or system recommended should perform the same function and provide the same level of safety as that provided by the LNG regulations.

### Regulatory Evaluation

At this early stage in the rulemaking process, the Coast Guard anticipates that any final rule will not be considered major under E.O. 12291, nor significant under DOT regulatory policies and procedures (44 FR 1034; February 26, 1979). The Coast Guard envisions the primary economic impact of these regulations will be on those waterfront facilities which will have to comply with any new requirements. Since no regulations have been drafted, the extent of this impact cannot be analyzed at this time. A primary purpose of this advance notice is to help the Coast Guard determine the cost of any new requirements to the extent which they may go beyond current legal and regulatory requirements or beyond current industry practice. The Coast Guard anticipates that the response of the public to this advance notice will assist it in writing proposed rules and a draft regulatory evaluation.

### Paperwork Reduction

At this time, the Coast Guard cannot estimate the paperwork burden associated with this rulemaking since no regulations have been drafted. Since the LNG requirements do contain some information collection requirements, it is anticipated that if those rules are followed as a model, there will be some information collection requirements. This will become apparent during the regulatory process. The Coast Guard expects that comments received on this advance notice will assist it in

estimating the potential paperwork burden.

### Regulatory Flexibility Act

There is potentially an impact on a substantial number of small businesses. However, because proposed rules have not yet been drafted, the Coast Guard is unable to determine the effect of regulations upon small entities. The Coast Guard expects that the comments received on this advance notice will assist it in determining what a small entity is and in weighing various regulatory alternatives.

### Environmental Impact

The Coast Guard expects that any new requirements for liquefied gas transfer operations will have only a very slight, positive effect on the marine environment. When the proposed regulations are drafted, the Coast Guard will prepare an Environmental Assessment which will address the potential impacts of the rulemaking. This assessment will become a part of the docket and will be available for public inspection and comment. The Coast Guard expects that comments received on this advance notice will assist it in evaluating the environmental impact of any future rules.

### Federalism Statement

This advance notice of proposed rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the concepts discussed therein do not have sufficient federalism implications to warrant the preparation of a federalism assessment.

### Regulatory Information Number

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 88-22132 Filed 9-27-88; 8:45 am]

BILLING CODE 491-014-M

### 33 CFR Part 135

[CGD 88-050]

RIN 2115-AD01

### Suspension of Barrel Fee Levy, Offshore Oil Production

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to suspend, for an indefinite period, the barrel fee levied on all oil produced on the Outer Continental Shelf (OCS). The Offshore Oil Pollution Compensation Fund balance, to which the barrel fee revenues have been credited, is now within the statutorily prescribed maintenance level and is sufficient to meet both foreseeable obligations for oil pollution cleanup and damage claims settlements arising from OCS activities, and administrative expenses of the Fund program. This proposed action will relieve the owners of OCS Oil from the burden of paying barrel fees while the Fund balance is sufficient to meet all reasonable anticipated obligations.

**DATE:** Comments must be received on or before November 14, 1988.

**ADDRESSES:** Comments should be submitted to Commandant (G-LRA-2/21) (CGD 88-050), U.S. Coast Guard, 2100 Second St., SW., Washington, DC. 20593-0001. Comments may be delivered to and will be available for inspection and copying in Room 2100 between the hours of 8:00 am and 3:30 pm, Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Frank A. Martin, Jr., Project Manager, Marine Environmental Response Division, Office of Marine Safety, Security, and Environmental Protection, telephone (202) 267-0535, between 7:30 am and 3:30 pm, Monday through Friday.

### SUPPLEMENTARY INFORMATION:

#### Request for Comments

The public is invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their name and address, identify this notice as CGD 88-050, and give the reasons for the comment. Persons desiring acknowledgment that their comments have been received should enclose a stamped self-addressed postcard or envelope.

All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held at a time and place to be set in a subsequent

notice if written requests for a hearing are received, and if it is determined that the opportunity to make oral presentations will be beneficial to this rulemaking.

### Drafting Information

The principal persons involved in drafting this proposed rulemaking are: Frank A. Martin, Jr., Project Manager, and Christena G. Green, Project Counsel, Office of Chief Counsel.

### Discussion of Proposed Rule

Under Section 302 of Title III, Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1812) the Offshore Oil Pollution Compensation Fund (Fund) must be maintained at a level of not less than \$100 million and not more than \$200 million. The Fund's principal revenue source since its establishment in 1979 has been the \$.03 barrel fee levied on each barrel of oil produced on the OCS. In addition to barrel fees, the Fund also earns interest on its investment in U.S. Securities (Treasury Bonds, Notes, Bills) of monies in the Fund which are not immediately needed for oil pollution removal costs, damage claims settlement activities, and administrative costs of the Fund program. The June 1, 1988 Fund balance was \$121,480,000.

The U.S. Treasury Department, Internal Revenue Service, serves as agent for the Coast Guard for collection and deposit of the barrel fee revenues into the Fund account at the U.S. Treasury. The Coast Guard is coordinating the proposed suspension with the Internal Revenue Service, and if adopted, corresponding changes to collection procedures will be effected.

The Coast Guard has not had to use the Fund for OCS pollution cleanup costs nor damage claims settlements, for any of the approximately 9,600 reported offshore spills which have occurred since its establishment. Cleanup of these spills, where necessary, was accomplished by the appropriate responsible party, and none of the spills were of sufficient size to result in damage claims. The only obligations against the Fund over the years have been for administration, and those expenses have been minimal. Present interest income more than covers Fund administration costs, and this income will continue to increase the Fund balance without the barrel fee revenues, absent major OCS pollution incidents which substantially draw down the Fund balance. Accordingly, the Coast Guard proposes to suspend the barrel fee levy in 33 CFR 135.103(a) for an indefinite period of time.

In addition to suspending the barrel fee collections, we are also updating the agency and regulatory references cited in § 135.103(b), concerning measurement of OCS oil production. Since original publication of this rule the U.S. Geological Survey name has been changed to Minerals Management Service (MMS), and the regulatory material on OCS production measurements, formerly at 30 CFR 250.60, has been revised and moved to another section. OCS Order #13 was incorporated into that revision.

#### Regulatory Evaluation

This proposed regulatory action is considered non-major under Executive Order 12291 and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). This proposal relieves an economic impact on the offshore oil industry for an indeterminate period of time. For fiscal year 1987, Fund barrel fees collected were \$10.9 million, interest income was \$7.5 million, and administrative expenses were \$147,000. As long as the Fund balance is being maintained by interest income, the Coast Guard has determined that barrel fees need not be levied. The barrel fee levy, at a rate of not to exceed \$.03 per barrel on oil obtained from the OCS, will be reimposed in future rulemaking, as necessary, to maintain the Fund balance at an appropriate level within the statutory limits. Because the primary impact of this proposed action is to reduce the economic burden on OCS oil producers, a full regulatory evaluation is unnecessary. Based upon current OCS crude oil production volumes, the impact of this rule is expected to be minimal. Therefore, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

#### Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### List of Subjects in 33 CFR Part 135

Oil pollution liability and compensation, Outer Continental Shelf oil barrel fees, Financial responsibility for offshore facilities, Notice of offshore spills, Designation of source of pollution.

In consideration of the foregoing, the Coast Guard proposes to amend Part 135

of Title 33, Code of Federal Regulations, to read as follows:

#### PART 135—OFFSHORE OIL POLLUTION COMPENSATION FUND [AMENDED]

1. The authority for Part 135 continues to read as follows:

Authority: 43 U.S.C. 1811-24; E.O. 12123, 44 FR 11199; 49 CFR 1.46.

2. Section 135.103 is revised to read as follows:

#### § 135.103 Levy and payment of barrel fee on OCS oil.

(a) A fee not to exceed \$.03 per barrel is levied on all oil produced on the OCS and is imposed on the owner of the oil when such oil is produced. Effective [insert effective date of Final Rule], the fee per barrel is \$.00.

(b) The owner of oil obtained from the OCS shall, for the purpose of computing the barrel fee levied in paragraph (a) of this section, measure OCS oil production by employing the methods and criteria of the Minerals Management Service contained in 30 CFR 250.180.

3. Section 135.105(b) is revised to read as follows:

#### § 135.105 Adjustment of levy.

\* \* \* \* \*

(b) Modification or suspension of the barrel fee levied in this subpart is made effective not less than 90 days after publication in the Federal Register.

Dated: July 6, 1988.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 88-22131 Filed 9-27-88; 8:45 am]

BILLING CODE 4910-14-M

#### DEPARTMENT OF AGRICULTURE

#### Forest Service

#### 36 CFR Parts 251 and 293

#### Land Uses; Wilderness

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

**SUMMARY:** These proposed regulations set forth the procedures, terms, and conditions governing access for landowners whose properties lie within the boundaries of units of the National Forest System. This regulation clarifies the manner in which such landowners may use National Forest System lands for ingress and egress and the rules of procedure by which the Forest Service will act on requests for access.

**DATE:** Comments must be received by November 28, 1988.

**ADDRESSES:** Send written comments to F. Dale Robertson, Chief (2730), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090. The public may inspect comments received on this proposed rule in the office of the Director, Lands Staff, Room 1011, Rosslyn Plaza East, 1621 North Kent Street, Arlington, Virginia, between the hours of 8:30 a.m. and 4:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** Robert B. Miller, Lands Staff, 703-235-2498 or James B. Snow, Attorney, USDA Office of the General Counsel, 202-447-6055.

**SUPPLEMENTARY INFORMATION:** Section 1323(a) of the Alaska National Interest Lands Conservation Act, "ANILCA", (16 U.S.C. 3210) requires the Secretary of Agriculture to provide "such access to non-Federally owned land within the National Forest System as the Secretary deems adequate to secure to the owner the reasonable use and enjoyment thereof \* \* \*". The law further provides that the Secretary may prescribe terms and conditions governing such access and that the landowner must "comply with rules and regulations applicable to ingress and egress to or from the National Forest System."

Section 1323(a) of ANILCA has been construed to apply throughout the National Forest System. *Montana Wilderness Association v. United States Forest Service*, 655 F.2d 951 (1981). The access provided by section 1323 has been construed as confirming existing rights of access rather than as creating new ones. See: *Utah Wilderness Association*, 80 IBLA 64 (March 30, 1984). However, where no access exists, this rule provides a means for a landowner to obtain access across National Forest lands.

Accordingly, the Chief of the Forest Service is proposing rules that set forth the terms, conditions, and procedures that govern the granting of access to owners of non-Federal lands within the boundaries of the National Forest System. The major provisions of these rules are as follows:

1. If the landowner already has access to his land, the Forest Service is under no obligation to provide other access routes.

2. If access to inholdings requires surface disturbance, use of forest development roads and trails, associated facilities or structures, other than as provided by 36 CFR 251.50(d), the landowner must apply for and receive a special-use authorization from the Forest Service.

3. The landowner must pay the United States Government the fair market value of the uses allowed on Federal lands through the special-use authorization.

4. The type of access authorized by the Forest Service will be commensurate with the types of land uses commonly or traditionally made on similar private lands in the general area. The type of access allowed will also reflect consideration of the need to minimize impacts on forest resources and the need to avoid conflicts with Congressionally designated areas.

These proposed rules would be codified at 36 CFR Part 251 as a new Subpart D. In addition, a conforming amendment would be made to the rules governing access to wilderness areas, 36 CFR 293.12, to provide a cross-reference to the access rules proposed for 36 CFR Part 251, Subpart D.

#### Regulatory and Environmental Impact

This proposed rule has been reviewed under USDA procedures and Executive Order 12291 and it has been determined that this rule is not a major rule. Little or no effect on the economy will result from this regulation.

This action also will not have a significant economic impact on a substantial number of small entities. Furthermore, it does not result directly in additional procedures or paperwork not already required by law. Special-use and application and authorization procedures applicable to this rule are already cleared for the uses of this proposed rule and have been assigned OMB Control No. 0596-0062.

Based on past experience and environmental analysis, this proposed rule in and of itself will have no significant effect on the human environment, individually or cumulatively. Therefore, it is categorically excluded from documentation in an environmental assessment or an environmental impact statement (40 CFR 1508.4). The Forest Service will conduct environmental analysis of applications for access on a case-by-case basis.

This rule has been reviewed for its effects on private property rights in accordance with Executive Order 12630 concerning the just compensation clause of the Fifth Amendment and has been found not to have significant takings implications. These rules apply principally to the use of Federal land, not private land. Existing access rights across National Forest lands are not affected. The law requires that owners of non-Federally owned land be granted access to such lands, provided, the owner complies with rules and regulations applicable to ingress or

egress to or from the National Forest System. This rule provides those terms and conditions.

#### List of Subjects

##### 36 CFR Part 251

Electric power, National forests, Public lands—rights-of-way, Reporting and recordkeeping requirements, Water resources.

##### 36 CFR Part 293

National forests, Wilderness areas.

Therefore, for the reasons set forth in the preamble, it is proposed to amend Title 36, Chapter II, Parts 251 and 293 of the Code of Federal Regulations as follows:

#### PART 251—LAND USES

1. Add a new Subpart D—Access to Non-Federal Lands to read as follows:

##### Subpart D—Access to Non-Federal Lands

- 251.110 Scope and application.
- 251.111 Definitions.
- 251.112 Application requirements.
- 251.113 Instrument of authorization.
- 251.114 Criteria, terms, and conditions.

Authority: 16 U.S.C. 472, 551, 1134, 3210; 30 U.S.C. 185; and 43 U.S.C. 1740, unless otherwise noted.

##### Subpart D—Access to Non-Federal Lands

##### § 251.110 Scope and application.

(a) The regulations in this subpart set forth the procedures by which landowners may apply for access across National Forest System lands and the terms and conditions that govern any special use or other authorization that is issued by the Forest Service to permit such access.

(b) These regulations apply to access across all National Forest System lands, including Congressionally designated areas, and supplement the regulations in Subpart B of this part, Part 212, and Part 293 of this chapter.

(c) Landowners shall be authorized such access as the authorized officer deems to be adequate to secure them the reasonable use and enjoyment of their land.

(d) In those cases where a landowner's ingress or egress across National Forest System lands would require surface disturbance or would require the use of Government-owned roads, trails, or transportation facilities not authorized for general public use, the landowner must apply for and receive a special-use authorization. That authorization documents the occupancy and use authorized on National Forest System lands and identifies the

landowner's rights, privileges, responsibilities, and obligations.

(e) Where ingress and egress will require the use of existing Government-owned roads, trails, or other transportation facilities which are open and available for general public use, use by the landowner shall be in accordance with the provisions of Part 212 of this chapter.

(f) The rules of this subpart do not apply to access within conservation system units in Alaska which are subject to Title XI of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101).

##### § 251.111 Definitions.

In addition to the definitions at § 251.51, the following terms apply to this subpart:

"Access" means the ability of landowners to have ingress and egress to their lands. It does not include rights-of-way for power lines or other utilities.

"Adequate access" means a route and method of access that is determined to be reasonably necessary for ingress and egress which is consistent with the protection of Federal resources, which allows reasonable use and enjoyment of non-Federally owned land, and is a reasonable mode and level of access for the type of property and its location, and which is consistent with the protection of Federal resources.

"Congressionally designated area" means lands which are within the boundaries of a component of the National Wilderness Preservation System, National Wild and Scenic River System, National Trails System, and also National Monuments, Recreation, and Scenic Areas within the National Forest System, and similar areas designated by Federal statute.

"Landowner(s)" means the owner(s) of non-Federal land within the boundaries of the National Forest System.

##### § 251.112 Application requirements.

In addition to complying with the application requirements of § 251.54 of this part, a landowner applying for access across National Forest System lands shall specifically include in the application a statement of the historical, present, and intended modes of access to, and uses of the non-Federal land for which the special-use authorization is requested.

##### § 251.113 Instrument of authorization.

The authorized officer shall grant authority to construct and/or use facilities and structures on National Forest System lands for access to non-

Federal lands by issuing a special-use authorization in conformance with the provisions of Subpart B of this part. In cases where Road Rights-of-way Construction And Use Agreements are in effect, the authorized officer may grant an easement in accordance with the provisions of Part 212 of this chapter.

**§ 251.114 Criteria, terms, and conditions.**

(a) Where there is existing access to property, there is no obligation to grant additional access through National Forest System lands.

(b) In issuing a special-use authorization for access to non-Federal lands the authorized officer shall authorize only those access facilities or modes of access that are needed for the reasonable use and enjoyment of the land and that are consistent with the protection of Federal resources. The authorizing officer shall determine reasonable use and enjoyment based on the type or level of use of the non-Federal land that:

(1) Has been used or practiced on the property for which access is sought or on similar lands in the area in accordance with local custom and tradition;

(2) Existed as of the date of designation, if within the boundaries of a Congressionally designated area; and

(3) Is otherwise deemed to be appropriate and in keeping with the uses on surrounding lands.

(c) Landowners must pay an appropriate fee for an access authorization across Federal land. The fee will be determined in accordance with § 251.57 of this part.

(d) A landowner may be required to provide a reciprocal grant of access to the United States across the landowner's property where such reciprocal right is deemed by the authorized officer to be necessary or desirable for the management of adjacent Federal land.

(e) For access across National Forest System lands that will have significant public traffic or non-Forest user traffic, a landowner may be required to construct new roads or reconstruct existing access roads to meet the minimum requirements for local public roads. A landowner also may be required to arrange for such road to be made part of the local public road system, or form a local improvement district to assume the responsibilities for the operation and maintenance of the road as either a private road or as a public road, as determined to be appropriate by the authorizing officer.

(f) When access is tributary to or dependent on forest development roads, and traffic over these roads arising from

the use of landowner's lands exceeds their safe capacity or will cause damage to the roadway, the landowner may be required to perform such reconstruction as necessary to improve them to a safe and adequate standard to accommodate such traffic in addition to the Government's traffic. In such case, the landowner shall enter into a cooperative maintenance arrangement with the Forest Service to ensure that the landowner's commensurate maintenance responsibilities are met, or shall make arrangements to have the jurisdiction and maintenance responsibility for the road assumed by the appropriate public road authority.

(g) In addition to ensuring that applicable terms and conditions of paragraphs (a) through (e) of this section are met, the authorizing officer, prior to issuing any access authorization, must also ensure that:

(1) The landowner has demonstrated a lack of any existing rights or routes of access available by deed or under State or common law;

(2) The route is so located and constructed as to minimize adverse impacts on soils, fish and wildlife, scenic, cultural and other values of the Federal land;

(3) The location and method of access is consistent with the management of any area protected by Federal statute; and

(4) When access routes exist across the adjacent non-Federal lands or the best route as determined by the authorizing officer is across non-Federal lands, the applicant landowner has demonstrated that all legal recourse to obtain access across adjacent non-Federal lands has been exhausted.

(h) In acting on applications for access across land which is a component of the National Wilderness Preservation System, the authorized officer:

(1) Shall deem access by air, trail, or over water as adequate if such mode of travel has been used traditionally for access to similar situated non-Federal land in Wilderness areas;

(2) Generally shall not authorize an increase in the level of motorized use from the level in common use for access to the property on the date the area was included in the wilderness system, unless such use will not increase the impact of the access on the wilderness;

(3) Shall identify and authorize only that increased level of access that will result in the least permanent impact on the primitive character of the land;

(4) Shall give preference to authorizing the use of animals or other nonmotorized modes of transportation over the use of motorized transportation wherever such mode can provide a level

of access commensurate with the proposed use of the private land; and

(5) Shall, as one of the alternatives to be addressed in the analysis of an access request, propose and consider a voluntary exchange of land under the conditions specified in section 5(a) of the Wilderness Act (16 U.S.C. 1134).

**PART 293—WILDERNESS—PRIVATE AREAS**

2. The authority citation for Part 293 is revised to read as follows:

Authority: 16 U.S.C. 551, 1131–1136 and 92 Stat. 1649.

3. Revise § 293.12 to read as follows:

**§ 293.12 Access to surrounded State and private lands.**

States or persons, and their successors in interest, who own land completely surrounded by National Forest Wilderness shall be given access as provided in Subpart D of Part 251 of this chapter.

George M. Leonard,  
Associate Chief.

Date: September 12, 1988.

[FR Doc. 88–22102 Filed 9–27–88; 8:45 am]

BILLING CODE 3410–11–M

**VETERANS ADMINISTRATION**

**38 CFR Part 3**

**Procedural Due Process**

**AGENCY:** Veterans' Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The Veterans' Administration (VA) is proposing to amend its adjudication regulations on procedural due process rights of VA claimants and the eligibility criteria for retroactive awards based on liberalizing laws or administrative issues. These changes are necessary because of the need for more specificity in the VA's regulations on procedural due process and because of a VA General Counsel opinion on eligibility criteria for retroactive awards based on liberalizing laws or administrative issues. These changes are necessary because of the need for more specificity in the VA's regulations on procedural due process and because of a VA General Counsel opinion on eligibility for retroactive benefits. The effect of these amendments will be to improve and more clearly define procedural due process rights and retroactive eligibility criteria.

**DATES:** Comments must be received on or before October 28, 1988. Comments will be available for public inspection

until November 7, 1988. These changes are proposed to be effective 30 days after the date of publication of the final rule.

**ADDRESSES:** Interested persons are invited to submit written comments, suggestions, or objections regarding these changes to Administrator of Veterans Affairs (271A), Veterans' Administration, 810 Vermont Avenue, NW., Washington DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132 at the above address, between the hours of 8:00 am and 4:30 pm, Monday through Friday (except holidays) until November 7, 1988.

**FOR FURTHER INFORMATION CONTACT:** Robert M. White, Chief, Regulations Staff (211B), Compensation and Pension Service, Department of Veterans Benefits, (202) 233-3005.

**SUPPLEMENTARY INFORMATION:** The current VA regulation on procedural due process (38 CFR 3.103) was published in 1972. Since that time, however, there have been several court decisions which have had a major impact on procedural due process with respect to Federal benefit programs.

In light of that impact the VA has initiated a review of its adjudication regulations in an effort to identify and amend any existing rules that may not satisfy current standards for procedural due process. This review is ongoing and additional amendments may be proposed in the future.

We are proposing to amend 38 CFR 3.103 to clarify the due process rights of claimants and beneficiaries. With a few minor grammatical and technical changes, § 3.103(a) is being retained. A sentence has been added to express the general policy that claimants are entitled to notice of the decisions made on their claims, the opportunity for a hearing and representation of their choice. With a minor technical change and substitution of gender-neutral terms, § 3.103(b) on submission of evidence, and § 3.103(d) representation are also being retained, but are redesignated as §§ 3.103(d) and 3.103(e), respectively.

Section 3.103(b) has been added to more clearly define the right of claimants to notice of VA decisions. The essential notice requirements contained in § 3.103(e) have been incorporated into new § 3.103(b)(1). The notice is required to clearly set forth the decision made, any applicable effective date, and the reasons for the decision as well as the right to a hearing, the right of representation and the right to appeal.

Section 3.103(b)(2) sets forth additional new requirements for notice

to claimants when the decision involves termination, suspension or reduction of benefits being paid. Unless otherwise provided, beneficiaries would be entitled to a minimum of 60 days notice prior to the taking of an adverse action so that they may offer evidence for the purpose of showing that the adverse action should not be taken.

Section 3.103(b)(3) provides for exceptions to the general notice rule in four specific situations where pre-termination/reduction notice would not be required but where notice contemporaneous with the adverse action would generally be required. The rationale behind these exceptions is to prevent the issuance of benefit checks in those circumstances where it is reasonable to conclude that the beneficiary would either not receive them or would not be entitled to them and that any attempt to provide advance notice to the beneficiary would be either unsuccessful or unnecessary.

The first exception to the pre-termination/reduction notice rule involves situations where benefit checks are returned to the VA as undeliverable. In such cases the VA could not reasonably be expected to provide meaningful advance notice of suspension or termination since the only address to which notice could be sent would be the address from which the check had been returned.

The second exception involves written, factual, unambiguous information as to income, net worth, dependency or marital status which is provided by the beneficiary or his/her fiduciary with knowledge or notice that the information would be used to calculate benefits and where the legal standards applied to this information are numerical in nature. When a beneficiary reports such information, advance notice of an adverse action based on that information would not be required.

The third exception involves failure to return a required eligibility verification report. Courts have previously held that adverse action based on failure to return an annual income questionnaire requires only contemporaneous notice.

The fourth exception involves evidence received by the VA which reasonably indicates that the beneficiary is deceased. In such cases pre-termination notice would clearly be ineffective and unnecessary. In the case of all four exceptions to the advance notice provisions, notice contemporaneous with the adverse action will be required except in three specific cases of beneficiary death. If the VA receives a death certificate, a terminal hospital report or a claim for

VA burial benefits in connection with a beneficiary's death, no notice of award termination (contemporaneous or otherwise) will be required.

Section 3.103(c) of the proposed regulation sets forth a claimant's or beneficiary's right to a hearing. With minor format and gender-neutral changes, §§ 3.103(c)(1) and 3.103(c)(2) are simply a restatement of the current rule with minor modifications, consistent with the present hearing procedures. Section 3.103(e) has also been retained with minor format and gender-neutral changes and is redesignated as § 3.103(f).

Our review for the purpose of improving due process procedures identified 38 CFR 3.105 as one regulation that needed significant revision in order to afford beneficiaries adequate notice when reductions or discontinuances of benefits are being contemplated. The amendment being proposed would require that prior to any reduction or discontinuance of benefits under § 3.105 the beneficiary would have to be provided advance written notice of the proposed adverse action and a period of 60 days in which to submit evidence for the purpose of showing that the adverse action should not be taken. In addition, if a predetermination hearing is requested within 30 days of the notice of proposed adverse action, benefits would be continued at the previously established level until the hearing is held (or reasonably afforded) and a final determination is made concerning the proposed adverse action.

At the expiration of the 60-day period noted above or following the predetermination hearing, whichever is later, a final decision would be made. The beneficiary would be notified of the final decision, and, where the effective date of reduction or discontinuance is linked to a date of notice to the beneficiary, the effective date would be linked to the date of notice of the final decision. Otherwise, the effective date of reduction or discontinuance would be in accordance with 38 CFR 3.500-3.503.

We are also proposing to amend §§ 3.109 and 3.110 concerning computation of the time limits within which claimants or beneficiaries are required to provide evidence or respond to requests for evidence. The current provisions of §§ 3.109(a)(1) and 3.109(a)(2) are positive statements as to time limits for filing evidence, but § 3.109(b) is a negative statement as to occurrences which will not extend time limits. This is inconsistent with the VA's usual practice of issuing regulations that are positive in tone and is also

inappropriate with respect to due process.

If claimants or beneficiaries are not furnished notice of the time limits within which they are required to act, it is unreasonable to penalize them for failing to act within those time limits. We are, therefore, proposing to amend § 3.109(b) to positively state those occurrences which will extend regulatory time limits. The proposed amendment provides that failure to notify a claimant or beneficiary of the time limit within which evidence must be submitted to perfect a claim or to challenge an adverse agency decision will extend the time limit for such action in accordance with § 3.110. We also propose to amend § 3.110 by adding a new § 3.110(b) to provide that, in computing the time limit within which a claimant or beneficiary must act, the first day of the specified period shall be the date of mailing of notification to the claimant or beneficiary of the action required and the time limit therefor, and that the date of the letter of notification shall be considered the date of mailing.

In unpublished opinions the VA General Counsel held that, where entitlement to benefits is established on the basis of a liberalizing law or VA administrative issue, retroactive benefits could be paid, under certain circumstances, for up to one year prior to the date of receipt of an original claim under the provisions of § 3.114(a) (undigested General Counsel opinion, May 3, 1984, on the subject of 38 CFR 3.114; undigested General Counsel opinion, July 17, 1984, on the subject of 38 CFR 3.114). The opinions noted that the legislative history of the statutory authority for this regulation (38 U.S.C. 3010(g)) indicated an intent that retroactive payments be available to individuals who were "potential beneficiaries" on the effective date of the liberalizing law or VA issue regardless of whether they had previously filed a claim for such benefits. We are, therefore, proposing to amend § 3.114(a) to clarify that in order to be entitled to retroactive benefits under this section a claimant must have met *all* of the eligibility criteria for the liberalized benefit on the effective date of the liberalizing law or VA issue and that such eligibility existed continuously from that date to the date of claim or administrative determination of entitlement. The proposed amendment also provides that the provisions of § 3.114(a) are applicable to original and reopened claims as well as claims for increase.

The Administrator hereby certifies that these proposed regulatory

amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries would be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Administrator has determined that these proposed regulatory amendments are nonmajor for the following reasons:

(1) They will not have an annual effect on the economy of \$100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance Program numbers are 64.100, 64.101, 64.104, 64.105, 64.106, 64.109 and 64.110.

#### List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans Administration.

Approved: September 9, 1988.

Thomas K. Turnage,  
Administrator.

38 CFR Part 3, Adjudication, is proposed to be amended as set forth below:

#### PART 3—[AMENDED]

1. Section 3.103 is revised to read as follows:

##### § 3.103 Procedural due process and appellate rights.

(a) *Statement of policy.* Every claimant has the right to written notice of the decision made on his or her claim, the right to a hearing, and the right of representation. Proceedings before the VA are ex parte in nature, and it is the obligation of the VA to assist a claimant in developing the facts pertinent to the claim and to render a decision which grants every benefit that can be supported in law while protecting the interests of the Government. The provisions of this section apply to all claims for benefits and relief, and

decisions thereon, within the purview of Part 3 of this chapter.

(b) *The right to notice.*—(1) *General.* Claimants are entitled to notice of any decision made by the VA affecting the payment of benefits or the granting of relief. Such notice shall clearly set forth the decision made, any applicable effective date, the reason(s) for the decision, the right to a hearing on any issue involved in the claim, the right of representation and the right, as well as the necessary procedures and time limits, to initiate an appeal of the decision.

(2) *Pre-termination/reduction notice.* Except as otherwise provided, no award of compensation, pension or dependency and indemnity compensation shall be terminated, reduced or otherwise adversely affected unless the beneficiary has been notified of such adverse action and has been provided a period of 60 days in which to submit evidence for the purpose of showing that the adverse action should not be taken.

(3) *Exceptions.* Pre-termination/reduction notice is not required but notice contemporaneous with the adverse action is required when:

(i) Benefit checks are returned as undeliverable,

(ii) An adverse action is based solely on written, factual, unambiguous information as to income, net worth, dependency or marital status provided by the beneficiary or his or her fiduciary with knowledge or notice that such information would be used to calculate benefits, and the legal standards applied to this information are numerical in nature,

(iii) An adverse action is based upon the beneficiary's or fiduciary's failure to return a required eligibility verification report, or

(iv) Evidence reasonably indicates that a beneficiary is deceased. However, in the event that the VA has received a death certificate, a terminal hospital report verifying the death of a beneficiary or a claim for VA burial benefits, no notice of termination (contemporaneous or otherwise) will be required.

(c) *The right to a hearing.* (1) Upon request a claimant is entitled to a hearing at any time on any issue involved in a claim within the purview of Part 3 of this chapter. The VA will provide the place of hearing in the VA office having original jurisdiction over the claim or at the VA office nearest the claimant's home having adjudicative functions, and will provide VA personnel who have original determinative authority of such issues to

conduct the hearing and be responsible for establishment and preservation of the hearing record. Hearings in connection with proposed adverse actions and appeals shall be held before VA personnel having original determinative authority who did not participate in the proposed action or the decision being appealed. All expenses incurred by the claimant in connection with the hearing are the responsibility of the claimant.

(2) The claimant is entitled to produce witnesses and all testimony will be under oath or affirmation. The purpose of a hearing is to permit the claimant to introduce into the record in person any available evidence which the claimant may consider material and any arguments and contentions with respect to the facts and applicable law which the claimant may consider pertinent. It is the responsibility of the VA personnel conducting the hearings to explain fully the issues and suggest the submission of evidence which the claimant may have overlooked and which would be of advantage to the claimant's position. To assure clarity and completeness of the hearing record, questions which are directed to the claimant and to witnesses are to be framed to explore fully the basis for claimed entitlement rather than with an intent to refute evidence or to discredit testimony. In cases in which the nature, origin, or degree of disability is in issue, the claimant may request visual examination by a physician designated by the VA and the physician's observations will be read into the record.

(d) *Submission of evidence.* Any evidence whether documentary, testimonial, or in other form, offered by the claimant in support of a claim and any issue a claimant may raise and any contention or argument a claimant may offer with respect thereto are to be included in the records.

(e) *The right to representation.* Subject to the provisions of §§ 14.626 through 14.637 of this chapter, claimants are entitled to representation of their choice at every stage in the prosecution of a claim.

(f) *Notification of decisions.* The claimant or beneficiary will be notified in writing of decisions affecting the payment of benefits or granting relief. Notice will include the reason for the decision and the date it will be effective as well as the right to a hearing subject to paragraph (c) of this section. The notification will also advise the claimant or beneficiary of the right to initiate an appeal by filing a Notice of Disagreement which will entitle the individual to a Statement of the Case for

assistance in perfecting an appeal. Further, the notice will advise him or her of the periods in which an appeal must be initiated and perfected. (See Part 19, Subpart B, of this chapter, on appeals.)

3. Section 3.105 is amended by revising the last sentence in paragraph (d), paragraphs (e) and (f), and adding paragraphs (g) and (h), to read as follows:

**§ 3.105 Revision of decision.**

(d) \* \* \* Unless otherwise provided in paragraph (h) of this section, if additional evidence is not received within that period, final rating action will be taken and the award will be reduced or discontinued, if in order, effective the last day of the month in which a 60-day period from the date of notice to the beneficiary of the final rating action expires.

(Authority: 38 U.S.C. 3012(b)(6))

(e) *Reduction in evaluation—compensation.* Where the reduction in evaluation of a service-connected disability or employability status is considered warranted and the lower evaluation would result in a reduction or discontinuance of compensation payments currently being made, a rating proposing the reduction of discontinuance will be prepared setting forth all material facts and reasons. The beneficiary will be notified at his or her latest address of record of the contemplated action and furnished detailed reasons therefor, and will be given 60 days for the presentation of additional evidence to show that compensation payments should be continued at their present level. Unless otherwise provided in paragraph (h) of this section, if additional evidence is not received within that period, final rating action will be taken and the award will be reduced or discontinued effective the last day of the month in which a 60-day period from the date of notice to the beneficiary of the final rating action expires.

(Authority: 38 U.S.C. 3012(b)(6))

(f) *Reduction in evaluation—pension.* Where a change in disability or employability warrants a reduction or discontinuance of pension payments currently being made, a rating proposing the reduction or discontinuance will be prepared setting forth all material facts and reasons. The beneficiary will be notified at his or her latest address of record of the contemplated action and furnished detailed reasons therefor, and will be given 60 days for the presentation of additional evidence to show that pension benefits should be

continued at their present level. Unless otherwise provided in paragraph (h) of this section, if additional evidence is not received within that period, final rating action will be taken and the award will be reduced or discontinued effective the last day of the month in which the final rating action is approved.

(Authority: 38 U.S.C. 3012(b)(5))

(g) *Other reductions/discontinuances.* Except as otherwise specified at § 3.103(b)(3) of this part, where a reduction or discontinuance of benefits is warranted by reason of information received concerning income, net worth, dependency, or marital or other status, a proposal for the reduction or discontinuance will be prepared setting forth all material facts and reasons. The beneficiary will be notified at his or her latest address of record of the contemplated action and furnished detailed reasons therefor, and will be given 60 days for the presentation of additional evidence to show that the benefits should be continued at their present level. Unless otherwise provided in paragraph (h) of this section, if additional evidence is not received within that period, final adverse action will be taken and the award will be reduced or discontinued effective as specified under the provisions of §§ 3.500 through 3.503 of this part.

(Authority: 38 U.S.C. 3012)

(h) *Predetermination hearings.* (1) In the advance written notice concerning proposed actions under paragraphs (d) through (g) of this section, the beneficiary will be informed that he or she will have an opportunity for a predetermination hearing, provided that a request for such a hearing is received by the VA within 30 days from the date of notice. If a timely request is received, the VA will notify the beneficiary in writing of the time and place of the hearing within a reasonable time in advance of the scheduled hearing date. The hearing will be conducted by VA personnel who did not participate in the proposed adverse action and who will bear the decision-making responsibility. If a predetermination hearing is timely requested, benefit payments shall be continued at the previously established level pending a final determination concerning the proposed action.

(2) Following the predetermination procedures specified in this paragraph and paragraph (d), (e), (f) or (g) of this section, whichever is applicable, final action will be taken. If a predetermination hearing was not requested or if the beneficiary failed to report for a scheduled predetermination hearing, the final action will be based

solely upon the evidence of record. If a predetermination hearing was conducted, the final action will be based on evidence and testimony adduced at the hearing as well as the other evidence of record including any additional evidence obtained following the hearing pursuant to necessary development. Whether or not a predetermination hearing was conducted, a written notice of the final action shall be issued to the beneficiary, setting forth the reasons therefor and the evidence upon which it is based. Where a reduction or discontinuance of benefits is found warranted following consideration of any additional evidence submitted, the effective date of such reduction or discontinuance shall be as follows:

(i) Where reduction or discontinuance was proposed under the provisions of paragraph (d) or (e) of this section, the effective date of final action shall be the last day of the month in which a 60-day period from the date of notice to the beneficiary of the final action expires.

(ii) Where reduction or discontinuance was proposed under the provisions of paragraph (f) of this section, the effective date of final action shall be the last day of the month in which such action is approved.

(iii) Where reduction or discontinuance was proposed under the provisions of paragraph (g) of this section, the effective date of final action shall be specified under the provisions of §§ 3.500 through 3.503 of this part.

(Authority: 38 U.S.C. 3012)

4. In § 3.109, paragraph (b) is revised and an authority citation is added, to read as follows:

**§ 3.109 Time limit.**

(b) *Failure to furnish notice of time limit.* Failure to furnish a claimant or beneficiary notice of the time limit within which evidence must be submitted to perfect a claim or challenge an adverse VA decision shall extend the time limit for such action in accordance with the provisions of § 3.110 of this part.

(Authority: 38 U.S.C. 210(c))

5. Section 3.110 is revised and an authority citation is added, to read as follows:

**§ 3.110 Computation of time limit.**

(a) In computing the time limit for any action required of a claimant or beneficiary, including the filing of claims or evidence requested by the VA, the first day of the specified period will be excluded and the last day included. This rule is applicable in cases in which the

time limit expires on a workday. Where the time limit would expire on a Saturday, Sunday, or holiday, the next succeeding workday will be included in the computation.

(b) "The first day of the specified period" referred to in paragraph (a) of this section shall be the date of mailing of notification to the claimant or beneficiary of the action required and the time limit thereof. The date of the letter of notification shall be considered the date of mailing for purposes of computing time limits. As to appeals, see § 19.129 of this chapter.

(Authority: 38 U.S.C. 210(c))

6. Section 3.114(a) is revised to read as follows:

**§ 3.114 Change of law or VA issue.**

(a) *Effective date of award.* Where pension, compensation, or dependency and indemnity compensation is awarded or increased pursuant to a liberalizing law, or a liberalizing VA issue approved by the Administrator or by the Administrator's direction, the effective date of such award or increase shall be fixed in accordance with the facts found, but shall not be earlier than the effective date of the act or administrative issue. In order to be eligible for a retroactive payment under the provisions of this paragraph the evidence must show that the claimant met all eligibility criteria for the liberalized benefit on the effective date of the liberalizing law or VA issue and that such eligibility existed continuously from that date to the date of claim or administrative determination of entitlement. The provisions of this paragraph are applicable to original and reopened claims as well as claims for increase.

(1) If a claim is reviewed on the initiative of the VA within 1 year from the effective date of the law or VA issue, or at the request of a claimant received within 1 year from that date, benefits may be authorized from the effective date of the law or VA issue.

(2) If a claim is reviewed on the initiative of the VA more than 1 year after the effective date of the law or VA issue, benefits may be authorized for a period of 1 year prior to the date of administrative determination of entitlement.

(3) If a claim is reviewed at the request of the claimant more than 1 year after the effective date of the law or VA issue, benefits may be authorized for a period of 1 year prior to the date of receipt of such request.

(Authority: 38 U.S.C. 3010(g))

[FR Doc. 88-22143 Filed 9-27-88; 8:45 am]

BILLING CODE 8320-01-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 141 and 142

[FRL 3456-1]

#### National Primary Drinking Water Regulations; Filtration and Disinfection; Turbidity, Giardia Lamblia, Viruses, Legionella, and Heterotrophic Bacteria; Total Coliforms; Availability

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of availability.

**SUMMARY:** On November 3, 1987, EPA proposed surface water treatment requirements and a national primary drinking water regulation for total coliforms, plus maximum contaminant level goals for certain microbiological contaminants under the Safe Drinking Water Act (52 FR 42178 and 52 FR 42224). On May 6, 1988, EPA published a notice of availability (53 FR 16348), which solicited specific data, offered additional regulatory options for comment, and clarified and corrected statements made in the November 3, 1987, proposals.

EPA has prepared outlines which summarize the provisions which the Agency is considering including in the final rules for surface water treatment requirement and total coliforms. To receive a copy of the outlines, contact the Safe Drinking Water Hotline, telephone (800) 426-4791 or (202) 382-5533, in Washington, DC.

Date: September 19, 1988.  
William A. Whittington,  
Acting Assistant Administrator for Water.  
[FR Doc. 88-22182 Filed 9-27-88; 8:45 am]  
BILLING CODE 6560-50-M

### 40 CFR Part 180

[PP 8E3597/P462; FRL-3451-7]

#### Pesticide Tolerance for 2-[1-(Ethoxymino)butyl]-5-[2-(Ethylthio)propyl]-3-Hydroxy-2-Cyclohexene-1-one

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes that a tolerance be established for the combined residues of the herbicide 2-[1-(ethoxymino)-butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites (referred to in this document as "sethoxydim") in or on the raw agricultural commodity lentils. The regulation to establish a maximum permissible level for residues of the herbicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 >(IR-4).

**DATE:** Comments, identified by the document control number (PP 8E3597/P462), should be received on or before October 28, 1988.

**ADDRESS:** By mail, submit written comments to:  
Public Docket and Freedom of Information Section, Field Operations Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

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

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

**FOR FURTHER INFORMATION CONTACT:**

By mail:

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

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

**SUPPLEMENTARY INFORMATION:** The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, submitted pesticide petition 8E3597 to EPA on behalf of Dr. Robert H.

Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Stations of Idaho and Washington.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the herbicide 2-[1-(ethoxymino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on the raw agricultural commodity lentils at 20.0 parts per million (ppm). The petition was later amended to propose 30.0 ppm.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A 6-month dog feeding study with a no-observed-effect level (NOEL) of 2 milligrams (mg)/kilogram (kg)/day (equivalent to 60 ppm).

2. 2-year chronic feeding/oncogenicity study in rats with a NOEL equal to or greater than 360 ppm (equivalent to 18 mg/kg/day, highest dose tested) and no oncogenic effects observed under the conditions of the study at all dose levels tested (40, 120, and 360 ppm).

3. A 2-year chronic feeding/oncogenicity study in mice with a NOEL of 120 ppm (equivalent to 18 mg/kg/day) and no oncogenic effects observed under the conditions of the study at all dose levels tested (0, 40, 120, 360, and 1,080 ppm).

4. A two-generation reproduction study in rats with a NOEL for reproductive effects at 54 mg/kg/day and a NOEL for systemic effects at 18 mg/kg/day.

5. A teratology study in rats with no observed teratogenic effects at 250 mg/kg/day (highest dose tested) and a NOEL of 40 mg/kg/day for maternal toxicity.

6. A teratology study in rabbits with a NOEL for teratogenic effects and maternal toxicity at 160 mg/kg/day.

7. Mutagenicity studies including recombinant assays and forward mutations in *B. subtilis*, *E. coli*, and *S. typhimurium* (negative at concentrations of chemical to 100 percent), and a host-mediated assay (mouse) with *S. typhimurium* (negative at 2.5 grams (g)/kg/day of chemical).

8. A metabolism study in rats which showed negligible accumulation and rapid excretion of the chemical.

The acceptable daily intake (ADI), based on the 6-month dog feeding study

NOEL of 2.0 mg/kg/day and using a 100-fold safety factor, is calculated to be 0.02 mg/kg of body weight/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for uses of sethoxydim is calculated to be 0.012959 mg/kg/day. The current action will increase the TMRC by 0.000036 mg/kg/day (0.3 percent). Published tolerances utilize 64.87 percent of the ADI, the current action will utilize an additional 0.2 percent.

The nature of the residues is adequately understood and an adequate analytical method, gas-liquid chromatography using a sulfur-specific flame photometric detector, is available for enforcement purposes. Analytical enforcement methods are currently available in the *Pesticide Analytical Manual* (PAM), Vol. II. There are currently no actions pending against the continued registration of this chemical.

No secondary residues in meat, milk, poultry, or eggs are expected because of label restrictions prohibiting grazing or feeding treated lentils to livestock. Based on the information and data considered, the Agency concludes that the tolerance will protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

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

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, (PP 8E3597/P462). All written comments filed in response to this petition will be available in the Public Docket and Freedom of Information Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

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

or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the *Federal Register* of May 4, 1981 (46 FR 24950).

#### List of Subjects in 40 CFR Part 180

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

Dated: September 13, 1988.

Edwin F. Tinsworth,

Acting Director, Registration Division, Office of Pesticide Programs.

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

#### PART 180—[AMENDED]

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

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

2. Section 180.412(a) is amended by adding and alphabetically inserting the raw agricultural commodity lentils, to read as follows:

§ 180.412 2-[1-(Ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one; tolerances for residues.

(a) \* \* \*

Commodities	Parts per million
Lentils.....	30.0

submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decision is based on an evaluation of waste-specific information provided by the petitioner.

The Agency is also proposing the use of a fate and transport model and its application in evaluating the waste-specific information provided by the petitioner. This model has been used in evaluating the petition to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed of.

**DATES:** EPA is requesting public comments on today's proposed decision and on the applicability of the fate and transport model used to evaluate the petition. Comments will be accepted until November 14, 1988. Comments postmarked after the close of the comment period will be stamped "late."

Any person may request a hearing on the proposed decision and/or the model used in the petition evaluation by filing a request with Joseph Carra, whose address appears below, by October 13, 1988. The request must contain the information prescribed in 40 CFR 260.20(d).

**ADDRESSES:** Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (OS-305), U.S. Environmental Protection Agency, 401 M Street SW., Washington DC 20460. A third copy should be sent to Jim Kent, Variance Section, Assistance Branch, PSPD/OSW (OS-343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F-88-WSDP-FFFFF."

Requests for a hearing should be addressed to Joseph Carra, Director, Permits and State Programs Division, Office of Solid Waste (OS-340), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street SW., (sub-basement), Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The public may copy

material from any regulatory docket at a cost of \$0.15 per page.

#### FOR FURTHER INFORMATION CONTACT:

For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Ms. Linda Cessar, Office of Solid Waste (OS-343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-9828.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

##### A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous characteristics (*i.e.*, ignitability, reactivity, corrosivity, and EP toxicity), and must present sufficient information for the Agency to determine

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BILLING CODE 6560-50-M

#### 40 CFR Part 261

[Docket No. SW-FRL 3455-6]

#### Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Denial

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule and request for comment.

**SUMMARY:** The Environmental Protection Agency (EPA or Agency) today is proposing to deny a petition submitted by Weirton Steel Corporation, Weirton, West Virginia, to exclude certain solid wastes generated at its facility from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition

whether the waste contains any other toxicants at hazardous levels. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous wastes, generators remain obligated to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. See 40 CFR 261.3(c) and (d)(2). The substantive standard for "delisting" a treatment residue or a mixture is the same as previously described for listed wastes.

#### *B. Approach Used to Evaluate This Petition*

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). If the Agency believes that the waste remains hazardous based on the factors for which the waste was originally listed, EPA will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria, EPA then will evaluate the waste with respect to other factors of criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considers whether the waste is acutely toxic, and considers the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and any other additional factors which may characterize the petitioned waste.

The Agency is proposing to use such information to identify plausible exposure routes for hazardous constituents present in the waste, and is proposing to use a particular fate and transport model to predict the concentration of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the unregulated disposals of Weirton's petitioned waste on human health and the environment.

Specifically, the model will be used to predict compliance-point concentrations which will be compared directly to the health-based levels used in delisting decision making for particular hazardous constituents.

EPA believes that the proposed model represents a reasonable worst-case waste disposal scenario for the petitioned waste, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off-site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off-site to a facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data to its evaluation of delisting petitions. In this case, the Agency determined that, because Weirton is seeking a delisting for waste contained in two on-site surface impoundments, ground-water monitoring data collected from the area where the petitioner stores the waste should be available to determine whether hazardous constituents have migrated from the units to the underlying ground water. Because the petitioned wastestream is stored on-site, ground-water data collected from monitoring wells would ordinarily be compared directly to the levels of regulatory concern for particular hazardous constituents detected in the ground water. This analysis would help to characterize the potential impact (if any) of the unregulated disposal of Weirton's waste

on human health and the environment. However, Weirton has not installed a ground-water monitoring system as required by § 265 Subpart F, nor have they submitted any ground-water monitoring data (the Agency previously requested that Weirton supply all available ground-water monitoring data). As a result, the Agency is unable to assess the actual effects that Weirton's waste may have had on the aquifer underlying the surface impoundments.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made on this petition proposed today until all public comments (including those at requested hearings, if any) are addressed.

## **II. Disposition of Petition**

*Weirton Steel Corporation, Weirton, West Virginia*

### **1. Petition for Exclusion**

Weirton Steel Corporation (Weirton), located in Weirton, West Virginia, is involved in the electroplating of sheet carbon steel. Weirton petitioned the Agency to exclude its wastewater treatment sludge, presently listed as EPA Hazardous Waste No. F006—"Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum." The listed constituents of concern for F006 wastes are cadmium, hexavalent chromium, nickel, and cyanide (complexed). Weirton petitioned to exclude its waste because it does not believe that the waste meets the criteria for which it was listed. Weirton also believes that its treatment process generates a non-hazardous waste because the constituents of concern, although present in the waste, are in an essentially immobile form. Weirton further believes that the waste is not hazardous for any other reason. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984. See section 222 of the Amendments, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)-(4). Today's

proposal to deny this petition for delisting is the result of the Agency's evaluation of Weirton's petition.

## 2. Background

Weirton petitioned the Agency to exclude its wastewater treatment sludge on July 8, 1982. In support of its petition, Weirton submitted (1) detailed descriptions of its manufacturing and waste treatment processes; (2) a list of all the raw materials used in both the manufacturing and treatment processes; (3) total constituent analyses data for the listed constituents and lead, and Oily Waste EP (OWEP) leachate analyses data for all the EP toxic metals; (4) total constituent analyses for 1,1,1-trichloroethane (1,1,1-TCA); (5) results from total oil and grease analyses on representative waste samples; and (6) results from analyses for the characteristics of ignitability, corrosivity, and reactivity.

The manufacturing processes at Weirton which generate the waste are chromium and nickel electroplating on carbon steel. The wastewater from the electroplating processes is collected and neutralized by the addition of a lime slurry. The wastewater then is split and pumped to two separately operated surface impoundments (*i.e.*, operating in parallel) for precipitation of the metal hydroxide sludge. Effluent from the two surface impoundments are discharged through National Pollution Discharge Elimination System (NPDES) permitted outflow. Weirton claims that the settled metal hydroxide sludge eventually will be dredged from the impoundments and transported to an off-site landfill for disposal.

To collect representative samples from surface impoundments like Weirton's, petitioners are normally requested to divide each unit into four quadrants and randomly collect five full-depth core samples from each quadrant. The five full-depth core samples are then composited (mixed) by quadrant to produce a total of four composite samples (per impoundment). See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA Office of Solid Waste and Emergency Response, Publication SW-846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste, (EPA/530-SW-85-003), April 1985.

Weirton collected a total of fourteen composite samples (seven from each impoundment) of the wastewater treatment sludge contained in its two on-site surface impoundments. Each impoundment measures 315 feet (length)

x 92 feet (width) x 14 feet (depth).

Weirton initially collected eight perimeter grab samples (four from each impoundment) using a weighted bucket, and mixed (*i.e.*, composited) the eight samples into four half-pond (*i.e.*, impoundment) composites. Each half-pond composite was, therefore, comprised of two perimeter samples.

The Agency required Weirton to collect additional samples in order to analyze the waste for the OWEP leachate concentrations of the EP toxic metals, nickel, and cyanide (see below), and for the total constituent concentration of 1,1,1-TCA (Wastes having more than one percent total oil and grease may either have significant concentrations of the constituents of concern in the oil phase, which may not be detected using the standard EP leachate procedure, or the concentration of oil and grease may be sufficient to coat the solid phase of the sample and interfere with the leaching of metals from the sample. For this reason, the Agency uses the OWEP methodology when oil and grease content exceed one percent. See SW-846 method number 1330.) Therefore, Weirton collected eight composite samples (four from each impoundment) dividing each impoundment width-wise into four sections and collecting five full-depth core samples from each section. Each core sample was collected by driving a coring device through the waste until the bottom of the impoundment was reached (approximately fourteen feet). The five full-depth core samples were collected at 60 foot intervals along each transect and composited, resulting a total of four composite samples from each impoundment. Two additional composite samples (one from each impoundment) were collected by dividing the impoundments in half (width-wise) and collecting five full-depth core samples from the middle transect at 60 foot intervals. The full-depth core samples then were composited (by impoundment).

Weirton claims that the 14 composite samples (composed of 58 discrete samples: 8 perimeter grab samples, and 50 full-depth core samples) adequately assess any variation in constituent concentrations, both because ten of the fourteen composite samples were full-depth (thus representing possible variation in constituent concentrations over time), and because no significant changes have been made to the raw materials, the plating process, the water usage, or the wastewater treatment process before, during, or since the period when the sampling was conducted.

Although Weirton did not randomly collect full-depth core samples of the impounded waste, EPA believes that Weirton's "fixed grid" (*i.e.*, collecting samples along the transect of geometrical divisions) method of collecting core samples is capable of characterizing constituent concentrations where the wastes sampled are uniform and homogeneous. Fixed grid sampling would not be appropriate to characterize wastes that are non-uniform and non-homogeneous (*i.e.*, generated by different or changing manufacturing and waste treatment processes). In this case, although the Agency does not believe that the samples necessarily would have been sufficient to characterize the impoundment completely, EPA believes that the samples are sufficient to provide data indicating that the waste is hazardous (see below).

## 3. Agency Analysis

Using SW-846 method number 3540, Weirton determined that its waste had a maximum oil, and grease content of 2.8 percent. In order to assess the concentrations of metals in the waste's oily phase, the EP analyses were modified in accordance with the Oily Waste EP (OWEP) methodology. See SW-846 method number 1330. Weirton used SW-846 method numbers 7130-7420 and 9010 to quantify the total constituent concentrations (*i.e.*, mass of constituent per mass of waste) of cadmium chromium, lead, nickel, and cyanide in the four half-pond composites (first round), and SW-846 method number 1330 (OWEP) to quantify the leachable concentrations (*i.e.*, mass of constituent per unit volume of extract) of all the EP toxic metals in the ten composite samples of their waste (second round). Table 1 presents the maximum total constituent concentration of cadmium, chromium, lead, nickel, and cyanide. Table 2 presents the maximum OWEP leachate values of the EP toxic metals, nickel, and cyanide. Weirton used SW-846 method number 8240 to determine the total constituent concentration of 1,1,1-TCA. Using a detection limit of 10 ug/kg, 1,1,1-TCA was not detected in any of the ten composite samples collected during the second sampling period. These detection limits represent the lowest concentrations quantifiable by Weirton when using the appropriate SW-846 analytical methods to analyze its waste.

TABLE 1.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS WASTEWATER TREATMENT SLUDGE

Constituents	Total constituent concentrations (mg/kg)
Cadmium.....	0.055
Chromium.....	8400
Lead.....	0.44
Nickel.....	23
Cyanide.....	96.3

TABLE 2.—MAXIMUM OILY WASTE EP LEACHATE CONCENTRATIONS WASTEWATER TREATMENT SLUDGE

Constituents	OWEP leachate concentrations (mg/l)
Arsenic.....	0.76
Barium.....	1.1
Cadmium.....	1.0
Chromium.....	0.71
Lead.....	0.53
Mercury.....	0.0007
Nickel.....	1.17
Silver.....	15.1
Selenium.....	0.34
Cyanide.....	4.9

<sup>1</sup> Calculated by assuming a dilution factor of 19.6 (based on an oil and grease content of 2.8 percent) and a theoretical worst-case leaching of 100 percent (see "Dilution from Oily Waste EP," memorandum from Dave Topping, Jr. to Myles Morse, U.S. EPA Office of Solid Waste, July 29, 1986 in the RCRA public docket).

(Detection limits may vary according to the waste and waste matrix being analyzed, i.e., the "cleanliness" of waste matrices varies and "dirty" waste matrices may cause interferences, thus raising the detection limit.)

The Agency requires that a minimum of four representative samples be analyzed for both the total constituent concentrations of all the EP toxic metals, nickel, cyanide, and reactive sulfide, and the EP leachable (standard or Oily Waste EP) concentrations of all the EP toxic metals, nickel, and cyanide (using distilled water in the cyanide extraction).

Weirton also submitted a list of all raw materials used in its manufacturing and waste treatment processes. This list indicated that no other hazardous constituents of concern, other than 1,1,1-TCA and the metals tested for, are used in Weirton's processes. Based on the results of characteristics testing, none of the samples analyzed exhibited the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23.

Weirton submitted a signed certification stating that based on the dimensions of its two impoundments,

together the two impoundments contain a maximum of 32,000 tons of wastewater treatment sludge. The Agency reviews a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste volume. EPA accepts Weirton's certified estimate of 32,000 tons (approximately 31,604 cubic yards).

EPA does not generally verify submitted test data before proposing delisting decisions, and has not verified the data upon which it proposes to deny Weirton's exclusion. The sworn affidavit submitted with the petition binds the petitioner to present truthful and accurate results. The Agency, however, has previously conducted a spot-check sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions, and may select to visit facilities proposed for exclusion as part of this program.

#### 4. Agency Evaluation

The Agency is currently developing a fate and transport model to evaluate the potential behavior of wastes managed in surface impoundments. However, this model is not ready for evaluating delisting petitions. As a result, the Agency has evaluated the petitioned waste using its vertical and horizontal spread (VHS) landfill model.<sup>1</sup> See 50 FR 7882 (February 26, 1985), 50 FR 48896 (November 27, 1985), and the RCRA public docket for a detailed description of the VHS model and its parameters. As explained below, the Agency feels that the VHS model, at this time, is adequate for this delisting petition. The Agency requests comments on the use of the VHS model as applied to the evaluation of Weirton's waste.

The primary difference expected between the VHS model (used for the petitioned waste) and a surface impoundment model is the consideration (in the impoundment model) of hydraulic head, sorption, retardation, and clogging. Hydraulic head is expected to cause higher compliance point concentrations.<sup>2</sup> Sorption, retardation

and clogging, on the other hand, are expected to result in lower concentrations of the contaminants.<sup>3</sup> To some extent, the mechanisms of sorption, retardation, and clogging will counteract hydraulic head. Until the ongoing development of the surface impoundment model is completed, it is difficult to predict what impact, if any, these competing mechanisms will have on the calculation of compliance point concentrations. EPA feels that to delay petition evaluations until such time as other analytical tools (such as the surface impoundment model discussed above) are developed would result in the curtailment of delisting petition processing. Delay is particularly unwarranted where, as here, it is not clear that the new analytical tool would predict different constituent concentrations and/or change EPA's conclusion.

Furthermore, EPA believes that the VHS model is currently adequate to assess the reasonable worst-case disposal scenario of wastes at surface impoundments because the VHS landfill model is conservative in all its assumptions. Specifically, the VHS landfill model does not account for the likely reduction in the total concentrations of hazardous constituents occurring through volatilization and degradation, thereby providing an additional margin of safety, regardless of whether the waste is disposed of in a landfill or surface impoundment scenario. Consequently, the Agency believes that the application of the VHS model, in this case, adequately protects human health.

In this case, the Agency used the VHS model to evaluate the mobility of all the hazardous inorganic constituents from Weirton's wastewater treatment sludge. The Agency's evaluation, using the waste volume of 31,604 cubic yards and the maximum mobile metal concentrations (OWEP leachate concentrations) of all the inorganic constituents of concern in the VHS model, has generated the compliance-point concentrations shown in Table 3. The Agency did not evaluate the mobility of 1,1,1-TCA from Weirton's

<sup>1</sup> When the Agency believes that the surface impoundment model is sufficiently developed for delisting decision-making, it intends to describe its parameters and assumptions and request comments on the model. Subsequent use of the model in the evaluation of specific delisting petitions would be proposed in the Federal Register. Also, the appropriateness of its use for each specific petition will be considered.

<sup>2</sup> Hydraulic head tends to force leachate into the aquifer, displacing ground water and resulting in potentially higher concentrations at the receptor well (i.e., compliance point).

<sup>3</sup> Sorption and retardation of dissolved contaminants with the aquifer solids encountered through migration in the ground water tend to reduce the concentrations of the contaminant in the aquifer. Clogging occurs in surface impoundments when either fine material filters out in the impoundment bottom materials, or when fine material settles on the bottom of the impoundment. A potential result of clogging is the lowering of the hydraulic conductivity of the impoundment bottom material to that which approaches the hydraulic conductivity of clay, thus reducing the leakage of impoundment liquid into the aquifer.

waste because it was not detected in the waste using the appropriate SW-846 analytical test method. The Agency believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method. Specifically, if a constituent cannot be detected (when using the appropriate analytical method) the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

TABLE 3.—VHS: CALCULATED COMPLIANCE-POINT CONCENTRATIONS LISTED AND NON-LISTED CONSTITUENTS WASTEWATER TREATMENT SLUDGE

Constituents	Compliance-point concentrations (mg/l)	Levels of regulatory concern (mg/l) <sup>1</sup>
Arsenic.....	0.12	0.05
Barium.....	0.17	1.0
Cadmium.....	0.15	0.01
Chromium.....	0.11	0.05
Lead.....	0.08	0.05
Mercury.....	0.0001	0.002
Nickel.....	0.18	0.50
Silver.....	2.3	0.05
Selenium.....	0.05	0.01
Cyanide.....	0.77	0.7

<sup>1</sup> See "Docket Report on Health-Based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1988, in the RCRA public docket.

The waste exhibited arsenic, cadmium, chromium, cyanide, lead, silver, and selenium levels at the compliance point in excess of the health-based levels used in delisting decision making. The barium, mercury, and nickel levels at the compliance point are below the health-based levels.

Because the concentration of total cyanide is 96.3 mg/kg, the concentration of reactive cyanide will be below the Agency's interim standard of 250 ppm. See "Interim Agency Threshold for Toxic Gas Generation," July 12, 1985, internal Agency memorandum in the RCRA public docket. Lastly, a total constituent analysis for reactive sulfide was not performed. Because the Agency believes that sulfide is a likely constituent of concern in Weirton's waste, the Agency is unable to determine whether the total constituent concentration of reactive sulfide is below the Agency's interim standard of 500 ppm. See "Interim Agency Threshold for Toxic Gas Generation," July 12, 1985, internal Agency memorandum in the RCRA public docket.

The Agency concluded after reviewing Weirton's processes and raw materials

list, that no other hazardous constituents of concern are being used by Weirton, and that no other constituents of concern are likely to be present or formed as reaction products or by-products of Weirton's waste. In addition, based on the test results submitted by the petitioner, pursuant to § 260.22, the waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23.

#### 5. Conclusion

The Agency believes that Weirton has failed to demonstrate that its impoundment sludge is not hazardous. The potential for arsenic, cadmium, chromium, lead, selenium, silver, and cyanide to lead from the waste at concentrations above the health-based levels used in delisting decision making has caused the Agency to conclude that the waste is hazardous. Although Weirton's sampling plan did not follow the EPA protocol in that samples were not randomly collected from every quadrant, the Agency believes that the samples collected from the surface impoundment indicate that Weirton's wastewater treatment sludge contains concentrations of arsenic, cadmium, chromium, lead, selenium, silver, and cyanide at levels of regulatory concern. Further, Weirton has failed to provide substantial additional information to characterize its waste fully.

The Agency, therefore, is proposing that Weirton's waste continue to be considered hazardous, as it could present a hazard to human health and the environment. The Agency proposes to deny an exclusion to Weirton Steel Corporation, located in Weirton, West Virginia, for its wastewater treatment sludge, generated and stored in its two surface impoundments, described in their petition as EPA Hazardous Waste No. F006. If the proposed rule becomes effective, the wastewater treatment sludge would continue to be subject to regulation under 40 CFR Parts 260 through 268, and to the permitting standards of 40 CFR Part 270.

#### III. Effective Date

This rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, since this rule, if promulgated, would not change the existing requirements for persons generating hazardous wastes. This facility has been obligated to manage its waste as

hazardous during the Agency's review of their petition. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

#### IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact analysis. The proposed denial of this petition, if promulgated, will not impose an economic burden on this facility since prior to submitting and during review of the petition, this facility should have continued to handle their waste as hazardous. The denial of their petition, if promulgated, would mean that they are to continue managing their waste as hazardous in the manner in which they have been doing, economically and otherwise. There is no additional economic impact, therefore, due to today's rule. This proposal is not a major regulation, therefore, no Regulatory Impact Analysis is required.

#### V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment, if promulgated, will not have an adverse economic impact on small entities. The facility included in this notice may be considered a small entity, however, this rule only affects one facility in one industrial segment. The overall economic impact, therefore, on small entities would be small. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

#### List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Date: September 21, 1988.

Joseph Cannon,

Acting Assistant Administrator, Office of  
Solid Waste and Emergency Response.

[FR Doc. 88-22187 Filed 9-27-88; 8:45 am]

BILLING CODE 6560-50-M

#### 40 CFR Part 261

[SW-FRL-3455-7]

### Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Denial

**AGENCY:** Environmental Protection  
Agency.

**ACTION:** Proposed rule and request for  
comment.

**SUMMARY:** The Environmental Protection Agency (EPA or Agency) today is proposing to deny a petition submitted by Brush Wellman Corporation, Bedford, Ohio, to exclude, on a one-time basis, certain solid wastes generated at its facility from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decision is based on an evaluation of waste-specific information provided by the petitioner.

The Agency is also proposing the use of a fate and transport model and its application in evaluating the waste-specific information provided by the petitioner. This model has been used in evaluating the petition to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed of.

**DATES:** EPA is requesting public comments on today's proposed decision and on the applicability of the fate and transport model used to evaluate the petition. Comments will be accepted until November 14, 1988. Comments postmarked after the close of the comment period will be stamped "late."

Any person may request a hearing on this proposed decision and/or the model used in the petition evaluation by filing a request with Joseph Carra, whose address appears below, by October 13, 1988. The request must contain the information prescribed in 40 CFR 260.20(d).

**ADDRESSES:** Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (OS-305), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSPD/OSW (OS-343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F-88-BRDP-FFFFF."

Requests for a hearing should be addressed to Joseph Carra, Director, Permits and State Programs Division, Office of Solid Waste (OS-340), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street SW., (sub-basement), Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-937 for appointments. The public may copy material from any regulatory docket at a cost of \$0.15 per page.

**FOR FURTHER INFORMATION CONTACT:** For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Mr. Scott Maid, Office of Solid Waste (OS-343), U.S. Environmental Protection Agency, 410 M Street SW., Washington, DC 20460, (202) 382-4783.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

###### *A. Authority*

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR

260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous characteristics (*i.e.*, ignitability, reactivity, corrosivity, and EP toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing hazardous wastes also are eligible for exclusion and remain hazardous until excluded. See 40 CFR 261.3(c) and (d)(2). The substantive standard for "delisting" a treatment residue or a mixture is the same as previously described for listed wastes.

###### *B. Approach Used to Evaluate This Petition*

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11(a)(2) and (a)(3). If the Agency believes that the waste remains hazardous based on the factors for which the waste was originally listed, EPA will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria, EPA then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such

additional factors could cause the waste to be hazardous. The Agency considers whether the waste is acutely toxic, and considers the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and any other additional factors which may characterize the petitioned waste.

The Agency is proposing to use such information to identify plausible exposure routes for hazardous constituents present in the waste, and is proposing to use a particular fate and transport model to predict the concentration of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the unregulated disposal of Brush Wellman's petitioned waste on human health and the environment. Specifically, the model will be used to predict compliance-point concentrations which will be compared directly to the health-based levels used in delisting decision making for particular hazardous constituents.

EPA believes that this model represents a reasonable worst-case waste disposal scenario for the petitioned waste, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off-site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off-site

to a facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data to its evaluation of delisting petitions. In this case, the Agency determined that, because Brush Wellman is seeking a delisting for waste contained in an on-site surface impoundment, ground-water monitoring data collected from the area where the petitioner stores the waste should be available to determine whether hazardous constituents have migrated from the unit to the underlying ground water. Because the petitioned wastestream is stored on-site, ground-water collected from Brush Wellman's monitoring wells were compared directly to the health-based levels for particular hazardous constituents detected in the ground water and will help to characterize the potential impact (if any) of the unregulated disposal of Brush Wellman's waste on human health and the environment.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made on this petition proposed today until all public comments (including those at requested hearings, if any) are addressed.

## II. Disposition of Petition

*Brush Wellman Corporation, Bedford, Ohio*

### 1. Petition for Exclusion

Brush Wellman Corporation (BWC), formerly S.K. Wellman Corporation, is involved in the manufacturing of metal clutch plates, facings, and brake linings. BWC petitioned the Agency to exclude its wastewater treatment sludge, presently listed as EPA Hazardous Waste No. F006—"Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum." The listed constituents of concern for F006 wastes are cadmium, hexavalent chromium, nickel, and cyanide (complexed). BWC petitioned to exclude its waste because it does not believe that the waste meets the criteria for which it was listed. BWC also believes that its treatment process

generates a non-hazardous waste because the constituents of concern, although present in the waste, are in an essentially immobile form. BWC further believes that the waste is not hazardous for any other reason (*i.e.*, there are no additional constituents or factors that could cause the waste to be hazardous). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984. See section 222 of the Amendments, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)-(4). Today's proposal to deny this petition for delisting is the result of the Agency's evaluation of BWC's petition.

### 2. Background

BWC petitioned the Agency to exclude its wastewater treatment sludge on April 11, 1984, and submitted additional information on May 18, 1984; September 7, 1984; and September 14, 1984. In support of its petition, BWC submitted (1) detailed descriptions of its manufacturing and waste treatment processes; (2) a list of all the raw materials used in both the manufacturing and treatment processes; (3) results from total constituent and EP leachate analyses for the EP toxic metals, nickel, and cyanide (using distilled water in the cyanide extraction); (4) results from total oil and grease analyses on representative waste samples; (5) results from ground-water monitoring collected during 1983; and (6) results from testing for the characteristics of ignitability, corrosivity, and reactivity.

The manufacturing processes at BWC which generate the waste are heat treating and copper electroplating on carbon steel. Only the cyanide-bearing wastewaters are treated on-site by BWC; all other wastewaters are discharged to a local publicly-owned treatment works (POTW). The cyanide-bearing wastewaters flow by gravity to a batch alkaline chlorination tank for pH adjustment and chlorination. The wastewater then flows to the surface impoundment for solids settling. Effluent from the surface impoundment is discharged through a National Pollution Discharge Elimination System (NPDES) permitted outflow. Brush Wellman has stated its intention to close the surface impoundment and dispose of the treatment sludge at an off-site non-hazardous waste landfill if the petition is granted.

To collect representative samples from a surface impoundment like BWC's, petitioners are normally requested to divide the unit into four

quadrants and randomly collect five full-depth core samples from each quadrant. The five full-depth core samples are then composited (mixed) by quadrant to produce a total of four composite samples. See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA Office of Solid Waste and Emergency Response, Publication SW-846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste, (EPA/530-SW-85-003), April 1985.

BWC, using a PVC core sampler, randomly collected a total of twelve full-depth core samples of the wastewater treatment sludge contained in its on-site surface impoundment. All twelve of the samples were analyzed for leachable concentrations of the EP toxic metals, nickel, and cyanide. Only four samples, however, were analyzed for total constituent concentrations of the EP toxic metals, nickel, cyanide, and total oil and grease content.

BWC claims that the twelve full-depth core samples adequately assess any variation in constituent concentrations since no new waste was to be added after 1985. BWC also claims that the full-depth core samples are representative of any temporal variations in the waste during the period of time it was generated, and that the manufacturing and treatment processes are consistent.

BWC's sampling plan did not follow the protocol specified in EPA's "Guidance Manual". Samples were not collected from every quadrant of the impoundment and were not composited. Consequently, BWC's sampling plan did not characterize one section of the impoundment. Although the Agency does not believe that the samples would be sufficient to characterize the impoundment completely, EPA does believe that the samples are sufficient to provide data indicating that the waste is hazardous (see below).

### 3. Agency Analysis

BWC used SW-846 method numbers 7060-7760 and 9010 to quantify the total constituent concentrations (*i.e.*, mass of constituent per mass of waste) and SW-846 method number 1310 to quantify the EP leachable concentrations (*i.e.*, mass of constituent per unit volume of extract) of the EP toxic metals, nickel, and cyanide in their waste. Table 1 presents the maximum total constituent concentration of the EP toxic metals, nickel, and cyanide. Table 2 presents the maximum EP leachate concentrations of the EP toxic metals, nickel, and cyanide. Detection limits represent the lowest concentrations quantifiable by BWC,

when using the appropriate SW-846 analytical methods to analyze its waste. (Detection limits may vary according to the waste and waste matrix being analyzed, *i.e.*, the "cleanliness" of waste matrices varies and "dirty" waste matrices may cause interferences, thus raising the detection limit.)

TABLE 1.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS IMPOUNDMENT SLUDGE

Constituents	Total constituent concentrations (mg/kg)
Arsenic .....	290
Barium .....	30
Cadmium .....	50
Chromium .....	320
Lead .....	860
Mercury .....	0.2
Selenium .....	12
Silver .....	ND(10)
Nickel .....	1590
Cyanide .....	1010

ND: Not Detected. Denotes concentration below the detection limit shown in parentheses.

TABLE 1.—MAXIMUM EP LEACHATE CONCENTRATIONS IMPOUNDMENT SLUDGE

Constituents	EP leachate concentrations (mg/l)
Arsenic .....	0.01
Barium .....	.027
Cadmium .....	.2
Chromium .....	ND(0.04)
Lead .....	.06
Mercury .....	.0008
Selenium .....	ND(0.01)
Silver .....	ND(0.02)
Nickel .....	.72
Cyanide .....	.29

ND: Not detected. Denotes concentrations below the detection limits shown in parentheses.

Using method number 502.D ("Standard Methods for Examination of Water and Wastewater," 14th Edition), BWC determined that its waste had a maximum oil and grease content of less than 0.0001 percent; therefore, the EP analyses did not have to be modified in accordance with the Oily Waste EP (OWEP) methodology (*i.e.*, wastes having more than one percent total oil and grease may either have significant concentrations of the constituent of concern in the oil phase, which may not be assessed using the standard EP leachate procedure, or the concentration of oil and grease may be sufficient to coat the solid phase of the sample and interfere with the leaching out of metals from the sample. For this reason, the Agency uses the OWEP methodology when oil and grease content in the waste exceeds one percent. See SW-846 method number 1330). Results from the

characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23.

BWC also submitted a summary of their ground-water monitoring data collected in 1983. BWC's ground-water monitoring system consists of one upgradient and three downgradient wells. Except for cadmium, none of the EP toxic metals, nickel, or cyanide were detected in the ground water at levels exceeding regulatory concern. Cadmium, although not detected at BWC's upgradient monitoring well (<0.01 mg/l), was detected at 0.011 mg/l, 0.010 mg/l, and 0.014 mg/l at the downgradient monitoring wells number two, three, and four, respectively. The Ohio EPA believed that seasonal fluctuations occurring in the ground-water table beneath BWC's facility occasionally caused the upgradient monitoring well to become a sidegradient monitoring well. Therefore, on July 29, 1987, BWC signed a consent agreement stipulating that they would install a new upgradient monitoring well. The Agency has not received any monitoring data collected from Brush's new upgradient monitoring well.

BWC submitted a signed certification stating that based on current annual waste generation (approximately 11,500 tons per year) and the fact that the surface impoundment has been operating for 20 years, the surface impoundment contains approximately 230,000 tons of sludge. The Agency reviews a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste volume. EPA accepts BWC's certified estimate of 230,000 tons (approximately 227,000 cubic yards).

EPA does not generally verify submitted test data before proposing delisting decisions, and has not verified the data upon which it proposes to deny BWC's exclusion. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, has previously conducted a spot-check sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions, and may select to visit facilities proposed for exclusion as a part of this program.

### 4. Agency Evaluation

The Agency is currently developing a fate and transport model to evaluate the potential behavior of wastes managed in surface impoundments. However, this model is not ready for evaluating delisting petitions. As a result, the Agency has evaluated the petitioned

waste using its vertical and horizontal spread (VHS) landfill model.<sup>1</sup> See 50 FR 7882 (February 26, 1985), 50 FR 48896 (November 27, 1985), and the RCRA public docket for a detailed description of the VHS model and its parameters. As explained below, the Agency feels that the VHS model, at this time, is adequate for this delisting petition. The Agency requests comments on the use of the VHS model as applied to the evaluation of BWC's waste.

The primary difference expected between the VHS model (used for the petitioned waste) and a surface impoundment model is the consideration (in the impoundment model) of hydraulic head, sorption, retardation, and clogging. Hydraulic head is expected to cause higher compliance point concentrations.<sup>2</sup> Sorption, retardation and clogging, on the other hand, are expected to result in lower concentrations of the contaminants.<sup>3</sup> To some extent, the mechanisms of sorption, retardation, and clogging will counteract hydraulic head. Until the ongoing development of the surface impoundment model is completed, it is difficult to predict what impact, if any, these competing mechanisms will have on the calculation of compliance point concentrations. EPA feels that to delay petition evaluations until such time as other analytical tools (such as the surface impoundment model discussed above) are developed would result in the curtailment of delisting petition processing. Delay is particularly unwarranted where, as here, it is not clear that the new analytical tool would predict different constituent concentrations and/or change EPA's conclusion.

Furthermore EPA believes that the VHS model is currently adequate to

assess the reasonable worst-case disposal scenario of wastes at surface impoundments because the VHS landfill model is conservative in all its assumptions. Specifically, the VHS landfill model does not account for the likely reduction in the total concentrations of hazardous constituents occurring through volatilization and degradation, thereby providing an additional margin of safety, regardless of whether the waste is disposed of in a landfill or surface impoundment scenario. Consequently, the Agency believes that the application of the VHS model, in this case, adequately protects human health.

In this case, the Agency used the VHS model to evaluate the mobility of all the hazardous inorganic constituents (except chromium, selenium, and silver—see explanation below) from BWC's wastewater treatment sludge. The Agency's evaluation, using the waste volume of 227,000 cubic yards and the maximum EP leachate concentrations of all the inorganic constituents of concern in the VHS model, has generated the compliance-point concentrations shown in Table 3. The Agency did not evaluate the mobility of chromium, selenium, and silver from BWC's waste because they were not detected in the EP extract using the appropriate SW-846 analytical test methods (see Table 2). The Agency believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method. Specifically, if a constituent cannot be detected (when using the appropriate analytical method) the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

TABLE 3.—VHS: CALCULATED COMPLIANCE-POINT CONCENTRATIONS IMPOUNDMENT SLUDGE

Constituents	Compliance-Point concentrations (mg/l)	Levels of regulatory concern (mg/l) <sup>1</sup>
Arsenic.....	0.0015	0.05
Barium.....	.0042	1.0
Cadmium.....	.031	.01
Lead.....	.009	.05
Mercury.....	.00012	.002
Nickel.....	.114	.50
Cyanide.....	.045	.7

<sup>1</sup> See "Docket Report on Health-Based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1988, in the RCRA public docket.

The waste exhibits the presence of cadmium at the compliance point in excess of the health-based level used in delisting decision making. Cadmium, therefore, is of regulatory concern. The levels of arsenic, barium, cyanide, lead, mercury, and nickel at the compliance point, however, are below the health-based levels. Total constituent analyses for reactive sulfide and reactive sulfide and reactive cyanide were not performed; therefore, the Agency is unable to determine whether the total constituent concentrations of reactive sulfide and reactive cyanide are below the Agency's interim standards of 500 ppm and 250 ppm, respectively. See "Interim Agency Threshold for Toxic Gas Generation," July 12, 1985, internal Agency memorandum in the RCRA public docket.

The Agency concluded after reviewing BWC's processes and raw materials list, that no other hazardous constituents of concern are being used by BWC, and that no other constituents of concern are likely to be present or formed as reaction products or by-products of BWC's waste. In addition, based on the test results submitted by the petitioner, pursuant to § 260.22, the waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23.

The Agency's evaluation of BWC's 1983 ground-water monitoring data indicates that cadmium was not detected at the upgradient monitoring well using a detection limit of <0.01 mg/l. Cadmium, however, was detected at concentrations exceeding the level of regulatory concern (0.01 mg/l) at downgradient monitoring wells number two and four. The fact that the upgradient monitoring well did not detect the presence of cadmium during 1983 leads the Agency to conclude that it is unlikely that other potential upgradient sources of cadmium exist. The Ohio EPA does consider the three downgradient monitoring wells to be adequate. The Agency, therefore, considers the data from the downgradient monitoring wells, which show indications of ground-water contamination with cadmium, to be valid.

## 5. Conclusion

The Agency believes that BWC has failed to demonstrate that its wastewater treatment sludge, presently contained in its on-site surface impoundment, is not hazardous. The potential for cadmium to leach from the waste (as indicated by both the Agency's modeling evaluation and the ground-water monitoring data) at

<sup>1</sup> When the Agency believes that the surface impoundment model is sufficiently developed for delisting decision-making, it intends to describe its parameters and assumptions and request comments on the model. Subsequent use of the model in the evaluation of specific delisting petitions would be proposed in the Federal Register. Also, the appropriateness of its use for each specific petition will be considered.

<sup>2</sup> Hydraulic head tends force leachate into the aquifer, displacing ground water and resulting in potentially higher concentrations at the receptor well (i.e. compliance point).

<sup>3</sup> Sorption and retardation of dissolved contaminants with the aquifer solids encountered through migration in the ground water tend to reduce the concentrations of the contaminant in the aquifer. Clogging occurs in surface impoundments when either fine material filters out in the impoundment bottom materials, or when fine material settles on the bottom of the impoundment. A potential result of clogging is the lowering of the hydraulic conductivity of the impoundment bottom material to that which approaches the hydraulic conductivity of clay, thus reducing the leakage of impoundment liquid into the aquifer.

concentrations above the level of regulatory concern has caused the Agency to conclude that the waste is hazardous.

Although BWC's sampling plan did not follow the protocol specified in the EPA's "Guidance Manual" since samples were not collected from every quadrant, the Agency believes that the samples collected from three of the four quadrants of the surface impoundment indicate that BWC's wastewater treatment sludge contains concentrations of cadmium at levels of regulatory concern. Further, BWC has failed to provide substantial additional information to characterize its waste fully.

The Agency, therefore, is proposing that BWC's waste continue to be considered hazardous, as it could present a hazard to human health and the environment. The Agency proposes to deny an exclusion to Brush Wellman Corporation, located in Bedford, Ohio, for its wastewater treatment sludges, generated and stored in its surface impoundment, as described in their petition as EPA Hazardous Waste No. F006. If the proposed rule becomes effective, the wastewater treatment sludge would continue to be subject to regulation under 40 CFR Parts 260 through 268, and to the permitting standards of 40 CFR Part 270.

### III. Effective Date

This rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, since this rule, if promulgated, would not change the existing requirements for persons generating hazardous wastes. This facility has been obligated to manage its waste as hazardous during the Agency's review of the petition. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

### IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The proposed denial of this petition, if promulgated, will not impose an economic burden on this facility since prior to submitting and during review of the petition, this facility was required to handle its waste as hazardous. The denial of this petition, if

promulgated, would mean that BWC is to continue managing its waste as hazardous in the manner in which it has been doing, economically and otherwise. There is no additional economic impact, therefore, due to today's rule. This proposal is not a major regulation, therefore, no Regulatory Impact Analysis is required.

### V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment, if promulgated, will not have an adverse economic impact on small entities. The facility included in this notice may be considered a small entity, however, this rule only affects one facility in one industrial segment. The overall economic impact, therefore, on small entities would be small. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have significant economic impact on a substantial number of small entities. This regulation, therefore, does not require regulatory flexibility analysis.

### List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Date: September 21, 1988.

Joseph Cannon,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 88-22188 Filed 9-27-88; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 97

[PR Docket No. 88-467; FCC 88-290]

### Amendment of Commission's Rules To Permit Use of the 17 Meter Band; Amateur Radio Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Pursuant to the Final Act of the World Administrative Radio

Conference, the Federal Communications Commission allocated the 17 meter band (18.068-18.168 MHz) to the Amateur and Amateur-Satellite Services in General Docket No. 80-739, subject to the removal of Government fixed operations from this band no later than July 1, 1989. The Commission has now adopted this Notice of Proposed Rule Making in order to initiate proceedings to implement this allocation by considering rules in the amateur services for use of the band.

DATES: Comments may be filed through October 31, 1988. Reply comments may be filed through November 30, 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 Notice of Proposed Rule Making, FCC 88-290, adopted September 1, 1988, and released September 14, 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 Notice of Proposed Rule Making

1. The Final Acts of the 1979 World Administrative Radio Conference (1979 WARC), which comprise an international treaty, allocated the 17 meter band to the Amateur and Amateur-Satellite Radio Services. While we have allocated this band for amateur services operation in the United States, it remains an alternative allocation to the Government fixed service until such services are removed from the band.

2. The U.S. Department of Commerce, National Telecommunications and Information Administration (NTIA), acting upon advice from the Interdepartment Radio Advisory Committee (IRAC), has informed us that United States Government fixed operations in the 17 meter band will preclude any amateur service usage of this band before July 1, 1989. Thus, we have denied access to the 17 meter band to amateur stations until July 1, 1989.

3. Normally, a two-step process follows domestically after allocation of a frequency band internationally. We have taken the first step, which is to

amend 47 CFR Part 2 to add 17 meters to the amateur services in the domestic Table of Allocations. To make this spectrum available to amateur stations by July 1, 1989, we must now take the second step, which is to adopt rules in the amateur services for use of the spectrum.

4. We propose to permit amateur station operation in the entire 17 meter band. Additionally, we propose to create a 42 kHz telegraphy/digital emissions subband (18.068–18.110 MHz) similar to those in the other high frequency amateur service bands. This proposal is consistent with the previous petition for rule making filed with respect to the 17 meter band by ARRL on July 2, 1986. Although that petition was dismissed at the time because it was premature, the recommendations for use of the band in the amateur services are still valid.

5. Additionally, the International Amateur Radio Union regional organizations have each adopted resolutions recommending a telegraphy/digital emissions subband in the 17 meter band. The subband we propose is consistent with these recommendations. Implementation of such a subband would assure consistency and international harmony in the use of the 17 meter band. In the balance of the band we propose to authorize telephone, facsimile and television emissions.

6. We propose to make the 17 meter band available to General, Advanced and Amateur Extra Class operator licenses. This approach is consistent with our previous authorization of the 12 meter band (24.890–24.990 MHz) to the amateur service. We are preliminarily of the view that use of the 17 meter band requires the skill and knowledge of General operators and above. More than

fifty nations already authorize use in this band, and we propose to make the entire band available in the Amateur-Satellite Service. Moreover, we propose no power limitations in the band other than those which generally govern the amateur services. To minimize the potential for interference in this band, we therefore believe the minimum skills associated with the General Class operator license are required. We seek comment on the operator classes that should have access to this band.

7. This is a non-restricted notice and comment rule making proceeding. See § 1.1206 of the Commission's Rules, 47 CFR 1.1206, for rules governing permissible *ex parte* contacts.

8. In accordance with section 605 of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, the Commission certifies that these rules would not, if promulgated, have a significant economic impact on a substantial number of small entities, because these entities may not use the amateur radio services for commercial radiocommunication. See 47 CFR 97.3(b). Moreover, the proposed rules would not require the use of or significantly enhance the sale of any additional amateur radio services apparatus.

9. This proposal has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

10. 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 October 31, 1988 and reply comments on or before

November 30, 1988. The Commission will consider all relevant and timely comments before taking final action in this proceeding.

#### Ordering Clauses

11. Accordingly, we propose to amend Part 97 of the Commission's Rules, 47 CFR Part 97, to add the 17 meter band to the amateur services as described above. Authority for issuance of this Notice is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

12. *It Is Ordered* that the Secretary shall cause a copy of this Notice to be served upon the Chief Counsel for Advocacy of the Small Business Administration.

#### List of Subjects in 47 CFR Part 97

Amateur radio, Emissions, Frequencies.

#### Rules changes

Part 97 of Chapter 1 of Title 47 of the *Code of Federal Regulations* is proposed to be amended, as follows:

#### PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609, unless otherwise noted.

2. Section 97.7(c) would be amended by adding the following line entry in the table between the last 20 meter band entry and the first 15 meter band entry, as follows:

#### § 97.7 [Amended]

Meter band	Terrestrial location of the amateur radio station			Limitations (see para. (g))
	ITU Region 1	ITU Region 2	ITU Region 3	
	kilohertz			
17 .....	18068-18168	18068-18168	18068-18168 .....	

3. Section 97.7(d) would be amended by adding the following line entry in the

table between the last 20 meter band

entry and the first 15 meter band entry, as follows:

Meter band	Terrestrial location of the amateur radio station			Limitations (see para. (g))
	ITU Region 1	ITU Region 2	ITU Region 3	
	kilohertz			
17 .....	18068-18168	18068-18168	18068-18168 .....	

4. Section 97.7(e) would be amended by adding the following line entry in the

table between the last 20 meter band

entry and the first 15 meter band entry, as follows:

Meter band	Terrestrial location of the amateur radio station			Limitations (see para. (g))
	ITU Region 1	ITU Region 2	ITU Region 3	
	kilohertz			
17	18068-18168	18068-18168	18068-18168	

5. Section 97.61(a) would be amended by adding two line entries to the table between the 7150-7300 kHz and 10100-10150 kHz entries, as follows:

#### § 97.61 [Amended]

Frequency band (kHz)	Emissions	Limitations (see para. (d))
18068-18110	A1A, F1B	
18110-18168	A1A, A3E, F3E, G3E, A3C, F3C, A3F, F3F	

#### § 97.415 [Amended]

6. Section 97.415(a) would be amended by adding one line entry between the 14000-14250 and 21000-21450 entries in the kilohertz portion of the table, as follows:

Frequency band	Limitations (see paragraph (b))
kilohertz	
18068-18168	

Federal Communications Commission.

H. Walker Feaster, III,

Acting Secretary.

[FR Doc. 88-22124 Filed 9-27-88; 8:45 am]

BILLING CODE 6712-01-M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### Endangered and Threatened Wildlife and Plants; Proposal To Determine Threatened Status for the Cheat Mountain Salamander and Endangered Status for the Shenandoah Salamander

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

**SUMMARY:** The Service proposes to determine threatened status for the Cheat Mountain salamander (*Plethodon nettingi*) and endangered status for the Shenandoah salamander (*Plethodon shenandoah*). The latter is known only from three tiny populations on isolated talus slopes in Shenandoah National Park, Virginia. The closely related *P. nettingi* is found above 3,000 feet in an approximately 19 by 50 mile area of Pendleton, Pocahontas, Randolph, and Tucker Counties, West Virginia, mostly within the Monongahela National Forest. Its populations are generally small and disjunct, probably remnants of a larger, more continuous distribution fragmented by habitat modifications such as timbering, mining, and recreational development (ski resorts, hiking trails, etc.). Competition with the widespread red-backed salamander also appears to be a major natural factor contributing to the status of both species. This proposal, if made final, will implement protection provided by the Endangered Species Act of 1973, as amended, for these salamanders. Critical habitat is not being proposed.

The Service seeks data and comments from the public on this proposal.

**DATES:** Comments from all interested parties must be received by November 28, 1988. Public hearing requests must be received by November 14, 1988.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Annapolis Field Office, U.S. Fish and Wildlife Service, 1825 Virginia Avenue, Annapolis, Maryland 21401. Comments and materials received will be available for inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Judy Jacobs at the above address or by telephone (301/269-5448).

#### SUPPLEMENTARY INFORMATION:

##### Background

The Cheat Mountain and Shenandoah salamanders are members of the family Plethodontidae, the lungless salamanders. Members of the genus *Plethodon* are also known as woodland salamanders. The Cheat Mountain salamander (*Plethodon nettingi*) was first observed on Barton Knob in Randolph County, West Virginia, in 1935 and was described as a new species by Green (1938). Highton and Grobman (1956) considered *P. nettingi* to be a subspecies of *P. richmondi*, but later, Highton (1971) re-elevated *P. nettingi* to full species status. *Plethodon shenandoah* was first described as a subspecies of *P. richmondi* (Highton and Worthington 1967), and later considered to be a subspecies of *P. nettingi* (Highton 1971). Subsequent analyses of electrophoretic data resulted in a determination of full species status for *P. shenandoah* (Highton and Larson 1979).

The Cheat Mountain and Shenandoah salamanders are morphologically similar, small, slender *Plethodons*, reaching a maximum length of 11–12 cm (about about 4½ inches), generally with 18 costal grooves (vertical indentations that externally mark the position of the ribs) and dark gray to black bellies. The dorsum, or back of *P. nettingi* is dark, usually with a heavy sprinkling of brassy or silvery flecks. The dorsum of *P. shenandoah* is also dark, but in this species, there are two color phases, striped and unstriped. In the unstriped phase, the dorsum is uniformly dark and may have a few brassy flecks; the striped phase is characterized by a narrow red stripe down the back.

As a general rule, woodland salamanders are found during the day under rocks and logs, or in rock crevices below the surface of the ground. At night, especially during rainy weather, they forage on the surface of the forest floor and occasionally climb trees or other plants for short distances (Pauley 1985, Jaeger 1978). The diet of the Cheat Mountain salamander, fairly typical for woodland salamanders, consists mainly of mites, springtails, small beetles, flies and other insects (Pauley 1980). There are no reported observations of mating for the Cheat Mountain or Shenandoah salamanders, but as in all other woodland salamanders, fertilization is internal and complete development takes place within the egg; in contrast with most other salamanders, there is no aquatic larval stage (Conant, 1975). Eggs are laid in damp logs, moss, etc. Cheat Mountain salamander egg masses containing 4–17 eggs have been found from May to August, with most observations in June (Brooks 1948). Timing of reproductive activity is probably similar for *P. shenandoah*.

The Cheat Mountain salamander occurs in the Allegheny Mountains of eastern West Virginia, in Pendleton, Pocahontas, Randolph and Tucker Counties, in an area approximately 19 miles wide and 50 miles long (Pauley 1985), almost entirely within the proclamation boundaries of the Monongahela National Forest. This species is found in forested areas above 3,120 feet, where red spruce (*Picea rubens*) and yellow birch (*Betula alleghaniensis*) are or were the dominant tree species. Originally, red spruce forest covered nearly half a million acres in West Virginia. Timbering operations around the turn of the century, in combination with wildfires caused by human activity, removed nearly all the red spruce in the state.

The Shenandoah salamander is known only from north-facing talus slopes on three mountains in Shenandoah National Park, Madison and Page Counties, Virginia, at elevations above 3,000 feet (Highton and Worthington 1967). It is confined to pockets of soil and/or vegetative debris within the talus, where moisture conditions are favorable. Because these salamanders are lungless, sufficient moisture must be present for respiratory exchange to occur directly through the skin. Competition with the red-backed salamander (*Plethodon cinereus*) plays a major role in restricting the Shenandoah salamander's range (Jaeger 1970, 1971, 1974, 1980). This salamander is classified as an endangered species under Virginia state law.

In its Review of Vertebrate Wildlife in the Federal Register of December 30, 1982 (48 FR 58454–58460) and September 18, 1985, (50 FR 37958–37967), the U.S. Fish and Wildlife Service placed both the Cheat Mountain and Shenandoah salamanders in Category 2, meaning that a proposal to list as endangered or threatened was possibly appropriate, but that substantial biological data were not then available to support such a proposal. Subsequently, the Service received a report from Dr. Thomas K. Pauley, who had been contracted by the Service to investigate the status of the Cheat Mountain salamander. The data presented in Dr. Pauley's report, along with other information assembled by the Service, including published reports by Dr. R. G. Jaeger on the Shenandoah salamander, indicate that a proposal to list both species is warranted.

#### Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Cheat Mountain salamander (*Plethodon nettingi*) and the Shenandoah salamander (*Plethodon shenandoah*) are as follows:

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

Habitat modification is a primary factor threatening the continued existence of the Cheat Mountain salamander. This species prefers cool moist forests where mature red spruce (*Picea rubens*) and yellow birch (*Betula*

*alleghaniensis*) predominate. At West Virginia's latitude, these northern forest types occur only at higher elevations. The Cheat Mountain salamander is found only at elevations above 3,120 feet (Pauley 1985). Prior to the late 1800s, *P. nettingi* may have been more widely distributed in these high elevation areas. The timber boom began in West Virginia during the 1880s; forty years later, virtually all of the old-growth, high quality timber had been stripped from the mountains in the eastern part of the state. Wildfires, some set intentionally to clear pasture, others resulting from the slash left from timbering operations, or from sparks from the stacks of steam locomotives, also contributed to the demise of spruce in the state (Clarkson 1964). Only one sizeable tract of virgin spruce encompassing some 200 acres, remains. Interestingly, one of the healthiest remaining populations of *P. nettingi* now occurs in this vicinity.

