AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

3-31-89
Vol. 54 No. 61
Pages 13157-13344

federal register

Friday
March 31, 1989

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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

Agricultural Marketing Service

7 CFR Part 910

[FV-89-003]

Lemons Grown in California and Arizona; Revisions of Rules and Regulations Regarding Allotment Loan Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service is adopting without modification as a final rule, the provisions of an interim final rule which changed the rules and regulations regarding the procedures used to effectuate the allotment loan provisions of the order. This final rule establishes the issuance of special allotments to lemon handlers by the Lemon Administrative Committee (Committee), the agency responsible for local administration of the lemon marketing order. The lemon marketing order allows lemon handlers to loan allotments to other handlers. Such loans provide for repayment to loaning handlers within the year of the loan. In some instances, loaning handlers fail to receive allotment loan repayments from borrowing handlers because such handlers have left the lemon business subsequent to receiving allotment loans and are thereby unavailable to repay the loaned allotment. Special allotments will be issued by the Committee to loaning handlers only in such instances. This action was unanimously recommened by the Committee.

EFFECTIVE DATE: March 31, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administrastion Branch, F&V, AMS, USDA, Room 2523-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 910 (7 CFR Part 910), as amended, regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

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

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing 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 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.12) as those having average gross annual revenues for the last three fiscal years of less than $500,000 and small agricultural service firms, which include handlers, are defined as those whose gross annual receipts are less than $3,500,000. The majority of California-Arizona lemon producers and handlers may be classified as small entities.

Section 910.52 of the lemon marketing order authorizes the Secretary to establish, based on the recommendation of the Committee and other information, quantities of lemons which may be handled in fresh domestic markets (the United States and Canada) during any week of the fiscal year. Handlers earn the right to ship lemons to fresh domestic markets based on their prorate base, a measure of the lemons picked by them in relation to the number of lemons picked by other handlers both within their own and other districts. Their prorate bases, when applied to the level of total shipments established by the Secretary for a particular week, result in allotments issued to them by the Committee. Such allotments represent the relative number of cartons handlers may ship to fresh domestic markets during the specified week.

Section 910.59 of the order provides that, whenever prorate bases have been established and allotments have been issued to handlers, handlers may loan all or a portion of their allotment to other handlers. Handlers may enter into allotment loan agreements which require the repayment of loaned allotment within one year of the date of the loan. Loans must be reported to the Committee within 48 hours of the time when loan agreements are entered into. Allotment loans may be made between handlers within the same district or to handlers of lemons produced in another district. Intra-district loans are usually arranged directly between handlers, although the Committee may be requested to arrange the loan. Inter-district loans must be arranged by the Committee.

Paragraph (e) of § 910.59 authorizes the Committee, with the approval of the Secretary, to adopt procedural rules and regulations to effectuate allotment loan provisions. Section 910.159 of the administrative rules and regulations of the order describes procedures currently in effect. Such procedures cover topics such as loan payback dates, confirmation of loans to the Committee, the Committee's role in arranging loans, arrangements when loan requests exceed loan offers and arrangements when loan offers exceed loan requests. The Committee has unanimously requested that this section be revised to recognize an emergency condition that has arisen in the California-Arizona lemon industry.

Currently, there are no provisions for the repayment of allotment loans to handlers who have loaned allotment to other handlers who, subsequent to borrowing allotment, cease operations in a particular lemon district or otherwise leave the lemon business by sale of their business to another handler or business failure. Unrepaid allotment loans represent a financial loss to loaning handlers. Handlers plan their

business operations in anticipation of loan repayments on scheduled dates and sales may thus be lost. This is inequitable to such loaning handlers, since their prorate bases earned them the right to ship such lemons.

In the past, there have been only a minimal number of handlers who have left the lemon business with outstanding allotment loans to be repaid. However, the Committee reports that during the 1988–89 season there have been seven handlers who have ceased operating in a particular district or who have gone out of business entirely. Such handlers cumulatively left a total of 45,000 cartons (45 cars) of allotment loans outstanding and the majority of the loan repayment dates are from the beginning of October through mid-December of the current fiscal year.

Although 45 cars of allotment is not significant at the aggregate industry level, it could be quite substantial to individual handlers. Failure to receive repayment of a loan could significantly affect the operation of such handlers and could have a serious financial impact. Thus, immediate action is required to prevent individual handlers from incurring financial losses.

The Committee, at its September 20, 1988, meeting, recommended that it should be authorized to issue special allotments to those handlers who would have allotment loan repayments lost to them because the borrowing handlers ceased operations in a particular district or went out of business. The level of such special allotments should be included by the Committee in their prorate recommendations to the Secretary of the number of cartons of lemons deemed advisable to be handled by all handlers during a particular week of the fiscal year, but should not be utilized in the calculation of regular allotments to be issued to all handlers during the particular prorate week. This will prevent other handlers from being penalized by having their level of shipments reduced by the amount of special allotment issued.

The Committee should monitor all loan arrangements and promptly notify any handler prior to the end of any prorate period when the Committee has reason to believe that a previously approved allotment loan cannot or will not be repaid by a borrowing handler. Handlers so notified by the Committee should promptly apply to the Committee by telephone or in person for repayment of the allotment loans. Handlers should provide their name, address, and the number of cartons of loan repayment requested from the Committee. This will allow the Committee to adequately evaluate the need for the issuance of special allotments during any particular prorate week.

The Committee has also recognized that the possibility exists for handlers with outstanding unpaid allotment loans to make requests to the Committee of a substantial volume of allotment loan repayments during any one week of the fiscal year. A substantial volume which needs to be repaid in any one week could result in excess supplies of lemons being made available to the fresh domestic market which could result in depressed prices and decreased returns to producers. Thus, the Committee has also recommended that the issuance of special allotments to repay allotment loans be limited to no more than 2.5 percent of the quantity recommended by the Committee to the Secretary of the total number of cartons to be handled by all handlers during a particular prorate week. Should this limitation prevent 100 percent of the loans to be repaid during a particular week, the Committee should apportion the special allotments issued among all requesting handlers so that the amount received by each requesting handler bears the same ratio to the total amount of special allotment issued as each requesting handler's average weekly pick bears to the total of all requesting handlers' average weekly picks for the particular prorate week. This will result in an equitable distribution of such special allotments. Should this procedure be necessary, the Committee should also be authorized to extend the payback periods, upon suitable notification to the handlers, to such subsequent prorate weeks as are necessary to pay back the full requested amounts.

A Notice of Recommended Decision which was published in the August 7, 1985, issue of the **Federal Register** (50 FR 31850), contained a proposal similar to the action discussed herein. That formal rulemaking proceeding covers 29 material issues and has not yet been completed. Since the order authorizes the promulgation of procedural rules which are necessary to effectuate the allotment loan provisions, this action does not require an amendment to the order. It is our view that this action is properly accomplished through established informal rulemaking procedures.

This action amends § 910.159 and is based on Committee recommendations and other information. An interim final rule was published in the November 14, 1988, issue of the **Federal Register** (53 FR 45751). Comments on the interim final rule were invited from interested persons until December 14, 1988. One comment was received from James A. Moody, on behalf of Sequoia Orange Company, Inc.

Sequoia opposes the interim final rule for the following reasons: (1) It requires an amendment to the lemon marketing order and, thus cannot be implemented by changing the rules and regulations; (2) a similar proposal was covered in amendatory hearings held in 1983 and 1984; (3) if the changes are implemented, payback to handlers should be mandatory and not up to the discretion of the Committee; and (4) the emergency claim of this rule is improper.