Subsequent to the lumbering operations, the Cheat Mountain salamander somehow managed to survive, perhaps in small pockets of marginally suitable habitat. High elevation forests have since regenerated, and today, spruce and mixed spruce-northern hardwood forests cover an estimated 27,000–67,000 acres in West Virginia, roughly 10% of the area covered prior to the lumbering era (Bones 1978, Zinn and Sutton 1976). Although at present only 10% to 15% of the red spruce in the state measure over 15 inches in diameter at breast-height (dbh), smaller spruce are economically valuable in today's timber market, and spruce timber sales are again occurring in West Virginia. The Cheat Mountain salamander's extirpation from one clearcut area has been documented, and seven other populations that have been impacted by timbering operations are likely to die out, due to the hot, dry conditions that prevail in their habitat (T. Pauley, pers. comm.).

In addition to timber cutting, access roads, hiking trails and pipeline rights-of-way bisect or limit the expansion of many *P. nettingi* populations. Such openings decrease soil moisture and increase soil temperature, thus presenting a barrier to these salamanders, which require cool, moist conditions. Due to genetic considerations, these bisected "half-populations" may not be viable over the long term. Nearly 40% of the populations Pauley (1985) found were bisected by or adjacent to roads or pipeline rights-of-way.

Other activities that threaten Cheat Mountain salamander habitat include the construction of ski resorts and coal

mining. Within the range of *P. nettingi*; four ski resorts are in operation and an additional one is presently being developed. Cutting of high-elevation forests for ski trails, lodges and condominiums is ongoing as these resorts expand. One Cheat Mountain salamander population has already been subdivided by ski slopes, and another, presently healthy population is threatened by an additional proposed ski resort and development. One historical population occurred on an area that is now developed as a ski resort (Pauley 1985).

Although high elevation coal mining in West Virginia makes up only a small percentage of the total, high elevation coal deposits consist of low-sulphur coal, which is becoming increasingly desirable, thus valuable, due to air quality considerations. Pauley (1985) reported five *P. nettingi* populations that have been severely impacted by surface or deep mining activities. One of these is likely extirpated and another is known to have been destroyed. Clearing and haul roads associated with mining activity broaden the scope of the impact of this threat to *P. nettingi*.

Habitat of the Shenandoah salamander has been timbered and burned in the past, which may have negatively impacted the species. At present, *P. shenandoah* habitat is protected from active modification, since it is located within the Shenandoah National Park. However, deterioration of the talus areas in which it occurs could promote the incursion of *Plethodon cinereus*, its chief competitor, which could ultimately lead to the extinction of *P. shenandoah* (see "Factor E" below).

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

These salamanders have no known commercial utility; however, in the past, considerable numbers of both species have been collected for scientific purposes or as curiosities, by amateur collectors. It is debatable whether unlimited collection can have any long-term effect upon salamander populations (R. Highton, University of Maryland, pers. comm.). Collection of either of these species requires a permit, from the Monongahela National Forest and West Virginia Department of Natural Resources (for *P. nettingi*) or Shenandoah National Park and the Virginia Commission of Game and Inland Fisheries (for *P. shenandoah*).

#### C. Disease or Predation

There is no evidence that these salamanders are threatened by disease or predation.

#### D. Inadequacy of Existing Regulatory Mechanisms

As mentioned in (B) above, collecting these salamanders requires a permit, thereby providing limited protection from take. The habitat of both species also receives some protection, since both Shenandoah National Park and Monongahela National Forest recognize *P. shenandoah* and *P. nettingi* respectively as species of concern. Despite this recognition, the habitat of *P. nettingi* is still threatened with destruction from a variety of sources, as specified in (A) above.

#### E. Other Natural or Manmade Factors Affecting their continued existence

The existence of the Shenandoah salamander is threatened by a naturally occurring phenomenon, competition with the closely related red-backed salamander, *Plethodon cinereus*, one of the most abundant and common woodland salamanders. *P. shenandoah* is essentially confined to its few talus islands by competition with *P. cinereus*. The species is able to survive there due to its higher tolerance to dry conditions, relative to *P. cinereus* (Jaeger 1971). The talus in which *P. shenandoah* lives is in the process of disintegration. Organic matter and the products of erosion accumulate in the less steep talus slopes, fragmenting them, decreasing their area and creating moisture conditions in which *P. cinereus* can survive. As this process continues, *P. cinereus* is likely to invade the habitat now occupied by *P. shenandoah*, possibly resulting in the eventual extinction of the latter species.

The Cheat Mountain salamander also experiences competition with *Plethodon cinereus* and with the mountain dusky salamander (*Desmognathus ochrophaeus*), which may limit the ability of *P. nettingi* to expand its range or re-populate areas previously occupied. Pauley's survey work revealed one or both of these potential competitor species present at 83% of the sites where he found *P. nettingi*, and their numbers exceeded those of *P. nettingi* at half of the observed population sites. Recent evidence indicates that *P. nettingi* populations may actually be declining where these competing species are present (Pauley, in prep.).

The ability of *P. nettingi* to establish populations in unoccupied, suitable habitat appears to be limited. In an experimental effort to save a population,

53 of these salamanders were removed from an area where habitat destruction from mining activities was imminent. These animals were carefully re-located to another area of very similar habitat, soil type and temperature from which all salamanders of other species found had been removed. Follow-up studies over the past four years have as yet revealed no surviving *P. nettingi* from this transplant effort (T. Pauley, pers. comm.).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred alternative is to list the Cheat Mountain salamander (*Plethodon nettingi*) as threatened and the Shenandoah salamander (*Plethodon shenandoah*) as endangered. The Cheat Mountain salamander is known from numerous populations within its limited range, and the management of much of its habitat is under the jurisdiction of a Federal agency, the U.S. Forest Service. Although its habitat has already been considerably altered, proper habitat management should prevent this species from becoming endangered throughout its range. In contrast, although the Shenandoah salamander also occurs on Federal land, (National Park Service), its population numbers are much lower and the management of its habitat is not a major factor contributing to its endangerment or to its recovery. The reasons for not designating critical habitat are discussed below.

#### Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. Implementing regulations at 50 CFR 424.12(a)(1) state: "A designation of critical habitat is not prudent when one or both of the following situations exist: (i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (ii) such designation of critical habitat would not be beneficial to the species." In the case of these salamanders, the Service finds that a determination of critical habitat is not prudent. Such a determination would result in no known benefit to the species. Nearly all of the known habitat of these salamanders is under the jurisdiction of Federal agencies (U.S. Forest Service and

National Park Service). Forest and park supervisors and other involved parties are already aware of the occupied range of these species. Furthermore, both the Park Service and the Forest Service have their own regulations which give high priority to protection of endangered and threatened species. Thus, no benefit would accrue from designation of critical habitat.

#### Available Conservation Measures

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperative provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service.

Federal actions which could impact these salamanders would include land management decisions on the Monongahela National Forest or Shenandoah National Park, and possibly, Federal permitting requirements for private actions, such as mining or recreational development. If this proposal is made final, such actions would require formal consultation, unless the Service concurs in writing that the action has been designed in a manner that eliminates adverse effects to these salamanders.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or

export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that was illegally taken. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

#### Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

- (1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these species;
- (2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;
- (3) Additional information concerning the range and distribution of these species; and
- (4) Current or planned activities in the subject area and their possible impacts on these species.

Final promulgation of the regulation on these species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing (see ADDRESSES section).

#### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental

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

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#### Author

The primary author of this proposed rule is Judy Jacobs (see ADDRESSES section), 301/269-5448.

#### List of Subjects in 50 CFR Part 17

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

#### Proposed Regulations Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, title 50 of the Code of Federal Regulations, as set forth below

#### PART 17—[AMENDED]

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

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat.

3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99-625, 100 Stat. 3500 (1986), unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under Amphibians, to the List of Endangered and Threatened Wildlife:

#### § 17.11 Endangered and threatened wildlife.

(h) \* \* \*

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
AMPHIBIANS							
Salamander, Cheat Mountain	<i>Plethodon nettingi</i>	U.S.A. (WV)	Entire	T		NA	NA
Salamander, Shenandoah	<i>Plethodon shenandoah</i>	U.S.A. (VA)	Entire	E		NA	NA

Dated: September 2, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-22145 Filed 9-27-88; 8:45 am]

BILLING CODE 4310-55-M

#### 50 CFR Part 17

#### Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for *Liatris ohlingerae* and *Ziziphus celata*

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

**SUMMARY:** The Service proposes to determine *Liatris ohlingerae* (scrub blazing star), a perennial herb in the aster family (Asteraceae) and *Ziziphus celata* (Florida ziziphus), a shrub in the buckthorn family (Rhamnaceae) to be endangered species pursuant to the Endangered Species Act of 1973 (Act), as amended. These two plants are endemic to sand pine scrub vegetation in Polk and Highlands counties in central Florida.

Both plants are threatened by habitat loss due to residential and agricultural land development. Only one small population of the Florida ziziphus is known to exist, so it is especially vulnerable to extinction. This proposal, if made final, would implement the

protection and recovery provisions afforded by the Act for these two plants. The Service seeks data and comments from the public on this proposal.

**DATES:** Comments from all interested parties must be received by November 28, 1988. Public hearing requests must be received by November 14, 1988.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Field Supervisor, Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** David J. Wesley, Field Supervisor, at the above address (telephone: 904/791-2580 or FTS 946-2580).

#### SUPPLEMENTARY INFORMATION:

##### Background

*Liatris ohlingerae* is a perennial herb of the aster family (Asteraceae, also known as Compositae). It was first collected in 1922 by John K. Small in Highlands County, Florida, and was collected in the same year by Mrs. F.E. Ohlinger southeast of Frostproof, Polk County. S.F. Black (1923) placed the plant in the blazing star genus, naming it *Lacinaria ohlingerae*, with the Frostproof site as the type locality. Small (1924) created a new genus for this plant, which became *Ammopursus*

*ohlingerae*. Robinson (1934) reinstated scrub blazing star in the large genus of the blazing stars in *Liatris ohlingerae*, changing the name of the genus in keeping with adoption of *Liatris* as a conserved name under the International Code of Botanical Nomenclature. Gaiser's (1946) treatment of *Liatris* and Cronquist's (1980) floristic treatment of the aster family in the Southeast retain this plant in the genus *Liatris*, although Lakela (1964) argued in favor of reinstating *Ammopursus* as a genus of only one species. Cronquist gives three common names for *Liatris*: blazing star, gay feather, and button snakeroot. Members of the genus that are sold as cut flowers or as garden perennials are usually called blazing stars. Wunderlin et al. (1980) mention "sand torch" as a name for *Liatris ohlingerae*.

*Liatris ohlingerae* is an erect, usually unbranched perennial herb, up to 1 meter (3 feet) tall. The leaves are very narrow, only 1-2.5 millimeters (0.04-0.10 inches) wide. The several flower heads are usually separated from each other on the stem; they are large compared to the rest of the genus, up to 2 centimeters (0.8 inch) broad and 3 centimeters (1.2 inch) from base to tips of the flowers. The flowers are bright pinkish purple. The plant flowers from July through September and October (Kral 1983, Cronquist 1980).

*Liatris ohlingerae* has been collected frequently because of its brilliant flowers. A study of the central Florida sand pine scrub by Christman (1988)

shows 93 known localities for the plant (71 of them in Highlands County), with a geographic range from Auburndale and Hesperides (on highway 60 east of Lake Wales) in Polk County, south along the Lake Wales Ridge (and U.S. highway 27) through Sebring to the Archbold Biological Station in Highlands County. The distribution of *Liatris ohlingerae* overlaps or encompasses the distribution of 10 federally listed plants of the scrub habitat, and it parallels especially closely the distributions of *Hypericum cumulicola* (endangered), *Polygonella basiramia* (endangered), and *Prunus geniculata* (endangered). A site at Archbold Biological Station is protected; a site at Saddle Blanket Lakes has been proposed for purchase by the State, but the purchase is not yet funded. A small site may be added to Highlands Hammock State Park.

*Liatris ohlingerae* is restricted to sand pine scrub vegetation, a vegetation that is restricted to Florida and has its greatest floristic richness on the Lake Wales Ridge. Scrub vegetation occurs on excessively drained, sand soils, usually on sites that, under presettlement conditions, were provided a degree of natural fire protection by a nearby lake or swamp (S. Christman, botany seminar, University of Florida, Feb. 1988). Scrub vegetation is dominated by evergreen shrubs including oaks (such as the endemic *Quercus inopina*), with variable numbers of sand pine (*Pinus clausa*). Sandy open spaces between large shrubs are occupied by small shrubs such as *Conradina brevifolia* and *Dicerandra frutescens* (both members of the mint family, the latter federally listed as endangered), *Polygonella myriophylla* (of the buckwheat family), and numerous small herbs including *Bonamia grandiflora* (of the morning glory family, threatened), *Nolina brittoniana* (agave family), and a few grasses such as *Schizachyrium niveum* (a bluestem grass endemic to central Florida).

Christman (1988) list 39 plant taxa that are virtually restricted to scrub vegetation. Of these taxa, 33 are present on the Lake Wales Ridge. Scrub vegetation on the Ridge appears to have the greatest number of endemic plant species in any single habitat in Florida. The State's two other major regions of plant endemism are the Apalachicola lowlands in northwest Florida (with about the same number of taxa, in several habitats) and the tropical region of Dade and Monroe Counties (with more taxa, but with few of the taxa constituting full species). Florida has the greatest degree of plant endemism in

eastern North America (Florida Natural Areas Inventory, in press).

*Ziziphus celata* was first collected by Ray Garrett in 1948 on sand dunes near Sebring; a second specimen was collected by Leonard J. Brass in the company of Garrett, presumably from the same locality. Garrett consulted with Erdman West and Lilian Arnold at the University of Florida, but neither could identify the plant. West had an illustration prepared. Over the years, attempts were made to identify the shrub (which belongs to the family Rhamnaceae or buckthorns) and to relocate the shrub in the wild, with no success. Finally, Walter Judd noted the similarity of Garrett's specimen to several shrubs from the southwestern United States and Mexico. Judd and Hall (1984) proposed that Garrett's specimen represented a new species, which they named *Ziziphus celata*, most closely related to *Ziziphus obtusifolia* (lotebush, white crucillo or gray thorn; a variable species of the deserts of southern California, Arizona, New Mexico, Texas, and Mexico) and to *Ziziphus parryi* (California lotebush, of southern California and Baja California) (Benson and Darrow 1981). Subsequently, Brass' specimen was found at the herbarium of the Archbold Biological Station, and the illustration prepared under West's direction was found (Wunderlin et al. 1985). In late July 1987, Kris R. DeLaney found a population of the Florida *ziziphus* in Polk County, Florida, after carefully searching suitable habitats (Wunderlin et al. 1987).

*Ziziphus celata* is a shrub up to 1.5 meters (5 feet) high. Branches are zigzagged and bear short, straight, spiny branchlets. Leaves are alternate, deciduous, with blades that are oblong-elliptic to obovate, dark glossy green above, lighter dull green beneath, 4.5–21 millimeters (0.18–0.83 inch) long, and 3–13 millimeters (0–12–0.5 inches) wide. Leaves have rounded tips, cuneate bases, and entire margins (Wunderlin et al. 1987). Flowers are axillary and solitary but appear fascicled; sepals are 5, green; petals are 5, white, somewhat clasping the stamens; stamens 5. The floral disc is thickened and surrounds the ovary (Judd and Hall 1984). The fruit is a drupe (Wunderlin et al. 1985). *Ziziphus celata* may be recognized in the field by its small, dark, glossy green, entire leaves on conspicuously zigzag spiny branches. Larger specimens tend to be covered with lichens (Wunderlin et al. 1987).

Currently, only one population of *Ziziphus celata* is known, consisting of about 30 stems in 2 groups on

approximately 2 acres on the Lake Wales Ridge in Polk County. Despite intensive floristic surveys of the Lake Wales Ridge in recent years, no other populations have been found. The site is on Avon Park Fine Sand, an excessively drained deep sand soil. The site appears to represent a transition between sand pine scrub vegetation and longleaf pine (*Pinus palustris*) vegetation with turkey oak (*Quercus laevis*). The site has evergreen oaks, scrub hickory (*Carya floridana*), *Bumelia tenax* (a buckthorn), *Prunus geniculata* (scrub plum, endangered), and many herbs, including *Berlandiera subacaulis* (a yellow daisy), *Bonamia grandiflora* (Florida bonamia, threatened), *Bulbostylis* sp. (a small sedge), *Liatris ohlingerae*, *Licania michauxii* (gopher apple), *Paronychia chartacea* (papery whitlow wort, threatened), and *Warea carteri* (Carter's mustard, endangered) (Wunderlin et al. 1987).

Federal government action on *Liatris ohlingerae* began with section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to the Congress on January 9, 1975. In this report, *Liatris ohlingerae* was considered endangered. On July 1, 1975, the Service published a notice in the Federal Register (40 FR 27823) of its acceptance of the report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and of its intention thereby to review the status of the plant taxa contained within. On December 14, 1980, the Service published a notice of review for plants (45 FR 82480), which included *Liatris ohlingerae* as a Category 1 candidate (a taxon for which data in the Service's possession indicate listing is warranted). A notice of review published on September 27, 1985 (50 FR 39526), maintained this species as a Category 1 candidate. The proposal to list this species as endangered is based on the information available in 1980, augmented by field work conducted since then by Gary Schultz for the Florida Natural Areas Inventory and by Steven Christman (1988) and by recent information on the rate of development of the two counties.

In the September 27, 1985, notice of review, *Ziziphus celata* is designated a Category 2\* candidate (a taxon for which data in the Service's possession indicate listing is possibly appropriate but for which additional biological information is needed to support a

proposed rule; the asterisk indicates that the taxon is possibly extinct). Subsequent discovery of another herbarium specimen, an illustration of a fruit, and an extant population of *Ziziphus celata* have confirmed that this is a valid species that merits listing.

Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Liatris ohlingerae* because the Service had accepted the 1975 Smithsonian report as a petition. In October of 1983, 1984, 1985, 1986 and 1987, the Service found the petitioned listing of this species was warranted but precluded by other listing actions of a higher priority, and that additional data on vulnerability and threats were still being gathered. Publication of the present proposal constitutes the final 1-year finding that is required.

#### Summary of Factors Affecting the Species

Section 4(a)(1) of the Act (16 U.S.C. 1531 et seq.) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their applications to *Liatris ohlingerae* (S.F. Blake) Robinson and *Ziziphus celata* Judd & Hall are as follows:

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

*Liatris ohlingerae* is restricted to sand pine scrub vegetation on the Lake Wales Ridge and the nearby Auburndale area in Highlands and Polk Counties, Florida. Sand pine scrub vegetation occurs elsewhere in these counties and the rest of the State, but lacks *Liatris ohlingerae*. The Lake Wales Ridge is a major citrus producing area, and the towns along the Ridge are growing rapidly. In Highlands County, 64.2 percent of the xeric vegetation (scrub, scrubby flatwoods, and longleaf pine-turkey oak vegetation) present before settlement had been destroyed in 1981. An additional 10.3 percent of the xeric vegetation was moderately disturbed, primarily by building roads to create housing subdivisions (Peroni and Abrahamson 1985). Remaining tracts of scrub on the Lake Wales Ridge in Polk and Highlands

counties are rapidly being developed for citrus groves, and especially for housing developments and businesses (Fred Lohrer, Archbold Biological Station, pers. comm. 1985; James Duane, Executive Director, Central Florida Regional Planning Council, pers. comm. 1988).

Many of the remaining stands of scrub are vacant lots, patches of land isolated by railroad tracks, or other isolated fragments of the original vegetation. Some of the few remaining large areas of scrub are subdivisions where lots were sold to absentee owners, but houses were not built. The fragmented land ownership, the difficulty of contacting landowners, and informal use of such subdivisions as trash dumps and recreation areas make conservation of the vegetation difficult. *Liatris ohlingerae* is not known to occur in publicly owned sand pine scrub vegetation at Arbuckle Lake or the Avon Park Air Force Ranged in these counties. The plant does not occur within (or on land that may be added to) Highlands Hammock State Park in Highlands County, and it occurs on the private Archbold Biological Station. *Liatris ohlingerae* occurs at Saddle Blanket Lakes, a tract in Polk County that is on the acquisition list for the State of Florida's Conservation and Recreation Lands Program. So far, purchase of this tract has been delayed because other tracts have received higher priority. The Nature Conservancy owns a small preserve at Saddle Blanket Lakes.

The relatively large number of known localities for *Liatris ohlingerae* is misleading. Because it has conspicuous flowers and is easily identified, it has been collected very frequently, much like *Polygonella myriophylla*, a distinctive species of the same habitat. Many of the known sites for the blazing star have already been destroyed, although on exact count is available. Although the blazing star is still locally abundant, most of the extant sites are small, and sites are disappearing very rapidly. For example, in January of 1988, Steven Christman (pers. comm. 1988) prepared for The Nature Conservancy a list of 10 sites that, collectively, could constitute a network of preserves for the central Florida scrub flora; by late March, 3 of the sites had changed hands, including 1 that had been considered relatively secure.

*Ziziphus celata* was first collected near Sebring; the site has not been relocated and may have been destroyed. The single known existing population, in Polk County, consists of about 30 stems. Most or all of the stems may be from a single rootstock. The site is privately

owned, and it is not protected (Wunderlin et al. 1987; R. Wunderlin, pers. comm. 1988). DeLaney and Wunderlin have received funding from the Florida Nongame Wildlife Program to search for more populations, but the lack of collections from this intensively explored portion of the State indicates that few populations can be expected to be found.

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

*Liatris ohlingerae* is being tested by a Dutch firm for cultivation as a cut flower because of its exceptionally large flower heads that are more pinkish than those of other members of the genus (S. Wallace, Bok Tower Gardens, pers. comm. 1988). This activity does not pose a threat to the species, but the increasing popularity of members of the genus *Liatris* as garden perennials could threaten this species in the future.

*Ziziphus celata* is one of the rarest shrubs in North America. Unrestricted scientific collecting or excessive visits could seriously affect the one population.

##### C. Disease or Predation

Not applicable.

##### D. The Inadequacy of Existing Regulatory Mechanisms

*Liatris ohlingerae* is listed as endangered by the Preservation of Native Flora of Florida Act (Section 581.185-187, Florida Statutes), which regulates taking, transport, and sale of plants but does not provide habitat protection. *Ziziphus celata* is proposed for addition to the State list. The Endangered Species Act will offer additional protection through section 7 and recovery planning.

##### E. Other Natural or Manmade Factors Affecting Their Continued Existence

Restriction to specialized habitats and to small geographic ranges tends to intensify any adverse effects on any rare plant. This is the case for *Liatris ohlingerae*, and is exacerbated by the loss of habitat that has already taken place. *Ziziphus celata* may be threatened by loss of genetic variation because the existing population may consist of only one or two clones.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Liatris ohlingerae*, and *Ziziphus celata* as

endangered. Their limited remaining habitats and vulnerability to human activities indicate that both species are in danger of extinction throughout all or significant portions of their ranges, and therefore fit the Act's definition of endangered. The decision not to propose critical habitat for these species is discussed in the following section.

#### Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Liatris ohlingerae*, or *Ziziphus celata* at this time. Federal agencies can be alerted to the presence of these species without the publication of critical habitat descriptions and maps. Publication of critical habitat descriptions and maps would increase the degree of threat from taking or vandalism, because *Liatris ohlingerae* is an attractive plant that could become popular in home gardens and because live specimens of *Ziziphus celata* would be of interest to a limited number of hobbyists and institutions; it could be a commercially viable plant for a few specialized nurseries. Removal of attractive plants, or plant curiosities, from the wild by collectors and hobbyists has been a serious problem for many years in south Florida. Consequently, no critical habitat is proposed for these plant species.

#### Available Conservation Measures

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being

designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The currently known sites for *Liatris ohlingerae*, are on private land, except for one that may be purchased by the State. The one currently known site for *Ziziphus celata* is on private land. The State of Florida is aware of the need to conserve both species; no Federal involvement is known at Highlands Hammock State Park or on private lands in the area. Populations of *Liatris ohlingerae*, that extend onto State-owned highway rights-of-way may be subject to Federal involvement if the U.S. Department of Transportation (Federal Highway Administration) should provide funds for maintenance or construction. Federal mortgage programs may be subject to section 7 review, including those of U.S. Department of Agriculture (farmers Home Administration), Veterans Administration, and the U.S. Department of Housing and Urban Development (Federal Housing Administration loans). The supply of electricity to new housing developments may be subject to Federal involvement through the Rural Electrification Administration.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the

issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. There is no commercial trade in *Ziziphus celata*, and no known commercial trade within the United States in *Liatris ohlingerae*. The Service anticipates few, if any, requests for permits. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Central Station, Washington, DC 20038-7329 (202/343-4955).

#### Public Comments Solicited

The Service intends that any final rule resulting from this proposal will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning the following:

- (1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Liatris ohlingerae* and *Ziziphus celata*;
- (2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;
- (3) Additional information concerning the range and distribution of these species; and
- (4) Current or planned activities in the range and habitat of these species and their possible impacts on them.

Final promulgation of the regulation on these species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216.

#### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental

Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Robinson, B.L. 1934. Records preliminary to the general treatment of the Eupatorieae XI. *Contribs. Gray Herb.* 104:3-49.

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Wunderlin, R.P., B.F. Hansen, and K.R. DeLaney. 1987. Status report on *Ziziphus celata*. Manuscript report, Department of Biology, University of South Florida, Tampa. 13 pp., photographs.

Wunderlin, R.P., B.F. Hansen, and D.W. Hall. 1985. The vascular flora of central Florida: taxonomic and nomenclatural changes, additional taxa. *Sida* 11:232-244.

Wunderlin, R.P., D. Richardson, and B. Hansen. 1980. Status report on *Liatris ohlingerae*. Unpublished report prepared for U.S. Fish and Wildlife Service, Jacksonville, Florida. 42 pp., illustration.

#### Author

The primary author if this proposed rule is David Martin, Jacksonville, Field Office, U.S. Fish and Wildlife Service,

3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216 (904/791-2580 or FTS 946-2580).

#### List of Subjects in 50 CFR Part 17

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

#### Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

#### Part 17—[AMENDED]

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

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1532 *et seq.*); Pub. L. 99-625, 100 Stat. 3500 (1986), unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the families indicated, to the List of Endangered and Threatened Plants:

#### § 17.12 Endangered and threatened plants.

\* \* \* \* \*

(h) \* \* \*

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asteraceae—Aster family:						
<i>Liatris ohlingerae</i> .....	Scrub blazing star.....	U.S.A. (FL)	E	*	NA	NA
Rhamnaceae—Buckthorn family:						
<i>Ziziphus celata</i> .....	Florida ziziphus.....	U.S.A. (FL)	E	*	NA	NA

Dated: September 2, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-22146 Filed 9-27-88; 8:45 am]

BILLING CODE 9310-55-M

#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 651

[Docket No. 80873-8173]

#### Northeast Multispecies Fishery; Correction

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

**ACTION:** Advance notice of proposed rulemaking; correction.

**SUMMARY:** This document corrects the definition of an importer/broker in the advance notice of proposed rulemaking for the Northeast Multispecies Fishery, which was published September 14, 1988 (53 FR 35532) in FR Doc. 88-20946.

**FOR FURTHER INFORMATION CONTACT:** Jack Terrill (Resource Policy Analyst, NMFS), 508-281-3600, ext. 252.

**SUPPLEMENTARY INFORMATION:** The following correction is made:

On page 35536, column 1, under the "Definitions" heading, paragraph 1 is corrected to read "1 *Importer/broker* means any person or corporation, other than an importer/processor or processor, which imports or receives unprocessed nonconforming fish from

outside the United States for the purpose of resale."

Other corrections to this rulemaking are being made by the Office of the Federal Register, and are published in the Corrections Section of this issue of the **Federal Register**.

Dated: September 23, 1988.

James E. Douglas Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 88-22194 Filed 9-27-88; 8:45 am]

BILLING CODE 3510-22-M

# Notices

Federal Register

Vol. 53, No. 188

Wednesday, September 28, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forms Under Review by Office of Management and Budget

September 23, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) title of the information collection; (3) form number(s), if applicable; (4) how often the information is requested; (5) who will be required or asked to report; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to provide the information; (8) an indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

### Existing

- Rural Electrification Administration
- 7 CFR Part 1751—Loan Processing Procedure—Telephone Program
- On occasion
- Small businesses or organizations; 95 responses; 1,520 hours; not applicable under 3504(h)
- Monte Heppe, Jr. (202) 382-8530

### Revision

- Food and Nutrition Service
- Food Stamp Program: Targeting for Income and Eligibility
- Verification Systems
- Recordkeeping: Annually
- Individuals or households; State or local governments; 53 responses; 786,537 hours; not applicable under 3504(h)
- John Hitchcock (703) 756-3385

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 88-22176 Filed 9-27-88; 8:45 am]

BILLING CODE 3410-01-M

### Eliminating Unnecessary Administrative Burdens on Research Awards

**AGENCY:** Office of the Secretary, USDA.  
**ACTION:** Notice.

**SUMMARY:** This Notice announces the Department of Agriculture's (USDA) intention to reduce unnecessary administrative burdens on its research awards. Deviations of Office of Management and Budget (OMB) Circulars A-21, "Cost Principles for Institutions of Higher Education," and A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-profit Organizations," which have been promulgated in 7 CFR Part 3015, are based on guidance received from OMB in a memorandum entitled "Eliminating Unnecessary Administrative Burden on Sponsored Research," dated May 18, 1988.

**DATE:** The effective date of this Notice is October 1, 1988.

#### FOR FURTHER INFORMATION CONTACT:

Lyn Zimmerman, Management Improvement and Fiscal Policy Division, Office of Finance and Management, Room 1364, South Agriculture Building, Washington, DC 20250. Telephone: 202-382-1304.

### SUPPLEMENTARY INFORMATION: Background

The Federal Government has streamlined the administration of sponsored research through issuance of OMB Circulars A-21 and A-110. However, accounting and administrative requirements have remained relatively complex. In April 1986, the National Institutes of Health, the National Science Foundation, the Department of Energy, the Office of Naval Research, and USDA joined with the Florida State University System and the University of Miami to show that research awards can be made more efficient (with likely increases in research productivity) by selective elimination of administrative processes that are unnecessary for prudent stewardship of public funds.

The Florida Demonstration Project, which has just been expanded by the Presidential Task Force on Regulatory Relief, was developed by Federal officials with the encouragement of the Government-University-Industry Research Roundtable of the National Academy of Sciences.

The Demonstration is testing a set of streamlined procedures to standardize and simplify most Federal financial and administrative requirements imposed on research awards as a means of enhancing research productivity and reducing administrative burdens for Federal agencies and grantees. The standard research award being tested eliminates many of the current requirements for Federal prior approval of certain expenditure items (foreign travel, permanent equipment, etc.) as long as pertinent grantee administrative systems are adequate. The terms of the Florida Demonstration Project also allow grantees the authority to incur pre-award costs up to 90 days before the effective date of an award; to carry forward unobligated balances to subsequent funding periods; and, to extend the period of the award, if necessary, without Federal approval. Grantees may also determine that all Federally supported research of individual Principal Investigator's is scientifically related and, if so, may charge available Federal funds to accomplish the work supported by each agency in the most effective way without the detailed justification of such allocations now required by Federal regulations. The Federal agencies continue to approve changes in the

scope of the research or in the Principal Investigator.

Based on extensive review of the results of the project to date, an Interagency Assessment Committee recommended to the Office of Management and Budget (OMB) that all research agencies be authorized to make routine use of most of the above features and that the Demonstration be continued with an enlarged scope and broader participation. On May 18, 1988, OMB issued a memorandum to the Heads of Executive Departments and Establishments authorizing agencies to apply most of these features to many research awardees, including contractors.

#### Deviation Authority

USDA Agencies, engaged in research, are authorized to make routine use, as appropriate, of the following Florida Demonstration procedures:

1. Waive most cost-related and other administrative "prior approvals" required by OMB Circulars A-21 and A-110, except actions which change the scope or objective of a project, change key personnel, require additional funding, or are specifically required in the award document.

2. Authorize award recipients to incur pre-award costs of up to 90 days prior to the effective date of an award. Any pre-award expenditures are made at the recipient's risk. Approval by the recipient does not impose any obligation on the awarding agency in the absence of appropriations; if any award is not subsequently made; or, if an award is made for a lesser amount than the recipient expected.

3. Authorize award recipients to initiate a one-time no-cost extension of up to 12 months if additional time beyond the established expiration date is required to assure adequate completion of the original scope of work within the funds already made available. A single extension, which shall not exceed 12 months, may be made for this purpose and must be made prior to the originally established expiration date. The award recipient must notify appropriate agency official(s) in writing within 10 days of the extension.

4. Authorize award recipients to carry forward unobligated balances of funds which remain at the end of any funding period, except for the final funding period of the project. Such funds may be used to defray costs of any funding period within the duration of the project.

The Department will report to OMB by January 1, 1989, on its experience using these procedures. Upon revision of OMB Circulars A-21 and A-110, this

Notice will be incorporated into 7 CFR Part 3015.

Dated: September 21, 1988.

John J. Franke,

Assistant Secretary for Administration.

[FR Doc. 88-22233 Filed 9-27-88; 8:45 am]

BILLING CODE 3410-90-M

#### Soil Conservation Service

##### DeRuyter Central School Athletic Field Drainage RC&D Measure NY,

**AGENCY:** Soil Conservation Service, USDA.

**ACTION:** Notice of a Finding of No Significant Impact.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the DeRuyter Central School Athletic Field Drainage RC&D Measure, Cortland County, New York.

**FOR FURTHER INFORMATION CONTACT:** Paul A. Dodd, State Conservationist, Soil Conservation Service, James M. Hanley Federal Building, 100 S. Clinton Street, Room 771, Syracuse, New York 13260, telephone (315) 423-5521.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Paul A. Dodd, State Conservationist, has determined that the preparation of an environmental impact statement is not needed for this project.

The measure concerns a plan to provide for drainage of existing athletic fields at DeRuyter Central School. The lack of a suitable outlet for drainage, in conjunction with a high water table, creates a wet condition of the fields that hampers or precludes the physical education program and various fall and spring sports activities. The use of the athletic fields will be maximized and lower maintenance costs will be realized. The planned works of improvement include improvement of existing open ditches, culvert replacement, construction of a new open ditch, and installation of corrugated plastic drain tubing. All disturbed areas will be prepared and seeded.

The Notice of Finding of No Significant Impact (FONSI) has been

forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single-copy requests at the above address. Basic data developed during the environmental assessment is on file and may be reviewed by contacting Paul A. Dodd.

No administrative action on implementation of the proposal will be taken on or before October 28, 1988.

[This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provision of Executive Order 12372 which requires intergovernmental consultation with State and Local officials.]

Dated: September 19, 1988.

Paul A. Dodd,

State Conservationist.

[FR Doc. 88-22144 Filed 9-27-88; 8:45 am]

BILLING CODE 3410-15-M

#### DEPARTMENT OF COMMERCE

##### Bureau of the Census

##### Census Advisory Committee (CAC) on the American Indian and Alaska Native Populations for the 1990 Census, et al. Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463 as amended by Pub. L. 94-409), we are giving notice of a joint meeting followed by separate and jointly held meetings (described below) of the CAC of the American Indian and Alaska Native Populations for the 1990 Census, the CAC on the Asian and Pacific Islander Populations for the 1990 Census, the CAC on the Black Population for the 1990 Census, and the CAC on the Hispanic Population for the 1990 Census. The joint meeting will convene on October 20 and 21, 1988 at the Ramada Hotel, 6400 Oxon Hill Road, Oxon Hill, Maryland 20745.

Each of these Committees is composed of 12 members appointed by the Secretary of Commerce. They provide an organized and continuing channel of communication between the communities they represent and the Bureau of the Census on the problems and opportunities of the 1990 decennial census.

The Committees will draw on the knowledge and insight of their members to provide advice during the planning of the 1990 Census of Population and Housing on such elements as improving the accuracy of the population count.

suggesting areas of research, recommending subject content and tabulations of particular use to the populations they represent, expanding the dissemination of census results among present and potential users of census data in their communities, and generally improving the usefulness of the census product.

The agenda for the October 20, 1988 combined meeting that will begin at 8:45 a.m. and end at 11:45 a.m. is: (1) introductory remarks by the Director, Bureau of the Census; (2) 1990 decennial update; (3) Gallup report evaluating dress rehearsal census promotion; (4) census promotion office update; and (5) review of recruitment and hiring process for field and processing offices.

The agendas for the four committees in their separate meetings that will begin at 1:15 p.m. and end at 5:00 p.m. on October 20, 1988 are as follows:

#### **The CAC on the American Indian and Alaska Native Populations for the 1990 Census**

(1) Census Bureau responses to recommendations; (2) activity report of the liaison program; (3) review and discussion of plenary session items; (4) meeting data needs for American Indian and Alaska Native programs and services; (5) Alaska enumeration; (6) urban/rural off-reservation outreach plan; and (7) behavioral research observation reports.

#### **The CAC on the Asian and Pacific Islander Populations for the 1990 Census**

(1) Census Bureau responses to recommendations; (2) Asian and Pacific Islander promotion and outreach plan; (3) review and discussion of plenary session items; and (4) update on employment statistics.

#### **The CAC on the Black Population for the 1990 Census**

(1) Census Bureau responses to recommendations; (2) behavioral research project on Black male undercount; (3) review and discussion of plenary session items; (4) presentations on project head start, public housing project, and Black Church Partnership update; (5) special inner-city enumeration procedures; and (6) update legislative and statutory barriers dealing with employment.

#### **The CAC on the Hispanic Population for the 1990 Census**

(1) Census Bureau responses to recommendations; (2) employment statistics for the American Indian and Alaska Native populations, Asian and Pacific Islander populations, and the Black population; (3) Hispanic

promotional/outreach initiatives; (4) Puerto Rico enumeration; and (5) Castor Spanish International media promotion plan.

The agenda for the October 21 combined meeting that will begin at 8:45 a.m. and end at 10:15 a.m. is: (1) cultural awareness and sensitivity training—CAPP Plan; and (2) roles committee members can play in the outreach effort.

The agendas for the four committees in their separate meetings that will begin at 10:30 a.m. and end at 2:30 p.m. are as follows:

#### **The CAC on the American Indian and Alaska Native Populations for the 1990 Census**

(1) election of Chair-elect; (2) review and discussion of plenary session items; and (3) development and discussion of recommendations.

#### **The CAC on the Asian and Pacific Islander Populations for the 1990 Census**

(1) review and discussion of plenary session items; and (2) development and discussion of recommendations.

#### **The CAC on the Black Population for the 1990 Census**

(1) election of Chair-elect; (2) review and discussion of plenary session items; and (3) development and discussion of recommendations.

#### **The CAC on the Hispanic Population for the 1990 Census**

(1) review and discussion of plenary session items; and (2) development and discussion of recommendations.

The agenda for the combined meeting that will begin at 2:45 p.m. and end at 4:00 p.m. is: (1) presentation of recommendations; (2) plans for the next meeting; and (3) public comments.

All meetings are open to the public and a brief period is set aside on October 21, 1988 for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Census Bureau official named below at least 3 days before the meeting.

Persons wishing additional information regarding these meetings or who wish to submit written statements may contact Ms. Diana Harley, Decennial Planning Division, Bureau of the Census, Room 3541, Federal Building 3, Suitland, Maryland. (Mailing address: Washington, DC 20233) Telephone: (301) 763-4275.

Date: September 23, 1988.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 88-22195 Filed 9-27-88; 8:45 am]

BILLING CODE 3510-07-M

## **DEPARTMENT OF COMMERCE**

### **International Trade Administration [A-122-802]**

#### **Preliminary Determination of Sales at Less Than Fair Value: Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor From Canada**

**ACTION:** Notice.

**SUMMARY:** We have preliminarily determined that thermostatically controlled appliance plugs and internal probe thermostats therefor from Canada are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from Canada as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by December 6, 1988.

**EFFECTIVE DATE:** September 28, 1988.

**FOR FURTHER INFORMATION:** Contact Maria Mac Kay or Marianne Stout, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: 202/377-3434 (Mac Kay) or 202/377-5760 (Stout).

#### **SUPPLEMENTARY INFORMATION:**

##### **Preliminary Determination**

We have preliminarily determined that thermostatically controlled appliance plugs and internal probe thermostats therefor from Canada are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated margin of sales at less than fair value is 24.40 percent *ad valorem*, as shown in the "Suspension of Liquidation" section of this notice.

##### **Case History**

Since our Notice of Initiation (53 FR 16746—May 11, 1988) the following events have occurred. On May 31, 1988, the ITC determined there is a reasonable indication that an industry in the United States is materially injured by reason of imports of thermostatically controlled appliance plugs and internal probe thermostats therefor (USITC Publication 2087—June 1988).

On June 10, 1988, we presented a questionnaire to ATCO Controls, Inc. (ATCO), which accounted for virtually all the exports to the United States from

Canada during the period of investigation. We requested that ATCO answer section A by July 1 and sections B and C by July 11, 1988. On July 6, 1988, at respondent's request, we extended the deadline for response to section A of the questionnaire to July 8, 1988. On July 7, 1988, again at respondent's request, we extended the deadline for response to section A until July 11, 1988, and to sections B and C until July 25, 1988. On July 11, we received ATCO's response to section A of the questionnaire. As a result of our analysis of ATCO's response, we issued a deficiency letter on July 22, 1988, and requested a response by August 6, 1988. On July 25, 1988, we received ATCO's response to sections B and C of the questionnaire. On August 5, 1988, at respondent's request, we extended the deadline for response to the deficiency letter until August 10, 1988. On August 10, 1988, we received ATCO's response to our deficiency letter. On August 12 and August 31, 1988, we received supplementary responses to sections B and C of the questionnaire. As a result of our analysis of ATCO's responses to sections B and C, on September 2, 1988, we issued a second deficiency letter and requested a response by September 16, 1988. On September 16, 1988, we received a response to our second deficiency letter.

#### Scope of Investigation

The products covered by this investigation are thermostatically controlled appliance plugs and internal probe thermostats therefor.

For purposes of this investigation, the term thermostatically controlled appliance plug refers to any device designed to connect an electrical outlet (typically a common wall receptacle) with a small cooking appliance of 2,000 watts or less (typically a griddle, deep fryer, frying pan, multicooker, and/or wok) and regulate the flow of electricity and thus the temperature therein; consisting of (1) A probe thermostat encased in a single housing set with a temperature control knob (typically a dial calibrated with various temperature settings), and (2) a cord set.

The term internal probe thermostat refers to any device designed to regulate automatically the flow of electricity, and thus the temperature, in a small heating apparatus of 2,000 watts or less (typically small cooking appliances); consisting of a stainless steel tube (which connects to the heating apparatus) and other components used for thermostatic control.

The products are currently provided for under item numbers 711.7820 and

711.7840 of the *Tariff Schedules of the United States, Annotated* (TSUSA) and are currently classifiable under item numbers 9032.10.00, 9032.20.00, 9032.89.60, 9032.90.60, and 9033.00.00 of the *Harmonized Tariff Schedule* (HTS).

#### Period of Investigation

The period of investigation for thermostatically controlled appliance plugs and internal probe thermostats therefor from Canada extends from November 1, 1987 through April 30, 1988.

#### Fair Value Comparisons

To determine whether sales in the United States of thermostatically controlled appliance plugs and internal probe thermostats therefor from Canada were made at less than fair value, we compared the United States price with the foreign market value for ATCO, using the data provided in the responses.

In its responses, ATCO stated that sales in Canada of the subject merchandise during the period of investigation fell into two categories. Certain models meeting Canadian technical specifications were sold to unrelated Canadian appliance manufacturers for packaging with various small appliances to be sold in the Canadian market. Other models meeting U.S. technical specifications were sold to an unrelated Canadian appliance manufacturer for packaging with various small appliances to be exported to the United States. ATCO contends that the second category of sales should be treated as sales to the United States for purposes of fair-value comparisons.

The Department, however, considers ATCO's sales of the subject merchandise meeting U.S. specifications to the unrelated Canadian customers to be home-market sales because, while ATCO sells the merchandise under investigation to the unrelated Canadian purchaser, this merchandise, as such, is not sold in the United States. Rather, the products that are ultimately exported by the unrelated Canadian purchaser to the United States consist of small appliances, merchandise which is not subject to this investigation.

Therefore, the Department compared ATCO's sales of the subject merchandise to United States purchasers with its home-market sales of the identical merchandise to the unrelated Canadian purchaser. Since we had sales of "identical" merchandise in the home market (*i.e.*, models meeting U.S. technical specifications), we did not use non-identical models (those models

meeting Canadian specifications) in making fair-value comparisons.

#### United States Price

We based United States price on purchase price (PP), in accordance with section 772(b) of the Act, because the merchandise was sold to an unrelated purchaser in the United States prior to its importation. We calculated purchase price based on the f.o.b. or delivered, packed prices to U.S. customers. We made additions to purchase price for duty drawback, *i.e.*, import duties which were rebated, or not collected, by reason of the exportation of the subject merchandise to the United States, in accordance with section 722(d)(1)(B) of the Act.

#### Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act, we calculated foreign market value based on f.o.b. or delivered, packed prices to unrelated purchasers in Canada. In accordance with section 353.15 of our regulations, we made an adjustment to foreign market value for differences in circumstances of sale for technical services. In order to adjust for differences in packing between the two markets, we deducted Canadian packing costs from foreign market value and added U.S. packing costs.

#### Currency Conversion

We made currency conversions in accordance with section 353.56(a)(1) of our regulations. We made all currency conversions using the daily exchange rates certified by the Federal Reserve Bank of New York.

#### Verification

As provided in section 776(b) of the Act, we will verify all information used in reaching the final determination in this investigation.

#### Suspension of Liquidation

In accordance with section 773(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of thermostatically controlled appliance plugs and internal probe thermostats therefor from Canada that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the Federal Register. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States

price, which is 24.40 percent *ad valorem*. This suspension of liquidation will remain in effect until further notice.

#### ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If our final determination is affirmative, then the ITC will determine no later than 120 days after the date of this preliminary determination or 45 days after the final determination, whichever is later, whether these imports are materially injuring, or threaten material injury to, an industry in the United States.

#### Public Comment

In accordance with 19 CFR 353.47, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 2:00 p.m. on October 31, 1988, at the United States Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B-089, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed.

In addition, pre-hearing briefs in at least ten copies, both public and non-public versions, must be submitted to the Assistant Secretary by October 24, 1988. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, at the above address, in at least ten copies, not less than 30 days before the date of the final determination, or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 733(f) of the Act [19 U.S.C. 1673b(f)].

Jan W. Mares,  
Assistant Secretary for Import  
Administration.

September 22, 1988.

[FR Doc. 88-22222 Filed 9-29-88; 8:45 am]  
BILLING CODE 3510-05-M

#### [A-582-801]

#### Preliminary Determination of Sales at Not Less Than Fair Value: Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor from Hong Kong

#### ACTION: Notice.

**SUMMARY:** We have preliminarily determined that thermostatically controlled appliance plugs and internal probe thermostats therefor from Hong Kong are not being, nor are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination. If this investigation proceeds normally, we will make a final determination by December 6, 1988.

**EFFECTIVE DATE:** September 28, 1988.

#### FOR FURTHER INFORMATION:

Contact Alain Letort or Bruce Harsh, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: 202/377-3818 (Letort) or 202/377-0182 (Harsh).

#### SUPPLEMENTARY INFORMATION:

#### Preliminary Determination

We have preliminarily determined that thermostatically controlled appliance plugs and internal probe thermostats therefor from Hong Kong are not being, nor are likely to be, sold in the United States at less than fair value within the meaning of section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). We have found that the weighted-average margin for the company being investigated is *de minimis*.

#### Case History

Since our Notice of Initiation (53 FR 16747—May 11, 1988) the following events have occurred. On May 31, 1988, The ITC determined there is a reasonable indication that an industry in the United States is materially injured by reason of imports of thermostatically

controlled appliance plugs and internal probe thermostats therefor (USITC Publication 2087—June 1988).

On June 11, 1988, we presented a questionnaire to Advance Thermo Control, Ltd. (ATC), which accounted for virtually all the exports to the United States from Hong Kong during the period of investigation. We requested that ATC answer section A by July 1 and sections B and C by July 11, 1988. On June 24, 1988, at respondent's request, we extended the deadline for response to section A until July 8, 1988, and to sections B and C until July 22, 1988. We received response to the questionnaire from ATC on July 8 and July 22, 1988.

On June 16, 1988, stating that there were no home-market sales of the subject merchandise identical to the merchandise sold in the United States, ATC requested that we use home-market sales of "stack" thermostats as a basis for comparison with the "probe" thermostats sold in the United States. Because there are substantial physical and cost differences between the stack thermostats sold in the home market and the probe thermostats sold in the United States and Canada, we determined that stack thermostats may not "reasonably be compared" with probe thermostats and, therefore, are not "similar merchandise" within the meaning of section 771(16) of the Act. Accordingly, we informed respondent on June 30, 1988, that it should use the probe thermostats sold in Canada as a basis for calculating foreign market value.

#### Scope of Investigation

The products covered by this investigation are thermostatically controlled appliance plugs and internal probe thermostats therefor.

For purposes of this investigation, the term thermostatically controlled appliance plug refers to any device designed to connect an electrical outlet (typically a common wall receptacle) with a small cooking appliance of 2,000 watts or less (typically a griddle, deep fryer, frying pan, multicooker, and/or wok) and regulate the flow of electricity and thus the temperature therein; consisting of (1) a probe thermostat encased in a single housing set with a temperature control knob (typically a dial calibrated with various temperature settings), and (2) a cord set.

The term internal probe thermostat refers to any device designed to regulate automatically the flow of electricity, and thus the temperature, in a small heating apparatus of 2,000 watts or less (typically small cooking appliances);

consisting of a stainless steel tube (which connects to the heating apparatus) and other components used for thermostatic control.

The products are currently provided for under item numbers 711.7820 and 711.7840 of the *Tariff Schedules of the United States, Annotated* (TSUSA) and are currently classifiable under item numbers 9032.10.00, 9032.20.00, 9032.89.60, 9032.90.60, and 9033.00.00 of the *Harmonized Tariff Schedule* (HTS).

#### Period of Investigation

Because the original period of investigation from November 1, 1987 through April 30, 1988 would not have captured an adequate number of sales to Canada, we extended the period of investigation in order to encompass the twelve months from May 1, 1987 through April 30, 1988, instead of using the six-month period defined by § 353.38(a) of our regulations.

#### Fair Value Comparisons

To determine whether sales of thermostatically controlled appliance plugs and internal probe thermostats therefor from Hong Kong in the United States were made at less than fair value, we compared the United States price with the foreign market value for ATC, using the data provided in the responses. We disregarded certain sales reported by ATC as being sales to the United States since it was unclear whether these are United States or third-country sales and the number of these sales is insignificant. We used virtually all of the respondent's total sales to Canada for comparisons of such or similar merchandise as provided by section 773(a)(1)(B) of the Act.

#### United States Price

We based United States price on purchase price (PP), in accordance with section 772(b) of the Act, because the merchandise was sold to an unrelated purchaser in the United States prior to its importation. We calculated purchase price based on the f.o.b. or c. & f. packed prices to U.S. customers. We made deductions, where appropriate, for foreign inland freight and ocean or air freight.

ATC also claimed an upward adjustment to purchase price to reflect the fact that it gave a discount on certain U.S. sales where the U.S. customer provided engineering assistance to ATC. We have preliminarily disallowed this adjustment because respondent has not provided us with sufficient information on the relationship between the discount and the engineering assistance provided.

#### Foreign Market Value

In accordance with section 773(a)(1)(B) of the Act, we calculated foreign market value based on f.o.b. or c. & f. packed prices to unrelated purchasers in Canada. We made deductions, where appropriate, for foreign inland freight and ocean or air freight. In accordance with § 353.16 of our regulations, where there was no identical product in the third-country market with which to compare a product in the United States, we made an adjustment to the foreign market value of similar merchandise to account for differences in the physical characteristics of the merchandise. In accordance with § 353.15 of our regulations, we made an adjustment for differences in circumstances of sale for credit expenses. In order to adjust for differences in packing between the two markets, we deducted Canadian packing costs from foreign market value and added U.S. packing costs.

#### Currency Conversion

We made currency conversions in accordance with § 353.56(a)(1) of our regulations. We made all currency conversions using the daily exchange rates certified by the Federal Reserve Bank of New York.

#### Verification

As provided in section 776(b) of the Act, we will verify all information used in reaching the final determination in this investigation.

#### Preliminary Result

The weighted-average dumping margin for all manufacturers, producers, and exporters in Hong Kong of the merchandise subject to this investigation is 0.07 percent *ad valorem*, which is *de minimis*.

#### ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If our final determination is affirmative, then the ITC will determine no later than 120 days after the date of this preliminary determination or 45 days after the final determination,

whichever is later, whether these imports are materially injuring, or threaten material injury to, an industry in the United States.

#### Public Comment

In accordance with 19 CFR 353.47, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on October 31, 1988, at the United States Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed.

In addition, pre-hearing briefs in at least ten copies, both public and non-public versions, must be submitted to the Assistant Secretary by October 24, 1988. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, at the above address, in at least ten copies, not less than 30 days before the date of the final determination, or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 733(f) of the Act [19 U.S.C. 1673b(f)].

Jan W. Mares,  
Assistant Secretary for Import  
Administration.  
September 22, 1988.

[FR Doc. 88-22223 Filed 9-27-88; 8:45 am]  
BILLING CODE 3510-DS-M

[A-588-805]

**Preliminary Determination of Sales at Less Than Fair Value: Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor from Japan**

**ACTION:** Notice.

**SUMMARY:** We have preliminarily determined that thermostatically controlled appliance plugs and internal probe thermostats therefor from Japan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International

Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from Japan as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by December 6, 1988.

**EFFECTIVE DATE:** September 28, 1988.

**FOR FURTHER INFORMATION:** Contact Alain Letort or Jane Siegel, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: 202/377-3818 (Letort) or 202/377-2667 (Siegel).

**SUPPLEMENTAL INFORMATION:**

**Preliminary Determination**

We have preliminarily determined that thermostatically controlled appliance plugs and internal probe thermostats therefor from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated margin of sales at less than fair value is 63.64 percent *ad valorem*, as shown in the "Suspension of Liquidation" section of this notice.

**Case History**

Since our Notice of Initiation (53 FR 16748—May 11, 1988) the following events have occurred. On May 31, 1988, the ITC determined there is a reasonable indication that an industry in the United States is materially injured by reason of imports of thermostatically controlled appliance plugs and internal probe thermostats therefor (USITC Publication 2087—June 1988).

On June 17, 1988, we presented a questionnaire to Toshiba Heating Appliance Co. Ltd. (Toshiba), which accounted for virtually all the exports to the United States from Japan during the period of investigation. We requested that Toshiba answer section A by July 8 and sections B and C by July 18, 1988. On June 27, 1988, Toshiba informed us that it would not be filing a questionnaire response.

**Scope of Investigation**

The products covered by this investigation are thermostatically controlled appliance plugs and internal probe thermostats therefor.

For purposes of this investigation, the term thermostatically controlled appliance plug refers to any device designed to connect an electrical outlet (typically a common wall receptacle)

with a small cooking appliance of 2,000 watts or less (typically a griddle, deep fryer, frying pan, multicooker, and/or wok) and regulate the flow of electricity and thus the temperature therein; consisting of (1) a probe thermostat encased in a single housing set with a temperature control knob (typically a dial calibrated with various temperature settings), and (2) a cord set.

The term internal probe thermostat refers to any device designed to regulate automatically the flow of electricity, and thus the temperature, in a small heating apparatus of 2,000 watts or less (typically small cooking appliances); consisting of a stainless steel tube (which connects to the heating apparatus) and other components used for thermostatic control.

The products are currently provided for under item numbers 711.7820 and 711.7840 of the *Tariff Schedules of the United States, Annotated* (TSUSA) and are currently classifiable under item numbers 9032.10.00, 9032.20.00, 9032.89.60, 9032.90.60, and 9033.00.00 of the *Harmonized Tariff Schedule* (HTS).

**Period of Investigation**

The period of investigation for thermostatically controlled appliance plugs and internal probe thermostats therefor from Japan extends from November 1, 1987 through April 30, 1988.

**Fair Value Comparisons**

To determine whether the sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price, based on the best information available, with the foreign market value, also based on the best information available. We used the best information available, as required by section 776(c) of the Act, because appropriate responses were not submitted.

**United States Price**

Since we did not have specific data as to the quantities and prices of the subject merchandise sold in the United States, we used the price information provided in the petition as the best information available, pursuant to section 776(c) of the Act. We used the packed United States price estimated by petitioner minus deductions for foreign inland freight, ocean freight, U.S. customs duty, brokerage and handling charges, and U.S. inland freight.

**Foreign Market Value**

Since we did not have specific data with respect to the quantities and prices of the subject merchandise sold in Japan or third countries, we used the constructed value of the subject

merchandise provided in the petition as the best information available, pursuant to section 776(c) of the Act. The constructed value calculated in the petition was based on petitioner's manufacturing cost for the fourth quarter of 1987, adjusted to reflect Japanese manufacturing costs, with the statutorily mandated addition of 10 percent of the cost of manufacture for general expenses and 8 percent for profit.

**Verification**

If timely and complete submissions are provided in accordance with section 776(b) of the Act, we will verify this information for use in our final determination in this investigation.

**Suspension of Liquidation**

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of thermostatically controlled appliance plugs and internal probe thermostats therefor from Japan that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the *Federal Register*. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price, which is 63.64 percent *ad valorem*. This suspension of liquidation will remain in effect until further notice.

**ITC Notification**

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If our final determination is affirmative, then the ITC will determine no later than 120 days after the date of this preliminary determination or 45 days after the final determination, whichever is later, whether these imports are materially injuring, or threaten material injury to, an industry in the United States.

**Public Comment**

In accordance with 19 CFR 353.47, if requested, we will hold a public hearing

to afford interested parties an opportunity to comment on this preliminary determination at 2:00 p.m. on October 27, 1988, at the United States Department of Commerce, Room 1851, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed.

In addition, pre-hearing briefs in at least ten copies, both public and non-public versions, must be submitted to the Assistant Secretary by October 20, 1988. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, at the above address, in at least ten copies, not less than 30 days before the date of the final determination, or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 733(f) of the Act [19 U.S.C. 1673b(f)].

Jan W. Mares,  
Assistant Secretary for Import  
Administration.

September 22, 1988.

[FR Doc. 88-22224 Filed 9-27-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-557-801]

#### **Preliminary Determination of Sales at Less Than Fair Value: Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor From Malaysia**

**ACTION:** Notice.

**SUMMARY:** We have preliminarily determined that thermostatically controlled appliance plugs and internal probe thermostats therefor from Malaysia are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from Malaysia as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by December 6, 1988.

**EFFECTIVE DATE:** September 28, 1988.

#### **FOR FURTHER INFORMATION:**

Contact Alain Letort or Jane Siegel, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: 202/377-3818 (Letort) or 202/377-2667 (Siegel).

#### **SUPPLEMENTAL INFORMATION:**

##### **Preliminary Determination**

We have preliminarily determined that thermostatically controlled appliance plugs and internal probe thermostats therefor from Malaysia are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated margin of sales at less than fair value is 28.13 percent *ad valorem*, as shown in the "Suspension of Liquidation" section of this notice.

##### **Case History**

Since our Notice of Initiation (53 FR 16749—May 11, 1988) the following events have occurred. On May 31, 1988, the ITC determined there is a reasonable indication that an industry in the United States is materially injured by reason of imports of thermostatically controlled appliance plugs and internal probe thermostats therefor (USITC Publication 2087—June 1988).

On June 8, 1988, we presented a questionnaire to Power Electronics Sdn. (Power), which accounted for virtually all the exports to the United States from Malaysia during the period of investigation. We requested that Power answer section A by June 29 and sections B and C by July 8, 1988. On July 1, 1988, we received a response to section A of the questionnaire from Power with a request that we extend the deadline for response to section C until July 22, 1988. Power also stated it would not respond to section B as it had no home-market or third-country sales of the subject merchandise during the period of investigation. On July 14, 1988, we extended the deadline for response to section C until July 22, 1988. On July 21, 1988, as a result of our analysis of Power's response, we issued a deficiency letter to section A of the questionnaire, and requested a response by August 5, 1988. We received no response to our deficiency letter or to sections C and D of the questionnaire. Counsel for Power has indicated that no further responses would be forthcoming in this investigation.

#### **Scope of Investigation**

The products covered by this investigation are thermostatically controlled appliance plugs and internal probe thermostats therefor.

For purposes of this investigation, the term thermostatically controlled appliance plug refers to any device designed to connect an electrical outlet (typically a common wall receptacle) with a small cooking appliance of 2,000 watts or less (typically a griddle, deep fryer, frying pan, multicooker, and/or wok) and regulate the flow of electricity and thus the temperature therein; consisting of: (1) A probe thermostat encased in a single housing set with a temperature control knob (typically a dial calibrated with various temperature settings), and (2) a cord set.

The term internal probe thermostat refers to any device designed to regulate automatically the flow of electricity, and thus the temperature, in a small heating apparatus of 2,000 watts or less (typically small cooking appliances); consisting of a stainless steel tube (which connects to the heating apparatus) and other components used for thermostatic control.

The products are currently provided for under item numbers 711.7820 and 711.7840 of the *Tariff Schedules of the United States, Annotated* (TSUSA) and are currently classifiable under item numbers 9032.10.00, 9032.20.00, 9032.89.60, 9032.90.60, and 9033.00.00 of the *Harmonized Tariff Schedule (HTS)*.

#### **Period of Investigation**

The period of investigation for thermostatically controlled appliance plugs and internal probe thermostats therefor from Malaysia extends from November 1, 1987 through April 30, 1988.

#### **Fair Value Comparisons**

To determine whether the sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price, based on the best information available, with the foreign market value, also based on the best information available. We used the best information available, as required by section 776(c) of the Act, because appropriate responses were not submitted.

#### **United States Price**

Since we did not have specific data as to the quantities and prices of the subject merchandise sold in the United States, we used the price information provided in the petition as the best information available, pursuant to section 776(c) of the Act. We used the packed United States price estimated by

petitioner minus deductions for foreign inland freight, ocean freight, brokerage and handling charges, and U.S. inland freight.

#### Foreign Market Value

Since we did not have specific data with respect to the quantities and prices of the subject merchandise sold in Malaysia or third countries, we used the constructed value of the subject merchandise provided in the petition as the best information available, pursuant to section 776(c) of the Act. The constructed value calculated in the petition was based on petitioner's manufacturing cost for the fourth quarter of 1987, adjusted to reflect Malaysian manufacturing costs, with the statutorily mandated addition of 10 percent of the cost of manufacture for general expenses and 8 percent for profit, minus standard sales commission.

#### Verification

If timely and complete submissions are provided in accordance with section 776(b) of the Act, we will verify this information for use in our final determination in this investigation.

#### Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of thermostatically controlled appliance plugs and internal probe thermostats therefor from Malaysia that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the *Federal Register*. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price, which is 28.13 percent *ad valorem*. This suspension of liquidation will remain in effect until further notice.

#### ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If our final determination is affirmative, then the ITC will determine

no later than 120 days after the date of this preliminary determination or 45 days after the final determination, whichever is later, whether these imports are materially injuring, or threaten material injury to, an industry in the United States.

#### Public Comment

In accordance with 19 CFR 353.47, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on October 27, 1988, at the United States Department of Commerce, Room 1851, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed.

In addition, pre-hearing briefs in at least ten copies, both public and non-public versions, must be submitted to the Assistant Secretary by October 20, 1988. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, at the above address, in at least ten copies, not less than 30 days before the date of the final determination, or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 733(f) of the Act [19 U.S.C. 1673b(f)].

Jan W. Mares,  
Assistant Secretary for Import  
Administration.

September 22, 1988.

[FR Doc. 88-22225 Filed 9-27-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-801]

#### Preliminary Determination of Sales at Less Than Fair Value: Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor From Taiwan

**ACTION:** Notice.

**SUMMARY:** We have preliminarily determined that thermostatically controlled appliance plugs and internal probe thermostats therefor from Taiwan are being, or are likely to be, sold in the United States at less than fair value. We

have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from Taiwan as described in the "Suspension and Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by December 6, 1988.

**EFFECTIVE DATE:** September 28, 1988.

#### FOR FURTHER INFORMATION CONTACT:

Contact Alain Letort or Jane Siegel, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: 202/377-3818 (Letort) or 202/377-2667 (Siegel).

#### SUPPLEMENTARY INFORMATION:

##### Preliminary Determination

We have preliminarily determined that thermostatically controlled appliance plugs and internal probe thermostats therefor from Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated margin of sales at less than fair value is 34.47 percent *ad valorem*, as shown in the "Suspension of Liquidation" section of this notice.

##### Case History

Since our Notice of Initiation (53 FR 16750—May 11, 1988) the following events have occurred. On May 31, 1988, the ITC determined there is a reasonable indication that an industry in the United States is materially injured by reason of imports of thermostatically controlled appliance plugs and internal probe thermostats therefor (USITC Publication 2087—June 1988).

On July 7, 1988, we presented questionnaires to Cheng Da Electronics Co. Ltd. (Cheng Da), Etowah Taiwan Enterprises Co. Ltd., Inwardness Enterprise Co. Ltd., and Shin Chin Industrial Co. Ltd., which accounted for virtually all the exports to the United States from Taiwan during the period of investigation. We requested that these companies answer section A by July 28 and sections B and C by August 8, 1988. On August 15, we received a letter from Cheng Da informing us that it did not export the merchandise under investigation to the United States and that it would not respond to our questionnaire. None of the other

companies submitted responses of any kind.

#### Scope of Investigation

The products covered by this investigation are thermostatically controlled appliance plugs and internal probe thermostats therefor.

For purposes of this investigation, the term thermostatically controlled appliance plug refers to any device designed to connect an electrical outlet (typically a common wall receptacle) with a small cooking appliance of 2,000 watts or less (typically a griddle, deep fryer, frying pan, multicooker, and/or wok) and regulate the flow of electricity and thus the temperature therein; consisting of (1) A probe thermostat encased in a single housing set with a temperature control knob (typically a dial calibrated with various temperature settings) and (2) a cord set.

The term internal probe thermostat refers to any device designed to regulate automatically the flow of electricity, and thus the temperature, in a small heating apparatus of 2,000 watts or less (typically small cooking appliances); consisting of a stainless steel tube (which connects to the heating apparatus) and other components used for thermostatic control.

The products are currently provided for under item numbers 711.7820 and 711.7840 of the *Tariff Schedules of the United States, Annotated* (TSUSA) and are currently classifiable under item numbers 9032.10.00, 9032.20.00, 9032.89.60, 9032.90.60, and 9033.00.00 of the *Harmonized Tariff Schedule* (HTS).

#### Period of Investigation

The period of investigation for thermostatically controlled appliance plugs and internal probe thermostats therefor from Taiwan extends from November 1, 1987 through April 30, 1988.

#### Fair Value Comparisons

To determine whether the sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price, based on the best information available, with the foreign market value, also based on the best information available. We used the best information available, as required by section 776(c) of the Act, because appropriate responses were not submitted.

#### United States Price

Since we did not have specific data as to the quantities and prices of the subject merchandise sold in the United States, we used the price information provided in the petition as the best information available, pursuant to

section 776(c) of the Act. We used the packed United States price estimated by petitioner minus deductions for foreign inland freight, ocean freight, brokerage and handling charges, and U.S. inland freight.

#### Foreign Market Value

Since we did not have specific data with respect to the quantities and prices of the subject merchandise sold in Taiwan or third countries, we used the constructed value of the subject merchandise provided in the petition as the best information available, pursuant to section 776(c) of the Act. The constructed value calculated in the petition was based on petitioner's manufacturing cost for the fourth quarter of 1987, adjusted to reflect Taiwanese manufacturing costs, with the statutorily mandated addition of 10 percent of the cost of manufacture for general expenses and 8 percent for profit.

#### Verification

If timely and complete submissions are provided in accordance with section 776(b) of the Act, we will verify this information for use in our final determination in this investigation.

#### Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of thermostatically controlled appliance plugs and internal probe thermostats therefor from Taiwan that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the *Federal Register*. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price, which is 34.47 percent *ad valorem*. This suspension of liquidation will remain in effect until further notice.

#### ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If our final determination is affirmative, then the ITC will determine no later than 120 days after the date of this preliminary determination or 45 days after the final determination, whichever is later, whether these imports are materially injuring, or threaten material injury to, an industry in the United States.

#### Public Comment

In accordance with 19 CFR 353.47, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 9:00 a.m. on October 28, 1988, at the United States Department of Commerce, Room 1851, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed.

In addition, pre-hearing briefs in at least ten copies, both public and non-public versions, must be submitted to the Assistant Secretary by October 21, 1988. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, at the above address, in at least ten copies, not less than 30 days before the date of the final determination or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 733(f) of the Act [19 U.S.C. 1673b(f)].

Jan W. Mares,  
Assistant Secretary for Import  
Administration.

September 22, 1988.

[FR Doc. 88-22226 Filed 9-27-88; 8:45 am]

BILLING CODE 3510-DS-M

[Application 88-00008]

#### Export Trade Certificate of Review

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice of Issuance of an Export Trade Certificate of Review.

**SUMMARY:** The Department of Commerce has issued an export trade certificate of review to U.S.A. Book-Expo, Inc. ("Book-Expo"). This notice

summarizes the conduct for which certification has been granted.

**FOR FURTHER INFORMATION CONTACT:** Thomas H. Stillman, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the Federal Register. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the grounds that the determination is erroneous.

#### Description of Certified Conduct

##### Export Trade

##### Products

Books and book-related materials published in the United States.

##### Related Services (as they relate to the export of Products)

Insurance; warehousing; foreign exchange; financing and financial services; export sale and trade documentation and services; overseas distribution; paying or charging commissions; marketing; advertising; communication and processing of foreign orders; accounting; clerical services; feasibility studies; investment services; legal services; management services; and translation services.

##### Transportation Services (as they relate to the export of Products)

Overseas freight transportation (all modes); inland freight transportation to a U.S. export terminal, port, or gateway; packing and crating; leasing of transportation equipment and facilities; terminal or port storage; wharfage and handling; warehousing; and forwarder services.

##### Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the

Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

##### Export Trade Activities and Methods of Operation

Book-Expo may:

1. Consolidate and distribute the freight of suppliers for Products exported or in the course of being exported;
2. Negotiate, procure, provide, and administer Transportation Services and Related Services for suppliers of Products;
3. Negotiate charges and other terms and enter into contracts which provide for Transportation Services for suppliers of Products, including but not limited to:
  - a. Chartering and space chartering of vessels,
  - b. Entering into of service contracts with ocean common carriers,
  - c. Negotiation and utilization of through intermodal rates with common and contract carriers for inland freight transportation for export shipments to a U.S. export terminal, port, or gateway, and
  - d. Combination and consolidation of container and less-than-containerload shipments into full containerized shipments on behalf of Book-Expo's suppliers;
4. Meet and discuss with suppliers ideas, methods and information solely concerning Export Trade, including
  - a. Trade opportunities,
  - b. Selling strategies,
  - c. Sales,
  - d. Projected demand and business growth,
  - e. Customary terms of sale,
  - f. Legal agreements for conducting business in the Export Markets, and
  - g. U.S. and foreign laws and regulatory programs affecting exports and expenses of exporting to specific points in the Export Markets; and
5. Establish the price of Products exported through Book-Expo, both when Book-Expo takes title and when it facilitates the export sale without taking title.

A copy of the certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: September 23, 1988.

Thomas H. Stillman,  
Director, Office of Export Trading Company Affairs.

[FR Doc. 88-22227 Filed 9-27-88; 8:45 am]

BILLING CODE 3510-DR-M

#### COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

**Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of Bangladesh**

September 23, 1988.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** September 30, 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:** Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

**SUPPLEMENTARY INFORMATION:** The current limit for Categories 347/348 is being increased for special shift, reducing the limit for Categories 647/648 to account for the special shift being applied. As a result, the limit for Categories 347/348, which is currently filled, will re-open.

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 52 FR 752, published on January 12, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 23, 1988.

Commissioner of Customs,  
Department of the Treasury,  
Washington, DC, 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on January 7, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive

concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Bangladesh and exported during the period which began on February 1, 1988 and extends through January 31, 1989.

Effective on September 30, 1988, the directive of January 7, 1988 is amended to adjust the limits for cotton and man-made fiber textile products in the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Bangladesh:

Category	Adjusted 12-mo limit <sup>1</sup>
347/348 .....	1,259,106 dozen
647/648 .....	556,000 dozen

<sup>1</sup> The limits have not been adjusted to account for any imports exported after January 31, 1988.

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. 88-22200 Filed 9-27-88; 8:45 am]

BILLING CODE 3510-DR-M

## DEPARTMENT OF DEFENSE

### Public Information Collection Requirement Submitted to OMB for Review

#### ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**Title, Applicable Form, and Applicable OMB Control Number:** Establishment of an Air Force Junior ROTC Unit; AFROTC Form 59; and No OMB Control Number.

**Type of Request:** New.

**Average Burden Hours/Minutes Per Response:** 30 minutes.

**Frequency of Response:** On Occasion.

**Number of Respondents:** 40.

**Annual Burden Hours:** 20.

**Annual Responses:** 40.

**Needs and Uses:** Secondary school officials use AFROTC Form 59 to apply to host an Air Force Junior ROTC Unit as part of their school's academic program. The Air Force distributes the form only when specifically requested by school officials. AFROTC uses the information collected on the form to identify school that would most likely offer effective programs and have the best chance of being successful.

**Affected Public:** State or Local Governments.

**Respondent's Obligation:** Required to obtain or retain a benefit.

**OMB Desk Officer:** Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

**DOD Clearance Officer:** Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 23, 1988.

[FR Doc. 88-22235 Filed 9-27-88; 8:45 am]

BILLING CODE 3810-01-M

### Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, October 4, 1988; Tuesday, October 11, 1988; Tuesday, October 18, 1988; and Tuesday, October 25, 1988 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b.(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 23, 1988.

[FR Doc. 88-22236 Filed 9-27-88; 8:45 am]

BILLING CODE 3810-01-M

## Department of the Army

### Decision To Convert the Existing Post Cafeteria to a Burger King at the Presidio of San Francisco, CA

August 17, 1988.

Notice is hereby given, pursuant to paragraph 17 to the Stipulation for Dismissal with Prejudice in the case entitled Sierra Club vs. March, filed with the Army's final decision to convert the existing Post Cafeteria (Bldg 211) to a Burger King at the Presidio of San Francisco. The construction contract is expected to be advertised in August 1988 and awarded in September 1988. Construction is expected to begin in October 1988.

#### Location

The proposed conversion is located in the main post area of the Presidio, east of Bank Street, between Dole Drive (Hwy 101) and Lincoln Boulevard.

#### Description

The proposed project consists of remodeling the existing post cafeteria, a 9,300 square foot (SF), one-story structure. The remodeling would primarily occur in the kitchen and serving areas. The seating area and existing central kitchen would undergo minor modifications. A new entry would be constructed on the east side of the

building and two drive up windows installed on the south side of the building. The drive up lanes would approach the building from the southwest, alongside Bldg 210. Simple 12" high, black, relief lettering spelling out "Burger King" would be installed at eye height on the south wall of the building in the same location and letter size as the existing lettering which spells out "Cafeteria". A small decal of the Burger King logo will be used on the glass of the east entry door. No backlit, or large Burger King logo signs would be used. No signs will be placed on the east wall of the building and none of the lettering would be visible to vehicles passing on Doyle Drive (Hwy 101). Additional directory signs, using simple letters and conforming with installation sign system, would be installed at the parking entry drives on Lincoln Blvd. and Halleck St.

This building is neither considered to be historically significant nor does it contribute to the historical significance of the Presidio as a National Historic Landmark or a National Historic District. No new structures would be constructed as part of the proposal nor would any modifications be made to any of the historic structures in the area.

In addition to the changes proposed as part of the restaurant several parking and roadway improvements are planned to take place. A non-historic structure (Bldg 214) would be demolished for an enlargement of the adjacent parking area. The parking area, located between Bldgs 211 and 220 would be enlarged to accommodate approximately 150 cars. A new access drive would be constructed from the parking area to Halleck St. The Lincoln Blvd./Halleck St. intersection would be realigned into a standard three-way intersection and the existing 33-space parking area in the intersection would be removed. These parking spaces would be accommodated in the enlarged parking area adjacent to Bldg 211. The total parking spaces available in the area would remain the same. The Graham St./Lincoln Blvd. intersection would be converted to a four-way stop. New curbing, sidewalks and plantings would be constructed along the north side of Lincoln Blvd. All parking and roadside areas would be landscaped with planting islands and medians. The total amount of planting area would slightly increase over the existing area.

The proposed project and its environmental effects were discussed in an Environmental Assessment (EA) circulated for public and agency review in March 1988 and was reviewed at a hearing of the Golden Gate National Recreation Area (GGNRA) Advisory

Commission on April 28, 1988. A Finding of No Significant Impact has been completed.

John O. Roach II,  
Army Liaison Officer with the Federal Register.

[FR Doc. 88-22180 Filed 9-27-88; 8:45 am]

BILLING CODE 3710-06-M

## DEPARTMENT OF EDUCATION

### Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of Proposed Information Collection Requests.

**SUMMARY:** The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

**DATES:** Interested persons are invited to submit comments on or before October 28, 1988.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** Margaret B. Webster (202) 732-3915.

**SUPPLEMENTARY INFORMATION:** Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection,

grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: September 23, 1988.

Carlos U. Rice,

Director for Office of Information Resources Management.

### Office of Postsecondary Education

**Type of Review:** Extension.

**Title:** Guarantee Agency Monthly Claims and Collection Report.

**Affected Public:** State or local governments; non-profit institutions.

**Frequency:** Monthly.

**Reporting Burden:**

**Responses:** 708

**Burden Hours:** 2,124

**Recordkeeping:**

**Recordkeepers:** 0

**Burden Hours:** 0

**Abstract:** This form is used by a guarantee agency to request payments of reinstatement for default, bankruptcy, death and disability claims paid to lenders, and for costs incurred for supplemental preclaims assistance. In addition, an agency may use this form to make payments for amounts due the Department for collections on defaulted loans on which reinsurance has been paid, and for refunding amounts previously paid for reinsurance claims. The Department uses this information to administer the Department's loan guarantee program operated by guarantee agencies.

### Office of Postsecondary Education

**Type of Review:** New.

**Title:** OPENet Survey.

**Affected Public:** Businesses or other for-profit; non-profit institutions; small businesses or organizations.

**Frequency:** On occasion.

**Reporting Burden:**

**Responses:** 5,000

**Burden Hours:** 2,500

**Recordkeeping:**

**Recordkeepers:** 0

**Burden Hours:** 0

**Abstract:** This survey will poll present and prospective users of the electronic bulletin board to determine how to better provide this electronic document dissemination service. The Department

will use the information to provide guidance and selectivity for growth and enhancements.

#### Office of Postsecondary Education

*Type of Review:* Revision.

*Title:* Student Aid Report.

*Affected Public:* Individuals or households; businesses or other for-profit; non-profit institutions.

*Frequency:* Annually.

*Reporting Burden:*

*Responses:* 12,368,066

*Burden Hours:* 2,021,655

*Recordkeeping:*

*Recordkeepers:* 6,000

*Burden Hours:* 438,387

*Abstract:* The Student Aid Report (SAR) is used to notify applicants of their eligibility to receive Federal financial aid. The form is submitted by eligible students to the participating institution of their choice. The institution submits Part 3 of the SAR to the Department to receive funds for the applicant.

#### Office of Educational Research and Improvement

*Type of Review:* New.

*Title:* National Education Longitudinal Study of 1988.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Reporting Burden:*

*Responses:* 2,600

*Burden Hours:* 5,468

*Recordkeeping:*

*Recordkeepers:* 0

*Burden Hours:* 0

*Abstract:* This longitudinal study will collect data from individual respondents on the educational, vocational and personal development of a subsample of eighth grade students. The Department will use the information to make possible analyses of the patterns of transition from the eighth grade level through high school and postsecondary education and into adulthood and the world of work.

#### Office of Bilingual Education and Minority Languages Affairs

*Type of Review:* Reinstatement.

*Title:* Application for the Bilingual State Educational Agency Program.

*Affected Public:* State or local governments.

*Frequency:* Annually.

*Reporting Burden:*

*Responses:* 59

*Burden Hours:* 2,360

*Recordkeeping:*

*Recordkeepers:* 0

#### Burden Hours: 0

*Abstract:* This form will be used by State educational agencies to apply for funding under the Bilingual State Educational Agency Program. The Department will use the information to make grant awards.

#### Office of Bilingual Education and Minority Languages Affairs

*Type of Review:* Revision.

*Title:* New and Continuing Application for Grants under Bilingual Education Programs.

*Affected Public:* Individual or households; State or local governments; businesses or other for-profit; non-profit institutions.

*Frequency:* Annually.

*Reporting Burden:*

*Responses:* 750

*Burden Hours:* 61,250

*Recordkeeping:*

*Recordkeepers:* 0

*Burden Hours:* 0

*Abstract:* This form will be used by local educational agencies, institutions of higher education, non-profit and for-profit institutions to apply for funding under Title VII of the Elementary and Secondary Education Act, as amended. The Department will use the information to make grant awards.

#### Office of Vocational and Adult Education

*Type of Review:* Revision.

*Title:* State Plan for Adult Education.

*Affected Public:* State or local governments.

*Frequency:* Quadrennially.

*Reporting Burden:*

*Responses:* 54

*Burden Hours:* 11,880

*Recordkeeping:*

*Recordkeepers:* 0

*Burden Hours:* 0

*Abstract:* State educational agencies submit State plans to receive Federal funds for adult education programs. The Department uses the information to determine grant eligibility and to ensure compliance with the Adult Education Act, as amended.

[FR Doc. 88-22210 Filed 9-27-88; 8:45 am]

BILLING CODE 4000-01-M

#### National Advisory Board on International Education Programs; Meeting

**AGENCY:** National Advisory Board on International Education Programs, Education.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the schedule of a forthcoming meeting of the National Advisory Board on International Education Programs (NABIEP). Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is also intended to notify the general public of their opportunity to attend.

**DATES:** October 17-18, 1988.

**Location:** The Quality Inn Capitol Hill Hotel (The Judicial Room), 415 New Jersey Avenue, NW., Washington, DC 20001

**FOR FURTHER INFORMATION CONTACT:** Harry M. Gardner, Executive Director, NABIEP, Postsecondary Relations Staff, 7th and D Streets, SW., Room 4907, Washington, DC 20202-5100.

#### SUPPLEMENTARY INFORMATION:

The National Advisory Board on International Education Programs is established under section 621 of the Higher Education Act of 1965, as amended by the Education Amendments of 1986 (Pub. L. 99-498; 20 U.S.C. 1131). NABIEP's mandate is to advise the Secretary of Education on the conduct of programs under this title.

This meeting of the National Advisory Board on International Education Programs is open to the public.

The agenda includes: (1) Orientation session for newly appointed members; (2) oath of office ceremonies for newly and reappointed members; (3) a brief review of the report to the Secretary on the *Federal Role in International Education* and an update on the activities of the Coalition on Foreign Languages and International Studies; (4) an update on Title VI Programs; (5) briefing by Dr. Michael Czinkota or Dr. Martin Kohn (from the Commerce Department), on interagency cooperation/activities regarding international education issues; (6) a report by Dr. Richard Lambert on the National Language Center at The Johns Hopkins University; and (7) general Board business for Fiscal Year 1989.

Records are kept on the Board's proceedings and are available for public inspection at the Office Postsecondary Relations Staff, from 8 a.m. to 4 p.m., ROB-3, 7th and D Streets, SW., Room 4907, Washington, DC.

Signed in Washington, DC, on September 22, 1988.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 88-22169 Filed 9-27-88; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

## Advisory Committee on Nuclear Facility Safety; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

*Name:* Advisory Committee on Nuclear Facility Safety.

*Date & Time:* Thursday, October 13, 1988 7:30 a.m. to 6:00 p.m.

*Place:* Shilo Motel, 780 Lindsay Blvd., Idaho Falls, Idaho 83401.

*Contact:* Wallace R. Kornack, Executive Director, ACNFS, S-3, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: 202/586-1770.

*Purpose of the Committee:* The Committee was established to provide the Secretary of Energy with advice and recommendations concerning the safety of the Department's production and utilization facilities, as defined in section 11 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014).

*Tentative Agenda:* October 13, 1988

- Subcommittee Reports and Discussion
- Review of Selected Issues
- Noon to 1:00 p.m.—Lunch
- Facility Reviews
- Advanced Test Reactor (ATR)
- Experimental Breeder Reactor II (EBR II)
- Idaho Chemical Processing Plant (ICPP)
- General Committee Business
- 5:30-6:00 p.m. Public Comment

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Wallace Kornack at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

*Transcripts:* The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, IE-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington DC, on September 22, 1988.

J. Robert Franklin

*Deputy Advisory Committee Manage Officer.*

[FR Doc. 88-22219 Filed 9-27-88; 8:45 am]

BILLING CODE 6450-01-M

## Assistant Secretary for International Affairs and Energy Emergencies

## Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreement involves the modification of Annex 5 of the Implementing Agreement between the Government of the United States of America and the Government of Japan Pursuant to Article 11 of Their Agreement for Cooperation concerning Peaceful Uses of Nuclear Energy (Implementing Agreement). Article 2 of the Implementing Agreement provides that Annex 5 of the Implementing Agreement, which concerns Guidelines for the International Transportation of Recovered Plutonium, may be modified by agreement of the parties, without amendment of the Implementing Agreement.

The modification of Annex 5 of the Implementing Agreement, which is the subject of this proposed subsequent arrangement, involves the approval of transportation of plutonium from either France or the United Kingdom to Japan by sea, utilizing dedicated cargo vessels and escorts.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), are submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above may run concurrently.

For the Department of Energy.

Dated: September 23, 1988.

Richard H. Williamson,

*Acting Assistant Secretary for International Affairs, and Energy Emergencies.*

[FR Doc. 88-22221 Filed 9-27-88; 8:45 am]

BILLING CODE 6450-01-M

## Economic Regulatory Administration

[Docket No. PP-76A]

## Record of Decision and Notice of Issuance of Amendment to Presidential Permit PP-76 to Vermont Electric Transmission Company for the Modification and Extension of Existing Electric Transmission Facilities Which Cross the U.S.-Canadian International Border

**AGENCY:** U.S. Department of Energy, Economic Regulatory Administration.

**ACTION:** Publication of the Record of Decision and Notice of the Amendment of Presidential Permit PP-76 issued to the Vermont Electric Transmission Company for the modification and extension of an existing  $\pm 450$  kilovolt direct current international transmission line.

**SUMMARY:** Pursuant to the authority contained in Executive Order No. 10485, as amended by Executive Order No. 12038, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has decided to amend Presidential Permit PP-76 issued to the Vermont Electric Transmission Company (VETCO) on April 5, 1984. This amendment allows modification and extension of existing electric transmission facilities which cross the U.S.-Canadian international border. These facilities are more fully described in the "SUPPLEMENTARY INFORMATION" section of this notice and in the final environmental impact statement (EIS) titled, "New England/Hydro-Quebec  $\pm 450$  kV Transmission Line Interconnection—Phase II", DOE/EIS-0129F. The availability of the final EIS above was announced in the *Federal Register* by ERA on November 13, 1987 (52 FR 43663).

In reaching the decision to amend Presidential Permit PP-76, the DOE considered the environmental impacts associated with granting and not granting the amendment, as well as granting the amendment but requiring construction along alternative transmission line corridors. Under the alternative of not granting the amendment, various alternative power supply options which the applicant might take were considered. None of these alternatives or the alternative

transmission line corridors considered proved to be environmentally preferable to granting the amendment for construction along the proposed route.

As a condition for granting the requested amendment, VETCO will be required to adopt all mitigation measures identified in the final EIS. In addition, any site-specific mitigation requirements identified during construction will be addressed by VETCO and coordinated with appropriate Federal, State, and local agencies.

This amendment is available for public inspection and copying at the address noted at the end of the

**SUPPLEMENTARY INFORMATION** section of this notice.

**FOR FURTHER INFORMATION CONTACT:**

Anthony J. Como, Economic Regulatory Administration (RG-22), U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586-5935.

Carol M. Borgstrom, Director, Office of NEPA Project Assistance (EH-25), U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586-9600.

**SUPPLEMENTARY INFORMATION:** On March 4, 1985, VETCO applied to the ERA to amend Presidential Permit PP-76 issued to VETCO on April 5, 1984. Presidential Permit PP-76 authorized the construction, connection, operation, and maintenance of a  $\pm 450$  kilovolt (kV), direct current (DC) transmission line, which crosses the U.S. international border near Norton, Vermont and extends approximately 60 miles south, terminating at a converter station located in Monroe, New Hampshire. The purpose of the converter station is to convert the DC power to alternating current (AC) power in order to permit integration with the existing New England AC transmission system. These previously permitted facilities (known as Phase I) were placed in operation on October 1, 1986. The reliability condition imposed by the permit limited the operation of the Phase I facilities to a maximum import level of 690 megawatts (MW).

In its amendment application, VETCO sought permission to: (1) Construct a new DC/AC converter station at a site in the towns of Ayer and Groton, Massachusetts located adjacent to the Sandy Pond substation; (2) extend the  $\pm 450$  kV DC transmission line approximately 133 miles south along existing transmission rights-of-way to the site of the new DC/AC converter station; and (3) construct two new 345 kV AC transmission lines in order to

integrate the proposed DC facilities with the existing AC transmission system. One of the AC lines is to be constructed from the new converter station to the existing Millbury No. 3 substation, located in Millbury, Massachusetts; the second 345 kV AC line is to be constructed between the Millbury No. 3 substation and the existing West Medway substation, located in Medway, Massachusetts. The above facilities are referred to as Phase II and are proposed for operation by 1990.

With the installation of the Phase II facilities, and as a result of a new firm energy contract between the New England utilities and Hydro-Quebec (signed on October 14, 1985), VETCO also is requesting that the combination of the Phase I and Phase II facilities be permitted to operate up to a maximum level of 2000 MW of power transfer in the import mode.

**Description of Alternatives**

On November 13, 1987 (52 FR 43663), the ERA issued a final EIS titled, "New England/Hydro-Quebec  $\pm 450$  kV Transmission Line Interconnection—Phase II", DOE/EIS-0129F. Section 2 of this document contains an analysis of the alternatives considered in this permit amendment evaluation, including three alternative corridors for routing the proposed transmission lines. The following alternatives were considered by DOE in reaching its decision to grant the amendment to Presidential Permit PP-76:

1. Grant the amendment to the Presidential permit as requested.

2. Grant the amendment but require the use of alternative transmission corridors and converter station sites. (Three alternative corridors and six converter sites were considered.)

3. Take no action—deny the amendment. Under this alternative the applicant could choose to implement a number of alternative actions:

(a) Make no changes in the facilities or operations of the system. (maintain status quo)

(b) Construct and operate a new conventional central station generating facility. (non-oil-fired generating plant)

(c) Refurbish older generating units.

(d) Construct and operate nonconventional generating facilities. (solar, wind and biomass-powered facilities)

(e) Institute conservation measures and load management.

(f) Decentralize energy sources. (dispersed applications of various small-scale energy technologies, e.g., solar, wind, low-head hydroelectric installations, cogeneration, wood stoves)

(g) Convert oil-fired generating units to the use of coal.

(h) Purchase power from other utilities.

(i) Construct the proposed extension underground.

**Basis for Decision**

Executive Order No. 10485, as amended by Executive Order No. 12038, authorizes the ERA to grant a Presidential permit to construct, connect, operate and maintain an electric transmission line which crosses the U.S. international border if it is determined that issuance of the permit is in the public interest.

ERA has concluded that the Phase II project proposed by VETCO satisfies the criteria presently used to determine consistency with the public interest, namely: 1) The project must not impair the reliability of the electric power supply system in the U.S.; 2) the project must receive the favorable recommendation of the Secretary of State and the Secretary of Defense; and 3) the DOE's decisionmaking process must satisfy the requirements of the National Environmental Policy Act of 1969.

The Administrator of the ERA has determined that the installation and operation of the Phase II facilities (subject to certain operating conditions) would not impair the reliability of the U.S. electric power supply system. Also, the Secretary of State by letter dated September 8, 1988, and the Secretary of Defense by letter dated September 6, 1988, have concurred in the granting of the amendment to Presidential Permit PP-76.

The final EIS analyzed the environmental impacts of issuing or not issuing an amendment to Presidential Permit PP-76 that would result in (or preclude) the construction of certain new electric transmission facilities in New Hampshire and Massachusetts. It concluded that the issuance of the amendment would result in only very small incremental impacts in New England since the new transmission facilities would be constructed almost entirely on existing rights-of-way within established transmission line corridors and adjacent to existing transmission lines.

Construction activities, including clearing and control of vegetation, loss or alteration of wildlife habitat, displacement and/or disturbance of wildlife, disturbance of aquatic resources, release of gaseous pollutants and dust, and disruption of agricultural activities, would be minor and of short duration. Impacts from operation and

maintenance of the transmission facilities, including collision of birds with structures, visual intrusion of an additional line within the transmission corridor, and possible health and safety effects associated with the electromagnetic environment in close proximity to the proposed line, would be minor and incremental in nature.

If the DOE were to deny the amendment, the applicant could implement alternative actions to obtain the necessary generating capacity and reduce the use of oil in the region. However, among the alternatives available to the applicant (Alternatives 3a through 3i above) none were deemed to be viable alternatives to the proposed action.

The "maintain status quo" alternative (Alternative 3a) would not provide the needed generating capacity and would result in greater air quality degradation due to the continued use of fossil fuels for electric generation.

Installing new conventional generating units (Alternative 3b) would be costlier than the proposed action, could not be implemented in the required time period, and could possibly result in greater environmental impacts than the proposed action due to the increased thermal emissions from both coal-fired and nuclear units, and the increased combustion emissions from coal-fired units.

The refurbishment of older generating units (Alternative 3c) could replace the generating capacity provided by the proposed action. However, since most of the generating units which are candidates for refurbishment are oil-fired units, this would exacerbate the region's oil-dependence and possibly contribute to higher electricity costs. Also, the environmental impacts of operating refurbished units likely would be greater than construction of the proposed facilities. Each of the refurbished units would be burning oil with some resulting airborne emissions of sulfur dioxide and ash.

The use of nonconventional generating facilities (Alternative 3d) was not considered to be a viable alternative to the proposed action because the optimum technologies for the exploitation of these energy sources will not be available in time to allow oil backout in the same quantity or time frame as the proposed project.

In evaluating the suitability of conservation and load management (Alternative 3e), the peak demand forecast for the New England region already assumes a reduction in peak demand of 1000 MW by the year 2000 due to conservation and load management. Therefore, the benefits of

the proposed action are in addition to any benefits derived from conservation and load management. Moreover, the proposed project does not preclude further pursuance of these programs.

The application of decentralized energy sources, such as single-residence solar, wind-electric generation, low-head hydro, cogeneration, and use of wood stoves for space heating (Alternative 3f) would be capable of reducing the use of oil for electric generation in the New England region. However, full application of these technologies still would leave the New England region sufficiently dependent upon oil-fired generation for the proposed project to provide the anticipated fuel-cost savings and oil reduction.

Conversion of existing oil-fired generating units to the use of coal (Alternative 3g) is not a viable alternative because of scheduled plant retirements, site limitations, and/or economic considerations on the part of the utilities in New England. Furthermore, this alternative likely would result in greater environmental impacts due to the thermal and airborne emissions caused by the combustion of coal.

The purchase of electric energy from other U.S. utilities (Alternative 3h) was not found to be a suitable alternative because this energy would not be available in sufficient quantities through the year 2000 and the delivered cost of the energy would be almost double that of the energy purchased under the Phase II agreement. Furthermore, this alternative would have similar environmental impacts since additional transmission lines would need to be constructed through New York and Pennsylvania in order to deliver the energy to the New England region.

Construction of the proposed Phase II facilities underground (Alternative 3i) was found to be more costly and to present greater environmental impacts than the proposed action.

The DOE also evaluated three alternative DC corridor routes and six alternative converter station sites. None of these corridors or converter station sites was found to be environmentally preferable to the proposed route or site.

#### Decision

The DOE has determined that the issuance of an amendment to Presidential Permit PP-76 is in the public interest. The DOE has reached this decision after determining that the issuance of the subject amendment was the most environmentally preferred action among those alternatives considered in the final EIS. However,

since the environmental impacts associated with the granting of this amendment were predicated on the implementation of numerous mitigative measures identified in the final EIS, issuance of the subject amendment will be conditioned on VETCO implementing all mitigative measures identified in § 2.1.5 and 4.1.10 of the final EIS.

Copies of this Record of Decision and the amendment to Presidential Permit PP-76 will be made available, upon request, for public inspection and copying at the Department of Energy's Freedom of Information Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday.

Issued in Washington, DC, on September 16, 1988.

Chandler L. van Orman,  
Deputy Administrator, Economic Regulatory  
Administration.

[FR Doc. 88-22220 Filed 9-27-88; 8:45 am]

BILLING CODE 6450-01-M

#### Federal Energy Regulatory Commission

[Docket Nos. ES88-63-000, et al.]

#### South Carolina Public Service Authority, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

#### 1. South Carolina Public Service Authority

[Docket No. ES88-63-000]

September 22, 1988.

Take notice that on September 16, 1988, the South Carolina Public Service Authority (Authority) filed a application seeking an order authorizing the issuance of \$50,000,000 in Tax-exempt commercial paper over a two year period. The Authority asks, in the alternative, an order dismissing the application for lack of jurisdiction.