In its comment, Sequoia states that the lemon marketing order provides for several types of allotments, i.e., regular, loan, freeze damage, etc.; however, there is no authority in the order for the special allotments provided for in the interim final rule. Section 910.59 of the lemon marketing order provides procedures for handlers to lend allotment to other handlers with the expectation that such allotments shall be repaid. Section 910.159 of the administrative rules and regulations contains procedures concerning allotment loans and the repayment of these loans. However, § 910.159 does not provide for the repayment of allotment loans to handlers who have loaned allotment to other handlers who, subsequent to borrowing allotment, cease operations in a particular lemon district or otherwise leave the lemon business by sale of their business to another handler or business failure. Therefore, even though the order contains provisions for allotment loans and the repayment of such loans, and even though the regulations provide the mechanism for such loans and repayments, the problem created by a borrowing handler who cannot repay the loan is not addressed by the regulations. Since paragraph (e) of § 910.59 provides that the Committee, with the approval of the Secretary, may adopt procedural rules and regulations to properly effectuate allotment loan provisions, the amendment contained in this rulemaking is authorized and necessary to properly administer the program.

Sequoia also states that a formal hearing to amend the lemon marketing order was held in 1983 and 1984 and a Notice of Recommended Decision which was published in the August 7, 1985, issue of the **Federal Register** (50 FR 31850), contained a proposal similar to the action discussed herein. Therefore, according to Sequoia, the fact that the hearing covered a similar proposal supports the contention that the subject should be dealt with by a formal

amendment to the lemon marketing order.

The formal rulemaking proceeding covers 29 material issues and has not yet been completed. This change to § 910.159 does not require an amendment to the order as the authority is found in paragraph (e) of § 910.59. In addition, in light of the previously discussed emergency situation currently facing the lemon industry, this change should not be delayed pending the outcome of that formal rulemaking proceeding.

Sequoia also states that, if the rules and regulations are amended to allow the Committee to issue special allotments, then there is no reason to leave payback and extension of the payback period in individual cases up to the discretion of the Committee.

It is the Department's position that it is necessary for the Committee to monitor loan repayments, to have the discretion to evaluate repayment requests, and to decide whether all or a portion of an allotment loan should be repaid during any particular week. As discussed earlier in this rule, repayment of a substantial volume of loans in any one week could result in excess supplies of lemons in the fresh domestic market which could result in depressed prices and decreased returns to producers. Therefore, it is necessary that repayment of allotment loans be limited to no more than 2.5 percent of the total number of cartons to be handled by all handlers during a particular prorate week. The Committee is in the best position to apportion special allotments and to extend the payback period to ensure an equitable distribution of special allotments to handlers.

Finally, Sequoia contends that the Department could have prevented the emergency rulemaking situation, and that a proposed rule could have been issued earlier than the November 14, 1988, publication date of the interim final rule. Based on information available to the Department, immediate action was necessary to prevent individual handlers from incurring financial losses as explained earlier in this rule.

For the reasons stated above, Sequoia's objections are denied.

Based on available information, the Administrator of the AMS has determined that issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3594), the information collection provision that is included in this final rule has been approved by the Office of Management and Budget (OMB) and is assigned OMB No. 0581-0210.

After consideration of all relevant matter presented, including that contained in the interim final rule published in the November 14, 1988, issue of the **Federal Register** (53 FR 45751), the Committee's recommendation and other information, it is found that the amendment of § 910.159, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** in that: (1) Allotment loans already have been entered into for the 1987-88 lemon marketing season; (2) handlers stand to incur financial losses in the absence of this action; and (3) this action relieves restrictions on handlers by making more allotment available to them.

List of Subjects in 7 CFR Part 910

Arizona, California, Lemons, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended by adding a new paragraph to § 910.159 to read as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

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

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

2. Section 910.159 is amended by adding a new paragraph (c) to read as follows:

Note: This section will be published in the annual Code of Federal Regulations.

Subpart—Rules and Regulations

§ 910.159 Allotment loans.

(a) * * *

(b) * * *

(c) *Loan repayments made by the committee.* If borrowing handlers are unable to repay any allotment loan arranged in accordance with paragraphs (a) and (b) of this section due to cessation of business or cessation of business in a particular prorate district, the committee may accept applications for repayment relief from the loaning handlers.

(1) *Notice of non-payment.* The committee shall notify the loaning handlers prior to the end of any prorate period when it has reason to believe that loans previously approved cannot or will not be repaid by the borrowing handlers for the reasons specified in this section.

(2) *Application by lender for committee repayment.* Handlers who do not receive loan repayments for the reasons specified in this section shall have the right to apply to the committee in person or by telephone for repayment. Requests for committee repayment shall be made by 12:00 noon on Monday of the prorate week following the week during which notice of non-repayment is received. Handlers should provide their name, address, and the number of cartons of loan repayment requested from the committee. On the basis of all information available, the committee may authorize repayment of all or a portion of the allotment loan for the following prorate week: *Provided,* That the total of such repayment to all requesting handlers does not exceed 2.5 percent of the allotment established for the prorate period when the repayments are to be made.

(3) *Procedure when repayment requests exceed allowable percentage.* If the quantity of requests for repayment exceeds 2.5 percent of the allotment established for the prorate period, the repayments granted by the committee shall be apportioned among requesting handlers so that the amount received bears the same ratio to the total repayment approved as each requesting handler's average weekly pick bears to the total of average weekly picks for such prorate week of all handlers requesting repayment by the committee.

(4) *Extension of repayment.* In the event the committee is unable to make all of the allotment loan repayments requested in any prorate week, the committee may extend any repayment period, after notifying the handler of the extension, to such subsequent prorate weeks as may be necessary to make the approved repayments within the limitations prescribed in paragraphs (c) (2) and (3) of this section.

Dated: March 28, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-7618 Filed 3-30-89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 910

[Lemon Reg. 659]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 659 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 290,000 cartons during the period April 2 through April 8, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 659 (§ 910.959) is effective for the period April 2 through April 8, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Mareting Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5697.

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

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

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

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2500 producers in the regulated area. 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 handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended 97 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1988-89. The Committee met publicly on March 28, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that demand for lemons is weak.

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

List of Subject in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, lemons.

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

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

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

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-764.

2. Section 910-959 is added to read as follows:

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

§ 910.959 Lemon Regulation 659.

The quantity of lemons grown in California and Arizona which may be handled during the period April 2, 1989, through April 8, 1989, is established at 290,000 cartons.

Dated: March 29, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-7809 Filed 3-30-89; 8:45 am]

BILLING CODE 3410-02-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Revision

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is revising its regulations defining small business for Government procurement as it concerns nonmanufacturers. A "nonmanufacturer" is a company offering to supply to the Federal government an item which it does not itself manufacture. This revision makes explicit the requirement that nonmanufacturer offerors on small business set-aside contracts must be small businesses and establishes a size standard of 500 employees for such nonmanufacturers.

EFFECTIVE DATE: March 31, 1989.

FOR FURTHER INFORMATION CONTACT: Gary Jackson, Director, Size Standards Staff, (202) 653-6373.

SUPPLEMENTARY INFORMATION: SBA's current size regulations for Government procurement distinguish between manufacturers and "nonmanufacturers." A "nonmanufacturer" is a company which proposes to supply but not manufacture the item being procured under a particular contract. Such a company may be considered small if it proposes to supply "the product of a small business manufacturer or producer, which end product must be manufactured or produced in the United States." 13 CFR 121.5(b)(2)(i).

This language was narrowly construed by the Office of Hearings and Appeals in a recent decision in which that Office held that the nonmanufacturer need not itself comply with any size standard so long as the actual manufacturer or producer of the product is a small business under the applicable manufacturing size standard. *See Size Appeal of Louisiana Filling, Inc.*, Appeal No. 2796 (December 14, 1987). In that decision, the Office of Hearings and Appeals held that "the regulations as worded in the current Code of Federal Regulations do not impose any restrictions on the number of employees or the annual receipts of

nonmanufacturers supplying end items produced in the United States by small businesses."

The Agency believes that the decision in *Louisiana Filling*, construing its present regulations governing the size of nonmanufacturers, reveals an unintended variance from the letter and spirit of the Small Business Act, its historic interpretation and the overall scheme of the size regulations. For these reasons, it is publishing a final rule making explicit the requirement that a nonmanufacturer must be small in order to bid on set-aside contracts.

The final rule establishes a size standard of 500 employees for nonmanufacturers. The SBA is setting the size standard at 500 employees in order to recognize and accommodate current procurement and industry practices. It is a relatively common practice for manufacturers to bid on supply contracts where they do not propose to produce the particular product to be supplied with their own labor force, notwithstanding that they are capable of doing so. Such manufacturers must qualify as small businesses under the nonmanufacturer rule. The overwhelming majority of the size standards for manufacturers is 500 employees. Therefore, in an effort to minimize the adverse consequences upon such concerns, the SBA is adopting the predominant size standard for manufacturers as the size standard for nonmanufacturers who desire to bid on Federal supply contracts.

SBA published a proposed rule in the **Federal Register** on April 28, 1988, 53 FR 15232, revising its current regulations to expressly provide that nonmanufacturers must be small and setting a size standard of 500 employees. Thirteen comments were received—nine from businesses, one from a law firm, one from an association and two from Federal agencies. With the exception of the two Federal agencies, all the commenters supported the proposed rule. The following is an analysis of the comments and the Agency's responses.

Of the eleven commenters supporting the rule, several pointed out that, traditionally, contracting agencies and prime contractors which subcontract to small nonmanufacturers have been using the wholesale size standard of 100 employees and that 100 employees was too low for procurement purposes. These commenters requested clarification as to when the nonmanufacturing size standard as opposed to the wholesale size standard should be used. The commenters stated that the distinction between these two size standards was not made clear in the proposed rule.

The nonmanufacturing size standard is to be used for all procurements of supplies, whereas the wholesale size standard is the size standard to be applied in all other small business assistance programs. Thus, any nonmanufacturer making an offer on a small business set-aside contract will be considered small if it has 500 employees or less, whether its major line of business is manufacturing, as discussed above, wholesale trade, or retail. Regardless of type, such firm would be subject only to the 500 employee size standard for nonmanufacturers.

A number of commenters also requested clarification concerning whether the 500 employee size standard is to be used for purposes of subcontracting with nonmanufacturers by prime contractors of the Federal government pursuant to SBA's section 8(d) small business subcontracting program. For purposes of the section 8(d) program, the nonmanufacturing size standard, 500 employees, is the appropriate size standard rather than the wholesale trade size standard of 100 employees.

The two Federal agencies opposing the rule, the Department of Justice (DOJ) and the Office of Management and Budget (OMB), both expressed the view that failure to permit large businesses to submit offers on set-aside contracts as nonmanufacturers would (1) lessen competition among small businesses in providing goods to the Government through set-aside contracts; (2) raise the price paid by the Government on set-aside contracts awarded to nonmanufacturers; and (3) increase the costs of small business manufacturers.

DOJ reasoned, specifically, that since small manufacturers can subcontract with large businesses for such services as labelling or packaging, they should also be able to delegate the duty of dealing directly with the Government through the bidding process to a large business. The nonmanufacturer, rather than the manufacturer, may have developed expertise related to regulations that govern the procurement process. Under these circumstances, OMB and DOJ maintain that it is competitively beneficial to permit large businesses to submit offers on set asides, so long as they will supply the product of a small business. DOJ and OMB argue that the negative impact on small manufacturers from restricting their ability to sell their products to the Government through large businesses would outweigh the benefit to small nonmanufacturers from such restriction.

Regardless of the degree of merit of these arguments from an economic point of view (which is discussed below as part of the analysis under Executive Order 12291), the SBA is unable to adopt the above comment because of its statutory mandate to assist only small businesses through the set-aside program. It has long been the SBA's official position that it is empowered to assist through its various programs only small business concerns. The intent of Congress that SBA aid *small* businesses is clearly set forth in the language of the Small Business Act.

> [S]ecurity and well-being cannot be realized unless the actual and potential capacity of small business is encouraged and developed. It is the declared policy of the Congress that the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government * * * be placed with small-business enterprises * * * 15 U.S.C. 631(a).

That the Agency's programs are available only to small businesses is confirmed in a number of cases. The court in *Systems and Applied Sciences Corp. v. Sanders*, 544 F. Supp. 576, 581 (D.D.C. 1982) held: "[it] is beyond doubt, and SBA admits, that small business status under the Act is an absolute prerequisite to participation in any of its programs. * * *" In *Champion Spark Plug*, B–154087, (unpublished, May 26, 1984), an otherwise ineligible business wished to obtain a set-aside award, arguing that it would be furnishing the products of small businesses. The Comptroller General denied the protest, holding, "[w]e do not agree that a large business concern could qualify under existing regulations as an eligible small business bidder merely because it proposes to furnish a product to be manufactured to its specifications by a small business concern* * *."

Inasmuch as the Small Business Act and the above case precedent permit the SBA to assist only small businesses, the SBA has no authority to permit large concerns to bid on or be awarded nonmanufacturing small business set-aside contracts.

Compliance With the Regulatory Flexibility Act, Executive Order 12291 and the Paperwork Reduction Act

SBA certifies that this final rule will not have a 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*. As a result of the Office of Hearings and Appeals decision discussed above, a firm of any size can bid as a

nonmanufacturer on a procurement for a manufactured item which is set aside for small business when that firm supplies an item it did not manufacture, providing only that the ultimate manufacturer is a small business. However, prior to that decision, Federal agencies had been interpreting SBA's size regulations to require either that the manufacturing size standard be applied to nonmanufacturers or that the wholesale trade size standard be applied. Consequently, since the decision of the Office of Hearings and Appeals, SBA is aware of only two firms of over 500 employees that have received small business set-aside contracts as nonmanufacturers. Under this final rule, firms with over 500 employees would be ineligible as nonmanufacturers to bid on small business set-asides. This action will return SBA policy to the status quo of excluding from participation in the set-aside contract program nonmanufacturing firms with over 500 employees.

SBA has determined that this regulation is not a major rule as defined by Executive Order 12291 because it is not expected to have an annual economic effect of $100 million or more. In Fiscal Year 1986, $6.4 billion of Federal procurements were provided by nonmanufacturing firms. Of this total, only $346.5 million, or about 5.4 percent, was provided through small business set-aside procedures. Three hundred sixty-six nonmanufacturing firms are above 500 employees and account for 24.2 percent of nonmanufacturing sales. It these firms actively participate in the set-aside market, it is estimated that they would likely obtain set-aside contracts equal to their overall market share of 24.2 percent. This would equal $88.9 million in set-aside contracts (24.2 percent of $345.5 million equals $88.9 million).

SBA notes also that this rule does not qualify as a major rule under the other two criteria of Executive Order 12291. The rule is not likely to result in a major increase in costs or prices, nor would it be likely to have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based businesses to compete with foreign-based businesses in domestic or export markets.

A criticism of the nonmanufacturer size standard is that establishing a size standard would harm small manufacturers by lessening business opportunities more than it would benefit small nonmanufacturers. In this view, small manufacturers who market their products to the Federal Government through nonmanufacturers would not be able to choose the least cost nonmanufacturer. Consequently, the small manufacturer would lose business opportunities as a result of higher prices for its products.