Comment date: October 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

#### 2. Indianapolis Power & Light Company

[Docket No. ES88-62-000]

September 22, 1988.

Notice is hereby given that on September 16, 1988, Indianapolis Power & Light Company (Applicant) filed an application with the Commission seeking authority under section 204 of the Federal Power Act, to issue, from time to time, up to \$150,000,000 principal

amount of unsecured short-term promissory notes through December 31, 1990, none of which are to have a final maturity date later than December 31, 1990.

*Comment date:* October 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

### 3. Dexzel, Inc.

[Docket No. QF86-613-004]

September 23, 1988.

On August 29, 1988, Dexzel, Inc. (Applicant), of 333 South Hope Street, Suite 2601, Los Angeles, California 90071 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located near Bakersfield, California and will consist of a combustion turbine generator, a heat recovery steam generator and an extraction/condensing steam turbine generator. Thermal energy in the form of steam will be used for thermal enhanced oil recovery operations and for the heating of oil storage tanks. The primary source of energy will be natural gas. Construction of the facility is expected to be completed in the fourth quarter of 1989.

The original application was filed December 1, 1986 and granted on February 27, 1987 (38 FERC ¶ 62,198). The recertification is requested due to a change of ownership and increase in the net electric power production capacity from 27.43 MW to 29.81 MW.

*Comment date:* Thirty days from publication in the *Federal Register*, in accordance with Standard Paragraph E at the end of this notice.

### Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party

must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
Secretary.

[FR Doc. 88-22155 Filed 9-27-88; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. RP88-217-004]

### CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 21, 1988.

Take notice that CNG Transmission Corporation ("CNG"), on September 13, 1988, pursuant to the Commission's August 12, 1988, suspension order in Docket No. RP88-217-000, filed the following revised tariff sheet:

#### Volume No. 1

#### Substitute Original Sheet No. 48

CNG is making this filing to correct a mathematical error inadvertently included on Original Sheet No. 48 which was filed by CNG on August 29, 1988. This correction is made to reflect the recovery of the amount proposed to be billed to CNG by Texas Gas Transmission Corporation in Docket No. RP88-230. The instant filing makes no other changes to CNG's August 29, 1988 compliance filing.

Copies of this filing were served upon CNG's sales customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All motions or protests should be filed on or before Sept. 29, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
Secretary.

[FR Doc. 88-22158 Filed 9-27-88; 8:45 am]  
BILLING CODE 6717-01-M

[Docket Nos. CP86-589-006, RP86-104-007, RP87-30-015]

### Colorado Interstate Gas Co.; Compliance Filing

September 22, 1988.

Take note that on August 29, 1988, Colorado Interstate Gas Company ("CIG") submitted certain tariff sheets in compliance with the Commission's March 28, 1988 and July 28, 1988 orders in these proceedings, which concerns CIG's application for a blanket certificate.

CIG states that the March 28 and July 28 orders required CIG to make a number of modifications to the *pro forma* tariffs submitted by CIG as part of its Settlement Offer in these cases, and that the instant tariff sheets embody all of the required changes.

Copies of this filing are being served on each person on the official service list compiled by the Secretary in these proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before September 30, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
Secretary.

[FR Doc. 88-22159 Filed 9-27-88; 8:45 am]  
BILLING CODE 6717-01-M

[Project No. 8889-001]

### Cordova Electric Cooperative, Inc.; Availability of Environmental Assessment

September 23, 1988.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for exemption from licensing for the proposed Humpback Creek

Hydroelectric Project and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 88-22160 Filed 9-27-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-595-002]

**Diamond Shamrock Offshore Partners Limited Partnership; Application for Amendment of a Blanket Certificate**

September 26, 1988.

Take notice that on September 14, 1988, Diamond Shamrock Offshore Partners Limited Partnership (Diamond Shamrock) of 717 North Harwood Street, Dallas, Texas 75201, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for amendment of its blanket unlimited-term certificate in Docket No. CI87-595-001, which authorizes sales of previously uncommitted gas from Block 700, Matagorda Island Area, Offshore Texas, to authorize the sale of Diamond Shamrock's interest and the interests of joint interest owners in contractually uncommitted gas from any old OCS leases, all as more fully described in the application which is on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 11, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for Diamond Shamrock to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 88-22161 Filed 9-27-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP82-124-009, RP81-53-006, RP81-55-035, and RP85-149-012]

**East Tennessee Natural Gas Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions**

September 22, 1988.

Take notice that on September 14, 1988, East Tennessee Natural Gas Company (East Tennessee) hereby files ten copies of Substitute Forty-Second and Substitute Forty-Third Revised Sheets No. 4 of its FERC Gas Tariff, Original Volume No. 1.

East Tennessee states that in Opinion No. 282, the Commission determined that the Mcf-mile methodology is the appropriate allocation method on the East Tennessee system and ordered East Tennessee to phase in the Mcf-mile methodology completely by 1989. Specifically, the Commission ordered East Tennessee to: (1) Amend its rates, effective September 1, 1987, to reflect a 50-50 weighting of the Mcf-mile and historical zone rate, (2) in 1988, on the anniversary of the first amendment, amend its rates so that 75 percent of the composite zone rate differentials will be based upon the Mcf-mile methodology, and (3) in 1989, on the anniversary date, amend its rates so that 100 percent of the zone rate differentials shall be based on the Mcf-mile methodology. Accordingly, the instant filing is made in compliance with the terms of Opinion 282 in order to reflect, effective September 1, 1988, the 75-25 weighting of the Mcf-mile and historical zone rate differentials pursuant to the Commission's opinion.

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 30, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party

must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-22162 Filed 9-27-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI61-15-000, et al.]

**Enerfin Partners I Limited Partnership (Successor to Farmland Industries, Inc.); Application**

September 26, 1988.

Take notice that on September 9, 1988, Enerfin Partners I Limited Partnership (Enerfin) of 3 Riverway, Suite 1200, Houston, Texas 77056, filed an application pursuant to section 7(c) of the Natural Gas Act and §§ 2.64, 154.92(d) and 157.23 of the Federal Energy Regulatory Commission's (Commission) regulations thereunder for certificates as successor-in-interest to Farmland Industries, Inc. (Farmland). Enerfin also requests that Farmland's rate schedules listed in the Appendix hereto be redesignated as those of Enerfin, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Enerfin states that effective November 25, 1987, Farmland transferred the processing plants and underlying contracts involved in the sales listed in the Appendix hereto to Enerfin.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 11, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Enerfin to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

## APPENDIX

Docket No.	Farmland rate schedule no.	Proposed energy partners rate schedule no.	Purchaser	Location of sale
CI61-15.....	2	1	Arkansas Louisiana Gas Co.....	Quitman Gas Products Plant, Wood County, Tex.
G-19534.....	3	2	Northern Natural Gas Co.....	Mertzon Plant, Irion County, Tex.
CI63-708.....	4	3	.....do.....	Do.
CI66-1106.....	5	4	.....do.....	Do.
CI74-206.....	6	5	MIGC, Inc.....	Lazy "B" Gas Processing Plant, Campbell County, Wyo.

[FR Doc. 88-22163 Filed 9-27-88; 8:45 am]  
BILLING CODE 6717-01-M

[Docket Nos. MT88-25-000, et al.]

**Natural Gas Pipeline Rate Filings;  
Black Marlin Pipeline Co., et al.**

Take notice that the following filings have been made with the Commission:

**1. Black Marlin Pipeline Company**

[Docket No. MT88-25-000]  
September 22, 1988.

Take notice that on September 19, 1988, Black Marlin Pipeline Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1:

Original Sheet No. 220  
Original Sheet No. 221  
Original Sheet No. 222  
Original Sheet No. 223  
1st Revised Sheet No. 100  
2nd Revised Sheet No. 105  
1st Revised Sheet No. 110  
1st Revised Sheet No. 114  
1st Revised Sheet No. 200  
1st Revised Sheet No. 204  
1st Revised Sheet No. 205  
1st Revised Sheet No. 206  
1st Revised Sheet No. 208  
1st Revised Sheet No. 209  
1st Revised Sheet No. 210  
1st Revised Sheet No. 213  
1st Revised Sheet No. 216  
2nd Revised Sheet No. 224-299

Comment date: September 30, 1988, in accordance with standard Paragraph K at the end of this notice.

**2. Mid Louisiana Gas Company**

[Docket No. MT88-4-001]  
September 22, 1988.

Take notice that on September 19, 1988, Mid Louisiana Gas Company tendered the following tariff sheets for filing in the captioned docket pursuant

to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, First Revised Volume No. 1:

Substitute Original Sheet No. 261,  
Superseding Original Sheet No. 261  
Substitute Original Sheet No. 260,  
Superseding Original Sheet No. 260  
Substitute Original Sheet No. 26p,  
Superseding Original Sheet No. 26p  
Substitute Original Sheet No. 26t,  
Superseding Original Sheet No. 26t

Comment date: September 30, 1988, in accordance with Standard Paragraph K at the end of this notice.

**3. Tennessee Gas Pipeline Company**

[Docket No. MT88-34-000]  
September 22, 1988.

Take notice that on September 19, 1988, Tennessee Gas Pipeline Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Second Revised Volume No. 1:

Fourth Revised Sheet No. 246, Superseding  
Third Revised Sheet No. 246  
First Revised Sheet No. 246A, Superseding  
Substitute Original Sheet No. 246A  
Second Revised Sheet No. 251, Superseding  
Second Substitute First Revised Sheet No. 251  
Original Sheet No. 251A

Comment date: September 30, 1988, in accordance with Standard Paragraph K at the end of this notice.

**4. Valley Gas Transmission, Inc.**

[Docket No. MT88-38-000]  
September 22, 1988.

Take notice that on September 19, 1988, Valley Gas Transmission, Inc., tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 2:

Original sheet No. 53  
Original sheet No. 53a  
Original sheet No. 53b

Comment date: September 30, 1988, in accordance with Standard Paragraph K at the end of this notice.

**5. Western Transmission Corporation**

[Docket No. MT88-39-000]  
September 22, 1988.

Take notice that on September 19, 1988, Western Transmission Corporation tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1:

First Revised Sheet No. 17A, Superseding  
Original Sheet No. 17A  
First Revised Sheet No. 17A.1, Superseding  
Original Sheet No. 17A.1  
First Revised Sheet No. 17A.2, Superseding  
Original Sheet No. 17A.2  
First Revised Sheet No. 17A.3, Superseding  
Original Sheet No. 17A.3  
Original Sheet Nos. 17A.4 through 17A.9

Comment date: September 30, 1988, in accordance with Standard Paragraph K at the end of this notice.

**6. Blue Dolphin Pipe Line Company**

[Docket No. MT88-40-000]  
September 22, 1988.

Take notice that on September 19, 1988, Blue Dolphin Pipe Line Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1:

Second Revised Sheet No. 40, Superseding  
First Revised Sheet No. 40  
First Revised Sheet No. 93, Superseding  
Original Sheet No. 93  
First Revised Sheet Nos. 94, Superseding  
Original Sheet No. 94  
Original Sheet No. 94 (a) through 94 (i)

*Comment date:* September 30, 1988, in accordance with Standard Paragraph K at the end of this notice.

#### 7. Natural Gas Pipeline Company of America

[Docket No. MT88-33-000]

September 23, 1988.

Take notice that on September 19, 1988, Natural Gas Pipeline Company of America tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and section 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, First Revised Volume No. 1A:

First Revised Sheet No. 35  
Original Sheet No. 35A  
First Revised Sheet No. 54  
Original Sheet No. 54A  
First Revised Sheet No. 117  
Original Sheet Nos. 117A through 117E

*Comment date:* September 30, 1988, in accordance with Standard Paragraph K at the end of this notice.

#### 8. Transcontinental Gas Pipe Line Corporation

[Docket No. MT88-3-001]

September 23, 1988.

Take notice that on September 16, 1988, Transcontinental Gas Pipe Line Corporation tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Second Revised Volume No. 1:

Original Sheet No. 278

*Comment date:* September 30, 1988, in accordance with Standard Paragraph K at the end of this notice.

#### 9. ANR Pipeline Company

[Docket No. MT88-19-001]

September 23, 1988.

Take notice that on September 19, 1988, ANR Pipeline Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and section 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, First Original Volume No. 1-A:

Second substitute Original Sheet No. 167

*Comment date:* September 30, 1988, in accordance with Standard Paragraph K at the end of this notice.

#### 10. Sea Robin Pipeline Company

[Docket No. MT88-32-000]

September 23, 1988.

Take notice that on September 19, 1988, Sea Robin Pipeline Company tendered the following tariff sheets for filing in the captioned docket pursuant

to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, First Original Volume No. 1:

Original Sheet No. 49-B  
Original Sheet No. 49-C  
Original Sheet No. 49-D  
Original Sheet No. 49-E  
Original Sheet No. 49-F  
Original Sheet No. 49-G  
Original Sheet No. 49-H  
Original Sheet No. 65-A  
Second Revised Sheet No. 86

*Comment date:* September 30, 1988, in accordance with Standard Paragraph K at the end of this notice.

#### Standard Paragraph

K. Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR § 385.214 and 385.211. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-22156 Filed 9-27-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. MT88-26-000, et al.]

#### Natural Gas Pipeline Rate Filings; Transwestern Pipeline Co., et al.

September 22, 1988.

Take notice that the following filings have been made with the Commission:

##### 1. Transwestern Pipeline Company

[Docket No. MT88-26-000]

Take notice that on September 19, 1988, Transwestern Pipeline Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Second Revised Volume No. 1:

2nd Revised Sheet No. 28  
3rd Revised Sheet No. 29  
1st Revised Sheet No. 29A  
1st Revised Sheet No. 30D  
1st Revised Sheet No. 30E  
Original Revised Sheet No. 30F  
Original Revised Sheet No. 30G  
Original Revised Sheet No. 30H  
4th Revised Sheet No. 32  
1st Revised Sheet No. 32A  
1st Revised Sheet No. 34B  
1st Revised Sheet No. 34C

2nd Revised Sheet No. 34D  
Original Revised Sheet No. 34E  
Original Revised Sheet No. 34F  
Original Revised Sheet No. 34G  
Original Revised Sheet No. 34H

*Comment date:* September 30, 1988, in accordance with standard Paragraph K at the end of this notice.

#### Northern Natural Gas Company, Division of Enron Corp.

[Docket No. MT88-24-000]

Take notice that on September 19, 1988, Northern Natural Gas Company, Division of Enron Corp., tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Third Revised Volume No. 1:

Second Revised Sheet No. 52c  
First Revised Sheet No. 52c.1  
Third Revised Sheet No. 52c.2  
Second Revised Sheet No. 52c.2a  
Third Revised Sheet No. 52c.3  
First Revised Sheet No. 52c.4  
Third Revised Sheet No. 52c.5  
Second Revised Sheet No. 52c.6  
First Revised Sheet No. 52c.7  
First Revised Sheet No. 52c.8  
Second Revised Sheet No. 52c.9  
Second Revised Sheet No. 52c.9a  
Second Revised Sheet No. 52c.10  
Second Revised Sheet No. 52f  
First Revised Sheet No. 52f.1  
First Revised Sheet No. 52f.2  
Second Revised Sheet No. 52f.3  
Third Revised Sheet No. 52f.4  
Second Revised Sheet No. 52f.5  
Second Revised Sheet No. 52f.6  
Second Revised Sheet No. 52f.7  
Second Revised Sheet No. 52f.8  
First Revised Sheet No. 52f.9  
First Revised Sheet No. 52f.10  
First Revised Sheet No. 52f.11  
Second Revised Sheet No. 52f.12  
First Revised Sheet No. 52f.12a  
Second Revised Sheet No. 52f.13  
Second Revised Sheet No. 52f.14  
First Revised Sheet No. 52f.14a  
First Revised Sheet No. 52f.15  
First Revised Sheet No. 52f.16  
First Revised Sheet No. 52f.17  
First Revised Sheet No. 52f.18  
Original Sheet No. 52f.19  
Original Sheet No. 52f.20

*Comment date:* September 30, 1988, in accordance with Standard Paragraph K at the end of this notice.

#### 3. Florida Gas Transmission Company

[Docket No. MT88-29-000]

Take notice that on September 19, 1988, Florida Gas Transmission Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1:

2nd Revised Sheet No. 1

Original Sheet No. 57C  
Original Sheet No. 57D  
Original Sheet No. 57E  
Original Sheet No. 57F  
Original Sheet No. 57G  
Original Sheet No. 57H  
Original Sheet No. 57I  
Original Sheet No. 57J  
Original Sheet No. 57K

**COMMENT DATE:** September 30, 1988, in accordance with Standard Paragraph K at the end of this notice.

#### 4. United Gas Pipe Line Company

[Docket No. MT88-30-000]

Take notice that on September 19, 1988, United Gas Pipe Line Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, First Revised Volume No. 1:

Second Revised Sheet No. 48-C11  
First Revised Sheet No. 48-E11  
Original Sheet No. 74-Y16  
Original Sheet No. 74-Y17  
Original Sheet No. 74-Y18  
Original Sheet No. 74-Y19  
Original Sheet No. 74-Y20  
Original Sheet No. 74-Y21  
Original Sheet No. 74-Y22  
Original Sheet No. 74-Y23  
Original Sheet No. 74-Y24  
Original Sheet No. 74-Y25  
Original Sheet No. 74-Y26

**COMMENT DATE:** September 30, 1988, in accordance with Standard Paragraph K at the end of this notice.

#### 5. Northern Border Pipeline Company

[Docket No. MT88-27-000]

Take notice that on September 19, 1988, Northern Border Pipeline Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1:

Second Revised Sheet No. 100  
Fourth Revised Sheet No. 156  
First Revised Sheet Nos. 161 and 162  
Original Sheet Nos. 254 through 262

**COMMENT DATE:** September 30, 1988, in accordance with Standard Paragraph K at the end of this notice.

#### Standard Paragraph

K. Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR §§ 385.214 and 385.211. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person

wishing to become a party must file a motion with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-22157 Filed 9-27-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-253-000]

#### Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

September 22, 1988.

Take notice that on September 15, 1988, Florida Gas Transmission Company (FGT) tendered for filing primary and alternate tariff sheets as part of its FERC Gas Tariff to be effective November 1, 1988.

FGT states that the proposed primary and alternate tariff sheets are being filed to establish procedures to flow through to FGT's firm jurisdictional sales customers the buy-out and buy-down charges allocated to FGT by Southern Natural Gas Company pursuant to its Order No. 500 filings in Docket Nos. RP88-96, RP88-210 and RP88-229.

FGT states that copies of the filing were mailed to all of FGT's jurisdictional purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before September 30, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-22165 Filed 9-27-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket RP88-118-002]

#### Mid Louisiana Gas Company; Compliance Filing

September 22, 1988.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on September 16, 1988, tendered for filing as part of First Revised Volume No. 1 of its FERC

Gas Tariff the following tariff sheets to be effective June 1, 1988:

Fourth Revised Sheet No. 26  
Eighth Revised Sheet No. 26a  
Tenth Revised Sheet No. 26b  
Eighth Revised Sheet No. 26c  
Original Sheet No. 26c.1  
Fourth Revised Sheet No. 26d.3  
Original Sheet No. 26d.3a  
Third Revised Sheet No. 26d.4  
Original Sheet No. 26d.5

Superseding:

Third Revised Sheet No. 26  
Seventh Revised Sheet No. 26a  
Ninth Revised Sheet No. 26b  
Seventh Revised Sheet No. 26c  
Third Revised Sheet No. 26d.3  
Second Revised Sheet No. 26d.4

Mid Louisiana states that the purpose of the filing of the tariff sheets is to bring Mid Louisiana's tariff into compliance with the Commission's Letter Order issued August 12, 1988 in Docket Nos. RP88-118-000 and TQ88-1-15-000 and Order Nos. 483 and 483-A.

Copies of this filing have been mailed to Mid Louisiana's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 30, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-22164 Filed 9-27-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-94-009]

#### Natural Gas Pipeline Company of America; Proposed Changes in FERC Gas Tariff

September 22, 1988.

Take notice that on September 16, 1988, Natural Gas Pipeline Company of America (Natural) submitted revised Tariff Sheet Nos. 165-168 and 168-A to modify its mechanism, currently in effect subject to refund in Docket No.

RP88-94, for the recovery of take-or-pay buyout and buydown and contract reformation costs.

Natural states that under the filing, Natural's cost recovery mechanism at Docket No. RP88-94 would be modified: (i) To extend from December 31, 1988 until December 31, 1989 the last date for Natural to file for the recovery of such costs under agreements entered into during a period ending within nine (9) months after the date of its last filing; and (ii) to permit recovery of such costs incurred with respects to gas contracts in litigation on December 31, 1989.

Natural requests an effective date on November 1, 1988 for the proposed tariff changes.

Natural states that a copy of its filing has been mailed to Natural's jurisdictional customers and interested state regulatory agencies and all parties on the official service list in Docket No. RP88-94.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 29, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,  
Secretary.

[FR Doc. 88-22166 Filed 9-27-88; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. RP88-229-001]

#### Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 23, 1988.

Take notice that on September 15, 1988, Southern Natural Gas Company (Southern) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1:

Substitute Second Revised Sheet No. 4B.1  
Substitute Second Revised Sheet No. 4B.2  
Substitute Second Revised Sheet No. 4B.3

The proposed tariff sheets are to be effective September 1, 1988.

Southern states that the proposed tariff sheets are being submitted in compliance with the Commission's order

of August 31, 1988 in Docket No. RP88-229-000, Southern's proceeding to flow through take-or-pay buy-out and buy-down charges allocated to it by United Gas Pipe Line Company. The aforesaid tariff sheets reflect revised fixed charges based on an adjustment of the purchase deficiency of Chattahoochee Gas Company and the consequent reallocation of costs to all customers; the elimination of pre-filing interest; and a reduction in the amount of costs to be flowed through in conformity with a corresponding reduction in the costs allocated to Southern by United in its August 31, 1988 compliance filing in Docket No. RP88-27-008.

Southern states that copies of the filing were mailed to all of Southern's jurisdictional purchasers and interested state commissions as well as the parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before September 30, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
Secretary.

[FR Doc. 88-22167 Filed 9-27-88; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. RP88-115-005]

#### Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 21, 1988.

Take notice that on September 15, 1988, Texas Gas Transmission Corporation (Texas Gas) tendered for filing Second Substitute Original Sheet No. 46 to its FERC Gas Tariff, Original Volume No. 2-A, proposed to be effective November 1, 1988.

Texas Gas states the revised tariff sheets are filed pursuant to the "Letter Order Pursuant to § 375.307 (b)(1) and (b)(2)" issued by the Commission on August 9, 1988, in Docket No. RP88-115, 88-002, 88-003, and 88-004.

Copies of the revised tariff sheets are being mailed to Texas Gas' jurisdictional customers and interested

State commissions, as well as all persons on the official service list for Docket No. RP88-115.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 29, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,  
Secretary.

[FR Doc. 88-22168 Filed 9-27-88; 8:45 am]  
BILLING CODE 6717-01-M

#### ENVIRONMENTAL PROTECTION AGENCY

[ECAO-R-076; FRL-3454-4]

#### Draft Health Assessment Document for Toluene Diisocyanate

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a workshop to be held by the Environmental Criteria and Assessment Office of EPA's Office of Health and Environmental Assessment to facilitate preparation of an external review draft of a Health Assessment Document for Toluene Diisocyanate. The conference site is the Pickett Suite Hotel, 2515 Meridian Parkway, Research Triangle Park, North Carolina.

DATES: The workshop will be held on October 24 and 25, 1988, from 8:30 a.m. to 5:00 p.m. Members of the public are invited to attend as observers.

FOR FURTHER INFORMATION CONTACT: Mark M. Greenberg, Project Manager for Toluene Diisocyanate, U.S. Environmental Protection Agency, Environmental Criteria and Assessment Office, MD-52, Research Triangle Park, North Carolina 27711, (919) 541-4156 or (FTS-629-4156).

SUPPLEMENTARY INFORMATION: EPA's Office of Air Quality Planning and Standards (OAQPS) requested that the Environmental Criteria and Assessment

Office (ECAO), Office of Health and Environmental Assessment (OHEA), prepare a health assessment document for toluene diisocyanate. The document will be used by EPA in the decision-making process to possibly regulate toluene diisocyanate under the Clean Air Act, 42 U.S.C. 7401 et seq.

ECAO is now assembling a panel of scientifically and technically qualified persons to review the draft document at the workshop. The draft document evaluates all health endpoints with the exception of carcinogenicity and mutagenicity. A separate document and workshop for these latter endpoints will be announced in a future Federal Register notice. Copies of the workshop draft will be made available to the public at the meeting, and observers will have an opportunity to make brief oral statements. The draft document subsequently will be revised and released as an external review draft. Ample opportunity will be provided for public review and submission of written comments upon release of the first external review draft. The public comment period will be announced in a subsequent Federal Register notice.

Dated: September 20, 1988.

Erich Bretthauer,

Acting Assistant Administrator for Research and Development

[FR Doc. 88-22191 Filed 9-27-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3454-9]

**Final National Pollutant Discharge Elimination System (NPDES) General Permits for Oil and Gas Operations on the Outer Continental Shelf of Alaska; Beaufort Sea II and Chukchi Sea**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of final NPDES general permits.

**SUMMARY:** The Regional Administrator of Region 10 is today issuing two final National Pollutant Discharge Elimination System (NPDES) general permits under the Clean Water Act which will authorize discharges from oil and gas stratigraphic and exploration wells on the Alaskan Outer Continental Shelf (OCS) in the Beaufort Sea and Chukchi Sea.

Notice of the draft Beaufort Sea II general permit was published September 30, 1987, at 52 FR 36617. The permit will authorize discharges from exploratory operations in all area offered for lease by the U.S. Department of the Interior's Minerals Management Service (MMS) during Federal Lease Sale 97. A general

permit (49 FR 23734, June 7, 1984) was issued May 30, 1984, for all previous Beaufort Sea lease sales including Federal Lease Sales 71 and 87, all contiguous inshore state lease sales, and joint Federal/States Lease Sale BF. Some of the federal lease blocks offered by not leased in these prior sales may be reoffered in Lease Sale 97. Any such lease blocks will be covered by today's Beaufort Sea II general permit, as it reflects Region 10's most recent Ocean Discharge Criteria Evaluation.

The notice for the Chukchi Sea general permit was published January 29, 1988, at 53 FR 2631. The Chukchi Sea permit will authorize discharges from exploratory operations in all areas offered for lease by the U.S. Department of the Interior's Minerals Management Service (MMS) during Federal Lease Sale 109.

The final Beaufort Sea II and Chukchi Sea general permits are being issued concurrently and notices of the final permits therefore have been combined. The response to comments on both permits have also been combined into a single document.

These final permits establish effluent limitations, standards, prohibitions, and other conditions of discharges from facilities in the these areas. Copies of the permits are printed below. The conditions are based on material contained in the administrative record. A brief description of the basis for the conditions and requirements of the final general permits is given in the final notice and statement of basis published below. Changes made in response to comments received during the public comment period are also briefly discussed in the fact sheet. They are addressed in full in a document entitled "Response to Comments Received on the Beaufort Sea II and Chukchi Sea Permits (NPDES General Permits AKG284100 and AKG288000, respectively)." This document is being sent to all commenters and is available to other parties from the address below upon request.

These permits shall become effective on September 28, 1988. Ordinarily, EPA would issued these permits and allow 30 days before making the final permits effective. However, under 5 U.S.C. 553(d)(1) EPA may make the permits effective immediately because this relieves a restriction on the regulated community by authorizing the discharge of pollutants in compliance with the terms of the permits. Without a permit, discharges of pollutants are prohibited under section 301 of the Clean Water Act. In addition, EPA finds that good cause exists under section 553(d)(3) because a later effective date would

result in significant economic loss due to delays in the commencement of exploratory drilling operations. The 30 period between the date of issuance and the date of effectiveness affords on opportunity for administrative appeal, and this procedure is not available for general permits.

**Requests for Coverage:** Written request for authorization to discharge under the general permits shall be provided, as described in Part I.A. of the final permits, to EPA, Region 10, at least 60 days prior to initiation of discharges. The notification requirement will be waived for those permittees who expect to operate during the first 60 days after the permits are issued. Authorization to discharge requires written notification from EPA that coverage has been granted and that a specific permit number has been assigned to operations at the discharge site. The permit also requires permittees to notify EPA no more than seven (7) days prior to the initiation of discharges at the site, and prior to the initiation of discharges from each new well at a given site.

**Administrative Record:** The administrative record for the final permits is available for public review at EPA, Region 10, 13th floor, at the address listed below.

**ADDRESS:** Requests for coverage and authorization to discharge should be sent to: Environmental Protection Agency, Region 10, Attn: Ocean Programs Section WD-137, 1200 Sixth Avenue, Seattle, WA 98101.

**FOR FURTHER INFORMATION CONTACT:** Anne Dailey, Region 10, at the address listed above or (206) 442-2110. Copies of the final general permits, response to comments, and today's notice may be obtained by writing to the above address or by calling Kris Flint at (206) 442-8155.

**SUPPLEMENTARY INFORMATION:**

**Organization of This Notice**

- I. Introduction
- II. Covered Facilities and Nature of Discharges
- III. Statutory Basis for Permit Conditions
- IV. Specific Permit Conditions
- V. Other Legal Requirements
- VI. References

**I. Introduction**

The Regional Administrator of Region 10 is today issuing two final NPDES general permits for discharges from oil and gas stratigraphic and exploration wells in federal waters offered for lease in OCS Lease Sales and 109.

On September 30, 1987 (52 FR 36617), Region 10 published a notice of the draft permit for the Beaufort Sea II

(Lease Sale 97). The Region published on January 29, 1988 (53 FR 2631) a notice of the draft permit for the Chukchi Sea (Lease Sale 109). Comments and supporting documents on the draft Beaufort Sea II and Chukchi Sea permits were received from 6 and 7 parties, respectively. No public hearings were held since no requests to hold them were received. All of the materials submitted during the public comment periods for both draft permits are included in the administrative record and were considered in determining the conditions for today's final permits.

Region 10 published detailed fact sheets for both the Beaufort Sea II draft permit (52 FR 36617) and the Chukchi Sea draft permit (52 FR 2631). Section I of those fact sheets (General Permits and Requests for Individual NPDES Permits) is being incorporated by reference without change as part of the statement of basis for today's final permits. Section II (Covered Facilities and Nature of Discharges) has been included in Section II of this document. Section III (Statutory Basis for Permit Conditions) is incorporated with minor changes which are discussed in Section III of today's notice. Section IV of today's notice briefly discusses the basis for each of the conditions in the final permits and explains changes made in response to comments and incorporates by reference Section IV of the fact sheets. The material in Sections II, III, and IV of the fact sheets for the draft permits should also be consulted concerning the applicability and scope of the final permit conditions.

Section V of the fact sheets for the draft permits discussed the required finding made with respect to other legal requirements. Section V of today's notice presents the necessary legal findings for the final permits.

A detailed listing of and response to comments on both permits is included in the document entitled "Response to Comments Received on the Beaufort Sea II and Chukchi Sea Permits (NPDES General Permits AKG284100 and AKG288000, Respectively)." The comments and responses have not been printed in today's notice because of their number and length. The document and original comment letters have been included in the administrative record for the permits. The document is being sent to all commenters and is available upon request from EPA Region 10.

## II. Covered Facilities and Nature of Discharges

The general permits issued today authorize the discharge of drilling muds, drill cuttings, and associated operational wastewaters from exploratory

operations in federal waters. Exploratory operations are defined as those operations involving the drilling of wells to determine the nature of potential hydrocarbon reserves. Under the permits, the number of wells from which discharges may occur is limited to a maximum of five at a single site. Exploration facilities covered by these general permits are included in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR Part 435).

These general permits authorize the following discharges: Drilling mud; drill cuttings and washwater; deck drainage; sanitary wastes; domestic wastes; desalination unit wastes; blowout preventer fluid; boiler blowdown; fire control system test water; non-contact cooling water; uncontaminated ballast water; uncontaminated bilge water; excess cement slurry; mud cuttings; cement at the seafloor; and test fluids. Descriptions of discharges are given in Part II.A. of the permits. Drillings muds and cuttings are the major pollutant sources discharged from exploratory drilling operations.

## III. Statutory Basis for Permit Conditions

Section III of the fact sheets for both the Beaufort Sea II and Chukchi Sea draft permits are incorporated by reference, as supplemented and amended below.

### A. Technology-Based Effluent Limitations

1. No changes are necessary.
2. BAT and BCT effluent limitations guidelines and New Source Performance Standards were proposed on August 26, 1985 (50 FR 34592). Promulgation is currently expected to occur in March 1990.

### B. Ocean Discharge Criteria

A separate Final Ocean Discharge Criteria Evaluation has been completed for each of the Beaufort Sea II and Chukchi Sea lease sale areas.

### C. Section 308 of the Clean Water Act

No changes are necessary.

## IV. Specific Permit Conditions

### A. Approach

The determination of appropriate conditions for each discharge was accomplished through:

- (1) Consideration of technology-based effluent limitations to control conventional pollutants under BCT.
- (2) Consideration of technology-based effluent limitations to control toxic and nonconventional pollutants under BAT; and

(3) Evaluation of the Ocean Discharge Criteria for discharges in the Offshore Subcategory, assuming conditions in (1) and (2), above, were in place.

Discussions of the specific effluent limitations and monitoring requirements derived from (1) through (3) appear below in sections B. through D., respectively. For convenience, these conditions and the regulatory basis for each are cross-referenced by discharge in the following table:

Discharge and Permit Condition	Statutory Basis
Drilling muds and cuttings:	
Authorized muds and additives only.	BAT
No oil-based muds	BCT
No diesel	BAT
10% max. oil content of cuttings.	BCT
No free oil	BCT
3 mg/kg cadmium and 1 mg/kg mercury in barite.	BAT
Monitor metals, oil content and toxicity.	Section 308
Monitor volume discharged.	Section 308
Chemical inventory	Section 308
Depth and area related discharge rate limits.	Section 403(c)
Deck drainage:	
No free oil	BCT
Monitor discharge rate	Section 308
Sanitary wastes:	
No floating solids	BCT
Chlorine 1.0 mg/l (facilities with more than 10 people).	BCT
Monitor discharge rate	Section 308
Domestic wastes:	
No floating solids	BCT
Monitor discharge rate	Section 308
Miscellaneous discharges (Discharges 006 to 014 in the permit):	
No free oil	BCT
Monitor discharge rate	Section 308
Inventory of added substances.	Section 308
Test fluids:	
pH 6.5-8.5	BCT & Marine Water Quality Criteria
No free oil	BCT
Oil & grease limits: 48 mg/l monthly average; 72 mg/l daily maximum.	BCT
Monitor frequency and volume of discharge.	Section 308
All discharges:	
No halogenated phenol compounds, diesel oil, sodium chromate, sodium dichromate, or trisodium nitrilotriacetic acid.	BAT
No floating solids	BCT

### B. BCT Requirements

#### 1. Oil and Grease in Test Fluids

Limited volumes of formation waters which are encountered during testing of the well are authorized for discharge as test fluids. In response to a comment from API, the Region has deleted the

required use of an oil-water separator since this requirement may be redundant with the oil and grease limitation (see Comment 33). However, the Region expects that operators will need to use an oil-water separator to ensure compliance with the daily maximum (72 mg/l) and the monthly average (48 mg/l) limitations on oil and grease in test fluids.

## 2. Free Oil and Oil-Based Muds

No discharge of free oil is permitted from discharges authorized by these permits. Region 10 has determined that the BPT effluent limitations guideline of no discharge of free oil from the discharge of deck drainage, drilling muds, drill cuttings, and well treatment fluids should apply to other discharges, including uncontaminated bilge water, uncontaminated ballast water, test fluids, desalination unit wastes, boiler blowdown, non-contact cooling water, excess cement slurry, blowout preventer fluid, fire control system test water, mud, cuttings and cement at the seafloor. Thus, the no free oil limitation is Region 10's best professional judgment determination of BPT controls for these discharges. They have been subject to a no free oil limitation in previous permits issued by Region 10, and past practices have not resulted in violations of this limitation.

Under the final permits, the discharge of oil-based drilling muds (with oil as the continuous phase and water as the dispersed phase) is prohibited since oil-based muds would violate the BCT effluent limitation of no discharge of free oil.

No technology performance data available to Region 10 indicate that more stringent standards are appropriate at this time. Region 10 has, therefore, set BCT effluent limitations equal to the BPT level of control. As such, these limitations impose no incremental costs.

Compliance with the free oil limitation for deck drainage and miscellaneous discharges will be by visual observation for a sheen on the receiving water, except for deck drainage and bilge water under the conditions described below. This requirement is similar to that in the Region's BPT permits and will not result in any additional costs to the industry. The requirement was also a condition of Region 10's BAT/BCT permits for the Bering and Beaufort seas (49 FR 23734, June 7, 1984), Norton Sound (50 FR 23578, June 4, 1985), and Cook Inlet (51 FR 35460, October 3, 1986). Region 10 has determined that the required use of an oil-water separator with the no free oil limitation on deck drainage may be redundant (see

Response to Comment 30). Therefore, the requirement that "(t)he contaminated deck drainage shall be processed through an oil-water separator prior to discharge" (Part II.C.) has been deleted from the final permits. It is expected, however, that operators will need to use an oil-water separator to ensure compliance with the no free oil limitation.

Compliance with the free oil limitation for muds and cuttings will be monitored by year-round use of the static sheen test (see Response to Comment 23). The static sheen test will also be required for the monitoring of deck drainage and bilge water during unstable or broken ice and stable ice conditions. This requirement for muds and cuttings was a condition of the Region's BPT permits and thus imposes no additional cost to industry. These requirements and those on deck drainage and bilge water were also conditions of the Region's BAT/BCT permits. Use of the static sheen test will prevent a violation of the free oil limitation as a result of those discharges most likely to be contaminated with oil. This would not be possible with an after-the-fact visual observation of a sheen on the receiving water.

## 3. Oil Content of Cuttings

The final permits restrict the discharge of oil-contaminated cuttings by prohibiting the discharge of free oil (see Part IV.B.2. above) and by limiting the maximum mineral oil content of cuttings. The limitation of 10 percent by weight on oil content is based on the efficiency of conventional cuttings washers in removing oil from drill cuttings. Region 10 expects that if mineral oil-based drilling muds or water-based muds with high concentrations of mineral oil additives are used, drill cuttings would, at a minimum, have to be washed by cuttings washers to meet the free oil limitation. The limitation on the maximum oil content of drill cuttings has been imposed as an additional means of effectively controlling the discharge of oil from cuttings associated with these muds.

Region 10 expects that cuttings washers will routinely be required only for drilling operations which use mineral oil-based drilling muds or water-based muds with high concentrations of mineral oil additives, and not for all drilling operations. Since such muds are rarely used by exploratory drilling operations, very few, if any, Alaskan exploratory facilities will require the installation of cuttings washers. Any facility requiring a cuttings washer to meet the 10 percent oil limitation would already require a cuttings washer to

meet the BPT effluent limitation of no free oil. Hence, there is no incremental cost involved beyond the cost of monitoring compliance, and the limitation passes the BCT cost test.

Region 10 has taken an approach to controlling the oil content of cuttings which differs from that taken by Regions 4 and 6 in their Gulf of Mexico permit (51 FR 284897, July 9, 1986). Regions 4 and 6 have imposed a visible sheen test to determine compliance of cuttings with the no free oil limit, and also have prohibited the discharge of cuttings from oil-based mud systems. Regions 4 and 6 adopted the prohibition on the discharge of cuttings from oil-based mud systems because some of these cuttings contain free oil and the visible sheen test cannot be conducted until after a discharge to the receiving water has occurred. Region 10 has chosen to require the static sheen test rather than the visible sheen test. Unlike the visible sheen test, the static sheen test is conducted prior to discharge and cuttings which do not pass the test cannot be discharged. The static sheen test is more appropriate than the visible sheen test for the harsh weather and extended periods of darkness common offshore in Alaska. Although the 10 percent oil limitation in these permits and others issued by Region 10 is less stringent, by itself, than the prohibition by Regions 4 and 6 on discharges of cuttings from oil-based mud systems, any cuttings which pass the 10 percent limitation must also pass the static sheen test prior to discharge.

EPA is currently studying newly developed technologies for removing oil from drill cuttings from oil-based and invert emulsion drilling muds discharged into the Gulf of Mexico. These new technologies, if successful, may be able to achieve a limit lower than 10 percent oil and grease and not result in the discharge of free oil. These permits do not contain terms based on application of these technologies. However, EPA would consider modifying these permits at an appropriate time after evaluating data and information as it becomes available.

The permits require an GC analysis of drill cuttings for oil content daily when oil-based drilling fluids or oil additives are used. Analysis is also required daily when drilling fluids could be contaminated with hydrocarbons from the formation. In addition, analysis is required immediately on any sample that has failed the daily static sheen test if a discharge has occurred.

## 4. pH

The pH of discharged test fluids (which may have a substantially

different pH from that of the ambient receiving water) has been limited to a range of 6.5–8.5 at the point of discharge (see Response to Comment 32). In Region 10's best professional judgment, this limitation appropriately reflects a BPT level of control. No technology performance data available to Region 10 indicate that a more stringent standard is appropriate at this time. Therefore, Region 10 is setting a BCT effluent limitation for the pH of test fluids equal to that of BPT. This limitation will ensure that pH changes greater than 0.2 pH unit will not occur beyond the edge of the 100 meter mixing zone (40 CFR 125.121(c)). This requirement has been and is routinely complied with by operations under previous BPT permits and thus, reflects no cost incremental to BPT.

#### 5. Floating Solids

The BCT prohibition on floating solids is equal to the BPT level of control for sanitary wastes. As with the free oil limitations for other waste streams, Region 10 has determined that the BPT effluent limitations guidelines of no discharge of floating solids from the discharge of sanitary wastes should apply to all other discharges as well. Thus, the no floating solids limitation is Region 10's best professional judgment determination of BPT limitations for these discharges. They have been subject to this limitation in previous permits issued by Region 10, and past practices have not resulted in violations of this limitation. No technology performance data available to Region 10 indicate that a more stringent standard is appropriate at this time. Therefore, Region 10 has determined that the BCT effluent limitation on floating solids from these discharges is equal to the BPT level of control. As such, the extension of this limitation to all discharges will involve no incremental cost.

#### 6. Chlorine

The requirement of maintaining residual chlorine levels as close as possible to, but no less than 1 mg/l in sanitary waste discharges for facilities manned by ten (10) or more people is a BCT determination equal to BPT. There is therefore no incremental cost to the industry.

#### C. BAT Requirements

##### 1. Diesel Oil

The discharge of drilling muds and associated cuttings which have been contaminated by diesel oil is prohibited. Diesel oil, which is sometimes added to a water-based mud system, is a complex

mixture of petroleum hydrocarbons, known to be highly toxic to marine organisms and to contain numerous toxic and nonconventional pollutants. This limitation controls both the toxic and the nonconventional pollutants present in diesel oil, but Region 10's primary concern is to control the toxic pollutants. The pollutant "diesel oil" is being used as an "indicator" of the listed toxic pollutants present in diesel oil which are controlled through compliance with the effluent limitation (i.e., no discharge). The technology basis for this limitation is product substitution of less toxic mineral oil for diesel oil.

*Diesel is an Indicator of Toxic Pollutants:* Region 10 selected "diesel" as an "indicator" pollutant pursuant to 40 CFR 125.3(h)(1) as an alternative to establishing limitations on each of the specific toxic and nonconventional pollutants present in the diesel-contaminated waste streams (see response to Comment 14). Available data clearly establish that diesel oils as a class contain significantly higher levels of toxic pollutants than do mineral oils as a class. The Region has determined that eliminating the discharge of drilling fluids contaminated with diesel oil will reduce the levels of toxic pollutants present in discharged fluids. Results of the EPA/API Diesel Pill Monitoring Program (DPMP) and other studies show that when the amount of diesel oil is reduced in drilling muds, the concentrations of toxic pollutants and the overall toxicity of the fluid generally is reduced. BAT-level control of toxic pollutants (i.e., reduction in concentrations through substitution of mineral oil for diesel oil) will be achieved by regulating diesel oil as an indicator pollutant. A permit limitation that prohibits the discharge of diesel oil is economically and technologically feasible.

*Mineral Oil as a Substitute for Diesel Oil:* API and other parties contended, as they have in prior permit proceedings, that survey data on the relative success rates of diesel oil and mineral oil pills demonstrate that mineral oil is not an acceptable substitute for diesel oil. Region 10 has determined that mineral oil-based fluids have a demonstrated product development and performance as effective substitutes for diesel oil-based fluids. This determination is based on the following: (1) The availability and successful formulation and use of chemical additives that are compatible with mineral oils, (2) the commercial availability of mineral oil spotting fluids, (3) the demonstrated performance of mineral oil spotting fluids as documented by published case

histories, (4) the ability to store mineral oil on site or obtain it quickly in critical stuck pipe situations, and (5) a consideration of the available data regarding the performance of diesel oil and mineral oil pills. EPA presented information and conclusions supporting this determination in the proposed and final modification to the Bering and Beaufort Seas general permits (51 FR 29604–06, August 19, 1986 and 52 FR 36463–36464, September 29, 1987, respectively). The Region has also addressed this issue in the notices for the draft Beaufort Sea II (52 FR 36621–36622, September 30, 1987) and Chukchi Sea (53 FR 2635–2636, January 29, 1988) permits and in the response to comments document (see responses to Comments 16[a] and 16[b]). This information is incorporated herein by reference.

*Cost Considerations:* The prohibition on the discharge of diesel oil is a technology-based BAT limitation based on product substitution. Low toxicity mineral oils are available as product substitutes for diesel oil, and do not impose unreasonable additional costs on industry. Region 10 has quantified the increased cost associated with the use of a mineral oil pill in place of a diesel pill by assuming that mineral oil would be stored in a rented tank on the rig. In the response to Comment 15(a), Region 10 addressed additional costs that API contends are attributable to sidetracking and redrilling wells spotted with mineral oil pills. Region 10 does not agree that these additional costs would necessarily be incurred. Region 10 has concluded that the cost associated with the prohibition on the discharge of diesel oil clearly is economically achievable for Alaskan offshore operations.

*Environmental Concerns:* While an environmental assessment under section 403(c) was not the basis for the limitation, Region 10 has considered the general environmental effects of diesel-contaminated muds in developing the proposed diesel oil prohibition. Diesel oil is highly toxic to marine organisms in the water column, and also poses a potential longer term threat to bottom-dwelling (benthic) organisms. Certain diesel oils, such as the frequently used No. 2 diesel fuel oil, "are among the most toxic petroleum products to marine organisms" (National Research Council 1983, p. 105). Laboratory studies have demonstrated the higher toxicity of diesel oils relative to mineral oils (e.g., see U.S. EPA 1985, p. 4–34). Since diesel oil is known to be highly toxic, substitution of low toxicity mineral oils for diesel in drilling fluids will reduce

the potential hazard to marine organisms from these discharges.

**Alternatives to Diesel Oil Prohibition (Removal of Diesel Pill and Oil Limitation):** One suggested alternative to the diesel oil prohibition would be to allow the discharge of drilling muds in which a diesel pill had been used, provided that the pill is removed and the residual drilling mud meets specified limitations on oil content. Such an approach depends on accomplishing effective pill removal such that the drilling mud can meet all other effluent limitations. The oil content limitation would be set at a level which not only reflects BAT control of toxic pollutants in diesel oil but also provides adequate safeguards for the marine environment.

The EPA/API DPMP was conducted to address the effectiveness of pill recovery in removing diesel oil from drilling muds. Final results of the program indicate that the toxicity of drilling muds increases with their diesel oil content, but that pill recovery techniques currently in use are not capable of consistently reducing diesel oil concentrations to non-toxic levels. (The reader is referred to the Responses to Comments 16(b), 17, and 20 for the details of this analysis.) Hence, diesel pill and buffer recovery does not constitute a viable alternative to the diesel prohibition.

In contrast, product substitution of mineral oil for highly toxic diesel oil is technologically feasible and economically achievable. Documentation in the administrative record fully supports Region 10's conclusion that acceptable alternatives exist to the use of diesel oil in oil-based spotting fluids. Hence, Region 10 has determined that the prohibition on the discharge of drilling fluids and cuttings contaminated with diesel oil is appropriate for the BAT level of control.

Region 10 has considered using "free oil," "oil-based drilling fluids," and "oil content of cuttings" as indicators of toxic pollutants. While the Region has determined that such effluent limitations would control the discharge of toxic pollutants in diesel oils, it is unnecessary to designate these pollutants as indicators since the same levels of control have been established under BAT, which are equal to levels of control required by the BPT effluent limitations guidelines. Therefore, redundant limitations under BAT are not proposed for these pollutant parameters.

**Conclusion:** Region 10 has evaluated alternative control technologies and alternative control parameters to reduce the toxic pollutants in discharged drilling muds. Based upon this evaluation, the Region has determined

that the prohibition on the discharge of diesel contaminated drilling muds and cuttings is reasonable and appropriate since adequate diesel pill recovery is unproven and substitution of a mineral oil pill for a diesel pill is technologically feasible and economically achievable.

## 2. Mercury and Cadmium in Barite

The permits contain limitations of 1 mg/kg mercury and 3 mg/kg cadmium in barite, a major constituent of drilling muds. These restrictions are designed to limit the discharge of mercury, cadmium, and other potentially toxic metals which can occur as contaminants in some sources of barite. An identical limitation is included in the general permits for the Bering and Beaufort seas, Norton Sound, and Cook Inlet.

As discussed in the fact sheets for the above permits, the technology basis for the limitation under BAT is product substitution; i.e., Alaskan operators can substitute "clean" barite, which meets the above limitations, for contaminated barite which does not. Numerous offshore exploratory wells have been drilled in Alaska over the past years, and chemical analyses have shown that the barite used has not exceeded the limitations. Given that "clean" barite is available and that operators in the above referenced general permit areas have been complying with an identical limitation, Region 10 believes that this limitation is both technologically feasible and economically achievable.

Region 10 does not believe that the mercury and cadmium limitations for barite will change the available supply of "clean" barite. In determining the availability of "clean" barite under this provision, Region 10 considered all reasonable relevant factors, including the cost of obtaining barite which meets the limitations. (See Comment 24.) The draft permits contained a provision (Part II B.1.g.) which would allow the Director the discretion to grant a waiver from the limitations on a case-by-case basis if the permittee (1) satisfactorily demonstrates that barite which meets the limitation is not available, and (2) provides results of analyses of the substitute barite. This provision could be considered an open-ended limit for mercury and cadmium in barite. To address this potential concern, the Region has established maximum levels of 3 mg/kg mercury and 5 mg/kg cadmium in barite that will be acceptable for discharge under this provision (see Part II B.1.g.).

## 3. Generic muds, Authorized Additives, and Mineral Oil Pills

It is Region 10's best professional judgment that the toxic and nonconventional pollutants present in

Alaskan drilling mud systems can most efficiently be controlled during the drilling fluid formulation process. Therefore, the Region has determined to regulate the pollutants in drilling mud by establishing a toxicity limitation which is defined as the 96-hour LC50 of 30,000 ppm on the suspended particulate phase (using *Mysidopsis bahia*). This limitation applies to the authorization of all drilling muds and additives. The basis for establishing the toxicity limitation was the toxicity study conducted on the eight generic muds at EPA's Gulf Breeze Laboratory which demonstrated that the most toxic generic mud was Mud No. 1 [see the response to Comment 26].

The final permits limit the discharge of toxic substances in drilling fluids by allowing the discharge of generic drilling muds (listed in Table 1 of the final permits) and additives for which acceptable bioassay or chemical data are available (listed in Table 2) as required in Part II B.1.d. of the permits. Tables 1 and 2 have been developed using the 30,000 ppm toxicity criterion and are similar in content to Tables 1 and 2 in the Cook Inlet/Gulf of Alaska general permit. The generic muds and authorized additives listed in Tables 1 and 2 do not require special authorization prior to discharge unless the desired concentration exceeds the concentration specified in the tables. (For background on the development and application of Tables 1 and 2, please refer to Section IV.C.3. of the fact sheets for the draft permits.)

The discharge of residual amounts of mineral oil pills (listed in Table 3) is authorized in Part II B.1.e. of the final permits, provided that the mineral oil pill and at least a 50 barrel buffer of drilling fluid on either side of the pill are removed from the circulating mud system and not discharged (see the responses to Comments 26 and 30). Residual amounts of mineral oil pill products listed in Table 3 may be discharged by operators without prior authorization from Region 10. The residual mineral oil content shall not exceed 2 percent v/v. In the event that more than one pill is applied to a single well, the previous pill and buffer shall be removed prior to application of a subsequent pill. The discharged mud must comply with all other permit requirements including no discharge of free oil. The above requirements have been imposed on Alaskan exploratory operations since 1985 under Region 10's existing permits, and the new permit requirements serve to formally incorporate these restrictions in the permit.

Table 3 separately lists spotting compounds (List A) and mineral oil products (List B) which are authorized. One product from each list may be combined to formulate a complete mineral oil pill. These lists are alphabetical and were compiled by Region 10 based on the products requested and authorized under previous general permits for the Alaskan OCS. (Mention of any trade names or commercial products does not constitute an endorsement or recommendation by the U.S. Environmental Protection Agency.) Due to the toxicity of Mud No. 1, the addition of mineral oil pills to Mud No. 1 is not covered by this provision and requires authorization under Part II.B.1.f. Any product not listed on Table 3 must be authorized by Region 10 prior to discharge under Part II.B.1.f., and discharges must comply with the provisions of Part II.B.1.e.

Permittees are required to certify in advance of discharge that only generic drilling muds and authorized additives will be discharged. However, the discharge of drilling muds containing any additive or component (including mineral oil pill packages) not allowed under Parts II.B.1.d. or e. shall require authorization by Region 10 prior to discharge as set forth in Part II.-B.1.f. of the final permits. In the authorization process, Region 10 will evaluate whether the requested additives or components (including mineral oil pills) may cause the drilling mud to violate the 96-hour LC50 toxicity limitation of 30,000 ppm (for *Mysidopsis bahia*) on the suspended particulate phase. In evaluating a request for authorization, toxicity is assumed to be additive for muds and additives, including mineral oil pills. (Any drilling muds authorized shall have a cumulative toxicity which is less toxic than the 30,000 ppm toxicity criterion; toxicity is inversely related to the LC50. Therefore, no drilling fluids or additives authorized may have an LC50 lower than the specified minimum LC50.)

In some cases, interim authorizations for the discharge of muds and additives may be granted under Part II.B.1.f. if preliminary bioassay data are submitted and appear acceptable in light of the foregoing criteria, but the Region determines that additional bioassay testing or other analyses are required. For example, such testing may be required to examine possible cumulative or synergistic effects if the additive is to be used in combination with a number of other additives or if a mud not listed on Table 1 of the permits is to be used, with or without additives. Because the additional testing may take a

considerable amount of time to conduct, interim authorization to discharge may be granted, if a reasonable amount of data are available, so that operations are not impaired for an unreasonable amount of time. The information obtained under the requirements of an interim authorization will be used in further evaluations of the subject additives of muds.

If a permittee wants to use a drilling mud, additive, or mineral oil pill not listed in Tables 1, 2, or 3, which has been denied authorization under Part II.B.1.f., the permittee has the option of applying for an individual permit or modification of the general permit. Processing a request for an individual permit or modification of the general permit requires that public notice requirements under 40 CFR 124.10-124.12 are addressed. This can be a time-consuming process, so permittees are advised to use the alternatives available within the context of the permit.

This approach to limiting toxicity is expected to control the discharge of listed toxic as well as nonconventional pollutants in drilling muds. Region 10 has determined that it is technically and economically infeasible to directly limit the toxic pollutants in drilling muds (see response to Comment 14[b]). Therefore, the Region has determined that the toxicity limitations constitute a reasonable approach which is expected to control not only listed toxic pollutants, but nonconventional pollutants as well. This procedure also addresses the concerns of a commenter regarding the perceived lack of public notice regarding the authorization process.

Under section 308 of the Act, compliance with this permit condition will be monitored in two ways. First, by requiring that permittees clarify that only generic muds and authorized additives including mineral oil pills will be discharged; and second, by requiring that permittees submit an end-of-well inventory listing all chemicals and the amounts of each added to each mud system. In addition, permittees must analyze at least one mud sample for metals content and toxicity. The final permits require that for any mud system which had a mineral oil pill added, the permittee must remove the pill and at least a 50 barrel buffer from each side of the pill. The mud must be sampled and analyzed when the mineral oil content in the discharge is highest. In the event that no mineral oil pill is used, analyses are required on a sample of discharged mud used at the greatest well depth, typically referred to as an "end-of-well"

sample. The metals data will be used to verify that mercury and cadmium limits on barite are adequately controlling metal concentrations in used muds. The Drilling Fluids Toxicity Test will provide a comparison between the toxicity of used muds containing mixtures of additives and the bioassay data submitted on individual additives prior to discharge and is also a check on whether these provisions ensure that mud toxicity is being adequately controlled.

#### 4. Other Toxic and Nonconventional Compounds

Under the permit discharges of the following pollutants are prohibited: halogenated phenol compounds, trisodium nitrilotriacetic acid, sodium chromate, and sodium dichromate. The class of halogenated phenol compounds includes toxic pollutants, and sodium chromate and sodium dichromate contain chromium, also a toxic pollutant. Trisodium nitrilotriacetic acid is a nonconventional pollutant. The discharge of these compounds was previously prohibited in the BPT general permits for the Beaufort Sea and Norton Sound (48 FR 54881, December 7, 1983) as well as in the BAT/BCT general permits for the Bering and Beaufort Seas (49 FR 23734, June 7, 1984), Norton Sound (50 FR 23578, June 4, 1984), and Cook Inlet (51 FR 35460, October 3, 1986). These compounds are therefore subject to BAT limitations. Because operators complied with this provision in the BPT permit, there is no additional cost to the industry.

The permit also contains a provision that the discharge of surfactants, dispersants, and detergents shall be minimized except as necessary to comply with the safety requirements of the Occupational Health and Safety Administration and the Minerals Management Service. These products contain primarily nonconventional pollutants. This provision previously appeared in the BPT permit for the Beaufort Sea and Norton Sound, as well as in the Region's other BAT/BCT permits. Because operators have complied with the provision in the BPT permits, there is no additional cost to the industry.

#### D. Requirements Based on the Ocean Discharge Criteria Evaluation

##### 1. Drilling Muds, Cuttings, and Washwater

Additional restrictions on these discharges are necessary to ensure no unreasonable degradation of the marine environment. Lease Sale 97 includes

water depths from 2 to about 1,000 meters deep; Lease Sale 109 includes water depths that range from about 18 to 80 meters. (In the Final Notice of Lease Sale 109, MMS deferred from sale 3.8 million acres. These new deferrals increase the minimum depth in the Chukchi Sea sale area from about 6 to 18 meters.) Discharge rate limitations on total muds and cuttings have been established in the Ocean Discharge Criteria Evaluation processes in order to allow adequate dispersion of the discharges. These maximum rates are:

- 1,000 bbl/hr for discharges into waters greater than 40 m in depth,
- 750 bbl/hr for discharges into waters greater than 20 m but not more than 40 m in depth,
- 500 bbl/hr for discharges into waters greater than 5 m but not more than 20 m in depth,
- 250 bbl/hr for discharges into waters greater than 2 m but not more than 5 m in depth, and
- No discharge into water depths less than 2 m.

The discharge limitations for depths less than 18 m are applicable only to the Beaufort Sea II permit; the minimum depth in the area covered by the Chukchi Sea permit is greater than 18 m.

These limits are necessary because for any given discharge rate, the dilution of drilling muds and cuttings is not as great in shallow waters as in deeper waters. However, at any particular water depth, greater dilution close to the discharge point will be achieved with a lower discharge rate. These maximum rates will ensure that acceptable toxicity limits will not be exceeded at the edge of the 100 m mixing zone (Bigham et al. 1984, p. 62).

Under the Beaufort Sea II permit, discharge of muds, cuttings, and washwater are prohibited in the following two areas: (a) between the shore (mainland and island) and the 2 m isobath and (b) within 1000 m of the Stefansson Sound Boulder Patch (see Parts II.B. 2. and 3. of the Beaufort Sea II permit). A provision prohibiting discharge within 1000 m of river mouths or deltas during unstable or broken ice or water conditions has been deleted from the Beaufort Sea II permit since all areas of Lease Sale 97 are more than 1000 meters from river mouths or deltas.

With regard to (a) above, EPA has extensively studied the nearshore zone of the Alaskan Beaufort Sea in two Ocean Discharge Criteria Evaluations (Jones & Stokes 1983, 1984). These evaluations have clearly shown that these nearshore areas provide important feeding and migratory habitat for a large number of species including fish, waterfowl, and mammals. Further, these

areas provide essential feeding and preferred habitat for species of major importance for subsistence and commercial fisheries. Concerning (b) above, Region 10 is issuing a final permit that does not authorize discharges within 1000 m of the Stefansson Sound Boulder Patch as defined at Dulton et al. (1982). The "Patch" is a rare and unique biological community that is susceptible to adverse effects caused by discharged drilling muds and cuttings. In accordance with 40 CFR 125.123(b), the Director has prohibited these discharges as the Region has determined they will cause unreasonable degradation of the marine environment. These prohibitions are also contained in the previous Beaufort Sea NPDES general permit (49 FR 23734, June 7, 1984).

Additionally, several areas included in the final permits are of particular concern in Region 10. They involve discharges of drilling muds and cuttings: (a) To open water in water depths from 2-5 m (applicable only to the Beaufort Sea II permit), (b) below-ice to water depths shallower than 20 m, and (c) within 1000 m of an area of biological concern (e.g., as identified in the Final Environmental Impact Statement for the relevant lease sale area). The Director has determined that controlled discharges to these areas, in accordance with 40 CFR 125.123(a) and the limitations and conditions in the final permits, will not cause unreasonable degradation of the marine environment. Monitoring is required to verify that the discharge of effluents to these areas will not produce conditions in the future that would lead to unreasonable degradation. These monitoring requirements are the same as those required by the previous Beaufort Sea general permit, except that the monitoring requirements for below-ice discharges has changed from "any depth" to "waters less than 20 m deep." Region 10 believes that the OOC (Offshore Operators Committee) model can successfully be used to predict the fate of under-ice discharges into waters greater than 20 m deep. (The Region has deleted a provision from Part II.B.4 of the Chukchi Sea permit which would have excluded ice thickness from measurement of the 20 m water depth. Region 10 was concerned that this wording may lead to confusion as ice cover conditions changed at the drilling site.)

## 2. Other Discharges (003-015)

These discharges are adequately controlled by the technology-based limitations in Part II. C. through E. of the final permits to ensure no unreasonable degradation of the marine environment.

## V. Other Legal Requirements

### A. Oil Spill Requirements

Section 311 of the Act prohibits the discharge of oil and hazardous materials in harmful quantities. Routine discharges specifically controlled by the permits are excluded from the provisions of section 311. However, these permits do not preclude the institution of legal action or relieve permittees from any responsibilities, liabilities, or penalties for other, unauthorized discharges of oil and hazardous materials which are covered by section 311 of the Act.

### B. Endangered Species Act

Based on information in the Ocean Discharge Criteria Evaluations and in the separate Final Environmental Impact Statements prepared for Federal Lease Sales 97 and 109, EPA concluded that the discharges authorized by these general permits are not likely to adversely affect any endangered or threatened species nor adversely affect its critical habitat. EPA requested comments from the U.S. Fish and Wildlife Service and the National Marine Fisheries Service on this determination on the draft permit. Both agencies concurred in writing with EPA's determination of no adverse effect.

### C. Coastal Zone Management Act

The draft permits and consistency determinations were submitted to the State of Alaska for state interagency review at the time of public notice. The State of Alaska has concurred that the activities allowed by the Chukchi Sea permit are consistent with local and state Coastal Management Plans and waived their right to review the Beaufort Sea permit due to the similarity with the previous Beaufort Sea general permit (AKG284000).

### D. Marine Protection, Research and Sanctuaries Act

No marine sanctuaries as designated by this Act exist in the vicinity of the permit areas.

### E. State Water Quality Standards and State Certification

No state waters are included in these permits; therefore, a state certification under Section 401 regarding compliance with water quality standards is not required.

### F. Executive Order 12291

The Office of Management and Budget has exempted this action from the review requirements of Executive Order

12291 pursuant to section 8(b) of that order.

#### G. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in these general permits under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Most of the information collection requirements have already been approved by the Office of Management and Budget (OMB) in submissions made for the NPDES permit program under the provisions of the Clean Water Act. In addition, the environmental monitoring requirements pursuant to section 403(c) of the Clean Water Act in Part II.B.4 of this permit are similar to the monitoring requirements that were approved by OMB for the first Beaufort Sea general permit (48 FR 54881, December 7, 1983). The new requirements are also similar to the Beaufort Sea general permit (49 FR 23734, June 7, 1984) and the Norton Sound general permit (50 FR 23578, June 4, 1985).

#### H. The Regulatory Flexibility Act

After review of the facts presented in the notice of intent printed above, I hereby certify, pursuant to the provisions of 5 U.S.C. 605(b), that these general permits will not have a significant impact on a substantial number of small entities. This certification is based on the fact that the regulated parties have greater than 500 employees and are not classified as small businesses under the Small Business Administration regulations established at 49 FR 5024 *et seq.* (February 9, 1984). These facilities are classified as Major Group 13—Oil and Gas Extraction SIC 1311 Crude Petroleum and Natural Gas.

Robert S. Burd,

Acting Regional Administrator, Region 10.

#### VI. References

- Bigham, G.L., Hornsby, and G. Wiens. 1984. Technical support document for regulating dilution and deposition of drilling muds on the Outer Continental Shelf. Prepared for U.S. Environmental Protection Agency, Region 10, Seattle, WA, and Jones and Stokes Associates, Bellevue, WA, by Tetra Tech, Inc., Bellevue, WA. November 1984. 68 pp. plus appendices.
- Dunton, K., E. Reimnitz, and S. Schonberg. 1982. An arctic kelp community in the Alaskan Beaufort Sea. *Arctic* 35(4): 465-484.
- Jones & Stokes Associates. 1983. Final ocean discharge criteria evaluation, Diapir Field, OCS lease sale 71. Prepared for U.S. Environmental Protection Agency, Region 10. March 21, 1983. 160 pp. plus appendices.
- Jones & Stokes Associates. 1984.

Final ocean discharge criteria evaluation, Diapir Field, OCS lease sale 87 and state lease sales 39, 43, and 43a. Prepared for U.S. Environmental Protection Agency, Region 10. July 24, 1984. 137 pp. plus appendices.

National Research Council. 1983.

Drilling discharges in the marine environment. National Academy Press. Washington, DC 180 pp.

U.S. EPA. 1985.

Assessment of environmental fate and effects of discharges from offshore oil and gas operations. EPA 440/4-85/002.

U.S. EPA and API. 1987.

Diesel Pill Monitoring Program: Report Number Five. Prepared for the Fifth meeting of the Diesel Pill Monitoring Program Oversight Committee, November 16, 1987.

[Permit No. AKG284100 (Beaufort Sea II)]

Final NPDES General Permit, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101

Authorization To Discharge Under The National Pollutant Discharge Elimination System For Oil and Gas Exploration Facilities on the Outer Continental Shelf

In compliance with the provisions of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, as amended by the Water Quality Act of 1987, Pub. L. 100-4, the "Act", the following discharges are authorized:

Discharge name	Discharge No.
Drilling Mud.....	001
Drill Cuttings and Washwater.....	002
Deck Drainage.....	003
Sanitary Wastes.....	004
Domestic Wastes.....	005
Desalination Unit Wastes.....	006
Blowout Preventer Fluid.....	007
Boiler Blowdown.....	008
Fire Control System Test Water.....	009
Non-Contact Cooling Water.....	010
Uncontaminated Ballast Water.....	011
Uncontaminated Bilge Water.....	012
Excess Cement Slurry.....	013
Mud, Cuttings, Cement at Seafloor.....	014
Test Fluids.....	015

From oil and gas exploratory facilities in offshore areas (defined in 40 CFR Part 435, Subpart A), to receiving waters named the Beaufort and Chukchi seas, in accordance with effluent limitations, monitoring and reporting requirements, and other conditions set forth in Parts I through V hereof.

Permittees who do not request and receive coverage under this general permit as described in Part I are not authorized to discharge to the specified waters unless an individual permit has been issued to the permittee by EPA, Region 10.

The authorized discharge sites include all blocks offered for lease from the U.S.

Department of the Interior's Minerals Management Service (MMS) in Federal Lease Sale 97 (Beaufort and Chukchi seas). Some of the lease blocks offered but not leased in prior lease sales (BF, 71, and 87) may be reoffered in Lease Sale 97. In this case, EPA will grant coverage under this general permit rather than under the previous general permit (AKG 284000, 49 FR 23734, June 7, 1984).

This permit shall be modified or revoked at any time if, on the basis of any new data, the Director determines that this information would have justified the application of different permit conditions at the time of issuance. Permit modification or revocation will be conducted in accordance with 40 CFR 122.62, 122.63, and 122.64. In addition to any other grounds specified herein, this permit shall be modified or revoked at any time if, on the basis of any new data, the Director determines that continued discharges may cause unreasonable degradation of the marine environment.

Under 40 CFR 122.44(c)(3), if an applicable standard or limitation is promulgated under sections 301(b)(2) (C) and (D), 304(b)(2), and 307(a)(2) and that effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the permit, the permit shall be promptly modified or revoked and reissued to conform to that effluent standard or limitation.

This permit shall become effective on September 28, 1988.

This permit and the authorization to discharge shall expire at midnight on September 28, 1993.

Robert S. Burd,

Acting Regional Administrator, Region 10.

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## Part I. Notification Requirements

## A. Requests to be Covered by General Permit

Written request to be covered by this permit shall be provided to EPA at least 60 days prior to initiation of discharges. The request shall include the following information:

1. Name and Address of the permittee.
2. General location (lease and block numbers) of operations and discharges.
3. Any discharge or operating conditions which will require special monitoring (Part II.B.4.) or will require special consideration by EPA.
4. Certification that only authorized muds and additives will be discharged (Part II.B.1.c.).
5. Certification of lessee's responsibility. The permittee shall be the owner and/or operator of the facility. However, the lessee may

become the permittee after certifying that the lessee assumes responsibility for compliance with the permit. If the lessee has multiple leases, the lessee may submit a single certification for all of its leases. Submission of this certification does not remove the responsibility of the owner or operator for compliance with the conditions of the permit.

6. If possible, the request for coverage shall also contain any information required for the permittee's request to EPA for authorization to discharge muds and additives not listed in Tables 1 and 2 (see Part II.B.4. Below).

## B. Authorization to Discharge

The permittee's discharges are not authorized until written notification is received from EPA that operations at the discharge site have been assigned a permit number under this general permit. A permit number cannot be assigned until the following information is received. This information shall be provided to EPA in the request for coverage. If possible, but in no case less than 30 days prior to commencement of discharges.

1. Name and location of discharge site, including lease block number and approximate coordinates.
2. Range of water depths (below mean lower low water) in lease block, and depth of discharge.
3. Initial date and expected duration of operations.
4. In necessary, request for EPA authorization to discharge muds or additives not listed in Tables 1, 2 or 3 (Part II.B.1.F.).

## C. Commencement of Discharges

The permittee shall notify EPA, Region 10, during the 7-day period prior to initiation of discharges from the facility and from each well. The notification shall include the exact coordinates (latitude and longitude) and water depth of the discharge site, and may be oral or in writing. If notification is given orally, written confirmation must follow within 7 days.

## D. Sites Requiring Environmental Surveys

All operators that locate within the areas covered by this general permit shall submit to EPA copies of any exploration plans, biological surveys, and/or environmental reports required by the Regional Supervisor, Field Operations of the Minerals Management Service, for the identification and/or protection of biological populations or habitats. If the final exploration plans and environmental reports are identical to review copies received by Region 10,

permittees need not submit them under this permit provision. Permittees shall notify Region 10 in writing when no exploration plan or environmental report will be sent.

## E. Termination of Discharges

The permittee shall notify EPA within 30 days following cessation of discharges from each well and from the discharge site. The notification may be provided in a DMR or under separate cover.

## F. Submission of Requests to be Covered and Other Reports

Reports and notifications required herein shall be submitted to the following addresses.

All requests for coverage and additive authorizations: Director, Water Division, U.S. Environmental Protection Agency, Region 10, Attn: Ocean Programs Section, WD-137, 1200 Sixth Avenue Seattle, Washington 98101, (206) 442-8155.

All monitoring reports and notifications of non-compliance: Director, Water Division, U.S. Environmental Protection Agency, Region 10, Attn: Water Compliance Section, WD-135, 1200 Sixth Avenue Seattle, Washington 98101, (206) 442-1213.

## G. Changes from Covered Under General Permit to Coverage Under Individual Permits

1. The Director may require any permittee discharging under the authority of this permit to apply for and obtain an individual NPDES permit when any one of the following conditions exist.

- a. The discharge(s) is (are) a significant contributor of pollution.
- b. The permittee is not in compliance with the conditions of this general permit.
- c. A change has occurred in the availability of the demonstrated technology or practices for the control or abatement of pollutants applicable to the point source.

d. Effluent limitation guidelines are promulgated for point sources covered by this permit.

e. A Water Quality Management Plan containing requirements applicable to such point source is approved.

f. The point sources covered by this permit no longer:

- (1) Involve the same or substantially similar types of operations,
- (2) Discharge the same types of wastes.
- (3) Require the same effluent limitations or operating conditions, or

(4) Require the same or similar monitoring.

g. In the opinion of the Director, the discharges are more appropriately controlled under an individual permit than under a general NPDES permit.

2. The Director may require any permittee authorized by this permit to apply for an individual NPDES permit only if the permittee has been notified in writing that an individual permit application is required.

3. Any permittee authorized by this permit may request to be excluded from the coverage of this general permit by applying for an individual permit. The owner or operator shall submit an application together with the reasons supporting the request to the Director no later than 90 days after the effective date of the permit.

4. When an individual NPDES permit is issued to a permittee otherwise subject to this general permit, the applicability of this general permit to that owner or operator is automatically terminated on the effective date of the individual permit.

## Part II. Effluent Limitations and Monitoring Requirements

### A. Definitions

1. "AAS" means atomic absorption spectrophotometry.

2. "Authorized additive" means any drilling mud additive listed in Table 2 or authorized for discharge under Parts II.B.1.d., e. or f.

3. "Ballast water" means seawater added or removed to maintain the proper ballast floater level and ship draft.

4. "bbl/hr" means barrels per hour. One barrel equals 42 gallons.

5. "Bilge water" means water which collects in the lower internal parts of the drilling vessel hull.

6. "Biocide" means any chemical agent used for controlling the growth of or destroying nuisance organisms (e.g., bacteria, algae, and fungi).

7. "Blowout preventer fluid" means fluid used to actuate hydraulic equipment on the blowout preventer.

8. "Boiler blowdown" means the discharge of water and minerals drained from boiler drums.

9. "Bulk discharge" means the discharge of more than 100 barrels in a one-hour period.

10. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility (see Part IV.G.).

11. "Cd" means cadmium.

12. "Cooling water" means once-through non-contact cooling water.

13. "Cuttings"—see "Drill cuttings".

14. "Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the "daily discharge" is calculated as the total mass of the pollutant discharge over the day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the day.

15. "Deck drainage" means all waste resulting from platform washings, deck washings, spills, rainwater, and runoff from curbs, gutters, and drains including drip pans and wash areas.

16. "Desalination unit wastes" means wastewater associated with the process of creating freshwater from seawater.

17. "Diesel oil" means the class of distillate fuel oil, typically used in conventional oil-based drilling fluids, which contains a number of toxic pollutants. For the purpose of this permit, "diesel oil" includes the fuel oil present at the facility.

18. "Domestic wastes" includes wastes from showers, sinks, galleys, and laundries.

19. "Drill cuttings" means particles generated by drilling into subsurface geological formations and carried to the surface with the drilling fluid.

20. "Drilling Fluids Toxicity Test" means a bioassay conducted and reported in accordance with the following bioassay methodology: "Drilling Fluids Toxicity Test," EPA Industrial Technology Division, May 1985, or other methods approved in advance by Region 10 that produce results which will assure equivalent protection levels.

21. "Drilling mud" means any fluid sent down the hole, including any specialty products, from the time a well is begun until final cessation of drilling in that hole. It also includes fluids used in workover operations involving drilling. A water-based drilling fluid is the conventional drilling mud in which water is the continuous phase and the suspending medium for solids, whether or not oil is present. An oil-based drilling fluid has diesel, crude, or some other oil as its continuous phase with water as the dispersed phase.

22. "Excess cement slurry" means the excess cement including additives and wastes from equipment washdown after a cementing operation.

23. "Exploratory" operations are limited to those operations involving drilling to determine the nature of potential hydrocarbon reserves and does not include drilling of wells once a

hydrocarbon reserve has been defined. Exploratory operations also include deep stratigraphic test wells.

24. "Fire control system test water" means the water released during the training of personnel in fire protection and the testing and maintenance of fire protection equipment.

25. "GC" means gas chromatography. "GC/MS" means gas chromatography/mass spectrometry.

26. "Generic drilling muds" or "generic muds" means the primary mud types which have been evaluated and authorized by EPA. These mud types have been authorized for discharge with limitations on composition given in Table 1. A list of authorized specialty additives is given in Table 2.

27. A "grab" sample is a single sample or measurement taken at a specific time or over as short a period of time as is feasible.

28. "Hg" means mercury.

29. "Interim authorization" means a type of authorization for drilling mud components not listed in Tables 1, 2, or 3. An interim authorization is designed to obtain further information concerning the toxicity of an additive or mud. The information obtained under an interim authorization is used to evaluate subsequent requests for discharge authorization of a mud or additive and does not set a precedent for future authorization of a particular item.

30. "lb/bbl" means pounds per barrel.

31. "Maximum" means the highest measured discharge or pollutant concentration in a waste stream during the time period of interest.

32. "Maximum hourly rate" as applied to drilling mud, cuttings, and washwater means the greatest number of barrels of drilling fluids discharged within one hour, expressed as barrels per hour.

33. "MGD" means million gallons per day.

34. "mg/kg" means milligrams per kilogram.

35. "mg/l" means milligrams per liter.

36. "Mineral oils" means a class of low volatility petroleum product, generally of lower aromatic hydrocarbon content and lower toxicity than diesel oil.

37. "Mineral oil pills" (also called mineral oil spots) are formulated and circulated in the mud system as a slug in attempt to free stuck pipe. Pills generally consists of two parts; a spotting compound and mineral oil.

38. "Monitoring month" means the period consisting of the calendar weeks which end in a given calendar month.

39. "Monthly average" means the average of "daily discharges" over a monitoring month, calculated as the sum

of all "daily discharges" measured during a monitoring month divided by the number of "daily discharges" measured during that month.

40. "Muds, cuttings, cement at sea floor" means the materials discharged at the surface of the ocean floor in the early phases of drilling operations, before the well casing is set, and during well abandonment and plugging.

41. "NAA" means neutron activation analysis.

42. "No discharge of free oil" means that waste streams that would cause a film or sheen upon or a discoloration of the surface of the receiving water or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines may not be discharged.

43. "No discharge of diesel oil" in drilling mud means a determination that diesel oil is not present based on a comparison of the gas chromatogram from an extract of the drilling mud and from diesel oil obtained from the drilling rig or platform. GC/MS may also be used.

44. "Open water" means less than 25 percent ice coverage within a one (1) mile radius of the discharge site.

45. "Sanitary wastes" means human body waste discharged from toilets and urinals.

46. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably

be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

47. "Site" means the single, specific geographical location where a mobile drilling facility (jackup rig, semi-submersible, or arctic mobile rig) conducts its activity, including the area beneath the facility, or to a location on a single gravel island.

48. "Slush ice" occurs during the initial stage of ice formation when unconsolidated individual ice crystals (frazil) form a slush layer at the surface of the water column.

49. "Stable ice" means ice that is stable enough to support discharged muds and cuttings.

50. "Static Sheen Test" means those procedures which are described in the draft "Proposed Methodology: Laboratory Sheen Tests for the Offshore Subcategory, Oil and Gas Extraction Industry," prepared by Technical Resources, Inc., April 10, 1983, and EPA, Region 10's "Interim Guidance for the Static (Laboratory) Sheen Test," January 10, 1984.

51. "Test fluid" means the discharge which would occur should hydrocarbons be located during exploratory drilling and tested for formation pressure and content. This would consist of fluids sent downhole during testing along with water and particulate matter from the formation.

52. "Unstable or broken ice conditions" means greater than 25 percent ice coverage within a one (1)

mile radius of the discharge site after spring breakup or after the start of ice formation in the fall, but not stable ice.

53. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation (see Part IV.H.).

54. "Water depth" means the depth of the water between the surface and the seafloor as measured at mean lower low water (0.0).

55. "XFA" means x-ray fluorescence analysis.

56. "96-hr LC50" means the concentration of a test material that is lethal to 50 percent of the test organisms in a bioassay after 96 hours of constant exposure.

#### B. Drilling Mud and Drill Cuttings and Washwater (Discharges 001 and 002).

##### 1. General Requirements

Such discharges shall be limited and monitored by the permittee in accordance with Parts II.B.2., II.B.3., II.F., III., and the following requirements. The requirements apply to each of the discharges except where otherwise noted.

Effluent Characteristic	Discharge Limitation	Monitoring Requirements		
		Measurement Frequency	Sample Type/Method	Reported Value(s)
Drilling mud constituents.....	Generic muds, authorized additives, and mineral oil pills.	(1).....	(1).....	(1).....
Flow rate Water Depth: *				
0-2m.....	No discharge.....	Hourly during discharge.....	Estimate.....	Maximum hourly rate.
>2-5m.....	250 bbl/hr.....			
>5-20m.....	500 bbl/hr.....			
>20m.....	750 bbl/hr.....			
>20-40m.....	1000 bbl/hr.....			
>40m.....				
Total volume (bbl/month).....	(2).....		Calculated from hourly rates.....	Monthly total.
Free oil.....	No free oil.....	Daily, and before bulk discharges.....	Grab/Static Sheen Test.....	Number of days sheen observed.
Oil-based fluids.....	No discharge.....	See Part II.B.1.a.....		
Oil content of cuttings.....	10% by weight.....	See Part II.B.1.a.....		
Diesel oil content.....	No discharge of diesel oil.....	See Part II.B.1.a.....	Grab/GC.....	Presence or absence.
Hg and Cd content of barite.....	1 mg/kg Hg, 3 Mg/kg Cd, dry wt. *.	Once per well.....	AAS.....	Concentrations (mg/kg, dry wt.).
Chemical inventory.....		Once per mud system.....	(3).....	(3).....
Metals in drilling mud.....		See Part II.B.1.i.....		Concentrations mg/kg dry wt.).
Oil content of drilling mud.....		See Part II.B.1.i.....		
Toxicity of drilling.....		See Part II.B.1.j.....		96-hr LC50.

\* See Parts II.B.1.c-g, and i.

\* Maximum flow rate of total muds and cuttings (Discharges 001 and 002) into waters of given depths and under water conditions.

\* Exploratory drilling discharges are limited to discharges from no more than five wells at a single drilling site. If a step-out (kick-off) well is drilled from a previously drilled well hole, the step-out well is counted as a new well. Requests to discharge the wastes from more than five wells per site will be considered by the Director on a case-by-case basis.

\* Waivers may be granted in some cases (See Part II.B.1.g.).

\* See Part II.C.1.h.

a. *Prohibition on the discharge of all oil-based muds, diesel oil, and cuttings with an oil content greater than 10 percent.* The discharge of oil-based drilling muds (containing oil as the continuous phase with water as the dispersed phase) is prohibited.

In addition, the discharge of cuttings containing more than 10 percent oil by weight is prohibited. Analysis is required: (a) Daily at the time that oil-based drilling fluids or oil additives (except those containing diesel oil) are used; (b) daily at the time that drilling fluids could be contaminated with hydrocarbons from the formation; and (c) immediately on any sample that has violated the Static Sheen Test if a discharge has occurred. The method of analysis shall be that listed for oil and grease in 40 CFR Part 136, or the retort distillation method for oil (American Petroleum Institute, Recommended Practice 13B, 1980). The results of each analysis shall be provided to the Director by written report within 45 days following sample collection.

The discharge of water-based drilling muds which have contained diesel oil or of cuttings associated with any muds which have contained diesel oil is also prohibited. Compliance with the limitation on diesel oil shall be demonstrated by gas chromatography (GC) analysis of drilling mud collected from the mud used at the greatest well depth ("end-of-well" sample) and of any muds or cuttings which fail the daily Static Sheen Test (Part II.B.1.b. below). In all cases, the determination of the presence or absence of diesel oil shall be based on a comparison of the GC spectra of the sample and of diesel oil in storage at the facility. The method for GC analysis shall be that described in "Analysis of Diesel Oil in Drilling Fluids and Drill Cuttings" (CENTEC, 1985) available from EPA, Region 10. Gas chromatography/mass spectrometry (GC/MS) may be used if an instance should arise where the operator and EPA determine that greater resolution of the drilling mud "fingerprint" is needed for a particular drilling mud sample.

The end-of-well analysis for diesel oil shall be done in conjunction with the end-of-well analyses required in Part II.B.1.i. The results and raw data, including the spectra, from the GC analysis shall be provided to the Director by written report (1) within 30 days of a positive result with the Static

Sheen Test when a discharge has occurred, or (2) for the end-of-well analysis, within 45 days of well completion.

b. *No discharge of free oil.* There shall be no discharge of free oil as a result of the discharge of drill cuttings and/or drilling muds. The permittee shall perform the Static Sheen Test on separate samples of drilling muds and cuttings on each day of discharge and prior to bulk discharges. The test shall be conducted in accordance with "Proposed Methodology: Laboratory Sheen Tests for the Offshore Subcategory, Oil and Gas Extraction Industry" (Petrizzuolo, 1983) and EPA, Region 10's "Interim Guidance for the Static (Laboratory) Sheen Test." The discharge of drilling muds or cuttings which fail the Static Sheen Test is prohibited.

Whenever muds or cuttings fail the Static Sheen Test and a discharge has occurred in the past 24 hours, the permittee is required to analyze an undiluted sample of the material which failed the test to determine the presence or absence of diesel oil. The determination and reporting of results shall be performed according to Part II.B.1.a. above.

c. *Certification of discharge of authorized muds and additives.* The permittee is required to certify at the time coverage is requested under the general permit that only generic muds and authorized additives (Part II.B.1.d.), mineral oil pills (Part II.B.1.e.), or muds, additives authorized, and mineral oil pills in accordance with Part II.B.1.f. will be discharged.

d. *Generic drilling muds and authorized additives.* Only generic drilling muds and authorized additives shall be discharged. The generic mud types which have been authorized for discharge are given in Table 1, with specified limitations on composition. A list of additional authorized mud additives is given in Table 2.

Additives listed in Table 2 may be discharged at the specified maximum allowable concentrations in Generic Muds Nos. 2 through 6 without prior authorization from Region 10. Only those additives so designated may be discharged in Generic Mud No. 1.

e. *Authorization to discharge mineral oil pills listed in Table 3.* The discharge of residual amounts of mineral oil pills (mineral oil plus additives) is authorized by this permit provided that the mineral oil pill and at least a 50 bbl buffer of

drilling fluid on either side of the pill are removed from the circulating drilling fluid system and not discharged to the waters of the United States. In the event that more than one pill is applied to a single well, the previous pill and buffer shall be removed prior to application of a subsequent pill. Residual mineral oil concentration in the discharged mud shall not exceed 2% v/v (API Retort Test). The discharged mud must comply with all permit conditions, including no discharge of free oil.

Mineral oil pills which have been authorized are given in Table 3. None of the mineral oil pills listed on Table 3 may be discharged in Generic Mud No. 1.

Should drilling mud containing residual mineral oil pill (after pill and buffer removal) be discharged the following information shall be reported within 60 days of discharge:

(1) Dates of pill application, recovery, and discharge;

(2) Results of the Drilling Fluids Toxicity Test on samples of:

(a) The mud before each pill is added and

(b) The mud after removal of each pill and buffer (taken when residual mineral oil pill concentration is expected to be greatest);

(3) Spotting compound and mineral oil products used;

(4) Volumes of spotting compound, mineral oil, water, and barite in the pill;

(5) Total volume of mud circulating prior to pill application, volume of pill formulated, and volume of pill circulated;

(6) Volume of pill recovered, volume of mud buffer recovered, and volume of mud circulating after pill and buffer recovery;

(7) Percent recovery of the pill (include calculations);

(8) Estimated concentrations of residual spotting compound and mineral oil in the sample of mud discharged, as determined from amounts added and total mud volume circulating prior to pill application;

(9) Measured oil content of the mud samples, as determined by the API retort method; and

(10) An itemization of other drilling fluid specialty additives contained in the discharged mud.

f. *Authorization to discharge drilling muds, additives, and mineral oil pills not listed in Tables 1, 2, or 3.* The discharge of drilling muds containing any additive or component (including

mineral oil pill packages) not allowed under parts II.B.1. d. or e. shall require authorization by Region 10 prior to discharge. In the authorization process, Region 10 will evaluate whether the requested additives or components may cause the drilling mud to violate the 96-hour LC50 toxicity limitation of 30,000 ppm (for *Mysidopsis bahia*) on the suspended particulate phase. In evaluating a request for authorization, toxicity is assumed to be additive for muds and additives, including mineral oil pills. Authorization will be granted only for drilling muds (including all components and additives) which are less toxic than the 30,000 ppm toxicity criterion; toxicity is inversely related to the LC50, therefore no drilling fluids or additives authorized may have an LC50 lower than the specified minimum LC50. Discharges of mineral oil pills authorized under this paragraph must comply with the provisions of Part II.B.1.e.

The permittee shall supply the information listed below to Region 10 and shall submit it with the information required by Part I.B.

(1) Approximate date and duration of proposed discharge.

(2) Bioassay testing and reporting of results in accordance with the Drilling Fluids Toxicity Test or other procedures approved in advance by Region 10 that produce results which will assure equivalent protection levels. Additives may be tested with this methodology in a standard reference mud, a generic mud, or in the proposed drilling mud system. *The bioassay report shall specify the concentration of each constituent in the tested drilling fluid.* Bioassay reports shall include whenever possible toxicity values for the base of reference muds. Region 10 recognizes that such data may not be available in all instances.

(3) Chemical characterization of the drilling mud, authorized additive or mineral oil pill; estimate of total amount required for any particular well, requested application rate (lb/bbl or percent by volume) in the drilling mud. For the particular well under consideration, a description of drilling mud type and list of other additives (including additives listed on Tables 2 or 3), including concentrations (lb/bbl or percent by volume) likely to be present in the drilling mud.

Additives may be authorized on an interim basis at the discretion of Region 10, if preliminary bioassay data and other information are submitted and appear acceptable in light of the foregoing criteria, but the Director determines that additional information is required. The requested additional

information may include bioassay data on a used drilling mud sample containing the requested additive.

Region 10 will also consider any cost information provided by permittees as part of its evaluations.

Drilling muds, additives, or mineral oil pills not authorized under Parts II.B.1.d., e., or f., may be requested by means of an individual permit or modification of the general permit.

g. *Mercury and cadmium content of barite.* The permittee shall not discharge a drilling mud to which barite was added if such barite contained mercury in excess of 1 mg/kg or cadmium in excess of 3 mg/kg (dry weight basis). The permittee shall analyze a representative sample of stock barite once prior to drilling each well and submit the results for total mercury and total cadmium in the Discharge Monitoring Report upon well completion. If more than one well is drilled at a site, new analyses are not required for subsequent wells if no new supplies of barite have been received since the previous analysis. In this case, the DMR should state that no new barite was received since the last reported analysis. Analyses shall be conducted by absorption spectrophotometry and results expressed as mg/kg (dry weight) of barite.

If the permittee is unable to comply with this provision due to the lack of availability of barite which meets the above limitations, the Director may, on a case-by-case basis, allow the discharge of barite which exceeds these limitations. Prior to discharge the permittee shall demonstrate on the satisfaction of the Director that barite which meets the limitations is unavailable and shall provide the results of analyses of the substitute barite. The substitute barite shall not exceed 3 mg/kg mercury and 5 mg/kg cadmium (dry weight).

h. *Chemical inventory.* For each mud system discharged, the permittee shall maintain precise chemical inventory of all constituents added downhole, including all drilling mud additives used to meet specific drilling requirements. The permittee shall report the following for each mud system: (1) Generic mud type (from Table 1), (2) name and total amount (volume or weight) of each constituent in discharged mud, (3) the total volumes of mud created and added downhole, and (4) maximum concentration of each constituent in the discharged mud. In addition, for each mud system discharged, the permittee shall report (5) the total volumes of mud discharged, and (6) the estimated amount of each constituent discharged.

The inventory shall be submitted within 45 days following well completion.

i. *Chemical analysis.* The permittee shall analyze each discharged mud system containing a mineral oil lubricity and/or spotting agent. Samples shall be collected when the mineral oil additive concentration is at its maximum value. If no mineral oil is used, the analysis shall be done on a drilling mud sample collected from the mud system used at the greatest well depth. All samples shall be collected prior to any predilution. Each drilling mud sample shall be of sufficient size to allow for both the chemical testing described here and the bioassay testing described below in Part II.B.1.j.

The chemical analysis of the drilling mud shall include the following metals: barium, cadmium, chromium, copper, mercury, zinc, and lead. The total concentration shall be reported for each metal and shall be obtained by the methods given in 40 CFR Part 136 with the exception of barium. Neutron activation analysis (NAA) or x-ray fluorescence analysis (XFA) shall be used for total barium. Flame or flameless atomic absorption spectrophotometry (AAS) shall be used for mercury, cadmium, copper, zinc and lead. Either NAA or AAS may be used for chromium. The results shall be reported in "mg/kg of whole mud (dry weight)," and the moisture content (percent by weight) of the original drilling mud sample shall be reported.

In addition, permittees shall analyze mud samples for oil content (percent by weight and by volume). The analytical method shall be the retort distillation method for oil (American Petroleum Institute, Recommended Practice 13B, 1980).

Results of chemical analyses shall be submitted within 45 days following well completion. Results shall be submitted with the end-of-well chemical inventory, Part II.B.1.h., and shall identify the corresponding mud system from the end-of-well inventory.

This requirement may be discontinued if EPA determines that additional data collection is unnecessary.

j. *Bioassay test.* The permittee shall complete one bioassay test on each discharged mud system where a mineral oil lubricity or spotting agent is used. If no mineral oil is used, the bioassay test shall be conducted on the drilling mud sample collected for end-of-well chemical analysis. Each sample shall be a representative subsample of that collected for chemical analysis in Part II.B.1.i. above. The testing and reporting of results shall be in accordance with the Drilling Fluids Toxicity Test or other

procedures approved in advance by EPA, Region 10.

Results of the bioassay testing shall be reported together with the end-of-well chemical inventory and chemical analysis results of Parts II.B.1.h. and i. Results are due within 45 days following well completion.

This requirement may be discontinued if EPA determines that additional data collection is unnecessary.

## 2. Depth-Related Requirements

The total drilling muds, drill cuttings, and washwater discharge rate shall not exceed: (a) 1000 bbl/hr in water depths exceeding 40 m, (b) 750 bbl/hr in water depths greater than 20 m but not exceeding 40 m, (c) 500 bbl/hr in water depths greater than 5 m but not exceeding 20 m, (d) 250 bbl/hr in water depths greater than 2 m, but not exceeding 5 m, and (e) discharge of muds and cuttings are prohibited between the shore (mainland and island) and the 2 m isobath.

## 3. Area and Seasonal Requirements

a. Discharge is not authorized within 1000 m of the Stefansson Sound Boulder Patch, or between individual units of the patch where the separation between units is greater than 2000 m but less than 5000 m. The Boulder Patch is defined as an area which has more than 10 percent of a one-hundred-square-meter area

covered by boulders to which kelp is attached.

b. During *open-water conditions*, discharge in the area from the 2 to 20 m isobaths shall be released no deeper than 1 m below the surface of the receiving water.

c. During *unstable or broken ice conditions*, the following conditions apply for discharges shoreward of the 20 meter isobath:

(1) Discharge shall be prediluted to 9:1 (seawater: drilling muds and cuttings).

(2) Environmental monitoring is required as specified in Part II.B.4 below.

d. During *stable ice conditions*, unless authorized otherwise by the Director, the following conditions apply:

(1) Discharges shall be to above-ice locations and shall avoid to the maximum extent possible areas of sea ice cracking or major stress fracturing.

(2) Predilution and flow rate restrictions do not apply.

## 4. Environmental Monitoring Requirements

Monitoring is required in three general areas, which have been identified as requiring further information on the fate and, in some cases, the effects of discharged drilling muds. These areas are: (1) Open water in water depths from 2-5 m, (2) below-ice to water depths shallower than 20 m, and (3) within 1,000 m of an area of biological

concern (i.e., as identified in the Final Environmental Impact Statement for Lease Sale 97). The specifics of each monitoring program, including survey design, analytical techniques, participants, and reporting requirements, will be determined by the Director in consultation with the Regional Environmental Supervisor of the Alaska Department of Environmental Conservation and the permittee. Such monitoring shall include, but not be limited to, relevant hydrographic, sediment hydrocarbon, and heavy metal data from surveys conducted before and during drilling mud disposal operations and up to at least one year after drilling operations cease.

The results of the initial monitoring survey in areas of biological concern shall be made available for review prior to any authorization of subsequent disposals into similar areas with significant biological communities.