Before discussing this argument further, it is important to clarify the application of the "nonmanufacturers rule" to government procurement. The nonmanufacturers rule is triggered when the Federal Government purchases under a small business set-aside contract a manufactured good from a firm which itself did not manufacture the good. The nonmanufacturing firm is required to be a firm of 500 employees or fewer to be eligible for the small business set-aside program. However, if a small manufacturer submits a bid in its own name it may subcontract to any nonmanufacturer, without regard to size, to perform certain distribution, bid preparation and related functions normally performed by a nonmanufacturing firm. In such case, the manufacturer is free to choose the least costly subcontracting nonmanufacturer. Accordingly, the manufacturer's costs are not affected in any way by the nonmanufacturers rule. The only time a manufacturer would be impacted by the nonmanufacturers rule is with regard to its sales to nonmanufacturing firms. A 500 employee size standard would result in only nonmanufacturers under that size standard buying manufactured products for resale to the Federal Government pursuant to a small business set-aside contract.

Small nonmanufacturers have incentives to hold down prices to be competitive in the Federal marketplace. As discussed above, nonmanufacturers who have bought goods from a manufacturer and wish to sell to the Federal Government are not competing simply with other small nonmanufacturers. They are also competing with manufacturers who wish to sell directly to the Government. These manufacturers have incorporated the cost of distributing their products (testing, packaging, shipping, etc.,) into the price structure of the final sale price similar to the pricing decision made by nonmanufacturers. Only if the nonmanufacturer can supply the product more cheaply than the manufacturer itself (again, who is not restricted to a small nonmanufacturer for distribution related services) will it be successful in the Federal marketplace. Thus the possibility of a nonmanufacturer providing inefficient, high cost services to the Federal Government due to a size limitation on nonmanufacturers is minimal given a pattern in which both the manufacturer and nonmanufacturer compete for small business set-aside contracts. Moreover, regardless which firm performs the distribution function, the price paid by the Government will normally be determined by the firm or combination of firms which are the most efficient in total operation.

With the assumption that fewer competitors will compete for a contract, it is argued that small nonmanufacturers can potentially exercise market power and raise prices to small manufacturers and to the Government. However, at a 500 employee size standard there exists a sufficiently large number of eligible firms to guarantee strong competition for manufactured products, and therefore it is unlikely that manufacturing firms would be inhibited in any way from providing products to the Federal Government through a small nonmanufacturer as a result of a 500 employee size standard. Over 280,000 nonmanufacturing firms are under 500 employees. Any exercise of market power by a group of nonmanufacturers could not be maintained given the number of firms in the market. The number of competitors in the marketplace is more than adequate to ensure that fair and reasonable market prices are offered to the Government.

In fiscal year 1986, nonmanufacturers benefited from the small business set-aside program by receiving over $345 million in set-aside contracts. Given the extent of competition faced by small nonmanufacturers, it is unlikely that these gains were obtained by, or offset by, small manufacturers being placed at a competitive disadvantage by the requirement that nonmanufacturers supplying a manufactured good must also be small businesses.

The rule defines the maximum size a firm may be to receive SBA's assistance and to bid on contracts set aside by all Federal agencies for small firms. The legal bases for this final rule are sections 3(a) and 5(b)(6) of the Small Business Act (15 U.S.C. 632(a) and 634(b)(6)). There are no Federal rules which would duplicate, overlap or conflict with this final rule.

SBA certifies that this regulation contains no reporting or recordkeeping requirements which are subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 13 CFR Part 121

Small businesses, Size standards.

PART 121—[AMENDED]

Accordingly, Part 121 of 13 CFR is amended as follows:

1. The authority citation for Part 121 continues to read as follows:

Authority: Secs. 3(a) and 5(b)(6), Small Business Act, 15 U.S.C. 632(a) and 634(b)(6).

2. Section 121.5 is amended by revising the introductory text of paragraph (b)(2) and (b)(2)(iv) to read as follows:

§ 121.5 Small business for Government procurement.

* * * * *

(b) * * *

(2) Any concern which submits a bid or offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is deemed to be a small business when it has no more than 500 employees, and:

* * * * *

(iv) For the purpose of receiving a Certificate of Competency on an unrestricted procurement, a small business nonmanufacturer may furnish any domestically produced or manufactured product.

* * * * *

3. The heading of Division F in Table 2 of § 121.2(d)(2) is revised to read as follows:

Division F—Wholesale Trade

(Not Applicable to Government Procurement. The nonmanufacturer size standard of 500 employees shall be used for Government Procurement purposes.)

* * * * *

4. The heading of Division G in Table 2 of § 121.2(d)(2) is revised to read as follows:

Division G—Retail Trade

(Not Applicable to Government Procurement. The nonmanufacturer size standard of 500 employees shall be used for Government Procurement purposes.)

* * * * *

Date: August 17, 1988.

James Abdnor,

Administrator.

Editorial Note: This document was received at the Office of the Federal Register on March 28, 1989.

[FR Doc. 89-7587 Filed 3-30-89; 8:45]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-124-AD; Amdt. 39-6178]

Airworthiness Directives; McDonnell Douglas Model DC-8 Series Airplanes, Equipped With Control Columns, P/N 5614272-1 and/or -2

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all McDonnell Douglas Model DC-8 series airplanes, equipped with certain control columns, which currently requires inspection of specific areas of the control columns for cracks, and rework or replacement, as necessary. This amendment requires inspection of additional areas of the control columns for cracks, and rework or replacement, as necessary. This amendment is prompted by reports of additional cracking in areas outside of those required to be inspected by the existing AD. Such cracking, if not detected and corrected, could lead to failure of the control column which, if it occurred during a critical flight regime, could result in loss of control of the airplane.

EFFECTIVE DATE: May 2, 1989.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 3229 E. Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. David Y.J. Hsu, Aerospace Engineer, Airframe Branch, ANM-122L, FAA Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 E. Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5323.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by superseding AD 73-07-09, Amendment 39-1967 (39 FR 33791; September 20, 1974), applicable to all McDonnell Douglas Model DC-8 series airplanes equipped with control columns, P/N 5614272-1 and/or -2, to require inspections of specific areas of the control columns for cracks, and rework or replacement, as necessary, was published in the **Federal Register** on November 17, 1988 (53 FR 46465).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Three commenters requested that the proposed rule be revised to increase the repetitive inspection interval from 2,500 hours time-in-service to 3,800 landings. To justify this request, the commenters noted that AD 87-13-04, Amendment 39-5656 (52 FR 23946; June 26, 1987), was issued in response to failure of the same part number control columns on McDonnell Douglas Model DC-9 series airplanes, and that the AD requires similar inspections as those proposed for the Model DC-8 airplanes, but at intervals of 3,800 landings. The commenters suggested that it would follow that the inspection intervals for both airplane types should be the same. The FAA does not concur. Due to the signficiant differences in the design and load spectrum between the Model DC-8 and DC-9 airplanes, the FAA has determined that repetitive inspections at intervals of 2,500 hours for the Model DC-8 is the maximum permitted without compromising safety.

One commenter requested the repetitive inspection interval be extended, since, based on this commenter's current airplane utilization rate of 2.5 flight hours per landing, this would result in an inspection every 1,000 landings. Further, this commenter noted that, since the control column is normally not used in cruise when the autopilot is engaged by the crew, the inspections should be based on landings instead of flight hours. In a similar request, another commenter suggested that the repetitive interval be increased to 3,000 flight hours to correspond with its scheduled maintenance ("C-check"). The FAA does not concur with these requests. Based on the design of the control column, the loads it experiences under average flight conditions which contribute to fatigue cracking, and the unsafe condition presented by a cracked control column, the FAA has determined that the repetitive inspection intervals, as proposed, are the maximum allowable in order to maintain an acceptable level of safety and to detect cracking in a timely manner.

One commenter requested that the proposed rule be revised to clearly state that, if inspection of the area noted in McDonnell Douglas All Operators Letter (AOL) 8-632 is accomplished in accordance with paragraph B. of the proposed AD, this action terminates the

inspection requirements of paragraph A. of the proposed AD; and furthermore, for the noted area, allowable limits and blendout criteria established in accordance with paragraph A. of this AD still apply. The FAA concurs, and the proposal has been revised to clarify this.