Information related to the effects of island construction and erosion will be considered but will not in itself be sufficient to make the above determination.

## C. Deck Drainage, Sanitary Wastes, and Domestic Wastes (Discharges 003-005)

These discharges shall be limited and monitored by the permittee in accordance with Parts II.F., III. and the following requirements:

Outfall/Effluent Characteristic	Discharge Limitation	Monitoring Requirements		
		Measurement Frequency	Sample Type/Method	Reported Value(s)
All Discharges (003-005): Flow rate.		Monthly	Estimate	Monthly average.
Deck Drainage (003) <sup>1</sup> : Free oil	No visible sheen	Daily, during discharge	Visual/sheen on receiving water <sup>2</sup> .	Number of days sheen observed.
Sanitary Wastes (004) <sup>3</sup> : Solids	No floating solids	Daily	Observation <sup>4</sup> .	Number of days solids observed.
Residual chlorine <sup>5</sup>	As close as possible to, but no less than, 1.0 mg/l.	Monthly	Grab <sup>6</sup> .	Concentration (mg/l)

<sup>1</sup> Area drains for either washdown water or rainfall that may be contaminated with oil and grease shall be separated from those area drains that would not be contaminated. Any deck drainage which is commingled with other wastes prior to discharge shall be subject at the point of discharge to the most stringent of the limitations on the individual effluents.

<sup>2</sup> If discharge occurs during broken, unstable, or stable ice conditions, the sample type/method shall be "Grab/Static Sheen Test."

<sup>3</sup> Any facility using a marine sanitation device (MSD) that complies with pollution control standards and regulations under section 312 of the Act shall be deemed to be in compliance with the limitations for this outfall until such time as the device is replaced or is found not to comply with such standards and regulations. The MSD shall be tested yearly for proper operation and test results maintained at the facility. In cases where sanitary and domestic wastes are mixed prior to discharge, and sampling of the sanitary waste component stream is infeasible, the discharge may be sampled after mixing. In such cases, the discharge limitations for sanitary wastes shall apply to the mixed waste stream.

<sup>4</sup> Monitoring, by visual observation of the surface of the receiving water in the vicinity of the outfall(s), shall be done during daylight at a time of maximum estimated discharge.

<sup>5</sup> This limitation applies only to facilities continuously manned by ten (10) or more persons.

<sup>6</sup> Residual chlorine may be monitored according to test procedures approved under 40 CFR Part 136 or using a Hach Test Kit capable of measuring free chlorine in the range 0-3.5 mg/l with a sensitivity of 0.1 mg/l or better.

## D. Miscellaneous Discharges (Discharges 006-014)

### General Requirements

The following limitations and

monitoring requirements in addition to those in Parts II.F. and III. apply to these discharges:

Outfall/Effluent Characteristic	Discharge Limitation	Monitoring Requirements		
		Measurement Frequency	Sample Type/Method	Reported Value(s)
All discharges (006-014): Flow rate (MGD)..... Free oil.....	No free oil.....	Monthly..... Once/discharge for intermittent discharges or once/day for continuous discharges.	Estimate..... Visual/sheen on receiving water.....	Monthly average. No. of days sheen observed.

a. Bilge water (012) shall be processed through an oil-water separator prior to discharge. If discharge of bilge water occurs during broken, unstable, or stable ice conditions, the sample type/method used to determine compliance with the no free oil limitation shall be "Grab/Static Sheen Test."

b. The permittee shall maintain an inventory of the quantities and rates of chemicals (other than water or seawater) added to cooling water (010) and desalination (006) systems. The inventory shall be submitted with the monthly Discharge Monitoring Report.

#### E. Test Fluids (Discharge 015)

##### General Requirements

This discharge shall be limited and monitored by the permittee in accordance with Parts II.F., III. and the following requirements. Samples when required shall be collected prior to discharge.

Outfall/Effluent Characteristic	Monitoring Requirements			
	Discharge Limitation	Measurement Frequency	Sample Type/Method	Reported Value(s)
Volume (bb1)..... Free oil.....	No free oil.....	Once/discharge..... Once/discharge.....	Estimate..... Visual/Sheen on receiving water.....	Total vol./test <sup>1</sup> Number of times sheen observed.
Oil and grease.....	72 mg/l daily max., 48 mg/l monthly avg.	Once/discharge.....	Grab.....	Monthly maximum and avg.
pH.....	6.5-8.5 <sup>2</sup> .....	Once/discharge.....	Grab.....	pH.
Oil-based fluids.....	No discharge.....			

<sup>1</sup> Volume will be reported as the number of barrels of fluids sent downhole during testing and the number of barrels discharged. The chemical composition of the fluids sent downhole will also be reported.

<sup>2</sup> Any spent acidic test fluids shall be neutralized before discharge such that the pH at the point of discharge shall not be less than 6.5 or greater than 8.5.

#### F. Other Discharge Limitations

##### 1. Floating Solids, Visible Foam, or Oily Wastes

There shall be no discharge of floating solids or visible foam in other than trace amounts, nor of oily wastes which produce a sheen on the surface of the receiving water.

##### 2. Applicable Marine Water Quality Criteria

There shall be no discharge of any constituent in concentrations which exceed applicable marine water quality criteria after allowance for initial mixing. Initial mixing in federal waters is defined at 40 CFR § 227.29 and federal marine water quality criteria at 45 FR 79318, 28 November 1980 and in subsequent updates in the Federal Register.

##### 3. Highly Toxic Compounds and Materials

There shall be no discharge of diesel oil, halogenated phenol compounds, trisodium nitrilotriacetic acid, sodium chromate or sodium dichromate.

##### 4. Surfactants, Dispersants, and Detergents

The discharge of surfactants, dispersants, and detergents shall be

minimized except as necessary to comply with the safety requirements of the Occupational Health and Safety Administration and the Minerals Management Service. The use of dispersants in marine waters in response to oil or other hazardous spills are not covered by this permit. See also Part III.J.

#### Part III. Monitoring, Recording, and Reporting Requirements

##### A. Representative Sampling

Samples taken in compliance with the monitoring requirements established under Part II shall be collected from the effluent stream prior to discharge into the receiving waters. Samples and measurements shall be representative of the volume and nature of the monitored discharge.

##### B. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

##### C. Reporting of Monitoring Results

The permittee shall be responsible for submitting monitoring results monthly during the time of discharge.

1. The effluent monitoring requirements in this permit shall take effect upon commencement of discharge. Monitoring results shall be summarized each month on a Discharge Monitoring Report (DMR) form (EPA No. 3320-1). The reports shall be submitted monthly and are to be postmarked by the 10th day of the following month. Legible copies of these, and all other reports, shall be signed and certified in accordance with the requirements of Part V.H. Signatory Requirements, and submitted to EPA at the address specified in Part I.F.

2. The permittee shall include on each DMR a listing of which days had (1) unstable or broken ice and (2) stable ice around the discharge site during the month covered by that DMR.

3. If any discharge has more than one discharge point, all permit limitations apply to each discharge point. The discharge points shall be designated as 001A, 001B, 001C, etc. Flow limitations apply to the total discharge of each category of wastes; i.e., to the sum of 001A, 001B, 001C, etc., except where otherwise noted.

4. Information indicating the type of operation shall be provided with the DMRs. The DMR shall also state that "No discharge" occurred for any category of waste that is not applicable

due to the type of operation or facility, or because no discharge occurred during the reporting period. Further, the DMRs for the end-of-well report shall indicate any future plans for the operation at that site.

#### D. Compliance Schedules

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any Compliance Schedule of this permit shall be submitted no later than 14 days following each schedule date.

#### E. Additional Monitoring by the Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR Part 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR. Such increased frequency shall also be indicated.

#### F. Records Contents

Records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;
2. The individual(s) who performed the sampling or measurements;
3. The date(s) analyses were performed;
4. The individual(s) who performed the analyses;
5. The analytical techniques or methods used; and
6. The results of such analyses.

#### G. Retention of Records

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to comply with of this permit, for a period of at least three (3) years from the date of the sample, measurement, or report. This period may be extended by request of the Director at any time. Data collected onsite, copies of Discharge Monitoring Reports, and a copy of this NPDES permit must be maintained onsite during the duration of activity at the permitted location.

#### H. Twenty-Four Hour Notice of Noncompliance Reporting

1. The following occurrences of noncompliance shall be reported by telephone within 24 hours from the time the permittee becomes aware of the circumstances:

- a. Any noncompliance which may endanger health or the environment;
- b. Any unanticipated bypass which exceeds any effluent limitation in the permit (See Part IV.G. Bypass of Treatment Facilities.);
- c. Any upset which exceeds any effluent limitation in the permit (See Part IV.H. Upset Conditions.); and
- d. Violation of a maximum daily discharge limitation for any of the pollutants listed in the permit to be reported within 24 hours.

2. A written submission shall also be provided within five (5) days of the time that the permittee becomes aware of the circumstances. The written description shall contain:

- a. A description of the noncompliance and its cause;
- b. The period of noncompliance, including exact dates and times;
- c. The estimated time noncompliance is expected to continue if it has not been corrected; and
- d. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

3. The Director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the Water Compliance Section in Seattle, Washington, by phone, (206) 442-1213.

4. Reports shall be submitted as specified in Part III.C. Reporting of Monitoring Results.

#### I. Other Noncompliance Reporting

Instances of noncompliance not required to be reported within 24 hours shall be reported at the time that monitoring reports for Part III.C. are submitted. The reports shall contain the information listed above in Part III.H.2.

#### J. Inspection and Entry

The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

Have access to and copy, at reasonable times, any records that must be kept under the condition of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized

by the Act, any substances or parameters at any location.

#### Part IV. Compliance Responsibilities

##### A. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action, termination of coverage under the general permit, or for requiring a permittee to apply for and obtain an individual NPDES permit. The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

##### B. Penalties for Violations of Permit Conditions

###### 1. Civil Penalty

The Act provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be subject to a civil penalty, not to exceed \$25,000 per day for each violation.

###### 2. Criminal Penalties

a. *Negligent Violations.* The Act provides that any person who negligently violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be punished by a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than one (1) year, or by both.

b. *Knowing Violations.* The Act provides that any person who knowingly violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, and 405 of the Act shall be punished by a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than three (3) years or by both.

c. *Knowing Endangerment.* The Act provides that any person who knowingly violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment of not more than 15 years, or both. A person which is an organization shall, upon conviction of violating this subparagraph, be subject to a fine of not more than \$1,000,000.

d. *False Statements.* The Act provides that any person who knowingly makes any false material statement, representation, or certification in any

application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than two (2) years, or by both.

#### C. Need to Halt or Reduce Activity not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

#### D. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

#### E. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective performance, adequate funding, adequate operator staffing and training, adequate laboratory and process controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

#### F. Removed Substances

Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters.

#### G. Bypass of Treatment Facilities

##### 1. Bypass not Exceeding Limitations

The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the

provisions of paragraphs 2 and 3 of this section.

##### 2. Notice

a. *Anticipated bypass.* If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the day of the bypass.

b. *Unanticipated bypass.* The permittee shall submit notice of an unanticipated bypass as required under Part III.H. Twenty-Four Hour Notice of Noncompliance Reporting.

##### 3. Prohibition of Bypass

a. Bypass is prohibited and the Director may take enforcement action against a permittee for a bypass, unless:

(1) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under paragraph 2 of this section.

b. The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph 3.a. of this section.

#### H. Upset Conditions

##### 1. Effect of an Upset

An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph 2 of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

##### 2. Conditions Necessary for a Demonstration of Upset

A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the permittee can identify the cause(s) of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required under Part III.H. Twenty-Four Hour Notice of Noncompliance Reporting; and

d. The permittee complied with any remedial measures required under Part IV.D. Duty to Mitigate.

##### 3. Burden of Proof

In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

#### I. Toxic Pollutants

The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

#### J. Samples of Wastes

If requested, the permittee shall provide EPA with a sample of any waste in a manner specified by the Agency.

#### Part V. General Requirements

##### A. Changes in Discharge of Toxic Substances

Under 40 CFR 122.42(a), notification shall be provided to the Director as soon as the permittee knows of, or has reason to believe:

1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

a. One hundred micrograms per liter (100 ug/l);

b. Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony; or

c. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or

d. The level established by the Director in accordance with 40 CFR 122.44(f).

2. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge

will exceed the highest of the following "notification levels":

- a. Five hundred micrograms per liter (500 ug/l);
- b. One milligram per liter (1 mg/l) for antimony.
- c. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.44(f).
- d. The level established by the Director in accordance with 40 CFR 122.44(f).

#### B. Planned Changes

The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source as determined in 40 CFR 122.29(b); or
2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under Part V.A.1.

#### C. Anticipated Noncompliance

The permittee shall also give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

#### D. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

#### E. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. The application should be submitted at least 180 days before the expiration date of this permit.

#### F. Duty to Provide Information

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this

permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

#### G. Other Information

When the permittee becomes aware that it failed to submit any relevant facts in a request for coverage or submitted incorrect information in a request of coverage or any report to the Director, it shall promptly submit such facts or information.

#### H. Signatory Requirements

All requests, reports or information submitted to the Director shall be signed and certified.

##### 1. Request for Coverage

All requests to be covered under the general permit shall be signed as follows:

a. *For a corporation:* By a responsible corporate officer. For the purposes of this section, a responsible corporate officer means:

(i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation or

(ii) The manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

b. *For a partnership or sole proprietorship:* By a general partner or the proprietor, respectively;

c. *For a municipality, state, Federal, or other public agency:* By either a principal executive officer or ranking elected official. For the purposes of this section, a principal executive officer of a federal agency includes:

- (i) The chief executive officer of the agency, or
- (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

##### 2. Reports Required by Permit

All reports required by the permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described above and submitted to the Director.

b. The authorization specified either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)

#### 3. Changes to Authorization

If an authorization under Part V.H.2. is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part V.H.2. must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

#### 4. Certification

Any person signing a document under this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under the direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

#### I. Availability of Reports

Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the office of the Director. As required by the Act, requests for coverage under this general permit, permits, and effluent data shall not be considered confidential.

#### J. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permitted from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the Act.

**K. Property Rights**

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, state, or local laws or regulations.

**L. Severability**

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

**M. Transfers**

This permit may be automatically transferred to a new permittee if:

1. The current permittee notifies the Director at least 30 days in advance of the proposed transfer date;
2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
3. The Director does not notify the existing permittee and the proposed new permittee of his or her intent to modify or revoke and reissue authorization under this general permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned above in paragraph 2.

**N. State Laws**

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by section 510 of the Act.

**Table 1—Authorized Drilling Mud Types**

Table 1 may be updated by EPA, Region 10, during the effective period of the permit. If so, the latest updated version will supersede all earlier versions. Updated versions will be mailed to permittees at the time that the updates become effective. They will be available to other parties upon request.

Components	Maximum allowable concentration (lb/bbl)
1. Seawater/Freshwater/Potassium/Polymer Mud:	
KCl .....	50
Starch .....	12
Cellulose Polymer .....	5
Xanthum Gum Polymer .....	2
Drilled Solids .....	100
Caustic .....	3
Barite .....	575
Seawater/Freshwater .....	( <sup>1</sup> )
2. Seawater/Lignosulfonate Mud:	
Bentonite <sup>2</sup> .....	50
Lignosulfonate, Chrome or Ferro-chrome .....	15
Lignite, Untreated or Chrome-treated .....	10
Caustic .....	5
Lime .....	2

Components	Maximum allowable concentration (lb/bbl)
Barite .....	575
Drilled Solids .....	100
Soda Ash/Sodium Bicarbonate .....	2
Cellulose Polymer .....	5
Seawater/Freshwater .....	( <sup>1</sup> )
3. Lime Mud:	
Lime .....	20
Bentonite <sup>2</sup> .....	50
Lignosulfonate, Chrome or Ferro-chrome .....	15
Lignite, Untreated or Chrome-treated .....	10
Caustic .....	5
Barite .....	575
Drilled Solids .....	100
Soda Ash/Sodium Bicarbonate .....	2
Seawater/Freshwater .....	( <sup>1</sup> )
4. Non-Dispersed Mud:	
Bentonite <sup>2</sup> .....	50
Acrylic Polymer .....	2
Lime .....	2
Barite .....	180
Drilled Solids .....	70
Seawater/Freshwater .....	( <sup>1</sup> )
5. Spud Mud:	
Lime .....	2
Bentonite <sup>2</sup> .....	50
Caustic .....	2
Barite .....	50
Soda Ash/Sodium Bicarbonate .....	2
Seawater .....	( <sup>1</sup> )
6. Seawater/Freshwater Gel Mud:	
Lime .....	2
Bentonite <sup>2</sup> .....	50
Caustic .....	3
Barite .....	50
Drilled Solids .....	100
Soda Ash/Sodium Bicarbonate .....	2
Cellulose Polymer .....	2
Seawater/Freshwater .....	( <sup>1</sup> )

<sup>1</sup> As needed.

<sup>2</sup> Attapulgite, sepiolite, or montmorillonite may be substituted for bentonite.

**TABLE 2—AUTHORIZED MUD COMPONENTS/SPECIALTY ADDITIVES**

[Any of the additives listed below may be discharged in generic muds 2 through 6. Only those additives marked "\*" may be discharged in generic mud 1.]

Product Name	Maximum Allowable Concentration (lb/bbl, unless otherwise noted) <sup>1</sup>	Generic Description <sup>2</sup>
.....	0.2*	Aluminum stearate.
.....	200 mg/l nitrate, or 0.05 lb/bbl	Ammonium nitrate.
.....	As needed*	Calcium carbide.
.....	As needed*	Cellophane flakes.
.....	45*	Flakes of silicate mineral mica.
.....	8*	Glass beads.
.....	As needed*	Nut hulls, crushed granular.
.....	0.4	Phosphoric acid esters and triethanolamine
.....	8*	Plastic spheres.
.....	50,000 mg/l chloride	Sodium chloride
.....	200 mg/l nitrate, or 0.05 lb/bbl	Sodium nitrate.
.....	0.5*	Sodium polyphosphate
.....	50*	Vegetable plus polymer fibers, flakes, and granules
.....	As needed*	Zinc carbonate and lime
Aktaflo-S <sup>3</sup>	3 (3) <sup>1</sup>	Aqueous solution of non-ionic modified phenol
Aqua Spot	1% by vol.	Sulfonated vegetable ester formulation.
Bara Brine Defoam <sup>3</sup>	0.1	Dimethyl polysiloxane in an aqueous emulsion.
Baratrol <sup>3</sup>	6	Sulfonated asphalt residuum
Barazan <sup>3</sup>	2	Xanthan gum polymer
Ben-Ex <sup>3</sup>	1 (1) <sup>1</sup>	Vinyl acetate/maleic anhydride copolymer
Bit Lube II	2	Fatty acid esters and alkyl phenolic sulfides in a solvent base
Chemtrol-X	5 (4) <sup>1</sup>	Polymer treated humate
Con Det	0.4 (0.25) <sup>1</sup>	Water solution of anionic surfactants
D-D	0.5 (0.25) <sup>1</sup>	Blend of surfactants
DMS <sup>3</sup>	3 (3) <sup>1</sup>	Aqueous solution of non-ionic modified phenol

TABLE 2—AUTHORIZED MUD COMPONENTS/SPECIALTY ADDITIVES—Continued

[Any of the additives listed below may be discharged in generic muds 2 through 6. Only those additives marked "\*" may be discharged in generic mud 1.]

Product Name	Maximum Allowable Concentration (lb/bbl, unless otherwise noted) <sup>1</sup>	Generic Description <sup>2</sup>
Desco CF	0.5	Chrome-free organic mud thinner containing sulfomethylated tannin.
Duovis	2	Xanthan gum.
Durenex	6 (4) <sup>1</sup>	Lignite/resin blend.
Enviro Torq <sup>3</sup>	6	Liquid triglycerides in vegetable oil.
Gelex	1 (1) <sup>1</sup>	Sodium polyacrylate and polyacrylamide.
Geltone, Geltone II <sup>3</sup>	12	Organophilic clay.
LD-8	10 gal/1500 bbl	Aluminum stearate in propoxylated oleyl alcohol.
Lube-106	2	Oleates in mixed alcohols.
Lubri-Sal	2.0% (by vol)	Vegetable ester formulation.
MD (IMCO)	0.25 (0.25) <sup>1</sup>	Fatty acid ester.
Mil-Gard	As needed	Basic zinc carbonate.
Milchem MO	0.04 gal/bbl, or 0.3 (0.25) lb/bbl <sup>1</sup>	Ethoxylated alcohol formulation.
Oxygen Scavenger <sup>3</sup>	0.5	Ammonium bisulfite.
Poly RX	4 (4) <sup>1</sup>	Polymer treated humate.
Resinex	4 (4) <sup>1</sup>	Reacted phenol-formaldehyde-urea resin containing no free phenol, urea, or formaldehyde.
SDI <sup>3</sup>	0.1	Dimethyl polysiloxane in an aqueous emulsion.
Selecfloc	0.25	High molecular weight poly-acrylamide polymer packaged in light mineral oil.
Soltex <sup>3</sup>	6	Sulfonated asphalt residuum.
Sulf-X <sup>3</sup>	As needed	Zinc oxide.
Sulf-X ES <sup>3</sup>	As needed	Zinc oxide.
Therma Check	1	Sulfono-acrylamide copolymer.
Therma Thin	4	Polycarboxylic acid salt.
Torq-Trim II <sup>3</sup>	6	Liquid triglycerides in vegetable oil.
VG-69 <sup>3</sup>	12	Organophilic clay.
X-Tend II <sup>3</sup>	1 (1) <sup>1</sup>	Vinyl acetate/maleic anhydride copolymer.
XC Polymer <sup>3</sup>	2	Xanthan gum polymer.
XO <sub>2</sub>	0.5	Ammonium bisulfite.

<sup>1</sup> These additive may be discharged in Generic Mud No. 1.<sup>2</sup> If a listed product will be used in combination with other functionally equivalent products, the maximum allowable concentration (MAC) for the sum of all of the products is the lowest MAC for any of the individual products. Four examples of functionally equivalent products are: (1) Aktaflo-S and DMS, MAC=3 lb/bbl; (2) Ben-Ex and Gelex, MAC=1 lb/bbl; (3) Chemtrol-X, Durenex, Poly RX, and Resinex, MAC=4 lb/bbl, and (4) Con Det, D-D, MO (IMCO), and Milchem MO, MAC=0.25 lb/bbl. For these examples, the MAC for any combination of the products is given in parentheses. For guidance on whether other products are considered to be functional equivalents, contact the Regional 10 office of EPA.<sup>3</sup> Any proprietary formulation that contains a substance which is an intentional component of the formulation, other than those specifically described, must be authorized by the Director.<sup>4</sup> Product names designated above are considered to represent additives with more than one commercial name. These products may be used interchangeably or in combination with each other. The MAC for the sum of all products thus designated is the lowest MAC for any of the individual products. Examples of these product names are: (1) Soltex and Baratrol, MAC=6 lb/bbl, (2) Bara Brine Defoam and SDI, MAC=0.1 lb/bbl, (3) XC Polymer and Barazan, MAC=2 lb/bbl, (4) VG-69 and Geltone, Geltone II, MAC=12 lb/bbl, (5) Torq-Trim II and Enviro-Torq, MAC=6 lb/bbl, (6) Benex and X-Tend II, MAC=1 lb/bbl, and (7) Aktaflo-S and DMS, MAC=3 lb/bbl. Contact the Region 10 office of EPA for guidance on whether other product names are considered to represent a single additive.Table 3—Authorized Mineral Oil Pill Components <sup>1</sup>

- None of the listed products may be discharged in generic mud 1. Refer to sections II.B.1.e. and f. of the permit for discharge requirements.

- One product from List A and one product from List B may be combined to formulate a mineral oil pill. Products from List B may also be used individually as a spot.

- Any mineral oil pill components not listed below must be authorized by Region 10 prior to discharge.

*List A—Spotting Compounds*

Black Magic SFT  
EZ Spot<sup>NT</sup>  
Kenol ES

<sup>1</sup> These lists were compiled by Region 10 based on the products requested and authorized under previous general permits for the Alaskan OCS.

Kwikspot  
Pipelax SF  
Halliburton Pill <sup>2</sup>  
Halliburton MO-55  
Halliburton MO-56  
Hyflow IV  
Mineral oil from List B

*List B—Mineral Oil Products*

Conoco LVT  
DOS 3  
Gulf Mineral Seal Oil  
LVT 35  
Mentor 28  
Vista ODC

*Pre-Mixed Mineral Oil Pills*Black Magic LT <sup>3</sup><sup>2</sup> The Halliburton Pill has been authorized according to the formulation listed above.<sup>3</sup> Black Magic LT is a complete mineral oil pill that is pre-mixed.

Final NPDES General Permit, U.S.  
Environmental Protection Agency, 1200  
Sixth Avenue, Seattle, Washington  
98101

*Authorization To Discharge Under The  
National Pollutant Discharge  
Elimination System For Oil And Gas  
Exploration Facilities on The Outer  
Continental Shelf*

[Permit No. AKG288000 (Chukchi Sea)]

In compliance with the provisions of  
the Clean Water Act, 33 U.S.C. 1251 *et  
seq.*, as amended by the Water Quality  
Act of 1987, Pub. L. 100-4, the "Act", the  
following discharges are authorized:

Discharge Name	Dis- charge No.
Drilling Mud	001
Drill Cuttings and Washwater	002
Deck Drainage	003

Discharge Name	Dis-charge No.
Sanitary Wastes .....	004
Domestic Wastes .....	005
Desalination Unit Wastes .....	006
Blowout Preventer Fluid .....	007
Boiler Blowdown .....	008
Fire Control System Test Water .....	009
Non-Contact Cooling Water .....	010
Uncontaminated Ballast Water .....	011
Uncontaminated Bilge Water .....	012
Excess Cement Slurry .....	013
Mud, Cuttings, Cement at Seafloor .....	014
Test Fluids .....	015

From oil and gas exploratory facilities in offshore areas (defined in 40 CFR Part 435, Subpart A), to receiving waters named the Chukchi Sea, in accordance with effluent limitations, monitoring and reporting requirements, and other conditions set forth in Parts I through V hereof.

Permittees who do not request and receive coverage under this general permit as described in Part I are not authorized to discharge to the specified waters unless an individual permit has been issued to the permittee by EPA, Region 10.

The authorized discharge sites include all blocks offered for lease from the U.S. Department of the Interior's Minerals Management Service (MMS) in Federal Lease Sale 109 (Chukchi Sea).

This permit shall be modified or revoked at any time if, on the basis of any new data, the Director determines that this information would have justified the application of different permit conditions at the time of issuance. Permit modification or revocation will be conducted in accordance with 40 CFR 122.62, 122.63, and 122.64. In addition to any other grounds specified herein, this permit shall be modified or revoked at any time if, on the basis of any new data, the Director determines that continued discharges may cause unreasonable degradation of the marine environment.

Under 40 CFR 122.44(c)(3), if an applicable standard or limitation is promulgated under sections 301(b)(2)(C) and (D), 304(b)(2), and 307(a)(2) and that effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the permit, the permit shall be promptly modified or revoked and reissued to conform to that effluent standard or limitation.

This permit shall become effective on September 28, 1988.

This permit and the authorization to discharge shall expire at midnight on September 28, 1993.

Robert S. Byrd,

Acting Regional Administrator, Region 10.

#### Part I. Notification Requirements

See Part I of the Beaufort Sea II permit (AKG284100).

#### Part II. Effluent Limitations and Monitoring Requirements

A. *Definitions.* See Part II.A. of the Beaufort Sea II Permit (AKG284100).

B. *Drilling Mud and Drill Cuttings and Washwater (Discharges 001 and 002).*

1.—2. See Parts II.B.1. through II.B.2 of the Beaufort Sea II Permit (AKG284100).

#### 3. Area and Seasonal Requirements.

a. During open-water conditions, discharge in the areas shallower than 20 meters shall be released no deeper than 1 meter below the surface of the receiving water.

b. During unstable or broken ice conditions, the following conditions apply for discharges in areas shallower than 20 meters:

(1) Discharge shall be prediluted 9:1 (seawater: Drilling muds and cuttings).

(2) Environmental monitoring is required as specified in Part II.B.4. below.

c. During stable ice condition, unless authorized otherwise by the Director, the following conditions apply:

(1) Discharges shall be to above-ice locations and shall avoid to the maximum extent possible areas of sea ice cracking or major stress fracturing.

(2) Predilution and flow rate restrictions do not apply.

4. *Environmental Monitoring Requirements:* Monitoring is required in two general areas, which have been identified as requiring further information on the fate and, in some cases, the effects of discharged drilling muds. These areas are: (1) Below-ice to water depths shallower than 20 meters and (2) within 1,000 meters of an area of biological concern (e.g., as identified in the Final Environmental Impact Statement for Lease Sale Area 109). The specifics of each monitoring program, including survey design, analytical techniques, participants, and reporting requirements, will be determined by the Director in consultation with the Regional Environmental Supervisor of the Alaska Department of Environmental Conservation and the permittee. Such monitoring shall include, but not be limited to, relevant hydrographic, sediment hydrocarbon, and heavy metal data from surveys conducted before and during drilling mud disposal operations and up to at

least one year after drilling operations cease.

The results of the initial monitoring survey in areas of biological concern shall be made available for review prior to any authorization of subsequent disposals into similar areas with significant biological communities.

C. through F. see Parts II.C. through II.F. of the Beaufort Sea II Permit (AKG284100).

Parts III., IV., and V., and Tables 1, 2, and 3.

See Parts III., IV., and V., and Tables 1, 2, and 3 of the Beaufort Sea II Permit (AKG284100).

[FR Doc. 88-22030 Filed 9-27-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30290; FRL-3452-8]

#### Certain Companies; Applications to Register Pesticide Products; Sandoz Crop Protection Corp., et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered products and products involving a changed use pattern pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATE: Comment by October 28, 1988.

ADDRESS: By mail submit comments identified by the document control number [OPP-30290] and the registration/file number, attention Product Manager (PM) named in each application at the following address: Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

In person, bring comments to: Environmental Protection Agency, Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential

may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Room 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:**  
By mail: Registration Division (TS-767C), Attn: (Product Manager (PM) named in each registration), Office of Pesticide Programs, 401 M Street SW., Washington, DC 20460.

In person: Contact the PM named in each registration at the following office location/telephone number:

Product manager	Office location/telephone No.	Address
PM 21 Lois Rossi.	Rm. 227, CM#2 (703-557-1900).	Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202. Do.
PM 23 Richard Mountfort.	Rm. 237, CM#2 (703-557-1830).	

**SUPPLEMENTARY INFORMATION:** EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products and products involving a changed use pattern pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

#### I. Products Containing Active Ingredients Not Included In Any Previously Registered Products

##### 1. File Symbol: 55947-RGG

Applicant: Sandoz Crop Protection Corporation, 1300 E. Touhy Ave., Des Plaines, IL 60018. Product name: Technical Cyproconazole. Fungicide. Active ingredient: Cyproconazole- $\alpha$ -(4-chlorophenyl)- $\alpha$ -(1-cyclopropylethyl)-1H-1,2,4-triazole-1-ethanol 93%. Proposed classification/Use: None. For manufacturing purposes only. (PM 21)

##### 2. File Symbol: 55947-RGE

Applicant: Sandoz Crop Protection Corp. Product name: Cyproconazole 40% WG Fungicide. Fungicide. Active ingredient: -(4-Chlorophenyl)-[1-cyclopropylethyl] triazole-1-ethanol 40%. Proposed classification/Use: None. For terrestrial/non-food use. (PM 21)

##### 3. File Symbol: 3125-GIE.

Applicant: Mobray Corporation, PO Box 4913, Kansas City, MO 64120. Product name: Lynx™ 1.2 Turf Fungicide. Fungicide. Active ingredient: Alpha-[1-(4-chlorophenyl)ethyl]- $\alpha$ -(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol 15%. Proposed classification/Use: None. For control of certain diseases on lawns and turfs. (PM 21)

##### 4. File Symbol: 3125-GIG.

Applicant: Mobray Corporation. Product name: Folicur™ Technical Fungicide. Active ingredient: Alpha-[2-(4-chlorophenyl)ethyl]- $\alpha$ -(1,1-demethylethyl)-1H-1,2,4-triazole-1-ethanol 93%. Proposed classification/Use: None. For formulation into end use products of terrestrial non-food and domestic outdoor crops, such as grasses grown for seed, lawns, turfgrass and ornamentals. (PM 21)

##### 5. File Symbol: 3125-GIU.

Applicant: Mobray Corporation. Product name: Folicur 1.2 EC Foliar Fungicide. Fungicide. Active ingredient: Alpha-[2-(4-chlorophenyl)ethyl]- $\alpha$ -(1,1-demethylethyl)-1H-1,2,4-triazole-1-ethanol 15%. Proposed classification/Use: None. For control of specified diseases on grasses grown for seed. (PM 21)

##### 6. File Symbol: 3125-GIL.

Applicant: Mobray Corporation. Product name: Tycor DF 50% Dry Flowable Herbicide. Herbicide. Active ingredient: 4-Amino-6-(1,1-dimethylethyl)-3-(ethylthio)-1,2,4-triazine-5(4H)-one 50%. Proposed classification/Use: None. For control of certain grass and broadleaf weeds in winter wheat. (PM 23)

##### 7. File Symbol: 3125-GIA.

Applicant: Mobray Corporation, PO Box 4913, Kansas City, MO 64120. Product name: Tycor Technical. Herbicide. Active ingredient: 4-Amino-6-(1,1-demethylethyl)-3-(ethylthio)-1,2,4-triazine-5(4H)-one 90%. Proposed classification/Use: None. For the use in the manufacture of herbicides. (PM 23)

##### 8. File Symbol: 8340-EI.

Applicant: Hoechst Celanese Corporation, Route 202-206 North, Somerville, NJ 08876. Product name: Ignite Herbicide. Herbicide. Active ingredient: Monoammonium 2-amino-4-(hydroxymethylphosphinyl)butanoate 16.22%. Proposed classification/Use: General. For non-selective postemergence weed control in non-food crop areas. (PM 23)

##### 9. File Symbol: 8340-GR.

Applicant: Hoechst Celanese Corp. Product name: Ignite Herbicide. Active ingredient: Monoammonium 2-amino-4-(hydroxymethylphosphinyl)butanoate 16.23%. Proposed classification/Use: General. For non-selective post-emergence weed control in soybeans, field corn, apples, tree nuts, and vine crops. (PN 23)

##### 10. File Symbol: 8340-EO.

Applicant: Hoechst Celanese Corp. Product name: Ignite Technical. Herbicide. Active ingredient: Monoammonium 2-amino-4-(hydroxymethylphosphinyl)butanoate 95%. Proposed classification/Use: None. For formulating purposes only. (PM 23)

##### 11. File Symbol: 8340-ET.

Applicant: Hoechst Celanese Corp. Product name: Ignite Manufacturing-Use Product. Herbicide. Active ingredient: Monoammonium 2-amino-4-(hydroxymethylphosphinyl)butanoate 47.50%. Proposed classification/Use: None. For formulating purposes only. (PM 23)

##### 12. File Symbol: 352-LEN.

Applicant: E. I. Du Pont De Nemours and Co., Agricultural Products Dept., Walkers Mill, Barley Mill Plaza, Wilmington, DE 19898. Product name: Du Pont Londax Herbicide. Active ingredient: Methyl 2-((((4,6-dimethoxy pyrimidin-2-yl)amino)-carbonyl)amino)sulfonyl]-methylbenzoate 60%. Proposed classification/Use: General. For use on rice in the State of California to control broadleaf weeds and sedge. (PM 23)

##### 13. File Symbol: 352-LNO.

Applicant: E. I. Du Pont De Nemours and Co. Product name: Du Pont Express Herbicide. Herbicide. Active ingredient: Methyl 2-[[[N-4-methoxy-6-methyl-1,3,5-triazin-2-yl]-methylamino]carbonyl]amino]sulfonyl]benzoate 75%. Proposed classification/Use: None. For selective postemergence control of certain broadleaf weeds in wheat and barley. (PM 23)

##### 14. File Symbol: 55422-E.

Applicant: Gro/Tech Inc., PO Box 347, Rapid City, SD 57709. Product name: Rootall. Plant Growth Regulator. Active ingredient: Pehnyl indole-3-thiolobutyrate 99.90%. Proposed classification/Use: General. Rootall is used to promote root growth on plant cuttings and to reduce transplant shock of rooted cuttings and seedlings. Also

used on trees, shrubs, and other woody ornamentals. (PM 23)

## II. Product Involving a Changed Use Pattern

File Symbol: 612-A. Applicant: Unocal Chemicals Division, Union Oil Co. of California, 1201 W. 5th Street, Los Angeles, CA 90017. Product name: Enfro. Frost Protection Agent. Active ingredient: Urea 42.9%. Proposed classification/Use: General. To include terrestrial food crop uses. (PM 23)

Notice of approval of denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Program Management and Support Division (PMSD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PMSD office (703-557-3262), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: September 15, 1988.

Edwin F. Tinsworth,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-21777 Filed 9-27-88; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

### Privacy Act of 1974; Systems of Records

The FCC is correcting typographical errors in the Prefatory Statement and in one system notice which appeared in the **Federal Register** on September 2, 1988 (53 FR 34149). For further information contact Terry D. Johnson, Federal Communications Commission, (202) 632-7513. The following corrections are made:

1. On page 34151, third column, in the table of blanket routine uses, under the "System No." column, change "FCC/OGC-8" to "FCC/OGC-7."

2. On page 34163, second column, under **AUTHORITY FOR MAINTENANCE OF THE SYSTEM**, line 3, change "530" to "630."

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-22130 Filed 9-27-88; 8:45 am]

BILLING CODE 6712-01-M

### Applications for Consolidated Hearing; Atlantic City, Community Broadcasting, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city, and state	File No.	MM Docket No.
A. Atlantic City Community Broadcasting, Inc.; Atlantic City, NJ.	BPH-870826ME.....	88-433
B. Radio-Vision Communications, Limited Partnership; Atlantic City, NJ.	BPH-870826MF.....	
C. Knight Radio, Inc.; Atlantic City, NJ.	BPH-870826MH.....	
D. Beach Communications; Atlantic City, NJ.	BPH-870826MJ.....	
E. Maureen H. Meny, Inc.; Atlantic City, NJ.	BPH-870826MB.....	
F. Atlantic Shore Broadcasting; Atlantic City, NJ.	BPH-870826ME.....	
G. Hillside Broadcasting Limited Partnership; Atlantic City, NJ.	BPH-870826MK.....	
H. Atlantic Wireless Broadcasting Limited Partnership; Atlantic City, NJ.	BPH-870826MO.....	
I. American Indian Broadcast Group, Inc.; Atlantic City, NJ.	BPH-870826MQ.....	
J. Surf City Broadcasting Associates; Atlantic City, NJ.	BPH-870826MR.....	
K. Tremont Broadcasting Corp.; Atlantic City, NJ.	BPH-870826MS.....	
L. Boardwalk Enterprises Limited Partnership; Atlantic City, NJ.	BPH-870826MW.....	
M. Telecommunications Network, Inc.; Atlantic City, NJ.	BPH-870826MX.....	

Applicant, city, and state	File No.	MM Docket No.
N. New Jersey Public Broadcasting Authority; Atlantic City, NJ.	BPED-870827NB.....	
O. Reginald W. Lavong and Sandra M. DelGiorno d/b/a D&L Broadcasting; Atlantic City, NJ.	BPH-870827NC.....	
P. Long Beach Island Radio Corp., Atlantic City, NJ.	BPH-870827ND.....	
Q. Feature Productions, Inc.; Atlantic City, NJ.	BPH-870827NN.....	
R. Freedave Broadcasting Company L.P.; Atlantic City, NJ.	BPH-870827NP.....	
S. Boardwalk Communications, Inc.; Atlantic City, NJ.	BPH-870827NU.....	
T. A.C. Boardwalk Broadcasting Associates, a limited partnership; Atlantic City, NJ.	BPH-870827NY.....	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

#### Issue Heading and Applicant(s)

1. Site Availability, C,D,H,I,K,L,M,N,O,P,R.
2. Environmental, E,T.
3. Financial, Q.
4. Air Hazard, A,B,E,F,G,J,K,O,T.
5. Comparative, A-T.
6. Ultimate, A-T.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services,

Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division,  
Mass Media Bureau.

[FR Doc. 88-22126 Filed 9-27-88; 8:45 am]

BILLING CODE 6712-01-M

### Applications for Consolidated Hearing; Columbus Broadcasting Corp., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and State	File No.	MM Docket No.
A. Columbus Broadcasting Corp. Columbus, OH.	BPH-870514ME...	88-421
B. O'Leary Broadcasting, Inc., Columbus, OH.	BPH-870514MH...	
C. William Henry Sauro, Columbus, OH.	BPH-870514MI....	
D. Columbus Radio, Ltd., Columbus, OH.	BPH-870515MG...	
E. Mid-Ohio/Capitol, Communications Limited, Partnership, Columbus, OH.	BPH-870515MK...	
F. Scioto Broadcasters, Limited Partnership, Columbus, OH.	BPH-870515MU...	
G. Karen C. Murray d/b/a Mid-Ohio Radio Limited, Columbus, OH.	BPH-870515NM...	
H. Clear Channel, Communications, Inc., Columbus, OH.	BPH-870515NN...	
I. Horace E. Perkins, Columbus, OH.	BPH-870515NP...	
J. Mark Allen Burchett, Columbus, OH.	BPH-870515NQ...	
K. McCall Broadcasting, Inc., Columbus, OH.	BPH-870515NU...	
L. Columbus Radio, Limited Partnership, Columbus, OH.	BPH-870515NY....	

3. Financial, C
4. Financial, H
5. City Coverage, A,C,D,E,F,G,H,I,J,K,L
6. Misrepresentation, A,E
7. Environmental, I,L
8. Air Hazard, B,D]
9. Comparative, ALL APPLICANTS
10. Ultimate, ALL APPLICANTS

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jana Gay,

Assistant Chief, Audio Services Division,  
Mass Media Bureau.

[FR Doc. 88-22127 Filed 9-27-88; 8:45 am]

BILLING CODE 6712-01-M

### Applications for Consolidated Hearing; Germantown Radio Co., et al.

1. The Commission has before it the following mutually exclusive applications for new FM station:

Applicant, City and State	File No.	MM Docket No.
A. Germantown Radio Co. Germantown, TN.	BPH-870904MR...	88-429
B. Eugene Walton, Germantown, TN.	BPH-870904MS...	
C. Albert L. Crain & Lois B. Crain, Germantown, TN.	BPH-870904MT...	
D. West Tennessee Broadcasting Limited, Partnership, Germantown, TN.	BPH-870908MG...	
E. Charles M. Trub and Jerry W. Siano d/b/a T & S Associates, Germantown, TN.	BPH-870908MH...	
F. Nor-Dot Broadcasting, Inc., Germantown, TN.	BPH-870908MI....	
G. Henderson Broadcasting of Memphis, Inc., Germantown, TN.	BPH-870908MJ....	
H. Novella Broadcasting Co., L.P., Germantown, TN.	BPH-870908MM...	
I. David J. Bott and Carese C. Bott, Joint Tenants, Germantown, TN.	BPH-870908MN...	

Applicant, City and State	File No.	MM Docket No.
J. American Indian Broadcasting Group, Germantown, TN.	BPH-870908MQ...	
K. Pederson Communications Limited Partnership, Germantown, TN.	BPH-870908MS...	
L. Graceland Broadcasting, Inc., Germantown, TN.	BPH-870908MT...	
M. Omni Broadcasting Corp., Germantown, TN.	BPH-870908MV...	
N. WMQM, Inc., Germantown, TN.	BPH-870908MW...	
O. Germantown Broadcasting Corp., Germantown, TN.	BPH-870908MY...	
P. Germantown FM, Inc., Germantown, TN.	BPH-870908MZ...	
Q. Heart of America Broadcasting, Ltd., Germantown, TN.	BPH-870904MU...	
	(PREVIOUSLY DISMISSED).	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

#### Issue Heading and Applicants

1. Environmental, O
2. Air Hazard, C,M,N
3. Comparative, A-P
4. Ultimate, A-P

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division,  
Mass Media Bureau.

[FR Doc. 88-22126 Filed 9-27-88; 8:45 am]

BILLING CODE 6712-01-M

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

#### Issue Heading and Applicants

1. Financial, A,D,E,I,L
2. Financial & Misrepresentation, A,E

### Applications for Consolidated Hearings; Richardson Broadcasting Group, et al.

1. The Commission has before it the following groups of mutually exclusive applications for new FM stations:

Applicant, City and State	File No.	MM Docket No.
I.		
A. Richardson Broadcasting Group, Southern Pines, NC.	BPH-870824MG...	88-407
B. Elizabeth M. Younts, Southern Pines, NC.	BPH-870824MH...	
C. Greene Broadcasting, Inc., Southern Pines, NC.	BPH-870824MI....	
D. Southern Radio, Limited Partnership, Southern Pines, NC.	BPH-870824MT...	

#### Issue Heading and Applicants

1. Environmental, A
2. Air Hazard, B
3. Comparative, All Applicants
4. Ultimate, All Applicants

Applicant, City and State	File No.	MM Docket No.
II.		
A. Radio Habersham, Inc., Clarkesville, GA.	BPH-871023MO...	88-408
B. Clara Morris Martin, Clarkesville, GA.	BPH-871026ML....	
C. Habersham Associates, Clarkesville, GA.	BPH-871026MM...	

#### Issue Heading and Applicants

1. Comparative, A,B,C
2. Ultimate, A,B,C

Applicant, City and State	File No.	MM Docket No.
III.		
A. Camelback Radio Broadcasters, L.P., Paradise Valley, AZ.	BPH-870909MC...	88-410
B. Scottsdale Talking Machine and Wireless Co., Inc., Paradise Valley, AZ.	BPH-870909MF...	
C. Paradise Valley Broadcasters, Ltd. Partnership I, Paradise Valley, AZ.	BPH-870910MB...	

Applicant, City and State	File No.	MM Docket No.
D. Gil L. Lyons, Paradise Valley, AZ.	BPH-870910MC...	
E. Hope Valley FM Limited Partnership, Paradise Valley, AZ.	BPH-870910ME...	
F. Patricia Hampton, Paradise Valley, AZ.	BPH-870910NE....	
G. Julia S. Zozaya d/b/a American International Diversified, Paradise Valley, AZ.	BPH-870910NH...	
H. Philip C. Davis and Lisa M. Davis d/b/a Paradise Valley Broadcasters, Paradise Valley, AZ.	BPH-870910NK....	
I. Paradise Valley Associates Limited Partnership, Paradise Valley, AZ.	BPH-870910OB...	

#### Issue Heading and Applicants

1. Environmental, G
2. Air Hazard, E, I
3. Comparative, ALL
4. Ultimate, ALL

Applicant, City and State	File No.	MM Docket No.
IV.		
A. Radio Albert Lea, Inc., Albert Lea, MN.	BPH-870914MO...	88-406
B. Albert Lea Broadcasting Corp., Albert Lea, MN.	BPH-870914MP...	
C. Archie Givens, Jr., Albert Lea, MN.	BPH-870914MB...	
D. Albert Lea, Communications, Inc., Albert Lea, MN.	(DISMISSED HEREIN). BPH-870914MD...	
	(DISMISSED HEREIN).	

#### Issue Heading and Applicants

1. Comparative, A,B
2. Ultimate, A,B

Applicant, City and State	File No.	MM Docket No.
V.		
A. David Fiveash, Port Isabel, TX.	BPH-851213MH...	88-409

Applicant, City and State	File No.	MM Docket No.
B. Tommy Turner Carruth, Port Isabel, TX.	BPH-851213NK....	
C. D&E Trevino, Partnership, Port Isabel, TX.	BPH-851216NB....	
D. Better News, Inc., Port Isabel, TX.	BPH-851216ND...	
E. Matthew C. Trub, Port Isabel, TX.	BPH-851216NE....	

#### Issue Heading and Applicants

1. Site Availability, A
2. (See Appendix), A
3. Air Hazard, A
4. Comparative, A-E
5. Ultimate, A-E

#### Appendix, Non-Standard Issue

1. (a) To determine whether A has reasonable assurance that the transmitter site specified will be available to him.

(b) To determine, in light of the facts adduced pursuant to issue (a) above, the facts and circumstances surrounding A's failure to timely update his application and whether A violated 47 C.F.R. § 1.65.

(c) To determine, in light of the facts adduced pursuant to issues (a) and (b) above, whether A attempted to conceal material facts from the Commission, and, if so, the effect thereof on his basic qualifications to be a Commission licensee.

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in consolidated proceedings upon the issues listed above for each proceeding. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used to signify whether the issue in question applies to that particular applicant.

3. Non-standardized issues in these proceedings, are set forth in an Appendix to this Notice. A copy of the complete HDO's in these proceedings are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW..

Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division,  
Mass Media Bureau.

[FR Doc. 88-22129 Filed 9-27-88; 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.: 224-010730-003

Title: City of Los Angeles Lease Agreement

Parties: City of Los Angeles Los Angeles Cruise Ship Terminals, Inc.

Synopsis: The agreement modifies the lease premises by: (1) Deleting 100,800 square feet adjacent to Berth 93A, (2) adding 32,687 square feet at Berth 93B and, (3) granting Tenant the nonexclusive preferential right to use Parcels No. One through Five of Drawing No. 1-1489. The agreement also revised the minimum annual guarantee and revenue sharing breakpoint.

Agreement No.: 224-200156

Title: State of Hawaii Terminal Agreement

Parties: State of Hawaii Matson Terminals, Inc. (Matson)

Synopsis: The agreement provides Matson a powerline easement to provide electrical power for its refrigerated cargo container operations. The 35-year lease provides for a fixed annual ground rental for the first 15-year period and provides for rental renegotiations prior to the 15th and 25th years of the lease.

Agreement No.: 224-200155

Title: State of Hawaii Lease Agreement

Parties: State of Hawaii Matson Terminals, Inc. (Matson)

Synopsis: The agreement authorizes Matson to lease certain electrical power easements and to purchase the existing electrical equipment at the container handling facility, Pier 1, Kahului Harbor, Maui, Hawaii.

By Order of the Federal Maritime Commission.

Dated: September 23, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-22238 Filed 9-27-88; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 88-23]

### Stevedoring Services of America v. Board of Harbor Commissioners of the City of Los Angeles and Overseas Shipping Co; Filing of Complaint and Assignment

September 23, 1988.

Notice is given that a complaint filed by Stevedoring Services of America ("SSA") against the Board of Harbor Commissioners of the City of Los Angeles ("BHCLA") and Overseas Shipping Company ("OSC") was served September 23, 1988. SSA alleges the existence of an exclusive, preferential, or cooperative working arrangement between BHCLA and OSC which has never been filed with the Federal Maritime Commission as required by section 5 of the Shipping Act of 1984 ("the Act"), 46 U.S.C. app 1704(a), and has never become effective pursuant to section 6(c) of the Act, 46 U.S.C. app 1705(c). As alleged by SSA, implementation of the agreement which has not become effective has resulted in a violation of sections 10 (a)(2) and 10 (a)(3), 46 U.S.C. app 1709 (a)(2) and (a)(3). In addition, other alleged practices by BHCLA in connection with its management of marine terminal facilities at the Port of Los Angeles have resulted in violations of sections 10 (b)(11), (b)(12), (d)(1), (d)(2), and (d)(3), 46 U.S.C. app 1709 (b)(11), (b)(12), (d)(1), (d)(2) and (d)(3).

This proceeding has been assigned to Administrative Law Judge Joseph N. Ingolia ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-

examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by September 25, 1989, and the final decision of the Commission shall be issued by January 25, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 88-22237 Filed 9-27-88; 8:45 am]

BILLING CODE 6730-01-M

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreements No.: (1) 202-000093-046 and (2) 202-005200-060

Titles: (1) North Europe-U.S. Pacific Freight Conference; (2) Pacific Coast European Conference.

Parties: (1) & (2) Compagnie Generale Maritime, Hapag-Lloyd AG, Incotrans B.V.

Synopsis: The proposed amendments would modify the self-policing procedures of the agreements in accordance with changes to the Compliance Agreement (FMC Agreement No. 203-011160).

Agreement No.: 203-011075-008.

Title: Central America Discussion Agreement

Parties: United States/Central America Liner Association, Nordana Line, Inc., Concorde Shipping Inc., Marine Bulk Carriers, Inc., Tropical Shipping and Construction Co. Ltd., Central Gulf Lines, Nexos Line, Gran Golfo Express, Thompson Shipping Co., Ltd., Maritima Juno, S.A.

Synopsis: The proposed modification would add Norwegian American Enterprises, Inc., as a party to the

agreement. The parties have requested a shortened review period.

**Agreement No.:** 203-011211-001.

**Title:** Transpacific Discussion Agreement.

**Parties:** Nippon Yusen Kaisha, American President Lines, Ltd., Mitsui O.S.K. Lines, Ltd., Sea-Land Service, Inc., Kawasaki Kisen Kaisha, Ltd.

**Synopsis:** The proposed modification would add A.P. Moller-Maersk Line, Evergreen Marine Corp. (Taiwan) Ltd., Yangming Marine Transport Corp., Neptune Orient Lines, Ltd., Hyundai Merchant Marine Co., Ltd., and Nippon Liner System, Ltd., as parties to the agreement. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: September 23, 1988.

[FR Doc. 88-22177 Filed 9-27-88; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Agency Forms Under Review

September 21, 1988.

#### Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of an assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following reports, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

**DATE:** Comments must be received on or before October 13, 1988.

**ADDRESS:** Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** A copy of the request for clearance (SF 83), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822).

*Proposal to approve under OMB delegated authority the extension, with revision, of the following report:*

**1 Report Title:** Annual Daylight

Overdraft Capital Report for U.S.

Agencies and Branches of Foreign

Banks

**Agency Form Number:** FR 2225

**OMB Docket Number:** 7100-0216

**Frequency:** Annual

**Reporters:** U.S. Agencies and Branches of Foreign Banks

**Estimated Number of Respondents:** 110

**Average Hours per Response:** 1

**Annual Reporting Hours:** 110

Small businesses are not affect.

**General Description of Report:**

This information collection is considered voluntary (12 U.S.C. 248) and is given confidential treatment (5 U.S.C. 552b(4)).

The FR 2225 report provides timely data on the worldwide capital of the foreign parent, which is used in conjunction with other information to calculate the branches' daylight overdraft limit on large dollar payments systems. Minor revisions include a reduction in the frequency of the report to once a year (and a conforming amendment to the title of the report),

elimination of one item, and clarifications.

*Proposal to approve under OMB delegated authority the extension, without revision, of the following report:*

**1 Report Title:** Report of Sender Net Debit Cap

**Agency Form Number:** FR 2226

**OMB Docket Number:** 7100-0217

**Frequency:** Annual

**Reporters:** Depository institutions

**Estimated Number of Respondents:** 5,780

**Average Hours per Response:** .1

**Annual Reporting Hours:** 578

Small businesses are not affected.

**General Description of Report:**

This information collection is considered voluntary (12 U.S.C. 248) and is given confidential treatment (5 U.S.C. 552b(4)).

The FR 2226 report provides timely data on institutions' debit cap levels which the Federal Reserve uses to monitor payments activities with the objective of reducing intraday credit exposure.

Board of Governors of the Federal Reserve System, September 21, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-22133 Filed 9-27-88; 8:45 am]

BILLING CODE 6210-01-M

### Agency Forms Under Review

September 20, 1988.

#### Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be

submitted to the Board for final approval under OMB delegated authority.

**DATE:** Comments must be received on or before October 13, 1988.

**ADDRESS:** Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name follows. Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822)

*Proposal to approve under OMB delegated authority the extension, with minor revisions, of the following reports:*

1. **Report Title:** Weekly Report of Assets and Liabilities of Large U.S. Branches and Agencies of Foreign Banks

**Agency Form Number:** FR 2069

**OMB Docket Number:** 7100-0030

**Frequency:** Weekly

**Reporters:** Large U.S. branches and agencies of foreign banks

**Average Response Time:** 3.5 hours

**Estimated Number of Respondents:** 3,432

**Annual Reporting Hours:** 12,012

Small businesses are not affected.

**General Description of Report:**

This report is authorized by law (12 U.S.C. 3105). Individual respondent data are exempt from disclosure (5 U.S.C. 552(b)(4) and (b)(8)).

This report provides current information on credit developments and sources of funds at large U.S. branches and agencies of foreign banks. The data are used to estimate bank credit and

nondeposit funds and for analyzing banking and monetary conditions.

2. **Report Title:** Regulation K Requirements for Applications and Prior Notifications

**Agency Form Number:** FR K-1

**OMB Docket Number:** 7100-0107

**Frequency:** On occasion

**Reporters:** State member and national banks, Edge and Agreement corporations, bank holding companies

Requirement	Estimated number of responses	Estimated hours per response
Application/Notification to Establish Foreign Branch of Member Banks .....	7	9.5
Application to Establish, Acquire or Change Control of an Edge Corp., or to Engage in Certain Domestic Activities .....	10	12.0
Notification to Establish a Branch of an Edge Corp.; Application to Invest in Other Organizations; Notification to Invest in Other Organizations; Notification to Invest in an Export Trading Company .....	100	18.8

**Annual Reporting Hours:** 2067

Small businesses are not affected.

**General Description of Reports:**

These reports are required by law (12 U.S.C. 601-604(a), 611-631, 1843(c)(13), (c)(14) and 1844(c)). Confidential treatment may be requested by the applicant (5 U.S.C. 552).

The FR K-1 is a compilation of all the applications and prior notification requirements in Regulation K that pertain to the formation of Edge and Agreement corporations and export trading companies and the international and foreign activities of U.S. banking organizations. The requirements are being renewed with certain minor changes to obtain additional information needed in the application process, and to include notifications of change in control of Edge corporations and of investment in a foreign joint venture.

3. **Report Title:** Annual Report of Bank Holding Companies; Bank Holding Company Report of Changes in Investment and Activities

**Agency Form Number:** FR Y-6; FR Y-6A

**OMB Docket Number:** 7100-0124

**Frequency:** Annual; on occasion

**Reporters:** Bank holding companies

**Average Response Time:** 8 hours (FR Y-6); 1 hour (FR Y-6A)

**Estimated Number of Respondents:** 6,433 (FR Y-6); 1,000 (FR Y-6A)

**Annual Reporting Hours:** 53,464

Small businesses are affected.

**General Description of Reports:**

These reports are required by law (12 U.S.C. 1844(c)). Certain portions may be given confidential treatment at respondent request (5 U.S.C. 552 (b)(4) and (b)(8)).

The annual FR Y-6 report is the Federal Reserve System's principal source of independently audited financial data on bank holding companies, their subsidiaries and other regulated investments. It consists of financial statements and structure and ownership information in the company's own format. It is being renewed with a revision requiring a cash flow statement instead of the statement of changes in financial position, beginning December 1988. The FR Y-6A report provides information on any change in the structure of bank holding companies and their subsidiaries. It is being renewed with certain clarifications in wording and revisions to provide additional detail to the manner of divestitures by bank holding companies.

4. **Report Title:** Annual Report of Selected Financial Data of Nonbank Subsidiaries of Bank Holding Companies

**Agency Form Number:** FR Y-111

**OMB Docket Number:** 7100-0218

**Frequency:** Annual

**Reporters:** Nonbank subsidiaries of bank holding companies

**Average Response Time:** .5 hour

**Estimated Number of Respondents:** 3,083

**Annual Reporting Hours:** 1850 hours

Small businesses are affected.

**General Description of Report:**

This report is required by law (12 U.S.C. 1844(c)). Certain portions may be given confidential treatment at respondent request (5 U.S.C. 552 (b)(4), (b)(8)).

This report provides selected balance sheet and income information in a standardized format, and is being renewed with certain minor informational changes to be effective December 1988. It is the Federal Reserve System's only source of standardized information on individual nonbank subsidiaries and is used to monitor activities of these subsidiaries.

Board of Governors of the Federal Reserve System, September 20, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-22134 Filed 9-27-88; 8:45 am]

BILLING CODE 6210-01-M

### Citicorp; Acquisition of Company Engaged in Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a) of (f) of the Board's Regulation Y (12 CFR 225.23 (a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 12, 1988.

**A. Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Citicorp*, New York, New York; to engage *de novo* through its subsidiary, Citicorp Banking Corporation, Wilmington, Delaware, which proposes to establish a branch in the Cayman Islands to engage in accepting funds in dollars or foreign currency in wholesale money markets in amounts over \$100,000; placing funds with and making loans and advances to subsidiary and affiliated organizations; making commercial loans in amounts over \$100,000; foreign exchange transactions; and other activities constituting commercial banking outside the United States. These activities were approved

by Board Order dated December 2, 1982 (69 Fed. Res. Bull. 36), approving Citicorp's application to establish branches of company in Bahrain, The Channel Islands, and Hong Kong and to engage in certain commercial banking activities. Applicant proposes to conduct these activities outside of the United States.

Board of Governors of the Federal Reserve System, September 21, 1988.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88-22136 Filed 9-27-88; 8:45 am]

BILLING CODE 6210-01-M

### Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies; Mike Jenkins et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 12, 1988.

**A. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Mike Jenkins*, Seminole, Texas, to acquire 27.79 percent; *Marion C. Bowers*, Seminole, Texas, 16.66 percent; *Athen Lowrie*, Seminole, Texas, to acquire 6.45 percent; *Robert M. Cosby*, Seminole, Texas, to acquire 2.78 percent; and *William R. Oswalt*, Denton, Texas, to acquire 57.42 percent; of the voting shares of *Gaines Bancshares, Inc.*, Seminole, Texas, and thereby indirectly acquire *First National Bank*, Seminole, Texas.

**B. Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Antonio Grimaldi*, Cottonwood, Arizona, to acquire 19.9 percent; *Arthur Schwalm*, Sedona, Arizona, to acquire 19.9 percent; and *Leon Felton*, Cottonwood, Arizona, to acquire 11.9 percent of the voting shares of *Verde Valley Bancorp, Inc.*, Cottonwood, Arizona, and thereby indirectly acquire

*Bank of Verde Valley*, Cottonwood, Arizona.

Board of Governors of the Federal Reserve System, September 21, 1988.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88-22137 Filed 9-27-88; 8:45 am]

BILLING CODE 6210-01-M

### Keycorp, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 14, 1988.

**A. Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Keycorp*, Albany, New York, to acquire 100 percent of the voting shares of First Wyoming Bancorporation, Cheyenne, Wyoming, and thereby indirectly acquire First Wyoming Bank-Hanna, Hanna, Wyoming; First Wyoming Bank-Worland, Worland, Wyoming; First Wyoming Bank-Wright, Wright, Wyoming; First Wyoming Bank-Meeteetse, Meeteetse, Wyoming; First Wyoming Bank-Gillette, Gillette, Wyoming; First Wyoming Bank-Torrington, Torrington, Wyoming; First Wyoming Bank-Rock Springs, Rock Springs, Wyoming; First Wyoming Bank-Saratoga, Saratoga, Wyoming; First Wyoming Bank-Lusk, Lusk, Wyoming; First Wyoming Bank-North Cheyenne, Cheyenne, Wyoming; First Wyoming Bank-Wheatland, Wheatland, Wyoming; First Wyoming Bank-Douglas, Douglas, Wyoming; First Wyoming Bank-Big Piney, Big Piney, Wyoming; First Wyoming Bank-Green River, Green River, Wyoming; First Wyoming Bank-Riverton, Riverton, Wyoming; First Wyoming Bank-Eash Cheyenne, Cheyenne, Wyoming; First Wyoming Bank-Rawlins, Rawlins, Wyoming; First Wyoming Bank-Jackson Hole, Jackson, Wyoming; First Wyoming Bank-Casper, Casper, Wyoming; First Wyoming Bank-Cody, Cody, Wyoming; First Wyoming Bank-Kemmerer, Kemmerer, Wyoming; First Wyoming Bank-Evanston, Evanston, Wyoming; First Wyoming Bank-Lander, Lander, Wyoming; First Wyoming Bank-Laramie, Laramie, Wyoming; First Wyoming Bank-Sheridan, Sheridan, Wyoming; and First Wyoming Bank-Cheyenne, Cheyenne, Wyoming. In addition, Key Bancshares of Wyoming, Inc., is also applying to become a bank holding company by acquiring First Wyoming Bancorporation.

In connection with this application, Applicants also propose to acquire Item Processing, Inc., Denver, Colorado, and thereby engage in data processing services pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 21, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-22138 Filed 9-27-88; 8:45 am]

BILLING CODE 6210-01-M

### **NBD Bancorp, Inc., et al.; Applications to Engage de novo in Permissible Nonbanking Activities**

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 14, 1988.

**A. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *NBD Bancorp, Inc.*, Detroit, Michigan; to engage *de novo* in making equity and debt investments in corporations or projects primarily designed to promote community welfare, such as economic rehabilitation and development of low income areas by providing housing, services or jobs for residents pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted in Detroit, Michigan.

**B. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Community First Minnesota Bankshares, Inc.*, Fargo, North Dakota; to engage *de novo* through its subsidiary, Community First Service Corporation, Fargo, North Dakota, in providing data processing and data transmission services pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 21, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-22140 Filed 9-27-88; 8:45 am]

BILLING CODE 6210-01-M

### **Peoples Heritage Financial Group, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies**

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 14, 1988.

**A. Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Peoples Heritage Financial Group, Inc.*, Portland, Maine; to acquire 100 percent of the voting shares of Oxford Bank and Trust, Oxford, Maine.

**B. Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104

Marietta Street, NW., Atlanta, Georgia 30303:

1. *Alan J. Lewis Financial Services Trust*, Tortola, British Virgin Islands, and Angola-American Bancshares Corporation, Baton Rouge, Louisiana; to become bank holding companies by acquiring 100 percent of the voting shares of Baton Rouge Bank and Trust Company, Baton Rouge, Louisiana. Comments on this application must be received by October 7, 1988.

2. *Main Street Banks, Inc.*, Covington, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Covington, Covington, Georgia.

C. *Federal Reserve Bank of Chicago* (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Republic Bancorp, Inc.*, Ann Arbor, Michigan, in organization; to acquire 100 percent of the voting shares of Republic Bank-Oakland, Bloomfield, Hills, Michigan, a *de novo* bank.

D. *Federal Reserve Bank of St. Louis* (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Banterra Corp.*, Eldorado, Illinois; to become a bank holding company by acquiring at least 99.8 percent of the voting shares of The Hamilton County Bank, McLeansboro, Illinois.

2. *Lawton Partners Holding Company*, Central City, Kentucky; to become a bank holding company by acquiring 32.26 percent of the voting shares of First United, Inc., Central City, Kentucky, and thereby indirectly acquire First National Bank of Central City, Central City, Kentucky.

3. *Sebastian Bankshares, Inc.*, Barling, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Bank of Lavaca, Barling, Arkansas.

E. *Federal Reserve Bank of Kansas City* (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Schneider Bankcorporation*, Plattsmouth, Nebraska; to become a bank holding company by acquiring 94.5 percent of the voting shares of Plattsmouth State Bank, Plattsmouth, Nebraska.

F. *Federal Reserve Bank of Dallas* (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Garland Bancshares, Inc.*, Dallas, Texas; to become a bank holding company by acquiring 80 percent of the

voting shares of Texas Bank of Garland, N.A., Garland, Texas.

Board of Governors of the Federal Reserve System, September 21, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-22139 Filed 9-27-88; 8:45 am]

BILLING CODE 5210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 88D-0260]

#### Blood Pressure Measurement Devices (Sphygmomanometers)—Accuracy; Revised Compliance Policy Guide; Availability

AGENCY: Food and Drug Administration.  
ACTION: Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of the revised Compliance Policy guide 7124.23, "Blood Pressure Measurement Devices (Sphygmomanometers)—Accuracy" (CPG 7124.23) (September 8, 1988). The purposes of revising CPG 7124.23 are to change the title of the CPG and to change the policy on the level of accuracy of blood pressure measurement devices from the level of accuracy in the Federal purchasing specification GG-S-618-C to the level of accuracy and bleed rates in the voluntary standards recently developed by the Association for the Advancement of Medical Instrumentation (AAMI). The AAMI voluntary standards apply to all types of marketed blood pressure measurement devices. While these voluntary standards do not constitute legal requirements, FDA will use them as guidance when considering whether to recommend legal action against these devices. This guidance does not limit the agency's enforcement discretion on whether to initiate regulatory action after an evaluation of all the relevant facts.

**ADDRESS:** Written requests for copies of CPG 7124.23 to the Division of Small Manufacturers Assistance, Center for Devices and Radiological Health (HFZ-220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 800-638-2041, calls from within MD 301-443-6597.

**FOR FURTHER INFORMATION CONTACT:** Kathleen S. Shanahan, Center for Devices and Radiological Health (HFZ-

323), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-427-8040.

**SUPPLEMENTARY INFORMATION:** In 21 CFR Part 870—Cardiovascular Devices, FDA has classified into class II three generic types of blood pressure measurement devices under §§ 870.1110 *Blood pressure computer*, 870.1120 *Blood pressure cuff*, and 870.1130 *Noninvasive blood pressure measurement system*. FDA has revised CPG 7124.23 pertaining to the three devices identified above by changing the level of accuracy of all types of marketed blood pressure measurement devices from the level of accuracy in the 1960 Federal purchasing specification GG-S-618-C to the level of accuracy and bleed rates in the AAMI voluntary standards for nonautomated sphygmomanometers and electronic or automated sphygmomanometers (Refs. 1 and 2). The accuracy and bleed rate specifications in the AAMI voluntary standards cover mercury, aneroid, and electronic types of blood pressure measurement devices.

### References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. "ANSI/AAMI SP-9-1985 American National Standard for Non-Automated Sphygmomanometers," *American National Standard*, Association for the Advancement of Medical Instrumentation, Approved April 14, 1986, ISBN0-910275-59-9, §§ 3.4 and 3.5.
2. "ANSI/AAMI SP-10-1987 American National Standard for Electronic or Automated Sphygmomanometers," *American National Standard*, Association for the Advancement of Medical Instrumentation, ISBN0-910275-69-6, § 3.4 and 3.5.

CPG 7124.23 is available for public examination in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday. This notice is issued under 21 CFR 10.85.

Dated: September 8, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-22207 Filed 9-27-88; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-731328

Applicant: Los Angeles Zoo, Los Angeles, CA

The applicant requests a permit to import one male and three female Asian elephants (*Elephas maximus*) born in the wild in 1987 in Malaysia and presently held in captivity at the Malacca Zoo, Malaysia, for purposes of propagation and exhibition.

PRT-731473

Applicant: Cincinnati Zoo, Cincinnati, OH

The applicant requests a permit to import one giant Chinese salamander (*Andrias davidianus*) from the Vancouver Aquarium, Vancouver, British Columbia, Canada, for purposes of exhibition, research and propagation.

PRT-731471

Applicant: The Hawthorn Corporation, Grayslake, IL

The applicant requests a permit to import two captive born male tigers (*Panthera tigris*) from Switzerland. These tigers are the progeny of applicant's own tigers that are currently performing in Switzerland. The tigers will be imported for purposes of exhibition and captive breeding. In the future, the applicant will export and re-import these animals for the same purposes.

PRT-731467

Applicant: The Hawthorn Corporation, Grayslake, IL

The applicant requests a permit to import one pair of captive born tigers (*Panthera tigris*) from Japan. These tigers are the progeny of applicant's own tigers that are currently performing in Japan. The tigers will be imported for purposes of exhibition and captive breeding. In the future, the applicant will export and re-import these animals for the same purposes.

PRT-708550

Applicant: Ringling Bros.—Barnum and Bailey Circus, Washington, DC

The applicant requests a permit to reexport and reimport two male and one female Asian elephants (*Elephas maximus*) for enhancement of propagation through education about the ecological role and conservation needs of the species.

PRT-731608

Applicant: U.S. Fish &amp; Wildlife Service, Puerto Rico Research Station, Palmer, PR

The applicant requests a permit to export blood samples taken from 47 Puerto Rican parrots (*Amazona vittata*) to Queens University, Kingston, Ontario, Canada, for DNA fingerprinting analysis.

PRT-731575

Applicant: Leslie Irvin Barnhart, Houston, TX

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), to be culled from the captive herd maintained by Mr. V.L. Pringle, "Huntley Glen", Bedford, Cape Province, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT-731580

Applicant: Denis Gormez, Key Biscayne, FL

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), to be culled from the captive herd maintained by Mr. V.L. Pringle, "Huntley Glen", Bedford, Cape Province, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT-731578

Applicant: Jose F. Herrera, Key Biscayne, FL

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), to be culled from the captive herd maintained by Mr. V.L. Pringle, "Huntley Glen", Bedford, Cape Province, Republic of South Africa, for the purpose of enhancement of survival of the species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K. Street NW., Washington DC. 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038-7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Date: September 23, 1988.

R. K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 88-22248 Filed 9-27-88; 8:45 am]

BILLING CODE 4310-AN-M

## Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-726758

Applicant: Ken Warthen, Pembroke, Va.

The applicant requests a permit to purchase in interstate commerce one pair of thick billed parrots (*Rhynchopsitta pachyrhyncha*) of unknown origin and two specimens hatched in captivity, from Mary Myers, Bowie, Maryland for enhancement of propagation and survival of the species.

PRT-729912

Applicant: Y.O. Ranch, Mt. Home, TX.

The applicant requests a permit to permit to cull 6 male barasingha deer (*Cervus duvaucali*) born between 1981 and 1983 in a captive herd at Y.O. Ranch, Mt. Home, Texas, for the purpose of continued maintenance of this herd and thereby enhancement of the survival of the species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K. Street NW., Washington DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038-7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Date: September 20, 1988.

R. K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 88-22249 Filed 9-27-88; 8:45 am]

BILLING CODE 4310-AN-M

## Klamath Fishery Management Council Open Meeting

AGENCY: Department of the Interior.

ACTION: Notice of open meeting.

**SUMMARY:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of an ad hoc committee of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources

Restoration Act (16 U.S.C. 460ss et seq.). The meeting is open to the public.

**DATES:** The meeting will be held from 8:00 am to 4:00 pm, Thursday, October 6, 1988, and from 8:00 am to 3:00 pm, Friday, October 7, 1988.

**PLACE:** The meeting will be held at the Downtowner Motel, 424 Eighth Street, Eureka, California.

**FOR FURTHER INFORMATION CONTACT:** Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, 1312 Fairlane Road, Yreka, California 96097, telephone (916) 842-5763.

**SUPPLEMENTARY INFORMATION:** For background information on the Management Council, please refer to the notice of their initial meeting that appeared in the *Federal Register* on July 8, 1987 (52 FR 25639).

During the October 6-7 meeting, an ad hoc committee, consisting of user group representatives on the Management Council, will review the Klamath River Salmon Management Long-Term Harvest Sharing Agreement for possible revisions. The ad hoc committee will recommend revisions to the parent Management Council at the Council meeting to be held November 2-3, 1988.

Dated: September 22, 1988.

Joseph S. Marler,

*Acting Regional Director, U.S. Fish and Wildlife Service.*

[FR Doc. 88-22181 Filed 9-27-88; 8:45 am]

BILLING CODE 4310-55-M

## Bureau of Land Management

### Bakersfield District Grazing Advisory Board Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Bakersfield District Grazing Advisory Board Meeting.

**SUMMARY:** Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463) and the Federal Land Policy and Management Act (Pub. L. 94-579) that the Bakersfield District Grazing Advisory Board will meet in formal session.

**DATE:** Friday, October 28, 1988 from 10 a.m. to 3 p.m.

**ADDRESS:** Room 335 of the Federal Building, 800 Truxtun Avenue, Bakersfield, California.

**SUPPLEMENTARY INFORMATION:** The agenda for the meeting will include discussion of FY 88 project accomplishments, FY 89 planned projects, coordinated resource management and the new regulations regarding payment of grazing fees. The meeting is open to the public. Interested

persons may make oral statements to the Board, or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify, in writing, the Bakersfield District Manager (Bureau of Land Management, 800 Truxtun Avenue, Room 311, Bakersfield, CA 93301) by October 25, 1988.

Summary minutes of the meeting will be maintained in the Bakersfield District Office and will be available for reproduction, during business hours, on or before October 28, 1988.

**FOR FURTHER INFORMATION CONTACT:** Tim Burke, District Range Conservationist, Bureau of Land Management, 800 Truxtun Avenue, Room 311, Bakersfield, CA 93301: (805) 861-4191.

Dated: September 20, 1988.

Robert D. Rheiner, Jr.,

*District Manager.*

[FR Doc. 88-22214 Filed 9-27-88; 8:45 am]

BILLING CODE 4310-40-M

## National Park Service

[FES 88-38]

### Availability of the Fiscal Environmental Impact Statement for the Wilderness Recommendation; Aniakchak National Monument and Preserve, AK

**ACTION:** Notice of Availability of the Final Environmental Impact Statement for the Wilderness Recommendation Aniakchak National Monument and Preserve, Alaska.

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service has prepared a final environmental impact statement (EIS) relating to the wilderness recommendation for Aniakchak National Monument and Preserve, Alaska.

**SUPPLEMENTAL INFORMATION:** Single copies of the final EIS may be obtained from the Regional Director, Alaska Region, National Park Service, Alaska Regional Office, 2525 Gambell Street, Anchorage, Alaska 99503, Attention: Division of Planning. Copies may also be requested by Telephone: (907) 257-2654.

Copies of the final EIS will also be available for public reading and inspection at the Alaska Regional Office, address above; at the Office of the Superintendent, Aniakchak National Monument and Preserve Headquarters, c/o Katmai National Park and Preserve at P.O. Box 7, King Salmon, Alaska 99614, Phone (907) 246-3305; at the Alaska Public Lands Information Office

in Fairbanks, Alaska, 3rd and Cushman Streets; at the Alaska Resources Library in Anchorage, Alaska, 701 C Street; and at the Office of Public Affairs, National Park Service, United States Department of the Interior in Washington, DC, 18th and C Streets NW.

Gerald D. Patten,

*Associate Director, Planning and Development.*

Bruce Blanchard,

*Director, Office of Environmental Project Review, United States Department of the Interior.*

Date: September 22, 1988.

[FR Doc. 88-22211 Filed 9-27-88; 8:45 am]

BILLING CODE 4310-70-M

[FES 88-36]

### Availability of the Final Environmental Impact Statement for the Wilderness Recommendation; Kobuk Valley National Park, AK

**ACTION:** Notice of Availability of the Final Environmental Impact Statement for the Wilderness Recommendation Kobuk Valley National Park, Alaska.

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service has prepared a final environmental impact statement (EIS) relating to the wilderness recommendation for Kobuk Valley National Park, Alaska.

**SUPPLEMENTARY INFORMATION:** Single copies of the final EIS may be obtained from the Regional Director, Alaska Region, National Park Service, Alaska Regional Office, 2525 Gambell Street, Anchorage, Alaska 99503, Attention: Division of Planning. Copies may also be requested by Telephone: (907) 257-2654.

Copies of the final EIS will also be available for public reading and inspection at the Alaska Regional Office, address above; at the Office of the Superintendent, Kobuk Valley National Park Headquarters at P.O. Box 1029, Kotzebue, Alaska 99752, Phone (907) 442-3890; at the Alaska Public Lands Information Office in Fairbanks, Alaska, 3rd and Cushman Streets; at the Alaska Resources Library in Anchorage, Alaska, 701 C Street; and at the Office of Public Affairs, National Park Service, United States Department of the Interior

in Washington, DC, 18th and C Streets NW.

Gerald D. Patten,

Associate Director, Planning and Development.

Bruce Blanchard,

Director, Office of Environmental Project Review, United States Department of the Interior.

Date: September 22, 1988.

[FR Doc. 88-22212 Filed 9-27-88; 8:45 am]

BILLING CODE 4310-70-M

[FES 86-37]

#### Availability of the Final Environmental Impact Statement for the Wilderness Recommendation; Noatak National Preserve, AK

**ACTION:** Notice of Availability of the Final Environmental Impact Statement for the Wilderness Recommendation Noatak National Preserve, Alaska.

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service has prepared a final environmental impact statement (EIS) relating to the wilderness recommendation for Noatak National Preserve, Alaska.

**SUPPLEMENTARY INFORMATION:** Single copies of the final EIS may be obtained from the Regional Director, Alaska Region, National Park Service, Alaska Regional Office, 2525 Gambell Street, Anchorage, Alaska 99503, Attention: Division of Planning. Copies may also be requested by Telephone: (907) 257-2654.

Copies of the final EIS will also be available for public reading and inspection at the Alaska Regional Office, address above; at the Office of the Superintendent, Noatak National Preserve Headquarters at P.O. Box 1029, Kotzebue, Alaska 99752, telephone: (907) 442-3890; at the Alaska Public Lands Information Office in Fairbanks, Alaska, 3rd and Cushman Streets; at the Alaska Resources Library in Anchorage, Alaska, 701 C Street; and at the Office of Public Affairs, National Park Service, United States Department of the Interior in Washington, DC, 18th and C Streets NW.

Gerald D. Patten,

Associate Director, Planning and Development.

Bruce Blanchard,

Director, Office of Environmental Project Review, United States Department of the Interior.

Date: September 22, 1988.

[FR Doc. 88-22213 Filed 9-27-88; 8:45 am]

BILLING CODE 4310-70-M

#### INTERNATIONAL TRADE COMMISSION

##### Agency Form Submitted for OMB Review

**AGENCY:** United States International Trade Commission.

**ACTION:** In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), as amended, the Commission has submitted a proposal for the collection of information to the Office of Management and Budget for review.

##### Purpose of Information Collection

The proposed information collection is a "generic clearance" under which the Commission can issue questionnaires for the following types of investigations: Countervailing duty, antidumping, escape clause, escape clause review, market disruption and "interference with programs of the USDA."

##### Summary of Proposal

- (1) *Number of forms submitted:* Three.
- (2) *Title of forms:* Sample Producer's, Sample Importer's, and Sample Purchaser's questionnaires (i.e., the "samples" are an aggregate of the information that is likely to be collected in a series of questionnaires issued under the generic clearance).
- (3) *Type of request:* Extension.
- (4) *Description of respondents:* Businesses or farms that produce, import, and/or purchase products under investigation.
- (5) *Estimated reporting burden:*

	Pro- ducers	Import- ers	Pur- chasers
Estimated average burden per response.....	36	28	13
Proposed frequency of response.....	1	1	1
Estimated number of respondents .....	694	786	769
Estimated total annual burden .....	25,000	22,000	10,000

Information obtained from the forms that qualifies as business proprietary information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

##### Additional Information or Comment

Copies of the proposed form and supporting documents may be obtained from Debra Baker (USITC, tel. no. 202-252-1167). Comments about the proposal should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New

Executive Office Building, Washington, DC 20503, Attention: Francine Picoult, Desk Officer for U.S. International Trade Commission. If you anticipate commenting on a form but find that time to prepare comments will prevent you from submitting them promptly you should advise OMB of your intent within two weeks of the date this notice appears in the *Federal Register*. Ms. Picoult's telephone number is 202-395-7231. Copies of any comments should be provided to Charles Ervin (United States International Trade Commission, 500 E Street SW., Washington, DC 20436).

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 252-1810.

By order of the Commission.

Issued: September 23, 1988.

Kenneth R. Mason,  
Secretary.

[FR Doc. 88-22245 Filed 9-27-88; 8:45 am]

BILLING CODE 7020-02-M

#### [Investigation No. 337-TA-284]

##### Certain Electric Power Tools, Battery Cartridges and Battery Chargers; Designation of Additional Commission Investigative Attorney

Before John J. Mathias, Administrative Law Judge.

Notice is hereby given that, as of this date, George G. Summerfield, Jr., Esq., of the Office of Unfair Import Investigations will be the Commission Investigative Attorney in the above-cited investigation in addition to Marcia H. Sundeen, Esq.

The Secretary is requested to publish this Notice in the *Federal Register*.

Dated: September 22, 1988.

Respectfully submitted,

Lynn I. Levine,

Director, Office of Unfair Import Investigations, 500 E Street, SW. Room 401, Washington, DC 20436.

[FR Doc. 88-22244 Filed 9-27-88; 8:45 am]

BILLING CODE 7020-02-M

#### [Investigation No. 73-TA-390 (Final)]

##### Digital Readout System and Subassemblies Thereof From Japan

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

**SUMMARY:** The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-390 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry of the United States is materially retarded, by reason of imports from Japan of digital readout (DRO) systems and subassemblies thereof,<sup>1</sup> provided for in item 710.80 of the Tariff Schedules of the United States (TSUS),<sup>2</sup> that have been found by the Department of Commerce, in the preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before November 21, 1988, and the Commission will make its final injury determination by January 9, 1989 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Parts 207), and 201, Subparts A through E (19 CFR Part 201).

**EFFECTIVE DATE:** September 12, 1988.

**FOR FURTHER INFORMATION CONTACT:**

George L. Deyman (202-252-1193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the

<sup>1</sup> The products covered by this investigation are DRO systems, whether assembled or unassembled, and subassemblies thereof. An unassembled DRO system includes a console and a transducer (glass scale, magnetic, rotary encoder, but not laser), and parts thereof, destined for use in a DRO system and imported into the United States either together or separately for assembly and sale as a DRO system. Subassemblies and parts thereof include consoles, and parts of consoles, destined for use in DRO systems.

DRO systems generally consist of an electronic console and one measurement transducer for each axis of linear or rotational displacement to be measured, and provide linear or rotational displacement information for high precision industrial equipment such as metalworking machine tools.

<sup>2</sup> The articles subject to this investigation are also provided for in subheading 9031.80.00 of the Harmonized Tariff Schedule of the United States (USITC Pub. 2030).

Secretary of the Secretary at 202-252-1000.

**SUPPLEMENTARY INFORMATION:**

**Background**

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports and DRO systems and subassemblies thereof from Japan are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on March 28, 1988, by Anilam Electronics Corp., Miami, FL. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (53 FR 17771, May 18, 1988).

**Participation in the Investigation**

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in 201.11 of the Commission's rule (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the *Federal Register*. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

**Service List**

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

**Limited Disclosure of Business Proprietary Information under a Protective Order**

Pursuant to 207.7(a) of the

Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in this final investigation to authorized applicants under a protective order, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the *Federal Register*. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been filed with all the parties that are authorized to receive such information under a protective order.

**Staff Report**

The prehearing staff report in this investigation will be placed in the nonpublic record on November 14, 1988, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

**Hearing**

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on December 1, 1988, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on November 18, 1988. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on November 23, 1988, at the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is November 25, 1988.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a non-business-proprietary summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any business proprietary materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

**Written submissions**

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on December 7, 1988. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before December 7, 1988.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 am to 5:15 pm) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of sections 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to section 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such information no later than December 12, 1988. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs.

**Authority:** This investigation is being conducted under authority of the Tariff Act of 1930, Title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: September 23, 1988.

Kenneth R. Mason,  
Secretary.

[FR Doc. 88-22246 Filed 9-27-88; 8:45 am]

BILLING CODE 7020-02-M

**[Investigation No. TA-201-61]****Report To the President on Certain Knives**

September 20, 1988.

**Determination**

On the basis of the information developed in the subject investigation, the Commission determines that the following knives are not being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry or industries<sup>1</sup> producing articles like or directly competitive with the imported articles: Pen knives, pocket knives, and other knives [except razor blade type knives], all the foregoing which have folding blades or other than fixed blades or attachments, provided for in items 649.71, 649.73, 649.75, 649.77, 649.79, 649.81, and 649.83 of the Tariff Schedules of the United States (TSUS);<sup>2</sup>

Cleavers with their handles, provided for in TSUS item 650.03;<sup>3</sup>

Kitchen and butcher knives with their handles, provided for in TSUS items 650.13, 650.15, and 650.21;<sup>4</sup>

Steak knives with their handles, provided for in TSUS items 650.13, 650.15, 650.17, and 650.21;<sup>5</sup> and

Hunting knives and sheath-type knives with their handles, provided for in TSUS items 650.13, 650.17, 650.19, and 650.21.<sup>6</sup>

**Background**

Following receipt of a petition filed on March 25, 1988, on behalf of the American Cutlery Manufacturers Association, the United States International Trade Commission instituted this investigation under section 201 of the Trade Act of 1974 to determine whether the certain knives

<sup>1</sup> Commissioners Eckes, Rohr, and Lodwick find one domestic industry, while Acting Chairman Brunsdale and Commissioners Liebler and Cass find two domestic industries producing articles like or directly competitive with the imported articles.

<sup>2</sup> These articles are provided for in subheading 8211.93.00 in the proposed Harmonized Tariff Schedule of the United States (USITC Pub. 2030).

<sup>3</sup> These articles are provided for in subheading 8214.90.30 in the proposed Harmonized Tariff Schedule of the United States (USITC Pub. 2030).

<sup>4</sup> These articles are provided for in subheadings 8211.92.20 and 8211.92.80 in the proposed Harmonized Tariff Schedule of the United States (USITC Pub. 2030).

<sup>5</sup> These articles are provided for in subheadings 8211.91.50 and 8211.91.60 in the proposed Harmonized Tariff Schedule of the United States (USITC Pub. 2030).

<sup>6</sup> These articles are provided for in subheadings 8211.92.40, 8211.92.60, and 8211.92.80 in the proposed Harmonized Tariff Schedule of the United States (USITC Pub. 2030).

are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing articles like or directly competitive with the imported articles.

Notice of the institution of the Commission's investigation and of public hearings to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of April 13, 1988 (53 FR 12197). A hearing in connection with the injury phase of the investigation was held in Washington, DC, on June 15, 1988, and all persons who requested the opportunity were permitted to appear in person or through counsel.

The Commission transmitted its determination in this investigation to the President on September 20, 1988, in accordance with section 201(d)(1) of the Trade Act. The views of the Commission are contained in USITS Publication 2107 (September 1988), entitled "Certain Knives: Report to the President on Investigation No. TA-201-61 Under Section 201 of the Trade Act of 1974."

By Order of the Commission.

Kenneth R. Mason,  
Secretary.

Issued: September 20, 1988.

[FR Doc. 88-22241 Filed 9-27-88; 8:45 am]

BILLING CODE 7020-02-M

**[Investigation No. 337-TA-266]****Certain Reclosable Plastic Bags and Tubing; Determination Not To Review Initial Advisory Opinion Proceeding**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial Advisory opinion (IAO) issued on August 24, 1988, terminating the advisory opinion proceeding as to two requesters of an advisory opinion.

**ADDRESSES:** Copies of the IAO and all other nonconfidential documents on the record of the above-captioned investigation and the advisory opinion proceeding concerning the investigation are available for inspection during official business hours (8:45 am to 5:15 pm) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202-252-1000.

**FOR FURTHER INFORMATION CONTACT:**

Paul R. Bardos, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1102. Hearing-impaired persons are advised that information on the aforesaid IAO and the subject investigation and proceeding can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

**SUPPLEMENTARY INFORMATION:** On April 29, 1988, the Commission issued a general exclusion order in the above-captioned investigation. On June 28, 1988, the Commission instituted an advisory opinion proceeding at the request of KCL Corp. of Indiana and KCL Packaging Corporation of Canada Ltd. (KCL), and Kingdom Plastics Manufacturing Co. of Taiwan (KPM). KCL and KPM had requested that the Commission issue advisory opinions on whether the reclosable plastic bags that KCL and KPM seek to export to the United States are covered by the exclusion order. On August 17, 1988, KCL moved to withdraw its request for an advisory opinion. On August 24, 1988, the presiding administrative law judge issued an initial advisory opinion (IAO) terminating the advisory opinion proceeding as to KCL. No petitions for review were received.

By order of the Commission.

Issued: September 20, 1988.

Kenneth R. Mason,  
Secretary.

[FR Doc. 88-22242 Filed 9-27-88; 8:45 am]

BILLING CODE 7020-02-M

### Investigation No. 337-TA-287]

### Certain Strip Lights; Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Institution of investigation pursuant to 19 U.S.C. 1337.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 24, 1988, under section 337 of the Tariff Act of 1930, as amended, (19 U.S.C. 1337), on behalf of Vista Manufacturing, Inc., 52864 Lillian Avenue, Elkhart, Indiana 46514. An amendment to the complaint and supplemental exhibits were filed on September 8, 1988. The complaint, as amended and supplemented, alleges violations of:

(1) Subsection (a)(1)(A) of section 337 in the importation of certain strip lights into the United States, or in their sale, by reason of (1) misappropriation of trade dress in violation of section 43(a)

of the Lanham Act (15 U.S.C. 1125(a)), and (2) misappropriation of photographs in violation of section 43(a) of the Lanham Act, the threat or effect of which is to substantially injure an industry in the United States; and

(2) Subsections (a)(1)(B) and (a)(1)(C) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain strip lights by reason of (1) infringement of claims 1, 2, 3, 4, and 7 of U.S. Letters Patent 4,376,966, and (2) infringement of Registered Trademark No. 1,433,725; and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

**ADDRESSES:** The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202-252-1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

**FOR FURTHER INFORMATION CONTACT:**

Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-252-1572.

**Authority:** The authority for institution of this investigation is contained in sec. 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33057 (Aug. 29, 1988).

### Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on September 20, 1988, Ordered That—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine:

(a) Whether there is a violation of subsection (a)(1)(A) of section 337 in the importation of certain strip lights into the United States, or in the sale of such strip lights, by reason of alleged (1) misappropriation of trade dress or (2) false advertising, the threat or effect of which is to destroy or substantially injure an industry in the United States; or

(b) Whether there is a violation of subsection (a)(1)(B) or (C) of section 337 in the importation into the United

States, the sale for importation, or the sale within the United States after importation of certain strip lights by reason of alleged (1) infringement of claims 1-4 or 7 of U.S. Letters Patent 4,376,966, or (2) infringement of Registered Trademark No. 1,433,725, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complaint is—

Vista Manufacturing, Inc., 52864 Lillian Avenue, Elkhart, Indiana 46514.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Cherng Lian Enterprise Co., Ltd., 700-52 Chien Kuo Village, Szu Fen Tzu Yung Kang Shiang, Tainan Shian, Taiwan.  
Golden Apple Corporation, 94-26B, 207th Street, Queens Village, New York 11428.

(c) Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401Q, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33057 (August 29, 1988). Pursuant to § 201.16(d) and 210.21(a) of the Commission's Rules (19 CFR 201.16(d) and 53 FR 33034, 33057 (August 29, 1988)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice

and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: September 21, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-22243 Filed 9-27-88; 8:45 am]

BILLING CODE 7020-02-M

## INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30400 (Sub-No. 21)]

**Santa Fe Southern Pacific Corp.;  
Control; Southern Pacific  
Transportation Co.**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of request for comments.

**SUMMARY:** The Commission is considering whether to impose labor protective conditions for the benefit of employees of either The Atchison, Topeka and Santa Fe Railway Company or the Southern Pacific Transportation Company who were adversely affected by actions taken in contemplation of the merger of those railroads. The Commission seeks comments on whether it has the authority to impose such conditions, whether such conditions, whether and to what extent such conditions are warranted in this instance, and, if so, how should the procedural and substantive provisions of such conditions be framed.

**DATES:** Comments must be filed by October 28, 1988, and replies must be filed by October 18, 1988.

**ADDRESSES:** (1) Send an original and 20 copies of pleadings referring to this notice to:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Send one copy each to representatives:

Jerome F. Donohoe, Richard E. Weicher, Santa Fe Southern Pacific Corporation, 224 South Michigan Avenue, Chicago, IL 60604;

William G. Mahoney, John O'B. Clarke, Jr., Highsaw and Mahoney, P.C., Suite 210, 1050 17th Street, NW., Washington, DC 20036.

### FOR FURTHER INFORMATION CONTACT:

Joseph H. Dettmar, (202) 275-7245. (TDD for hearing impaired (292) 275-1721).

### SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision in Finance Docket No. 32000, *Rio Grande Industries, Inc., SPTC Holding, Inc., and The Denver and Rio Grande Western Railroad Company—Control—Southern Pacific Transportation Company*, I.C.C.2d \_\_\_\_ (served September 12, 1988). A copy of that decision, as well as the public docket, is available for inspection in the Commission's Public Docket Room, Room 1221, Interstate Commerce Commission Building, Washington, DC 20423. A copy of that decision may be purchased by writing to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (D.C. metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275-1721) or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters.

Decided: September 19, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 88-22173 Filed 9-27-88; 8:45 am]

BILLING CODE 7035-01-M

## JUSTICE DEPARTMENT

### Joint Newspaper Operating Agreement; Manteca News and Manteca Bulletin

Notice is hereby given that the Attorney General, by Order of September 19, 1988, has extended the period for public comment on the application for a Joint Operating Agreement between the Manteca News and Manteca Bulletin filed pursuant to the Newspaper Preservation Act, 15 U.S.C. 1801 *et seq.* Notice of the proposed agreement inviting public comments was published in the *Federal Register* on August 19, 1988. The period for public comments has been extended until December 1, 1988. The period in which persons may reply in writing to the report of the Antitrust Division and to other comments is extended until December 31, 1988. Comments should be filed by mailing or delivering five copies to the Assistant Attorney General, Justice Management Division, Department of Justice, Washington, DC 20530.

Date: September 20, 1988.

Harry H. Flickinger

Assistant Attorney General for Administration.