One commenter requested that the installation of control column part numbers 5614272-501 and -502, currently specified as terminating action in AD 73-07-09, be retained and be clearly stated in the body of the proposed amendment. The FAA agrees. Paragraph C. of the proposal has been revised to make this clarification.

Since issuance of the proposal, the FAA has reviewed and approved Revision 1 to McDonnell Douglas DC-8 Service Bulletin 27-267, and Revision 2 to McDonnell Douglas Alert Service Bulletin A27-267. Together, the above revisions provide description of two new part number control columns, P/N's 5614272-503 and -504, that can be installed to replace control columns, P/N's 5614272-1 and -2, as terminating action for the inspection requirements of this AD. The final rule has been revised to incorporate references to these later revisions and the additional control columns that can be installed as terminating action.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed, with the changes previously described. The FAA has determined that these changes do not increase the economic burden on any operator, nor do they expand the scope of the AD.

There are approximately 350 Model DC-8 series airplanes in the worldwide fleet. It is estimated that 256 airplanes of U.S. registry will be affected by this AD, that it will take approximately 14 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $143,360.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because of the minimal cost of compliance per airplane ($560). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By superseding AD 73-07-09, Amendment 39-1967 (39 FR 33791; September 20, 1974), with the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC-8 series airplanes, equipped with control columns, P/N 5614272-1 and/or -2, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the loss of airplane control in critical flight regimes due to fatigue failure of the control column, accomplish the following:

A. Within the next 1,250 hours time-in-service after September 25, 1974 (the effective date of Amendment 39-1967), unless already accomplished within the last 1,250 hours time-in-service, and thereafter at intervals not to exceed 2,500 hours time-in-service, except as provided below, conduct a dye penetrant or eddy current inspection of the control columns in accordance with the instructions in McDonnell Douglas All Operators Letter 8-632, issued October 11, 1972, or equivalent inspection technique approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

1. If surface indications of cracking exist, consisting of small specks not yet joined to form a linear crack of at least ⅛-inch in length, no rework is required, but the inspection interval is thereafter reduced to 2,000 hours time-in-service.

2. If linear cracks of ⅛-inch or more exist, blendout may be accomplished, in lieu of replacement, subject to the following qualifications: Blendout shall not exceed .030-inch in depth from the original surface and shall be blended over an area 10 times the depth. The defect shall not exceed an initial length of ¼-inch. No more than two defects can occur in the same horizontal plane, and the defects shall be separated by at least 2-inch center-to-center spacing. Additional defects may be blended if the vertical distance between horizontal planes is at least ¼-inch and the 2-inch center-to-center spacing requirement in the same horizontal plane is observed. After this rework, inspect at intervals not to exceed 2,500 hours time-in-service.

3. If cracks which exceed the limits described in paragraph A.2. of this AD are discovered as a result of any inspection, remove and replace the control columns, P/N's 5614272-1 and/or -2, in accordance with paragraph C. of this AD, or rework in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Within the next 1,250 hours time-in-service after the effective date of this AD, unless already accomplished within the last 1,250 hours time-in-service, conduct a dye penetrant or eddy current inspection of the control columns, in accordance with the instructions in McDonnell Douglas DC-8 Alert Service Bulletin A27-267, dated February 18, 1987, Revision 1, dated May 22, 1987, Revision 2, Dated February 14, 1989, or equivalent inspection technique approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

1. If no cracks are found, accomplish repetitive inspections at intervals not to exceed 2,500 hours time-in-service.

2. If cracks are found, prior to further flight, remove and replace the control column in accordance with paragraph C. of this AD.

Accomplishment of the provisions of Paragraph B. constitutes terminating action for the inspection requirements of paragraph A. of this AD. However, for areas specified in the McDonnell Douglas All Operators Letter 8-632, dated October 11, 1972, allowable limits and blendout criteria established in accordance with paragraph A. of this AD still apply.

C. Replacement of both pilot's and copilot's control columns, P/N's 5614272-1 and 5614272-2, respectively, with new control columns, SB 09270288-3, 5614272-501, or -503 (pilot's), and SB 09270288-4, 5614272-502, or -504 (co-pilot's), in accordance with McDonnell Douglas DC-8 Service Bulletin 27-267, issued January 20, 1988, or Revision 1, dated February 17, 1989, constitutes terminating action for the requirements of this AD.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 3229 E. Spring Street, Long Beach, California.

This amendment supersedes AD 73-07-09, Amendment 39-1967.

This amendment becomes effective May 2, 1989.

Issued in Seattle, Washington, on March 23, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-7713 Filed 3-30-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-60-AD; Amdt. 39-6179]

Airworthiness Directives; McDonnell Douglas Model DC-9, DC-9-80, and C-9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), which requires the installation of a Spoiler Position Sensing and Indication System and "spoiler deployed" annunciation takeoff inhibit feature on McDonnell Douglas Model DC-9 series airplanes; and requires installation of a "spoiler deployed" annunciation takeoff inhibit feature on certain McDonnell Douglas Model DC-9-80 series airplanes. This amendment is prompted by reports of inadvertent airplane lateral roll during takeoff. This condition, if not corrected, could lead to severe lateral control difficulties immediately after liftoff.

EFFECTIVE DATE: May 4, 1989.

ADDRESS: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Alan T. Shinseki, Aerospace Engineer, Systems and Equipment Branch, ANM-132L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806; telephone (213) 988-5343.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD) which requires the installation of a Spoiler Position Sensing and Indication System and a "spoiler deployed" annunciation takeoff inhibit feature on certain McDonnell Douglas Model DC-9, DC-9-80, and C-9 (Military) series airplanes, was published in the **Federal Register** on September 23, 1988 (53 FR 36994). The comment period for the proposal closed on November 18, 1988.

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration have been given to the comments received.

The Air Line Pilots Association (ALPA), on behalf of its member pilots representing 43 airlines, stated that the Spoiler Position Sensing and Indication System is essential to the safety of flight and fully supported the provisions of the proposed rule.

McDonnell Douglas requested that the proposed rule allow Master Minimum Equipment List (MMEL) dispatch relief when either the indication system or the inhibit feature is inoperative. The FAA does not concur. Because of the varying conditions under which relief might be appropriate, it would be inappropriate to address this issue in the AD. However, individual applications for such relief would be considered as alternate means of compliance, as provided by paragraph D. of the final rule.

The Air Transport Association (ATA) of America, on behalf of its member operators, stated that the proposed requirements for both the spoiler deployed indication system and the inhibit feature are unnecessary. With regard to the indication system, ATA stated that, since development by the manufacturer of reliability improvements for the spoiler system, service experience does not support the FAA's conclusion that the indication system is needed, and that if improvements are needed, the FAA should mandate the spoiler system reliability improvements instead. The FAA does not concur because the FAA continues to receive reports of uncommanded spoiler deployments and rejected takeoffs due to uncommanded spoiler deployments on airplanes which have incorporated those improvements. Therefore, the indication system is needed to ensure that the flight crew is properly informed of such deployments.

The ATA also stated that the risks associated with false indications (which result in unnecessary aborted takeoffs) is greater than the risks associated with unannunciated spoiler deployments. The FAA does not concur. As expressed in the NPRM, the purpose of this AD is both to provide appropriate indications and to eliminate inappropriate indications. As stated in the NPRM, the FAA finds that the unexpected lateral roll that can result from an unindicated spoiler deployment during takeoff does create an unsafe condition which justifies the requirement to incorporate the indication system. The FAA shares ATA's concern with regard to the unsafe condition created by unnecessary aborted takeoffs, which will be prevented by incorporation of the required inhibit feature.

The ATA also stated that the inhibit feature on airplanes equipped with the indication system is unnecessary because flight crews are trained to anticipate nuisance indications. The FAA does not concur. As discussed above, the FAA has received reports of unnecessary aborted takeoffs due to inappropriate spoiler deployed indications. The incorporation of the inhibit feature will prevent such occurrences.