[FR Doc. 88-22201 Filed 9-27-88; 8:45 am]

BILLING CODE 4410-01-M

## Antitrust Division

### Notice Pursuant to the National Cooperative Research Act of 1984; Portland Cement Association

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Portland Cement Association ("PCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission on August 23, 1988 disclosing that the Glens Falls Portland Cement Company, Inc. has changed its name to Glens Falls Cement Company, Inc. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Accordingly, at present the members of the PCA are those companies listed below:

### United States

Aetna Cement Corporation  
Alamo Cement Company  
Alaska Basic Industries  
Ash Grove Cement Company  
Ash Grove Cement West, Inc.  
Blue Circle Atlantic, Inc.  
Blue Circle, Inc.  
Blue Circle West Inc.  
Calaveras Cement Company  
CalMat Co.  
Capitol Aggregates, Inc.  
Capitol Cement Corporation  
Continental Cement Company Inc.  
Davenport Cement Company  
Dragon Products Company  
Dundee Cement Company  
Glens Falls Cement Company, Inc.  
Hawaiian Cement  
Ideal Basic Industries, Inc.  
Independent Cement Corporation  
Lafarge Corporation  
Lehigh Portland Cement Company  
LoneStar-Falcon  
Lone Star Industries Inc.  
Lone Star Northwest  
Medusa Cement Corporation  
Missouri Portland Cement Company  
The Monarch Cement Company  
Moore McCormack Cement, Inc.  
Northwestern States Portland Cement Co.  
Phoenix Cement Company  
Rinker Materials Corporation  
RMC Lonestar  
Rochester Portland Cement Corporation  
St. Marys Peerless Cement Company  
St. Marys Wisconsin Inc.  
The South Dakota Cement Plant

Southwestern Portland Cement  
Company  
Tarmac-LoneStar, Inc.  
Tilbury Cement Company

#### Canada

Federal White Cement Ltd.  
Ideal Cement Company Ltd.  
Inland Cement Limited  
Lafarge Canada Inc.  
Lake Ontario Cement Limited  
North Star Cement Limited  
St. Lawrence Cement Inc.  
St. Marys Cement Corporation  
Tilbury Cement Limited

#### Mexico

Instituto Mexicano del Cemento y del  
Concreto (IMCYC)  
Cementos Acapulco, S.A.  
Cementos Apasco, S.A.  
Cementos de Chihuahua, S.A.  
Cementos Mexicanos, S.A.  
Cementos Moctezuma, S.A.  
Cooperative De Cementos Cruz Azul  
Cooperative de Cementos Hidalgo

#### Affiliate Members

Cement and Concrete Promotion  
Council of Texas  
Florida Concrete and Products  
Association  
Mississippi Concrete Industries  
Association  
North Central Cement Promotion  
Association  
Northern California Cement Promotion  
Group  
Northwest Concrete Promotion Group  
Rocky Mountain Cement Promotion  
Council  
South Central Cement Promotion  
Association

In addition, the following equipment  
suppliers are involved as "Participating  
Associates," together with PCA  
members, in the activities of the  
Manufacturing Process Subcommittee of  
PCA's General Technical Committee:

Baker-Dolomite (DBCA)  
C-E Raymond  
Holderbank Consulting Ltd.  
Humboldt Wedag Company  
F.L. Smidth and Company  
Claudius Peters, Inc.  
Polysius Corp.  
The Fuller Company  
W.R. Grace & Company

On January 7, 1985, PCA filed its

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 February 5,  
1985, 50 Fed. Reg. 5015. On March 14,  
1985, August 13, 1985, January 3, 1986,  
February 14, 1986, May 30, 1986, July 10,  
1986, December 31, 1986, February 3,  
1987, April 17, 1987, June 3, 1987, July 29,  
1987, August 6, 1987, October 9, 1987,  
February 18, 1988, March 9, 1988 March  
11, 1988, July 7, 1988, and August 9, 1988  
PCA filed additional written  
notifications. The Department published  
notices in the **Federal Register** in  
response to these additional  
notifications on April 10, 1985 (50 FR  
14175), September 16, 1985 (50 FR 37594),  
February 4, 1986 (51 FR 4440), March 12,  
1986 (51 FR 8573), June 27, 1986 (51 FR  
23479), August 14, 1986 (51 FR 29173),  
February 3, 1987 (52 FR 3356), March 4,  
1987 (52 FR 8635), May 14, 1987 (52 FR  
18295), July 10, 1987 (52 FR 28183),  
August 26, 1987 (52 FR 32185), November  
17, 1987 (52 FR 43953), March 28, 1988 (53  
FR 9999), August 4, 1988 (53 FR 29397),  
and September 15, 1988 (53 FR 35935-36)  
respectively.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 88-22261 Filed 9-27-88; 8:45 am]

BILLING CODE 4410-01-M

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

#### Advisory Council on Employee Welfare and Pension Benefits Plans; Work Group Meeting

Pursuant to the authority contained in  
section 512 of the Employee Retirement  
Income Security Act of 1974 (ERISA), 29  
U.S.C. 1142, a public meeting of the  
Work Group on Access to Health Care  
of the Advisory Council on Employee  
Welfare and Pension Benefit Plans will  
be held at 9:30 a.m., Monday, October  
17, 1988, in Room S-4215C, U.S.

Department of Labor Building, Third and  
Constitution Avenue, NW., Washington,  
DC 20210.

This eight member work group was  
formed by the Advisory Council to study  
issues relating to access to health care.

As a result of hearings held on March

24, 1988, July 13, 1988, and September 9,  
1988—at which testimony was received  
from governmental and labor-  
management witnesses concerning  
universal health access legislation at the  
federal and state level—the Advisory  
Council's Access to Health Care Work  
Group has identified three initial areas  
of concern that pertain to regulatory  
governance under ERISA: (1) The scope  
of federal preemption under mandatory  
employer health plan legislation, (2)  
potential governmental jurisdictional  
conflicts and duplication with respect to  
the enforcement of access to health care  
legislation, and (3) the continued  
appropriateness of ERISA benefit claim  
dispute procedures with respect to  
health benefit claims arising directly  
from mandated statutory provisions. At  
its October 17, 1988 meeting, the Access  
to Health Care Work Group will  
endeavor to decide on recommendations  
for resolving the key issues in the three  
areas of concern outlined above. For  
purposes of assisting the group to  
formulate its recommendations, a  
discussion paper will be presented  
identifying the issues within each  
category and the options available for  
resolution of the issues.

Individuals, or representatives of  
organizations, wishing to address the  
work group should submit written  
requests on or before October 12, 1988 to  
William E. Morrow, Deputy Executive  
Secretary ERISA Advisory Council, U.S.  
Department of Labor, Room N-5677, 200  
Constitution Avenue, NW., Washington,  
DC 20210. Oral presentations will be  
limited to ten minutes, but witnesses  
may submit an extended statement for  
the record.

Organizations or individuals may also  
submit statements for the record without  
testifying. Twenty (20) copies of such  
statements should be sent to the Deputy  
Executive Secretary of the Advisory  
Council at the above address. Papers  
will be accepted and included in the  
record of the meeting if received on or  
before October 12, 1988.

Signed at Washington, DC, this 22nd day of  
September, 1988.

David M. Walker, CPA,

Assistant Secretary for Pension and Welfare  
Benefits Administration.

[FR Doc. 88-22152 Filed 9-27-88; 8:45 am]

BILLING CODE 4510-29-M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-461]

### Illinois Power Company, et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to the Illinois Power Company<sup>1</sup> (IP), Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc., (the licensees for Clinton Power Station, Unit 1, located in DeWitt County, Illinois.

#### Environmental Assessment

##### Identification of Proposed Action

In general, the proposed license amendment would revise the Technical Specifications (TS) concerning the main stream line radiation-high full power background radiation levels and associated trip setpoints.

Specifically, the licensees requested the proposed change in order to test the feasibility of a hydrogen water chemistry (HWC) system which will be used to mitigate intergranular stress corrosion cracking of stainless steel components. The Technical Specification change will permit a temporary increase in the Clinton main stream line radiation-high scram and isolation setpoints to allow operation with expected higher radiation levels resulting from hydrogen injection into the reactor coolant.

This revision to the Clinton Power Station license would be made in response to the licensees' application for amendment dated May 18, 1988, as supplemented on June 2, 1988.

##### The Need for the Proposed Action

Pursuant to 10 CFR 50.90, IP, et al. have proposed an amendment to Facility Operating License No. NPF-62 which consists of a change to the TS concerning the hydrogen water chemistry tests.

The proposed change consists of the addition of a footnote to the text regarding the hydrogen injection test

and its effect on the main stream line radiation-high trip function. This proposed change will permit the main stream line radiation monitor setpoints to be temporarily changed based on either calculations or measurements of actual radiation levels resulting from the hydrogen injection test. The Illinois Power Company intends to perform a hydrogen injection test on the reactor coolant system at the Clinton Power Station. The purpose of the test is to determine the feasibility of hydrogen water chemistry controls as a means of reducing intergranular stress corrosion cracking of stainless steel piping.

##### Environmental Impacts of the Proposed Action

The proposed change consists of the addition of a footnote regarding the hydrogen injection test and its effect on the main stream line radiation-high trip function to Technical Specification Table 2.2.1-1, Reactor Protection System Instrumentation Setpoints, and Table 3.3.2-2, CRVICS Instrumentation Setpoints.

The Main Stream Line Radiation Monitors (MSLRMs) provide reactor scram as well as reactor vessel and primary containment isolation signals upon detection of high activity levels in the main stream lines. Additionally, these monitors serve to limit radioactivity released in the event of fuel failures. The proposed Technical Specification changes to Tables 2.2.1-1 and 3.3.2-2 would allow adjustments to the normal background radiation level and associated trip set points for the MSLRMs at reactor power levels greater than 20% of rated thermal power. The background radiation level shall be verified and the associated trip set points shall be returned to their normal value within 24 hours of re-establishing normal radiation levels after completion of the hydrogen injection test at greater than 20% of rated thermal power or within 12 hours of establishing reactor power levels below 20% of rated thermal power.

The licensees state that the only design basis accident which takes credit for the main stream line radiation-high trip is the control rod drop accident (CRDA). Generic analysis of the consequences of the CRDA are increasingly less severe above 10 percent power due to a faster doppler response and a lower rod worth. Above

20 percent power, the consequences of the CRDA are minimal. Since hydrogen injection will be limited to above 20 percent of rated power and the increased MSLRM trip setpoint will be reduced to normal levels below this power level, the staff concludes that the currently approved CRDA analysis for the Clinton Power Station is appropriately bounded and remains valid.

The staff has reviewed the proposed Technical Specification changes to assure that the licensees have considered the radiological implications of dose rate increases associated with N-16 activity increases due to hydrogen injections into the reactor system. Radiation surveys will be conducted at regular intervals during the test to determine radiation levels in and around the facility as well as at the site boundary. Additionally, the licensees have stated that data will be obtained for shielding design should additional shielding be necessary for a permanent hydrogen water chemistry installation.

Various radiation protection measures will be implemented to maintain doses to plant personnel as low as reasonably achievable (ALARA). Other plants have operated with HWC and have not experienced an increase in offsite dose. The licensees do not expect a significant site boundary dose rate increase at Clinton during the test and will make appropriate measurements to assure compliance with 40 CFR 190 limits. The conduct of the test and radiological surveys obtained during the test will ensure ALARA in accordance with Regulatory Guide 8.8 and is, therefore, acceptable.

Compressed hydrogen will be supplied to the plant site in gaseous form in a 120,000 SCF capacity tube trailer. The tube trailer will be used as the storage facility and will be located no closer than 432 feet from any building containing safety-related or class 1E components. Although the test facility is not a permanent HWC installation, the facility will meet the applicable sections of the BWR Owners Group Guidelines, "Guidelines for Permanent BWR Hydrogen Water Chemistry Installations—1987 Revision," EPRI NP-5283-SR-A, September 1987.

Since the licensees currently store substantial quantities of chlorine onsite for water sewage treatment, the staff evaluated the potential synergistic effect

<sup>1</sup> Illinois Power Company is authorized to act as agent for Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc. and has exclusive responsibility and control over the physical construction, operation and maintenance of the facility.

associated with the storage of hydrogen. The combination of hydrogen gas and chlorine gas can explode in the presence of any form of energy, such as sunlight or heat (250°C). Therefore, it is prudent to maintain an adequate separation distance between the chlorine and hydrogen storage facilities. The hydrogen tube trailer will be kept at a minimum distance of over 100 feet from the chlorine storage containers. The 100 feet separation distance is judged to be sufficient to prevent interaction of these two gases in the event of a simultaneous chlorine and hydrogen release, since it meets the requirements of NFPA 50A-5984, "Standards for Gaseous Hydrogen Systems at Consumer Sites."

Therefore, the proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed changes to the TS involve systems located within the restricted area as defined in 10 CFR Part 20. The changes do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological 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 June 28, 1988 (53 FR 24385). No request for hearing or petition for leave to intervene was filed following this notice.

#### *Alternative to the Proposed Action*

The principal alternative would be to deny the requested amendment. This alternative, in effect, would be the same as a "no action" alternative. Since the Commission has concluded that no adverse environmental effects are associated with this proposed action, any alternative with equal or greater environment impact need not be evaluated.

#### *Alternative Use of Resources*

This action does not involve the use of resources not previously considered in connection with the Nuclear Regulatory Commission's Final Environmental

Statement for the Clinton Power Station, Unit 1, dated May 1982.

#### *Agencies and Persons Consulted*

The NRC staff reviewed the licensee's request of May 18, 1988, as supplemented on June 2, 1988, and did not consult other agencies or persons.

#### *Finding of No Significant Impact*

The Commission has determined not to prepare an environmental impact statement on the proposed license amendment.

Based upon this 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 request for amendment dated May 18, 1988, as supplemented on June 2, 1988, and the Final Environmental Statement for the Clinton Power Station dated May 1982, which are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555 and at the Vespasian Warner, 120 West Johnson Street, Clinton, Illinois 61727.

Dated at Rockville, Maryland, this 20th day of September 1988.

For The Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Project Directorate III-2 Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88-22197 Filed 9-27-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-416]

#### **System Energy Resources, Inc., et al.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPR-29, issued to Mississippi Power & Light Company, South Mississippi Electric Power Association and System Energy Resources, Inc. (the licensees), for operation of the Grand Gulf Nuclear Station, Unit 1, located in Claiborne County, Mississippi.

The proposed amendment would change Technical Specification 3.5.2, "ECCS-Shutdown," and Technical Specification 3.5.3, "Suppression Pool," by deleting the requirement for the fuel transfer canal gate to be in place when the reactor cavity is flooded and either the ECCS or the suppression pool is inoperable.

Prior to issuance of the proposed license amendment, The Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By October 28, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file written request for a hearing and a petition for leave to intervene. Requests for a hearing and petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission, or an Atomic Safety and Licensing Board designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the result of the proceeding. The petition should specifically explain the reasons by intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions that are sought to be

litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the other granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Elinor G. Adensam: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nicholas S. Reynolds, Esquire; Bishop, Liberman, Cook, Purcell, and Reynolds, 1200 17th Street NW., Washington, DC 20036, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 31, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Hinds Junior

College, McLendon Library, Raymond, Mississippi 39154.

Dated at Rockville, Maryland, this 16th day of September 1988.

For the Nuclear Regulatory Commission.

**Lester L. Kintner,**

Senior Project Manager, Project Directorate II-1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-22198 Filed 9-27-88; 8:45 am]

BILLING CODE 7590-01-M

# **Memorandum of Understanding Between U.S. Nuclear Regulatory Commission and U.S. Environmental Protection Agency**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Publication of Memorandum of Understanding.

**SUMMARY:** On August 26, 1988, the Administrators of the U.S. Nuclear Regulatory Commission's (NRC's) Region IV and the U.S. Environmental Protection Agency's (EPA's) Region VI signed a Memorandum of Understanding (MOU) concerning the Churchrock, New Mexico uranium mill site.

The Churchrock site is licensed by the NRC and is also on EPA's National Priority List for remedial action under Superfund. The MOU provides the procedures which the two agencies will follow to help assure that remedial actions at the site occur in a timely and effective manner.

The MOU is printed in its entirety below.

**DATE:** If any member of the public would like to submit comments on the MOU for consideration in any future amendments of the document, they would be most helpful if submitted by November 28, 1988.

**ADDRESS:** Mail comments to: Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may be hand-delivered to 7920 Norfolk Avenue, Bethesda, Maryland between the hours of 7:45 a.m. and 4:15 p.m. weekdays except Federal holidays. Comments received may be viewed at NRC's Public Document Room in the Gelman Building, 2120 L Street, NW., Washington, DC, between the hours of 7:45 a.m. and 4:15 p.m. weekdays except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Harry J. Pettengill, Uranium Recovery Field Office, 730 Simms Street, Suite

100A, Golden, Colorado 80401 (Telephone (303) 236-2810).

Dated at Rockville, Maryland, this 19th day of September 1988.

For the Nuclear Regulatory Commission.

**Michael J. Bell, Chief,**  
Regulatory Branch.

## **Memorandum of Understanding Between Region VI of The U.S. Environmental Protection Agency and Region IV of The U.S. Nuclear Regulatory Commission for Remedial Action at the UNC-Churchrock Uranium Mill in McKinley County, NM**

### *I. Purpose*

This document establishes the roles, responsibilities, and relationship between Region VI of the U.S. Environmental Protection Agency ("EPA") and Region IV of the U.S. Nuclear Regulatory Commission ("NRC"), hereinafter collectively referred to as the "Parties," regarding remedial action at the UNC-Churchrock uranium mill in McKinley County, New Mexico. The Parties have overlapping authority in connection with this site, and this Memorandum of Understanding ("MOU") will help assure that remedial actions occur in a timely and effective manner.

### *II. Basis For Agreement*

NRC will assume the role of lead regulatory agency for the byproduct material disposal area reclamation and closure activities and EPA will monitor all such activities and provide review and comments directly to NRC. The objective of EPA's review and comment will be to assure that activities to be conducted under NRC's regulatory authority allow attainment of applicable or relevant and appropriate requirements under the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9601 *et seq* outside of the byproduct material disposal site. NRC will require the Licensee to implement an approved disposal site reclamation plan which meets the requirements of 10 CFR Part 40, Appendix A, as amended at 52 FR 433553 through 43568, "Uranium Mill Tailings Regulations; Groundwater Protection and other Issues," which conforms with the EPA 40 CFR 192, Subpart D. EPA development and implementation of its own site action requirements for groundwater contamination outside of the disposal area will be conducted in accordance with CERCLA and the National Oil and Hazardous Substances Contingency Plan ("NCP") 40 CFR 300 including any

revisions thereto. The EPA and NRC agree that the groundwater protection requirements of 10 CFR Part 40, Appendix A are the Federal environmental and public health requirements applicable or relevant and appropriate to the disposal site. The EPA and NRC believe that conformance with 10 CFR Part 40, Appendix A (with the possible exception of nitrate), will generally assure conformance with CERCLA requirements. However, each Party will be responsible for assuring compliance with its specific regulatory requirements as discussed in this section. The parties believe that the U.S. Department of Energy or another responsible State or Federal authority will assume responsibility for long-term care of the byproduct material disposal site, following remediation of the site.

### III. Background

The State of New Mexico was responsible as an "Agreement State" for licensing and regulating uranium mills within the State until June 1, 1986, at which time the NRC resumed this authority at the request of the Governor of New Mexico. Prior to this change, EPA had placed the UNC-Churchrock site on the National Priority List ("NPL") of sites for response action under CERCLA. EPA's policy is to list only those uranium mills meeting criteria for placement on the NPL which are located in Agreement States, that is States which have entered into agreements with the NRC pursuant to section 274 of the Atomic Energy Act of 1954, as amended, to regulate certain nuclear activities in a manner compatible with the NRC's program. Mills in states where NRC has direct licensing authority have not been placed on the list. Although New Mexico is no longer an Agreement State insofar as uranium recovery operations are concerned and the NRC has reassumed primary jurisdiction, the site was properly placed on the NPL and the physical conditions resulting in that placement are still present. Therefore, EPA has no intention of recommending delisting the site from the NPL until all authorized EPA and NRC controlled remedial activities, addressing releases or threats thereof, at this facility are completed.

### IV. Agreement

In order to achieve satisfactory cleanup of the UNC site, the NRC and the EPA agree to do the following:

1. The Parties shall cooperate with each other in the oversight of reclamation and remedial activity at the UNC site.

2. Upon submittal by UNC of a proposed site reclamation plan ("the

plan"), NRC and EPA will begin concurrent reviews of the proposed plan. EPA will review the plan and will provide comments to the NRC. NRC will review and, if necessary, require revisions to the plan to assure conformance to 10 CFR Part 40, Appendix A, as amended, prior to approving the plan via license amendments. If EPA cannot conclude that the plan approved by NRC meets CERCLA requirements, then EPA may initiate separate actions as may be necessary to ensure conformance with CERCLA requirements outside of the disposal area site. NRC will not approve any specific components of the groundwater protection and recovery aspects of UNC's proposed reclamation plan until EPA has determined, in a Record of Decision or by review of the UNC plan an statement to NRC, that it is consistent with CERCLA requirements and/or remedial actions required under CERCLA. NRC does not intend to approve any specific aspects of UNC's groundwater protection and recovery actions contained in UNC's proposed reclamation plan until such time as any inconsistencies have been resolved. If remedial action is determined in a Record of Decision to be necessary, EPA intends to either enter into a Consent Decree with UNC under which UNC will conduct, with EPA oversight, remedial actions equal to or exceeding those outlined in an EPA Record of Decision, to take appropriate enforcement action, or perform remedial action itself pursuant to section 104 of CERCLA, reserving all rights to seek cost recovery under section 107 of CERCLA. Such actions may be conducted as part of the NRC's approval of the UNC plan or separately; but in any event EPA intends to coordinate its actions first with the NRC.

3. If either Party determines that remedial actions are deficient or unsatisfactory, then that Party shall provide notice to the other Party of the deficiency. The NRC shall assume the lead role for notification to UNC, except for such notification as EPA might statutorily be required to provide in certain events. The notification shall specify a time period in which regulatory compliance is expected to be achieved. Should compliance not be achieved in this time period, EPA will assume the lead for taking or seeking any enforcement action necessary for off-site groundwater and NRC will assume the lead for any other enforcement actions necessary within its area of regulatory responsibility. Both Parties reserve all rights under this MOU to take whatever actions are determined to be necessary, including

the conduct of remedial actions on and off-site in order to fulfill their regulatory requirements. In any event no action will be taken by either party without prior consultation with the other Party.

4. Both Parties shall appoint a facility coordinator who shall be responsible for oversight of the implementation of the MOU and the activities required herein. The facility coordinators shall be appointed by each Party within seven (7) days of the effective date of this MOU. The Parties each have the right to appoint a new facility coordinator at any time. Such change shall be accomplished by notifying the Party, in writing, at least five (5) days prior to the appointment of the name, telephone number, and mailing address of said facility coordinator.

5. The Parties will meet periodically at the request of either Party and at least semiannually insofar as it is necessary to accomplish the objectives of the MOU. The facility coordinators should communicate with each other on a routine basis by telephone.

6. The Parties will provide technical advice and any necessary regulatory consultation to one another upon request.

7. The Parties will generally provide each other with copies of all official correspondence and documents related to remedial actions at the site. The Parties will also normally provide copies of other information upon request. In the event that one of the parties does not wish to furnish certain specific information, documents, or correspondence to the other, then said material shall be identified to the other party along with the reasons for withholding it.

8. Whenever notice or information is required to be forwarded by one party to another under the terms of this MOU, it shall be given by and directed to the individuals at the addresses specified below:

EPA: Allyn M. Davis, Director,  
Hazardous Waste Management  
Division, Region VI, U.S. EPA, 1445  
Ross Ave., Dallas, Texas 75202.

NRC: Dale Smith, Director, Uranium  
Recovery Field Office, U.S. Nuclear  
Regulatory Commission, P.O. Box  
25325, Denver, Colorado 80225.

9. Routine communications may be exchanged verbally, in person, or by telephone between the Parties to facilities the orderly conduct of work contemplated by this MOU.

10. Enforcement documentation provided under this MOU will be kept as exempt material by EPA and NRC, to the extent legally possible, according to

the policies and procedures under 40 CFR Part 2 and 10 CFR Part 2.790, respectively.

#### V. Agency Responsibilities

##### A. NRC responsibilities

1. The NRC will require the owners/operators of the UNC Churchrock mill (UNC) to implement an approved on-site reclamation plan that meets all relevant NRC requirements, including 10 CFR Part 40, Appendix A, as amended. If any such plan is not complied with by UNC, NRC will take whatever actions it deems appropriate to ensure compliance.

2. The NRC will direct UNC to provide both parties with copies of major work product submittals as they become available. Such work products will include, but not be limited to, an adequate overall reclamation plan, and any other plans and specifications for assessment, remediation, and monitoring, including all analytical data.

3. The NRC agrees to provide progress reports on UNC remediation on a quarterly basis.

4. The NRC will assist in the development of information to support EPA's deletion of the site from the NPL upon completion of the remedial action.

5. The NRC shall notify EPA of all pending visits to the Churchrock property which relate to the site closure plan and shall afford EPA and its consultants opportunity to accompany NRC personnel on such visits.

##### B. EPA Responsibilities

1. EPA will provide formalized review, consultation and comment throughout the entire project.

2. EPA will review and provide comments on the site reclamation plan, and other associated deliverables, within timeframes as agreed to between NRC and EPA. In the event that EPA determines that the implementation of the site reclamation plan has not resulted in, or may not result in, cleanup conditions that meet applicable or relevant and appropriate requirements under CERCLA, then EPA may take whatever action it deems appropriate.

3. EPA intends to pursue and complete a Remedial Investigation and Feasibility Study, public comment and agency response process, and Record of Decision (ROD) directed at off-site groundwater contamination, with the intention of completing this process by October 1, 1988. EPA intends to implement, or require UNC or other potentially responsible parties to implement, any EPA selected remedial actions set forth in a ROD. Any remedial actions conducted by UNC or other

potentially responsible parties to implement an EPA selected remedy will be done under EPA oversight and in accordance with the terms of any Consent Decree entered into with EPA. EPA intends that any such Consent Decree would cover actions outside the byproduct material disposal site needed to implement the ROD remedy.

#### VI. Dispute Resolution

In the event of dispute between EPA and the NRC concerning site activities, the persons designated by each Agency as primary or, in their absence, alternate contact points will attempt to promptly resolve such disputes. If disputes cannot be resolved at this level, the problem will be referred to the supervisors of these persons for further consultation. The supervisory referral and resolution process will continue, if necessary to resolve the dispute, to the level of the Regional Administrators of the NRC and EPA.

Both Parties shall continue to maintain their respective rights or responsibilities under the MOU during the dispute resolution process.

#### VII. Execution and Modification

This agreement shall take effect upon execution by EPA and the NRC. It shall remain in effect for the duration of the program addressed herein unless terminated by mutual agreement by the two Agencies; or, the MOU may be terminated unilaterally if any of the conditions set forth below are present.

1. The planning or conduct of groundwater cleanup actions fail to meet standards set forth in the Basis for Agreement (Section II) of this MOU.

2. The site is deleted from the NPL.

3. The site is turned over to the Department of Energy or other responsible State or Federal authority for long term care.

4. Regulatory, Statutory, or other events occur which make this MOU unnecessary, illegal, or otherwise inappropriate.

#### VIII. Modification

The Parties may modify this MOU from time to time in order to simplify and/or define the procedures contained herein. Each Party shall keep the other informed of any relevant proposed modifications to its basic statutory or regulatory authority, forms, procedures, or priorities. This MOU shall be revised, as necessary, by the adoption of such modifications. The MOU should be reviewed on an annual basis by both the Director-URFO, Region IV, NRC, and the Director-Hazardous Waste Management Division, Region VI, EPA or their designated representatives.

#### IX. Reservation of Rights

The Parties reserve any and all rights or authority that they may have, including but not limited to legal, equitable, or administrative rights. This specifically includes EPA's and NRC's authority to conduct, direct, oversee, and/or require environmental response in connection with the site, as well as the authority to enter the site and require the production of information, within each of their own areas of responsibility.

Executed and agreed to:

Dated: August 26, 1988.

Robert D. Martin,  
Regional Administrator, U.S. Nuclear  
Regulatory Commission, Region IV,  
Arlington, Texas.

Dated: August 26, 1988.

Robert E. Layton, Jr., P.E.,  
Regional Administrator, U.S. Environmental  
Protection Agency, Region VI, Dallas, Texas.

[FR Doc. 88-22196 Filed 9-27-88; 8:45 am]

BILLING CODE 7590-01-M

#### OFFICE OF PERSONNEL MANAGEMENT

##### Request for Approval of RI 79-14; Submitted to OMB for Clearance; Correction

**AGENCY:** Office of Personnel  
Management.

**ACTION:** Notice; correction.

**SUMMARY:** This document corrects OPM's previous notice published on September 12, 1988 (53 FR 35246). In accordance with the Paperwork Reduction Act of 1980 (Title 44, U.S. Code, Chapter 35), OPM is announcing a new information collection from the public. RI 79-14, Certification of Eligibility To Receive the FEHBP Premium Rebate Under the Medicare Catastrophic Coverage Act, is to be completed by Federal retirees, survivors, and former spouses who wish to certify eligibility for the FEHBP premium rebate. Medicare eligible individuals are entitled to the premium rebate under the Medicare Catastrophic Coverage Act of 1988 which provides for expanded Medicare benefits duplicated under the Federal Employees Health Benefits Program. The RI 79-14 form which follows will be used to survey 1,300,000 individuals initially and 100,000 annually thereafter. The unit burden per respondent is 15 minutes for a total initial burden of 225,000 hours and an annual burden of 25,000 hours. For copies of this proposal, call Lawrence Dambrose on (202) 632-0199.

**DATES:** Comments on this proposal should be received by October 3, 1988. This is an expedited clearance and OMB approval is requested by October 5, 1988.

**ADDRESSES:** Send or deliver comments to—

C. Ronald Trueworthy, Agency  
Clearance Officer, U.S. Office of

Personnel Management, 1900 E Street,  
NW., Room 6410, Washington, DC  
20415,

and,

Joseph Lackey, OPM Desk Officer,  
Office of Information and Regulatory  
Affairs, Office of Management and  
Budget, New Executive Office

Building, NW., Room 3235,  
Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:**  
James L. Bryson, (202) 632-5472.

U.S. Office of Personnel Management.  
**Constance Horner,**  
*Director.*

**BILLING CODE 6325-01-M**

UNITED STATES  
OFFICE OF PERSONNEL MANAGEMENT  
RETIREMENT PROGRAMS  
WASHINGTON, D.C. 20415

**Certification of Eligibility to Receive the FEHBP Premium Rebate  
Under the Medicare Catastrophic Coverage Act**

CS :

Social Security No.:

FEHBP Enrollment Code:

Please read the accompanying instructions carefully **BEFORE** completing this certification. We will periodically match your certification of eligibility with records of the Department of Health and Human Services to verify the information you have provided.

**Section A - Annuitant Eligibility (Complete only if you are a retired employee, survivor, or a former spouse)**

- Item 1. Are you eligible to receive the premium rebate? (You must have answered "True" to all questions in Section A of the accompanying instructions.)

☐ Yes ☐ No  
Y N

- Item 2. What is the effective date of your enrollment in Medicare, both Parts A and B? (If enrollment in both Parts A and B were not effective on the same date, enter the LATER of the two dates.)

Month	Year

- Item 3. If your Social Security Number at the top of this form is not correct or is blank, please enter your correct number.

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**Section B - Spouse Eligibility (Complete only if you are currently enrolled in a family FEHBP enrollment)**

- Item 4. Are you eligible to receive the premium rebate for your spouse? (You must have answered "True" to all questions in Section B of the accompanying instructions.)

☐ Yes ☐ No  
Y N

- Item 5. What is the effective date of your spouse's enrollment in Medicare, both Parts A and B? (If enrollment in both Parts A and B were not effective on the same date, enter the LATER of the two dates.)

Month	Year

- Item 6. Enter your spouse's Social Security Number.

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- Item 7. Enter your spouse's first name. (Please print)

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**Section C - Eligibility of Children (Complete only if you are currently enrolled in a family FEHBP enrollment)**

- Item 8. Are you eligible to receive the premium rebate for your child(ren)? (You must have answered "True" to all questions in Section C of the accompanying instructions.)

☐ Yes ☐ No  Number of eligible children  
Y N

Please Continue on Reverse Side

Item 9. For each child that you have certified eligible for the FEHBP payment, please complete the information below (if enrollment in both Parts A and B were not effective on the same date, enter the LATER of the two dates):

Child's Name	Social Security Number	Effective Date of Medicare, both Parts A and B	
		MONTH	YEAR

#### Section D - Annuitant Certification

I certify that all statements made on this form are true to the best of my knowledge and belief. OPM may verify the information provided. I understand that I must immediately notify OPM if I, or a family member who is receiving a premium rebate, loses eligibility for any reason other than a change or cancellation of my FEHBP enrollment.

Signature (Do not print)

Date

#### WARNING

Any intentional false statement on this form or willful misrepresentation relative thereto is a violation of the law punishable by a fine of not more than \$10,000 or imprisonment of not more than 5 years, or both. (18 U.S.C. 1001)

**Do not return this form unless you answered "YES" in section A, B, or C.  
Do not enclose additional information or requests with this certification form.**

#### Privacy Act Statement

Solicitation of this information is authorized by the Medicare Catastrophic Coverage Act of 1988 (Public Law 100-360) and the Federal Employees Health Benefits law (Chapter 89, title 5, U.S. Code). The information you furnish will be used to identify you to document benefits or claims under these programs. The information may be shared with national, state, local or other charitable or social security administrative agencies to assist them in determining benefits under their programs, to obtain information necessary under OPM programs, or to report income for tax purposes. Provision of the information is voluntary; however, failure to supply all the requested information may delay or prevent action on the benefit or claim. Intentionally false statements and/or suspected illegal activities are reportable by us to the appropriate law enforcement agencies.

#### Public Burden Statement

We think this form takes an average 15 minutes per response to complete, including the time for reviewing instructions, getting the needed data, and reviewing the completed form. Send comments regarding our estimate or any other aspect of this form, including suggestions for reducing completion time, to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 or Reports and Forms Management Officer, U.S. Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

Return this form only to:

U.S. Office of Personnel Management  
P.O. Box 275  
Washington, D.C. 20044-0275

## Eligibility Information and Instructions for Completing the Certification of Eligibility to Receive the FEHBP Premium Rebate Under the Medicare Catastrophic Coverage Act

### Eligibility Information

The Medicare Catastrophic Coverage Act of 1988 (Public Law 100-360), which expands benefits provided under Medicare Parts A and B, begins to take effect on January 1, 1989. The expanded Medicare benefits under the new law duplicate benefits under the Federal Employees Health Benefits Program (FEHBP). In view of this duplication of catastrophic benefits, Congress required the Office of Personnel Management (OPM) to pay a premium rebate to certain annuitants who have one or more "Medicare eligible individuals" covered under their FEHBP enrollment. (See definition below.) In 1989, the premium rebate will be \$3.10 for each "Medicare eligible individual" covered under an FEHBP enrollment. The amount of the premium rebate reflects the estimated overall savings to FEHBP insurance carriers resulting from having the Medicare program assume responsibility for payment of the additional catastrophic benefits provided under the new law.

If you are currently receiving payments as a retired employee, survivor annuitant, or former spouse and qualify for the premium rebate, the amount of the rebate will be **added** to your net annuity payment each month. (Thus, your FEHBP premium withholding--as shown on any OPM annuity notice--will be the regular withholding for the plan in which you are enrolled.)

If you are a former spouse or a Federal Employees Retirement System (FERS) beneficiary who pays FEHBP premiums directly to OPM and you are eligible for the premium rebate, the FEHBP premium you must pay each month will be reduced by the amount of the rebate. The premium coupon booklet you receive will show the adjusted premium.

To qualify for the premium rebate, each individual must meet the definition of "Medicare eligible individual" that appears below. In general, you qualify if you are **enrolled** in Medicare Parts A and B, you are enrolled in the FEHBP program, and Medicare is the primary payor of your health care benefits. Your family member(s) qualify if they are covered by your family enrollment in the FEHBP, they are **enrolled** in Medicare Parts A and B, and Medicare is the primary payor of their health care benefits.

If you want to know how to enroll for Medicare, contact your local Social Security Administration Office.

**NOTE:** The correct telephone number for the Medicare Hotline is 1-800-888-1988.

### Instructions for Completing the Certification Form (RI 79-14)

Please read the definition of "Medicare eligible individual" carefully. You should answer the questions below to determine whether you, your spouse, or any children qualify for the rebate. If after completing the form, you determine that **NO** premium rebate is payable, **DO NOT RETURN THE FORM.**

If you, your spouse, or child is a Medicare eligible individual, enter the requested information on the certification form, sign

### Definition of "Medicare Eligible Individual"

For the purposes of this monthly payment, a Medicare eligible individual is one who meets the following criteria:

- A. He/she must be an annuitant, a survivor, or a former spouse who is enrolled in the FEHBP;

**OR**

He/she must be a family member of an annuitant, a survivor or a former spouse who is covered by a family enrollment in the FEHBP;

**AND**

- B. He/she must be enrolled in Medicare Part A and Part B;

**AND**

- C. Medicare must be the primary payor of health benefits for the individual. Medicare is generally the primary payor (pays first) if the annuitant and/or family members are covered by both Medicare **and** a health benefits plan under the FEHBP.

Exceptions where Medicare is **not** the primary payor are:

- 1) if the annuitant is reemployed (or the survivor annuitant is employed) by the Federal government, FEHBP is the primary payor for the annuitant and his/her covered family members; or
- 2) if the annuitant's covered spouse is age 65 or over and is employed by the Federal government, FEHBP is the primary payor for the covered spouse only; or
- 3) if the annuitant or family member is eligible for Medicare benefits solely on the basis of End Stage Renal Disease (ESRD) and is within the **FIRST** 12 months of ESRD care, FEHBP is the primary payor for the individual (annuitant or family member) who has ESRD.

If you believe that you or a member of your family qualify for the premium rebate, you should complete the certification form.

and date it, and return it in the enclosed envelope.

### Section A - Annuitant Eligibility

You should complete this section if you are a retired employee, a survivor, or a former spouse. If you are the representative payee for an annuitant, a survivor, or former spouse, you should complete this section for that individual.

- Item 1. I am enrolled in the FEHBP. ☐ True ☐ False

(continued on reverse)

I am enrolled in Medicare, both Parts A and B.  
☐ True ☐ False

I am not currently a Federal employee.  
☐ True ☐ False

Medicare is the primary payor of my health care benefits.  
☐ True ☐ False

If **ALL** of the above statements are **TRUE**, you should certify your eligibility for the premium rebate by entering a "X" in the "Yes" block of item 1, in Section A of the certification form.

Item 2. You should complete this item **ONLY** if you answered "Yes" to item 1. Do not complete it if you answered "No" to item 1.

Item 3. You should complete this item **ONLY** if the social security number at the top of the form is incorrect or that section shows no number.

#### Section B - Spouse Eligibility

You should complete this section for your spouse if you have a family FEHBP enrollment.

Item 4. My spouse is covered by my family FEHBP enrollment.  
☐ True ☐ False

My spouse is enrolled in Medicare, both Parts A and B.  
☐ True ☐ False

I am not currently a Federal employee.  
☐ True ☐ False

My spouse is not currently a Federal employee.  
☐ True ☐ False

Medicare is the primary payor of my spouse's health care benefits.  
☐ True ☐ False

If **ALL** of the above statements are **TRUE**, you should certify your spouse's eligibility for the rebate by entering a "X" in the "Yes" block of item 4, in Section B of the certification form.

Items 5, 6 and 7.

You should complete these items **ONLY** if you answered "Yes" to item 4. Do not complete them if you answered "No" to item 4.

#### Section C - Eligibility of Children

You should complete this section if you have a family FEHBP enrollment. The following questions should be completed for each disabled adult child or child under age 22 with End Stage Renal Disease (ESRD).

Item 8. My child is covered by my family FEHBP enrollment.  
☐ True ☐ False

My child is enrolled in Medicare, both Parts A and B.  
☐ True ☐ False

I am not currently a Federal employee.  
☐ True ☐ False

My child is not currently a Federal employee.  
☐ True ☐ False

Medicare is the primary payor of my child's health care benefits.  
☐ True ☐ False

If **ALL** of the above statements are **TRUE** for a child (or children), you should certify eligibility for the additional premium rebate(s) by entering a "X" in the "Yes" block of item 8 in Section C of the certification form. You **must** also enter the number of children eligible for the rebate in this item.

Item 9. You should complete this item only if you answered "Yes" to item 8. Do not complete it if you answered "No" to item 8. You must enter the information for each child you certified as eligible in item 8.

**Before** you return this form, have you:

- determined that you, your spouse, or your child (ren) qualify for the rebate?
- signed and dated the certification form?
- correctly completed the certification form according to the instructions on this information sheet, including all requested information?
- enclosed only the certification form? *You should keep this information sheet with your other important retirement papers. You must notify OPM at the address below immediately if any person you certified ceases to qualify as a Medicare eligible individual. You should not enclose additional information or requests with the certification form, or use the return envelope for any purpose other than returning the certification form.*
- used the envelope provided? *Do not use other self-addressed, return envelopes you may have received from OPM. If you have lost or damaged the provided envelope, you should mail your completed certification form to:*

U.S. Office of Personnel Management  
 P. O. Box 275  
 Washington, D.C. 20044-0275

[FR Doc. 88-22174 Filed 9-27-88; 8:45 am]

BILLING CODE 6325-01-C

SECURITIES AND EXCHANGE  
COMMISSION

[Release No. 34-26101; File No. SR-MBS-88-14]

**Self-Regulatory Organization; MBS  
Clearing Corporation; Notice of Filing  
of Proposed Rule Change Relating to  
Depository Division Rules**

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 August 10, 1988, MBS Clearing Corporation, Depository Division, 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 proposed changes to the Rules of the Depository Division ("the Depository") of MBS Clearing Corporation ("the Corporation") include: (1) Provisions clarifying the right of Participants to maintain multiple sets of Depository Accounts, each such set designated as a Master Account; (2) creation of an Abeyance Account to more clearly identify the location of Securities in process of transfer; (3) designation of a Seg Account available for bulk transfer of Securities as a Hold in Custody Account; (4) provisions for a new class of Limited Purpose Participants and Limited Purpose Accounts to accommodate Warehouse Lenders and issuers of Securities desiring to take delivery of GNMA Securities originally issued through the Depository; (5) raising of participation standards; (6) increases in Participants Fund contributions, newly designated as Mandatory and Optional Deposits; (7) new definitions of Net Free Equity and Reserve on Gain and provision for inclusion of a portion of Mandatory Deposits in the computation of Net Free Equity; (8) establishment of a Net Debit Monitoring Level for each Participant; (9) revisions of cash settlement provisions; (10) provisions for transfer to or retention by Delivering Participants or Limited Purpose Participants of a temporary security interest in Securities delivered Versus Payment; (11) clarification of provisions allowing agents to maintain Pledgee Accounts for third parties; (12) clarification that the right of agents to reverse transactions extends to agents maintaining Pledgee Accounts for third parties and that any

reversal of an agency transaction is subject to a check of the Delivering Participant's Net Free Equity; (13) modification of procedures for dealing with defaults and related new provisions for retransfers of Securities to Delivering Participants and for book-entry transfers and withdrawals of Securities by the Corporation to the extent necessary to follow the stated default procedures; (14) limitations on withdrawals and free transfers of Securities from MBSCC Transfer Accounts; (15) a clarification of the need to prefund any Debit Balances resulting from Reclamations to Agency Seg Accounts; (16) modification of provisions for financing principal and interest advances and clarification of the rights, interests and obligations of various parties in connection with principal and interest advances; and (17) provision for appointment of Participants and Limited Purpose Participants to arbitration panels.

(1) *Master Accounts.* Article II, Rule 1, section 1, is amended to permit a Participant to maintain one or more Master Accounts, newly defined in Article I, Rule 1. Each Master Account consists of one more Proprietary Accounts and associated Seg Accounts, Agency Accounts and associated Seg Accounts and/or Pledgee Accounts. Article II, Rule 13 (formerly 12), is amended to require separate determination, for each Master Account, of the permissibility of Account Transfers (see paragraph 7 below). Sections 1 and 2 of Article II, Rule 13 (formerly 12), have been amended to allow a Participant to transfer Securities both within and between its Master Accounts. Rule 15 (formerly 14) has been amended to allow for transfers of funds between Master Accounts. Each Participant's Master Accounts will be subject to the Participant's obligations for all of its Master Accounts (see paragraph 13 below).

(2) *Abeyance Account.* Article II, Rule 13 (formerly 12), section 1(c), is amended to provide for recording in an Abeyance Account, newly defined in Article I, Rule 1, of Securities which have been debited from the Depository Account of a Delivering Participant prior to the time they are credited to a Receiving Participant's Depository Account. A new paragraph added to Article II, Rule 3, section 1, provides that there is no transfer of title to such Securities until they are credited to the Receiving Participant's Depository Account or the associated MBSCC Transfer Account and that the recording of such Securities in the Abeyance Account neither extinguishes nor creates any interest of the Corporation in the Securities.

**(3) Hold in Custody Accounts.**

Amendments to Article II, Rule 1, provide for the creation of a new type of Seg Account, newly defined in Article I, Rule 1 as a Hold in Custody Account, to permit the bulk segregation of Securities. Rule 2, section 2, is amended to include any debits or credits with respect to Securities in a Hold in Custody Account in the computation of the Cash Balance for the Depository Account from which the Securities have been transferred. Rule 4 is amended to provide that Securities transferred to a Hold in Custody Account, like Securities in other Seg Accounts, are not subject to the Corporation's lien.

Article II, Rule 4 is amended to make it clear that the Corporation will have no lien on Securities in Hold in Custody Accounts, on Agency Seg Credit Balances, or on principal and interest pledged to third-party lenders to enable the Corporation to fund principal and interest advances.

(4) *New Class of Limited Purpose Participants.* Article II, Rule 1, section 2, is added to provide for the maintenance of Limited Purpose Accounts, defined in Article I, Rule 1, as Depository Accounts maintained for Limited Purpose Participants. Limited Purpose Participants are defined in Article I, Rule 1, as issuers of GNMA Securities or Warehouse Lenders taking delivery to GNMA Securities originally issued through the Depository. A Warehouse Lender is defined in Article I, Rule 1, as a lender which has advanced funds to a prospective issuer of GNMA Securities secured by mortgages which will underlie such GNMA Securities. New Article III, Rule 5, provides for original issuance of GNMA Securities through the Depository under a procedure whereby the Corporation has no interest in new Securities received from GNMA's issuing agent and immediately credits the Securities to the Depository Account of the appropriate Participant or Limited Purpose Participants.

Article II, Rule 1, section 4 (formerly 3), is amended to clarify the respective warranties of Limited Purpose Participants regarding their Limited Purpose Accounts—issuers representing that no third party has any interest in the Securities credited to their Depository Accounts and Warehouse Lenders representing that Securities are credited to and transferred from their Depository Accounts in conformity with their pledge agreements with the issuers. Rules 12 and 13 (formerly 11 and 12) are amended to permit Limited Purpose Participants to withdraw Securities, to deliver or receive Securities free and to receive Securities free but not Versus

Payment. Because Limited Purpose Participants cannot receive Securities Versus Payment, Article II, Rule 4, is amended to make it clear that the Corporation will have no lien on Securities in Limited Purpose Accounts, and no provision is made in Article II, Rule 9 (formerly 8) for the computation of Net Free Equity with respect to Limited Purpose Accounts.

A new clause (d) is added to Article II, Rule 2, section 2, to provide for the computation of a Limited Purpose Cash Balance, which is subject to the same credits as any other Cash Balance but is debited only for amounts owed to the Corporation for services or fines and for funds transferred pursuant to Rule 15 (formerly 14) for reconciling differences in Contract Value for reported transactions and adjustments for payments of principal and interest.

Throughout the Rules, provisions of general application have been amended to include Limited Purpose Participants.

(5) *Participation Standards.* Article IV, Rule 1, section 3 (formerly 2), is amended to establish qualification guidelines for Participants and Limited Purpose Participants. Under these guidelines, the Corporation normally will expect banks and similar institutions applying to become Participants to have equity capital of at least \$100,000,000, brokers and dealers to have regulatory net capital of at least \$50,000,000, and other applicants in other categories to have at least the equivalent in equity or regulatory capital. Applicants to become Limited Purpose Participants normally will be expected to have equity capital of at least \$10,000,000. (Former clause (a) of Rule 1, section 1, which described the qualifications of mortgage bankers to become Participants, is deleted, given the new provisions for Limited Purpose Participants.) However, the Corporation may impose a greater or lesser capitalization standard on any applicant based upon (a) the anticipated value of the positions the applicant proposes to maintain with, and the anticipated volume and risks associated with the types of transactions the applicant proposes to process through, the Depository and (b) the overall financial condition of the applicant.

Article IV, Rule 1, sections 7 and 8 (formerly 6 and 7), have been amended to require applicants and Participants and Limited Purpose Participants that are regulated by governmental authorities to supply the Corporation with copies of any financial reports submitted to such authorities. Article IV, Rule 1, sections 7 and 8 also mandate submission of such other financial

information as the Corporation reasonably may require.

(6) *Participants Fund.* Article V, Rule 2, section 2, is amended to require each Limited Purpose Participant to make a Mandatory Deposit to the Participants Fund in the amount of \$50,000 (or such higher amount as the Corporation may determine). Under new Article V, Rule 2, section 4, this deposit must be made in cash.

Article V, Rule 2, section 2, is further amended to require each Participant to make a Mandatory (formerly Minimum) Deposit to the Participants Fund for each of its Master Accounts ranging from \$1,000,000 to \$10,000,000 (or such higher minimum and maximum amounts as the Corporation may determine), the exact amount being a prescribed percentage of average gross debits to its Cash Balances for Depository Accounts included within the Master Account on settlement days as prescribed by the Public Securities Association. Under new Article V, Rule 2, section 4, at least \$150,000 (or such higher amount as the Corporation may determine) of the Mandatory Deposit (defined in Article I, Rule 1 as the Required Cash Deposit) must be made in cash. The remainder of a Participant's Mandatory Deposit may be in the form of either cash or approved government securities.

Article V, Rule 2, section 3 is amended to make clear that Optional (formerly Additional) Deposits to the Participants Fund may be used to (a) provide Supplemental Processing Collateral (see paragraph 7 below), (b) prefund Debit Balances, (c) allow free transfers and withdrawals of Securities from MBSCC Transfer Accounts before they have been paid for and (d) permit reclamations to Agency Seg Accounts that would otherwise produce an impermissible Debit Balance. New Article V, Rule 2, section 4 provides that, for the purposes described in clauses (b) through (d) above, Optional Deposits must be in cash; for other purposes, they may be in the form of approved government securities.

Article V, Rule 2, sections 5 and 6 (formerly 4 and 5), are amended to allow Participants with more than one Master Account to reallocate cash and securities deposits to the Participants Fund with respect to one Master Account to another Master Account, provided that such reallocation does not result in the Participant's failure to satisfy the Mandatory Deposit and Net Free Equity Requirements for the Master Account from which reallocation is to be made.

(7) *Net Free Equity and Reserve on Gain.* Article I, Rule 1, adds a new

definition of Net Free Equity, which will refer to Proprietary, Agency or Pledgee Net Free Equity, as the context may require. The definition of Reserve on Gain in Article I, Rule 1, is amended to include the excess of the Market Value of Securities receivable Versus Payment over the price payable.

The computation of Net Free Equity in Article II, Rule 9, section 1, has been changed so that Net Free Equity for any Depository Account included within a Master Account now includes Supplemental Processing Collateral. Article I, Rule 1 defines Supplemental Processing Collateral for any Master Account as the sum of (a) Optional Deposits with respect to that Master Account, (b) a percentage of the Mandatory Deposit as determined from time to time by the Corporation, (c) Excess Proprietary Securities and (b) Excess Market Margin Differential (to the extent of the Applicable Percentage of the Market Value of securities deposits and 100% of collected cash, in the case of (a), (b) and (c)). Excess Proprietary Securities are defined in Article I, Rule 1 as Securities in any Proprietary Account included within a Master Account that are not required to collateralize transactions in such Proprietary Account. Given the inclusion of Supplemental Processing Collateral in the computation of Net Free Equity, Article II, Rule 13, is amended to eliminate the former concept of permitting negative Net Free Equity to be offset by the Collateral Value of a Participant's Collateral (such terms having been replaced in Article I, Rule 1 by reference to Supplemental Processing Collateral). An Account Transfer resulting in negative Net Free Equity no longer will be processed.

(8) *Net Debit Monitoring.* New Article II, Rule 2, section 4 provides that each Participant may be assigned, in a manner prescribed in the Procedures, a Net Debit Monitoring Level, defined in Article I, Rule 1, which will be applied to all of the Master Accounts maintained by the Participant. If a Participant's Debit Balances for all of its Depository Accounts, net of all Credit Balances, reach that level, the Corporation may require the Participant either to confirm its ability to pay its net Debit Balance or to prefund its Debit Balances through Optional Deposits in case to the Participants Fund. The Corporation will retain the right to reduce a Participant's Net Debit Monitoring Level Pursuant to Article IV, Rule 1, section 11 (formerly 10), in the event that the Participant no longer meets the financial requirements for participation.

(9) *Cash Settlement.* Article I, Rule 1, is amended to clarify the definitions of Agency Cash Balance, Agency Seg Cash Balance, Pledgee Cash Balance and Proprietary Cash Balance, and add new definitions of Limited Purpose Cash Balance, Limited Purpose Credit Balance and Limited Purpose Debit Balance.

Article II, Rule 2, section 2(c), is amended to make clear that, in computing Agency Cash Balances, that the Corporation may credit, as well as charge, such Balances for reasons not directly related to the transfer of Securities. Provisions in Article II, Rule 2, section 2, are amended to include all amounts payable by the Corporation in the computation of Credit Balances, not only those that directly relate to the Corporation's maintenance of Depository Accounts.

Article II, Rule 2, section 3 is amended to provide that, if a Participant has prefunded payment of its Debit Balances by making Optional Deposits in cash to the Participants Fund, the Corporation may charge the Participants Fund rather than requiring a separate settlement payment.

Article II, Rule 2, section 3, is also amended to indicate that cash settlements for Limited Purpose Accounts will be effected in the same manner as cash settlements for any other Depository Accounts.

A paragraph is added to Article II, Rule 2, section 3, providing that all settlement payments will be made to/from a bank account maintained by the Corporation separate and apart from its other funds, and that the Corporation will not make any withdrawals or transfers of funds from such account except to pay amounts owed by Participants to the Corporation until Participants' Credit Balances have been paid in full.

Another paragraph added to Article II, Rule 2, section 3, provides that Participants may elect to net its Credit and Debit Balances within a Master Account and make a single payment to, or receive a single payment from, the Corporation. If a Participant makes only a partial payment of its net Debit Balance, the payment will be applied first to any Agency Debit Balance, then to any Pledgee Debit Balance, then to any Proprietary Debit Balance (such applications to be made pro rata if there are two or more Proprietary or Agency or Pledgee Debit Balances).

Article II, Rule 7 (formerly 6), is amended to provide that, in the event of a system failure and settlement based on duplicate records, a Delivering Participant's Cash Balances will exclude credits arising from Account Transfers Versus Payment that have not yet been

matched by corresponding debits to the Cash Balance of a Receiving Participant (i.e., credits arising from transactions reflected in the Abeyance Account).

(10) *Deliverer's Security Interest.* Article II, Rule 3, section 1, is amended to provide that, to secure the Corporation's obligation to pay Participants' and Limited Purpose Participants' Credit Balances, when a Participant or Limited Purpose Participant initiates an Account Transfer of Securities Versus Payment, the Corporation will either transfer to the Delivering Participant or Limited Purpose Participant a security interest in such Securities or, if the Delivering Participant or Limited Purpose Participant is a Warehouse Lender or is a Pledgee Participant returning Securities to a Pledgor Participant Versus Payment, permit it to retain its existing security interest. The security interest so transferred or retained is defined in Article I, Rule 1 as the Deliverer's Security Interest. Article II, Rule 3, section 3, is amended to make clear that the Deliverer's Security Interest is extinguished when the Securities are transferred to the Receiving Participant's Depository Account against payment, while Article II, Rule 6, section 1 is amended to indicate that the Deliverer's Security Interest is extinguished at the time a defaulting Participant's securities are pledged to a third-party lender.

(11) *Pledges.* Two new defined terms, Pledgor Participant or Limited Purpose Participant and Pledgee Participant are added to Article I, Rule 1, replacing prior references to borrowing and lending Participants. Article II, Rule 1, section 1(c), and the definition of Pledgee Account in Article I, Rule 1, are amended to make it clear that a Participant may maintain a Pledgee Account as agent for a third party.

(12) *Reversal of Agency Transactions.* Article II, Rule 13 (formerly 12), section 6 (formerly 5), permitting an agent, prior to a designated cutoff time, to reverse transactions in its Agency Account if it believes in good faith that its principal will default in its obligations to the agent, is amended to include transactions in a Pledgee Account maintained by a Participant acting as an agent. Article II, Rule 13, section 6 is also amended to make it clear that any such reversal is subject to a check of the Delivering Participant's Net Free Equity.

(13) *Default Procedures.* A new Rule 5 is added to Article II, entitling the Corporation to apply two-fold satisfaction of the Limited Purpose Participant's Debit Balance its cash deposit to the Participants Fund and any other cash or property except Securities

the Corporation holds for the Limited Purpose Participant. Article II, Rule 6 (formerly 5), section 1, is amended to enumerate the actions that the Corporation may take in the event of a Participant's default, in the indicated order or such other order as the Corporation deems appropriate to facilitate orderly settlement.

(a) A new section 1(a) of Rule 6 provides that the Corporation will eliminate that portion of the defaulting Participant's unpaid Debit Balance that has no corresponding credits to other Participants' or Limited Purpose Participants' Cash Balances (e.g., fees owed to the Corporation) by charging the defaulting Participant's Required Cash Deposit to the Participants Fund for the Master Account which includes the Depository Account which includes the Depository Account to which the unpaid Debit Balance relates and, if necessary, for any other Master Account of the Participant.

(b) Section 1(b) (formerly 1(a)) provides that the Corporation will offset against the unpaid Debit Balance any Proprietary Credit Balance otherwise payable by the Corporation to the defaulting Participant.

(c) Section 1(c) (formerly 1(b)) provides that the Corporation, at its option, if the defaulting Participant is a Pledgee Participant that has defaulted in payment of its Pledgee Debit Balance, may return to Pledgor Participants any Securities in the MBSCC Transfer Account associated with the Pledgee Participant's Pledgee Account and reverse the related debits and credits to the Pledgee and Pledgor Participants' Cash Balance.

(d) Section 1(d) is amended to make it clear that the Corporation may use its own funds or funds borrowed from third-party lenders to cover the remaining unpaid Debit Balance by pledging (i) any Securities held in the MBSCC Transfer Account associated with the Depository Account to which the unpaid Debit Balance relates, if such Depository Account is a Proprietary or Agency Account, any Securities held in such Account, and any Excess Proprietary Securities; (ii) any securities deposited by the defaulting Participant in the Participants Fund for the Master Account which includes the Depository Account to which the unpaid Debit Balances relates and, if necessary, for any other Master Account of the Participant; and (iii) any property deposited in the Participants Fund of the Clearing Division that constitutes Excess Market Margin Differential.

(e) A new section 1(e) provides that the Corporation will apply to payment of

the Debit Balance (i) the defaulting Participant's Mandatory Deposit in cash in excess of its Required Cash Deposit for the Master Account which includes the Depository Account to which the Debit Balance relates and, if necessary, for any other Master Account; (ii) the net proceeds from liquidation of securities (not otherwise pledged) that are deposited in the Participants Fund for the Master Account that includes the Depository Account to which the Debit Balance relates and, if necessary, for any other Master Account; or (iii) unless the Corporation has notice of the defaulting Participant's insolvency, the Required Cash Deposits made by non-defaulting Participants to the Participants Fund.

(f) A new section 1(f) permits the Corporation to reverse debits to the defaulting Participant's Cash Balance and corresponding credits to the Cash Balances of non-defaulting Participants and Limited Purpose Participants and, to the extent that any credit so reversed was attributable to the intended transfer of Securities that remain in the MBSCC Transfer Account associated with the Depository Account to which the Debit Balance relates, retransfer such Securities to the Delivering Participant or Limited Purpose Participant.

Amendments to Article II, Rule 3, section 3, and Rule 9 (formerly 8), section 2, and additions of section 2(e) to Rule 12 (formerly 11), and section 2 to Rule 13 (formerly 12), clarify the Corporation's right to make book-entry transfers and withdrawals of Securities necessary to take the actions enumerated above.

A new paragraph in Article II, Rule 6, section 1, requires that any reversals of debits and credits and any retransfers of Securities be made in the reverse of the chronological order in which such debits and credits were made (i.e., last first), provided that where only a portion of the Securities intended for transfer to the defaulting Participant's Depository Account remain in the associated MBSCC Transfer Account, the Corporation may elect first to retransfer Securities to other Delivering Participants and Limited Purpose Participants, all of whose Securities intended for transfer to the defaulting Participant's Depository Account remain in the associated MBSCC Transfer Account.

Another new paragraph in Article II, Rule 6, section 1, makes it clear that any Securities returned to a non-defaulting Participant (but not a non-defaulting Limited Purpose Participant) will be credited to its appropriate MBSCC Transfer Account pending payment of any resulting Debit Balance. This

paragraph further provides that, to facilitate borrowings to fund payment of such Debit Balances, the Corporation may extend the time for transfer of Securities to Pledgee Participants' Pledgee Accounts beyond the normal cutoff time for Account Transfers.

Another new paragraph in Article II, Rule 6, section 1 makes it clear that the return of Securities to a nondefaulting Participant or Limited Purpose Participant will not extinguish its contractual claims against the defaulting Participant for breach of settlement obligations and that claims for losses may be pursued outside the Depository. However, any Participant or Limited Purpose Participant may submit to the Depository for binding arbitration claims for losses resulting from the pledging or disposition of returned Securities.

Provisions formerly contained in Article II, Rule 6, section 4 regarding application of proceeds of liquidation of a defaulting Participant's collateral are replaced by provisions in new section 5. Under new section 5, the Corporation will apply liquidation proceeds that remain after repayment of third-party lenders to (a) restore pro rata any Required Cash Deposits of non-defaulting Participants that were applied toward payment of the defaulting Participant's Debit Balance; (b) discharge any unpaid obligations of the defaulting Participant to the Corporation not covered by application of its Required Cash Deposit; (c) pay pro rata any non-defaulting Participants and Limited Purpose Participants whose claims of loss have been allowed by arbitration; and (d) pay any remainder to the defaulting Participant. Any such application of proceeds will be subject to instructions from any trustee or similar official that may be appointed for the defaulting Participant.

Article II, Rule 6, section 3, is amended to make it clear that a non-defaulting Participant whose Required Cash Deposits have been applied toward payment of the defaulting Participant's Debit Balance will be entitled to payment of interest assessed against the defaulting Participant. Rule 6, section 6 is amended to provide that to the extent that liquidation proceeds are insufficient to restore non-defaulting Participants' Required Cash Deposits, non-defaulting Participants who dealt with the defaulting Participant will be subject to assessment to cover the insufficiency.

(14) *Withdrawals and Free Transfers of Securities.* New Rule 13 (formerly 12), section 1(b)(ii)(B), of Article II permits a Participant to withdraw or make free movements of Securities in an MBSCC

Transfer Account only if the Participant has made Optional Deposits in cash to the Participants Fund at least equal to the price it has agreed to pay for the Securities.

(15) *Reclamations.* Article II, Rule 14, (formerly 13), section 2, is amended to make it clear that no Reclamation to an Agency Seg Account will be allowed if the result would be a deficit in the Agency Seg Cash Balance that has not been prefunded.

(16) *Principal and Interest.* Article I, Rule 1, is amended to clarify the definitions of Proprietary and Agency Repo In and Repo Out Positions.

Article III, Rule 2, section 1, is amended to provide that Receiving Participants will be entitled to principal and interest for Securities held in trust for them by the Corporation during periods in which settlement cannot occur.

Article III, Rule 2, section 1 is also amended to authorize the Corporation to finance principal and interest advances using Participants' Mandatory Deposits either by advancing the cash portion or by pledging the securities portion as collateral for bank loans. Article III, Rule 2, section 2(f) (formerly 2(e)), is amended to provide that Participants will receive interest to the extent that their cash deposits to the Participants Fund are advanced to finance principal and interest payments.

Section 2(d) is amended to more clearly define the rights of any pledgee or transferee of a limited interest in Securities that are the subject of a principal and interest advance funded with the proceeds of bank loans. Any interest such pledgee or transferee may have in principal and interest receivable on such securities is subordinated to the security interest in such principal and interest granted to the Corporation's bank lenders. Section 2(d) also makes it clear that Corporation has only a subordinated lien on principal and interest payments pledged to such lenders.

Article III, Rule 2, section 2(c), is amended to provide that, if the Corporation borrows funds from more than one third-party lender secured by principal and interest receivable, each Participant receiving a principal and interest advance will be deemed to have received a pro rata portion of the loan proceeds from each lender. A new section 2(e) requires each such lender to be party to an intercreditor agreement requiring that, if it receives repayment of more than its pro rata share of loan proceeds plus interest, it will hold such excess in trust for the other lenders.

Section 2(d) of Article III, Rule 2, is amended to make clear that Participants' repayment obligations to the Corporation's lenders extend to interest and costs of collection.

Article III, Rule 2, section 6, is amended to make clear that enforcement by the Corporation of guarantees on deposited Securities is limited to GNMA Securities.

(17) *Arbitration*. Article VI, Rule 8, is amended to permit the Board of Directors to appoint officers, employees or partners of Participants or Limited Purpose Participants to arbitration panels.

#### **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 the basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

##### **(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

The proposed Rule changes are intended, among other things, to expand participation in the Corporation's services, to raise participation standards, to provide additional protection for non-defaulting Participants and the Corporation against the risk and the event of Participant default, to provide additional security for the settlement of account balances, and to facilitate the Corporation's financing of principal and interest advances. A detailed explanation of the proposed Rule change is available in the file and may be obtained, upon request, from the Commission and MBSCC.

The proposed Rule changes are consistent with section 17A of the Securities Exchange Act of 1934 ("the Act"), in that they facilitate the prompt and accurate clearance and settlement of securities transactions.

##### **(B) Self-Regulatory Organization's Statement on Burden on Competition**

The Corporation does not believe that any burden will be placed on competition as a result of the proposed Rule changes.

##### **(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others**

On May 9, 1988 the Corporation mailed to all Depository Participants for comment the text and an explanation of proposed changes to the Rules. A copy of the explanation is attached in the file as Exhibit 1.

In response to the May 9 mailing, the Corporation received a letter from Bear, Stearns & Co., Inc., commenting on various proposed Rule changes. Copies of the letter and the Corporation's response are attached in the file as Exhibit 2.

Three Participants, Fiduciary Trust International, Mabon Nugent & Co., and UBS Securities Inc., submitted comments, attached in the file as Exhibits 3 through 5, proposed changes in participation standards described in the May 9 mailing. In general, these firms expressed concern that the standards were too inflexible. One firm also objected to an exclusion from equity capital of subordinated debt. In response to those comments, after consultation with its Risk Management Committee, the Corporation further modified the proposed participation standards to provide minimum capitalization guidelines rather than absolute requirements, and for broker-dealers based the guidelines on regulatory net capital, including subordinated debt. These modifications were described to Participants in a mailing dated July 12, 1988, attached in the file as Exhibit 6, with respect to which the Corporation received comments from Fiduciary Trust International and Kemper Clearing Corp., attached in the file as Exhibit 7 and 8. The revised standards, which the Corporation believes are sufficient to satisfy concerns previously expressed, are summarized under the caption *Participation Standards* under Item 3(a) above.

The Rule changes filed herewith include additional modifications not described in the May 9 and July 12 mailings, but such Rule changes do not, in the Corporation's judgment, materially affect the rights and obligations of Participants. The text of all proposed Rule changes and a summary of those changes not reflected in the prior mailings will be distributed to all Participants promptly following the filing hereof. The Corporation will promptly notify the Commission of any written comments received.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number (File No. SR-MBS-88-14) and should be submitted by October 19, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 22, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-22231 Filed 9-27-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16567; (812-6994)]

#### **A.T. Ohio Tax-Free Money Fund, et. al.; Application**

September 22, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for an Order for Exemption under the Investment Company Act of 1940 (the "1940 Act").

**Applicants:** A.T. Ohio Tax-Free Money Fund; Aetna Series Trust; American Leaders Fund, Inc.; Automated Cash Management Trust; Automated Government Money Trust; Convertible Securities and Income, Inc.; Edward D. Jones & Co. Daily Passport Cash Trust; EGT Money Market Trust; FT International Trust; Federated Bond Fund; Federated Corporate Cash Trust; Federated Exchange Fund, Ltd.; Federated Floating Rate Trust; Federated GNMA Trust; Federated Growth Trust; Federated High Income Securities, Inc.; Federated High Quality Stock Fund; Federated High Yield Trust; Federated Income Trust; Federated Intermediate Government Trust; Federated Intermediate Municipal Trust; Federated Master Trust; Federated New Jersey Municipal Bond Fund; Federated Short-Intermediate Government Trust; Federated Short-Intermediate Municipal Trust; Federated Short-Term U.S. Government Trust; Federated Stock and Bond Fund, Inc.; Federated Stock Trust; Federated Tax-Free Income Fund, Inc.; Federated Tax-Free Trust; Federated U.S. Government Fund; Federated Utility Trust; Federated Variable Rate Mortgage Securities Trust; Fort Washington Money Market Fund; Fortress High Yield Tax-Free Fund, Inc.; Fortress Total Performance U.S. Treasury Fund, Inc.; Fund for U.S. Government Securities, Inc.; Government Income Securities, Inc.; High Yield Cash Trust; Legg Mason Cash Reserve Trust; Liberty U.S. Government Money Market Trust; Liquid Cash Trust; Money Market Management; Money Market Trust; Morgan Keegan Daily Cash Trust; New York Municipal Cash Trust; Progressive Income Equity Fund, Inc.; Tax-Free Instruments Trust; Trust for Cash Reserves; Trust for Short-Term U.S. Government Securities; Trust for U.S. Treasury Obligations; and all future investment companies for which affiliated persons of Federated Investors, Inc. serve as investment adviser and/or principal underwriter and/or sponsor (collectively "the Funds").

**Relevant 1940 Act Section:** Exemption requested under sections 17(b) and 6(c) from the provisions of sections 17(a)(1), 17(a)(2), and 17(e)(1) of the 1940 Act.

**SUMMARY OF APPLICATION:** Applicants seek an order permitting the Funds to: (1) Engage in purchase and sale transactions of both long-term and short-term U.S. government securities

with certain banks which now or may become "upstream" affiliates of the Funds and which are primary dealers in these securities and (2) permit such affiliated banks to accept compensation within the limitations of section 17(e)(2) of the 1940 Act for acting as agent for any Fund in connection with the purchase or sale of such U.S. government securities.

**FILING DATES:** The application was filed on February 26, 1988, and amended on August 25, 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 17, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicants, c/o Federated Investors, Inc.; Federated Investors Tower, Pittsburgh, PA 15222-3779, Attention: G. Andrew Bonnewell.

**FOR FURTHER INFORMATION CONTACT:** James E. Banks, Staff Attorney (202) 272-2190, or Brion R. Thompson, Branch Chief (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The 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. Each Fund is registered under the 1940 Act as an open-end, management investment company. Federated Securities Corp., a subsidiary of Federated Investors, Inc. ("Federated Investors"), serves as the principal underwriter of each Fund. Federated Investors is a subsidiary of Aetna Life and Casualty Company and the investment adviser of each Fund is an affiliated person of Federated Investors.
2. Each Fund's investment policies currently, or may in the future, permit it to invest in U.S. government securities,

which are defined in section 2(a)(16) of the 1940 Act. The Federal Reserve Bank of New York (the "Federal Reserve") issues and sells U.S. government securities to a select group of "primary dealers", who in turn distribute the securities to other dealers and sell them to institutional investors such as the Funds. The Federal Reserve will only sell U.S. government securities to dealers which satisfy certain standards: e.g., the firm must have adequate capital relative to the positions it assumes; the firm must be doing a reasonable volume (at least one percent of market activity) and be willing to make markets in U.S. government securities at all times; and management in the firm must understand the risks involved in the government market and make a long term commitment to the market. There are presently 42 primary dealers, of which 14 are banks or bank affiliates.

3. Federated Investors markets certain Funds to banks which are primary dealers. If a bank becomes an affiliated person of one of the Funds, as defined in section 2(a)(3) of the 1940 Act ("Affiliated Bank"), sections 17(a)(1) and 17(a)(2) of the 1940 Act would preclude the Affiliated Bank from engaging in any principal transactions with the Fund and may prohibit the Affiliated Bank from accepting compensation in transactions where it acts as agent for the Fund. Specifically, by virtue of section 2(a)(3) of the 1940 Act, a bank owning more than five percent of a Fund's outstanding voting securities is an affiliated person of that Fund and, thus, is prohibited from engaging in purchase and sale transactions of U.S. government securities with the Funds. In addition, under sections 2(a)(3) (B) and (C) of the 1940 Act, a primary dealer which is a subsidiary of a bank, or which is controlled by the same holding company as a bank (or otherwise under control with the bank) is an affiliated person of the bank. Consequently, if that bank owns or controls more than five percent of a Fund's outstanding shares, or serves as the Fund's investment adviser, then the primary dealer is an affiliated person of an affiliated person of that Fund and it cannot deal in U.S. government securities with the Funds.

4. Over the years, the number of banks utilizing the Funds has increased, so that currently, virtually all of the banks which are either primary dealers or affiliated with primary dealers are now investors in one or more of the Funds. The consequences to the Funds of a primary dealer becoming an Affiliated Bank are harsh: no Fund may then engage in any transactions with that primary dealer. Presently, two of

the primary dealers in long and short term U.S. government securities are Affiliated Banks and the Funds have ceased dealing with them. Other bank primary dealers or banks which have primary dealer affiliates could become affiliated persons of the Funds should they increase the amount of their investments in the Funds.

5. According to the application, primary dealers, as a whole, provide the most favorable price and execution in U.S. government securities transactions for large institutional investors such as the Funds. The Funds can only obtain the most favorable price and execution in their U.S. government securities transactions, however, when they are able to deal with the entire pool of primary dealers.

6. Although most Affiliated Banks engage in U.S. government securities transactions for their own accounts, the Funds may engage in agency transactions with such Affiliated Banks. Since the Affiliated Banks are neither brokers nor underwriters for purposes of the 1940 Act, section 17(e)(1) of the 1940 Act prohibits them from accepting compensation in securities transactions where they act as agents for the Funds.

#### **Applicant's Legal Conclusion**

1. The requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. In addition, the terms of the proposed transactions are: (1) Reasonable and fair and do not involve overreaching on the part of any person, (2) consistent with the policy of each registered investment company concerned, and (3) consistent with the general purposes of the 1940 Act. In purchasing and selling U.S. government securities, it is critical that the Funds obtain prompt execution of their transaction at a competitive price. Each primary dealer represents a significant portion of the U.S. government securities market. There are occasions, especially in the disposition of portfolio securities in weak markets, when each primary dealer offers the most favorable price and execution as against the other dealers. Inability to trade with one or more Affiliated Banks will deprive the Funds of the most favorable price and execution on the occasions when those dealers have the best overall offer for a transaction. Further, because the U.S. government securities market is highly competitive, removing one or more primary dealers from the Funds' market may deprive the Funds of the most favorable price and execution even when dealing with other dealers.

Consequently, the shareholders' return from their investment in the Funds may be reduced if the Funds' access to the primary dealers is restricted.

#### **Applicants' Proposed Conditions**

If the requested order is granted, the Applicants agree to the following conditions:

1. The Board of Trustees, Directors, or General Partners of each of the Funds: (1) Will adopt procedures, pursuant to which transactions may be effected for the Funds, that are reasonably designed to provide that all the conditions in paragraphs 2 through 6 below have been complied with, (2) will review no less frequently than annually such procedures for their continuing appropriateness, and (3) will determine no less frequently than quarterly that such transactions made during the preceding quarter were effected in compliance with such procedures. These procedures will also be approved by a majority of the disinterested Trustees, Directors or General Partners of the Funds. The investment adviser of each Fund will implement those procedures and make decisions necessary to meet these conditions, subject to the direction and control of the Board of Trustees, Directors or General Partners of each Fund.

2. No Fund will engage in U.S. government securities transactions with a primary dealer that is a bank serving as investment adviser to such Fund or affiliated with such a bank.

3. The Funds (1) will maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph 1, and (2) will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transactions occurred, the first two years in an easily accessible place, a written record of each such transaction setting forth a description of the security purchased or sold, the identity of the person on the other side of the transaction, the terms of the purchase or sale transaction, and the information or materials upon which the determinations described below were made.

4. The security to be purchased or sold by a Fund will be consistent with the investment objectives and policies of that Fund as recited in the Fund's registration statement, and will be consistent with the interests of that Fund and its shareholders. Further, the security to be purchased or sold by that Fund must be comparable in terms of quality, yield, and maturity to other similar securities that are appropriate

for the Fund and that are being purchased or sold during a comparable period of time.

5. The terms of the transaction must be reasonable and fair to the shareholders of that Fund and cannot involve overreaching of that Fund or its shareholders on the part of any person concerned. Before any transaction may be conducted pursuant to the exemption, the Funds or their advisers must obtain such information as they deem necessary to determine that the price to be paid or received for the security is at least as favorable as that available from other sources. The Funds or their advisers must obtain and document competitive quotations from at least two other dealers with respect to the specific proposed transaction, except that if quotations are unavailable from two such dealers, only one other competitive quotation is required. With respect to prospective purchases of securities, these dealers must be those who have securities of the categories and the type desired in their inventories and who are in a position to quote favorable prices with respect thereto. With respect to the prospective disposition of securities, these dealers must be those who, in the experience of the Funds and their advisers, are in a position to quote favorable prices.

6. The commission, fee, spread, or other remuneration to be received by the Affiliated Dealer must be reasonable and fair compared to the commission, fee, spread, or other remuneration received by other brokers or dealers in connection with comparable transactions involving similar securities being purchased or sold during a comparable period of time but in no event will such fee, commission, spread or other remuneration exceed that which is stated in section 17(e)(2) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,  
Assistant Secretary.

[FR Doc. 88-22229 Filed 9-27-88; 8:45 am]  
BILLING CODE 8010-01-M

[Rel. No. IC-16566; 812-6999]

#### **The Richardson Corp. et al.; Application**

September 22, 1988.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of filing of an application under the Investment Company Act of 1940, as amended ("1940 Act").

**Applicants:** The Richardson Corporation and Piedmont Financial Company, Inc.

**Relevant 1940 Act Sections:** Exemption requested under section 6(c) of the 1940 Act from all provisions of the 1940 Act.

**Summary of Application:** Applicants seek an order conditionally exempting certain investment vehicles from the provisions of the 1940 Act based upon the private nature of the investment vehicles, the ownership and control of which are dominated by one family and certain persons employed by, controlled by, or otherwise related to members of that family.

**Filing Dates:** The application was filed on March 1, 1988 and amended on June 13 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 the application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m., on October 17, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o John S. Stoppelman, Esq., Bishop, Cook, Purcell & Reynolds, 1400 L Street, NW., Suite 1000, Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:** H.R. Hallock, Jr., Special Counsel at (202) 272-3030 (Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

#### Applicants' Representations

1. Applicants are corporations established by and solely owned by the Richardson Family (the "Family"). The Richardson Corporation, a North Carolina corporation, is a privately-held company which is beneficially owned

solely by members of the Family. The Richardson Corporation owns all of the outstanding stock of Piedmont Financial Company, Inc. ("Piedmont Financial"), a New York corporation which was established as the "Family Office" to provide income tax planning, investment advice, financial planning, philanthropic administration and miscellaneous services exclusively to "Family Clients" as defined in paragraph 3 below. Piedmont Financial also sponsors certain Exclusive Family Investment Vehicles (the "Family Investment Vehicles") which are described in paragraphs 6 and 7 below.

2. Piedmont Financial services as its clients the 219 individual descendants and spouses of Lunsford Richardson (the "Family Members"). Lunsford Richardson was a founder of the predecessor to Richardson-Vicks, Inc., a health care product and pharmaceutical company acquired by The Proctor & Gamble Company in 1985. Piedmont Financial also serves approximately three hundred other entities which include inter-vivos and testamentary trusts, the beneficiaries of which are Family Members. Finally, Piedmont Financial also administers the affairs of a small number of charitable trusts and foundations. Of the fifteen seats on Piedmont Financial's Board of Directors, twelve are held by Family Members.

3. The following categories define the classes of persons who are the Family Clients of Piedmont Financial and are eligible to utilize the services of the Family Office and thereby invest in the Family Investment Vehicles:

a. The Richardson Family.

(i) *Individuals.* Descendants of Lunsford Richardson constituting the five branches of the Family and their spouses (including former spouses and adopted or step children);

(ii) *Spousal Kin.* Certain relatives of descendants' spouses. Specifically, thirteen trusts and two individuals are participants in the Family Investment Vehicles. While it is anticipated that trusts or estates established by Family Members for the benefit of spousal kin may be admitted as participants in the Family Investment Vehicles, no additional individual spousal kin will be admitted as participants.

(iii) *Estates.* Estates of persons described in a.(i);

(iv) *Trusts.* Inter-vivos or testamentary trusts created by or for the benefit of persons listed in a.(i) or (ii).

b. *Charities.* Charitable trusts or foundations established by Family Members and controlled (as defined in Rule 405 of the Securities Act of 1933, as amended) by Family Members. Six of these charitable entities are currently

participants in the Family Investment Vehicles. Furthermore, any and all charitable entities as described herein which are, or which may become, participants in the Family Investment Vehicles are and will remain in the control of Family Members.

c. *Others.* Persons, or trusts by or for such persons, whose connection to the Family is through an employment relationship with persons listed in a.(i) above or with companies which Family Members controlled. The two individual persons and two other entities included in this category are, and will be, limited to the persons and entities listed in the application. Furthermore, such persons and entities will not be permitted to make any future investments in either the existing or future Family Investment Vehicles.

4. The Family also owns sixty percent of the outstanding common stock of Piedmont Management Company, Inc. ("Piedmont Management"), a publicly traded company. Piedmont Management operates two businesses through wholly-owned subsidiaries. The first is Lexington Management Corporation ("Lexington"), a registered investment adviser. The second is The Reinsurance Company of New York, a property-casualty reinsurer. Family Members hold seats on the Board of Directors of Piedmont Management and occupy the positions of Chairman and Vice Chairman of the Board. It is expected that the Family will retain control of Piedmont Management.

5. Lexington, among other things, is the investment adviser to the Family Investment Vehicles sponsored by Piedmont Financial. Lexington is also the investment adviser to a family of open-end mutual funds known as the Lexington Group, which are registered with the SEC under the 1940 Act, as well as numerous other institutional and individual accounts. It is anticipated that, as a result of the Family's control of Piedmont Management, the Family will retain indirect control of Lexington.

6. Two New York limited partnerships, Piedmont Associates, Limited, an equity and capital appreciation fund, and Southern Income Associates, Limited, an income-oriented fund, have been established by the Family Office to serve as Family Investment Vehicles. In addition, a third limited partnership being designed as a tax-exempt income fund is currently in formation. Each existing, formative and future Family Investment Vehicle has been, or will be, designed to meet identified investment needs of the Family Members.

7. Under the terms of the limited partnership agreements, the two existing limited partnerships are each operated by four individual general partners ("General Partners"), all of whom are senior Family Members. The third limited partnership currently being formed, and all future partnerships formed, will be similarly structured. The partnerships each have formal investment advisory contracts with Lexington, and it is anticipated that formative and future partnerships will have a similar relationship with Lexington.

#### Applicants' Legal Conclusions

Applicants submit that the Family Investment Vehicles will be controlled by Family Members and are private investment vehicles for which the requested exemption is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

#### Applicants' Conditions

The application states that the requested exemption with respect to a Family Investment Vehicle may be conditioned upon the observance by such Vehicle of each of the following undertakings:

1. That, unless a Family Investment Vehicle shall have first obtained an amended exemptive order from the SEC in respect of its ceasing to do so, such Vehicle will continue to furnish each investor both quarterly reports from Piedmont Financial and annual financial statements which will be audited by an independent Certified Public Accountant.

2. That, unless a Family Investment Vehicle shall have first obtained an amended exemptive order from the SEC permitting it to do so, such Vehicle shall neither admit as a new investor, nor permit the assignment or transfer of any interest therein to any individual or entity, if such admission, assignment, or transfer would cause the Vehicle to fail to be solely owned by or for the benefit of Family Members, their trusts or estates and Family related charities.

3. That, unless a Family Investment Vehicle shall have first obtained an amended exemptive order from the SEC permitting it to do so, such Vehicle shall not (a) admit any new general partner without the approval of a majority in interest of the investors, (b) have as a general partner a person other than a Family Member, or (c) have as an investment adviser to such Vehicle any investment adviser not properly engaged by the General Partners pursuant to a

formal written contract, which contract shall be ratified by a majority of the investors in accordance with section 15(a) of the 1940 Act.

4. That, unless a Family Investment Vehicle shall have first obtained an amended exemptive order from the SEC permitting it to do so, neither such Vehicle, nor Piedmont Financial, Piedmont Management, Lexington or the General Partners of the Vehicles shall knowingly make available to any broker or dealer registered under the Securities Exchange Act of 1934, any financial information concerning such Vehicle for the purpose of knowingly enabling such broker or dealer to initiate any regular trading market in any partnership interest of such Vehicle.

5. That, unless a Family Investment Vehicle shall have first obtained an amended exemptive order from the SEC permitting it to do so, any and all formative and future Family Investment Vehicles, including, but not limited to, the tax-exempt income fund limited partnership currently being organized, will be subject to and comply with the same conditions that will apply to the two existing Family Investment Vehicles.

6. That, unless a Family Investment Vehicle shall have first obtained an amended exemptive order from the SEC permitting it to do so, the lineal descendants of Lunsford Richardson will control, and continue to control the management of, and access to membership in, the Family Investment Vehicles, the partnership agreement of each existing and future partnership provides or will provide that no person may be admitted as a limited partner without the approval of the General Partners, in each and every case, such general partners are or will be Family Members, in each and every case the Managing General Partner is or will be a lineal descendant of Lunsford Richardson and the partnership agreements provide or will provide that no partner may transfer or assign this or her interest in the partnership without the approval of the Managing General Partner.

7. That, unless a Family Investment Vehicle shall have first obtained an amended exemptive order from the SEC permitting it to do so, ownership, sponsorship, and advisory arrangements with respect to existing, formative or future Exclusive Family Investment Vehicles shall not significantly differ from the arrangements reflected in the application, including the assignment of advisory contracts for one or both of the existing Family Investment Vehicles (unless permitted by a relevant rule under the 1940 Act or the "safe harbor"

provisions of section 15(f) of the 1940 Act).

8. That, unless a Family Investment Vehicle shall have first obtained an amended exemptive order from the SEC permitting it to do so, existing, formative and future Vehicles shall not enter into or conduct any affiliated transactions (within the meaning of sections 17 (a) and (d) of the 1940 Act) with Lexington, any affiliated person of Lexington or the Lexington Group, or any of the other advisory clients for which Lexington serves as investment adviser.

For the SEC, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-22230 Filed 9-27-88; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Dated: September, 22, 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: 8809.

Type of Review: New Collection.

Title: Request for Extension of Time to File Information Returns.

Description: Form 8809 is used to request an extension of time to file certain information returns. It will be used by IRS to process requests expeditiously and to track from year to year those who repeatedly ask for an extension.

Respondents: Individuals or households, State or local governments, Farms, Businesses of other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.

Estimated Number of Respondents: 30,000.

**Estimated Burden Hours Per Response/Recordkeeping:**

Recordkeeping—44 minutes

Learning about the law or the form—14 minutes

Preparing the form—50 minutes

Copying, assembling, and sending the form to IRS—26 minutes

Frequency of Response: On occasion.

Estimated Total Recordkeeping/

Reporting Burden: 66,900 hours.

Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-22153 Filed 9-27-88; 8:45 am]

BILLING CODE 4810-25-M

**Public Information Collection Requirements Submitted to OMB for Review**

Dated: September, 22, 1988.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

OMB Number: 1545-1038.

Form Number: 8803.

Type of Review: Resubmission.

Title: Annual Certification by Operator of a Qualified Residential Rental Project.

Description: Operators of qualified residential projects will use this form to certify annually that their projects meet the requirements of Internal Revenue Code section 142(d). Operators are required to file this certification under section 142(d)(7).

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 5,000.

**Estimated Burden Hours Per Response/Recordkeeping:**

Recordkeeping—5 hours 19 minutes

Learning about the law or the form—42 minutes

Preparing and sending the form to IRS—47 minutes

Frequency of Response: Annually.

Estimated Total Recordkeeping/

Reporting Burden: 26,550 hours.

Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-22154 Filed 9-27-88; 8:45 am]

BILLING CODE 4810-25-M

**VETERANS ADMINISTRATION****Agency Information Collection Under OMB Review**

AGENCY: Veterans' Administration.

ACTION: Notice.

The Veterans' Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) the department or staff office issuing the information collection, (2) the title of the information collection, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the information collection must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of recordkeepers, (8) an estimate of the total number of hours needed to fill out the information collection, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patti Viers, VA Clearance Officer, Veterans' Administration (732), 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-3172.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the

OMB Desk Officer within 30 days of this notice.

Dated: September 21, 1988.

By direction of the Administrator.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

**Reinstatement**

1. Office of Equal Opportunity.
2. Age Discrimination Complaints and Notice to Subrecipients.
3. Not applicable.
4. This information collection pertains to the recordkeeping requirement that Federally funded recipients process complaints of age discrimination in their respective programs and that these recipients notify subrecipients of their obligations under the law and VA's implementing regulations.
5. On occasion.
6. Individuals or households; State or local governments; Businesses or other for-profit; Non-profit institutions.
7. 1,007 recordkeepers.
8. One hour.
9. Not applicable.

[FR Doc. 88-22141 Filed 9-27-88; 8:45 am]

BILLING CODE 8320-01-M

**Request for Expedited Processing; Agency Information Collection Under OMB Review**

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department sponsoring the information collection; (2) the title of the information collection; (3) the agency form number, if applicable; (4) a description of the need and its use; (5) frequency of the information collection; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the study and supporting documents may be obtained from Ann Bickoff, Department of Medicine and Surgery (136E), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 233-

2282. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395-7316.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer on or before October 13, 1988.

Dated: September 21, 1988.

By direction of the Administrator.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

#### New Collection

1. Department of Medicine and Surgery
2. Letter to CHAMPVA Beneficiaries Requesting Social Security Numbers
3. Not Applicable
4. Dependents of veterans who are eligible for CHAMPVA benefits must complete an application form to obtain these benefits. The form is currently under revision to include Social Security numbers needed by the Department of Defense to verify claims prior to payment. This one time collection of Social Security numbers is required until the revised form is approved for use.
5. One-time

6. Individuals or households
7. 53,700 responses
8. 483 hours
9. Not applicable

#### *Request for Expedited Processing Under 5 CFR 1320.18*

1. The collection of this information is essential to the mission of the Agency and we are requesting expedited processing of this information collection so that certain claims for medical benefits may be paid.

2. The social security numbers for CHAMPVA beneficiaries are needed so that claims may be properly processed for payment.

3. Under an agreement between the VA and the Department of Defense, the processing of CHAMPVA claims for payment for the costs of care is under the overall jurisdiction of the Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS). Benefits are paid in the same manner and under the same conditions as benefits are provided to the dependents of retirees and survivors of deceased members of the uniformed services under CHAMPUS.

4. OCHAMPUS contracts with various private organizations, or fiscal intermediaries, to process and pay CHAMPUS and CHAMPVA claims.

When the OCHAMPUS fiscal intermediaries process CHAMPUS claims, the claimant's eligibility is verified through the Defense Eligibility Enrollment Reporting System (DEERS). Beginning in October 1988, CHAMPVA beneficiaries will be enrolled in DEERS and fiscal intermediaries will verify claimant eligibility before processing a CHAMPVA claim for payment. DEERS eligibility information is retrieved using the sponsor's Social Security account number.

The Social Security number is not currently collected on the application for CHAMPVA benefits and is not available in the records of 53,700 beneficiaries and sponsors. The Social Security number is needed to enroll the beneficiaries in DEERS.

5. It is requested that OMB review and approve this collection of information within fifteen days of receipt.

6. The Social Security number for CHAMPVA beneficiaries is not available from any other source. We have been advised by the Department of Defense that the sponsors' Social Security numbers are needed in order for the beneficiaries to be enrolled in DEERS.

BILLING CODE 8320-01-M

Date	Description	Amount
1891		
Jan 1	Balance forward	100.00
Jan 15	Received from John Doe	50.00
Jan 20	Paid to Mary Smith	25.00
Feb 1	Received from John Doe	75.00
Feb 10	Paid to Mary Smith	30.00
Feb 25	Received from John Doe	100.00
Mar 1	Paid to Mary Smith	40.00
Mar 15	Received from John Doe	125.00
Mar 20	Paid to Mary Smith	50.00
Apr 1	Received from John Doe	150.00
Apr 10	Paid to Mary Smith	60.00
Apr 25	Received from John Doe	175.00
May 1	Paid to Mary Smith	70.00
May 15	Received from John Doe	200.00
May 20	Paid to Mary Smith	80.00
Jun 1	Received from John Doe	225.00
Jun 10	Paid to Mary Smith	90.00
Jun 25	Received from John Doe	250.00
Jul 1	Paid to Mary Smith	100.00
Jul 15	Received from John Doe	275.00
Jul 20	Paid to Mary Smith	110.00
Aug 1	Received from John Doe	300.00
Aug 10	Paid to Mary Smith	120.00
Aug 25	Received from John Doe	325.00
Sep 1	Paid to Mary Smith	130.00
Sep 15	Received from John Doe	350.00
Sep 20	Paid to Mary Smith	140.00
Oct 1	Received from John Doe	375.00
Oct 10	Paid to Mary Smith	150.00
Oct 25	Received from John Doe	400.00
Nov 1	Paid to Mary Smith	160.00
Nov 15	Received from John Doe	425.00
Nov 20	Paid to Mary Smith	170.00
Dec 1	Received from John Doe	450.00
Dec 10	Paid to Mary Smith	180.00
Dec 25	Received from John Doe	475.00
Total		5000.00

CENTRAL CHAMPVA REGISTRY CENTER  
1055 CLERMONT STREET  
DENVER, COLORADO 80220

Jane Nname  
123 Test Street  
Kolobia, MA 01234

Dear Ms Jane Nname:

We have recently reviewed all CHAMPVA beneficiaries and have confirmed that you are fully eligible. In order to streamline the processing of any future claims that you may have, we are checking all data on our CHAMPVA beneficiaries. During this check we have discovered that we are missing your Social Security Number. This missing data could delay claims processing in the future. So as to eliminate this possible delay we are at this time requesting that you write your social security number and your sponsor's social security number in the space at the bottom of this letter. Please also correct any other misinformation at the bottom of the page and then return this letter in the business reply envelope enclosed with this letter. Your prompt response to this request will assist us greatly in better serving you in the future.

Sincerely,

Stuart Mount  
Acting Director CHAMPVA

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NOTICE: Public reporting burden for this collection of information is estimated to average 1/2 minute per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to VA Clearance Officer, 810 Vermont Avenue, NW, Washington, DC 20420; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.  
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Please write your social security number and your sponsor's social security number in the space below and correct any other information that is wrong.

Social Security Number: \_\_\_\_\_

Sponsor Social Security Number: \_\_\_\_\_

Nname, Jane

123 Test Street

Kolobia, MA 01234

Home Phone: 617-222-6156

Date of birth: DEC 14, 1926

Please return this letter in the enclosed business reply envelope.

FL 10-20876(NR)  
AUG 1988

[FR Doc. 88-22135 Filed 9-27-88; 8:45 am]

BILLING CODE 8320-01-C

# Sunshine Act Meetings

Federal Register

Vol. 53, No. 188

Wednesday, September 28, 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).

## COMMODITY FUTURES TRADING COMMISSION

**TIME AND DATE:** 10:00 a.m., Friday, September 30, 1988.

**PLACE:** 2033 K Street, NW., Washington DC, 8th Floor Hearing Room.

**STATUS:** Closed.

### MATTERS TO BE CONSIDERED:

Enforcement Matters.

### CONTACT PERSON FOR MORE

**INFORMATION:** Jean A. Webb, 254-6314.

Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 88-22376 Filed 9-26-88; 3:20 pm]

**BILLING CODE** 6351-01-M

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

**DATE AND TIME:** 2:00 p.m. (Eastern Time) Monday, October 3, 1988.

**PLACE:** Clarence M. Mitchell, Jr., Conference Room, No. 200-C on the Second Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington DC 20507.

**STATUS:** Part of the Meeting will be Open to the Public and Part will be Closed to the Public.

### MATTERS TO BE CONSIDERED:

#### Open Session

1. Announcement of Notation Vote(s).
2. A Report on Commission Operations—(EEOC Handicapped Employee of the Year Award).
3. Policy Guidance on Reproductive and Fetal Hazards.

#### Closed Session

Discussion of a Certain Commissioner's Charge.

**Note:** Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the *Federal Register*, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at any time for information on these meetings.)

### CONTACT PERSON FOR MORE

**INFORMATION:** Frances M. Hart, Executive Officer on (202) 634-6748.

Dated: September 23, 1988.

This Notice Issued September 23, 1988.

Frances M. Hart,

*Executive Officer, Executive Secretariat.*

[FR Doc. 88-22333 Filed 9-26-88; 1:29 pm]

**BILLING CODE** 6750-06-M

## FEDERAL HOME LOAN MORTGAGE CORPORATION

**DATE AND TIME:** Wednesday, September 28, 1988, 9:00 a.m.

**PLACE:** 1776 G Street, NW., Board Room, Third Floor, Washington, DC 20006.

**STATUS:** Closed.

### CONTACT PERSON FOR MORE

**INFORMATION:** Keith Earley, 1759 Business Center Drive, P.O. Box 4115, Reston, Virginia 22090, (703) 759-8414.

### MATTERS TO BE CONSIDERED

*Closed:* Minutes of the August 30, 1988, Board of Directors' Meeting.

*Closed:* President's Report.

*Closed:* Corporate Investments.

*Closed:* Financial Report.

Date sent to *Federal Register*: September 23, 1988.

Maud Mater,

*Secretary.*

[FR Doc. 88-22290 Filed 9-26-88; 11:25 am]

**BILLING CODE** 6719-01-M

## FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

**TIME AND DATE:** 11:00 a.m., Monday, October 3, 1988.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

**STATUS:** Closed.

### MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

### CONTACT PERSON FOR MORE

**INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board, (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 23, 1988.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 88-22234 Filed 9-23-88; 4:35 pm]

**BILLING CODE** 6210-01-M

## NATIONAL ECONOMIC COMMISSION

### Briefing Session

**AGENCY:** National Economic Commission.

**ACTION:** Notice of briefing session.

**SUMMARY:** A briefing session for members of the National Economic Commission will take place on October 5. The commission was established by section 2101 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, enacted December 22, 1987.

**Date, Time and Place:** October 5, 1988. First session: 11am-2pm. Second Session: 3pm-5:30pm. Hall of States, 444 North Capitol Street NW., Room 239. The briefing will be open to the public.

**Agenda:** *First session:* Presentation by staff and outside experts on new national priorities. *Second session:* Presentation by staff and outside experts on non-social security entitlements.

**FOR ADDITIONAL INFORMATION:** Jim Hildreth at 425-8986, National Economic Commission, 734 Jackson Place, NW., Washington, DC 20503.

**SUPPLEMENTARY INFORMATION:** See *Federal Register*, volume 53, No. 80, Tuesday, April 26, 1988, page 14871.

Drew Lewis,

*Co-Chairman.*

Robert S. Strauss,

*Co-chairman.*

[FR Doc. 88-22388 Filed 9-27-88; 8:45 am]

**BILLING CODE** 6820-45-M

# Corrections

Federal Register

Vol. 53, No. 188

Wednesday, September 28, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 651

[Docket No. 80873-8173]

#### Northeast Multispecies Fishery

##### Correction

In proposed rule document 88-20946 beginning on page 35532 in the issue of Wednesday, September 14, 1988, make the following corrections:

1. On page 35533, in the first column, in the third line, "special" should read "specific".

2. On the same page, in the same column, in the third complete paragraph, in the 4th line, "harvests" should read "harvesters"; in the 15th line, "which"

should read "with"; and in the 18th line, "quality" should read "quantity".

3. On the same page, in the second column, in the first complete paragraph, in the seventh line, "minimum" was misspelled.

4. On the same page, in the same column, in the second complete paragraph, in the 1st line, "begin" should read "began"; and in the 22nd line, "that" should read "the".

5. On page 35534, in the second column, in the second complete paragraph, in the second line, "attending" should read "attended"; and in the third line, "hearings" should read "hearing".

6. On page 35536, in the first column, under **Requirements**, in paragraph one, "Importer/brokers" was misspelled.

7. On the same page, in the second column, the first complete paragraph should read "3. The importer/broker forwards tags to the foreign supplier".

8. On the same page, in the same column, in the second complete paragraph, in the second line, after the word "have" insert "been", and in the fifth line, "nonconforming" was misspelled.

**Note:** For a National Oceanic and Atmospheric Administration correction to this document, see the proposed rule section of this issue.

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Social Security Administration

#### 20 CFR Part 416

[Regulations No. 16]

#### Supplemental Security Income for the Aged, Blind, and Disabled; Exclusion From Resources of Funds Set Aside For Burial and Burial Spaces

##### Correction

In proposed rule document 88-21063 beginning on page 35830 in the issue of Thursday, September 15, 1988, make the following corrections:

1. On page 35831, in the second column, in the third paragraph, in the 16th line, "not" should read "now".

#### PART 416—[CORRECTED]

2. On page 35832, in the second column, under **Authority**, in the fourth line, "1832j" should read "1382j".

#### § 416.1231 [Corrected]

3. On the same page, in the third column, in § 416.1231(b)(1), in the sixth line, "fo" should read "of".

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# Environmental Protection Agency

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Wednesday  
September 28, 1988

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## Part II

### Environmental Protection Agency

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40 CFR Parts 124, 264, 265 and 270  
Permit Modifications for Hazardous  
Waste Management Facilities; Final Rule

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 124, 264, 265 and 270**

[FRL 3388-2]

**Permit Modifications for Hazardous Waste Management Facilities****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is today amending its regulations under the Resource Conservation and Recovery Act (RCRA) governing modifications of hazardous waste management permits. Today's final rule establishes new procedures that apply to changes that facility owners and operators may want to make at their facilities. EPA has categorized selected permit modifications into three classes and established administrative procedures for approving modifications in each of these classes. The purpose of these amendments is to provide owners and operators more flexibility to change specified permit conditions, to expand public notification and participation opportunities, and to allow for expedited approval if no public concern exists for a proposed permit modification.

**EFFECTIVE DATE:** October 28, 1988.

**ADDRESS:** The public docket for this rulemaking is available for public inspection in Room S-212, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. The docket number is F-87-PMHP-FFFFF. The public must make an appointment to review docket materials by calling (202) 475-9327. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost; additional copies cost \$0.20 per page.

**FOR FURTHER INFORMATION CONTACT:** RCRA hotline at (800) 424-9346 (in Washington, DC call 382-3000) or Wayne Roepe, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, Washington, DC 20460, telephone (202) 475-7245.

**SUPPLEMENTARY INFORMATION:****Preamble Outline***I. Authority**II. Background**A. Need for Revisions to Modification Process**B. Regulatory Negotiation**III. Summary of Today's Rule**IV. Discussion of Final Rule**A. Modification, Revocation, and Reissuance of Permits**B. Procedures for Classes 1, 2, and 3 Modifications**1. Class 1 Modifications**2. Class 2 Modifications**i. Public Notification**ii. Deadlines for Agency Decisions**iii. Preconstruction**3. Class 3 Modifications**4. Other Permit Modifications**5. Temporary Authorizations**6. Notification Requirements and Permit Modification Appeals**7. Newly Listed or Identified Wastes**8. Publication of Permit Modification List**C. Classification of Permit Modifications**1. Change of Facility Owner or Operator**2. General Permit Provisions**3. General Facility Standards**4. Ground-Water Protection**5. Different Wastes in a Unit**6. General Approach to Defining Unit-Specific Changes**i. Tanks and Containers**ii. Surface Impoundments**iii. Waste Piles**iv. Landfills**v. Land Treatment Units**vi. Incinerators**7. Closure**8. Post-Closure**9. HSWA Corrective Action**10. Location of Minor Modifications in Today's Rule**D. Conforming Changes to Permitting Regulations**V. Other Issues**A. Permit Modification Form**VI. State Authority**A. Applicability of Rules in Authorized States**B. Effect on State Authorizations**C. State Authorization Options**VII. Effective Date**VIII. Regulatory Analysis**A. Regulatory Impact Analysis**B. Regulatory Flexibility Act***I. Authority**

These regulations are promulgated under the authority of sections 2002(a), 3004, 3005, and 3006 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6924, 6925, and 6926.

**II. Background**

Subtitle C of the Resource Conservation and Recovery Act (RCRA) creates a "cradle-to-grave" management system designed to ensure that hazardous waste is identified and properly transported, stored, treated, and disposed. Subtitle C requires EPA to identify hazardous waste and promulgate standards for generators and transporters of such waste. Under section 3004 of RCRA, owners and

operators of treatment, storage, and disposal facilities are required to comply with standards "necessary to protect human health and the environment." These standards are generally implemented initially through "interim status" requirements and later through permits issued under authorized State programs or by EPA.

Section 3005(a) of the RCRA prohibits all treatment, storage, and disposal of hazardous waste except in accordance with a permit issued under an authorized State program or by EPA. However, recognizing that the issuance of permits can be time-consuming, Congress created "interim status" for facilities in existence on the effective date of EPA's permitting regulations (November 19, 1980) or on the effective date of statutory or regulatory changes that subject a facility to the RCRA permit requirement.

The hazardous waste management regulatory system established by EPA on May 19, 1980, recognized that permits issued to treatment, storage, or disposal facilities would need to be modified for various reasons during the life of the permit (normally ten years). Accordingly, the Agency established two different processes for modifying permits: major and minor modifications (40 CFR 270.41 and 270.42). Under that system the majority of permit changes followed the major modification procedures, including development of a draft permit, public notice, and opportunity for a public hearing as required under 40 CFR Part 124. These procedures are the same as for initial permit issuance, except that the scope of public participation is limited to the specific permit conditions being modified. The minor modification regulations allow EPA or authorized States to make a limited set of minor changes in RCRA permits with the consent of the permit holder without triggering the procedures of Part 124.

*A. Need for Revisions to Modification Process*

After several years of experience with permitted facilities, EPA and authorized States have found that in many cases the current permit modification regulations are unnecessarily restrictive and seriously hamper the implementation of the permitting program. EPA has found that the modification procedures are time-consuming and resource-intensive, even for routine and administrative matters. The result has been to delay or discourage facility changes, many of which would lead to improved management of hazardous wastes.

The Agency believes that permits must be viewed as living documents that can be modified to allow facilities to make technological improvements, comply with new environmental standards, respond to changing waste streams, and generally improve waste management practices. Since permits are usually written for ten years of operation, the facility or the permit writer cannot anticipate all or even most of the administrative, technical, or operational changes required over the permit term for the facility to maintain an up-to-date operation. Therefore, permit modifications are inevitable. In fact, EPA estimates that many permits may have to be modified two or three times a year.

In the past several years, EPA, States, permittees, and members of the public have recognized that current procedures must be revised to allow greater flexibility in modifying permits. The need for greater flexibility is becoming increasingly important as more permits are issued (particularly in response to the permitting deadlines specified in the Hazardous and Solid Waste Amendments (HSWA) of 1984), leading to a corresponding increase in demand for permit modifications. In addition, regulatory developments will increase the demand for permit modifications. Unless EPA improves the permit modification procedures, significant EPA (and permit holder) resources will be spent on making minor permit changes, and will be diverted from more important tasks. More important, perhaps, improvements in the handling and treatment of hazardous waste will be delayed, and the regulated community will find itself unable to obtain modified permit conditions in a timely manner. The net result could well be an increased threat to human health and the environment and a growing shortfall in hazardous waste treatment, storage, and disposal capacity.

#### B. Regulatory Negotiation

In mid-1986, EPA communicated with various parties interested in developing a new approach to permit modifications, including hazardous waste generators and representatives from the waste management industry, State governments, and environmental and citizen groups. EPA established a committee under the Federal Advisory Committee Act to negotiate the provisions of the standard. At the final meeting on February 24, 1987, 18 of the 19 Committee members reached agreement on the major provisions of a permit modification proposal. The signed Committee statement has been included in the public docket for this

rule. This agreement was the basis for the Agency's proposed rule on September 23, 1987 (52 FR 35838). EPA received over 50 comments on that proposal. The Agency has carefully analyzed those comments and made changes as appropriate in promulgating today's rule.

#### III. Summary of Today's Rule

EPA is today revising the regulations governing permit modifications (40 CFR 270.41 and 270.42) to incorporate a process that better accommodates the different types of modifications. The revisions provide both owners and operators and EPA more flexibility to change specified permit conditions, expand public notification and participation opportunities, and allow for expedited approval if no public concern exists regarding a proposed change.

Today's rule addresses only modifications requested by a permittee. It does not change the procedures for modifications sought solely by the regulatory Agency. The rule restructures §§ 270.41 and 270.42, which currently specify the major and minor modification procedures, respectively. The rule alters § 270.41 so that it applies only to modifications that are initiated by the authorized Agency; the current major modification procedures for these changes remain in effect. The rule alters § 270.42 to refer only to modifications requested by the permittee, and establishes three classes of modifications within this universe.

As defined in revised § 270.42, Class 1 and 2 permittee-requested modifications do not substantially alter existing permit conditions or significantly affect the overall operation of the facility. Class 1 covers routine changes, such as changing typographical errors, upgrading plans and records maintained by the facility, or replacing equipment with functionally equivalent equipment. Class 2 modifications address common or frequently occurring changes needed to maintain a facility's capability to manage wastes safely or to conform with new regulatory requirements. Class 3 modifications cover major changes that substantially alter the facility or its operations.

Procedures differ among these three classes of permittee-requested modifications. Class 1 changes are generally allowed without prior Agency approval. Owners and operators must, however, notify the public and the authorized Agency once they have made these changes. In some cases, which are indicated in Appendix I to 40 CFR Part 270, prior Agency approval is required.

With cause, the Agency may reject any Class 1 modification.

Class 2 modifications begin with a modification request to the authorized Agency, public notice by the facility owner of a modification request, an informational meeting between the owner and the public, and a 60-day comment period. Within 90 days of receipt of a request for a Class 2 modification request, the Agency must approve or deny the request; extend the review period 30 days; or approve a temporary authorization for up to 180 days. If the Agency does not take action by the end of the 30-day extension, the changes specified in the modification request are automatically authorized for a period of 180 days. If the Agency has not acted by the end of the 180-day period, the changes are authorized for the duration of the permit. This mechanism for automatic authorization, which has become known as the "default" provision, is designed to provide reasonable certainty to facility owner/operators that Class 2 modification requests will be acted on expeditiously. Prompt consideration of modification requests is necessary to allow facilities to plan effectively for the future and to upgrade or modify facility conditions quickly in response to changing conditions. The rule also allows the facility to begin construction of a Class 2 modification 60 days after the modification is requested, although such construction would be at the permittee's own risk if the modification request is ultimately denied. This is known as the "preconstruction" provision. Finally, if the proposed Class 2 modification raises significant public interest or Agency concern about protection of human health or the environment, then the Agency can require that the Class 3 procedures be followed instead.

Class 3 modifications are subject to the same initial public notice and meeting requirements as Class 2 modifications. However, the default and preconstruction provisions of Class 2 do not apply. Furthermore, an EPA decision to grant the modification request is subject to the permit issuance procedures of 40 CFR Part 124. The Agency must prepare a draft permit modification, notify the public of the draft modification, hold a public hearing on the modification if requested, and grant or deny the request.

The Agency is also changing the current permit modification requirement for facilities that are handling a waste when that waste becomes newly listed or is identified as hazardous. For Class 1 modifications, facilities may make the

necessary permit changes immediately as long as the facility owner notifies EPA and the public of the changes. For Class 2 or Class 3 modifications, the owner or operator may make the change without prior approval; however, he or she must submit a complete permit modification request within 180 days of the effective date of the rule designating the waste as hazardous. Furthermore, for land disposal units, the owner or operator would be required to certify compliance with all applicable ground-water monitoring and financial responsibility requirements for that unit within one year of the effective date.

Today's rule also gives EPA the authority to grant temporary authorization, without prior public notice and comment, for activities that are necessary for facility owners and operators to respond promptly to changing conditions. Temporary authorizations, for terms ranging up to 180 days, may be granted to Class 2 or Class 3 modifications that meet criteria specified in § 270.42(e). Owners and operators who apply for temporary authorizations are required to notify the public. Temporary authorizations that involve more permanent activities (i.e., activities that are intended to extend beyond 180 days) are subject to Class 2 or Class 3 public participation procedures for permit modifications.

Appendix I to 40 CFR Part 270 contains a list of specific modifications and assigns them to Class 1, 2, or 3. Permit modifications not listed in Appendix I may be submitted under Class 3. Alternatively, the permittee may request a Class 1 or 2 determination from the Agency.

For any final decision granting or denying a modification request, or for any temporary or permanent automatic authorization, the permittee and members of the public have the same rights of appeal as provided for RCRA permits in Part 124.

EPA or an authorized State must maintain a listing of all approved permit modifications and periodically publish a notice that the list is available for review.

The Agency emphasizes that today's rule addresses the procedures for approving permit changes and for public participation regarding these changes. The substantive standards that apply to the design and operation of the new activities at a facility are not affected by today's proposal. Therefore, any permit modification, whether a Class 1, 2, or 3 change, will be subject to the appropriate substantive Parts 264, 265, 268, and 269 requirements.

#### IV. Discussion of Final Rule

The following discussion of today's rule describes the new permit modification procedures and responds to the significant public comments received on the proposal. In this discussion, the terms "EPA," "Agency," and "permitting Agency" have been used interchangeably to mean the appropriate permitting authority (including the State agency, once it becomes authorized for these new procedures), that will be using these procedures for permit modifications.

##### *A. Modification, Revocation, and Reissuance of Permits*

EPA is today substantially restructuring §§ 270.41 and 270.42. As proposed on September 23, 1987, § 270.41 now addresses only those permit modifications initiated by the Agency. Section 270.42 covers only changes requested by the permittee, and contains the relevant permit modification classifications and procedures.

Section 270.41, as promulgated today, identifies three causes for which the Agency might require a permit modification: Alterations or additions to the permitted facility or activity; new information received by the Agency; or new standards, regulations, or judicial decisions affecting the human health or environmental basis of a facility permit. All three of these causes remain unchanged from the previous regulatory language, although the third cause—new regulations—was recently codified on December 1987 (52 FR 45788). The current Part 124 permitting procedures would remain in effect for these changes.

Commenters supported the use of § 270.41 for modifications initiated by the Agency. However, one commenter suggested that the permittee should also have the option of voluntarily employing the appropriate Class 1, 2, or 3 procedure as an alternative to the Part 124 permitting procedure. EPA agrees with this commenter, and points out that the language contained in today's rule would allow a permittee to request a permit modification in accordance with the § 270.42 procedures in anticipation of or in response to an Agency-initiated modification action.

As a part of restructuring § 270.41, today's rule deletes those portions of § 270.41(a)(3) that would allow permittees to request major modifications for changes made in response to new regulations or judicial decisions. Permittees can still request such changes, but the procedures are

now contained in § 270.42. Commenters supported this action.

Several commenters expressed some concern that the revised language in § 270.41(a)(3) removes the "permit as a shield" protection for permittees. (See § 270.4(a)). They characterized this action as onerous and unreasonable. The purpose of this "permit as a shield" provision is to assure the permittee that by complying with the permit, he or she is in full compliance with the RCRA facility standards. Therefore, standards which become effective after permit issuance usually are not incorporated into the permit until it expires and is reissued.

However, the 1984 HSWA amendments require that certain statutory and regulatory provisions imposed by HSWA apply to all facilities, including those with permits. To clarify the Agency's authority to reopen permits as necessary to assure compliance with new regulations, EPA amended § 270.41(a)(3) (December 1, 1987 (52 FR 45788)). As stated in the preamble to the December 1 rule, this provision is intended only for significant amendments which may provide a substantial increase in the protection of human health or the environment.

The Agency believes that some confusion was created because both the September 23rd proposal on permit modifications and the December codification rule addressed § 270.41(a)(3). It is important to note that today's final rule does not change the substantive requirements of this paragraph, as it was promulgated on December 1. It only modifies this paragraph by deleting the procedures that relate to modifications requested by the permittee, since these procedures are now addressed in § 270.42. This is consistent with the September 23rd proposal.

##### *B. Procedures for Class 1, 2, and 3 Modifications*

###### *1. Class 1 Modifications*

EPA is promulgating today's rule covering Class 1 modifications essentially as proposed. (See § 270.42(a).) Class 1 modifications cover changes that are necessary to correct minor errors in the permit, to upgrade plans and records maintained by the facility, or to make routine changes to the facility or its operation. They do not substantially alter the permit conditions or significantly affect the overall operation of the facility. Generally, these modifications include the correction of typographical errors; necessary updating of names, addresses,

or phone numbers identified in the permit or its supporting documents; upgrading, replacement, or relocation of emergency equipment; improvements of monitoring, inspection, recordkeeping, or reporting procedures; updating of sampling and analytical methods to conform with revised Agency guidance or regulations; updating of certain types of schedules identified in the permit; replacement of equipment with functionally equivalent equipment; and replacement of damaged ground-water monitoring wells. The specific modifications that fall into Class 1 are enumerated in Appendix I to 40 CFR Part 270. This Appendix is discussed more fully in Section IV.C of this preamble.

Section 270.42(a) specifies the approval procedures for Class 1 modifications. Under these procedures, the permittee may, at any time, put into effect any Class 1 modification that does not require prior Agency approval. The permittee is required to notify the Agency by certified mail or by any other means that establish proof of delivery within seven calendar days of making the change. The notice must specify the change being made to the permit conditions or documents referenced in the permit and explain briefly why it was necessary. However, there are several cases where prior approval is required; these modifications are specifically identified in Appendix I.

The permittee is also required to notify by mail persons on the facility mailing list within 90 days of making the modification. The September 23, 1987 proposal only specified a 14 day notification period. EPA received several comments from respondents who believe that the Class 1 notification requirements would be an unnecessary administrative burden. EPA is sympathetic to these concerns, but believes that it is important to keep the public informed of all changes at RCRA permitted facilities. In an effort to alleviate potential burdens at facilities making frequent Class 1 changes or that have extensive mailing lists, today's § 270.42(a)(1)(ii) specifies a maximum of 90 days to notify the public of such changes. This time period will allow permittees to cluster some of their notices and still provide for public notice of these relatively minor changes.

EPA or an authorized State is currently required under 40 CFR 124.10(c)(viii) to compile and maintain a mailing list for each RCRA permitted facility. The list must include all persons who have asked in writing to be on the list (for example, in response to public solicitations from the Agency). Also, it

generally includes both local residents in the vicinity of the facility and statewide organizations that have expressed interest in receiving such information on permit modifications. A facility owner under today's rule is responsible for obtaining from EPA or the authorized State a complete facility mailing list and for updating it by contacting the Agency periodically. However, it is also the permitting Agency's responsibility to periodically inform the facility of new additions to the list. The facility owner/operator would not be held responsible for failure to notify persons recently added to the EPA list when the owner/operator has made a reasonable effort to keep its list current.

In today's rule, § 270.42(a)(1)(ii) has been amended to require the permittee to send notices of Class 1 modifications to appropriate units of State and local government as specified in § 124.10(c)(1)(ix). EPA solicited comment on this notification in the preamble to the proposal, and received support for the approach. It is important that all levels of government that have jurisdiction over the area where the facility is located remain informed of all changes in the facility permit and operation. (Note that similar changes have been made to notification procedures for Classes 2 and 3 modifications.)

Although the permittee may make most Class 1 modifications without Agency approval or prior public notice, under § 270.42(a)(iii) the public may ask the permitting Agency to review any Class 1 modification. In the event such a review is conducted, if the Agency denies a Class 1 modification request, the Agency shall notify the permittee in writing of this ruling, and the permittee is required to comply with the original permit conditions. Several commenters wanted a 30-day time period to return to compliance because of the time needed to make the changes. EPA does not believe a specific time period is necessary. The changes listed as Class 1 are minor in nature and for the most part should be easily reversible. If a Class 1 modification reversal by the Agency cannot be accomplished very quickly (e.g., a piece of equipment must be ordered), the permittee and the Agency can agree to an appropriate schedule for completion.

As proposed, EPA is allowing certain Class 1 modifications—such as changes in interim dates in schedules of compliance or minor changes in incinerator trial burns—only after the permitting Agency has approved the modification. This provision is

contained in § 270.42(a)(2). Those Class 1 modifications which require prior Agency approval are identified in Appendix I with an asterisk. This approval procedure is analogous to the former minor modification procedures. The permittee must notify persons on the facility mailing list within 90 calendar days after the Director approves the request.

Several commenters asked for a specified timeframe for Agency decisions for the Class 1 modifications that require prior approval. Therefore, in today's rule a new provision has been added at § 270.42(a)(3) that allows the permittee to elect to follow the Class 2 process instead of the Class 1 procedures. As discussed in the following section, the Class 2 process will assure that an Agency decision will be made on the modification request within established timeframes (generally 90 to 120 days). This approach will also result in additional public participation regarding the permittee's request. Furthermore, the deadlines in the Class 2 process balance the concerns of the Agency, the public, and the permittee, and are readily adaptable to the types of facility changes encompassed in Class 1.

## 2. Class 2 Modifications

Class 2 modifications cover changes that are necessary to enable a permittee to respond, in a timely manner, to (i) common variations in the types and quantities of the wastes managed under the facility permit, (ii) technological advancements, and (iii) regulatory changes, where such changes can be implemented without substantially altering the design specifications or management practices prescribed by the permit. As specified in the rule, Class 2 modifications include increases of 25 percent or less in a facility's non-land-based treatment or storage capacity, authorizations to treat or store new wastes that do not require different unit design or management practices, and modifications to improve the design of hazardous waste management units or improve management practices. The specific modifications that fall in Class 2 are identified in Appendix I to Part 270. This Appendix is discussed more fully in Section IV.C of this preamble.

Under § 270.42(b)(1), a permittee who wishes to make a Class 2 modification is required to submit to the Agency a modification request describing the exact change to be made to the permit conditions. The permittee must also submit supporting documents that identify the modification as a Class 2 modification, explain why the

modification is needed, and provide the applicable information required by §§ 270.13 through 270.21, 270.62, and 270.63. EPA also recommends that the permittee discuss the modification with the Agency and the public before submission to help eliminate unnecessary delays and denials.

i. *Public Notification.* Under § 270.42(b)(2), the permittee must notify persons on the facility mailing list and appropriate units of State and local government, and he or she is also required to publish a notice in a local newspaper regarding the modification request. In the September 23, 1987 proposal, these actions would occur on the date of submission. EPA received many comments on this subject. All the commenters favored more flexibility in the timing of the submission, the mailing, and the newspaper publication. The Agency is today adopting one suggestion which requires the permittee to complete the mail and newspaper notifications 7 calendar days before or after he or she submits the modification request to the permitting Agency. This will allow a two week period to accomplish the notifications, and makes coordination of necessary actions easier since, for example, some newspapers are not published on a daily basis. EPA believes that this alternative provides the best compromise between flexibility in timing the notice and assuring an adequate public comment period. However, if the newspaper publication is likely to occur before the modification request is submitted to the Agency, it is important that the permittee inform the Agency of the nature of the request prior to publication.

Section 270.42(b)(2) specifies the information required in the notice: (i) Announcement of a 60-day comment period during which interested persons may submit written comments to the permitting Agency; (ii) announcement of the date, time, and place for an informational public meeting; (iii) name and telephone number of the permittee's contact person whom the public can contact for information on the request; (iv) name and telephone number of an Agency contact person whom the public could contact for information about the permit, the modification request, applicable regulatory requirements, permit modification procedures, and the permittee's compliance history; (v) information on viewing copies of the modification request and any supporting documents; and (vi) a statement that the permittee's compliance history during the life of the permit is available from the Agency's contact person. Section 270.42(b)(2) also requires the permittee

to submit to the permitting Agency evidence that this notice was published in a local newspaper and mailed to persons on the facility mailing list. Finally, the permittee must make a copy of the permit modification request and supporting documents accessible to the public in the vicinity of the permitted facility (for example, at a public library, local government agency, or location under control of the owner).

One commenter suggested that the 60-day public comment period should begin with the date of the newspaper notice rather than the date of submission to the Agency. EPA agrees with this comment since the newspaper notice will be the most easily determined date by the public. Therefore, § 270.42(b)(5) is modified in today's rule accordingly. This change in timing will give all members of the public a full 60 days to respond to the modification request.

The permittee is required to hold an informational public meeting, which is open to all members of the public, no fewer than 15 days after the start of the comment period, and at least 15 days before the end of the comment period. The purpose of this meeting is to enable the permittee and the public to exchange views and, to the extent possible, resolve any issues raised by the permit modification request. An official transcript of the statements made at the meeting is not required and the Agency is not obligated to attend the meeting or respond to comments made at the meeting. However, it is expected that the meeting will lead to more informed written comments submitted to the Agency, and it may also result in voluntary revisions in the permittee's modification request.

The "permittee's compliance history" will be made available to the public as provided in § 270.42(b)(2)(vi). The regulation does not specifically define what would constitute a "compliance history"; however, it should be designed to give the public a sense of the way the facility has been operated during the permit term. For example, the compliance history could be a summary list of permit violations, dates that the violations occurred, and whether these violations have been corrected. It would not include any instances where the allegations were dismissed, and would not contain confidential inspection reports or other confidential items not found in the public record (e.g., sensitive information pertaining to a pending enforcement action).

One commenter recommended that the compliance history should contain only those items related to the requested modification. EPA disagrees. The

purpose of the requirement is to provide the public an opportunity to learn the overall record of the permitted facility. Restricting the requirement to items related to the requested modification (which, in any case, would be difficult to define) might lead to the omission of significant information on the company's compliance record.

ii. *Deadlines for Agency Decisions.* Section 270.42(b)(6) contains specific procedures for Agency review and approval or denial of Class 2 modification requests. Under § 270.42(b)(6)(i), the Agency must make one of the following five decisions within 90 days of receiving the modification request: (i) Approve the request with or without changes; (ii) deny the request; (iii) determine that the modification request must follow the procedures for Class 3 modifications; (iv) approve the request, with or without changes, as a temporary authorization having a term of up to 180 days; or (v) notify the permittee that it will make a decision on the request within 30 days. If the permitting Agency notifies the permittee of a 30-day extension for a decision (or, if it fails to make any of the decisions), it must, by the 120th day after receiving the modification request, make one of the following decisions: (i) Approve the request, with or without changes; (ii) deny the request; (iii) determine that the modification request must follow the procedures for Class 3 modifications; or (iv) approve the request as a temporary authorization for up to 180 days.

In addition, § 270.42(b)(6)(vii) allows the Director to extend indefinitely, or for a specified period of time, the deadlines for action on a Class 2 request if he or she obtains the written consent of the permittee. This option may be useful where the Director requests additional information from the permittee or when the permittee wishes to conduct additional public meetings. This provision is unchanged from the proposal.

If the Agency fails to make one of the four decisions listed above by the 120th day, the activities described in the modification request, as submitted, are authorized for a period of 180 days as an "automatic authorization" without Agency action. At any time during the term of the automatic authorization, however, the Agency may approve or deny the permit modification request. If the Agency does so, this action will terminate the automatic authorization. If the Agency has not acted on the modification request within 250 days of receipt of the modification request (i.e., 50 days before the end of the automatic

authorization), under § 270.42(b)(6)(iv) the permittee must notify persons on the facility mailing list within seven days, and make a reasonable effort to notify other persons who submitted written comments, that the automatic authorization will become permanent unless the Agency acts to approve or deny it. If the Agency fails to approve or deny the modification request during the term of the automatic authorization, the activities described in the modification request become permanently authorized without Agency action on the day after the end of the term of the automatic authorization. (However, if the owner/operator fails to notify the public when EPA has not acted on an automatic authorization 50 days before its termination date, the clock on the automatic authorization will be suspended. The permanent authorization will not go into effect until 50 days after the public is notified. Until the permanent authorization becomes effective, the Agency may approve or deny the modification request at any time. In addition, the owner/operator will be subject to potential enforcement action.) This permanent authorization lasts for the life of the permit unless modified later by the permittee (under § 270.42) or the Agency (under § 270.41). This procedure for automatic authorization is commonly referred to as the "default" provision.

During the term of any automatic authorization, whether it was a temporary authorization occurring at day 120 or a permanent authorization at day 300, the newly authorized activities are limited to those described in the modification request. Furthermore, the permittee is required to comply with all applicable Part 265 standards during this term. These standards would be enforceable by EPA or an authorized State, and any deviation from them—even if the deviation was explicitly described in the modification request—would constitute a violation of Part 265.

EPA received many comments on the subject of automatic authorizations. Many of the commenters supported the provision as proposed on September 23, 1987, citing the need for assurances that certain limited changes at facilities will not be precluded by failure of the permitting agency to act on the modification request on a timely basis.

A number of commenters opposed this default provision, primarily because they believed that all permit modifications should undergo affirmative Agency review and approval before they went into effect. They argued that review and approval by a permit writer was necessary to ensure

that the permittee in fact complied with applicable standards and provided a significant degree of protection to the public. Several commenters agreed that it was appropriate to impose a time limit on Agency decisions (e.g., 90 or 180 days), but argued that the concept of an automatic authorization, where the Agency had not acted within the time period, was inappropriate.

EPA acknowledges these concerns, but it continues to believe that the "default provision" is a critical element in its new permit modification scheme. Without such a provision, the regulated industry will have no assurance that the Agency will act expeditiously even on relatively limited changes that are necessary to the ongoing operation of a facility and that, in many cases, would upgrade public and environmental protection. Without such an assurance, the Agency believes that it will be difficult if not impossible for many facilities to manage wastes safely and effectively in the increasingly complex world of hazardous waste management.

The concept of automatic approvals has worked well in other EPA programs, such as EPA's review program for new chemicals under the Toxic Substances Control Act. This experience leads EPA to expect benefits, and not problems, from the automatic approval concept. Furthermore, it is balanced by significantly strengthened procedures for public participation. EPA believes that automatic authorization for limited types of modifications will contribute to a more effective and streamlined permitting program.

At the same time, the safeguards built into today's rule will ensure that Class 2 modifications receive sufficient review and that risks are limited under automatic authorizations. These safeguards include: (1) Limitations on the types of modifications that can be made under Class 2 procedures, (2) the Agency's authority to reject Class 2 modification requests because the applications are incomplete, or to require that they undergo Class 3 procedures (a new requirement in this final rule), (3) the fact that the Agency has up to 300 days to revoke an automatic authorization, if human health or environmental concerns are identified, and (4) the requirement that activities under automatic authorizations comply with Part 265 requirements.

As noted above, these safeguards include one significant new requirement, which EPA has included in response to commenters' concerns about the default provision. Section 270.42(b)(6) has been amended to allow the Director to

determine that a Class 2 modification request should instead follow the Class 3 modification procedures. The Director may make this determination by the 90-day deadline (or 120-day deadline, if extended) required for Class 2 modifications, provided that there is significant public concern about the proposed modification or if he believes that the nature of the change warrants the more extensive procedures of Class 3. Therefore, if members of the public feel strongly that a Class 2 modification request should be subject to the Part 124 approval procedures contained in Class 3, they can raise this issue with the Agency during the comment period and express the reasons why the Class 2 process is not appropriate in the particular case.

In the proposed rule, EPA also solicited comment on another aspect of the automatic authorization. Under the proposal, a temporary automatic authorization would become permanently authorized if the Agency had not acted by day 300. In contrast, however, if the Agency issued a temporary authorization by day 120, there was no provision for an automatic authorization if the Agency then failed to make a final decision by the end of the temporary authorization. EPA requested comment on this seemingly inconsistent provision. Commenters expressed concern that at the end of the 180-day temporary authorization period the modification is, in effect, automatically denied if the Agency failed to take action to approve or deny the request. Commenters urged EPA to apply the permanent authorization default at the conclusion of Agency-issued temporary authorizations. EPA agrees with these comments, and has incorporated such a provision in § 270.42(b)(6) (iv) and (v).

Because of this change, it was also necessary to make some minor conforming changes to the language in § 270.42(b)(6)(iv) regarding the permittee's notice to the public about the possibility of a permanent default. The notice is triggered if the Agency has not made a final decision by the date 50 days before the end of the facility's automatic temporary or Agency-issued temporary authorization. Today's language has the same result as the proposal (which specified that the notice be triggered at day 250), but it also accounts for those situations where a temporary authorization is issued before day 120 (e.g., a temporary authorization issued on day 90). This change will assure that the public receives a 50-day advance notice of a possible permanent authorization via the default

mechanism. It is important to ensure that members of the public have sufficient advance notice of a potential permanent authorization so that they will have ample opportunity to press the permitting Agency for action to avoid a decision by default. This time period gives the Agency enough time to act in response to comments before the permanent authorization occurs.

Several commenters also argued against the Class 2 procedures because of their resource implications. One commenter, for example, contended that the procedures will strain EPA or state resources because they will require extensive review time for low priority modifications. EPA disagrees with this comment. Class 2 modifications represent a restricted category of changes, which should generally require a limited commitment of Agency resources to review. The major difficulty the Agency would have in meeting the 120-day deadline would be in situations where the facility owner or operator had not provided complete information; in these cases, the Agency has the authority to deny the request. Similarly, in controversial cases the Agency has the authority to require Class 3 procedures.

Another commenter argued that there may be an incentive for permittees to overload the system with many permit modification requests in the hope that they would be automatically authorized. EPA, however, does not believe that this concern outweighs the benefits of the approach in today's rule. In the first place, the rule provides significant disincentives for such a strategy by an owner or operator. The information requirements of Part 270 will discourage less than serious requests. Furthermore, under Class 2 procedures, the Agency can terminate an automatic authorization even after it has gone into effect, up to day 300 of the review. Therefore, facilities hoping to overwhelm the Agency with a large number of modification requests should recognize that the Agency would have almost a year to act on them, and that the disruption could be significant if a temporary authorization were revoked after the facility change had already been made. Finally, EPA is convinced that, if facilities confine Class 2 modification requests to legitimate Class 2 modifications and provide all the required information, it will be able to keep up with the work load. Where facilities do not meet the Class 2 requirements, the Agency will deny the request.

EPA also received comments on the standards that should apply to facility

modifications during an automatic authorization. The proposal required compliance with the Part 265 standards at a minimum, and with Part 264 to the extent practicable. Many commenters asserted that the self-implementing nature of Part 265 is appropriate in these circumstances where the Agency has not made changes to the permit conditions. EPA agrees with these comments, and upon further consideration is changing the appropriate references in today's rule to require compliance with Part 265 only, in order to minimize any possible confusion that could occur from a permittee trying to judge which Part 264 standards are "practicable" in his situation.

iii. *Preconstruction.* The proposed rule allowed the facility owner/operator to perform any construction necessary to implement a Class 2 change before the modification request is granted. A number of State and industry commenters supported the preconstruction provision, saying that it will speed implementation of Class 2 modifications, and allow flexibility to plan and schedule activities before approval is granted. However, several commenters opposed the idea since they believed that the permitting Agency would be less inclined to deny a modification that had already been constructed.

EPA believes that preconstruction by the permittee, as allowed under the final rule, will not influence the permitting Agency's decision. Because of the limited nature of Class 2 modifications and the need for flexibility in maintaining permits, preconstruction will be allowed for this category of modification. However, in order to balance these needs with the concerns expressed by commenters, the preconstruction provision in today's final rule has been substantially modified. (See § 270.42(b)(9).) The date that construction can begin has been set at 60 days after submission of the modification request, unless the Director establishes a different date. In contrast, the proposal would have allowed construction immediately after the request was submitted. The new delayed construction date allows time for Agency and public review of the modification design, so that if the public raises concerns during the public comment period or if the Agency is likely to deny or change the request, the permittee can be informed prior to construction.

The second aspect of today's preconstruction provision allows the Director to establish a preconstruction

date of more than 60 days after application submission. This flexibility is needed for several reasons. First, situations may arise that warrant design changes in the permittee's proposal, and the Director should be able to postpone all or part of the construction until the final design is approved (although this should be infrequent, given the limited scope of Class 2 modifications). Another reason for the permitting Agency to be able to delay construction stems from the new provision in today's rule that would allow the Director to determine that a Class 2 request should instead follow the Class 3 procedures. (See above preamble discussion.) Since there is no preconstruction allowed with a Class 3 modification, and since the public has 60 days to comment and request that the permittee's proposal follow the Class 3 procedures, the Director may not know by the 60th day whether there is sufficient merit to require the Class 3 procedures for the modification instead of Class 2. In such cases, the Director needs the ability to inform the permittee, by day 60, that construction should be delayed.

The proposed preconstruction provision was intended to allow expedited implementation of Class 2 modifications. Today's rule still meets that objective. Permittees can perform many activities prior to the construction date, including: Preparation of detailed design drawings, arranging for equipment delivery, making contractual arrangements for construction, etc. Additionally, if construction begins soon after the 60th day, in most cases the permittee should be ready to operate the modified portion at the facility by the time the Class 2 request is approved. Finally, in any case where construction occurs prior to final Agency action, the permittee assumes the risk that the request will be denied or changed.

### 3. Class 3 Modifications

Class 3 modifications cover changes that substantially alter the facility or its operations. Generally, they include increases in the facility's land-based treatment, storage, or disposal capacity; increases of more than 25 percent in the facility's non-land-based treatment or storage capacity; authorization to treat, store, or dispose of wastes not listed in the permit that require changes in unit design or management practices; substantial changes to landfill, surface impoundment, and waste pile liner and leachate collection/detection systems; and substantial changes to the ground-water monitoring systems or incinerator operating conditions. The specific modifications that fall into Class 3 are

identified in Appendix I to 40 CFR Part 270 and discussed more fully in Section IV.C of this preamble.

Since Class 3 modifications involve substantial changes to facility operating conditions or waste management practices, they should be subject to the same review and public participation procedures as permit applications. The specific procedures for Class 3 modifications are at 40 CFR 270.42(c).

The first steps in the application procedures for Class 3 modifications are similar to the procedures for Class 2. Under § 270.42(c)(1), the permittee must submit a modification request to the Agency indicating the change to be made to the permit; identifying the change as a Class 3 modification; explaining why the modification is needed; and providing applicable information required by 40 CFR 270.13 through 270.21, 270.62, and 270.63. As with Class 2 modifications, the permittee is encouraged to consult with the Agency before submitting the modification request.

Section 270.42(c)(2) requires the permittee to notify persons on the facility mailing list and local and State agencies about the modification request. This notice must occur not more than 7 days before the date of submission nor more than 7 days after the date of submission. The notice must contain the same information as the Class 2 notification, including an announcement of a public informational meeting. The meeting would be held no fewer than 15 days after the notice and no fewer than 15 days before the end of the comment period.

Finally, after the conclusion of the 60-day comment period, the permitting Agency then initiates the permit issuance procedures of 40 CFR Part 124 for the Class 3 modification. Thus, the Agency will prepare a draft permit modification, publish a notice allow a 45-day public comment period on the draft permit modification, hold a public hearing on the modification if requested and issue or deny the permit modification. In addition, the Agency will consider and respond to all written comments received by the Agency during the 60-day public comment period as it conducts the activities required by Part 124.

In the September 23 notice, EPA proposed procedures for a second public meeting, which would be held at the owner or operator's discretion. EPA received several comments objecting to the requirements prescribing how the second meeting would be conducted (e.g., use of a neutral facilitator), particularly since the meeting was voluntary (i.e., the permittee could

decide not to hold the meeting at all). In consideration of these comments, the Agency has dropped the reference to a second meeting in the Class 3 process. The purpose of today's rule is to specify the minimum requirements that must be followed for a Class 3 modification. Additional activities beyond those contained in today's rule (e.g., additional public meetings) may take place. In fact, EPA encourages frequent and early communications between the permittee and interested local citizens to informally address and resolve issues these parties may have. However, it is inappropriate to prescribe how such voluntary activities must be conducted.

EPA received very few additional comments on the proposed Class 3 procedures. One commenter wanted a provision for automatic authorization in the absence of Agency decisions on Class 3 modifications. EPA declines to do this because Class 3 modifications may have a significant effect on human health and the environment if the appropriate permit conditions based on Part 264 standards are not developed prior to actual implementation. This situation is unlike that for Class 2 modifications, which are more limited in their potential to adversely impact human health and the environment.

#### 4. Other Permit Modifications

Although EPA has sought to provide a complete list of possible permit modifications and their classifications in Appendix I, there will undoubtedly be permit modification requests that are not included in Appendix I. Therefore, EPA today is establishing procedures that permittees can use under § 270.42(d) where a permittee wishing to make a permit modification not included in Appendix I can submit a Class 3 modification request, or alternatively ask the Agency for a determination that Class 1 or 2 modification procedures should apply. In making this determination, the Agency will consider the similarity of the requested modification to modifications listed in Appendix I, and will also apply the general definitions of Class 1, 2, and 3 modifications. It should be noted that EPA intends to monitor decisions by permitting authorities (both EPA Regional offices and authorized States) on modification request classifications and will periodically amend Appendix I of this regulation to include new classifications.

Several commenters supported this proposed approach. Others stated that there should be a specified time limit on the Agency's classification determination. EPA disagrees because the determinations may be varied in

nature and complexity. Also, since the decisions may sometimes be precedential, consultations among authorized States, EPA Regional offices, or EPA headquarters may be necessary. The Agency is committed to making a speedy decision for these classifications, but believes that a deadline will not be beneficial in these circumstances. Therefore, EPA has decided not to set a time limit for decisions of modifications classifications.

When the permittee chooses to request a classification determination instead of following the Class 3 process, then he or she should not initiate the formal modification review procedures until the Agency has decided on the appropriate classification. Otherwise, there may be confusion among the public concerning which process is being followed. Furthermore, the deadlines for Agency decisions in the Class 2 process will not begin until after the Agency has decided that the Class 2 procedures are appropriate for the modification and the permittee then proceeds in accordance with § 270.42(b). In any case, it should not take long for the permitting Agency to assign a classification to the modification request.

The proposal provided that the Agency would notify persons on the facility mailing list after making a determination on an unclassified change, and that the public and the permittee would have the right to appeal the decision. EPA is not adopting these provisions in today's rule, as discussed in section IV.B.6 of the preamble.

#### 5. Temporary Authorizations

Today's rule provides the Agency with the authority to grant a permittee temporary authorization, without prior public notice and comment, to conduct activities necessary to respond promptly to changing conditions. (See § 270.42(e).) It is expected that temporary authorizations will be useful in the following two situations: (1) To address a one-time or short-term activity at a facility for which the full permit modification process is inappropriate; or (2) to allow a facility to initiate a necessary activity while its permit modification request is undergoing the Class 2 or 3 review process.

An Agency-issued temporary authorization may be obtained for activities that are necessary to: (i) Facilitate timely implementation of closure or corrective action activities; (ii) allow treatment or storage in tanks or containers of restricted wastes in accordance with Part 268; (iii) avoid disrupting ongoing waste management

activities at the permittee's facility; (iv) enable the permittee to respond to changes in the types or quantities of wastes being managed under the facility permit; or (v) carry out other changes to protect human health and the environment. Temporary authorizations can be granted for any Class 2 modification that meets these criteria, or for a Class 3 modification that is necessary to: (i) Implement corrective action or closure activities; (ii) allow treatment or storage in tanks or containers of restricted waste; or (iii) provide improved management or treatment of a waste already listed in the permit, where necessary to avoid disruption of ongoing waste management, allow the permittee to respond to changes in waste quantities, or carry out other changes to protect human health and the environment. A temporary authorization will be valid for a period of up to 180 days. The term of the temporary authorization will begin at the time of its approval by the Agency, or at some specified effective date shortly after the time of approval. The authorized activities must be completed at the end of the authorization.

Several commenters responded on the subject of temporary authorizations. Several supported the approach contained in the proposal, citing the beneficial flexibility to change certain facility operations with no adverse effect to human health or the environment.

Two other commenters supported the use of temporary authorizations, but for more restricted uses (e.g., for on-site wastes only or for unexpected situations only). One commenter was generally opposed because of a lack of public comment and hearings. EPA disagrees because the use of temporary authorizations is allowed only for specified purposes, which are intended to improve the management of hazardous wastes or respond to a critical situation. The Agency will have the authority to deny any requests which are not protective of human health and the environment or do not meet the criteria for a temporary authorization. Also, as discussed below, the permittee must notify persons on the facility mailing list about the temporary authorization and must comply with Part 264 standards for its duration.

The proposal would not have allowed temporary authorizations for periods of less than 90 days. In today's final rule, however, EPA has eliminated this minimum length to provide that the term of a temporary authorization may be for any period up to 180 days. Although two

commenters supported the proposed minimum length, EPA is making today's change for two reasons.

First, the minimum specified period of 90 days seemed arbitrary and would likely result in restricting the Agency's flexibility to allow facilities to respond to temporary situations. For example, if the Agency believed that there was good cause to authorize a facility to conduct a particular activity without a permit modification but that the task should be completed within 30 days under the proposal, the Agency would be limited to approving the activity for 90 days or denying the request. Given that temporary authorizations were developed to allow a rapid response without the limitations of a formal permit modification, to set an arbitrary minimum duration would be needlessly restrictive and likely counterproductive.

Second, the duration of a temporary authorization under proposed § 270.42(e) (i.e., 90 to 180 days) was inconsistent with the temporary authorization which may be granted by the Agency at day 90 or 120 in the Class 2 process which can be granted for 1 to 180 days (see § 270.42(b)(6)(i)(D)). The different treatment of these temporary authorizations could lead to confusion.

The criteria in the final rule for approval of temporary authorizations under § 270.42(e)(3) are the same as proposed on September 23, 1987 except for two changes. First, in response to several requests by commenters, EPA is adding a specific provision for the storage and treatment of wastes subject to the land disposal restrictions of Part 268. This will give the regulated industry the flexibility to treat and store restricted wastes in tanks and containers, while the permit modification process is conducted. The Agency believes that there was sufficient flexibility to approve these changes as a temporary authorization under the proposed criteria; however, commenters wanted an assurance that the activities allowed under the recently promulgated minor modification provision in § 270.42(p)—which will be eliminated with today's new modification process—will be eligible for a temporary authorization under the new system. Therefore, these activities involving restricted wastes are specifically endorsed for temporary authorizations in new § 270.42(e)(3)(ii)(B).

In a second change, EPA decided not to retain the proposed temporary authorization provision for management of newly regulated waste. Instead, management of such waste is addressed solely under § 270.42(g). Although some

commenters suggested keeping both alternatives, other commenters believed that the special procedure for new wastes in § 270.42(g) is generally more appropriate. EPA believes that it is preferable to have a single procedure for addressing newly regulated wastes, and agrees that § 270.42(g) is more appropriate since it is designed specifically for that situation. (See preamble discussion in Section IV.B.7.)

Section 270.42(e) (2) through (4) details the procedures for granting temporary authorizations. Under these procedures, the permittee must submit to the Agency a request for a temporary authorization describing the activities to be conducted; explain why the temporary authorization was necessary; and provide sufficient information to ensure compliance with Part 264 standards. In addition, the permittee would be required to notify all persons on the facility mailing list and local and State agencies about the temporary authorization request within seven days of the request.

Section 270.42(e)(3) requires the Agency to approve or deny the temporary authorization as quickly as practical. To approve the authorization, the Agency must find that the request meets the criteria for a temporary authorization. It should be noted that today's rule, like the proposal, requires compliance with Part 264 for Agency-initiated temporary authorizations. This is because the procedures for obtaining such an authorization provides for Agency review of the permittee's request and an affirmative Agency action to approve the conditions of the authorization. Therefore, an Agency permit writer will be involved in establishing the appropriate operating conditions based on the Part 264 standards. This is in contrast to the automatic temporary authorizations (discussed in Section IV.B.2.ii above) where Part 265 standards are more appropriate since there are no Agency-prescribed site specific conditions developed.

A denial of a temporary authorization request would not prejudice action on any concurrent modification request. The denial only means that the activities contemplated by the permittee were not eligible for a temporary authorization. The request could still be acceptable as a permit modification.

In today's final rule, EPA has modified the language in § 270.42(e)(4) from the proposal. As proposed, § 270.42(e)(4)(i) required the owner or operator to submit a "complete modification request" within 60 days of obtaining a temporary authorization. This provision assumed

there would be circumstances where the permittee might not have time to provide all the material required under Part 270 (e.g., changes to closure plans or training plans) prior to issuance of the temporary authorization.

Several commenters disagreed with this proposal, pointing out that in many cases a temporary authorization could address a short-term or one-time situation, and would not require a permanent modification to the permit and submission of all the Part 270 information. EPA agrees with these commenters, and finds the 60-day deadline unnecessary, particularly since § 270.42(e)(3)(i) requires the permittee to demonstrate in his or her request that the Part 264 standards will be achieved. Thus, the Director should have all information necessary prior to a temporary authorization decision. In cases where some additional minor information is needed, the Director could make the authorization conditional on the submission of this information on an appropriate schedule.

The proposal allowed the renewal of a temporary authorization (§ 270.42 (e)(1) and (e)(4)(iii)), if the permittee initiated the Class 2 or 3 process for a permit modification. Today's rule modifies and clarifies these provisions. As required in § 270.42(e)(4) today, a temporary authorization cannot be reissued except through the following procedures. First, the permittee must initiate the appropriate Class 2 or 3 modification process for the activity covered in the temporary authorization. In addition, for a Class 2 modification, any extension of the activity approved in the temporary authorization must take place under Class 2 procedures. Finally, for a Class 3 modification, the Director may extend the temporary authorization if warranted to allow the authorized activity to continue while Class 3 procedures are completed.

The result of today's change for a temporary authorization that is concurrently undergoing the Class 2 review is to set a limit, generally, of 300 days for operation under the temporary authorization. The proposal would have allowed, in extreme cases, up to 540 days of temporary authorization before a final Agency decision was required. (For example, a 280-day authorization, reissued for a second 180-day period, and then the Director's decision per § 270.42(e)(4)(ii) to issue an additional authorization of 180 days.) These changes were made in response to commenters, who requested a shorter and clearer schedule for Agency decisions on Class 2 changes subject to temporary authorizations. EPA agrees

with these comments, and maintains that Class 2 changes should be reviewed rapidly and incorporated into the permit as a modification. It is not appropriate for these decisions to be postponed for up to a year and a half. For these reasons, today's rule does not allow extension of a temporary authorization for a Class 2 activity, except through the Class 2 procedures that are leading to an Agency decision on the modification request.

For Class 3 modifications, the renewal of the temporary authorization is at the discretion of the Director if he or she believes that it is appropriate for the activities to continue while the Class 3 modification process is completed. In most cases it will be difficult to complete the Class 3 process in the 180 days allowed for the temporary authorization, since there will be at least 105 days of public comment (60 days for comment on the applicant's modification request and 45 days for comment on the draft permit modification prepared by the Agency), as well as one or more public meetings and a public hearing, if requested. Therefore, today's rule allows the extension of a Class 3 temporary authorization for an additional 180 days, for a maximum of 360 days. However, this would be allowed only if the facility is proceeding toward a Class 3 modification.

In summary, the Agency-issued temporary authorization mechanism provides a reasonable balance between the public's right to be informed of and comment on activities at permitted hazardous waste facilities and the facility owner/operator's need to implement certain changes rapidly. More generally, the temporary authorization procedure will provide important flexibility to permitted hazardous waste facilities without sacrifice to public health or the environment. Because temporary authorizations are designed specifically for activities necessary to improve management of hazardous waste or to conduct timely closures and corrective actions, this authority should actually reduce risk and promote safe handling of wastes. For this reason, EPA believes that the temporary authorization procedure will be of benefit to the regulated industry, regulating agencies, and the public.

#### 6. Notification Requirements and Permit Modification Appeals

Under today's rule, the Director will notify persons on the facility mailing list and appropriate state and local government agencies within 10 days of any decision to grant or deny a permit modification request (except for Class 1

modifications and temporary authorizations). (See § 270.42(f).) Such notification will also be given within 10 days after a Class 2 automatic authorization takes effect. The permit appeal procedures of 40 CFR 124.19 apply to the Director's decision to grant or deny a Class 2 or 3 permit modification request and to Class 2 automatic authorizations. For Class 1 modifications, temporary authorizations, and classification determinations, the appeal procedures of Part 124 do not apply, although in many cases there are opportunities to seek a change in the modification or authorization, as discussed in more detail below.

The proposal provided that the Agency would notify persons on the facility mailing list after making a determination on an unclassified change, after approving a Class 1 modification (when prior approval is needed), and after granting a temporary authorization. However, EPA received a number of comments from state agencies and industry arguing that there are too many required notices in the proposal, and that numerous notifications add complexity to the process and divert Agency resources to administrative tasks instead of to protection of the environment. EPA agrees with this comment for notifications of temporary authorizations, classification determinations, and Class 1 approvals.

In the case of Agency classification determinations, there will be subsequent public notification of the proposed changes as the facility proceeds with its modification request. The public will be able to raise concerns at that time if they believe that the modification request has been incorrectly classified. For these reasons, EPA believes that the notice regarding a classification determination would be redundant, and therefore is not adopting it in today's rule.

For Class 1 modifications, the permittee is required to provide notice of the change to persons on the facility mailing list within 90 days, including those cases where prior Director approval is required. (See § 270.42(a)(1)(ii).) The proposal would have also required that the Agency send a notice of its decision to the facility mailing list for a Class 1 modification that required prior Agency approval. EPA believes that there is no need for the Agency to mail such a notice since the permittee will be sending a similar notice. Two notifications regarding a single Class 1 modification would be a duplication of effort and could also be confusing to people on the mailing list.

For these reasons, EPA has eliminated the redundant Agency notice for Class 1 modification determinations in the final rule.

For Agency-issued temporary authorizations, a notice is sent to persons on the facility mailing list and to appropriate government agencies within 7 days of the facility's request. Thus, there is opportunity for the public to express its concerns to the permitting agency regarding the facility's application. Since many temporary authorizations will be of short duration (a few weeks to six months), a single notice of the activity should be sufficient. If the activity will continue beyond 180 days, the facility is obligated to follow the Class 2 or 3 process, which will provide for a second notification and opportunity to comment. For these reasons, EPA believes that the notification mailing regarding the Agency's decision to grant a temporary authorization would be repetitive and unnecessary.

In the proposal, § 270.42(f)(2) provided for the appeal of the Director's decision to classify a permit modification request, under the procedures of Part 124. One commenter objected to the public being able to provide input and delay progress on the processing of an unclassified facility change. While EPA maintains that public involvement in these decisions is useful and important, it also believes that once a determination has been made as to the appropriate modification procedures for a particular facility change, the permittee's application should be processed accordingly. As discussed earlier, the modification review process will provide an opportunity for indicating concerns regarding the Agency's classification decision. However, if a formal appeal were allowed for the classification decision, then a single appeal request could effectively require any modification to follow the Class 3 process—or else delay the modification process for months while awaiting the Administrator's decision on the appeal—regardless of the merits of the appeal. Therefore, today's rule does not provide for appeals of § 270.42(d) classification decisions.

As discussed above, during the modification approval process the commenters will be able to indicate any concerns with the classification assigned by the Agency. If the Agency agrees with the comments, then it could reclassify the permittee's request and initiate the appropriate modification procedures. For example, if in the course of a Class 2 modification process the

Agency is convinced by commenters to follow the Class 3 procedures instead, then the Agency would prepare the appropriate notification and draft permit as required by Part 124 after the Class 2 comment period is concluded. However, if the Agency disagrees with the request to reclassify the modification, then it must provide its response in the administrative record; such decision constitutes a final Agency determination and is not subject to appeal under Part 124 procedures.

Although the proposal would have applied the Part 124 appeals procedures to Class 1 modifications and temporary authorizations, today's final rule does not contain such appeal procedures. For Class 1 changes, any person can request the Director to review the modification, and the Director may, for cause, reject the modification. This mechanism provides recourse for persons concerned about such a modification. Due to the very limited nature of Class 1 changes, however, the Agency does not expect these activities to be called into question.

Agency-issued temporary authorizations are intended to allow facilities to respond rapidly to changing conditions and to enhance the environmental protection at the site. Because swift action is essential for these authorizations, and since they will only allow operation for a maximum of 180 days (unless a permanent permit modification has also been requested), EPA believes that the Part 124 appeals procedures cannot be integrated into the temporary authorization process without undermining the fundamental purpose of such authorizations.

One commenter suggested that if a subsequent denial of already implemented modified operations conducted under a Class 1 modification, a Class 2 automatic authorization, or a temporary authorization is appealed, those operations should be allowed to continue until the appeal is resolved. As discussed above, today's final rule does not provide for appeals for Class 1 and temporary authorization decisions. If the Agency denies one of these activities after the facility has already implemented it pursuant to today's rule, then the Agency may provide for a reasonable period of time for the facility to cease operation, if appropriate. In the case of automatic authorizations, EPA agrees with this commenter. If a permittee has followed the established Class 2 procedures and an automatic authorization has occurred, then he should be entitled to operate pursuant to such authorization until the Agency has made a final determination or until an

appeal opposing the automatic authorization has been granted. Otherwise, a single appeal could negate any automatic authorization before the Agency has been able to review the merits of the appeal. Therefore, today's rule provides that in the case of an appeal of an automatic authorization, the authorization remains in effect until such appeal is granted.

#### 7. Newly Listed or Identified Wastes

"Today EPA is promulgating a new provision in § 270.42(g) that provides permittees with a special procedure for modifying permits when wastes they are already managing are newly listed or identified by EPA as hazardous. Under this provision, the permittee must submit a Class 1 modification request at the time the waste becomes subject to the new listing or identification—that is, on or before the effective date of the rule listing or identifying the waste. If the changes at the facility constitute a Class 2 or 3 modification, the permittee must submit, in addition to the above Class 1 request, a complete permit modification request within 180 days of the effective date. Until a final decision is made on the modification request, the permittee must comply with Part 265 standards. In addition, where new wastes or units are added to a facility's permit under this approach, they would not count against the 25 percent expansion limit for Class 2 modifications. Finally, for land disposal units, the owner or operator is required to certify compliance with all applicable groundwater monitoring and financial responsibility requirements within one year of the effective date. If the owner or operator fails to make this certification, he or she will lose authorization to operate the unit.

EPA is taking this action for several reasons. First, the Agency believes that several rules expected in the next few years, such as the Organic Toxicity Characteristic, will classify additional wastes as hazardous. A potential for disruption in the handling of these newly identified wastes exists because of the time involved in the permit modification process for permitted facilities, particularly when Class 3 modifications are needed. If the permittee has not obtained a permit modification when a listing or identification becomes effective, the facility could not handle the waste until the permit is revised as needed. There may be a severe shortage in waste management capacity if a significant number of facilities which have previously handled the newly identified wastes are barred from doing so because they have not been able to

obtain permit modifications. In addition, the on-going operations of many facilities will be severely disrupted. This scenario will become more likely as more facilities obtain RCRA permits.

A second reason for this procedure is that, without it, permit writers may be forced to give these modifications a very high priority, regardless of the effect on the environment, because of the potential impact on capacity and the disruption of facilities. Since permitting resources are limited, other permitting activities with greater environmental consequences may be delayed.

Last, there would be an inequity between permitted facilities, and interim status or unpermitted facilities. Under RCRA, previously unregulated facilities can gain interim status after a waste is newly listed or identified as hazardous, allowing them to continue to handle the waste, simply by submitting a Part A application and, if required, by complying with section 3010 notification requirements. Interim status facilities would be able to continue to handle newly listed or identified wastes through a change in interim status without a detailed permitting review by the Agency. Permitted facilities however, would require a Class 2 or 3 permit modification in most cases. As a result, permitted facilities would be treated unequally when wastes are newly listed or identified. The procedures adopted today rectify the potential disequilibrium between permitted and interim status facilities.

Today's rulemaking is also consistent with the August 14, 1987 proposed rule for Changes to Interim Status and Permitted Facilities for Hazardous Waste Management (see 52 FR 30570). The August 14 proposal is procedurally very similar to today's rule. The one difference is that the August 14 proposal would have required facilities to initially obtain prior Agency approval through the minor modification process before handling newly regulated wastes. Today's rule, on the other hand, uses the Class 1 procedure, which does not require prior EPA approval. The permittee simply has to notify the Agency and the public under the Class 1 procedures to put into effect a modification involving a newly listed or regulated waste. The August 14 proposal did not contemplate an approach like the one in today's rule since the August 14 proposal was based on the framework of the current minor modification regulations, which do not provide for permit modifications without prior Agency approval.

EPA has decided not to adopt the procedure for newly regulated waste suggested in the August 14 proposal,

since that proposal was intended as only an interim mechanism until this permit modification rule became final. We note that commenters to the August 14 proposal generally supported a special procedure for newly listed or identified waste. However, some commenters felt that the proposal should have gone even further in giving permittees the same flexibility as interim status facilities. Today's permit modification rule provides this equal flexibility. EPA has reviewed the comments to this portion of the August 14 proposal, and responds to them below.

The Agency received many comments on this section of today's rulemaking. Two commenters stated that the date of submission for the initial Class 1 request should be clarified. EPA agrees and has amended § 270.42(g)(1)(ii) to require that the Class 1 request must be submitted on or before the effective date of the rule which newly lists or identifies a waste as hazardous. This final rule will also retain the requirement that the subsequent Class 2 or 3 requests must be submitted within 180 days of the effective date for the new listing or identification. Several commenters favored this position. One commenter argued that a shorter period would be more appropriate. EPA disagrees. The 180-day time limit for submission provides a reasonable balance between a speedy permit process that is protective of human health and the environment, and the need to allow both the facility and the permit writer to develop the appropriate but often complex permit conditions. As specified § 270.42(g)(1)(iii), the facility must comply with the standards of Part 265 during this period.

Several commenters on the September 23, 1987, and August 14, 1987 proposals expressed concern about when they had to be handling the newly listed or identified wastes to be eligible to use this procedure. Under the proposal, to be eligible, facilities would have to be handling the waste at the time of publication of the final rule listing or identifying the waste as hazardous. Most of the commenters argued that the requirements should be consistent with those for unpermitted facilities, which can gain interim status if they are "in existence" as hazardous waste management facilities at the time the new listing or identification becomes effective. EPA agrees with this comment. The Agency believes that it is inequitable in this case to have different tests for permitted and interim status facilities, and therefore has modified the rule accordingly.

Therefore, in response to these comments, the Agency has removed the proposed requirement that the facility must be handling the waste at the time of publication of the final rule for the new waste. Instead, today's rule specifies that permitted facilities eligible for this provision must be "in existence" as hazardous waste facilities for the waste in question on the listing or identification's effective date. This standard is identical to the standard for facilities qualifying for interim status when the permitting regulations were initially issued. For further information on this concept, see the preamble discussion at 45 FR 76630 (November 19, 1980).

Finally, EPA has added a new requirement for land disposal units eligible for a permit modification under this section. Under § 270.42(g)(1)(v), the owner or operator of such units must, within one year of the effective date of the new listing or identification, certify compliance with Part 265 ground-water monitoring and financial responsibility requirements. If the owner or operator fails to do this, he or she would lose authority to operate the unit. EPA has included this provision, which was proposed in the August 14, 1987, notice, to ensure consistency with unpermitted facilities. Of course, if the Agency modifies the permit to incorporate Part 264 before the one year period is up, the facility does not need to submit a certification.

#### 8. Publication of Permit Modification List

As required by § 270.42(h), EPA (or the authorized State) will maintain a list of approved permit modifications and publish a state-wide notice annually that the list is available for review. The public notice will primarily serve as a reminder to the public that an updated list is available for review. Members of the public interested in a closer review can follow the Agency's actions on a site-specific basis. This provision is unchanged from the proposal.

#### C. Classification of Permit Modifications

Today's rule creates Appendix I to Part 270 that identifies what types of facility changes constitute Classes 1, 2, and 3 modifications. This classification list generally follows the organization of the facility standards in Part 264 and is designed to be self-explanatory.

Most commenters generally supported the concept of using Appendix I to classify types of facility changes into Classes 1, 2, and 3 modifications. However, concerns over several general

issues and a number of specific items included in Appendix I of Part 270 were raised.

Although most commenters supported the classification of facility changes into Classes 1, 2, and 3 modifications, several questioned the practicality of increasing the number of classes of modifications from the two-tiered system (i.e., major and minor modifications). These commenters felt that with three categories of modifications the process will be more complicated and may increase the number of misunderstandings between the regulated community and EPA or authorized States which could lead to numerous appeals. Two commenters expressed a preference for expanding the current list of minor modifications instead of reclassification. EPA believes, as did the Permit Modification Negotiating Committee, that three classes are necessary to provide EPA and authorized States the flexibility to appropriately address various types of permit modifications. The current system provides only two procedures for modifying a permit—the minor modification procedure provides for no public notification or comment, while the major modification procedure requires all the formal proceedings of permit issuance. In contrast, the three classifications will provide EPA and authorized States the appropriate mechanisms for processing a wide spectrum of permit changes in a timely manner. EPA believes that the system of three classifications and the associated procedures will provide the necessary flexibility while ensuring early, appropriate public participation.

The specificity of Appendix I caused several commenters to be concerned that permit modifications would be required under the proposed rule for minor changes to a facility that would not currently require modification. EPA clarifies that permit modifications are applicable only when changes made to a facility affect a condition specified in the permit. Thus, for example, if a particular item of equipment, including the manufacturer's name and the model number, is specified in a permit, replacing that item with an identical item (same manufacturer and model number) would not affect that permit condition and would not require a modification. Similarly, if the equipment is described generally, then changing that equipment also would not require a permit modification as long as the new equipment met the same definition and specifications. Normal routine maintenance would not usually require a permit modification unless the activity

directly affects a condition specified in the permit.

#### 1. Change of Facility Owner or Operator

The current regulations governing change in ownership or operational control are addressed in § 270.40 (Transfer of permits), § 270.41(b)(2) (Causes for modification or revocation and reissuance of permits), and § 270.42(d) (Minor modifications of permits). These regulations allow the Agency to make a minor modification to a permit to reflect a change in ownership or operational control, provided the new owner or operator submits a revised permit application within 90 days prior to the scheduled change and demonstrates compliance with 40 CFR Part 264 Subpart H (Financial Requirements) within six months of the scheduled change. During the transfer of the permit, the previous owner or operator must comply with the requirements of Subpart H until the new owner or operator has demonstrated to the Director that he or she is complying with the requirements of that subpart.

When considering how to incorporate changes in ownership or operational control into the new modification approach, the Negotiating Committee could not agree on the most appropriate classification. Therefore, EPA published a second permit modification **Federal Register** notice on November 28, 1987 (52 FR 44153) that proposed essentially to retain the current standards for changes in ownership or operational control by classifying such modifications as Class 1 with prior Agency approval. This classification retained the existing level of Agency oversight, but provided the additional public participation opportunities contained in the Class 1 procedure.

EPA received several comments that supported the proposal, and is today incorporating this approach into the final rule. EPA decided, however, that this provision should be set forth in the § 270.40 regulation instead of in the Appendix, as proposed, due to the prescriptive conditions associated with this type of modification. Therefore, in today's rule, the existing language in § 270.40 is designated as § 270.40(a), and a new paragraph (b) is added to address changes in ownership or operational control. In Appendix I, new Item A(7) identifies changes in ownership or operational control as a Class 1 modification with prior Agency approval, but refers to § 270.40(b) for the substantive requirements.

Two commenters objected to the requirement for submission of a revised permit application at least 90 days before the scheduled change. They

wanted to be able to make such business transactions in a shorter period of time by not having to wait for Agency approval. Another commenter thought that this modification should be a Class 1 change with prior Agency approval only for the financial responsibility requirements in Subpart H. Two other commenters suggested that the Class 2 process for changes in ownership or operational control would be more appropriate. As stated in the November 18 notice, EPA recently completed a rulemaking on these issues regarding changes in owner and operator (May 2, 1986, 51 FR 16422), and is therefore reluctant to overturn these requirements based on the few comments received on the subject in this rulemaking.

#### 2. General Permit Provisions

The items identified under "General Permit Provisions" in Appendix I are primarily derived from conditions applicable to all permits as specified in §§ 270.30-270.33. Other general changes included in this section are administrative in nature, or recur throughout the Part 264 regulations but would be more simply addressed in one place (e.g., frequency of reporting).

The first two items in Appendix I specify that administrative and informational changes or correction of typographical errors in the permit are Class 1 modifications. Comment was requested on whether correction of "minor factual errors" should be added as a Class 1 change and on how this should be defined. One commenter supported the addition of this item, but did not suggest a definition. EPA decided not to add this item to Appendix I since it believes that many of these changes will be covered under other items in the Appendix (e.g., training plans, contingency plans), or, if not, the permittee may request a determination by the Director that the modification be treated as a Class 1 or 2 under § 270.42(d).

Under Item A(3), permittees are able to make routine equipment replacements that are necessary for the continued operation of the facility. Equipment that frequently needs replacement includes pumps, pipes, valves, incinerator firebrick, and instrument readout devices. In most cases, such replacements would not require a permit modification since the permit would acknowledge them as ongoing maintenance activities. However, some permit conditions may inadvertently create restrictions by incorporating portions of the Part B permit application by reference. For example, if a permit incorporates a design drawing by reference which

specifies a particular piece of equipment—including the manufacturer's name and the model number of the item—then to replace the item with anything other than the original model might require a permit modification. Such an item may not be available at a later date when it needs replacement, or the permittee may prefer to replace it with an improved version.

EPA does not believe that anyone (the permittee, the public, or the government) benefits from subjecting such routine maintenance functions to the permit modification process. It is preferable that permits contain sufficient flexibility to allow these kinds of equipment replacements outside of the permit modification process. Therefore, if it is necessary to include design drawings in permits, the permit condition should also allow minor deviations from the design without a permit modification (although the Director may want to have the permittee send the revised design to the Agency to maintain a current file on the facility).

In spite of the preferred method of drafting permit conditions, there are many existing RCRA permits that contain very detailed information regarding facility equipment and provide little or no leeway for deviation. Therefore, Item A(3) in the Appendix provides that equipment replacement or upgrading with functionally equivalent components is a Class 1 change. This will allow the facility to change ancillary equipment without prior approval if the original equipment is no longer made or to take advantage of better designed products, so long as the new equipment is functionally equivalent to the equipment it replaces. (The definition of "functionally equivalent" is discussed later in the preamble.)

Item A(4) addresses changes in frequency of monitoring, reporting, and maintenance activities. One commenter requested that "sampling" be added to Item A(4), stating that it logically belonged with monitoring, reporting, and maintenance activities. EPA believes that sampling is included in the term monitoring (as in ground-water or unsaturated zone monitoring). However, to clarify this, "sampling" has been added to these items.

Item A(5) allows changes in interim compliance dates in schedules of compliance as a Class 1 modification with prior Director approval. However, where such changes would likely delay the final date of compliance, it would instead proceed as a Class 3 change.

Several commenters argued that many modifications should be classified as Class 1 whenever an improvement is

being made to equipment, hazardous waste management units, or facility management standards. EPA disagrees with this suggestion since such a provision would be much too broad for the Class 1 category, and could lead to major changes at a facility that would be more appropriate as Class 2 or 3 modifications. Furthermore, if a permittee wishes to make such improvements expeditiously, he or she could seek a temporary authorization.

### 3. General Facility Standards

The "General Facility Standards" portion of Appendix I encompasses changes that affect the general standards and requirements that apply to all hazardous waste facilities (Subparts B through E of Part 264). These changes primarily involve the various plans that must be maintained by the facility (e.g., contingency plan, training plan) and are self-explanatory.

EPA has made one addition to this section to clarify a point that was not clear in the proposal. In many cases, specific changes at a facility will necessitate changes in general facility standards and plans. For example, the introduction of a new waste at a unit might necessitate a change in the contingency plan, or the addition of a new unit might require a change in the facility's closure or security plan. In such cases, the changes in the plan would be reviewed and approved under the same procedures as are required for the introduction of the new waste or the new unit. Thus, if a facility brought a tank treatment unit on-site for 90 days under Class 1 procedures, review of any necessary changes in the facility's contingency plan or waste analysis plan would take place under Class 1 procedures as well. This point is clarified in a note added to Section B of Appendix I. It should be noted that the permit changes that may be reviewed in this fashion are limited to the items specifically identified in Section B of the appendix; i.e., general facility standards and plans. Therefore, if the addition of a new waste involved a new tank unit with different management practices than those authorized by the permit (see Item G(5)(b)), then the Class 3 procedures apply.

Several commenters had suggestions on specific items in Section (B). One commenter suggested that only significant changes in the procedures for maintaining the operating record should require a permit modification (see Item B(3)). The commenter was concerned that changes in a computer program that is used in conjunction with the operating record could require a modification. It is not EPA's intent to require modifications

for such recordkeeping methods. It is unlikely that actual procedures for maintaining the operating record (other than the location of the record) will be specified in permits; therefore there is already significant flexibility in the method of maintaining the record, as long as the requirements of § 264.73 are met. However, EPA emphasizes that in cases where procedures for maintaining the operating record are specified in the permit, a Class 1 permit modification will be required for a change that affects the permit condition.

In a related matter, several commenters were concerned that modifications listed in Appendix I (e.g., B(4) changes in frequency or content of inspection schedules) would require a facility to go through a Class 2 permit modification to carry out more frequent or more extensive activities than required in the permit. Again, EPA would like to clarify that as long as a specific permit condition is not affected by a change, a modification is not required. Thus, as long as the frequency and content of inspections specified in the permit are fulfilled, additional inspections would not require a modification.

Several commenters argued that items classified as Class 2 under Section B(6), Contingency Plan, should be reclassified as Class 1. EPA disagrees and points out that these items, (changes in emergency procedures and removal of equipment from emergency equipment list) may lead to a significant decrease in the level of protection for human health and the environment. Thus, a Class 2 modification is appropriate to allow public comment on each proposed change.

### 4. Ground-Water Protection

Subpart F of Part 264 specifies the RCRA system for protecting ground-water. Permitted facilities subject to ground-water monitoring requirements have very detailed permit conditions regarding the hazardous constituents to be monitored; concentration limits of hazardous constituents that trigger subsequent actions; and the number, location, depth, and design specifications of monitoring wells.

In the proposal, EPA suggested 11 items for inclusion in Appendix I to describe anticipated changes in permitted ground-water protection programs. EPA reevaluated the proposed classifications, and found that several of the items were redundant and that a few others could be clarified. In addition, commenters suggested several improvements that could be made. For these reasons, the ground-water items in

Section C of the Appendix have been restructured (as discussed below) to define these modifications more precisely.

EPA believes that Class 2 is an appropriate category for many ground-water monitoring changes, because the modification requests must indicate compliance with Part 264 requirements and because—once ground-water monitoring systems have been established and approved as part of the original permit—changes in the systems will generally be minor and technical. In fact, EPA believes that most changes will be made to improve permitted systems because of new information, improved technology, or other considerations. Therefore, public health and the environment will be best served by an expedited approval procedure for these kinds of changes.

The first item in the appendix addresses changes to wells (C(1)). This classification is unchanged from the proposal except that well replacements that result in a change to location, design, or depth of the well—which was a separate item in the proposal—is now merged into Item C(1)(A) which describes all changes that affect number, location, depth, or design of wells. Such changes are Class 2. Item C(1)(b) identifies certain well replacements that are Class 1 changes, namely the replacement of a damaged or inoperable well that does not involve a change in its location, design, or depth.

Several commenters argued that changes in sampling or analysis procedures or changes in statistical procedures should be reclassified as Class 1 with prior Director approval since they are technical in nature and generally of limited interest to the public. EPA agrees with these comments and has changed them in today's final rule to be Class 1 modifications with prior approval. (See Items C(2) and (3).) The Agency should be able to respond promptly to such facility requests, particularly where they will lead to more representative or improved sampling, analysis, or evaluation techniques. Furthermore, since these changes are easily reversible, any subsequent concerns raised by the public could be considered and implemented, if merited.

A change in the point of compliance (C(4)) is a Class 2 change as proposed, although the language in this provision has been changed slightly to indicate that such changes may be necessary when land-based units are added to the facility.

Changes in indicator parameters, hazardous constituents, or concentration limits are addressed in Item C(5). If such

changes are made in the detection monitoring program they are Class 2, whereas a Class 3 modification is required where the ground-water protection standard is affected. This classification is a result of consolidating five of the items in the proposed appendix. In the proposal, changes in hazardous constituents for which the ground-water protection standard applies (proposed C(1)) and changes in concentration limit (C(2)) were identified as Class 3 changes; in today's rule item C(5)(a) encompasses these changes. Today's Class 2 changes in C(5)(b) are derived from three proposed items: Changes in established background ground-water quality concentration levels (C(6)); changes in parameters or constituents (C(8)); and reduction in number of hazardous constituents analyzed for an assessment program based on no evidence of wastes in the unit (C(11)). Commenters supported the proposed classification of these items; however, the proposed language was redundant in some cases (e.g., proposed C(8) and (11)). Furthermore, EPA believed that some confusion may have resulted from the scattered nature of these items. Therefore, the Agency consolidated these actions to address them comprehensively in a single place.

A new Item C(6) has been added to address changes made in the detection monitoring program. Although this item was not mentioned in the proposal, § 264.98(j) specifically requires a permit modification when the detection monitoring program no longer meets the requirements specified in the regulations. The Agency is establishing this as a Class 2 modification in today's rule. Changes in the detection monitoring system are comparable to the kinds of changes that could occur in a compliance monitoring program, which are identified as Class 2 (as discussed below).

Comments were also requested on two items added to Appendix I in the proposal: Changes to a compliance program (C(7)) and addition of or changes to a corrective action program (C(8)). (Note that these changes are typically imposed by the Agency and therefore would follow the modification procedures of § 270.41, unless the permittee elected to use the § 270.42 procedures instead.) No comments were received on changes to a compliance program, and it remains a Class 2 modification in today's rule. One commenter raised the point that classifying all changes to a corrective action program as Class 3 would require permittees to go through the Class 3 modification procedures for changes

that under a detection program would be classified as Class 1 or 2. The commenter suggested that the general classification of corrective action changes should not subsume specific ground-water monitoring modifications that have been identified in the Appendix. EPA agrees with the comment, and believes that it is equally applicable to the general provisions for detection monitoring (C(6)) and compliance monitoring (C(7)) as well. The commenter also argued that every change in a permitted corrective action program should not have to undergo a Class 3 modification. EPA agrees with this comment, and has reclassified changes in the corrective action program.

One commenter suggested that a thorough analysis of the appropriate classifications for changes to corrective action permit conditions should be made in the upcoming corrective action rule. EPA agrees and adds that it intends to address corrective action permit modifications in conjunction with that rule. (Also see discussion in Section III.C.9 of the preamble.)

An additional comment regarding ground-water protection suggested that proposed Item C(1) should be amended to specify that a reduction in the number of hazardous constituents for which the ground-water protection standard applies should remain Class 3 but that an increase should be Class 1. The Agency points out that the ground-water protection standard is one of the most critical elements of a ground-water protection program. Any change to the ground-water protection standard may substantially alter the ground-water monitoring system and is thus appropriately classified a Class 3 modification. (In today's rule, this change has been reclassified as C(5)(a).)

A final commenter expressed the opinion that proposed item C(11), reduction in the number of hazardous constituents analyzed for in the assessment program based on no evidence of wastes in the unit, should be a Class 1 rather than a Class 2 modification. First, the Agency notes that the language of Item C(11) should have referred to the detection or compliance monitoring program since there is no assessment program under the Part 264 permit standards. Second, the classification of this item remains Class 2 in the final rule and has been renumbered as C(5)(b). Participants in the permitting process may not necessarily agree upon whether or not evidence of waste in a unit exists; thus some level of Agency and public review is appropriate to make a determination

on this issue. This type of modification is not always a trivial change, but it is a common change that may be necessary to maintain a facility's capability to manage wastes. Thus, a Class 2 modification is appropriate.

Permittees should understand that, if a permit modification request does not provide documentation that the modification will fully comply with Part 264 standards and will not reduce the effectiveness of the ground-water monitoring system, EPA or an authorized state will deny the request. (Alternatively, the Agency could extend the review period, with the approval of the permittee, to allow for appropriate improvements in the request.) Therefore, permittees should consult closely with the regulating agency before requesting these modifications, except in the most straightforward of cases.

#### 5. Different Wastes in a Unit

The use of the term "different wastes" in the Appendix I list refers to changes involving the introduction of hazardous wastes to units that are not permitted to handle these wastes. In other words, the facility may be seeking to accept wastes that were not previously identified in the permit, or it may already be managing the waste but would prefer to shift it to a different treatment, storage, or disposal process. Permit modifications for "newly regulated wastes"—those wastes that are newly listed or identified—are treated somewhat differently, as described in Section IV.B.8 of this preamble.

Permit modifications to allow different wastes at a permitted unit are classified into two general categories. The first situation involves different wastes that are sufficiently similar to wastes currently authorized at the unit so that no additional or different management practice, design, or process is required. As an example, a unit may be permitted only to treat specific solvent wastes, but may be equally capable of treating other solvent wastes that exhibit similar physical and chemical properties within the same management conditions of the permit. In these cases, the permit modification will follow the Class 2 process.

The second situation is where the introduction of a different waste at a unit will require different or additional management practices, design, or processes to properly manage the waste—for instance, if the waste is reactive or ignitable—and the permit conditions does not anticipate that such wastes will be managed in the unit. These circumstances require a Class 3 permit modification.

In the proposal the term "new wastes in a unit" was used instead of "different wastes in a unit" in Appendix I. This led a number of commenters to confuse the Appendix I modifications, which address the management of existing hazardous wastes in different units from those prescribed by the permit, with the separate provision concerning the management of newly listed or identified wastes. Since there are different modification procedures for the management of newly listed or identified wastes (§ 270.42(g)), the distinction is critical. To clarify this issue for persons using Appendix I, in today's rule the Agency is using the term "management of different wastes in a unit" to refer to changes involving the introduction of hazardous wastes to units that are not permitted to handle these wastes. Also, notes have been added to the Appendix to reference § 270.42(g) for modification procedures to be used for the management of newly listed or identified wastes.

Many commenters suggested that the modifications regarding management of different wastes in each specific type of unit be reclassified or downgraded. EPA considered these comments, but has decided to retain the respective classifications as proposed for the following reasons. First, when a facility proposes to alter the way that its wastes will be treated, stored, or disposed, then the public should have an opportunity to comment on the proposal prior to a final Agency decision. The Class 2 and 3 processes provide for such public input. Second, where the introduction of different wastes to a unit involves additional or different operating procedures or management practices, there is a greater potential for significant change to the permitted operation; therefore the Class 3 process should be followed since it was designed for those circumstances. Finally, it should be noted that in many cases the permittee can apply for a temporary authorization to implement the desired change while the Class 2 or 3 procedures are carried out. Therefore, the Agency believes that the framework in today's rule is appropriate and consistent with the definitions established for the three classes.

For each type of unit in Appendix I, EPA has defined general criteria as discussed above to be used in determining whether permit modifications involving the management of new wastes represent a Class 2 or a Class 3 change. Although these criteria are general in nature, EPA believes that they are sufficiently specific to delineate Classes 2 and 3 modifications.

#### 6. General Approach to Defining Unit-Specific Changes

This section of the preamble describes EPA's classification of permit modifications involving the various types of hazardous waste management units at a facility. In general, EPA has addressed for each type of unit: (1) Changes to or addition of units that affect the facility's capacity, (2) changes to units that do not affect facility capacity, (3) replacement of units, (4) introduction of new wastes into a unit, and (5) changes to the waste management practices involving the unit. Also, EPA has identified additional changes that are appropriate for specific units.

i. *Tanks and Containers.* The permitting standards for containers and tanks are found in 40 CFR Part 264, Subparts I and J. Because of the similarities of the classifications for these units, they are discussed together in this preamble. Furthermore, the Agency has combined "tank storage" and "tank treatment" into a single section. The Agency believes that this arrangement is preferable because it eliminates possible confusion created by duplicative language and because the Part 264 standards do not differentiate between tanks used for treatment and tanks used for storage.

Tank system and container changes or additions resulting in a capacity increase of 25 percent or less qualify as Class 2 modifications as long as they do not involve other changes that require a Class 3 modification (i.e., treatment of new wastes using a different tank design or process—discussed later in this section of the preamble). This allows modest capacity growth at a facility without the full-scale procedures for major modifications, but with an appropriate level of public notice and participation. Any change leading to an increase of more than 25 percent requires a Class 3 modification (except for certain specific unit operations described later in this section).

The 25 percent limit is based on the initial permitted capacity for tank systems or containers. As an example, a facility that has a permit for both tank systems and containers may bring on additional tank systems as Class 2 modifications until the cumulative increase in tank capacity equals 25 percent of the tank capacity specified in the initial permit. Similar changes may be made involving container units, based on the initial container capacity. Once the 25 percent limit is reached, all subsequent modifications involving

capacity increases for the specific type of unit must follow the Class 3 process.

Another example that illustrates the limited nature of this Class 2 provision is where a facility's permit specifies extensive container storage, but there is no provision for tank storage. In this case, the container storage operation may be expanded through a Class 2 change (subject to the 25 percent limit), but the addition of tanks is a Class 3 modification since there was no permitted tank capacity.

Several commenters argued that F(2), modification of a container unit without increasing the capacity, should be reclassified from Class 2 to Class 1 with prior Agency approval. One example is the addition of a roof to a container unit. EPA believes that the addition of a roof to a container unit without alteration of the containment system is an appropriate Class 1 modification and has added this to Appendix I as Item F(2)(b). Other unspecified changes in this category, however, still fall within the definition of Class 2 modifications: Changes to improve the design of hazardous waste management units without substantially altering the conditions of the permit or reducing protection of human health or the environment.

In developing the rule, EPA considered the addition of certain tanks that perform particular treatment activities—neutralization, dewatering, phase separation, or component separation—that are fairly elementary physical processes. These unit operations are relatively simple in design and are often found in temporary or mobile treatment units (MTUs). EPA recognizes the growing interest for using such MTUs since they provide industry significant flexibility in selecting among treatment technologies, in pretreating wastes before final treatment, and in reducing waste volume before shipping, and in conducting closure and corrective action. To address this issue, EPA proposed in Item G(1)(d) that new tanks performing these functions be allowed to operate for 90 days or less under Class 1 procedures, with prior Director approval. New tanks performing these functions for more than 90 days would be addressed under Class 2 procedures, even if they involved a greater than 25 percent increase in the facility's tank capacity (e.g., if the facility in question had limited or no tank capacity).

Introduction of temporary tank treatment units might also require changes in ancillary plans, such as closure, contingency, or personnel training plans. In this case, these changes are considered part of the overall permit modification required to

introduce these units at the facility, and will be approved under Class 1 procedures as well.

Comment was specifically requested on the classification of the temporary (i.e., less than 90 days) addition of tanks to perform neutralization, dewatering, phase separation, or component separation (G(1)(d)). Three commenters supported the classification of these changes as Class 1 with prior Agency approval, while none opposed it. In light of these comments, this modification has been identified as Class 1 with prior Agency approval in the final rule.

One additional commenter argued that stabilization should be added to the treatment activities included in Items G(1)(c) and (d). EPA acknowledges that this suggestion would simplify and expedite pretreatment of wastes at the time of disposal or unit closure. Further, the Agency believes that the requirement of Director approval would ensure that the stabilization takes place in conformance with Part 264 standards. However, the Agency also acknowledges that stabilization is a more complex process than the four processes identified in G(1)(d), and it recognizes the concerns of the negotiating committee and others about the addition of new units at facilities. Therefore, the Agency is not prepared at this time to include stabilization units in Category G(1)(d). It should be noted, however, that stabilization tanks—particularly when used for closure and corrective action—may often be eligible for temporary authorizations under § 270.42(e).

Item G(3) in the proposal would have allowed replacement of tanks as a Class 1 modification, as long as the new tank had a capacity of  $\pm 10\%$  of the old tank. However, the facility owner or operator was prohibited from using the additional capacity. Comment was requested on whether it is necessary to prohibit the owner/operator's use of the additional 10% capacity. Commenters overwhelmingly opposed the prohibition, arguing that such a prohibition would be difficult to implement, monitor, and enforce. EPA agrees and has removed the prohibition from G(3). The 10 percent variation would be limited to a maximum of 1,500 gallons since tanks of 15,000 gallons or more are usually made to order and therefore would not have to deviate significantly from the original tank size.

One commenter stated that the proposed exclusion in G(1)(a) (which lists as Class 3 the addition or modification of a tank unit leading to a greater than 25 percent increase in capacity) should refer to G(1)(d) (less than 90-day units) rather than G(1)(c)

(greater than 90-day units). The final rule includes an exclusion for both G(1)(c) and G(1)(d) because EPA does not believe that a capacity limitation should apply for either of these modifications.

Several commenters asked EPA to clarify that permit modifications would not be required where tanks (or containers) were operated at a facility in a manner that was exempt from RCRA permitting. EPA, therefore, explicitly acknowledges that units excluded from the permit standards of Part 264 would not be subject to permit modification procedures. Examples of such units are tanks or containers excluded under the generator accumulation provisions of § 262.34, the exemptions for wastewater treatment and neutralization tanks of § 264.1(g)(6), and the closed loop recycling exclusion of § 261.4(a)(8).

ii. *Surface Impoundments.* The surface impoundment permitting standards of 40 CFR Part 264, Subpart K are designed to prevent any migration of wastes out of the impoundment to adjacent soil, ground-water, or surface water. EPA has decided to allow Class 2 permit modifications involving surface impoundments only under the following circumstances: (1) Changes to an impoundment that do not increase the unit's capacity and that do not modify the liner, leak detection system, or leachate collection system, (2) changes to management practices at the impoundment, and (3) addition of new wastes under certain circumstances (as discussed in Section IV.C.5 of the preamble). Class 3 permit modifications are required for other changes, such as increased capacity or replacement of an impoundment. This approach is consistent with the proposal.

One commenter questioned how an improvement to a liner would be classified under Section H. The commenter's confusion on this point reflected the fact that the section on surface impoundment modifications in Appendix I of the proposal was not as complete as the sections for comparable units, such as landfills and waste piles. The final rule has been modified so that the surface impoundment modifications parallel those for landfills and unenclosed waste piles. This revision answers the commenter's concern: improvement to a liner without increasing the capacity of the impoundment would now be processed as a Class 2 change under H(3).

iii. *Waste Piles.* EPA has developed separate permit modification categories for two general types of waste piles. The first type of waste pile is one that is not inside or under a cover providing

protection from precipitation, or that otherwise does not qualify for the exemptions provided in § 264.250(c). Such units are referred to as "unenclosed waste piles," and are treated in the same manner as landfills for purposes of permit modifications. Since unenclosed waste piles are subject to essentially the same design, operating, monitoring, and inspection requirements as landfills, the Agency has decided that the permit modification requirements for these waste pile units should also be similar. The specific landfill permit modification requirements are discussed in the following section.

The second type of waste pile unit is the "enclosed waste pile"—i.e., waste piles that comply with § 264.250(c). Such waste piles are exempt from the ground-water monitoring requirements of Subpart F and from the § 264.251 requirements for liners, leachate collection systems, run-on and run-off control, and wind dispersal control. Section I of the appendix lists the modifications for enclosed waste piles.

Note that Item I(1)(b) treats unit changes or additions resulting in a capacity increase of 25 percent or less as Class 2 modifications. This is the same as for tank and container units. Further discussion of the operation and limitations of this Class 2 change can be found in Section IV.C.6.i above.

One commenter pointed out correctly that two references to § 265.250(c) in modification I should read § 264.250(c). This change has been made. Another commenter argued that Item I(3) should be reclassified as Class 2 unless the replacement waste pile will be in the same location as the old one. The commenter is concerned that the location will influence the structural stability of the enclosure and the potential for flooding. However, EPA disagrees because the unit must be of the same design as the previous unit and meet all of the waste pile conditions in the permit.

iv. *Landfills.* The permitting standards for landfills are found in 40 CFR Part 264, Subpart N. The list of permit modifications for landfills are presented in Section J of Appendix I. (As discussed above, these modifications also apply to unenclosed waste piles.)

EPA lists most changes at landfill facilities as Class 3 modifications. Class 2 applies only to changes that: (1) Do not affect a liner, leachate collection or detection system, run-off control or final cover system, (2) affect management practices at the landfill, and (3) involve the addition of new wastes under certain circumstances (see Section IV.C.5 of the preamble).

v. *Land Treatment Units.* The list of modifications to land treatment facilities relate primarily to changes in land treatment operating practices, monitoring of the unsaturated zone, and the treatment demonstration. The items listed are specific and self-explanatory.

In general, commenters on the proposal suggested the reclassification of certain land treatment permit modifications to expand the scope of Class 1 changes. One commenter suggested dividing K(2), modification of run-on control, into K(2)(a) for changes that decrease the amount of run-on (Class 1) and K(2)(b) for other changes (Class 2). The same commenter also suggested dividing K(3), modification of run-off control systems, into K(3)(a) for changes that involve management of non-hazardous run-off (Class 2) and K(3)(b) for changes that involve management of hazardous run-off (Class 3). Two commenters suggested that K(6) should be revised to split out any practice which would only lower the rate of waste application and to allow this change to be Class 1. Although the intent of the commenters is understandable, the Agency is particularly concerned about run-on and run-off systems at land treatment facilities. Therefore, EPA is amending K(6) to allow Class 1 procedures for activities that only decrease the waste application rate, but is not amending K(2) and K(3). The Agency, however, emphasizes that most of the concerns of the commenter could be addressed through carefully written permits, allowing flexibility in run-off and run-on standards.

Three commenters argued that K(7), which addresses certain changes in management practices, should be reclassified as a Class 1 modification for activities that improve the efficiency and operation of land treatment operations. EPA agrees that improvements in land treatment processes should be encouraged. However, it can be a difficult question in any given circumstance to determine whether a specific change will lead to an improvement. Therefore, the Agency has not revised K(7). At the same time, the Agency believes that many of the concerns identified by the commenters can be addressed through reasonable flexibility in permit writing. In addition, a land treatment owner or operator wishing to experiment with new methods to improve treatment might in some cases qualify for a temporary authorization.

One commenter stated that K(12), which deals with changes in background levels, should be a Class 2 modification to be consistent with proposed C(6),

since both concern the establishment of background values. EPA agrees that these two items are similar and should have comparable classifications. Thus, item K(12) has been reclassified as Class 2 to be consistent with the previously discussed ground-water classification.