ATA also commented that the compliance period for installation of the Spoiler Position Sensing and Indication System should be extended to three years since an extensive parts list is required to accomplish the required modifications. The FAA does not concur. The FAA has consulted with the manufacturer and has determined that the 12-month compliance requirement is appropriate based on the nature of the unsafe condition addressed, the availability of parts from the manufacturer, and the anticipated effective date of this final rule.

Paragraph A. of the final rule has been revised to delete reference to the Model DC-9-80, since the specific requirements of that paragraph are not applicable to that model.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and public interest require adoption of the rule as proposed, with the change noted above.

There are approximately 1,247 Model DC-9 and DC-9-80 series airplanes of

the affected design in the worldwide fleet.

It is estimated that 435 Model DC-9 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 78 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The material cost per Model DC-9 series airplane will be approximately $2,700 per plane. Based on these figures, the total cost impact of this AD on U.S. operators of Model DC-9 series airplanes is estimated to be $2,531,700.

It is estimated that 186 Model DC-9-80 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 8.5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The material cost per Model DC-9-80 series airplane will be approximately $200 per plane. Based on these figures, the total cost impact of this AD on U.S. operators of Model DC-9-80 series airplanes is estimated to be $100,440.

Based on the figures indicated above, the total cost impact of this AD on U.S. operators is estimated to be $2,632,140.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, McDonnell Douglas Model DC-9, DC-9-80, and C-9 (Military) series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following airworthiness directive:

McDonnell Douglas: Applies to Model DC-9, DC-9-80, and C-9 (Military) series airplanes, certificated in any category, as listed in McDonnell Douglas Model DC-9 Service Bulletin 27-173, Revision 1, dated May 20, 1982, and Service Bulletin 27-257, Revision 1, dated June 20, 1988. Compliance required within 12 months after the effective date of this airworthiness directive (AD), unless previously accomplished.

To eliminate lateral control difficulties after liftoff during takeoff, accomplish the following:

A. For McDonnell Douglas Model DC-9 and C-9 (Military) series airplanes, identified in McDonnell Douglas Model DC-9 Service Bulletin 27-173, Revision 1, dated May 20, 1982, and Service Bulletin 27-257, Revision 1, dated June 20, 1988: Install the Spoiler Position Sensing and Indication System and "spoiler deployed" annunciation takeoff inhibit feature in accordance with the accomplishment instructions of those service bulletins.

B. For McDonnell Douglas Model DC-9-81, DC-9-82, and DC-9-83 series airplanes identified in McDonnell Douglas Model DC-9 Service Bulletin 27-257, Revision 1, dated May 20, 1988: Install the Spoiler deployed annunciation takeoff inhibit feature in accordance with the accomplishment instructions of that service bulletins.

C. For McDonnell Douglas Model DC-9-81, DC-9-82, and DC-9-83 airplanes with the production equivalent of McDonnell Douglas Model DC-9 Service Bulletin, 27-257, Revision, dated June 20, 1988, incorporated but presently de-activated: Re-activate the spoiler deployed annunciation takeoff inhibit feature in accordance with the airplane type design configuration.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

E. Special flight permits may be used in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 3229 East Spring Street, Long Beach, California.

This amendment becomes effective May 4, 1989.

Issued in Seattle, Washington, on March 24, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-7714 Filed 3-30-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 639

Worker Adjustment and Retraining Notification

AGENCY: Employment and Training Administration, Labor.

ACTION: Interim interpretative rule; delay of expiration date.

SUMMARY: The Employment and Training Administration of the Department of Labor is delaying the expiration date on an interim interpretative rule interpreting the provisions of the Worker Adjustment and Retraining Notification Act (WARN). WARN provides that, with certain exceptions, employers of 100 or more workers must give at least 60 days' advance notice of a plant closing or mass layoff to affected workers or their representatives, to the State dislocated worker unit, and to the appropriate local government.

EFFECTIVE DATE: This interim interpretative rule is effective on March 31, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Colombo; Telephone: (202) 535-0577.

SUPPLEMENTARY INFORMATION: The Worker Adjustment and Retraining Notification Act (WARN, the statute, or the Act), Public Law 100-379, 102 Stat. 890. was enacted on August 4, 1988. 29 U.S.C. 2101 *et seq.* Section 11 of the Act provides that WARN goes into effect on February 4, 1989, WARN provides that, with certain exceptions, employers of 100 or more workers must give at least 60 days' advance notice of a plant

closing or mass layoff to affected workers or their representatives, to the State dislocated worker unit (see 29 U.S.C. 1661(b)(2)), and to the appropriate local government. 29 U.S.C. 2902 and 2903. Section 8(a) of the Act requires that the Secretary of Labor "prescribe such regulations as may be necessary to carry out this Act. Such regulations shall, at a minimum, include interpretative regulations describing the method by which employers may provide for appropriate service of notice as required by this Act." 29 U.S.C. 2107(a). Under section 11 of the Act, the authority to issue regulations for WARN became effective on August 4, 1988.

The Employment and Training Administration (ETA) of the Department of Labor (DOL or Department), on December 2, 1988, published an interim interpretative rule for WARN. 20 CFR Part 639, 53 FR 48884. The interim interpretative rule was to expire on April 1, 1989. 20 CFR 639.11, 53 FR at 48894. Comments on the interim interpretative rule were requested through January 31, 1989.

On December 5, 1989, ETA published a proposed rule to revise 20 CFR Part 639, which expected to be effective by April 1, 1989. 53 FR 49076. The comment period on the proposed rule was to end on February 3, 1989.

Substantial commentary was received from the business community, unions, members of Congress, trade associations, and other groups. The final rule has been postponed to respond to the interests and concerns of commenters regarding various aspects of WARN.

The expiration date on the interim interpretative rule is being extended, to allow for further consideration of comments and for publication of the final rule prior to the final rule's effective date. This is to allow employers, workers, and their representatives adequate time to study the provisions of the final rule before it takes effect.

Regulatory Impact

The interim interpretative rule interprets the provisions of the Worker Adjustment and Retraining Notification Act. It imposes no burden on employers or others; implementation flows from the Act itself. As it would not have the financial or other impact to make it a major rule, preparation of a regulatory impact analysis is unnecessary. See Executive Order No. 12291, 5 U.S.C. 601 note.

Insofar as is possible, however, DOL intends to perform an analysis of the impact of the Act, this interim interpretative rule, and the final rule, to aid the General Accounting Office in its function of reporting to Congress on the Act.

The interim interpretative rule was not preceded by a general notice of proposed rulemaking. Therefore, it is not a "rule" as that term is defined in the Regulatory Flexibility Act. 5 U.S.C. 601(2).

List of Subjects in 20 CFR Part 639

Employment, Labor, Labor management relations, Labor unions, Penalties.

Interim Interpretative Rule

PART 639—[AMENDED]

Accordingly, Part 639 of Chapter V of Title 20, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 639 continues to read as follows:

Authority: 29 U.S.C. 2107(a).

§ 639.11 [Amended]

2. Section 639.11 is amended by removing the term "April 1, 1989" and inserting in lieu thereof the term "April 18, 1989".

Signed at Washington, DC, this 29th day of March 1989.

Elizabeth Dole,

Secretary of Labor.

[FR Doc. 89-7829 Filed 3-30-89; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 89N-0039]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers; Technical Amendment

AGENCY: Food and Drug Administration.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to correct an error that was inadvertently introduced into § 178.1005 (21 CFR 178.1005) on December 20, 1985 (50 FR 51847). The agency is issuing this technical amendment to correct the error by providing for the safe use of hydrogen peroxide for sterilizing food-contact surfaces prepared from polycarbonate resins.

DATE: Effective March 31, 1989.

FOR FURTHER INFORMATION CONTACT: George H. Pauli, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 15, 1985 (50 FR 47211), FDA issued a final rule amending 21 CFR 178.1005 to provide for the safe use of hydrogen peroxide for sterilizing food-contact surfaces prepared from polycarbonate resins. In the **Federal Register** of December 20, 1985 (50 FR 51847), FDA issued a final rule amending this same regulation to provide for the additional safe use of hydrogen peroxide for sterilizing food-contact surfaces prepared from polystyrene and rubber-modified polystyrene resins. In both rules the amendment was issued by reprinting the entire revised § 178.1005(e)(1). In the later case, however, the reference to polycarbonate resins was inadvertently omitted. As a result, the amendment of November 15, 1985, was never incorporated into 21 CFR 178.1005.

The agency is issuing this document to correct the error by amending § 178.1005(e)(1) to provide for the safe use of hydrogen peroxide for sterilizing food-contact surfaces prepared from polycarbonate resins. Because a 30-day objection period was provided in the November 15, 1985, final rule, none need be provided at this time. No objections were received at that time.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 178.1005 is amended in paragraph (e)(1) by alphabetically adding an entry in the table under the headings "Substances" and "Limitations" to read as follows:

§ 178.1005 Hydrogen peroxide solution.

* * * * *

(e) * * *
(1) * * *

Substances	Limitations
* * *	* *
Polycarbonate resins	Complying with § 177.1580 of this chapter.
* * *	* *

* * * * *

Dated: March 17, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-7599 Filed 3-30-89; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 184

[Docket No. 78N-0349]

Certain Glycerides; Affirmation of Gras Status; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting its response to a comment that was included in the agency's final rule of February 21, 1989, which affirmed that the use of certain glycerides is generally recognized as safe (GRAS) as direct human food ingredients. This document was inadvertently published while the agency was considering a submission the claimed that "DATEM" is an appropriate acronym for the GRAS ingredient diacetyl tartaric acid esters of mono- and diglycerides. The agency has completed its review of this submission and will not object to the term "DATEM" being inserted immediately after the name of this ingredient on food product labeling. The GRAS regulation for diacetyl tartaric acid esters of mono- and diglycerides is being amended to reflect this agency view.

EFFECTIVE DATE: May 1, 1981.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 21, 1989 (54 FR 7401), FDA published a final rule to affirm that mono- and diglycerides, diacetyl tartaric acid esters of mono- and diglycerides, monosodium phosphate derivatives of mono- and diglycerides, glyceryl monostearate, gylceryl monooleate, triacetin (glyceryl triacetate), and tributyrin (glyceryl tributyrate) and GRAS for use as direct human food ingredients. This document was inadvertently published while the agency was considering a comment that claimed that "DATEM" is an appropriate acronym for the GRAS ingredient diacetyl tartaric acid esters of mono- and diglycerides.

In the final rule, FDA stated that use of the term "DATEM" in conjunction with this ingredient would be confusing because of how "DATEM" is used in Europe. Because of the inadvertent publication of the document, this view was not based upon a complete review of the submitted data. The agency has now completed its evaluation of the information contained in the comment, additional information submitted in support of the comment, and information the agency itself developed on the use of the term "DATEM" in Europe and the United States. Based upon that evaluation, the agency now concludes that the use of the term "DATEM" in conjunction with the ingredient name for diacetyl tartaric acid esters of mono- and diglycerides on food labels would be appropriate. FDA has reached this conclusion because: (1) Diacetyl tartaric acid esters of mono- and diglycerides are the primary components of "DATEM" as the term is used in the scientific literature; (2) European labeling for the additive uses neither the common name nor the term "DATEM"; and (3) compliance with 21 CFR 184.1101 and the specifications of the Food Chemicals Codex, 3d Ed. (1981) would provide for the use in Food, in the United States, of only the diacetyl tartaric acid esters of mono- and diglycerides considered in this affirmation document.

FDA concludes, therefore, that it is appropriate to permit the use of the acronym "DATEM" of food labeling, provided it is parenthetically inserted immediately following the name of the ingredient. Public exposure over a period of time could lead to eventual acceptance of the acronym as an alternate common or usual name for this ingredient. Any interested person may then petition FDA to formally adopt the term "DATEM" as an alternate common or usual name for diacetyl tartaric acid esters of mono- and diglycerides.

The comment asked that the term "DATEM" be parenthetically inserted in the title of § 184.1101. The agency is denying this request because it believes that if the regulation were revised in this way, it would imply that "DATEM" had already been established as an alternate common or usual name for this substance. As discussed, this impression would not be correct.

The agency is, therefore, amending § 184.1101 *Diacetyl tartaric acid esters of mono- and diglycerides* (21 CFR 184.1101) by revising paragraph (a) and by adding paragraph (e) to provide for the use of the acronym "DATEM" in combination with the full chemical name.

List of Subjects in 21 CFR Part 184

Food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 184 is amended as follows:

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR Part 184 continues to read as follows:

Authority: Secs. 201(s), 402, 409, 701, 52 Stat. 1046-1047 as amended 1055-1056 as amended, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10, 5.61.

2. Section 184-1101 is amended by revising paragraph (a) and by adding new paragraph (e) to read as follows:

§ 184.1101 Diacetyl tartaric acid esters of mono- and diglycerides.

(a) Diacetyl tartaric acid esters of mono- and diglycerides (DATEM) are composed of mixed esters of glycerin in which one or more of the hydroxyl groups of glycerin has been esterified by diacetyl tartaric acid and by fatty acids. The ingredient is prepared by the reaction of diacetyl tartaric anhydride with mono- and diglycerides that are derived from edible sources.

* * * * *

(e) *Labeling:* The acronym "DATEM" has been suggested as an eventual alternate common or usual name for the ingredient diacetyl tartaric acid esters of mono- and digylcerides. This term may be used, in parenthesis, immediately following the name of this ingredient on food labeling.

Dated: March 24, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-7600 Filed 3-30-89; 8:45 am]

BILLING CODE 4160-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2644

Notice and Collection of Withdrawal Liability; Adoption of New Interest Rate

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Notice and Collection of Withdrawal Liability. That regulation incorporates certain interest rates published by another Federal agency. The effect of this amendment is to add to the appendix of that regulation a new interest rate to be effective from April 1, 1989, to June 30, 1989.

EFFECTIVE DATE: April 1, 1989.

FOR FURTHER INFORMATION CONTACT: John Foster, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; telephone 202–778–8850 (202–778–8859 or TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Under section 4219(c) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("the PBGC") promulgated a final regulation on Notice and Collection of Withdrawal Liability. That regulation, codified at 29 CFR Part 2644, deals with the rate of interest to be charged by multiemployer pension plans on withdrawal liability payments that are overdue or in default, or to be credited by plans on overpayments of withdrawal liability. The regulation allows plans to set rates, subject to certain restrictions. Where a plan does not set the interest rate, § 2644.3(b) of the regulation provides that the rate to be charged or credited for any calendar quarter is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates").

Because the regulation incorporates interest rates published in Statistical Release H.15, that release is the authoritative source for the rates that are to be applied under the regulation. As a convenience to persons using the regulation, however, the PBGC collects the applicable rates and republishes them in an appendix to Part 2644. This amendment adds to this appendix the interest rate of 11½ percent, which will be effective from April 1, 1989 through June 30, 1989. This rate represents an increase of 1 percent from the rate in effect for the first quarter of 1989. See 53 FR 52995 (December 30, 1988). This rate is based on the prime rate in effect on March 15, 1989.

The appendix to 29 CFR Part 2644 does not prescribe interest rates under the regulation; the rates prescribed in the regulation are those published in Statistical Release H.15. The appendix merely collects and republishes the rates in a convenient place. Thus, the interest rates in the appendix are informational only. Accordingly, the PBGC finds that notice of and public comment on this amendment would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making this amendment effective immediately.