One commenter argued that K(15), minor changes to a land treatment permit to reflect the results of the treatment demonstration, is basically the same as a minor modification under the current regulations and supported the reclassification of this item as a Class 1 modification. Since the procedures for a minor modification and a Class 1 modification with prior Director approval are similar, and the Agency is not aware of any difficulties caused by application of the minor modification procedures to these situations, K(15) is listed as a Class 1 modification, with prior Director approval, in the final rule.

EPA has made several conforming changes to the land treatment demonstration permitting provisions of § 270.63. Section 270.63(d) formerly specified procedures for modifying the second phase of a land treatment permit based on results of field tests or laboratory analyses. However, these procedures were designed, in part, to provide the owner or operator an opportunity to appeal the Director's decision on conditions in the second phase permit. Since this rule's modification approach provides for the appeal of any permit modification (see discussion at IV.B.6 above), there is no need to specify special appeals procedures. Therefore, § 270.63(d)(2) no longer will reference minor modifications. In addition, as a conforming change EPA has deleted the reference to minor modification in Section (d)(1), and combined existing Sections (d)(3) with (d)(1) for simplicity.

vi. *Incinerators.* Section L of Appendix I presents the classifications of permit modifications for incinerators. This Section is slightly reorganized from the proposal. Items L(1) and (2) address modifications to incinerators that result in capacity increases. Measures of incinerator capacity commonly used in permits are: (1) Thermal feed rate, (2) waste feed rate, or (3) organic chlorine feed rate. A Class 2 permit modification may be obtained for capacity increases up to 25 percent; beyond that, a Class 3 is required. Item L(3) specifies particular unit modifications that require the Class 3 approval process even if these changes result in less than a 25 percent capacity increase. This is because they can directly affect the achievement of the

performance standards specified in the permit.

Changes in Items L(1), (2), and (3) require trial burns unless the Director decides that the information that would be gained through the trial burn can be reasonably developed through other means. Items L(1), (2), and (3) allow the Director to waive the required trial burn if the permittee can make an acceptable demonstration that the performance standards would be met. Current EPA requirements pertaining to trial burns allow substitute demonstrations in lieu of trial burns under certain circumstances—normally where data are available from operational or trial burns at similar units. (See §§ 270.19(c), 270.62(b)(5), and 264.244(c).) The language is consistent with existing incinerator regulations. This language also appears in Items L(5)(a) and L(6)(a).

In the proposal, replacement of unit components with functionally equivalent components, was addressed in proposed Item L(3). This item has been dropped from the final rule since it is covered by item A(3). One commenter suggested that this provision should allow replacement of incinerator unit components with improved components. EPA believes that the definition of "functionally equivalent" provided in § 270.2 allows sufficient latitude for these types of changes under A(3). See preamble Section IV.C.2 for further discussion on Item A(3).

Item L(4) addresses changes to incinerator operating or monitoring requirements not likely to affect compliance with performance standards. Examples of these Class 2 changes include modification of the waste feed systems, quench systems, kiln refractory, or control instrumentation. The Director may require a trial burn if the modification could affect the capability of the incinerator to meet performance standards or could significantly change the operating conditions.

Changes to operating requirements are identified in Item L(5). Alteration of operating requirements that relate to the unit's capability to meet performance standards are designated Class 3 modifications. Changes to other operating requirements can be made under the Class 2 process. Trial burns may be required for the changes listed in Item L(5)(a).

Due to the nature of the trial burn and shutdown periods for new incinerators, changes often need to be made in the trial burn plan or in the permit conditions that apply to the incinerator before and immediately after the trial burn is conducted. Such changes are in Item L(7). Note that Items

L(7) (b), (c), and (d) are essentially unchanged from the current minor modifications in § 270.42 (k), (j), and (i).

One commenter expressed the opinion that positive changes designed to improve the pollution control mechanisms or the destruction capacities of incinerators under Item L(3) (formerly Item L(1)(c)) should be encouraged through a Class 1 designation. This is not feasible because technical changes to incinerator systems cannot easily be determined to be "positive" changes. Thus, a higher level of review, perhaps including a trial burn, is required to evaluate the actual effects of these types of system alterations on the environment.

Another commenter requested that improved inspection or recordkeeping procedures in Item L(5)(c) be Class 1 modifications. This issue was addressed earlier—increased inspections or recordkeeping would not adversely affect permit conditions and therefore do not require modification. The same commenter argued that wastes identified in the same waste codes as those previously incinerated should not be considered new wastes for the purposes of permit modification under Item L(6). The language of L(6) clearly indicates that the determining factor for whether a waste is considered new or not is the presence or absence of a Principal Organic Hazardous Constituent (POHC) that is more difficult to burn than authorized by the permit. Thus, the waste code is relevant only to the extent that wastes with the same waste code may have similar POHCs. EPA is not amending this modification as suggested because the incinerator permit standards are based on the presence or absence of POHCs, not on waste codes.

Another commenter suggested that the term "more difficult to incinerate" in L(6)(a) and L(6)(b) be replaced with "having a heat of combustion lower than the minimum." Heat of combustion has been suggested in past EPA guidance as one method to rank the incinerability of compounds. However, other incinerability ranking methods may be preferable to heat of combustion on a technical basis. Therefore, the suggested revision would make the regulation overly specific and narrow, and has not been incorporated.

An additional commenter argued that L(8), substitution of an alternate fuel, should be reclassified Class 2 or 3, due to the concern that fuel substitution could substantially alter the performance of the incinerator. EPA does not believe that this is a major concern since compliance with the destruction and emission levels required

by the regulations can be maintained by making adjustments when various fuels are used so that the incinerator maintains the operating conditions at which its destruction and removal efficiency (DRE) was demonstrated in the trial burn, as specified in the permit.

## 7. Closure

The closure activities identified in Section D of Appendix I stem from Part 264 Subpart G. Since § 264.112(a) specifies that the approved closure plan becomes incorporated as a condition of the permit, any changes to the plan must be made through the permit modification process. The classification of specific closure plan changes is presented in Appendix I, Item D(1).

Item D(1) classifies various changes to facility closure plans. This item has been somewhat revised since the proposal, because of public comment and further analysis of closure procedures. The major changes are discussed below.

First, Item D(1)(a)—estimate of maximum extent of operations and maximum inventory of wastes on site—is now categorized as a Class 1 modification with Director approval. In the proposal, the two estimates were treated separately. A change in the estimate of the maximum extent of operation was proposed to be Class 2, and a change in the estimate of maximum inventory of wastes was identified as a Class 1 change (without Director approval). These modifications, however, are of minor significance to the overall management of the facility and to human health and safety. They reflect the owner or operator's estimate of his or her actual and future activities at the facility, but the estimates in no case could exceed the facility's permitted capacity. Therefore, EPA believes that only limited review is necessary. However, because these estimates are critical in defining the scope of the closure plan and, in particular, the amount of financial assurance carried for closure, EPA believes that prior approval of changes in estimates should be required before the Class 1 modification takes effect. Consequently, changes to these estimates are established as Class 1 modifications with prior Director approval in today's rule.

Second, Item D(1)(b)—changes in the closure schedule for any unit, including approval of closure periods longer than 90 days or 180 days under § 264.113 (a) and (b)—was proposed as a Class 2 modification. The extension of the closure period beyond 90 and 180 days had previously been classified as a

minor modification. EPA does not believe that the procedures for requesting this modification should be substantially changed, and therefore is classifying extensions of the closure period under § 264.113 (a) and (b) as Class 1 modifications, with the Director's approval. In general, changes in closure schedules will involve modification of interim dates within the 90 and 180-day closure time periods. Even in cases where the period is extended beyond these dates, the changes will be relatively minor, as long as other modifications of the closure plan were not involved. Typically, they reflect delays due to equipment problems, bad weather, or similar factors. Where the delay also involves substantive modifications of the closure plan, those modifications have to undergo the permit modification procedures appropriate for that class of change.

Two other entries in Item D(1) have also been changed from the proposal in response to comments. First, D(1)(c), changes in estimates of the expected year of closure, has been changed from Class 1 to Class 1 with Director approval. Although a change in estimated year of closure is minor in terms of public health and the environment, it is important in determining the pay-in period for the closure trust fund. (In fact, current regulations require the owner or operator to estimate the date of final closure only if he or she is relying on a trust fund for financial assurance for closure.) Agency approval of changes in this estimate is necessary, because they may affect the pay-in rate to a trust fund and therefore the facility's financial assurance. Second, D(1)(d), changes in procedures for decontamination of facility equipment or structures, has been changed from Class 2 to Class 1, with Director approval. The Part 264 closure regulations establish general standards for decontamination, which have to be met in every case. The specific procedural details of how decontamination will be achieved are technical and generally best suited for a Class 1 designation.

Items D(2) and D(3) deal with permit modifications to allow the use of new units—for example, treatment tanks—during closure. In some cases, the use of specific units during closure may be anticipated in sufficient detail in the closure plan, and therefore a permit modification will not be necessary. However, the use of units not covered in the closure plan will generally require a permit modification to amend the plan (see § 264.112(c)). In practice, it is often

not possible for the permittee or the Agency, at the time of permit issuance, to anticipate the specific methods that will be best suited to close a facility ten or more years in the future. Therefore, EPA expects that facility owners will frequently introduce units during closure that were not included in the original closure plan.

The Agency has decided that the addition of units to perform closure should generally carry the same classification as adding the same types of units for other reasons (discussed in preceding sections of the preamble). However, the Agency believes it is not necessary to require a Class 3 modification for adding tanks, containers, or enclosed waste piles for closure that result in a capacity increase of more than 25 percent, as would be the case if such expansion occurred at an operating facility. Closure activities are generally of relatively short duration. Capacity increases resulting from the addition of these units to perform closure are temporary because following their use during closure, these units will also be closed. Therefore, the addition of these three types of units during closure are specified as Class 2. Items D(2) and (3) in the Appendix I contain the classification of these closure activities.

EPA has also considered the special case of tanks that neutralization, dewatering, phase separation, and component separation. (See the earlier discussion on tanks in Section IV.C.5.i of this preamble.) As described earlier, the Agency expects these four treatment operations to become increasingly available through the use of MTUs. MTUs are particularly well adapted to cleanup activities and closure of hazardous waste facilities. Therefore, in today's rule, EPA has classified the temporary addition of these specific tank units as a Class 1 modification with required Agency approval. (See Item D(3)(f).) This is consistent with the classification for these same units if used for fewer than 90 days to perform non-closure activities.

Comment was requested on whether the temporary addition of tanks that perform neutralization, dewatering, phase separation, and component separation for closure activities was appropriately classified in the proposal as a Class 1 modification with prior Agency approval. One comment supporting this modification was received. Thus, Item D(3)(f) has not been changed from the proposal.

Many additional changes beyond those listed in Appendix I are likely to be required for closure plans. EPA and the Negotiating Committee did not

attempt to identify every possible change, for example, in the unit-specific technical standards for closure. Where a specific change has not been identified, the owner or operator would have the option of using the Class 3 procedures, or requesting the Agency to classify the change under § 270.42(d). EPA, however, emphasizes that many potential changes in closure plans, such as changes in sampling or monitoring, are already included elsewhere in Appendix I. EPA also reiterates that, where the introduction of a new unit will require the modification of a facility's closure plan, review of the closure plan modification would take place under the same procedures as those required for the introduction of the new unit. For example, where new tanks are added to a facility as a Class 2 change, modifications in the closure plan to account for those tanks would take place under Class 2 procedures as well.

## 8. Post-Closure

Permitted facilities that must conduct post-closure activities must have an approved post-closure plan in their permits and must eventually have a post-closure permit. (See §§ 264.118(a) and 270.1(c).) Modifications to post-closure conditions are classified in Section E of Appendix I.

## 9. HSWA Corrective Action

Today's rule does not specifically address permit modifications that will take place as part of the HSWA corrective action process. Corrective action, however, will likely require one or more permit modifications after the permit has been issued. For example, corrective action permits now being issued by the Agency require a major permit modification at the time the Agency approves a remedy. During the permit modification regulatory negotiation, EPA and the other negotiators considered the possibility of specifically addressing corrective action and categorizing potential modifications as Class 1, 2, or 3. The negotiators, however, decided not to address such modifications, because the corrective action program was still under development and likely permit modification points were not yet well defined. Instead, EPA will explicitly address corrective action permit modifications as part of the section 3004(u) corrective action rule it is now developing. In the meantime, individual permits will specify where permits will be modified for corrective action, and modifications will generally take place under the procedures of § 270.41.

Although today's rule does not specifically address permit modifications that will occur during the corrective action process—such as at the point of remedy approval—it nevertheless provides significant flexibility for corrective actions voluntarily undertaken by the owner/operator. For example, temporary authorizations would allow an owner/operator to remediate specific problems more promptly, and the reduced procedures for certain new treatment units will promote voluntary action by owner/operators in anticipation of formal EPA action. Therefore, today's

rule should substantially facilitate corrective action at permitted facilities.

#### 10. Location of Minor Modifications in Today's Rule

In today's restructuring of §§ 270.41 and 270.42, the minor modifications previously located in § 270.42 (a) through (p) are now contained in Appendix I of § 270.42. For the convenience of the reader, the following chart cross references the former paragraphs of § 270.42 with their location in Appendix I, and the designated modification class is provided. Note that the minor modifications that addressed

management of restricted wastes (§ 270.42 (o) and (p)) are not covered under a single item in the Appendix. Rather, the specific classification under today's rule is dependent on the type of unit involved, the magnitude of additional unit capacity requested, and other factors. However, a temporary authorization may be obtained for these restricted waste activities as specified in § 270.42(e)(3)(ii)(B). Similarly, although several Appendix I categories address the land treatment modifications in the former § 270.42(1), temporary authorizations should be available for such changes.

TABLE 1.—LOCATION OF FORMER MINOR MODIFICATIONS IN APPENDIX I

Previous § 270.42 Provision	Appendix I Cite	Class
(a) Typographical errors.....	A.2.....	1.
(b) More frequent monitoring or reporting.....	A.4.a.....	1.
(c) Change in interim compliance date in a schedule of compliance.....	A.5.a.....	1. <sup>1</sup>
(d) Change in owner/operator.....	A.7.....	1. <sup>1</sup>
(e) Change in emergency coordinator or equipment.....	B.6.b.....	1.
(f) Change estimates of maximum inventory.....	D.1.b.....	1. <sup>1</sup>
(g) Change estimates of expected year or schedules for final closures.....	D.1.b.....	1. <sup>1</sup>
(h) Extend time allowed for closure.....	E.4.....	1.
(i) Minor change in operating requirements in the permit to reflect results of trial burn.....	D.1.c.....	1. <sup>1</sup>
(j) Minor change in operating requirements for conducting a trial burn.....	L.6.d.....	1. <sup>1</sup>
(k) Extension of up to 720 hours to determine operational readiness.....	L.6.c.....	1. <sup>1</sup>
(l) Minor change in land treatment program to improve treatment.....	L.6.b.....	1. <sup>1</sup>
(m) Minor change in land treatment permit to reflect results of treatment demonstration.....	Various (see text).....	1. <sup>1</sup>
(n) Allow second land treatment demonstration.....	K.15.....	1. <sup>1</sup>
(o) Allow treatment or storage of restricted waste in existing units.....	K.16.....	1. <sup>1</sup>
(p) Allow treatment or storage of restricted waste in new tank or container units provided a major modification is requested.....	§ 270.42(e)(3)(ii)(B).....	Temporary authorization.
	§ 270.42(e)(3)(ii)(B).....	Temporary authorization.

Note: Class 1<sup>1</sup> requires prior Director approval.

#### D. Conforming Changes to Permitting Regulations

As discussed in the preamble to the proposal, EPA has identified several other areas in the current RCRA permitting regulations—in addition to §§ 270.41 and 270.42—that need to be made consistent with today's rule. One commenter suggested three additional items that should also be changed. Therefore, today's rule adopts conforming changes to Parts 124, 264, 265, and 270 as presented in the proposal, with the additions suggested by the commenter, as discussed below.

Section 124.5 generally identifies which permit modifications must follow the full Part 124 permitting procedures. In § 124.5(c) we are adding a reference to § 270.42(c)—procedures for Class 3 permit modifications—to indicate that Class 3 changes must comply with the Part 124 procedures. Also, § 124.5(c)(3) is modified today to remove the reference to RCRA "minor modifications" and replace it with "Classes 1 and 2 modifications," indicating that they are

not subject to the full permitting requirements.

Part 264 specifies that the permittee must request a permit modification to amend an approved closure plan (§ 264.112(c)) or post-closure plan (§ 264.118(d)). The request must include a copy of the amended plan for approval by the Agency. However, since today's rule allows certain changes to closure or post-closure plans as Class 1 modifications, in such cases the permittee would not "request" a modification or seek "approval" of the amended plan. Instead, the permittee would notify the Agency of the Class 1 change. (See Section IV.B.1 for detailed discussion.) There is no Agency approval necessary for the Class 1 changes to these plans. Therefore, EPA is amending §§ 264.112(c) and 264.118(d) to allow "written notification" of Class 1 modifications. Also in Part 264, the comment at § 264.54 is deleted since it describes minor modifications to contingency plans that would be

inconsistent with today's new classification system.

Several conforming changes are identified for Part 270. First, three definitions are added to § 270.2: "Facility mailing list" is defined as meaning the list maintained by the Agency in accordance with § 124.10(c)(viii); this list is used to notify interested parties of permit modifications (as discussed in Section IV.B of this preamble). "Component" and "functionally equivalent component" are included in the definition section to more clearly specify the types of equipment changes that are allowed as Class 1 modifications in accordance with Item A(3) of Appendix I (discussed in Section IV.C.1 above).

In a second change to Part 270, EPA is adding a provision to § 270.4(a) stating "the permit may be modified upon the request of the permittee as set forth in § 270.42." This change is necessary to coincide with the restructuring of § 270.42 to address only permittee-initiated modifications.

Another change is made to § 270.30(1)(2) since this provision did not allow the permittee to use the modified portion of the facility until a certification was submitted to the Agency indicating the modification was in accordance with the permit and the Agency has an opportunity to inspect the modification. Under today's modification scheme, the requirements of § 270.30(1)(2) are not appropriate in many cases, particularly for Class 1 modifications and automatic authorizations. Therefore, the amendment to this provision allows the use of the modified portion of the facility as long as such use is in conformance with § 270.42.

Finally, EPA is deleting the reference to "minor modification" in § 270.40(a) (transfer of permits by modification) and § 270.62 (incinerator permits). These provisions continue to reference the permittee-initiated modifications that are available under § 270.42.

#### V. Other Issues

##### A. Permit Modification Form

Currently, there is no prescribed format for submitting permit modification requests. The RCRA regulations provide that in the case of a permit modification, the Director may require the submission of an updated permit application. (See § 124.5(c).) Today's changes to § 270.42 provide a more specific indication of the information that the permittee would have to submit. However, even with these changes, each permittee seeking a permit modification will have to decide the most appropriate way to assemble his or her submission.

In the proposal, EPA solicited comments on the desirability of a standardized form designed specifically for permit modification requests. The proposal discussed general objectives for such a form and suggested items that might be included. Three commenters supported the development of a form, while one commenter opposed the use of a form saying that the format for a permit modification should be left up to the permittee to provide maximum flexibility.

EPA is not pursuing any further action on the permit modification form in today's rulemaking, but will instead continue to consider the merits of that approach for possible future action.

#### VI. State Authority

##### A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR

Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State where the State was authorized to issue permits. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C 6926(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA requirements are applied by EPA in authorized States in the interim.

##### B. Effect on State Authorizations

Today's rule is imposed pursuant to pre-HSWA authority. Therefore, these new permit modification procedures are applicable in those States that do not have interim or final authorization. In authorized States, the new procedures may not be used to modify State-issued permits unless the State revises its program to adopt equivalent requirements under State law. However, EPA may use today's permit modification procedures in authorized States where necessary to implement HSWA provisions (e.g., for modifying EPA-issued HSWA permits to allow compliance with corrective action, land disposal restrictions, or other HSWA requirements).

It should be noted that authorized States are only required to modify their programs when EPA promulgates Federal standards that are more stringent or broader in scope than the existing Federal standards. Section 3009 of RCRA allows States to impose standards more stringent than or in addition to those in the Federal program.

The amendments in today's rule are not considered to be more stringent than the existing Federal requirements. Therefore, authorized States are not required to modify their programs to adopt requirements equivalent to the provisions contained in today's rule.

The Agency recognizes that there are several aspects to today's rule that could be viewed as more stringent than the current major/minor modification system. For example, there are public notification requirements for Class 1 modifications, whereas no notification is required for similar minor modifications. However, these notifications were established as a tradeoff for allowing the facility to proceed with the changes without approval. (There is no counterpart in the existing minor modification process for these immediate modifications without prior approval.) As in this example, the other aspects of today's rule that could be considered more stringent are integral parts of this new modification approach and are not applicable to the existing major/minor modification process. Therefore, the Agency decided that today's rule, when considered in its entirety, is not more stringent than the major/minor modification process which it replaces.

##### C. State Authorization Options

Although today's permit modification rule is deemed to be not more stringent than the major/minor modification process it replaces, EPA believes that this new approach will contribute to more efficient and effective State programs. The need to revise the existing permit modification process was acknowledged by the Regulatory Negotiation Committee that developed the basis for the September 23, 1987 proposed rule, and the vast majority of commenters on the proposal echoed that changes in the system are desirable. For these reasons, as well as the other reasons discussed throughout the preamble, EPA strongly encourages states to adopt this permit modification rule as promulgated.

Several States indicated concerns about the automatic authorization ("default") provision in the Class 2 process since it would conflict with existing state laws. Although the default provision is an important feature of today's rule, the Agency does not want to prevent states from adopting these new permit modification procedures solely because the state is unable or unwilling to pick up the default mechanism. Therefore, states may receive authorization for today's rule without incorporating the Class 2 default

procedure; however, such states will be expected to process these Class 2 modification requests promptly (e.g., generally within the 120 days allowed in the Class 2 process), or within 300 days if a temporary authorization is in effect). It is especially important that prompt action be taken on facility modifications involving corrective action or new treatment capabilities.

Even in States that may want to retain the basic major/minor modification process, there are certain parts of today's rule that they may want to adopt. States may amend their programs to incorporate selected portions of this rule so long as the overall effect of their program is no less stringent than the Federal program. Examples of possible components of today's rule that States could adopt are discussed below.

#### New Waste Provision

Agency efforts to promulgate a revised toxicity characteristic and other actions to list new wastes will generate a significant number of permit modifications. The new procedure in § 270.42(g) corrects an inequity in the treatment of permitted facilities in comparison to interim status facilities and should result in much less disruption of waste management when new wastes are identified.

#### Class 1 Modifications

These Class 1 procedures could be added as a supplement to the major/minor system to provide for prompt implementation of the Class 1 changes identified in Appendix I. In this case, those Class 1 changes that require prior director approval should follow the minor modification procedures while the remaining Class 1 changes would just require notification to the Director. Another alternative would be to just add all the Class 1 items in Appendix I to the state's list of minor modifications.

#### Temporary Authorizations

With this mechanism the Director can allow a facility to respond promptly to closure activities, corrective action, sudden changes in the types or quantities of wastes managed at the facility, etc.

#### VII. Effective Date

This rule will be effective 30 days after final promulgation. Section 3010(b) of RCRA provides that regulations concerning permits for the treatment, storage, or disposal of hazardous waste shall take effect six months after the date of promulgation. However, section 3010(b)(1) provides for a shorter period if the Agency finds that the regulated

community does not need six months to comply with the new regulation.

Since today's rule is designed to expedite permit modifications requested by the regulated community, the Agency believes that the regulated community will not need six months to come into compliance. Therefore, these amendments are effective 30 days after promulgation, as provided under the Administrative Procedure Act.

#### VIII. Regulatory Analysis

##### A. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major" and thus whether EPA must prepare and consider a Regulatory Impact Analysis in connection with the rule. Today's rule is not major because it will not result in an annual effect on the economy of \$100 million or more, nor will it result in an increase in costs or prices to industry. There will be no adverse impact on the ability of the U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, the Agency does not believe a Regulatory Impact Analysis is required for today's rule. Today's rule has been submitted to the Office of Management and Budget (OMB) for review in accordance with Executive Order 12291.

##### B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, at the time an agency publishes any proposed or final rule, it must prepare a regulatory flexibility analysis that describes the impact of the rule on small entities unless the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The amendments in today's rule provide additional flexibility for hazardous waste treatment, storage, and disposal facilities to undertake changes and overall do not affect the compliance burdens of the regulated community. Therefore, pursuant to 5 U.S.C. 601(b), I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

#### List of Subjects

##### 40 CFR Part 124

Administrative practice and procedure, Hazardous waste, Waste treatment and disposal.

##### 40 CFR Part 264

Corrective action, Hazardous waste, Reporting and recordkeeping requirements, Waste treatment and disposal.

##### 40 CFR Part 265

Corrective action, Hazardous waste, Reporting and recordkeeping requirements, Waste treatment and disposal.

##### 40 CFR Part 270

Administrative practice and procedure, Hazardous waste, Reporting and recordkeeping requirements, Permit application requirements, Permit modification procedures, Waste treatment and disposal.

Dated: September 12, 1988.

Lee M. Thomas,  
Administrator.

Therefore, Subchapter I of Title 40 is amended as follows:

#### PART 124—PROCEDURES FOR DECISIONMAKING

1. The authority citation for Part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300(f) *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.*; and Clean Air Act, 42 U.S.C. 1857 *et seq.*

2. Section 124.5 is amended by revising paragraphs (c)(1) and (c)(3) to read as follows:

##### § 124.5 Modification revocation and reissuance, or termination of permits.

(c) (Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA)). (1) If the Director tentatively decides to modify or revoke and reissue a permit under §§ 122.62 (NPDES), 144.39 (UIC), 233.14 (404), or 270.41 or 270.42(c) (RCRA), he or she shall prepare a draft permit under § 124.6 incorporating the proposed changes. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, the Director shall require the submission of a new application.

(3) "Minor modifications" as defined in §§ 122.63 (NPDES), 144.41 (UIC), and 233.16 (404), and "Classes 1 and 2 modifications" as defined in § 270.42 (a) and (b) (RCRA) are not subject to the requirements of this section.

#### PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

3. The authority citation for Part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

**§ 264.54 [Amended]**

4. Section 264.54 is amended by removing the comment.

5. In § 264.112, paragraph (c) introductory text, (c)(1), and (c)(2) are revised to read as follows:

**§ 264.112 Closure plan; amendment of plan.**

(c) *Amendment of plan.* The owner or operator must submit a written notification of or request for a permit modification to authorize a change in operating plans, facility design, or the approved closure plan in accordance with the applicable procedures in Parts 124 and 270. The written notification or request must include a copy of the amended closure plan for review or approval by the Regional Administrator.

(1) The owner or operator may submit a written notification or request to the Regional Administrator for a permit modification to amend the closure plan at any time prior to the notification of partial or final closure of the facility.

(2) The owner or operator must submit a written notification of or request for a permit modification to authorize a change in the approved closure plan whenever:

6. In § 264.118, paragraphs (d) introductory text, (d)(1), and (d)(2) introductory text, are revised to read as follows:

**§ 264.118 Post-closure plan; amendment of plan.**

(d) *Amendment of plan.* The owner or operator must submit a written notification of or request for a permit modification to authorize a change in the approved post-closure plan in accordance with the applicable requirements in Parts 124 and 270. The written notification or request must include a copy of the amended post-closure plan for review or approval by the Regional Administrator.

(1) The owner or operator may submit a written notification or request to the Regional Administrator for a permit modification to amend the post-closure plan at any time during the active life of the facility or during the post-closure care period.

(2) The owner or operator must submit a written notification of or request for a permit modification to authorize a change in the approved post-closure plan whenever:

**PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES**

6a. The authority citation for Part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

7. In § 265.112, the last sentences in paragraphs (c)(3) and (c)(4) are revised to read as follows:

**§ 265.112 Closure plan; amendment of plan.**

(c) \* \* \*  
(3) \* \* \* If the amendment to the plan is a Class 2 or 3 modification according to the criteria in § 270.42, the modification to the plan will be approved according to the procedures in § 265.112(d)(4).

(4) \* \* \* If the amendment is considered a Class 2 or 3 modification according to the criteria in § 270.42, the modification to the plan will be approved in accordance with the procedures in § 265.112(d)(4).

8. In § 265.118, the last sentence in paragraph (d)(3) and the third sentence in paragraph (d)(4) are revised to read as follows:

**§ 265.118 Post-closure plan; amendment of plan.**

(d) \* \* \*  
(3) \* \* \* If the amendment to the post-closure plan is a Class 2 or 3 modification according to the criteria in § 270.42, the modification to the plan will be approved according to the procedures in § 265.118(f).

(4) \* \* \* If the amendment to the plan is considered a Class 2 or 3 modification according to the criteria in § 270.42, the modifications to the post-closure plan will be approved in accordance with the procedures in § 265.118(f). \* \* \*

**PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM**

9. The authority citation for Part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

10. Section 270.2 is amended by adding the following terms and definitions in alphabetical order:

**§ 270.2 [Amended]**

*Component* means any constituent part of a unit or any group of constituent

parts of a unit which are assembled to perform a specific function (e.g., a pump seal, pump, kiln liner, kiln thermocouple).

*Facility mailing list* means the mailing list for a facility maintained by EPA in accordance with 40 CFR 124.10(c)(viii).

*Functionally equivalent component* means a component which performs the same function or measurement and which meets or exceeds the performance specifications of another component.

11. In § 270.4, the last sentence of paragraph (a) is revised to read as follows:

**§ 270.4 Effect of a permit.**

(a) \* \* \* However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in §§ 270.41 and 270.43, or the permit may be modified upon the request of the permittee as set forth in § 270.42.

12. In § 270.30, paragraph (l)(2) introductory text is revised to read as follows:

**§ 270.30 Conditions applicable to all permits.**

(l) \* \* \*

(2) *Anticipated noncompliance.* The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements. For a new facility, the permittee may not treat, store, or dispose of hazardous waste; and for a facility being modified, the permittee may not treat, store, or dispose of hazardous waste in the modified portion of the facility except as provided in § 270.42, until:

13. Section 270.40 is revised to read as follows:

**§ 270.40 Transfer of permits.**

(a) A permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued (under § 270.40(b) or § 270.41(b)(2)) to identify the new permittee and incorporate such other requirements as may be necessary under the appropriate Act.

(b) Changes in the ownership or operational control of a facility may be made as a Class 1 modification with prior written approval of the Director in

accordance with § 270.42. The new owner or operator must submit a revised permit application no later than 90 days prior to the scheduled change. A written agreement containing a specific date for transfer of permit responsibility between the current and new permittees must also be submitted to the Director. When a transfer of ownership or operational control occurs, the old owner or operator shall comply with the requirements of 40 CFR Part 264, Subpart H (Financial Requirements) until the new owner or operator has demonstrated that he or she is complying with the requirements of that Subpart. The new owner or operator must demonstrate compliance with Subpart H requirements within six months of the date of the change of ownership or operational control of the facility. Upon demonstration to the Director by the new owner or operator of compliance with Subpart H, the Director shall notify the old owner or operator that he or she no longer needs to comply with Subpart H as of the date of demonstration.

14. Section 270.41 is amended by revising the section heading, the introductory text and paragraph (a)(3) and by removing paragraph (a)(5), and redesignating existing paragraph (a)(6) as (a)(5) to read as follows:

**§ 270.41 Modification or revocation and reissuance of permits.**

When the Director receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit (see § 270.30), receives a request for revocation and reissuance under § 124.5 or conducts a review of the permit file), he or she may determine whether one or more of the causes listed in paragraphs (a) and (b) of this section for modification, or revocation and reissuance or both exist. If cause exists, the Director may modify or revoke and reissue the permit accordingly, subject to the limitations of paragraph (c) of this section, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. (See 40 CFR 124.5(c)(2).) If cause does not exist under this section, the Director shall not modify or revoke and reissue the permit, except on request of the permittee. If a permit modification is requested by the permittee, the Director shall approve or deny the request according to the procedures of 40 CFR 270.42. Otherwise, a draft permit must be prepared and

other procedures in Part 124 (or procedures of an authorized State program) followed.

(a) \* \* \*

(3) *New statutory requirements or regulations.* The standards or regulations on which the permit was based have been changed by statute, through promulgation of new or amended standards or regulations, or by judicial decision after the permit was issued.

\* \* \* \* \*

15. Section 270.42 is revised to read as follows:

**§ 270.42 Permit modification at the request of the permittee.**

(a) *Class 1 modifications.* (1) Except as provided in paragraph (a)(2) of this section, the permittee may put into effect Class 1 modifications listed in Appendix I of this section under the following conditions:

(i) The permittee must notify the Director concerning the modification by certified mail or other means that establish proof of delivery within 7 calendar days after the change is put into effect. This notice must specify the changes being made to permit conditions or supporting documents referenced by the permit and must explain why they are necessary. Along with the notice, the permittee must provide the applicable information required by §§ 270.13 through 270.21, 270.62, and 270.63.

(ii) The permittee must send a notice of the modification to all persons on the facility mailing list, maintained by the Director in accordance with 40 CFR 124.10(c)(viii), and the appropriate units of State and local government, as specified in 40 CFR 124.10(c)(ix). This notification must be made within 90 calendar days after the change is put into effect. For the Class I modifications that require prior Director approval, the notification must be made within 90 calendar days after the Director approves the request.

(iii) Any person may request the Director to review, and the Director may for cause reject, any Class 1 modification. The Director must inform the permittee by certified mail that a Class 1 modification has been rejected, explaining the reasons for the rejection. If a Class 1 modification has been rejected, the permittee must comply with the original permit conditions.

(2) Class 1 permit modifications identified in Appendix I by an asterisk may be made only with the prior written approval of the Director.

(3) For a Class 1 permit modification, the permittee may elect to follow the procedures in § 270.42(b) for Class 2

modifications instead of the Class 1 procedures. The permittee must inform the Director of this decision in the notice required in § 270.42(b)(1).

(b) *Class 2 modifications.* (1) For Class 2 modifications, listed in Appendix I of this section, the permittee must submit a modification request to the Director that:

(i) Describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(ii) Identifies that the modification is a Class 2 modification;

(iii) Explains why the modification is needed; and

(iv) Provides the applicable information required by §§ 270.13 through 270.21, 270.62, and 270.63.

(2) The permittee must send a notice of the modification request to all persons on the facility mailing list maintained by the Director and to the appropriate units of State and local government as specified in 40 CFR 124.10(c)(ix) and must publish this notice in a major local newspaper of general circulation. This notice must be mailed and published within 7 days before or after the date of submission of the modification request, and the permittee must provide to the Director evidence of the mailing and publication. The notice must include:

(i) Announcement of a 60-day comment period, in accordance with § 270.42(b)(5), and the name and address of an Agency contact to whom comments must be sent;

(ii) Announcement of the date, time, and place for a public meeting held in accordance with § 270.42(b)(4);

(iii) Name and telephone number of the permittee's contact person;

(iv) Name and telephone number of an Agency contact person;

(v) Location where copies of the modification request and any supporting documents can be viewed and copied; and

(vi) The following statement: "The permittee's compliance history during the life of the permit being modified is available from the Agency contact person."

(3) The permittee must place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.

(4) The permittee must hold a public meeting no earlier than 15 days after the publication of the notice required in paragraph (b)(2) of this section and no later than 15 days before the close of the 60-day comment period. The meeting

must be held to the extent practicable in the vicinity of the permitted facility.

(5) The public shall be provided 60 days to comment on the modification request. The comment period will begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the Agency contact identified in the public notice.

(6)(i) No later than 90 days after receipt of the notification request, the Director must:

(A) Approve the modification request, with or without changes, and modify the permit accordingly;

(B) Deny the request;

(C) Determine that the modification request must follow the procedures in § 270.42(c) for Class 3 modifications for the following reasons:

(1) There is significant public concern about the proposed modification; or

(2) The complex nature of the change requires the more extensive procedures of Class 3.

(D) Approve the request, with or without changes, as a temporary authorization having a term of up to 180 days, or

(E) Notify the permittee that he or she will decide on the request within the next 30 days.

(ii) If the Director notifies the permittee of a 30-day extension for a decision, the Director must, no later than 120 days after receipt of the modification request:

(A) Approve the modification request, with or without changes, and modify the permit accordingly;

(B) Deny the request; or

(C) Determine that the modification request must follow the procedures in § 270.42(c) for Class 3 modifications for the following reasons:

(1) There is significant public concern about the proposed modification; or

(2) The complex nature of the change requires the more extensive procedures of Class 3.

(D) Approve the request, with or without changes, as a temporary authorization having a term of up to 180 days.

(iii) If the Director fails to make one of the decisions specified in paragraph (b)(6)(ii) of this section by the 120th day after receipt of the modification request, the permittee is automatically authorized to conduct the activities described in the modification request for up to 180 days, without formal Agency action. The authorized activities must be conducted as described in the permit modification request and must be in compliance with all appropriate standards of 40 CFR Part 265. If the Director approves, with or without

changes, or denies the modification request during the term of the temporary or automatic authorization provided for in paragraphs (b)(6) (i), (ii), or (iii) of this section, such action cancels the temporary or automatic authorization.

(iv)(A) In the case of an automatic authorization under paragraph (b)(6)(iii) of this section, or a temporary authorization under paragraph (b)(6) (i)(D) or (ii)(D) of this section, if the Director has not made a final approval or denial of the modification request by the date 50 days prior to the end of the temporary or automatic authorization, the permittee must within seven days of that time send a notification to persons on the facility mailing list, and make a reasonable effort to notify other persons who submitted written comments on the modification request, that:

(1) The permittee has been authorized temporarily to conduct the activities described in the permit modification request, and

(2) Unless the Director acts to give final approval or denial of the request by the end of the authorization period, the permittee will receive authorization to conduct such activities for the life of the permit.

(B) If the owner/operator fails to notify the public by the date specified in paragraph (b)(6)(iv)(A) of this section, the effective date of the permanent authorization will be deferred until 50 days after the owner/operator notifies the public.

(v) Except as provided in paragraph (b)(6)(vii) of this section, if the Director does not finally approve or deny a modification request before the end of the automatic or temporary authorization period or reclassify the modification as a Class 3, the permittee is authorized to conduct the activities described in the permit modification request for the life of the permit unless modified later under § 270.41 or § 270.42. The activities authorized under this paragraph must be conducted as described in the permit modification request and must be in compliance with all appropriate standards of 40 CFR Part 265.

(vi) In making a decision to approve or deny a modification request, including a decision to issue a temporary authorization or to reclassify a modification as a Class 3, the Director must consider all written comments submitted to the Agency during the public comment period and must respond in writing to all significant comments in his or her decision.

(vii) With the written consent of the permittee, the Director may extend indefinitely or for a specified period the time periods for final approval or denial

of a modification request or for reclassifying a modification as a Class 3.

(7) The Director may deny or change the terms of a Class 2 permit modification request under paragraphs (b)(6) (i) through (iii) of this section for the following reasons:

(i) The modification request is incomplete;

(ii) The requested modification does not comply with the appropriate requirements of 40 CFR Part 264 or other applicable requirements; or

(iii) The conditions of the modification fail to protect human health and the environment.

(8) The permittee may perform any construction associated with a Class 2 permit modification request beginning 60 days after the submission of the request unless the Director establishes a later date for commencing construction and informs the permittee in writing before day 60.

(c) *Class 3 modifications.* (1) For Class 3 modifications listed in Appendix I of this section, the permittee must submit a modification request to the Director that:

(i) Describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(ii) Identifies that the modification is a Class 3 modification;

(iii) Explains why the modification is needed; and

(iv) Provides the applicable information required by 40 CFR 270.13 through 270.21, 270.62 and 270.63.

(2) The permittee must send a notice of the modification request to all persons on the facility mailing list maintained by the Director and to the appropriate units of State and local government as specified in 40 CFR 124.10(c)(ix) and must publish this notice in a major local newspaper of general circulation. This notice must be mailed and published within seven days before or after the date of submission of the modification request, and the permittee must provide to the Director evidence of the mailing and publication. The notice must include:

(i) Announcement of a 60-day comment period, and a name and address of an Agency contact to whom comments must be sent;

(ii) Announcement of the date, time, and place for a public meeting on the modification request, in accordance with § 270.42(c)(4);

(iii) Name and telephone number of the permittee's contact person;

(iv) Name and telephone number of an Agency contact person;

(v) Location where copies of the modification request and any supporting

documents can be viewed and copied; and

(vi) The following statement: "The permittee's compliance history during the life of the permit being modified is available from the Agency contact person."

(3) The permittee must place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.

(4) The permittee must hold a public meeting no earlier than 15 days after the publication of the notice required in paragraph (c)(2) of this section and no later than 15 days before the close of the 60-day comment period. The meeting must be held to the extent practicable in the vicinity of the permitted facility.

(5) The public shall be provided at least 60 days to comment on the modification request. The comment period will begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the Agency contact identified in the notice.

(6) After the conclusion of the 60-day comment period, the Director must grant or deny the permit modification request according to the permit modification procedures of 40 CFR Part 124. In addition, the Director must consider and respond to all significant written comments received during the 60-day comment period.

(d) *Other modifications.* (1) In the case of modifications not explicitly listed in Appendix I of this section, the permittee may submit a Class 3 modification request to the Agency, or he or she may request a determination by the Director that the modification should be reviewed and approved as a Class 1 or Class 2 modification. If the permittee requests that the modification be classified as a Class 1 or 2 modification, he or she must provide the Agency with the necessary information to support the requested classification.

(2) The Director shall make the determination described in paragraph (d)(1) of this section as promptly as practicable. In determining the appropriate class for a specific modification, the Director shall consider the similarity of the modification to other modifications codified in Appendix I and the following criteria:

(i) Class 1 modifications apply to minor changes that keep the permit current with routine changes to the facility or its operation. These changes do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment. In the case of Class 1

modifications, the Director may require prior approval.

(ii) Class 2 modifications apply to changes that are necessary to enable a permittee to respond, in a timely manner, to,

(A) Common variations in the types and quantities of the wastes managed under the facility permit;

(B) Technological advancements; and  
(C) Changes necessary to comply with new regulations, where these changes can be implemented without substantially changing design specifications or management practices in the permit.

(iii) Class 3 modifications substantially alter the facility or its operation.

(e) *Temporary authorizations.* (1) Upon request of the permittee, the Director may, without prior public notice and comment, grant the permittee a temporary authorization in accordance with this subsection. Temporary authorizations must have a term of not more than 180 days.

(2)(i) The permittee may request a temporary authorization for:

(A) Any Class 2 modification meeting the criteria in paragraph (e)(3)(ii) of this section; and

(B) Any Class 3 modification that meets the criteria in paragraph (3)(ii) (A) or (B) of this section; or that meets the criteria in paragraphs (3)(ii) (C) through (E) of this section and provides improved management or treatment of a hazardous waste already listed in the facility permit.

(ii) The temporary authorization request must include:

(A) A description of the activities to be conducted under the temporary authorization;

(B) An explanation of why the temporary authorization is necessary; and

(C) Sufficient information to ensure compliance with 40 CFR Part 264 standards.

(iii) The permittee must send a notice about the temporary authorization request to all persons on the facility mailing list maintained by the Director and to appropriate units of State and local governments as specified in 40 CFR 124.10(c)(ix). This notification must be made within seven days of submission of the authorization request.

(3) The Director shall approve or deny the temporary authorization as quickly as practical. To issue a temporary authorization, the Director must find:

(i) The authorized activities are in compliance with the standards of 40 CFR Part 264.

(ii) The temporary authorization is necessary to achieve one of the

following objectives before action is likely to be taken on a modification request:

(A) To facilitate timely implementation of closure or corrective action activities;

(B) To allow treatment or storage in tanks or containers of restricted wastes in accordance with 40 CFR Part 268;

(C) To prevent disruption of ongoing waste management activities;

(D) To enable the permittee to respond to sudden changes in the types or quantities of the wastes managed under the facility permit; or

(E) To facilitate other changes to protect human health and the environment.

(4) A temporary authorization may be reissued for one additional term of up to 180 days provided that the permittee has requested a Class 2 or 3 permit modification for the activity covered in the temporary authorization; and:

(i) The reissued temporary authorization constitutes the Director's decision on a Class 2 permit modification in accordance with paragraph (b)(6)(i)(D) or (ii)(D) of this section; or

(ii) The Director determines that the reissued temporary authorization involving a Class 3 permit modification request is warranted to allow the authorized activities to continue while the modification procedures of paragraph (c) of this section are conducted.

(f) *Public notice and appeals of permit modification decisions.* (1) The Director shall notify persons on the facility mailing list and appropriate units of State and local government within 10 days of any decision under this section to grant or deny a Class 2 or 3 permit modification request. The Director shall also notify such persons within 10 days after an automatic authorization for a Class 2 modification goes into effect under § 270.42(b)(6) (iii) or (v).

(2) The Director's decision to grant or deny a Class 2 or 3 permit modification request under this section may be appealed under the permit appeal procedures of 40 CFR 124.19.

(3) An automatic authorization that goes into effect under § 270.42(b)(6) (iii) or (v) may be appealed under the permit appeal procedures of 40 CFR 124.19; however, the permittee may continue to conduct the activities pursuant to the automatic authorization until the appeal has been granted pursuant to § 124.19(c), notwithstanding the provisions of § 124.15(b).

(g) *Newly listed or identified wastes.*

(1) The permittee is authorized to continue to manage wastes listed or

identified as hazardous under 40 CFR Part 261 if he or she:

(i) Was in existence as a hazardous waste facility with respect to the newly listed or characterized waste on the effective date of the final rule listing or identifying the waste;

(ii) Submits a Class 1 modification request on or before the date on which the waste becomes subject to the new requirements;

(iii) Is in compliance with the standards of 40 CFR Part 265;

(iv) In the case of Classes 2 and 3 modifications, also submits a complete permit modification request within 180 days after the effective date of the rule listing or identifying the waste; and

(v) In the case of land disposal units, certifies that such unit is in compliance with all applicable Part 265 ground-water monitoring and financial responsibility requirements on the date 12 months after the effective date of the rule identifying or listing the waste as hazardous. If the owner or operator fails to clarify compliance with these requirements, he or she shall lose authority to operate under this section.

(2) New wastes or units added to a facility's permit under this subsection do

not constitute expansions for the purpose of the 25 percent capacity expansion limit for Class 2 modifications.

(h) *Permit modification list.* The Director must maintain a list of all approved permit modifications and must publish a notice once a year in a State-wide newspaper that an updated list is available for review.

16. In § 270.62, the last sentence of paragraph (a) and the last sentence of paragraph (b)(10) are revised to read as follows:

**§ 270.62 Hazardous waste incinerator permits.**

(a) \* \* \* The permit may be modified to reflect the extension according to § 270.42 of this chapter.

\* \* \* \* \*

(b) \* \* \*

(10) \* \* \*

The permit modification shall proceed according to § 270.42.

\* \* \* \* \*

17. In § 270.63, paragraph (d)(3) is removed and paragraphs (d)(1) and (d)(2) are revised to read as follows:

**§ 270.63 Permits for land treatment demonstrations using field test or laboratory analyses.**

\* \* \* \* \*

(d) \* \* \*

(1) This permit modification may proceed under § 270.42, or otherwise will proceed as a modification under § 270.41(a)(2). If such modifications are necessary, the second phase of the permit will become effective only after those modifications have been made.

(2) If no modifications of the second phase of the permit are necessary, the Director will give notice of his final decision to the permit applicant and to each person who submitted written comments on the phased permit or who requested notice of the final decision on the second phase of the permit. The second phase of the permit then will become effective as specified in § 124.15(b).

18. Section 270.42 is amended by adding Appendix I to read as follows:

**§ 270.42 Permit modification at the request of the permittee.**

\* \* \* \* \*

**Appendix I to § 270.42—Classification of Permit Modification**

Modifications	Class
<b>A. General Permit Provisions</b>	
1. Administrative and informational changes.....	1
2. Correction of typographical errors.....	1
3. Equipment replacement or upgrading with functionally equivalent components (e.g., pipes, valves, pumps, conveyors, controls).....	1
4. Changes in the frequency of or procedures for monitoring, reporting, sampling, or maintenance activities by the permittee:	
a. To provide for more frequent monitoring, reporting, sampling, or maintenance.....	1
b. Other changes.....	2
5. Schedule of compliance:	
a. Changes in interim compliance dates, with prior approval of the Director.....	1
b. Extension of final compliance date.....	3
6. Changes in expiration date of permit to allow earlier permit termination, with prior approval of the Director.....	1
7. Changes in ownership or operational control of a facility, provided the procedures of § 270.40(b) are followed.....	1
<b>B. General Facility Standards</b>	
1. Changes to waste sampling or analysis methods:	
a. To conform with agency guidance or regulations.....	1
b. Other changes.....	2
2. Changes to analytical quality assurance/control plan:	
a. To conform with agency guidance or regulations.....	1
b. Other changes.....	2
3. Changes in procedures for maintaining the operating record.....	1
4. Changes in frequency or content of inspection schedules.....	2
5. Changes in the training plan:	
a. That affect the type or decrease the amount of training given to employees.....	2
b. Other changes.....	1
6. Contingency plan:	
a. Changes in emergency procedures (i.e., spill or release response procedures).....	2
b. Replacement with functionally equivalent equipment, upgrade, or relocate emergency equipment listed.....	1
c. Removal of equipment from emergency equipment list.....	2
d. Changes in name, address, or phone number of coordinators or other persons or agencies identified in the plan.....	1
Note: When a permit modification (such as introduction of a new unit) requires a change in facility plans or other general facility standards, that change shall be reviewed under the same procedures as the permit modification.	
<b>C. Ground-Water Protection</b>	
1. Changes to wells:	
a. Changes in the number, location, depth, or design of upgradient or downgradient wells of permitted ground-water monitoring system.....	2
b. Replacement of an existing well that has been damaged or rendered inoperable, without change to location, design, or depth of the well.....	1
2. Changes in ground-water sampling or analysis procedures or monitoring schedule, with prior approval of the Director.....	1
3. Changes in statistical procedure for determining whether a statistically significant change in ground-water quality between upgradient and downgradient wells has occurred, with prior approval of the Director.....	1
4. Changes in point of compliance.....	2
5. Changes in indicator parameters, hazardous constituents, or concentration limits (including ACLs):	
a. As specified in the groundwater protection standard.....	3
b. As specified in the detection monitoring program.....	2

Modifications	Class
6. Changes to a detection monitoring program as required by § 264.98(j), unless otherwise specified in this appendix.....	2
7. Compliance monitoring program:	
a. Addition of compliance monitoring program as required by §§ 264.98(h)(4) and 264.99.....	3
b. Changes to a compliance monitoring program as required by § 264.99(k), unless otherwise specified in this appendix.....	2
8. Corrective action program:	
a. Addition of a corrective action program as required by §§ 264.99(i)(2) and 264.100.....	3
b. Changes to a corrective action program as required by § 264.100(h), unless otherwise specified in this Appendix.....	2
D. Closure	
1. Changes to the closure plan:	
a. Changes in estimate of maximum extent of operations or maximum inventory of waste on-site at any time during the active life of the facility, with prior approval of the Director.....	1 1
b. Changes in the closure schedule for any unit, changes in the final closure schedule for the facility, or extension of the closure period, with prior approval of the Director.....	1 1
c. Changes in the expected year of final closure, where other permit conditions are not changed, with prior approval of the Director.....	1 1
d. Changes in procedures for decontamination of facility equipment or structures, with prior approval of the Director.....	1 1
e. Changes in approved closure plan resulting from unexpected events occurring during partial or final closure, unless otherwise specified in this appendix.....	2
2. Creation of a new landfill unit as part of closure.....	3
3. Addition of the following new units to be used temporarily for closure activities:	
a. Surface impoundments.....	3
b. Incinerators.....	3
c. Waste piles that do not comply with § 264.250(c).....	3
d. Waste piles that comply with § 264.250(c).....	2
e. Tanks or containers (other than specified below).....	2
f. Tanks used for neutralization, dewatering, phase separation, or component separation, with prior approval of the Director.....	1 1
E. Post-Closure	
1. Changes in name, address, or phone number of contact in post-closure plan.....	1
2. Extension of post-closure care period.....	2
3. Reduction in the post-closure care period.....	3
4. Changes to the expected year of final closure, where other permit conditions are not changed.....	1
5. Changes in post-closure plan necessitated by events occurring during the active life of the facility, including partial and final closure.....	2
F. Containers	
1. Modification or addition of container units:	
a. Resulting in greater than 25% increase in the facility's container storage capacity.....	3
b. Resulting in up to 25% increase in the facility's container storage capacity.....	2
2:	
a. Modification of a container unit without increasing the capacity of the unit.....	2
b. Addition of a roof to a container unit without alteration of the containment system.....	1
3. Storage of different wastes in containers:	
a. That require additional or different management practices from those authorized in the permit.....	3
b. That do not require additional or different management practices from those authorized in the permit.....	2
Note: See § 270.42(g) for modification procedures to be used for the management of newly listed or identified wastes.	
4. Other changes in container management practices (e.g., aisle space; types of containers; segregation).....	2
G. Tanks	
1:	
a. Modification or addition of tank units resulting in greater than 25% increase in the facility's tank capacity, except as provided in G(1)(c) and G(1)(d) of this appendix.....	3
b. Modification or addition of tank units resulting in up to 25% increase in the facility's tank capacity, except as provided in G(1)(d) of this appendix.....	2
c. Addition of a new tank that will operate for more than 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation.....	2
d. After prior approval of the Director, addition of a new tank that will operate for up to 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation.....	1 1
2. Modification of a tank unit or secondary containment system without increasing the capacity of the unit.....	2
3. Replacement of a tank with a tank that meets the same design standards and has a capacity within + / - 10% of the replaced tank provided.....	1
—The capacity difference is no more than 1500 gallons,	
—The facility's permitted tank capacity is not increased, and	
—The replacement tank meets the same conditions in the permit.	
4. Modification of a tank management practice.....	2
5. Management of different wastes in tanks:	
a. That require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit.....	3
b. That do not require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process than authorized in the permit.....	2
Note: See § 270.42(g) for modification procedures to be used for the management of newly listed or identified wastes.	
H. Surface Impoundments	
1. Modification or addition of surface impoundment units that result in increasing the facility's surface impoundment storage or treatment capacity.....	3
2. Replacement of a surface impoundment unit.....	3
3. Modification of a surface impoundment unit without increasing the facility's surface impoundment storage or treatment capacity and without modifying the unit's liner, leak detection system, or leachate collection system.....	2
4. Modification of a surface impoundment management practice.....	2
5. Treatment, storage, or disposal of different wastes in surface impoundments:	
a. That require additional or different management practices or different design of the liner or leak detection system than authorized in the permit.....	3
b. That do not require additional or different management practices or different design of the liner or leak detection system than authorized in the permit.....	2
Note: See § 270.42(g) for modification procedures to be used for the management of newly listed or identified wastes	
I. Enclosed Waste Piles. For all waste piles except those complying with § 264.250(c), modifications are treated the same as for a landfill. The following modifications are applicable only to waste piles complying with § 264.250(c).	
1. Modification or addition of waste pile units:	
a. Resulting in greater than 25% increase in the facility's waste pile storage or treatment capacity.....	3
b. Resulting in up to 25% increase in the facility's waste pile storage or treatment capacity.....	2
2. Modification of waste pile unit without increasing the capacity of the unit.....	2

## Modifications

## Class

3. Replacement of a waste pile unit with another waste pile unit of the same design and capacity and meeting all waste pile conditions in the permit. 2
4. Modification of a waste pile management practice. 2
5. Storage or treatment of different wastes in waste piles:
  - a. That require additional or different management practices or different design of the unit. 3
  - b. That do not require additional or different management practices or different design of the unit. 2

Note: See § 270.42(g) for modification procedures to be used for the management of newly listed or identified wastes.

## J. Landfills and Unenclosed Waste Piles

1. Modification or addition of landfill units that result in increasing the facility's disposal capacity. 3
2. Replacement of a landfill. 3
3. Addition or modification of a liner, leachate collection system, leachate detection system, run-off control, or final cover system. 3
4. Modification of a landfill unit without changing a liner, leachate collection system, leachate detection system, run-off control, or final cover system. 2
5. Modification of a landfill management practice. 2
6. Landfill different wastes:
  - a. That require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system. 3
  - b. That do not require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system. 2

Note: See § 270.42(g) for modification procedures to be used for the management of newly listed or identified wastes.

## K. Land Treatment

1. Lateral expansion of or other modification of a land treatment unit to increase areal extent. 3
  2. Modification of run-on control system. 2
  3. Modify run-off control system. 3
  4. Other modifications of land treatment unit component specifications or standards required in permit. 2
  5. Management of different wastes in land treatment units:
    - a. That require a change in permit operating conditions or unit design specifications. 3
    - b. That do not require a change in permit operating conditions or unit design specifications. 2
- Note: See § 270.42(g) for modification procedures to be used for the management of newly listed or identified wastes
6. Modification of a land treatment unit management practice to:
    - a. Increase rate or change method of waste application. 3
    - b. Decrease rate of waste application. 2
  7. Modification of a land treatment unit management practice to change measures of pH or moisture content, or to enhance microbial or chemical reactions. 2
  8. Modification of a land treatment unit management practice to grow food chain crops, to add to or replace existing permitted crops with different food chain crops, or to modify operating plans for distribution of animal feeds resulting from such crops. 3
  9. Modification of operating practice due to detection of releases from the land treatment unit pursuant to § 264.278(g)(2). 3
  10. Changes in the unsaturated zone monitoring system, resulting in a change to the location, depth, number of sampling points, or replace unsaturated zone monitoring devices or components of devices with devices or components that have specifications different from permit requirements. 3
  11. Changes in the unsaturated zone monitoring system that do not result in a change to the location, depth, number of sampling points, or that replace unsaturated zone monitoring devices or components of devices with devices or components having specifications different from permit requirements. 2
  12. Changes in background values for hazardous constituents in soil and soil-pore liquid. 2
  13. Changes in sampling, analysis, or statistical procedure. 2
  14. Changes in land treatment demonstration program prior to or during the demonstration. 2
  15. Changes in any condition specified in the permit for a land treatment unit to reflect results of the land treatment demonstration, provided performance standards are met, and the Director's prior approval has been received. 2
  16. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the wastes can be treated completely, provided the conditions for the second demonstration are substantially the same as the conditions for the first demonstration and have received the prior approval of the Director. 2
  17. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the wastes can be treated completely, where the conditions for the second demonstration are not substantially the same as the conditions for the first demonstration. 3
  18. Changes in vegetative cover requirements for closure. 2

## L. Incinerators

1. Changes to increase by more than 25% any of the following limits authorized in the permit: A thermal feed rate limit, a waste feed rate limit, or an organic chlorine feed rate limit. The Director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means. 3
2. Changes to increase by up to 25% any of the following limits authorized in the permit: A thermal feed rate limit, a waste feed limit, or an organic chlorine feed rate limit. The Director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means. 2
3. Modification of an incinerator unit by changing the internal size or geometry of the primary or secondary combustion units, by adding a primary or secondary combustion unit, by substantially changing the design of any component used to remove HCl or particulate from the combustion gases, or by changing other features of the incinerator that could affect its capability to meet the regulatory performance standards. The Director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means. 3
4. Modification of an incinerator unit in a manner that would not likely affect the capability of the unit to meet the regulatory performance standards but which would change the operating conditions or monitoring requirements specified in the permit. The Director may require a new trial burn to demonstrate compliance with the regulatory performance standards. 2
5. Operating requirements:
  - a. Modification of the limits specified in the permit for minimum combustion gas temperature, minimum combustion gas residence time, or oxygen concentration in the secondary combustion chamber. The Director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means. 3
  - b. Modification of any stack gas emission limits specified in the permit, or modification of any conditions in the permit concerning emergency shutdown or automatic waste feed cutoff procedures or controls. 3
  - c. Modification of any other operating condition or any inspection or recordkeeping requirement specified in the permit. 2
6. Incineration of different wastes:
  - a. If the waste contains a POHC that is more difficult to incinerate than authorized by the permit or if incineration of the waste requires compliance with different regulatory performance standards than specified in the permit. The Director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means. 3
  - b. If the waste does not contain a POHC that is more difficult to incinerate than authorized by the permit and if incineration of the waste does not require compliance with different regulatory performance standards than specified in the permit. 2

Modifications	Class
<b>Note:</b> See § 270.42(g) for modification procedures to be used for the management of newly listed or identified wastes.	
7. Shakedown and trial burn:	
a. Modification of the trial burn plan or any of the permit conditions applicable during the shakedown period for determining operational readiness after construction, the trial burn period, or the period immediately following the trial burn.....	2
b. Authorization of up to an additional 720 hours of waste incineration during the shakedown period for determining operational readiness after construction, with the prior approval of the Director.....	1 <sup>1</sup>
c. Changes in the operating requirements set in the permit for conducting a trial burn, provided the change is minor and has received the prior approval of the Director.....	1 <sup>1</sup>
d. Changes in the ranges of the operating requirements set in the permit to reflect the results of the trial burn, provided the change is minor and has received the prior approval of the Director.....	1 <sup>1</sup>
8. Substitution of an alternate type of fuel that is not specified in the permit.....	1

<sup>1</sup> Class 1 modifications requiring prior Agency approval.

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# Federal Register

Wednesday  
September 28, 1988

## Part III

## Department of the Interior

### Fish and Wildlife Service

#### 50 CFR Part 20

#### Migratory Bird Hunting; Late Seasons, and Bag and Possession Limits for Certain Migratory Game Birds in the United States; Final Rule

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 20

**Migratory Bird Hunting; Late Seasons, and Bag and Possession Limits for Certain Migratory Game Birds in the United States**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** This rule prescribes the late open seasons, hunting hours, hunting areas, and daily bag and possession limits for general waterfowl seasons; special restrictions to reduce the black duck harvest; additional sandhill crane seasons in the Central Flyway and in Arizona; coots, common moorhens, and snipe in the Pacific Flyway; and additional special extended falconry seasons. Taking of the designated species of migratory birds is prohibited unless open hunting seasons are specifically provided. The rules will permit taking of the designated species during the 1988-89 season within specified periods of time beginning as early as September 26.

**EFFECTIVE DATE:** September 28, 1988.

**FOR FURTHER INFORMATION CONTACT:** Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, Matomic Building Room 536, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC, telephone 202-254-3207.

**SUPPLEMENTARY INFORMATION:** The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), as amended, authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory birds, to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported, or transported.

On March 9, 1988, the U.S. Fish and Wildlife Service (hereinafter the Service) published for public comment in the *Federal Register* (53 FR 7702) a proposal to amend 50 CFR Part 20, with comment periods ending June 22, 1988, for Alaska, Hawaii, Puerto Rico, and the Virgin Islands; July 18, 1988, for other early-seasons proposals; and August 25, 1988, for the late-season proposals. The March 9 document dealt with the establishment of hunting seasons, hours, areas and limits for migratory game

birds under §§ 20.101 through 20.107, 20.109 and 20.110 of Subpart K. On June 7, 1988, the Service published in the *Federal Register* (53 FR 20874) a second document consisting of a supplemental proposed rulemaking dealing with both the early- and late-season framework. On July 11, 1988, the Service published for public comment in the *Federal Register* (53 FR 26198) a third document consisting of a proposed rulemaking dealing specifically with frameworks for early-season migratory bird hunting regulations. That document also reopened and extended the comment period for the proposed frameworks for Alaska, Puerto Rico and the Virgin Islands from June 22, 1988, to July 20, 1988. All three documents, March 9, June 7, and July 11, indicated that special consideration was being given to possible restrictive regulations for all aspects of the 1988-89 hunting season dependent upon the continuing poor status of ducks. On August 9, 1988, the Service published a fourth document (53 FR 29897) containing final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico and the Virgin Islands selected early-season hunting dates, hours, areas and limits for 1988-89. The fifth document in the series, published August 12, 1988, in the *Federal Register* (53 FR 30622), deals specifically with proposed frameworks for the 1988-89 late-season migratory bird hunting regulations. On August 31, 1988, the Service published in the *Federal Register* (53 FR 33792) a sixth document consisting of a final rule amending Subpart K of Title 50 CFR Part 20 to set hunting seasons, hours, areas and limits for mourning doves, white-winged and white-tipped doves, band-tailed pigeons, rails, woodcock, common snipe, and common moorhen and purple gallinules; sea ducks in certain defined areas of the Atlantic Flyway; wood ducks in September in Florida, Kentucky and Tennessee; Canada geese in September in portions of Illinois, Michigan and Minnesota; sandhill cranes in the Central and Pacific Flyways; a special Canada goose season in southwestern Wyoming; migratory game birds in Alaska, Hawaii, Puerto Rico and the Virgin Islands; and extended falconry seasons. On September 16, 1988, the Service published in the *Federal Register* a seventh document (53 FR 36033) consisting of a final rulemaking for the late-season frameworks for migratory game bird hunting regulations from which State wildlife conservation agency officials selected late season hunting dates, hours, areas, and limits for 1988-89.

The final rule described here is the eighth in a series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations and deals specifically with amending Subpart K of 50 CFR Part 20 to set hunting seasons, hours, areas and limits for species subject to late hunting regulations.

**Nontoxic Shot Regulations**

In the June 28, 1988, *Federal Register* (53 FR 24284), the Service published a final rule describing zones in which use of lead shot would be prohibited for hunting waterfowl, coots and certain other species in the 1988-89 hunting season. Waterfowl hunters are advised to become familiar with State and local regulations regarding the use of nontoxic shot for waterfowl hunting.

**NEPA Consideration**

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88-14)", filed with CEQ on June 9, 1988. Notices of Availability were published in the *Federal Register* on June 16, 1988 (53 FR 22582), and June 17, 1988 (53 FR 22727), and the Service's Record of Decision was published on August 18, 1988 (53 FR 31341).

**Endangered Species Act Consideration**

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and shall) "insure that any action authorized, funded or carried out \* \* \* is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or modification of (critical) habitat \* \* \*".

Subsequently, the Service initiated section 7 consultation under the Endangered Species Act for the proposed hunting season frameworks.

On June 17, 1988, the Division of Endangered Species and Habitat Conservation gave a biological opinion that the proposed actions were not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats.

As in the past, hunting regulations this year are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and

conservation of endangered and threatened species.

The Service's biological opinion resulting from its consultation under section 7 is considered a public document and is available for inspection in the Office of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

#### Regulatory Flexibility Act, Executive Order 12291 and the Paperwork Reduction Act

In the *Federal Register* dated March 9, 1988 (53 FR 7702), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240. These regulations contain no information collections subject to Office of Management and Budget under the Paperwork Reduction Act of 1980.

#### Memorandum of Law

The Service published its Memorandum of Law, required by section 4 of Executive Order 12291, in the *Federal Register* dated August 9, 1988 (53 FR 29897).

#### Authorship

The primary author of this final rule is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

#### Regulations Promulgation

After analysis of the migratory game bird survey data obtained through investigations conducted by the Service, State conservation agencies, and other sources, and consideration of all comments received on the late season proposals (53 FR 7702, March 9, 1988; 53 FR 20874, June 7, 1988; and 53 FR 30622, August 12, 1988), the Service published

in the *Federal Register* on September 16, 1988 (53 FR 36033) final late-season frameworks. Copies of the proposed and final frameworks were sent to the officials of the State conservation agencies who were invited to submit recommendations for hunting seasons which complied with the season times and lengths, hours, areas, and limits specified in the final frameworks.

Among these recommendations, the State of Maryland selected a one-bird limit, rather than take the full two birds allowed under the frameworks, for the first 15 days of the goose season. The Service has long since recognized, consistent with 16 U.S.C. 708, that States need not avail themselves of the maximums dictated by annual Federal frameworks. Local resource needs and the health of portions of a population using a particular area may require stricter local controls than prevail elsewhere in a flyway. Survival rates for Maryland geese have fallen to 63 percent, below the 70 percent considered necessary to maintain a stable population, and wintering populations have declined at least 34 percent since the mid-1970's. These facts, combined with the strong tendency of Maryland geese to return in subsequent years, justify the State's choice of less than the allowable bag limit.

The taking of the designated species of migratory birds is prohibited unless open hunting seasons are specifically provided. The following amendment will permit taking of the designated species within specified time periods beginning as early as September 26 and will benefit the public by relieving existing restrictions.

The rulemaking process for migratory game bird hunting, must, by its nature, operate under severe time constraints. However, the Service intends that the public be given the greatest possible opportunity to comment on the regulations. Thus, when proposed rulemakings were published on March 9, June 7, and August 12, 1988, the Service established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that when the comment period closed time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the States would have insufficient time to select

their season dates, shooting hours, hunting areas, and limits; to communicate those selections to the Service; and to establish and publicize the necessary regulations and procedures to implement their decisions. The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C.(d)(3) (Administrative Procedure Act), and these regulations will, therefore, take effective immediately upon publication.

Accordingly, each State conservation agency having had an opportunity to participate in selecting the hunting seasons desired for its State on those species of migratory birds for which open seasons are now to be prescribed, and consideration having been given to all other relevant matters presented, certain sections of Title 50, Chapter I, Subchapter B, Part 20, Subpart K, are hereby corrected and amended as set forth below.

#### List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

For the reasons set out in the preamble, Title 50, Chapter I, Subchapter B, Part 20, Subpart K is amended as follows.

#### PART 20—[AMENDED]

1. The authority citation for Part 20 continues to read as follows:

**Authority:** Migratory Bird Treaty Act, sec. 3, Pub. L. 65-186, 40 Stat. 755 (16 U.S.C. 701-708h); sec. 3(h), Pub. L. 95-616, 92 Stat. 3112 (16 U.S.C. 712); Alaska Game Act of 1925, 43 Stat. 739, as amended, 54 Stat. 1103-04.

**Note.**—The following annual hunting regulations provided for by §§ 20.104, 20.105, 20.106, 20.107, and 20.109 of 50 CFR Part 20 will not appear in the Code of Federal Regulations because of their seasonal nature.

2. Section 20.104 is revised to read as follows:

#### § 20.104 Seasons, limits, and shooting hours for rails, woodcock, and common snipe.

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits on the species designated in this section are as follows:

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	Rails (Sora & Virginia)	Rails (Clapper & King)	Woodcock	Common Snipe
Daily bag limit.....	25 (1)	See footnote (2).	5 (3)	8
Possession limit.....	25 (1)	See footnote (2).	10 (3)	16

Shooting Hours: One-half hour before sunrise until sunset daily on all species, except as noted otherwise.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS, INCLUDING AREA DESCRIPTIONS.

Seasons in the Atlantic Flyway:

Connecticut.....	Sept. 1-Nov. 9.	Sept. 1-Nov. 9.	Oct. 15-Nov. 28.	Oct. 15-Nov. 28.
Delaware.....	Sept. 1-Nov. 9.	Sept. 1-Nov. 9.	Nov. 21-Jan. 4.	Nov. 21-Jan. 31.
Florida.....	Sept. 1-Nov. 9.	Sept. 1-Nov. 9.	Dec. 10-Jan. 23.	Nov. 1-Feb. 15.
Georgia.....	Sept. 24-Dec. 2.	Sept. 24-Dec. 2.	Nov. 26-Jan. 9.	Nov. 20-Feb. 28.
Maine.....	Sept. 1-Nov. 9.	Closed.	Oct. 1-Nov. 14.	Sept. 1-Dec. 16.
Maryland.....	Sept. 1-Nov. 9.	Sept. 1-Nov. 9.	Oct. 12-Nov. 25.	Oct. 1-Nov. 25 & Nov. 28-Jan. 17.
Massachusetts.....	Sept. 1-Nov. 7.	Closed.	Oct. 10-Nov. 23.	Sept. 1-Dec. 12.
New Hampshire.....	Closed.	Closed.	Oct. 1-Nov. 14.	Sept. 15-Nov. 30.
New Jersey (4):				
North Zone.....	Sept. 1-Nov. 9.	Sept. 1-Nov. 9.	Oct. 15-Nov. 18.	Oct. 1-Jan. 15.
South Zone.....	Sept. 1-Nov. 9.	Sept. 1-Nov. 9.	Nov. 12-Dec. 3 & Dec. 17-Dec. 29.	Oct. 1-Jan. 15.
New York.....	Sept. 1-Nov. 9.	Closed.	Oct. 1-Nov. 14.	Sept. 1-Dec. 16.
North Carolina....	Sept. 3-Nov. 11.	Sept. 3-Nov. 11.	Nov. 19-Jan. 2.	Nov. 14-Feb. 28.
Pennsylvania.....	Sept. 1-Nov. 7.	Closed.	Oct. 22-Nov. 12.	Oct. 22-Dec. 10.
Rhode Island.....	Sept. 12-Nov. 20.	Sept. 12-Nov. 20.	Oct. 15-Nov. 28.	Sept. 12-Dec. 2 & Dec. 12-Jan. 5.
South Carolina....	Sept. 12-Nov. 23.	Sept. 15-Nov. 23.	Nov. 24-Dec. 10 & Dec. 24-Jan. 20.	Nov. 14-Feb. 28.
Vermont.....	Sept. 24-Dec. 2.	Closed.	Oct. 1-Nov. 14.	Sept. 24-Dec. 2.
Virginia.....	Sept. 1-Nov. 9.	Sept. 1-Nov. 9.	Nov. 7-Nov. 29 & Dec. 21-Jan. 11.	Oct. 17-Jan. 31.
West Virginia.....	Sept. 1-Nov. 9.	Closed.	Oct. 15-Nov. 28.	Sept. 1-Dec. 16.

Seasons in the Mississippi Flyway:

Alabama (10).....	Nov. 12-Jan. 20.	Nov. 12-Jan. 20.	Nov. 28-Jan. 31.	Nov. 14-Feb. 28.
Arkansas.....	Sept. 13-Nov. 12.	Closed.	Nov. 5-Dec. 11 & Jan. 7-Feb. 3.	Nov. 14-Feb. 28.
Illinois.....	Sept. 3-Nov. 11.	Closed.	Oct. 1-Dec. 4.	Sept. 3-Dec. 16.
Indiana.....	Sept. 1-Nov. 9.	Closed.	Sept. 17-Sept. 23 & Oct. 1-Nov. 27.	Sept. 1-Dec. 16.

Iowa (5).....	Sept. 3-Nov. 11.	Closed.	Sept. 17-Nov. 20.	Sept. 3-Dec. 18.
Kentucky.....	Nov. 24-Jan. 20.	Closed.	Oct. 1-Dec. 4.	Oct. 1-Dec. 4.
Louisiana.....	Nov. 19-Jan. 20.	Nov. 19-Jan. 20.	Dec. 10-Feb. 12.	Nov. 12-Feb. 26.
Michigan (6).....	Sept. 15-Nov. 14.	Closed.	Sept. 15-Nov. 14.	Sept. 15-Nov. 14.
Minnesota.....	Sept. 1-Nov. 4.	Closed.	Sept. 1-Nov. 4.	Sept. 1-Nov. 4.
Mississippi.....	Oct. 15-Dec. 23.	Oct. 15-Dec. 23.	Dec. 26-Feb. 28.	Nov. 14-Feb. 28.
Missouri.....	Sept. 1-Nov. 9.	Closed.	Oct. 15-Dec. 18.	Sept. 1-Dec. 16.
Ohio.....	Sept. 1-Nov. 9.	Closed.	Sept. 23-Nov. 26.	Sept. 1-Nov. 26 & Dec. 5-Dec. 24.
Tennessee.....	Dec. 10-Jan. 8.	Closed.	Oct. 22-Nov. 27 & Feb. 1-Feb. 28.	Nov. 14-Feb. 28.
Wisconsin.....	Oct. 8-Nov. 20.	Closed.	Sept. 17-Nov. 20.	Oct. 8-Nov. 20.

Seasons in the Central Flyway:

Colorado (7).....	Sept. 1-Nov. 9.	Closed.	Closed.	Sept. 1-Dec. 2.
Kansas.....	Sept. 1-Nov. 9.	Closed.	Oct. 1-Dec. 4.	Sept. 1-Dec. 16.
Montana (7).....	Closed.	Closed.	Closed.	Oct. 1-Jan. 1.
Nebraska (8).....	Sept. 1-Nov. 9.	Closed.	Sept. 15-Nov. 18.	Sept. 1-Dec. 15.
New Mexico (7) and (11).....	Oct. 8-Dec. 14.	Closed.	Closed.	Oct. 8-Jan. 8.
North Dakota.....	Closed.	Closed.	Closed.	Oct. 1-Nov. 27.
Oklahoma.....	Sept. 1-Nov. 9.	Closed.	Oct. 24-Dec. 27.	Oct. 1-Jan. 15.
South Dakota (9).....	Closed.	Closed.	Closed.	Sept. 1-Oct. 31.
Texas.....	Sept. 1-Nov. 9.	Sept. 1-Nov. 9.	Nov. 26-Jan. 29.	Deferred.
Wyoming (7).....	Sept. 17-Nov. 25.	Closed.	Closed.	Sept. 17-Jan. 1.

Seasons in the Pacific Flyway:

Arizona (12).....	Closed.	Closed.	Closed.	Oct. 14-Nov. 20 & Dec. 19-Jan. 8.
California Northeastern Zone (4).....	Closed.	Closed.	Closed.	Oct. 8-Dec. 5.
Colorado River Zone.....	Closed.	Closed.	Closed.	Oct. 14-Nov. 20 & Dec. 19-Jan. 8.
Southern Zone (4).....	Closed.	Closed.	Closed.	Oct. 15-Nov. 9 & Dec. 7-Jan. 18.
Balance of the State Zone....	Closed.	Closed.	Closed.	Oct. 22-Nov. 13 & Dec. 4-Jan. 8.
Colorado (7).....	Sept. 1-Nov. 9.	Closed.	Closed.	Oct. 8-Oct. 16 & Nov. 12-Jan. 2.
Idaho (4): Zone 1.....	Closed.	Closed.	Closed.	Oct. 15-Dec. 12.

Zone 2.....	Closed.	Closed.	Closed.	Oct. 8-Nov. 6 & Dec. 10-Jan. 7.
Montana (7).....	Closed.	Closed.	Closed.	Oct. 8-Nov. 26 & Dec. 24-Jan. 1.
Nevada (13):				
Clark County....	Closed.	Closed.	Closed.	Nov. 11-Jan. 8.
Remainder of State.....	Closed.	Closed.	Closed.	Oct. 8-Dec. 5.
New Mexico (7) and (11).....	Oct. 8-Dec. 14.	Closed.	Closed.	Oct. 8-Jan. 8.
Oregon:				
Morrow and Umatilla Counties.....	Closed.	Closed.	Closed.	Oct. 15-Nov. 27 & Dec. 10-Dec. 31.
Remainder of State.....	Closed.	Closed.	Closed.	Oct. 15-Nov. 27 & Dec. 17-Dec. 31.
Utah (13).....	Closed.	Closed.	Closed.	Oct. 8-Dec. 4.
Washington:				
Eastern Washing- ton (4) (13)...	Closed.	Closed.	Closed.	Oct. 15-Oct. 23 & Nov. 5-Dec. 31.
Western Washing- ton (4) (13)...	Closed.	Closed.	Closed.	Oct. 15-Oct. 23 & Nov. 12-Dec. 31.
Wyoming (7).....	Sept. 17-Nov. 25.	Closed.	Closed.	Sept. 17-Dec. 18.

(1) The bag and possession limits for sora and Virginia rails apply singly or in the aggregate of these two species.

(2) In addition to the limits on sora and Virginia rails, in Connecticut, Delaware, Maryland, New Jersey, and Rhode Island, there is a daily bag limit of 10 and possession limit of 20 clapper and king rails, singly or in the aggregate of these two species, except that the season is closed on king rails in New Jersey by State regulation. In Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, and Virginia, there is a daily bag limit of 15 and possession limit of 30 clapper and king rails, singly or in the aggregate of these two species.

(3) In States of the Atlantic Flyway, the woodcock bag limit is 3 daily and 6 in possession.

(4) For description of zones or management units within a State, see State regulations.

(5) In Iowa, rail limits are 15 daily and 25 in possession.

(6) See State regulations for listing of certain Great Lakes waters where the season is to open concurrently with the duck season.

(7) The Central Flyway portion consists of: Colorado and Wyoming -- the area lying east of the Continental Divide; Montana -- the area lying east of Hill, Chouteau, Cascade, Meagher, and Park Counties; New Mexico -- the area lying east of the Continental Divide but outside the Jicarilla Apache Indian Reservation. The remaining portions of these States are in the Pacific Flyway.

(8) In Nebraska, the rail limits are 10 daily and 20 in possession.

(9) In South Dakota, the snipe limits are 5 daily and 15 in possession.

(10) In Alabama, the rail limits are 15 daily and 15 in possession.

(11) In New Mexico, the rail limits are 10 daily and 10 in possession.

(12) In Arizona, Ashurst Lake in Unit 5B is closed to common snipe hunting.

(13) Check State regulations for shooting hours restrictions.



Gallinules/Moorhens (4) Geese: Canada	Closed.	Nov. 11-Nov. 25.	1	2	South Zone (1)	Oct. 22-Oct. 29 &	3 (2)	6 (2)
		Dec. 8-Jan. 21.	2	4		Nov. 24-Dec. 15.	3 (2)	6 (2)
Snow (including blue)	Closed.	Oct. 25-Nov. 25 &	2	4	Coastal Zone (1)	Oct. 29-Nov. 5 &	3 (2)	6 (2)
		Dec. 5-Jan. 31.	4	8	Sea ducks (3) (5) (6) (7)	Dec. 17-Jan. 7.	7	14
Brant	Closed.	Nov. 23-Nov. 25 &	4	8	Mergansers	Oct. 1-Jan. 15.	5	10
		Dec. 8-Jan. 20.	2	4	Coots	Same as for ducks.	15	30
Massachusetts Ducks:	Closed.	Nov. 23-Nov. 25 &	4	8	Gallinules/Moorhens (4)	Same as for ducks.	15	30
		Dec. 8-Jan. 20.	2	4	Geese:	Closed.	15	30
Western (Berkshire) Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Canada:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	North Zone (1)	Nov. 24-Jan. 25.	3	6
Central Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	South Zone (1)	Oct. 22-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 30.	3	6
Sea ducks (3) (5) (6) (7)	Closed.	Nov. 23-Nov. 25 &	4	8	Snow (including blue):	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	North Zone (1)	Nov. 24-Jan. 25.	3	6
Mergansers	Closed.	Nov. 23-Nov. 25 &	4	8	South Zone (1)	Oct. 22-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 30.	3	6
Coots	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Gallinules/Moorhens (4)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Geese:	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Canada:	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Western (Berkshire) Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Central Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Coastal Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Snow (including blue):	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Western (Berkshire) Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Central Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Coastal Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Snow (including blue):	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Western (Berkshire) Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Central Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Coastal Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Snow (including blue):	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Western (Berkshire) Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Central Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Coastal Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Snow (including blue):	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Western (Berkshire) Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Central Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Coastal Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Snow (including blue):	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Western (Berkshire) Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Central Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Coastal Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Snow (including blue):	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Western (Berkshire) Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Central Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Coastal Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Snow (including blue):	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Western (Berkshire) Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Central Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Coastal Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Snow (including blue):	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Western (Berkshire) Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Central Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Coastal Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Snow (including blue):	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Western (Berkshire) Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Central Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Coastal Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Snow (including blue):	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Western (Berkshire) Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Central Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Coastal Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Snow (including blue):	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Western (Berkshire) Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Central Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Coastal Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Snow (including blue):	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Western (Berkshire) Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Central Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Coastal Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Snow (including blue):	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Western (Berkshire) Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Central Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Coastal Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Snow (including blue):	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Western (Berkshire) Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Central Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Coastal Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Snow (including blue):	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Western (Berkshire) Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Central Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Coastal Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Snow (including blue):	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Western (Berkshire) Zone (1)	Closed.	Nov. 23-Nov. 25 &	4	8	Brant:	Oct. 17-Nov. 12 &	3	6
		Dec. 8-Jan. 20.	2	4	Coastal Zone (1)	Nov. 24-Jan. 25.	3	6
Central Zone (1)	Closed.</							

Area	Species	Count	Notes	Season
Brant	Brant	2		Oct. 12-Nov. 30.
Western Zone (1):				
Ducks				
Mergansers		3 (2)		Oct. 21-Nov. 12 & Dec. 26-Jan. 1.
Coots		5		Same as for ducks.
Gallinules/Moorhens (4)		15		Same as for ducks.
Coose:		15 (8)		Sept. 1-Nov. 9.
Canada				Oct. 15-Nov. 20 & Dec. 3-Jan. 25.
Snow (including blue)		3		
Brant		2		Oct. 16-Dec. 4.
North Carolina				
Ducks				
Sea ducks (3) (5) (6) (7)		3 (2) (10) 6 (2) (10)		Oct. 13-Oct. 15 & Nov. 24-Nov. 26 & Dec. 13-Jan. 15.
Mergansers		7		Oct. 11-Jan. 14.
Coots		5		Same as for ducks.
Gallinules/Moorhens (4)		15		Same as for ducks.
Coose:		15 (8)		Sept. 3-Nov. 11.
Canada				
Snow (including blue)		3 (2)		Oct. 13-Oct. 15 & Nov. 24-Nov. 26 & Dec. 13-Jan. 15.
Brant		2		Oct. 16-Dec. 4.
North Carolina				
Ducks				
Sea ducks (3) (5) (6) (7)		3 (2) (10) 6 (2) (10)		Oct. 13-Oct. 15 & Nov. 24-Nov. 26 & Dec. 13-Jan. 15.
Mergansers		7		Oct. 11-Jan. 14.
Coots		5		Same as for ducks.
Gallinules/Moorhens (4)		15		Same as for ducks.
Coose:		15 (8)		Sept. 3-Nov. 11.
Canada				
Snow (including blue)		3 (2)		Oct. 13-Oct. 15 & Nov. 24-Nov. 26 & Dec. 13-Jan. 15.
Brant		2		Oct. 16-Dec. 4.
North Carolina				
Ducks				
Sea ducks (3) (5) (6) (7)		3 (2) (10) 6 (2) (10)		Oct. 13-Oct. 15 & Nov. 24-Nov. 26 & Dec. 13-Jan. 15.
Mergansers		7		Oct. 11-Jan. 14.
Coots		5		Same as for ducks.
Gallinules/Moorhens (4)		15		Same as for ducks.
Coose:		15 (8)		Sept. 3-Nov. 11.
Canada				
Snow (including blue)		3 (2)		Oct. 13-Oct. 15 & Nov. 24-Nov. 26 & Dec. 13-Jan. 15.
Brant		2		Oct. 16-Dec. 4.
North Carolina				
Ducks				
Sea ducks (3) (5) (6) (7)		3 (2) (10) 6 (2) (10)		Oct. 13-Oct. 15 & Nov. 24-Nov. 26 & Dec. 13-Jan. 15.
Mergansers		7		Oct. 11-Jan. 14.
Coots		5		Same as for ducks.
Gallinules/Moorhens (4)		15		Same as for ducks.
Coose:		15 (8)		Sept. 3-Nov. 11.
Canada				
Snow (including blue)		3 (2)		Oct. 13-Oct. 15 & Nov. 24-Nov. 26 & Dec. 13-Jan. 15.
Brant		2		Oct. 16-Dec. 4.
North Carolina				
Ducks				
Sea ducks (3) (5) (6) (7)		3 (2) (10) 6 (2) (10)		Oct. 13-Oct. 15 & Nov. 24-Nov. 26 & Dec. 13-Jan. 15.
Mergansers		7		Oct. 11-Jan. 14.
Coots		5		Same as for ducks.
Gallinules/Moorhens (4)		15		Same as for ducks.
Coose:		15 (8)		Sept. 3-Nov. 11.
Canada				
Snow (including blue)		3 (2)		Oct. 13-Oct. 15 & Nov. 24-Nov. 26 & Dec. 13-Jan. 15.
Brant		2		Oct. 16-Dec. 4.
North Carolina				
Ducks				
Sea ducks (3) (5) (6) (7)		3 (2) (10) 6 (2) (10)		Oct. 13-Oct. 15 & Nov. 24-Nov. 26 & Dec. 13-Jan. 15.
Mergansers		7		Oct. 11-Jan. 14.
Coots		5		Same as for ducks.
Gallinules/Moorhens (4)		15		Same as for ducks.
Coose:		15 (8)		Sept. 3-Nov. 11.
Canada				
Snow (including blue)		3 (2)		Oct. 13-Oct. 15 & Nov. 24-Nov. 26 & Dec. 13-Jan. 15.
Brant		2		Oct. 16-Dec. 4.
North Carolina				
Ducks				
Sea ducks (3) (5) (6) (7)		3 (2) (10) 6 (2) (10)		Oct. 13-Oct. 15 & Nov. 24-Nov. 26 & Dec. 13-Jan. 15.
Mergansers		7		Oct. 11-Jan. 14.
Coots		5		Same as for ducks.
Gallinules/Moorhens (4)		15		Same as for ducks.
Coose:		15 (8)		Sept. 3-Nov. 11.
Canada				
Snow (including blue)		3 (2)		Oct. 13-Oct. 15 & Nov. 24-Nov. 26 & Dec. 13-Jan.

## Geese:

## Allegheny Mountain Upland

## Zone (Zone 2) (1)

Oct. 1-Nov. 19 &  
Jan. 2-Jan. 20.

## Remainder of State

## (Zone 1) (1)

Oct. 1-Oct. 15 &  
Nov. 28-Jan. 20.

## Canada

## Snow (including blue)

## Brant

## Allegheny Mountain Upland

## Zone (Zone 2)

Oct. 29-Nov. 19.

## Remainder of State

## (Zone 1)

Dec. 17-Jan. 7.

3 6  
4 8  
2 4

Note: All areas of the Flyway are closed to canvasback hunting.

(1) Described in the September 16, 1988, Federal Register (53 FR 36033) and/or the State Regulations.

(2) The daily bag limit is 3 and may include no more than 3 mallards of which only 1 may be a hen, 1 pintail, 1 black duck, 1 mottled duck, 2 wood ducks, 2 redheads and 1 fulvous tree duck. The possession limit is twice the daily bag limit.

(3) Shooting hours for Sea Ducks is one-half hour before sunrise to sunset.

(4) Shooting hours for Gallinules/Moorhens is one-half hour before sunrise to sunset.

(5) An open season for taking scoter, eider, and oldsquaw ducks is prescribed during the period between September 15, 1988, and January 20, 1989, in all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut and New York; in any waters of the Atlantic Ocean and, in addition, in any tidal waters of any bay which are separated by at least one mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and/or in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina, and Virginia; and provided that any such areas have been described, delineated, and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States. In all other areas of these States and in all other States in the Atlantic Flyway, sea ducks may be taken only during the regular open season for ducks and they must be included in the regular duck season conventional or point-system daily bag and possession limits.

(6) The daily bag limit is 7 and possession limit is 14, singly or in the aggregate of these species. Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may set, in addition to the regular limits, a daily bag limit of 7, and a possession limit of 14 scoter, eider, and oldsquaw ducks, singly or in the aggregate of these species.

(7) Notwithstanding the provisions of this Part 20 the shooting of crippled waterfowl from a motorboat under power will be permitted in Maine, Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, Delaware, Virginia and Maryland in those areas described, delineated, and designated in their respective hunting regulations as being open to sea duck hunting.

(8) Bag and possession limits given for common moorhens and purple gallinules, are singly or in the aggregate of the two species. In Florida, the gallinule season applies to the common gallinule only. There is no open season on the purple gallinule in Florida.

(9) In Delaware, during October 17 through October 29 and November 7 through November 18, the snow goose season is limited to the area bounded on the north by Delaware Route 6, on the west by Delaware Route 9, on the south by the Leipsic River and on the east by the Delaware Bay. Hunting will only be allowed under permits issued by the Delaware Division of Fish and Wildlife or the Refuge Manager of Bombay Hook National Wildlife Refuge.

(10) No special daily bag and possession limit restrictions apply to wood ducks in North Carolina during October 13-October 15, and in Virginia during October 12-October 15.

(11) Only in waters east of U.S. Highway 17, except Currituck Sound north of U.S. Highway 158.

(12) In South Carolina, see State regulations for further restrictions on black ducks and mottled ducks. On December 25 and January 1 there will be no Sunday hunting in Georgetown County or Charleston County from the Georgetown County line (South Santee River) to the Wando River east of U.S. Highway 17. The shooting hours in this area will be sunrise to 12:00 noon daily except on November 16 and January 7 when shooting hours will be sunrise to sunset. During the period December 17 to January 7, shooting hours are sunrise to 12:00 noon daily on all lands and waters of that portion of Lake Marion and Santee Swamp west of the Interstate 95 bridge upstream to the confluence of the Wateree and Congaree Rivers. The affected area being further described as all lands west of I-95 within or adjacent to Lake Marion which is owned by Santee Cooper or the State of South Carolina in the counties of Clarendon, Sumter, Orangeburg, and Calhoun. This regulation shall apply to all land in the area described above whether such land shall be exposed or inundated. During the November season and on January 7, shooting hours in the area will be sunrise to sunset.

(13) Only in waters east of U.S. Highway 17, north of Charleston, and east of the old Seaboard Railroad bed south of Charleston.

(14) In Virginia, the Back Bay Area is defined for Canada geese as those portions of the cities of Virginia Beach and Chesapeake lying east of U.S. Highway 17 and Interstate 64. Canada geese may only be taken on the waters of Back Bay, November 26-28 and December 17-January 18.

(15) In Virginia, the Back Bay Area is defined for snow (including blue) geese as the waters of Back Bay and its tributaries and the marshes adjacent thereto, and on the land and marshes between Back Bay and the Atlantic Ocean from Sandbridge to the North Carolina line, and on and along the shore of North Landing River and the marshes adjacent thereto, and on and along the shores of Lake Tecumseh and Red Wing Lake and the marshes adjacent thereto.

(16) East of Intracoastal Waterway in Chatham, Bryan, Liberty, McIntosh, Glynn and Camden Counties, Georgia.

(17) In Crawford, Erie, Mercer and Butler Counties, Pennsylvania the Canada goose daily bag limit is 2 and 4 in possession.

## MISSISSIPPI FLYWAY

The Mississippi Flyway includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee and Wisconsin.

## Flywaywide Restrictions

Shooting hours: Sunrise to sunset daily except as otherwise noted-- Check State regulations for further restrictions.

Canvasbacks - All areas of the Flyway are closed to canvasback hunting.

Bag Limits - The daily bag limit of ducks is 3, and may include no more than 2 mallards (no more than 1 of which may be a female), 1 black duck, 1 pintail, 2 wood ducks, and 1 redhead. The possession limit is twice the daily bag limit.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

The season dates for mergansers and coots are the same as those for ducks in the following tables.

	Season Dates	Limits	
		Bag	Possession
Alabama Ducks:			
North Zone (1)	Dec. 10-Jan. 8.	3	6
South Zone (1)	Nov. 17-Nov. 21 & Dec. 15-Jan. 8.		

[illegible]



Ohio Pymatuning Area (1): Ducks: Black Ducks Pintails Other Ducks Limits include no more than: Female Mallards Coots Gallinules/Moorhens(4) Mergansers (except hooded) Hooded mergansers Geese: Brant Other Geese Limits include no more than: Canada Brant Remainder of State: Ducks: North Zone (1) South Zone (1) Ohio River Zone (1) Limits include no more than: Mallards (no more than 1 female mallard daily or 2 in possession) Pintails Black ducks Wood ducks Redheads Mergansers (except hooded) Hooded mergansers Coots Gallinules/Moorhens(4) Geese Limits include no more than: Canada White-fronted Snow (including blue) and brant	Snow (including blue) and brant	5	10	3	6	Tag System--See State Regulations Tag System Tag System Tag System.
Wisconsin Ducks: North Duck Zone (1) South Duck Zone (1) Coots Gallinules/Moorhens(4) Geese: Canada(3): Horicon Zone(1) Pine Island Zone(1) Collins Zone(1) Theresa Zone(1) Exterior Zone(1): Mississippi River Zone(1): North Duck Zone(1) South Duck Zone(1) Rock Prairie Zone(1) Brown County Zone(1) Remainder of Exterior Zone (1): North Duck Zone(1) South Duck Zone(1) Other Geese: (Seasons are concurrent with Canada goose seasons). Limits include no more than: White-fronted Snow (including blue) and brant	North Duck Zone (1) South Duck Zone (1) Coots Gallinules/Moorhens(4) Geese: Canada(3): Horicon Zone(1) Pine Island Zone(1) Collins Zone(1) Theresa Zone(1) Exterior Zone(1): Mississippi River Zone(1): North Duck Zone(1) South Duck Zone(1) Rock Prairie Zone(1) Brown County Zone(1) Remainder of Exterior Zone (1): North Duck Zone(1) South Duck Zone(1) Other Geese: (Seasons are concurrent with Canada goose seasons). Limits include no more than: White-fronted Snow (including blue) and brant	5	10	3	6	Tag System--See State Regulations Tag System Tag System Tag System.
Tennessee Ducks: Reelfoot Zone (1) State Zone (1) Coots Gallinules/Moorhens(4) Geese: Canada: Northwest Zone (1)(3) Southwest Zone (1) Remainder of State Other Geese Limits include no more than: White-fronted Snow (including blue) and brant	Reelfoot Zone (1) State Zone (1) Coots Gallinules/Moorhens(4) Geese: Canada: Northwest Zone (1)(3) Southwest Zone (1) Remainder of State Other Geese Limits include no more than: White-fronted Snow (including blue) and brant	3	6	25	2	Tag System--See State Regulations Tag System Tag System Tag System.

(1) Described in the September 16, 1988, Federal Register (53 FR 36033) and/or the State Regulations.  
(2) Geese taken in Illinois and Missouri and in the Kentucky counties of Ballard, Hickman, Fulton, and Carlisle may not be transported, shipped or delivered for transportation or shipment by common carrier, the Postal Service, or by any person except as the personal baggage of licensed waterfowl hunters, provided that no hunter shall possess or transport more than the legally-prescribed possession limit of geese. Geese possessed or transported by persons other than the taker must be labeled with the name and address of the taker and the date taken.  
(3) Harvests of Canada geese will be limited as follows:

Arkansas  
Statewide - 2,400  
Illinois  
Southern Illinois Quota Zone - 37,000  
Rand Lake Quota Zone - 11,100  
Remainder of State - 25,900  
Indiana  
Posey County - 8,300  
Remainder of State - 20,100  
Kentucky  
Western Zone:  
Ballard Reporting Area - 14,200  
Henderson/Union Reporting Area - 4,500  
Remainder of Western Zone - 3,800  
Michigan  
Superior Counties Goose Management Area - 8,000  
Allegan County Goose Management Area - 4,500  
Muskegon Wastewater Goose Management Area - 500  
Saginaw County Goose Management Area - 4,500  
Fish Point Goose Management Area - 2,500  
Remainder of State - 59,400

Minnesota: Lac qui Parle Quota Zone - 4,000  
 Missouri: Swan Lake Zone - 10,000  
 Tennessee:

#### Northwest Zone:

Reelfoot Subzone - 6,200  
 Remainder of Northwest Zone - 2,700

#### Wisconsin:

Horicon Zone - 46,100  
 Theresa Zone - 3,000  
 Pine Island Zone - 1,000  
 Collins Zone - 2,000  
 Exterior Zone - 16,100

When it has been determined that the quota of Canada geese allotted to the Southern Illinois Quota Zone, the Rend Lake Quota Zone in Illinois, the Swan Lake Zone in Missouri, Posey County in Indiana, the Lac qui Parle Quota Zone in Minnesota, the Ballard and Henderson/Union Reporting Areas in Kentucky, the Reelfoot Subzone in Tennessee, and the Superior Counties, Allegan County, Muskegon Wastewater, Fish Point, and Saginaw County Goose Management Areas in Michigan, will have been filled, the season for taking Canada geese in the respective area will be closed by either the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

(4) Shooting hours for common moorhens and purple gallinules are one-half hour before sunrise to sunset.

(5) The daily bag and possession limit for purple gallinules and common moorhens is singly or in the aggregate of the two species.

#### CENTRAL FLYWAY

The Central Flyway consists of Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Ferris, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except that the Jicarilla Apache Indian Reservation is in the Pacific Flyway), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Geese include all species of geese and brant.

Dark Geese include Canada geese, white-fronted geese, and "black" brant.

Light Geese include all other species.

#### Flywaywide Restrictions

Shooting (including hawking) hours: Sunrise to sunset daily except as otherwise restricted—Check State regulations.

Canvassacks -- All areas of the Flyway are closed to canvassack hunting.

Mergansers -- All mergansers are to be included within the daily bag and possession limits.

Bag Limits -- The daily bag limit is 3 ducks, including no more than 2 mallards, no more than 1 of which may be a female, 1 mottled duck, 1 pintail, 1 redhead, 1 hooded merganser, and 2 wood ducks. The possession limit is twice the daily bag limit. Check State regulations for additional restrictions.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS WITHIN STATES. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

	Season Dates	Limits Bag Possession
Colorado Ducks	Oct. 8-Oct. 18 & Nov. 5-Nov. 27 & Dec. 17-Jan. 2. Same as for ducks.	3 6 15 30
Coots Geese:		
North-Central Unit (1):		
West of I-25	Oct. 1-Oct. 9 & Oct. 29-Jan. 8.	4 8
Including no more than:		
Dark geese		2 4
Remainder of North Central Unit	Oct. 29-Jan. 8.	4 8
Including no more than:		
Dark geese		2 4
South Park Unit (1)	Oct. 1-Oct. 9 & Oct. 29-Jan. 2.	2 4
San Luis Valley Unit (1) (special permit)	Oct. 29-Jan. 2.	2 geese per season.
North Park Unit (1) (special permit)	Oct. 1-Oct. 9.	2 geese per season.
Arkansas Valley Unit (1)	Nov. 19-Jan. 22.	4 8
Including no more than:		
Dark geese		2 4
Remainder of State in Central Flyway	Oct. 29-Jan. 22.	4 8
Including no more than:		
Dark geese		2 4
Kansas Ducks:		
Female Mallards (Statewide)	Oct. 8-Oct. 28 & Nov. 11-Nov. 28 & Dec. 24-Jan. 4.	3 6 1 1
High Plains Area (west of U.S. 283)		
Low Plains Area (east of U.S. 283)	Oct. 22-Oct. 28 & Nov. 10-Dec. 4 & Dec. 26-Jan. 1. Same as for ducks.	15 30 2 4
Coots		
Dark geese (2)	Oct. 29-Jan. 8.	
(During the period Oct. 29- Nov. 27 the daily bag limit will be 2 Canada geese or 1 Canada goose and 1 white- fronted goose; possession limit is twice the daily bag. During the period Nov. 28- Jan. 8 the daily bag limit will be 1 Canada goose or 1 white-fronted goose; possession limit is twice the daily bag.)		
Light geese		
Unit 1 (east of U.S. 75 and north of I-70)	Nov. 11-Dec. 4 & Dec. 13-Feb. 12.	5 10
Unit 2 (remainder of State)	Oct. 13-Dec. 4 & Dec. 17-Feb. 3.	5 10
Montana Ducks		
Zone 1 (3)	Oct. 8-Nov. 15 & Dec. 10-Dec. 21.	3 6
Zone 2 (3)	Oct. 8-Oct. 16 & Nov. 10-Dec. 21. Same as for ducks.	15 30
Coots		

Geese:		Oct. 1-Jan. 1.		Oct. 1-Dec. 11.	
Limits:					
Shoridan County:					
Dark geese					
Light geese					
Remainder of State in					
Central Flyway:					
Dark geese					
Light geese					
Tundra swans					
Nebraska:					
Ducks:					
Female mallards (Statewide)					
High Plains Area					
Low Plains Area					
Zones 1 and 2 (4)					
Zones 3 and 4 (4)					
Pintails					
Coots					
Dark geese					
North Unit (5)					
(During the period Oct. 1-					
Nov. 11 the daily bag limit					
will be 1 Canada goose or 1					
white-fronted goose; possession					
limit is twice the daily bag.					
During the period Nov. 12-					
Dec. 18 the daily bag limit					
will be 2 Canada geese or 1					
Canada goose or 1 white-fronted					
goose; possession limit is twice					
the daily bag.)					
East Unit (5)					
(During the period Oct. 1-					
Nov. 20 the daily bag limit					
will be 2 Canada geese or 1					
Canada goose and 1 white-					
fronted goose; possession					
limit is twice the daily bag.					
During the period Nov. 21-					
Dec. 11 the daily bag limit					
will be 1 Canada goose or 1					
white-fronted goose; possession					
limit is twice the daily bag.)					
Central Unit (5)					
(During the period Oct. 25-					
Nov. 20 the daily bag limit					
will be 2 Canada geese or 1					
Canada goose and 1 white-					
fronted goose; possession					
limit is twice the daily bag.					
During the period Nov. 21-					
Jan. 4 the daily bag limit					
will be 1 Canada goose or 1					
white-fronted goose; possession					
limit is twice the daily bag.)					
Farhandle Unit (5)					
(During the period Nov. 10-					
Nov. 20 the daily bag limit					
will be 2 Canada geese or 1					
Canada goose and 1 white-					
fronted goose; possession					
limit is twice the daily bag.					
During the period Nov. 21-					
Jan. 4 the daily bag limit					
will be 1 Canada goose or 1					
white-fronted goose; possession					
limit is twice the daily bag.)					
Sandhills Unit (5)					
(special permit)					
Light geese					
New Mexico					
Ducks:					
Zone 1 (7)					
Zone 2 (7)					
Coots					
Common Moorhens (15)					
Geese:					
Dark geese (8)					
Light geese:					
Rio Grande Valley					
Unit (9)					
Remainder of State in					
Central Flyway					
North Dakota					
Ducks:					
Low Plains Area					
Female mallard					
High Plains Area					
Coots					
Dark geese:					
Statewide					
Dark Goose Late Season					
Zone only					
Including no more than:					
Canada					
Light geese					
Swans					
Oklahoma					
Ducks:					
High Plains Area (10)					
Low Plains					
Zone 1 (10)					
Zone 2 (10)					
Coots					
Dark geese (16)					
Including no more than:					
White-fronted					
Light geese					
South Dakota					
Ducks:					
High Plains Area (11)					
Low Plains Area					
North Zone (11)					
South Zone (11)					
Coots					
Dark geese					
Missouri River Unit (12)					
(During the period Oct. 18-					
Nov. 11 the daily bag limit					
will be 1 Canada goose or 1					
white-fronted goose; possession					
limit is twice the daily bag.					
During the period Nov. 12-					
Dec. 25 the daily bag limit					
will be 2 Canada geese or 1					
Canada goose and 1 white-					
fronted goose; possession limit					
is twice the daily bag.)					



Sandhill cranes (only in Nov. 4-Nov. 6 & Nov. 8-Nov. 10 & Nov. 12-Nov. 14 & Nov. 16-Nov. 18. Only by permit; 2 cranes per season.

#### California

##### Ducks:

Northeastern Zone (2) Oct. 8-Dec. 5. See footnote (1)  
Colorado River Zone (2) Oct. 14-Nov. 20 & Dec. 19-Jan. 8. See footnote (1)  
Southern Zone (2) Oct. 15-Nov. 9 & Dec. 7-Jan. 8. See footnote (1)  
Balance of State Zone (2) Oct. 22-Nov. 13 & Dec. 4-Jan. 8. See footnote (1)

##### Geese (except cackling Canada, Aleutian Canada and brant):

Northeastern Zone (3) Including no more than: 3 6  
Canada geese (except Aleutian and Cackling) White-fronted geese (except that the season shall be Oct. 8-Oct. 30). 2 4  
White geese Colorado River Zone(3) Including no more than: 1 2  
Dark (but no more than 2 Canada geese) (4) 3 3  
White geese 3 6

##### Southern Zone (2)

Including no more than: Oct. 15-Jan. 15. 3 3  
Dark (except that Canada geese shall not exceed 2 in the daily bag and possession limits; but in that portion of District 22 within the Southern Zone, Canada geese may not exceed 1 in daily bag and 2 in possession; and the season on Canada geese shall be Oct. 22-Jan. 15.) (3) 3 3

##### Balance-of-the-State Zone(2)

Including no more than: Oct. 29-Jan. 15. 3 3  
Dark (3) (4): 1 1  
Except that the season on Canada geese shall be: -  
Counties of Del Norte and Humboldt Closed.  
Sacramento Valley Area (2) Closed.  
San Joaquin Valley Area (2) Oct. 29-Nov. 22.  
Except that the season on white-fronted geese shall be: Oct. 29-Jan. 1.

Reservation Boundary and Lyman County Road through Preshto to I-90, and US-183 to the southern State line. North Zone: East of the High Plains except the South Zone. South Zone: Bon Homme County (south of S.D. Highway 50), Yankton County (south of S.D. Highway 50) and Clay County (south of S.D. Highway 50); Charles Mix County (south and west of a line formed by S.D. Highway 50 from Douglas County to Geddes, Highways CPAS 6198 and CPAS 6516 to Lake Ardes, and S.D. Highway 50 to Bon Homme County); Gregory County; and Union County (south and west of S.D. Highway 50 and Interstate Highway 29).

(12) Missouri River Unit: The Counties of Bon Homme, Butte, Buffalo, Campbell, Charles Mix, Corson (east of highway SD-65), Dewey, Gregory, Haakon (north of Kirley Road and part of Plum Creek), Hughes, Hyde, Lyman (north and east of highways I-90 and US-183), Potter, Stanley, Sully, Tripp (east of highway US-183), Walworth, and Yankton (west of highway US-81).

(13) High Plains: West of highways US-183 from the northern State line to Vernon, US-283 to Albany, T-6 and T-351 to Abilene, US-277 to Del Rio, and the Del Rio International Toll Bridge access road.

(14) In Texas, the season on Canada geese is closed in Anderson and Henderson Counties.

(15) Shooting hours for common snipe, rails, woodcock, sandhill cranes, common moorhens, and purple gallinules may be one-half hour before sunrise to sunset. Check State regulations.

(16) See State regulations for areas closed to Canada goose hunting except by State permit.

#### PACIFIC FLWYWAY

The Pacific Flyway includes the States of Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington, and Wyoming (west of the Continental Divide including the Great Divide Basin).

#### Flywaywide Restrictions

Shooting (including hawkling) hours: Sunrise to sunset daily, except as otherwise noted—Check State regulations for further restrictions.

Aleutian Canada Geese: The season is closed on Aleutian Canada geese throughout the Flyway.

White Geese and Dark Geese: Unless otherwise noted, seasons and limits for white geese are for snow, including blue, and Ross' geese, either singly or in the aggregate; and seasons and limits for dark geese are for Canada and white-fronted geese, brant, and all other species of geese, either singly or in the aggregate, except in Washington, Oregon, and California where there are separate seasons and limits on brant.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATION OF GEOGRAPHICAL AREAS OR ZONES WITHIN STATES. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

	Season Dates	Limits	
		Bag	Possession
Arizona Ducks	Oct. 14-Nov. 20 & Dec. 19-Jan. 8. Nov. 15-Jan. 22.	See footnote (1). 6 6	
Geese:			
Including no more than:			
Dark (no more than 2 Canada geese)		3 3	
White		3 3	
Coots and common moorhens (singly or in the aggregate)	Same as for ducks.	25 25	
Common Snipe	Same as for ducks.	8 16	

Sacramento Valley Area (2) Remainder of Zone White Cackling Canada geese and Aleutian Canada geese Brant Coots and common moorhens (singly or in the aggregate) Common snipe Colorado Ducks Geese: Brown's Park, Moffat County Delta and Montrose Counties Mesa County Dolores, Gunnison, LaPlata and Montezuma Counties Remainder of State in Pacific Flyway Coots Common snipe Idaho Ducks Zone 1 (2) Zone 2 (2) Geese: Goose Area 1 (2) (5) Including no more than: Dark Goose Area 2 (2) Including no more than: Dark Goose Area 3 (2) Including no more than: Dark Goose Area 4 (2) Including no more than: Dark Coots Common snipe Montana Ducks Geese: (6) East of the Continental Divide Including no more than: Dark White West of the Continental Divide Including no more than: Dark White Coots Common snipe	Oct. 29-Nov. 30. Oct. 29-Jan. 1. Closed. Nov. 1-Nov. 30. Same as for ducks. Same as for ducks. Oct. 8-Oct. 14 & Nov. 14-Jan. 2. Oct. 22-Dec. 4. Nov. 12-Jan. 2. Nov. 12-Jan. 2. Closed. Oct. 1-Oct. 13 & Oct. 22-Jan. 2. Same as for ducks. Sept. 1-Dec. 2. Oct. 15-Dec. 12. Oct. 8-Nov. 6 & Dec. 10-Jan. 7. Oct. 8-Jan. 1. Oct. 22-Jan. 1. Oct. 10-Jan. 3. Oct. 10-Nov. 6. Nov. 7-Dec. 13. Dec. 14-Jan. 3. Oct. 15-Jan. 8. Same as for ducks. Same as for ducks. Oct. 8-Nov. 26 & Dec. 24-Jan. 1. Oct. 1-Jan. 1. Oct. 1-Jan. 1. Same as for ducks. Same as for ducks.	3 3 - 2 25 8 See footnote (1) 1 Only by permit; 2 geese per day; 4 per season. Only by permit; 2 4 6 geese per season. - 2 25 8 See footnote (1) See footnote (1) See footnote (1) 3 6 2 4 1 1 1 2 25 8 See footnote (1) 6 3 3 5 2 25 8 See footnote (1) 6 3 3 5 2 3 6 25 8	Whistling swans, only in Cascade, Hill, Liberty, Fondera, Toole and Teton Counties Nevada Ducks: Clark County Remainder of State Dark geese: Clark County White River Valley in Nye County, and Pahrnagata Valley in Lincoln County Remainder of State White geese: Clark County White River Valley in Nye County, Pahrnagata Valley in Lincoln County and Ruby Valley in Elko and White Pine Counties Remainder of State Coots and common moorhens (singly or in the aggregate) Common snipe Whistling swans (only in Churchill, Lyon, and Pershing Counties) New Mexico Ducks Geese: North of Interstate 40 Including no more than: Dark (no more than 2 Canada geese per day and 12 per season) White South of Interstate 40 Including no more than: Dark (no more than 2 Canada geese) White Coots and common moorhens (singly or in the aggregate) Common snipe Sora and Virginia Rails (singly or in the aggregate) Oregon Ducks: Entire State, except Morrow and Umatilla Counties Morrow and Umatilla Counties Geese (except cackling Canada, and Aleutian Canada): Western Oregon (3) (7) (8)	Oct. 1-Jan. 1. Nov. 11-Jan. 8. Oct. 8-Dec. 5. Nov. 26-Jan. 22. Nov. 26-Jan. 22 Oct. 8-Jan. 8. Nov. 26-Jan. 22. Oct. 8-Jan. 8. Closed. Oct. 8-Jan. 8. Same as for ducks. Same as for ducks. Oct. 8-Jan. 8. Oct. 8-Oct. 23 & Nov. 26-Jan. 7. Jan. 7-Jan. 22. Oct. 22-Jan. 15. Same as for ducks. Oct. 8-Jan. 8. Oct. 8-Jan. 8. Oct. 15-Nov. 27 & Dec. 17-Dec. 31. Oct. 15-Nov. 27 & Dec. 10-Dec. 31. Oct. 15-Jan. 15.	Only by permit; 1 swan per season. See footnote (1) See footnote (1) 2 2 3 2 4 3 - 3 25 8 Only by permit; 1 swan per season. See footnote (1) 3 3 2 1 2 25 8 10 See footnote (1) See footnote (1) 2 4
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Eastern Oregon, except Baker, Malheur, Klamath, and Lake Counties	Oct. 15-Jan. 15.	6	6	Clark, Coallitz, Pacific and Waiilatam Counties	See footnotes (3) & (11)
Including no more than: Dark (3) White		3	6	Remainder of Western Washington	
Baker and Malheur Counties (3)	Oct. 15-Jan. 1.	2	4	Cackling Canada geese and Aleutian Canada geese:	Closed.
Klamath and Lake Counties		6	6	Brant:	
Including no more than: Dark (3), except the season on white-fronted geese does not open until Nov. 1.				Skagit and Whatcom Counties only.	
White	Oct. 15-Jan. 15.	3	6	Coots	Dec. 10, 11, 13, 14, 15
Cackling and Aleutian Canada geese	Oct. 15-Jan. 15.	3	6	Common snipe	16, 17, 18 and 20.
Brant	Closed.	-	-		Same as for ducks.
Coots	Dec. 17-Jan. 1.	only by permit;	25		8
Common snipe	Same as for ducks	25	4		16
Utah Ducks	Same as for ducks	8	16		
Geese:	Oct. 8-Dec. 4.	See footnote (1)			
Including no more than: Dark geese	Oct. 8-Jan. 1.	5	6		
White geese		2	4		
Special Seasons:		3	6		
Daygett County east of U.S. Highway 191	Oct. 22-Dec. 4.	1	2		
Including no more than: Canada geese	Oct. 15-Jan. 8.	2	2		
Washington County					
Including no more than: Canada geese					
Emery County, Desert Lake Wildlife Management Area	Oct. 29-Jan. 1.	1	2		
Coots	See State Regulations.	25	25		
Common snipe	Same as for ducks.	8	16		
Tundra swans	Oct. 8-Jan. 1.	Only by permit;	1 swan per season.		
Washington Ducks:					
Eastern Washington (9)	Oct. 15-Oct. 23 & Nov. 5-Dec. 31.	See footnote (1)			
Western Washington (9)	Oct. 15-Oct. 23 & Nov. 12-Dec. 31.	See footnote (1)			
Geese (except cackling Canada, Aleutian Canada and Brant)					
Eastern Washington (3) (9): Adams, Benton, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla Counties, and east of Satus Pass (Highway 97) in Klickitat County	Oct. 15-Jan. 15 (11).	3	6		
Remainder of Eastern Washington	Oct. 15-Jan. 15.	3	6		
Western Washington (3) (10): Island, Skagit, Snohomish and Whatcom Counties	Oct. 15-Jan. 8.	3	4		

seasons are allowed. The permit must be displayed to any authorized law enforcement official upon request.

#### Pacific Flyway

(a) In Arizona (within Game Management Units 30A, 30B, 31, and 32), the season dates are November 4-6, November 8-10, November 12-14 and November 16-18, 1988. Hunting will be by special permit to be issued by the State. Each permittee may take 2 sandhill cranes per season.

(b) In Wyoming's sandhill crane-Canada goose hunt areas: Hunting is by State permit only.

Bear River area in Lincoln County - the season dates are September 3 through September 4, 1988. Season limit is 1 sandhill crane per hunter.

Riverton Boysen Unit in Fremont County - the season dates are September 10 through September 11, 1988. Season limits are 2 sandhill cranes per hunter.

Salt River (Star Valley) area in Lincoln County - the season dates are September 3 through September 4, 1988. Season limits are 1 sandhill crane and 2 Canada geese per hunter.

Eden - Farson Agricultural Project in Sweetwater and Sublette Counties - the season dates are September 3 through September 4, 1988. Season limits are 2 sandhill cranes and 1 Canada goose per hunter.

5. Section 20.107 is revised as follows:

20.107 Seasons, limits, and shooting hours for tundra (whistling) swans.

Whistling swans may be taken only by State-issued permit. Permittees may take only one whistling swan per season. Successful permittees must immediately validate their harvest by that method required in State regulations. Shooting hours are from one-half before sunrise to sunset daily except as otherwise restricted—Check State hunting regulations. Seasons are:

Atlantic Flyway: (a) In North Carolina, tundra swans may be hunted from November 3, 1988, through January 31, 1989; and (b) in Virginia, tundra swans may be hunted from November 1 through November 5, 1988, November 7 through November 12, 1988, and November 14, 1988, through January 31, 1989.

Central Flyway: (a) In Montana, tundra swans may be hunted from October 1, 1988, through January 1, 1989; and (b) in North Dakota, tundra swans may be hunted from October 8 through November 13, 1988.

Pacific Flyway: (a) In Montana, whistling swans may be hunted only in Teton and Cascade Counties from October 1, 1988, through January 1, 1989; (b) In Nevada, tundra swans may be hunted only in Churchill, Lyon and Pershing Counties from October 8, 1988, through January 8, 1989; (c) In Utah, tundra swans may be hunted from October 8, 1988, through January 1, 1989.

6. Section 20.109 is revised to read as follows:

20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.

Subject to the applicable provisions of this part, the areas open to hunting, the respective open seasons (dates inclusive), the hawking hours, and the daily bag and possession limits on the species designated in this section are prescribed as follows:

Daily bag limit..... 3 singly or in the aggregate.  
Possession limit..... 6 singly or in the aggregate.  
These limits apply during both regular hunting seasons and extended falconry seasons.

(11) The hunting season for all geese except Canada geese in Clark, Cowlitz, Pacific and Wahkiakum Counties is October 15 through January 15; 3 geese may be taken daily and 6 may be in possession. Canada goose season is open in the following Clark-Cowlitz-Wahkiakum Counties area: Clark County: All lands west of the boundary from Interstate 5 north to SR 502, thence north on N.E. 10th Ave., thence north on N.E. Timmen Road to La Center Road, thence west to Interstate 5, thence north to the Lewis River; Cowlitz and Wahkiakum counties: all lands south of State Hwy 4 and west of Interstate 5. The season in the Clark-Cowlitz-Wahkiakum area is Nov. 13, 16, 20, 27, and 29, December 3, 7, 11, 13, 17, 21, 27, 31, and January 2 and 7. The Canada goose season is open in Pacific County from on Wednesdays and Saturdays only, November 12 to January 7. Canada goose season shooting hours are 9 a.m. to 4 p.m. Bag limits are 3 geese per day and 6 in possession, including no more than 1 dusky Canada goose per season. See State regulations for specific conditions of these permit hunts.

4. Section 20.106 is revised to read as follows:

20.106 Seasons, limits, and shooting hours for sandhill cranes.

Central Flyway: Subject to the applicable provisions of the preceding sections of this part, open seasons are prescribed for taking sandhill cranes with a daily bag limit of 3 and a possession limit of 6 cranes (unless otherwise noted), and with shooting hours from one-half hour before sunrise until sunset (unless otherwise noted) in the following areas for the dates indicated:

(a) In Colorado (the Central Flyway portion except the San Luis Valley and North Park) the inclusive dates are October 1 through November 27, 1988.

(b) In New Mexico (a) in the counties of Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt, the inclusive dates for the regular season are October 22, 1988, through January 22, 1989; (b) in the Middle Rio Grande Valley Hunt Zone (described in State regulations) the inclusive dates for the experimental season is October 15 through October 30, 1988; and (c) in the Harch-Deming Zone in the counties of Sierra, Luna, and Dona Ana the inclusive dates are January 6-January 8; January 13-January 15; January 20-January 22; and January 27-January 29, 1989. Hunting in the experimental seasons is by State permit only, the daily bag limit is 3 sandhill cranes and the seasonal bag limit is 9, and shooting hours are sunrise to sunset.

(c) In Oklahoma (that portion west of I-35) the inclusive dates are October 22-January 22, 1989.

(d) In Texas, in Zone A the inclusive dates are November 12, 1988, through February 12, 1989. In Zone B the inclusive dates are November 26, 1988, through February 5, 1989. In Zone C the inclusive dates are January 7, 1989, through February 12, 1989. In the remainder of the State, the season is closed. See State regulations for description of zones.

(e) In North Dakota (that portion west of U.S. Highway 281) the inclusive dates are September 10 through November 6, 1988.

(f) In South Dakota, the inclusive season dates are September 24 through October 30 1988.

(g) In Montana (the Central Flyway portion except that area south of I-90 and west of the Bighorn River), the inclusive dates are October 1 through November 27, 1988.

(h) In Wyoming, in Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties, the inclusive season dates are September 17 through November 13, 1988.

Each hunter participating in the regular sandhill crane hunting season must obtain and carry in his possession while hunting sandhill cranes a valid Federal sandhill crane hunting permit available without cost from conservation agencies in the States where crane hunting

Hawking hours: One-half hour before sunrise until sunset daily.  
CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS.

#### Atlantic Flyway

##### Florida:

Mourning doves and white-winged doves..... Sept. 24-Dec. 2.  
Woodcock..... Oct. 22-Dec. 4.  
Snipe..... Nov. 1-Feb. 15.  
Common moorhens and rails..... Sept. 24-Dec. 3.  
Ducks and coots..... Nov. 1-Nov. 19 &  
Dec. 1-Dec. 14 &  
Jan. 21-Feb. 28.

##### Georgia:

Ducks, coots, mergansers, gallinules  
and sea ducks..... Nov. 14-Feb. 28.

##### Maine:

Ducks, coots, and mergansers:

North Zone (Units 1-5)..... Oct. 6-Oct. 9 &  
Oct. 30-Nov. 9 &  
Nov. 20-Jan. 20.  
South Zone (Units 6-8)..... Oct. 6-Oct. 9 &  
Oct. 23-Nov. 30 &  
Dec. 18-Jan. 20.

##### Maryland:

Mourning doves..... Sept. 1-Oct. 23 &  
Nov. 1-Dec. 24.

Rails..... Sept. 1-Dec. 16.

Woodcock..... Oct. 5-Jan. 19.

Snipe..... Oct. 1-Nov. 25 &  
Nov. 28-Jan. 17.

Ducks..... Oct. 21-Oct. 22 &  
Nov. 21-Nov. 25 &  
Dec. 1-Mar. 10.

Canada Geese..... Nov. 11-Nov. 25 &  
Dec. 8-Jan. 21.

Snow Geese (including blue)..... Oct. 25-Nov. 25 &  
Dec. 5-Jan. 31.

Brant..... Nov. 21-Nov. 25 &  
Dec. 8-Jan. 20.

##### Massachusetts:

All permitted ducks and coots..... Oct. 12-Jan. 14.

##### New Hampshire:

Ducks, coots and mergansers:

Inland Zone..... Oct. 31-Nov. 23 &  
Dec. 5-Dec. 31.  
Coastal Zone..... Oct. 24-Nov. 23 &  
Dec. 15-Jan. 8.

##### New Jersey:

Ducks..... Oct. 3-Jan. 7 &  
Mar. 1-Mar. 10.

##### New York:

All Species:

Northeast Zone..... Oct. 1-Oct. 7 &  
Nov. 1-Nov. 7.  
Southeast Zone..... Oct. 1-Oct. 11 &  
Oct. 17-Oct. 19.  
Western Zone..... Oct. 1-Oct. 14.  
Long Island..... Nov. 4-Nov. 17.

##### Pennsylvania:

Mourning doves..... Sept. 1-Dec. 16.  
Ducks and geese..... Oct. 8-Jan. 8.

##### South Carolina:

Ducks, coots and mergansers..... Oct. 8-Nov. 18 &  
Nov. 27-Dec. 16.

##### Virginia:

Woodcock and snipe..... Oct. 17-Jan. 31.  
Mourning doves and rails..... Sept. 1-Nov. 30 &  
Dec. 19-Jan. 3.  
Ducks, coots, mergansers and geese..... Oct. 6-Jan. 20.

##### Mississippi Flyway

##### Illinois:

Mourning doves, woodcock, rails and snipe..... Sept. 1-Dec. 16.  
Ducks, mergansers and coots..... Oct. 8-Jan. 8.

##### Indiana:

Mourning doves..... Oct. 17-Nov. 3 &  
Jan. 1-Jan. 29.

Woodcock..... Sept. 1-Sept. 16.

Ducks, coots and mergansers:

North Zone..... Oct. 8-Oct. 13 &  
Oct. 17-Nov. 3 &  
Dec. 1-Jan. 8.  
South Zone..... Oct. 8-Oct. 21 &  
Oct. 25-Nov. 18 &  
Dec. 16-Jan. 8.

Ohio River Zone..... Oct. 8-Nov. 23 &  
Nov. 28-Dec. 9 &  
Jan. 5-Jan. 8.

##### Iowa:

Ducks, coots, and geese..... Sept. 1-Dec. 16.

##### Kentucky:

All permitted species..... Nov. 1-Jan. 20.

Michigan:

Snipe, rails and moorhens..... Sept. 1-Dec. 16.  
Ducks, coots, and geese..... Oct. 4-Jan. 18.

Minnesota:

Woodcock, snipe, and rails..... Sept. 1-Dec. 16.

Mississippi:

Mourning Doves..... Nov. 15-Nov. 30 &  
Feb. 1-Mar. 4.

Ducks, coots, and mergansers..... Nov. 1-Nov. 30 &  
Jan. 28-Mar. 10.

Missouri:

Mourning doves..... Sept. 1-Dec. 16.

Ducks, coots, and mergansers..... Oct. 1-Jan. 15.

Wisconsin:

Rails, woodcock, snipe, and gallinules..... Sept. 1-Dec. 16.

Ducks, mergansers, and coots..... Nov. 8-Jan. 22.

Geese..... Oct. 1-Dec. 31.

Central FlywayColorado:

Ducks, mergansers, coots and geese..... Sept. 1-Oct. 7 &  
Oct. 19-Nov. 4.

Montana:

All migratory game birds excluding doves..... Sept. 17-Jan. 1.

Nebraska:

Ducks, coots, mergansers, and geese..... Oct. 1-Jan. 15.

New Mexico: (1)

Mourning doves..... Sept. 1-Nov. 6 &  
Nov. 22-Dec. 30.

Band-tailed pigeons..... Sept. 1-Nov. 30.

Sandhill cranes only in Chaves, Curry,  
De Baca, Eddy, Lea, Quay, and  
Roosevelt Counties..... Oct. 8-Jan. 22.

Ducks..... Oct. 8-Jan. 15.

Canada and white-fronted geese..... Oct. 8-Jan. 15.

Snow, blue, and Ross' geese..... Nov. 28-Feb. 28.

North Dakota:

All legal migratory game species..... Sept. 1-Nov. 6.

Oklahoma:

Duck, mergansers, and coots..... Oct. 8-Jan. 22.

Texas:

Mourning doves (statewide)..... Sept. 1-Nov. 20 &  
Jan. 1-Jan. 26.

Rails and gallinules..... Sept. 1-Nov. 20 &  
Jan. 1-Jan. 26.

White-winged doves..... Sept. 1-Nov. 20 &  
Jan. 1-Jan. 26.

Wyoming:

Mourning doves..... Sept. 1-Oct. 15.

Snipe and rails..... Sept. 17-Nov. 25.

Ducks, coots, mergansers, and geese..... Oct. 8-Jan. 1.

Pacific FlywayCalifornia:

Ducks, coots, mergansers and geese

Northeastern Zone..... Oct. 8-Jan. 22.

Colorado River Zone..... Oct. 14-Jan. 28.

Southern Zone..... Oct. 15-Jan. 27.

Balance of State..... Oct. 22-Feb. 5.

Colorado:

Ducks, mergansers, coots and geese..... Sept. 1-Oct. 7 &  
Oct. 15-Oct. 24.

Idaho:

Mourning doves..... Sept. 1-Dec. 16.

Ducks, coots, and mergansers

Area 1..... Sept. 23-Oct. 14 &  
Dec. 13-Jan. 7.

Area 2..... Sept. 23-Oct. 7 &  
Nov. 7-Dec. 9.

Geese

Area 1..... Sept. 23-Oct. 7 &  
Jan. 2-Jan. 7.

Area 2..... Sept. 23-Oct. 21 &  
Jan. 2-Jan. 7.

Area 3..... Sept. 23-Oct. 9 &  
Jan. 4-Jan. 7.

Area 4..... Sept. 23-Oct. 14.

Nevada:

Ducks, coots, mergansers, snipe and moorhens.... Jan. 12-Feb. 28.

New Mexico (1):

Mourning doves..... Sept. 1-Nov. 6 &  
Nov. 22-Dec. 30.

Band-tailed pigeons..... Sept. 1-Nov. 30.

Ducks..... Oct. 8-Jan. 8.

Canada and white-fronted geese..... Oct. 8-Jan. 15.

Snow, blue and Ross' geese..... Oct. 8-Jan. 8.

Oregon:

Doves and pigeons..... Sept. 1-Dec. 16.

All permitted migratory waterfowl..... Oct. 1-Jan. 15.

Utah:

Ducks, coots, mergansers and geese..... Oct. 8-Jan. 8.

Washington:

Ducks, coots, mergansers, and geese..... Oct. 15-Jan. 29.

Wyoming

Mourning doves..... Sept. 1-Oct. 15

Snipe and rails..... Sept. 17-Nov. 25.

Ducks, coots, mergansers and geese..... Oct. 8-Jan. 1.

Note: See waterfowl season footnotes for descriptions of zones. For some States, the extended falconry season dates also include general season dates.

Date: September 22, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and  
Wildlife and Parks.

[FR Doc. 88-22121 Filed 9-27-88; 8:45 am]

BILLING CODE 4310-55-M

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# **Federal Register**

**Wednesday  
September 28, 1988**

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## **Part IV**

## **Department of the Interior**

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### **Fish and Wildlife Service**

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#### **50 CFR Part 17**

#### **Endangered and Threatened Wildlife and Plants; Final Rules**

## DEPARTMENT OF THE INTERIOR

## 50 CFR Part 17

## Endangered and Threatened Wildlife and Plants; Reclassification of the Alabama Cavefish from Threatened to Endangered

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** This rule reclassifies the Alabama cavefish, *Speoplatyrhinus poulsoni*, from threatened or endangered under the authority of the Endangered Species Act of 1973, as amended. The critical habitat designation remains unchanged. The Alabama cavefish is known only from Key Cave in Lauderdale County, Alabama. A hydrological survey for a proposed solid waste landfill determined an existing sewage sludge disposal operation is within the recharge area of Key Cave (Aley 1986). The land immediately above and around Key Cave has numerous sinkholes and water collecting depressions and is in agricultural row-crops. The application of pesticides to these crops may impact the fauna in Key Cave.

This determination increases the protection provided by the Endangered Species Act of 1973 (Act), as amended.

**EFFECTIVE DATE:** October 28, 1988.

**ADDRESS:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the Jackson Field Office, U.S. Fish and Wildlife Service, Jackson Mall Office Center, Suite 316, 300 Woodrow Wilson Avenue, Jackson, MS 39213.

**FOR FURTHER INFORMATION CONTACT:** James H. Stewart at the above address (601/965-4900, FTS 490-4900).

**SUPPLEMENTARY INFORMATION:****Background**

The Alabama cavefish was described by J.E. Cooper and R.A. Kuehne in 1974. *Speoplatyrhinus* is a monotypic genus known from only Key Cave, Lauderdale County, Alabama. It was first collected in 1967 by Cooper (Cooper and Kuehne 1974). Only nine Alabama cavefish in total are known to have been collected. The population in Key Cave is estimated at fewer than 100 individuals by Cooper (USFWS 1985). The largest number of cavefish ever observed on a single visit to Key Cave was 10 individuals.

The Alabama cavefish lacks externally visible eyes and pigmentation. Like all other members of the cavefish family, it has a jugular vent and a large branchial cavity, probably

for oral incubation of eggs. Pelvic fins are absent and the head is elongated and flattened. The typical length is just less than 3 inches (about 7 centimeters) (Cooper and Kuehne 1974).

The Service initially listed the Alabama cavefish as a threatened species and designated Key Cave as critical habitat on October 11, 1977 (42 FR 45526). Since the initial listing, the Service funded a survey of caves in Lauderdale and Colbert Counties, Alabama in 1985 and a follow-up survey of three caves in 1986 in an effort to locate other populations of Alabama cavefish. This project studied 120 caves, 27 of which were surveyed in 1985 (Cobb 1985). The remaining caves were not field surveyed because earlier surveys had found southern cavefish or no fauna or determined that permanent water was not present. Southern cavefish (*Typhlichthys subterraneanus*) and Alabama cavefish are not known to co-exist, possibly because of competition for food and space. In the 1985 survey, three caves were selected for further survey in 1986 because of habitat present or the sighting of a cavefish. The 1986 survey did not capture any cavefish, but its observations further strengthened the probability these are southern cavefish (Cobb 1986). The southern cavefish, *Typhlichthys subterraneanus*, occurs to the east and south of Key Cave and probably also to the north (Cobb 1985, 1986).

The type locality of the Alabama cavefish is situated in the Warsaw component of Tusculumbia limestone, which is known to contain caves only in the western portion of Lauderdale County. Geologically, the Key Cave area is not part of a continuous cave-containing limestone area (the eastern two-thirds of Lauderdale County contains the Fort Payne chert formation of a different geologic age) (Cobb 1985). Key Cave is a relatively large and multi-level cave with over 10,000 feet of mapped passage. Water depths may approach 20 feet in late spring (USFWS 1985). The Tennessee Valley Authority owns the two entrances and has erected a fence to discourage spelunkers. Most of the surrounding land is privately owned. A hydrological study for a proposed solid waste landfill near Key Cave concluded the recharge area for this cave included most or all of the land lying above the elevation of Pickwick Lake in eight sections of T3S, R12W (Aley 1986). Most of this area is in agricultural row-crops. A sewage sludge disposal project developed by the Tennessee Valley Authority and operated intermittently by the City of Florence, Alabama, is probably within this recharge area. The Service

published a proposed rule to reclassify this species from threatened to endangered in the *Federal Register* (52 FR 46106) on December 4, 1987.

**Summary of Comments and Recommendations**

In the December 4, 1987, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county and local governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the *Florence Times Daily* on December 12, 1987, and in the *The Birmingham News* on December 13, 1987, which invited general public comment. Three comments were received. One Federal agency and two professional biologists commented in support of the reclassification. There were no comments in opposition.

**Summary of Factors Affecting the Species**

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

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

Groundwater contamination represents a major threat to the Alabama cavefish. Most of the probable recharge area for Key Cave is in agricultural production (Aley 1986). The topography is marked by sinkholes and water-collecting depressions. The Florence Demonstration Project involves land application of municipal sludge from the City of Florence and is likely within the recharge area for Key Cave (Aley 1986). Contaminants from agricultural activities and the sewage sludge application probably enter the Key Cave aquifer since Aley (1986) believes that virtually all the land is

drained through the groundwater system.

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

Obligate cave species characteristically live longer and have considerably lower reproductive capacities than related surface species (Poulson 1961). Offers to purchase cavefish have appeared in various publications, and scientific collectors have often taken all the individuals encountered in an area. Reduction of the cavefish population by whatever event could reduce the population below the sustaining level.

*C. Disease or Predation*

Disease in cavefish has not been studied but it is reasonable to assume they are susceptible to disease outbreaks, especially when water quality deteriorates. Predation may be a threat. Raccoons and epigeal fishes are known to prey upon cavefish, as are cave crayfish. Raccoons may venture great distances into a cave preying upon whatever they catch. Key Cave has a relatively abundant population of cave crayfish.

*D. The Inadequacy of Existing Regulatory Mechanisms*

The Alabama cavefish was initially listed as threatened under authority of the Endangered Species Act of 1973, as amended. Under this designation, permits may be issued for zoological exhibitions or educational purposes. The present status of this species does not warrant issuance of permits for such purposes.

*E. Other Natural or Manmade Factors Affecting its Continued Existence.*

Cavefish are very dependent upon the energy source supporting the food supply. In Key Cave, the primary energy source is guano from a maternity colony of the endangered gray bat, *Myotis grisescens*. A decline in this maternity colony would undoubtedly affect the Alabama cavefish. The low reproductive capability and low population are natural limitations to the ability of this species to recover from any adversity.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this reclassification final. This reclassification is appropriate because (1) this species is still known from only one cave after extensive surveys of other caves in the vicinity; (2) the population is very small in this one

cave; and (3) the water quality in this cave is probably being degraded by surface activities. These factors and those described earlier place the Alabama cavefish in danger of extinction.

**Critical Habitat**

This rule does not make any change in the critical habitat as presently designated.

**Available Conservation Measures**

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Since the Alabama cavefish is already protected under section 7 of the Act by its previous listing as threatened, reclassification to endangered will not affect this requirement. For example, Federal involvement with the Alabama cavefish will probably continue to involve the Environmental Protection Agency in pesticide registration and water contamination.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the

jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

**National Environmental Policy Act**

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

**References Cited**

- Aley, T. 1986. Hydrogeologic Investigations for a Proposed Landfill near Florence, Alabama. A contract study and report for Waste Contractors, Inc. 20 pp.
- Cobb, R.M. 1985. A Reconnaissance of Caves in Lauderdale and Colbert Counties, Alabama, for the Alabama cavefish, *Speoplatyrhinus poulsoni*. A survey and report for the U.S. Fish and Wildlife Service. Jackson, MS. 26 pp. with field data forms.
- Cobb, R.M. An Attempt to Collect Specimens of Cavefish at Three Cave Sites in Northeast Alabama. A survey and report for the U.S. Fish and Wildlife Service. Jackson, MS. 8 pp.
- Cooper, J.E., and R.A. Kuehne. 1974. *Speoplatyrhinus poulsoni*: A New Genus and Species of Subterranean Fish from Alabama. *Copeia* (2):486-493.
- Poulson, T.L. 1961. Cave Adaptation in Amblyopid Fishes. Ph. D. dissert., Univ. Mich. Ann Arbor. 185 pp.
- U.S. Fish and Wildlife Service. 1985. Revised Recovery Plan for the Alabama Cavefish *Speoplatyrhinus poulsoni* Cooper and Kuehne 1974. 64 pp.

**Author**

The primary author of this final rule is James Stewart (see "ADDRESSES" section) 601/965-4900 or FTS 490-4900).

**List of Subjects in 50 CFR Part 17**

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

**Regulation Promulgation**

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

**PART 17—[AMENDED]**

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

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

**§ 17.11 [Amended]**

2. Amend § 17.11(h), the list of Endangered and Threatened Wildlife, under "FISHES", by revising the "Status" column for the entry "Cavefish, Alabama \* \* \*" to read "E" instead of "T", and revising the "When listed" column for the same species to read "28, 328".

Dated: September 2, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-22147 Filed 9-27-88; 8:45 am]

BILLING CODE 4310-55-M

**50 CFR Part 17****Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for *Oxytropis campestris* var. *chartacea***

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Service determines threatened status for *Oxytropis campestris* var. *chartacea* (Fassett's locoweed) under authority of the Endangered Species Act (Act) of 1973, as amended. The species is known from six sites in Portage and Waushara Counties, Wisconsin. Threats include human disturbance and grazing. This action will implement the protection provided by the Act for *Oxytropis campestris* var. *chartacea*.

**EFFECTIVE DATE:** October 28, 1988.

**ADDRESSES:** The complete file for this rule is available for inspection, by

appointment, during normal business hours at the Service's Regional Office of Endangered Species, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

**FOR FURTHER INFORMATION CONTACT:** James M. Engel (see "ADDRESSES" section) at 612/725-3276 or FTS 725-3276.

**SUPPLEMENTARY INFORMATION:****Background**

*Oxytropis campestris* var. *chartacea*, a member of the pea family Fabaceae, was first described as a distinct species, *Oxytropis chartacea* (Fassett 1936). This herbaceous perennial has many leaves clustered in a rosette at the base of the stem. Leaves are pinnately compound, 2 to 8 inches (5 to 20 centimeters) long, with about 15 pairs of small, pointed leaflets (Alverson 1982). Most of the plant is covered by dense, white, silky hairs which give it a silvery-gray appearance. Barneby (1952) considered the taxon a variety of *Oxytropis campestris*. Although it is very similar to var. *johannensis*, the pod of var. *chartacea* is shorter, the vestiture of the whole plant more copious and looser, and the stipules permanently pilose (Barneby 1952). *Oxytropis campestris* var. *chartacea* produces attractive rose-purple flowers from mid-May through mid-June. Fruits develop as individual pods from each flower.

*Oxytropis campestris* var. *chartacea* is known from six sites (less than 5,000 individual plants) in Portage and Waushara Counties, central Wisconsin. Attempts to locate additional populations have been unsuccessful. The species occurs on open to partially shaded sand/gravelly shorelines of small landlocked hardwater lakes. The species is not found where it is overtopped by grasses, woody shrubs, or trees. The plant will grow where the overstory is sparse enough to permit sunlight for part of the day (Alverson 1982). Fassett's locoweed is often found in association with *Carex* spp., *Juncus* spp., and *Eleocharis* spp. Lake level fluctuations maintain the species' required open habitat.

*Oxytropis campestris* var. *chartacea* was among those species covered by a report on endangered, threatened, and extinct plants which was prepared by the Secretary of the Smithsonian Institution in accordance with section 12 of the Endangered Species Act of 1973 (16 U.S.C. *et seq.*). This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. In the Federal Register of July 1, 1975 (40 FR 27823), the Service issued a notice of its acceptance of this report as a petition within the context of

section 4(c)(2) of the Act, now section 4(b)(3)(A) and of its intention to review the status of the plant taxa named therein. In the Federal Register of June 16, 1976 (41 FR 24523), the Service issued a proposed rule to determine endangered status for approximately 1,700 vascular plant species, including *O. c.* var. *chartacea*. General comments received on that proposal were summarized in the Federal Register of April 26, 1978 (43 FR 17909). In the Federal Register of December 10, 1979 (44 FR 70796), the Service issued a notice withdrawing that portion of the proposal of June 16, 1976, that had expired, along with four other proposals that had also expired. In the Federal Register of September 27, 1985 (50 FR 39526-39527), the Service issued a revised notice of review. *O. c.* var. *chartacea* was placed in Category 1 of that notice, meaning that the Service had substantial information supporting the appropriateness of proposing endangered or threatened status. On December 4, 1987, the Service published in the Federal Register (52 FR 46336), a proposal to list *Oxytropis campestris* var. *chartacea* as a threatened species. The Service now determines *O. c.* var. *chartacea* to be a threatened species with the publication of this final rule.

**Summary of Comments and Recommendations**

In the December 4, 1987 proposed rule (52 FR 46336) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in the *Stevens Point Journal*, Stevens Point, Wisconsin; and *Waushara Argus*, Waushara, Wisconsin. No comments were received. The Wisconsin Department of Natural Resources supported the proposed rule (52 FR 46336) and advised the Service of continued support for this final rule but did not have any new species information (R. Nicotera, Wisconsin Department of Natural Resources, pers. comm. 1988).

**Summary of Factors Affecting the Species**

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the

Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Oxytropis campestris* var. *chartacea* (Fassett's locoweed) are as follows:

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

This species occurs wholly on privately-owned land, residential lots, lake front lots and at a summer camp. Human use of sandy shorelines has extirpated the plant from several historic sites in Bayfield and Waushara Counties (Alverson 1982). At current sites, plants occur adjacent to areas not used by humans for recreational or other purposes. Although moderate human use of shoreline appears to be compatible with the species' survival, increasing shoreline developments would jeopardize the species.

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

Due to the limited distribution and small population size of *Oxytropis campestris* var. *chartacea*, indiscriminate collecting of any nature could have serious effects.

**C. Disease or Predation.**

Several of the sites at which *O.c.* var. *chartacea* formerly occurred have been heavily grazed by domestic livestock for many years. Circumstantial evidence suggests that such grazing eliminated the plant from these sites. Grazing is a potential threat to populations that still survive (Alverson 1982).

**D. The Inadequacy of Existing Regulatory Mechanisms**

*Oxytropis campestris* var. *chartacea* is officially listed as threatened in Wisconsin. However, such classification is of little practical benefit, since the species occurs entirely on private land. The Endangered Species Act would provide the basis for substantial additional conservation measures, such as habitat acquisition, land use agreements, and development of a recovery plan.

**E. Other Natural or Manmade Factors Affecting its Continued Existence**

*Oxytropis campestris* var. *chartacea* is vulnerable because of its restricted range and low numbers. A substantial disturbance could reduce a population to the point where long-term genetic viability would be lost, resulting in extinction.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Oxytropis campestris* var. *chartacea* as threatened. Such status is necessary due to the species' restricted range and the multiplicity of threats facing it and its habitat. It does not, however, appear to be in immediate danger of extinction. However, without protection and further research, the vulnerability of this species will continue. Critical habitat is not being designated for reasons discussed in the following section.

**Critical Habitat**

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Oxytropis campestris* var. *chartacea* at this time. Publishing a detailed description and map of this species' habitat might stimulate public interest and make this species more vulnerable to taking by collectors (see factor "B" in the "Summary of Factors Affecting the Species"). No net benefit would be derived from designating critical habitat and so it would not be prudent or beneficial to designate critical habitat for *Oxytropis campestris* var. *chartacea* at this time.

**Available Conservation Measures**

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following the listing. Recovery actions that may be of benefit to *O.c.* var. *chartacea* include protection from excessive grazing and pedestrian traffic, and reintroduction on previously occupied sites. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate

their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, to carry out are not likely to jeopardize the continued existence of a listed species or result in destruction or adverse modification of its critical habitat. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. No Federal involvement is anticipated for *Oxytropis campestris* var. *chartacea* at this time.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plants. With respect to *Oxytropis campestris* var. *chartacea*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71 apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. With respect to Fassett's locoweed, it is anticipated that few trade permits would ever be sought or issued since the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27239, Washington, DC 20038-7329 (202/343-4955).

**National Environmental Policy Act**

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of

1973, as amended. The reasons for this determination were published in the *Federal Register* on October 25, 1983 (48 FR 49244).

#### References Cited

- Alverson, W.S. 1982. Status report on *Oxytropis campestris* L. var. *chartacea* (Fassett) Barneby. Unpubl. rep. 15 pp.  
 Barneby, R.C. 1952. A revision of the North American species of *Oxytropis* DC. Proc. Calif. Acad. Sci. 17:177-312.  
 Fassett, N.C. 1936. Notes from the herbarium of the University of Wisconsin, 13. *Rhodora* 38:95.

#### Author

The primary author of this final rule is William F. Harrison (See ADDRESSES section) (612/725-3276 or FTS 725-3276).

#### List of Subjects in 50 CFR Part 17

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

#### Regulation Promulgation

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

#### PART 17—[AMENDED]

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

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

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

#### § 17.12 Endangered and threatened plants.

\* \* \* \* \*

(h) \* \* \*

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Fabaceae—Pea family.						
<i>Oxytropis campestris</i> var. <i>chartacea</i> .	Fassett's locoweed	U.S.A. (WI)	T	329	NA	NA

Dated: September 2, 1988.  
 Susan Recce,  
 Acting Assistant Secretary for Fish and Wildlife and Parks.  
 [FR Doc. 88-22148 Filed 9-27-88; 8:45 am]  
 BILLING CODE 4310-55-M

#### 50 CFR Part 17

#### Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for *Iris lacustris* (Dwarf Lake Iris)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines threatened status for *Iris lacustris* (dwarf lake iris) under authority of the Endangered Species Act (Act) of 1973, as amended. *Iris lacustris* is found along the northern shores of Lakes Michigan and Huron, at about 60 sites in 10 Michigan counties and 15 sites in two Wisconsin counties, as well as several areas in Ontario. Threats to this species include continued loss of habitat and lack of appropriate overstory vegetation management. This action will implement the Federal protection provided by the Act for *Iris lacustris*.

EFFECTIVE DATE: October 28, 1988.

ADDRESS: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Service's Regional Office of Endangered Species, Federal Building,

Fort Snelling, Twin Cities, Minnesota 55111.

FOR FURTHER INFORMATION CONTACT: James M. Engel, Endangered Species Coordinator (see ADDRESS section) at 612/725-3276 or FTS 725-3276.

#### SUPPLEMENTARY INFORMATION:

##### Background

*Iris lacustris*, a member of the family Iridaceae, has been treated as a variety of *Iris cristata* (Dykes 1913), but is recognized by others as a distinct species (Foster 1937). *Iris lacustris* is an herbaceous perennial, a diminutive iris with flat, erect, narrow leaves that sheath each other at the base. Leaves are 3 inches (7.5 centimeters) tall at the onset of flowering in late spring, later reaching 5-6 inches (15 cm). The flowers are 2-2.5 inches (6 cm) long, have three petals and sepals with the sepals being larger and the most conspicuous part of the flower, ranging in color from blue to dark violet. Fruit capsules are about 1 inch (2.5 cm) tall and triangular. *Iris lacustris* is rhizomatous and forms dense colonies under favorable conditions.

*Iris lacustris* is found in Michigan, Ontario, and Wisconsin. Reports in the literature of this species' occurrence on the shores of Lake Superior have been discounted (Guire and Voss 1963). In Michigan, the species is found at about 60 sites in 10 counties on the northern shores of Lake Michigan and Huron (The Nature Conservancy data files). In Ontario, it is found on Manitoulin Island

and the Bruce Peninsula. Makhholm (1986) recorded *Iris lacustris* at 15 scattered colonies in two counties on Wisconsin's Door Peninsula. The lakeshore habitat of this species is usually sandy or gravelly and open, although the plant occurs in the partial shade of coniferous trees and in mesic areas at the forest edge. The species seems to thrive on calcareous gravels, in partial shade near the lakeshore (E.G. Voss, University of Michigan, pers. comm. 1987). Voss also mentions that the plant will grow in crevices of limestone, or dolomite, when the substrate is bedrock. *Iris lacustris* grows in dense colonies and may be scattered in small patches in upper beach habitats, where it is shaded (Makhholm 1986). The plant is not found in full sunlight.

Although some colonies of *Iris lacustris* are protected on public land, most of the plants are threatened by habitat destruction and a lack of active management. It is estimated that less than 20 percent of the *Iris lacustris* colonies in Michigan receive any type of habitat protection, while approximately 40 percent of the Wisconsin *Iris lacustris* colonies are considered to be protected. The rarity of the species and various threats indicate that it is likely to become endangered in the long term. Federal actions involving this iris begin with section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants

considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the *Federal Register* (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2), now section 4(b)(3)(A), of the Act and of its intention thereby to review the status of those plants. *Iris lacustris* was included in the Smithsonian petition as a candidate for threatened status.

On December 15, 1980, the Service published a revised notice of review for native plants in the *Federal Register* (45 FR 82480); *Iris lacustris* was included as a Category-1 species (species for which data in the Service's possession indicate listing is warranted). This iris was still included in Category 1 in the September 27, 1985, revised notice of review of plants (50 FR 39526).

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Iris lacustris* because the 1975 Smithsonian report had been accepted as a petition. On October 13, 1983; October 12, 1984; October 11, 1985; October 10, 1986; and October 13, 1987, the Service found that the petitioned listing of these species was warranted, but that listing this species was precluded due to other higher priority listing actions. On December 4, 1987, the Service published a proposal in the *Federal Register* (52 FR 46334) to list *Iris lacustris* as a threatened species. The Service now determines *Iris lacustris* to be a threatened species with the publication of this final rule.

#### Summary of Comments and Recommendations

In the December 4, 1987 proposed rule (52 FR 46334) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate state agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in the *Green Bay News Chronicle* on December 17, 1987; *Escanaba Daily Press*, *Petoske News Review*, *Manistee News Advocate*, and *Menominee Herald-Leader*, on

December 21, 1987; the *Charlevoix Courier*, on December 23, 1987; and *The St. Ignace News*, *The Alpena News*, and *The Cheboygan Daily Tribune* on December 24, 1987.

Eight comments were received. The United States Forest Service, the Michigan Department of Natural Resources, the Michigan Chapter of the Nature Conservancy, Natural Resources Defense Council, a university professor, and a sanctuary manager supported the proposal and provided new status information. The Michigan Department of Natural Resources questioned the status information and indicated that additional information will be furnished to the Service later when recovery efforts are initiated. The U.S. Forest Service advised of occurrences of *Iris lacustris* on the Hiawatha and Huron-Manistee National Forests and that the plant adds beauty and diversity to the plant community and also seems to be a good soil stabilizer. The Nature Conservancy urged additional monitoring and taxonomic studies and habitat management research. The Natural Resources Defense Council emphasized the potential threat of commercial trade because closely related species are commonly sold through garden catalogs. The Manager of the 1000 acre Ridges Sanctuary, boreal forest community in Door County, Wisconsin which contains a large population of *Iris lacustris*, advised of his ongoing monitoring program within the sanctuary. The Michigan Department of Transportation submitted two comments, but did not take a position on the proposal. They expressed reservations about increased involvement they will have with the Federal Highway Administration in the section 7 consultation process and indicated it would be difficult for them to meet construction and roadside maintenance schedules because of the added time required for section 7 consultation procedures. The Michigan Department of Transportation is also concerned that listing *Iris lacustris* might affect their ability to maintain new safety standards along coast roads. They expressed concern about added responsibilities once *Iris lacustris* is listed, while adjoining landowners are not bound by the Act and sometimes destroy plants. Therefore the Michigan Department of Transportation supports added protection for plants on private land and further suggests continued cooperation and early consultation under section 7 with the Federal Highway Administration. Since the Michigan Department of Transportation is currently complying with the

Michigan Department of Natural Resources requirements for endangered and threatened species permits, the Service will endeavor to integrate these state requirements and actions into section 7 activities so as not to cause unnecessary delay or added work. The Department of Transportation expressed a desire to cooperate with the Service, but admits they have limited control over some uses on the right-of-way. Because of the limited nature of *Iris lacustris* and the narrow habitat requirements, the number of instances in which the plant may be affected by the Michigan Department of Transportation actions may not be of the magnitude expected. The Michigan Department of Transportation also requested representation on the recovery team for *Iris lacustris*. The Service will consider the expertise of Michigan Department of Transportation staff when formulating a recovery plan for this species. The other comment from The Michigan Department of Transportation provided additional status and occurrence information.

#### Summary of Factors Affecting the Species

After a thorough review and consideration of information available, the Service has determined that *Iris lacustris* should be classified as a threatened species. Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Iris lacustris* Nuttall (dwarf lake iris) are as follows:

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

*Iris lacustris* formerly was more widely distributed than it is today (Guire and Voss 1963, Crispin 1981, Makhholm 1986). Major habitat areas in Michigan have been significantly altered by private development to the extent that they cannot support *Iris lacustris* populations (Crispin 1981). Development of private shore areas continues and is increasing. Private residential development and associated impacts such as access road development are the greatest threats to *Iris lacustris*. In Wisconsin, Alverson (1981) identified home and cottage construction, road widening, chemical spraying and salting,

and off-road vehicle use as current threats to the species' habitat. According to R. Lukes (Ridges Sanctuary, Inc., WI, pers. comm. 1987) natural plant succession combined with the construction of shoreline homes and associated disturbances has been the cause of the steady decline of *Iris lacustris* in Door County, Wisconsin. The population of *Iris lacustris* in Milwaukee was destroyed in the course of urban development (Read 1976). Voss (pers. comm. 1987) notes that roads in these developing shoreline areas are generally placed on the solid gravelly ridges, exactly where *Iris lacustris* is found.

**B. Overutilization for Commercial, Sporting, Scientific or Educational Purposes.**

The species has attractive flowers and so has commercial potential. Faith T. Campbell (Natural Resources Defense Council pers. comm. 1987) reports that *Iris lacustris* is being offered for sale in garden catalogs and the potential exists for increased commercial trade of this species.

**C. Disease or Predation**

Not known to be a threatening factor.

**D. The Inadequacy of Existing Regulatory Mechanisms**

This species is listed as threatened by the States of Michigan and Wisconsin. Wisconsin regulations prohibit any person from removing or transporting an endangered or threatened wild plant away from its native habitat on public property, or from property he or she does not own or control, except in the course of forestry or agricultural practices or in the construction and maintenance of a utility facility. The Michigan Endangered Species Act requires developers to determine threatened species involvement in proposed projects. Although *Iris lacustris* is offered various forms of protection under these State laws, monitoring and enforcement are difficult due to limited personnel. The Endangered Species Act offers possibilities for protection of this taxon through section 6 by cooperation between the States and the Service and through section 7 (Interagency Cooperation) requirements. The Endangered Species Act will provide additional protection for *Iris lacustris* through section 9 and the recovery process.

**E. Other Natural or Manmade Factors Affecting its Continued Existence**

*Iris lacustris* colonies require management to maintain required open

habitat. Successional processes have altered some habitat beyond the tolerance limit for species. Planisek (1983) concluded that a pollen vector is necessary for fruit set. However further research is needed to determine the pollinator and what attracts it to the iris. Planisek also concluded that *Iris lacustris* is self-compatible, which increases the percentage of fruit set. However, seed production is still low.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based upon this evaluation, the preferred action is to list *Iris lacustris* as threatened. Threatened status is proposed due to the species' restricted range and the threats facing it and its habitat. Since the iris is not in any immediate threat of extinction, largely because of its scattered distribution, the Service is not proposing it for endangered status. Critical habitat is not being proposed for reasons discussed in the following section, "Critical Habitat."

**Critical Habitat**

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The designation of critical habitat is not considered to be prudent when such designation would not be of net benefit to the species involved (50 CFR 424.12). The Service believes that designation of critical habitat for *Iris lacustris* would not be prudent because no benefit to the species can be identified that would outweigh the potential threat of vandalism or collection, which might be exacerbated by the publication of a detailed critical habitat description and map.

**Available Conservation Measures**

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

competition of other plants and transplanting to previously occupied sites. The protection required of Federal agencies and the prohibitions against collecting are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provisions of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species, or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. *Iris lacustris* is known to occur on Federal lands near an unoccupied U.S. Coast Guard Lighthouse on Thunder Bay Island, Michigan, and at several sites within the Huron-Manistee and Hiawatha National Forests. No Federal actions are anticipated which would affect *Iris lacustris* at this time.

The act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plant species. With respect to *Iris lacustris* all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71 apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States, to import or export, transport in interstate or foreign commerce in the course of commercial activity, sell or offer for sale this species in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. With respect to *Iris lacustris*, it is anticipated that few trade permits would be sought or issued since the species is not now common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the office of Management

Authority, U.S. Fish and Wildlife Service, P.O. Box 27239, Central Station, Washington, DC 20038-7329 (703/343-4955).

#### National Environmental Policy Act

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

#### References Cited

- Alverson, W.S. 1981. Status report on *Iris lacustris*. Wisconsin Dept. Nat. Res. Unpubl. rep. 13 pp.  
Crispin, S.R. 1981. *Iris lacustris* in Michigan. Unpubl. rep. 6 pp.

Dykes, W.R. 1913. The genus *Iris*. Univ. Press, Cambridge. 245 pp.

Foster, R.C. 1937. A cyto-taxonomic study of the North American species of *Iris*. Contr. Gray Herb. No. 69. 81 pp.

Guire, K.E., and E.G. Voss. 1963. Distribution of distinctive shoreline plants in the Great Lakes Region. Michigan Bot. 2:99-114.

Makholm, M.M. 1986. Ecology and management of *Iris lacustris* in Wisconsin. M.S. thesis, Univ. Wisconsin. 123 pp.

Planisek, S.L. 1983. The Breeding System, Fecundity, and Dispersal of *Iris lacustris*. Michigan Bot. 22:93-102.

Read, R.H. 1976. Endangered and Threatened Vascular Plants in Wisconsin. Tech. Bull. No. 92. Sci. Areas Pres. Council. Wisconsin Department of Natural Resources. 58 pp.

#### Author

The primary author of this final rule is William F. Harrison (see ADDRESSES section) (612/725-3276 or FTS 725-3276).

#### List of Subjects in 50 CFR Part 17

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

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

#### PART 17—[AMENDED]

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

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

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

#### § 17.12 Endangered and threatened plants.

\* \* \* \* \*

(h) \* \* \*

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific	Common name					
Iridaceae:						
<i>Iris lacustris</i> .....	Dwarf lake iris .....	U.S.A. (MI, WI), Canada (ON) .....	T	330	NA	NA

Dated: September 2, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-22149 Filed 9-27-88; 8:45 am]

BILLING CODE 4310-55-M

#### 50 CFR Part 17

#### Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for *Abronia macrocarpa* (Large-fruited Sand-verbena)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

**SUMMARY:** The Service has determined that a plant, *Abronia macrocarpa* (large-fruited sand-verbena), is an endangered species. The single known population of this plant occurs on active sand dunes on private land in Leon County, Texas. Because of its small population size and limited distribution, this species is vulnerable to the threats of residential development, recreation, and commercial use. The determination of endangered status for *Abronia macrocarpa* implements protection

provided by the Endangered Species Act of 1973 (Act), as amended.

**EFFECTIVE DATE:** October 28, 1988.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours, at the Service's Regional Office of Endangered Species, 500 Gold Avenue SW., Room 4000, Albuquerque, New Mexico.

**FOR FURTHER INFORMATION CONTACT:** Charles McDonald, Botanist, Endangered Species Office, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3972 or FTS 474-3972).

#### SUPPLEMENTARY INFORMATION:

##### Background

*Abronia macrocarpa* is an herbaceous perennial endemic to Leon County in eastern Texas. Plants are restricted to actively blowing sand dunes in the Post Oak Woods Forest and Grassland Mosaic vegetation type (McMahan *et al.* 1984). *Quercus stellata* (post oak) and *Ilex vomitoria* (yaupon) are dominants in the small wooded islands within the dunes and in the surrounding woodlands. *Abronia macrocarpa* is one of the many herbaceous species that temporarily dominate the bare sands

during spring. Some commonly associated species are *Gaillardia pulchella* (Indian blanket), *Coreopsis* sp. (tickseed), *Rhododendron ciliatum*, *Stylisma* sp., and *Croton argyranthemus* (silver croton).

Showy pink-purple flower clusters make *Abronia macrocarpa* an attractive component of the spring wildflower display. Twenty to seventy-five flowers are arranged in each spherical nodding head that is golf ball size or larger. The plant's ascending or erect stems may reach 5 decimeters (20 inches) in height. Leaves are hairy, have sticky glands, and are arranged oppositely on the stems. The large scarious fruits of *Abronia macrocarpa* distinguish this species from related taxa:

The only known population of *Abronia macrocarpa* occurs on sand dunes that lie entirely within a residential resort community. The dunes cover about 30 acres, but the area occupied by *Abronia macrocarpa* is much less. In 1986, Service botanists estimated that the population contained 250 plants.

*Abronia macrocarpa* was first collected in 1968 by Dr. D.S. Correll and H.B. Correll at its only known locality.

Dr. L. Galloway formally named and described this species in 1972 in a monograph of the entire genus (Galloway 1972). Galloway was writing his monograph when the *Manual of the Vascular Plants of Texas* (Correll and Johnston 1970) was published, thus *Abronia macrocarpa* does not appear in the manual.

Federal action involving *Abronia macrocarpa* began when the species was included in category 1 of the December 15, 1980, notice (45 FR 82480) of plants under review for threatened or endangered classification. Category 1 comprises taxa for which the Service has substantial biological information to support proposing them as endangered or threatened. Further evaluation of *Abronia macrocarpa* indicated the need for more data, and the species was placed in category 2 (those species for which listing may be warranted but for which the Service does not presently have sufficient biological data to support proposing them as endangered or threatened) in a November 28, 1983, supplement (48 FR 53640) to the 1980 notice. A status report by Turner (1983) provided sufficient data to support returning *Abronia macrocarpa* to category 1 in the September 27, 1985, revision (50 FR 39526) of the 1980 notice and the 1983 supplement.

Species covered in the December 15, 1980, notice (45 FR 82480), including *Abronia macrocarpa*, are considered to be petitioned for listing. Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within one year of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 12, 1982, be treated as having been newly submitted on that date. This was the case for *Abronia macrocarpa* because of its inclusion in the 1980 notice. In October 1983, 1984, 1985, and 1986 the Service found that the petition to list *Abronia macrocarpa* was warranted but precluded by other listing actions of higher priority. The June 16, 1987, proposal to designate *Abronia macrocarpa* as endangered constituted the next one-year finding for this species.

#### Summary of Comments and Recommendations

In the June 16, 1987, proposed rule (52 FR 22944) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and

other interested parties were contacted and requested to comment. A newspaper notice inviting public comment was published in the Bryan-College Station Eagle on July 1, 1987.

Five comments were received. Comments supporting the proposal were submitted by the Texas Natural Heritage Program, the Texas Parks and Wildlife Department, and Dr. Hugh Wilson, a botanist at Texas A&M University. Comments by the Texas State Department of Highways and Public Transportation and the management of the resort community where the species occurs, offered no new information and did not take a position on the proposal. Dr. Wilson commented that if designation of critical habitat would provide additional protection, then the dune area occupied by the plants should be so designated.

**Response:** Since the potential critical habitat area is on private land, the designation of critical habitat would be of no substantial benefit to the species. In addition, the precise locality information that must be supplied when critical habitat is designated could make protection and management of the site more difficult.

#### Summary of Factors Affecting the Species

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

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

The historic and present known ranges of *Abronia macrocarpa* are the same; however, residential expansion and recreational activities associated with the surrounding resort community have destroyed habitat. Roads for a new residential area were recently built adjacent to the population. The open space of the sand dunes is an attractive area for horseback riding, bicycling, off-road vehicle (ORV) riding, and general play. These high-impact uses have produced wide paths where the sand is too disturbed to support vegetation.

An active oil well occurs on the sand dunes and construction of the well and the access road have destroyed habitat. Maintenance activities and oil spills could destroy additional plants and habitat. Maintenance of electric utility lines near the population could also contribute to site disturbance.

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

Presently, no commercial trade in *Abronia macrocarpa* exists, but horticultural interest may develop. *Abronia macrocarpa* could be developed as an ornamental, as has the similar species *Abronia ameliae*. Because of the easy accessibility of the site, the potential exists for uncontrolled collecting for horticultural research material or for commercial sale. Because the population occurs on private land, plants will not be protected, under the Endangered Species Act, from taking.

##### C. Disease or Predation

No threats are known.

##### D. The Inadequacy of Existing Regulatory Mechanisms

Currently, *Abronia macrocarpa* is not protected by either Federal or State laws or regulations.

##### E. Other Natural or Manmade Factors Affecting its Continued Existence

The limited distribution of this species makes it vulnerable to a variety of threats including disease, insect predation, or extreme weather conditions. Further reduction of its small population may result in a reduced gene pool that could threaten the species' reproductive capacity or genetic potential.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this final rule. Based on this evaluation, the preferred action is to list *Abronia macrocarpa* as endangered without critical habitat. Endangered status seems appropriate because only one known population exists and it is subject to possible destruction by residential development, recreation, and commercial activity. The reasons for not designating critical habitat are discussed below.

#### Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a

species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at the time due to its low numbers and restriction to one population. Listing of a species, with attendant publicity, highlights its rarity and attractiveness to collectors. Publication of specific location information associated with critical habitat designation would make the species more vulnerable to taking or vandalism. The location of this plant and the importance of its protection have been brought to the attention of appropriate agencies and other involved parties. Protection of the species' habitat will be addressed through the recovery process and through section 7 of that Act. Therefore, the determination of critical habitat would not be prudent, and would not result in any additional benefit to the species.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service at the earliest opportunity. Actions that may benefit *Abronia macrocarpa* include fencing, and testing seed germination and growth for possible introduction of seedlings back into the home site. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they

authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. However, *Abronia macrocarpa* is not known to occur on Federal lands and no Federal involvement with this species is currently known or expected.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of the commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. With respect to *Abronia macrocarpa*, it is anticipated that few trade permits would be sought or issued since the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Permit Branch, Office of Management Authority, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/343-4955).

#### National Environmental Policy Act

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

#### References Cited

- Correll, D.S., and M.C. Johnston. 1970. Manual of the vascular plants of Texas. Texas Research Foundation, Renner, Texas. 1881 pp.
- Galloway, L.A. 1972. *Abronia macrocarpa* L.A. Galloway. *Brittonia* 24:148-149.
- Galloway, L.A. 1975. Systematics of the North American desert species of *Abronia* and *Tripterocalyx* (Nyctaginaceae). *Brittonia* 27:328-347.
- McMahan, C.A., R.G. Frye, L.K. Brown. 1984. The vegetation types of Texas including cropland. Texas Parks and Wildlife Department, Austin, Texas. 40 pp. + map.
- Turner, B.L. 1983. Status report on *Abronia macrocarpa*. U.S. Fish and Wildlife Service, Albuquerque, New Mexico. 10 pp.

#### Author

The author of this final rule is Charles McDonald, Endangered Species Botanist, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3972 or FTS 474-3972). Status information was provided by Dr. B.L. Turner, University of Texas at Austin, Texas.

#### List of Subjects in 50 CFR Part 17

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

#### Regulation Promulgation

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

#### PART 17—[AMENDED]

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

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

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

#### § 17.12 Endangered and threatened plants.

\* \* \* \* \*

(h) \* \* \*

Species	Common name	Historic range	Status	When listed	Critical habitat	Special rules
Scientific name						

Nyctaginaceae—Four-o'clock family.

Species	Common name	Historic range	Status	When listed	Critical habitat	Special rules
Scientific name						
<i>Abronia macrocarpa</i> .....	Large-fruited sand-verbena.....	U.S.A. (TX).....	E	331	NA	NA

Dated: September 2, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-22150 Filed 9-27-88; 8:45 am]

BILLING CODE 4310-55-M

## 50 CFR Part 17

### Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for *Ptilimnium nodosum*

**AGENCY:** Fish and Wildlife Services, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Service determines *Ptilimnium nodosum* (harperella) as an endangered species, under the authority of the Endangered Species Act of 1973, as amended (Act). This annual plant, which is a member of the carrot family, occurs in Alabama, Georgia, North and South Carolina, West Virginia, and Maryland. *P. nodosum* has been eliminated from over half of its known historical population sites rangewide. None of the ten currently known viable populations is in Federal ownership or other permanently protected status, although The Nature Conservancy has an easement on a small portion of one population in West Virginia and is trying to protect populations in other States. This action implements Federal protection provided by the Act for *Ptilimnium nodosum*.

**EFFECTIVE DATE:** October 28, 1988.

**ADDRESSES:** The complete file for this rule is available for public inspection, by appointment, during normal business hours at Ecological Services Field Office, 1825 Virginia Street, Annapolis, Maryland 21401.

**FOR FURTHER INFORMATION CONTACT:** Judy Jacobs, Endangered Species Biologist at the above address (301/269-5448).

#### SUPPLEMENTARY INFORMATION:

##### Background

In 1902 Dr. Roland M. Harper discovered a previously undescribed plant growing in a shallow pineland pond in Schley County, Georgia. Three years later, Dr. Harper collected what appeared to be a second, closely related

species from a rock stream bed in DeKalb County, Alabama. These plants were named *Harperella nodosa* and *Harperella fluviatilis* respectively, in honor of their discoverer (Rose 1905, 1911). Mathias (1936) noted that despite their very different leaf structure, these plants were not generically distinct from members of the genus *Ptilimnium*. Thus, they became *Ptilimnium nodosum* and *P. fluviatile*, although they are still referred to by the common name, harperella.

In a recent examination of these taxa, Kral (1981) concluded that their observable differences in morphology and phenology were very likely due to environmental factors, rather than to inherent genetic differences. This is supported by the observation that both forms have six chromosome pairs (Easterly 1957). Kral (1981) observed that the riverine form, *P. fluviatile*, is shorter and develops roots at the nodes, probably because the plants are frequently inundated and toppled by swift-flowing water in the stream situations they inhabit. Conversely, the taller, erect and non-proliferous plants referred to as *P. nodosum* occur in the fringe of grass and sedge around ponds, where they are less likely to be knocked down by floodwaters. That these morphological differences were environmentally induced was particularly evident to Kral (1981) in the Little River population of "*P. fluviatile*" in Alabama; there, the plants from the higher seep areas, where flooding is infrequent, were more clearly assignable to the "*P. nodosum*" type. Differences in flowering time between the pond and river forms are also likely due to environmental factors, such as differences in temperature and time of flooding (R. Kral, Vanderbilt University, pers. comm., 1987). Because there is no apparent way to take into account their variation and yet to distinguish the two taxa, Kral (1981) synonymized the two under *P. nodosum*, the earlier name. In this rule, the Service follows Kral's treatment; thus, references to *P. nodosum* will be meant to include *P. fluviatile*, unless otherwise indicated.

*P. nodosum*, an annual plant, is a member of the carrot family (Apiaceae) that grows to a height of 0.2-1.0 meter. Unlike those of the more common members of this genus, the leaves of *P.*

*nodosum* are reduced to hollow, quill-like structures. The small white flowers occur in heads not unlike those of "Queen Annes lace" (*Daucus carota*), and may appear from May to frost. *P. nodosum* typically occurs in two habitat types: (1) Rocky or gravel shoals and margins of clear, swift-flowing stream sections, and (2) the edges of intermittent pineland ponds or low, wet savannah meadows in the coastal plain (Kral 1983). In Georgia, the only known extant population occurs on a granite outcrop seep. This seemingly atypical setting actually has a water regime not unlike that of more characteristic pond habitat for this plant (Rawinski and Cassin 1986).

Harperella is always found on saturated substrates and readily tolerates periodic, moderate flooding. This tolerance may, in fact, be of key importance to the plant's survival, for few potential competitors are adapted to such water fluctuations. In riverine situations, short-duration spring floods annually scour the gravel bars or rock crevices where *P. nodosum* grows, preventing substantial soil accumulations in which weedy competitors might gain a foothold. When floodwaters subside harperella seeds germinate in shallow, rocky areas and complete their life cycle with their root systems submerged or saturated. Similarly, pond sites are normally full of water in the spring and, depending on the rainfall, often well into the summer. The plants have completed their life cycle by late summer or fall, when the ponds are often devoid of standing water and competing species have moved in. As in the riverine situation, it appears that *P. nodosum* has survived by its adaptation to changing water levels that few other plants can tolerate.

Because of its very specific habitat requirements, harperella can be easily extirpated from an area even by seemingly minor perturbations. In riverine situations, for example, prolonged or intensified flooding, as a result of upstream land use changes, could wash away its substrate and its seed bank. Conversely, reductions or lack of flooding, as from upstream impoundments, could decrease the species' competitive edge over more common streamside plants. In pond situations, ditching and draining for

irrigation and/or agriculture would be of obvious detriment to harperella. Conversion to permanent ponds could also eliminate this species. Additional threats facing *P. nodosum* include siltation of its stream habitat from construction and mining activities upstream, habitat loss resulting from bank stabilization and landowner access to waterfront, and water quality degradation from excessive nutrient loading of streams.

Because harperella generally occurs in areas with a high potential for human use, these threats have already impacted *P. nodosum* at various locations throughout its range. In Alabama, one of the three known historic sites for the species is under a reservoir and another has been eliminated by excessive siltation and water quality degradation (R. Kral, pers. comm.; pers. obs.). Numerous coastal plain ponds in South Carolina and Georgia, including the type locality, have been drained or otherwise severely disturbed. In West Virginia, ten thousand plants were destroyed in 1984 by construction at a housing subdivision. Throughout its range, over 50 percent of the known harperella populations have been destroyed.

State heritage programs and interested individuals have conducted intensive searches for *P. nodosum*. In West Virginia, over 260 miles of stream habitat, comprising nearly all the suitable habitats in the State, have been checked (R. Bartgis, West Virginia Natural Heritage Program, pers. comm., 1987); in Maryland also, surveys have been made of nearly all known suitable habitats for the species (D. Boone, Maryland Heritage Project pers. comm., 1987), and in South Carolina, a total of 360 coastal plain ponds have been examined in an effort to locate this plant (D. Rayner, South Carolina Heritage Trust, pers. comm., 1987). In Georgia extensive searches have been made of both granite outcrops and coastal plain ponds (T. Patrick, Georgia Natural Heritage Inventory; R. Carter, Valdosta State College, pers. comm., 1987). Georgia and Alabama sections of the Little River have also been checked (D. Whetstone, Jacksonville State University pers. comm., 1987). Despite these searches, *Ptilimnium nodosum* is presently known from only ten populations rangewide. These include six stream populations, in Alabama (DeKalb Co.), Maryland (Allegany Co.), North Carolina (one each in Granville and Chatham Cos.) and West Virginia (two Morgan Co.) and four pond populations, in Georgia (one known extant, in Greene Co.) and South

Carolina (three viable populations in Aiken and Saluda Cos. The species may be present in small numbers at two additional sites in South Carolina, but its presence has not been confirmed recently and these are not considered to have long-term viability). Stream populations typically consist of tens of thousands of individuals patchily distributed along short stream sections. Location of these patches and number of individuals may change from year to year. Pond populations are more spatially predictable and typically number in the hundreds. However, numbers of individuals in these populations too may fluctuate considerably from year to year.

Federal government actions on this species began as a result of section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report (House Document No. 94-51) was presented to Congress on January 9, 1975.

The Service published a notice in the July 1, 1975, *Federal Register* (40 FR 27823), of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3)) of the Act and its intention thereby to review the status of the plant taxa named therein. On June 16, 1976, the Service published a proposal in the *Federal Register* (41 FR 24523), to determine approximately 1700 vascular plant taxa to be endangered species pursuant to section 4 of the Act. *Ptilimnium nodosum* and *P. fluviatile* were included in the July 1, 1975, and June 1976 *Federal Register* documents. General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, *Federal Register* publication (43 FR 17909). The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. In the December 10, 1979, *Federal Register* (44 FR 70796), the Service published a notice of withdrawal of the June 6, 1976, proposal, along with four other proposals that had expired.

On December 15, 1980, the Service published in the *Federal Register* a revised Notice of Review for Native Plants (45 FR 82480). *P. nodosum* and *P. fluviatile* were included in that notice as Category 2 species. Category 2 includes those taxa for which listing as endangered or threatened species may be warranted but for which substantial

data on biological vulnerability and threats is not currently known or on file to support proposed rules. On November 28, 1983, the Service published in the *Federal Register* a supplement to the Notice of Review for Native Plants (48 FR 53640); the plant notice was again revised September 27, 1985 (50 FR 39526). *Ptilimnium nodosum* and *P. fluviatile* were included in both of these revisions as Category 2 species. As stated above, the Service now considers these to be a single species, *Ptilimnium nodosum*.

In 1985 the Service contracted with The Nature Conservancy's Eastern Regional Office to conduct status survey work on *Ptilimnium nodosum* (including *P. fluviatile*) and several other Federal candidate species. Their report (Rawinski and Cassin 1986) and other information indicate that *P. nodosum* and *P. fluviatile* are appropriately considered a single taxon, that the number of extant sites for *P. nodosum* has declined significantly, and that there is a high degree of threat to remaining populations.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Ptilimnium nodosum*, because the 1975 Smithsonian report had been accepted as a petition. On October 13, 1983; October 12, 1984; October 11, 1985; October 10, 1986; and October 11, 1987, the Service found that the petitioned listing of *Ptilimnium nodosum* was warranted but precluded by other listing actions of a higher priority and that additional data on vulnerability and threats were still being gathered. On February 25, 1988, the Service published in the *Federal Register* a proposal to list *Ptilimnium nodosum* as an endangered species (53 FR 5736). That proposal constituted the final finding required by the Endangered Species Act.

#### Summary of Comments and Recommendations

In the February 25, 1988, proposed rule, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Copies of the February 25, 1988, proposed rule were sent to appropriate Federal and State agencies, county officials, scientific organizations and other interested parties, with a request to provide factual information that might

contribute to the development of a final rule. Newspaper notices inviting comment from the general public were published in the *Aiken Standard* (Aiken, South Carolina), *Atlanta Constitution* (Atlanta, Georgia), *Durham Herald* (Durham, North Carolina), *Fort Payne Times-Journal* (Ft. Payne, Alabama), *Hagerstown Herald* (Hagerstown, Maryland), and *Martinsburg Evening Journal* (Martinsburg, West Virginia). As a result of these notifications, eight comments were received. Four of these comments were from state agencies, two were from private sector conservation groups and two from private individuals.

The conservation groups, namely, The Nature Conservancy and the Maryland Environmental Trust, wrote in full support of the listing action and indicated their willingness to assist with further conservation efforts for harperella. The West Virginia, Maryland, and North Carolina Departments of Natural Resources also indicated that they fully support this listing. Two of these letters pointed out additional potential threats to harperella, as follows.

Preliminary planning has begun for the development of an industrial plant upstream of the harperella population on the Deep River in North Carolina. This project could alter the hydrology of the river. Secondly, in West Virginia, the Department of Commerce is considering proposals to construct a ski resort development at Cacapon State Park, which might require the diversion of water from the Cacapon River for winter snowmaking and summer irrigation of the Park's golf course. This also has the potential for altering the hydrology of the river, thereby potentially impacting harperella. The two letters from private citizens were related to this project in West Virginia. Both expressed opposition to the listing on the basis that this action would interfere with the development of the state park facilities, thus adversely impacting economic growth and orderly development of this area of Morgan County. Section 4 of the Endangered Species Act as amended (Act) and regulations set forth to interpret and implement this section, require that listing determinations be made solely on the basis of the best available information regarding a species' status, without reference to economic or other impacts of such a determination. The information presently available on these projects is not sufficient to assess impacts to harperella at this time. If there is Federal involvement with these projects, it is likely that they will require consultation, as specified in section 7 of

the Act. These projects might require modifications to accommodate the needs of harperella; however, it has been the experience of the Service that nearly all section 7 consultations are resolved so that the species is protected and the project objectives are met.

#### Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that harperella should be classified as an endangered species. Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1513 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Ptilimnium nodosum* (Rose) Mathias (harperella) are as follows:

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

The effects of human activities upon the habitat types in which *Ptilimnium nodosum* occurs have resulted in the permanent elimination of the plant and its habitat in many locations throughout its range. In Alabama, siltation, eutrophication and an impoundment have eliminated the plant from two of its three known historic localities. In Georgia and South Carolina, at least four *Ptilimnium nodosum* populations were obliterated when the ponds they inhabited were drained and converted to agriculture or otherwise severely disturbed. Of the five populations known to remain in South Carolina, two have been so severely disturbed that they are no longer considered viable (D. Rayner, pers. comm.). In West Virginia, an estimated ten thousand harperella plants were recently destroyed during construction of a vacation home subdivision (Rawinski and Cassin 1986). Approximately 90 percent of the plants remaining at this site are now restricted to a 300-foot section of stream, where they are vulnerable to trampling and/or streamside alterations.

Other cases of habitat disruption may be less obvious yet no less detrimental to the plants. Harperella populations occurring at Harper's Ferry, West Virginia in the 1830's and at Hancock, Maryland, in the early 1900's have been eliminated, probably by industrial development and the operation of riverside canals and railroads. Water quality degradation may also be threatening certain stream populations

of harperella. The stretch of the Little River in which it occurs in Alabama may be receiving both excessive nutrient loading from insufficient sewage treatment and acid runoff from unreclaimed surface mines. This population is also threatened by the existence upstream of two unstable impoundments that could break and eliminate or degrade remaining harperella habitat in Alabama (D. Whetstone, pers. comm.). Maryland's one known harperella population was threatened by siltation and runoff associated with the construction of a highway nearby. Although corrective measures have been taken, it is not certain that the threat to this site has been totally eliminated. Additional potential threats that have come to light include the development of an industrial plant upstream of the harperella population on the Deep River in North Carolina and the proposed water withdrawal from the Cacapon River associated with the developments at Cacapon State Park in West Virginia.

The estimated loss of 50 percent of known populations of *Ptilimnium nodosum* may actually be conservative; the species was known historically from a few traditional "good" collecting spots, but since it occupies habitat types that have been so extensively altered by human activities, it is likely that other populations were destroyed without being discovered.

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

Harperella has not been a target for collection, since it is not a showy plant and would not survive under normal garden conditions. Although the plant has been collected for scientific study, this does not constitute a threat for the species.

#### C. Disease or Predation

In its pond habitat, *P. nodosum* may occasionally be subject to grazing or trampling, where it occurs along the margins of ponds that have been altered for use by livestock. However, the disruption of its habitat, rather than any occasional grazing, poses the more severe threat. Disease is not known to be a problem for this species.

#### D. The Inadequacy of Existing Regulatory Mechanisms

*Ptilimnium nodosum* is not known to occur on Federal land and presently receives no protection under any Federal law. The species' habitat receives limited protection under section 404 of the Federal Water Pollution

Control Act; however, section 404 does not assure that the habitat of an unlisted species will not be adversely modified. Some populations do occur on State-owned land, in streams over which States have jurisdiction, or on preserves owned by The Nature Conservancy. In North Carolina and Maryland, the plant is protected from trade and unauthorized take. However, except in Maryland, where it receives limited protection, it is not protected from habitat loss, the primary threat to its survival. The Nature Conservancy and State Natural Heritage Programs, particularly in West Virginia and South Carolina, have been actively pursuing both easements and voluntary protection agreements with landowners. The agreements, while potentially very useful in protecting the plants, have no legal authority.

#### *E. Other Natural or Manmade Factors Affecting its Continued Existence*

In West Virginia, the exotic grass *Arthraxon hispidus* is seen as a potential competitor to *P. nodosum*. Over the past decade, this aggressive Asian introduction has become widespread in many parts of the State. As an annual, it can compete directly with harperella for occupation of ephemeral habitats; without control, *A. hispidus* could overrun and locally extirpate harperella.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Ptilimnium nodosum* as endangered. At least eight populations are known to have been destroyed, and over half of the remaining known populations, together constituting over 95 percent of the known individuals, are faced with continuing habitat degradation. Although stream populations may be large in terms of number of individuals, destruction or degradation of their habitat would be equally effective at extirpating them regardless of their number.

#### **Critical Habitat**

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Ptilimnium nodosum*. In its pond habitats, if its location were specifically delineated, as though the

publication of critical habitat maps, it could be easily extirpated by vandals or curiosity seekers. Because it does not occur on Federal land, such taking would not be prohibited by the Endangered Species Act. In stream situations also, these plants would be vulnerable to vandalism if the stream sections in which they occur were specifically located. The State agencies and landowners involved in managing the habitat of this species have been informed of the plant's general locations and of the importance of protection. Therefore, the determination of critical habitat would not be prudent, and no additional benefit would result from it.

#### **Available Conservation Measures**

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

At present, the Service has not identified any ongoing projects with Federal involvement known to have potential impacts to *P. nodosum*. The Maryland population is being monitored by Maryland Natural Heritage Program biologists to ensure the effectiveness of erosion control measures associated with the construction of Route 48 in Western Maryland. The biology and dynamics of this population are also

being studied. Other federally funded or permitted actions which could affect this plant include, but are not limited to, SCS watershed management activities, FERC-permitted hydroelectric projects, construction projects involving Federal Highway Administration or Farmers Home Administration funds, or those within the jurisdiction of the Corps of Engineers.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. In the case of *Ptilimnium nodosum*, it is anticipated that few trade permits would ever be sought or issued since the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Washington, DC 20036 (202/343-4955).

#### **National Environmental Policy Act**

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

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- Rose, J.N. 1905. Two new umbelliferous plants from the coastal plain of Georgia. Proc. Nat. Acad. Sci. 29:441-3.
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#### Author

The primary author of this final rule is Judy Jacobs, Annapolis Field Office, U.S. Fish and Wildlife Service, 1825 Virginia Street, Annapolis, Maryland 21401 (301/269-5448).

#### List of Subjects in 50 CFR Part 17

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

#### Regulation Promulgation

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

#### PART 17—[AMENDED]

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

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

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

#### § 17.12 Endangered and threatened plants.

\* \* \* \* \*

(h) \* \* \*

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Apiaceae—Parsley Family:						
<i>Ptilimnium nodosum</i> (= <i>P. Harperella</i> .....)		U.S.A. (AL, GA, MD, NC, SC, WV)...	E	332	NA	NA
<i>fluviale</i> ).						

Dated: September 2, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-22151 Filed 9-27-88; 8:45 am]

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102 Stat. 1720; 1 page)  
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**H.R. 4775/Pub. L. 100-440**

Treasury, Postal Service and  
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(Sept. 22, 1988; 102 Stat.  
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**S. 52/Pub. L. 100-441**

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**S. 1360/Pub. L. 100-442**

To amend the Indian  
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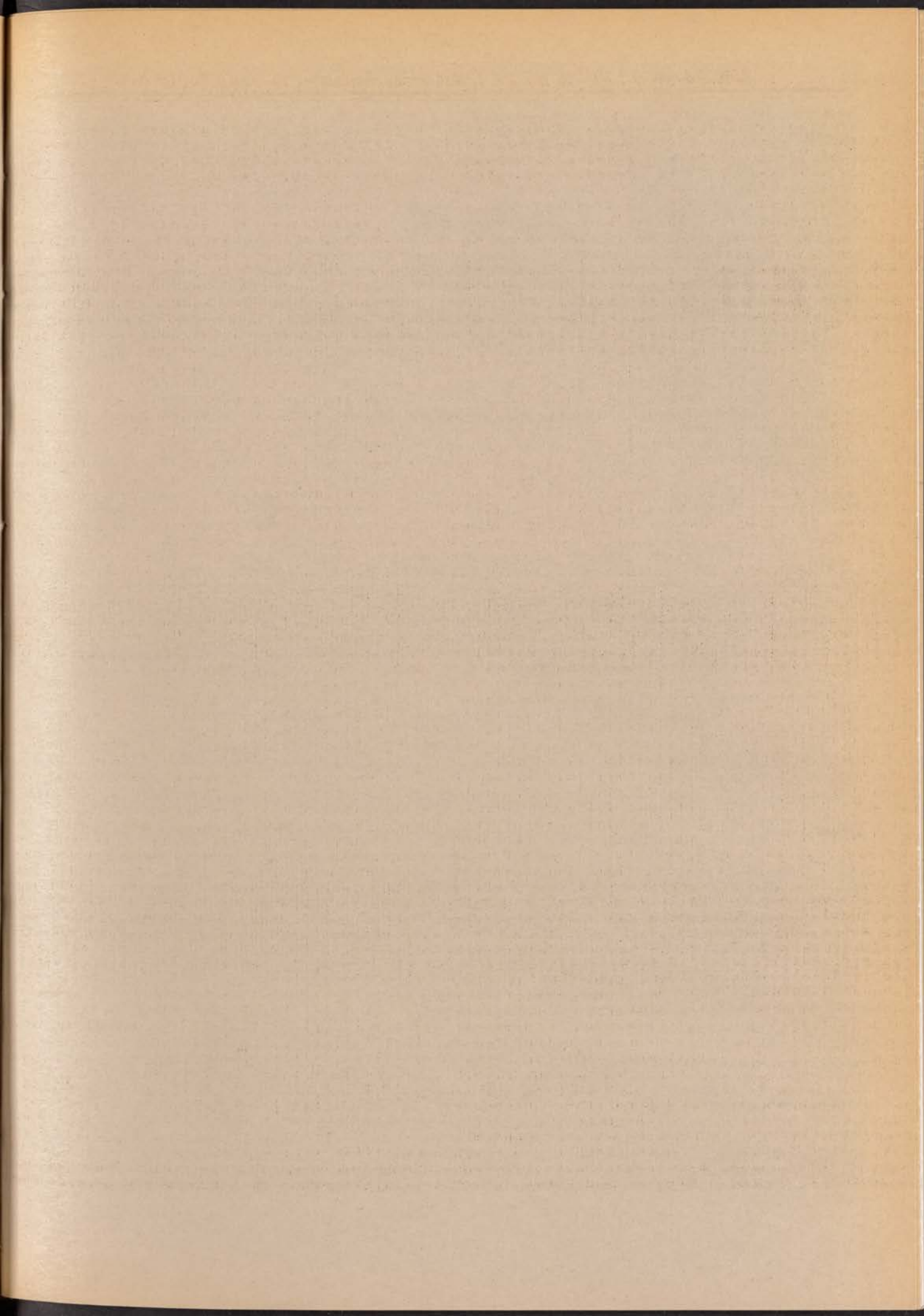
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