The PBGC has determined that this amendment is not a "major rule" within the meaning of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 2644

Employee benefit plans, Pensions.

In consideration of the foregoing, Part 2644 of Subchapter F of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2644—NOTICE AND COLLECTION OF WITHDRAWAL LIABILITY

1. The authority citation for Part 2644 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3) and 1399(c)(6).

Appendix A [Amended]

2. Appendix A is amended by adding to the end of the table therein a new entry as follows:

From	To	Date of quotation	Rate (percent)
*	*	*	*
04/01/89.....	06/30/89	03/15/89	11.50

Issued at Washington, DC, on this 24th day of March 1989.

Kathleen P. Utgoff,

Executive Director.

[FR Doc. 89–7629 Filed 3–30–89; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Colorado Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule; approval of amendments.

SUMMARY: OSMRE is announcing the approval of amendments to the Colorado permanent regulatory program (hereinafter referred to as the Colorado program), as administered by the Colorado Mined Land Reclamation Division (MLRD), under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments pertain to exemptions, experimental practices, prime farmland, subsidence control, fish and wildlife, bonding and insurance requirements, revegetation, lands unsuitable and related areas, inspection and enforcement, civil penalties, and topsoil. Colorado is modifying its approved program to be consistent with SMCRA and the Federal regulations and to improve its operational efficiency. Consistency of State and Federal standards is required by SMCRA.

EFFECTIVE DATE: March 31, 1989.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue SW., Suite 310, Albuquerque, NM 87102; Telephone (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Colorado Program
II. Submission of Proposed Amendments
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Colorado Program

On December 15, 1980, the Secretary of the Interior conditionally approved the Colorado program. Information regarding the general background for the Colorado program, including the Secretary's findings, the disposition of comments, and detailed explanation of the conditions of approval can be found in the December 15, 1980, **Federal Register** (45 FR 82173). Actions concerning program amendments, taken subsequent to the approval of the Colorado program, may be found at 30 CFR 906.15.

II. Submission of Proposed Amendments

By letter dated May 26, 1987, Colorado submitted to OSMRE the proposed amendments (Administrative Record No. CO-336) to the Colorado program. The State submitted the majority of these proposed amendments in response to OSMRE's letter dated May 7, 1986 (Administrative Record No. CO-282). This letter was issued in accordance with 30 CFR 732.17(d) and notified the State of required amendments to its program. The remainder of the proposed amendments were submitted at the State's initiative in order to improve its program.

OSMRE published a notice in the **Federal Register** on June 29, 1987 (52 FR 24173), announcing receipt of the proposed amendments to the Colorado program and inviting public comment on the adequacy of the proposed amendments. After reviewing the proposed amendments and all comments received, OSMRE notified Colorado by letter dated October 15, 1987 (Administrative Record No. CO-357), of several provisions in its proposal that appeared to be inconsistent with the Federal regulations. By letter dated December 17, 1987 (Administrative Record No. CO-360), Colorado provided further clarification of and submitted revisions to the amendments. On November 6, 1987, Colorado withdrew the proposed amendments on revegetation in their entirety at Rule 4.15.7(1) and in part at Rule 4.15.7(2) (Administrative Record No. CO-358). To allow the public an opportunity to comment on the additional material submitted by Colorado, OSMRE published a notice in the **Federal Register** on March 7, 1988 (53 FR 7211), reopening and extending the comment period. The comment period closed on March 22, 1988.

III. Director's Findings

The Director finds in accordance with SMCRA, and the Federal regulations at 30 CFR 732.15 and 732.17, that the program amendments submitted by Colorado on May 26, 1987, and subsequently revised and clarified on December 17, 1987, meet the requirements of SMCRA and 30 CFR Chapter VII as discussed below. However, the Director may require further changes in the future as a result of Federal regulatory revisions, court decisions, and OSMRE oversight of the Colorado program. Only provisions of particular interest are discussed below. Provisions discussed are those having no Federal counterpart, or those containing wording that is dissimilar to the corresponding Federal provisions and/or substantively different from the Federal counterpart. Provisions which are not discussed either contain language substantively identical to the corresponding Federal provisions or do not adversely affect other aspects of the program.

A. Exemptions

(1) *Acreage exemption.* As originally approved, Colorado Rule 1.05.1(2) excluded coal extraction operations affecting two acres or less from regulation. Similarly, as originally enacted, section 528(2) of SMCRA exempted coal extraction operations affecting two acres or less. However, on May 7, 1987, the President signed Pub. L. 100-34, which repealed this exemption and preempted any corresponding acreage-based exemptions included in State laws or regulations. The amendment under consideration in this rulemaking removes the State regulatory language preempted by Pub. L. 100-34. Therefore, the Director finds Colorado Rule 1.05.1, as revised by this amendment, to be no less stringent than section 528 of SMCRA. Removal of the acreage exemption from the Colorado rules will avoid confusion on the part of the public, which may not be aware of the Federal preemption.

(2) *Exemption determination procedures.* Colorado Rule 1.05.1(1) provides exemptions to (1) landowners extracting coal for noncommercial use from land that they own or lease; (2) persons extracting coal as an incidental part of Federal, State or local government-financed construction, and (3) persons extracting coal incidental to the extraction of other minerals if the coal does not exceed 16-⅔ percent of the mineral tonnage removed for commercial use or sale. Colorado proposes to add Rule 1.05.1(2) to establish exemption determination procedures for use when a person claims one of these exemptions.

Colorado's proposed rule is almost verbatim to the counterpart Federal regulation at 30 CFR 700.11(c). The proposed amendment differs from the Federal regulation only in that Colorado would issue a written determination within 10 working days of a person's request for an exemption, whereas the Federal regulation states that the regulatory authority shall make a written determination within a "reasonable time."

OSMRE considers the Colorado timeframe of 10 working days to be a reasonable time. Therefore, the Director finds Colorado Rule 1.05.1(2) to be no less effective than its Federal counterpart at 30 CFR 700.11(c).

B. Prime Farmland

(1) *Negative determinations.* Colorado proposes to recodify existing Rule 2.04.12(4) as 2.04.12(5) and add a new paragraph (4) allowing a person to request and, where appropriate, obtain a negative prime farmland determination in advance of filing a permit application. A negative prime farmland determination can be made only when no land within the proposed permit areas is prime farmland historically used for cropland. Under the existing regulations, the applicant is required to submit a request for a negative determination, if appropriate and desired, as a part of the permit application. The proposed rule would allow the applicant to submit a request for a negative determination, with the accompanying rationale, prior to submitting a permit application. If granted, the negative determination would then be included in the permit application.

The corresponding Federal rule at 30 CFR 785.17(b), as revised on May 12, 1983 (48 FR 21462), no longer includes the specific provisions for negative determinations previously found at 30 CFR 779.27, as promulgated on March 13, 1979 (44 FR 15370), but it does require that the results of a prime farmland reconnaissance inspection be included in each permit application. Since, under Rule 2.04.12(1), the prospective applicant would have to conduct a similar investigation before requesting the negative determination, the Director finds that proposed Rule 2.04.12(4) is not inconsistent with the Federal regulations at 30 CFR 785.17.

(2) *Soil survey handbooks.* Colorado proposes to undate Rule 2.06.6(2)(a), which requires a soil survey of the permit area in accordance with certain handbooks published by the U.S. Soil Conservation Service, to reflect handbook revisions that have occurred since program approval. Specifically, Colorado proposes to incorporate by reference the 1983 edition of the U.S.

Department of Agriculture (USDA) National Soils Handbook and delete the specific incorporation by reference of USDA Handbooks 436 ("Soil Taxonomy," 1975 edition) and 18 ("Soil Survey Manual," 1951 edition). The corresponding Federal regulation at 30 CFR 785.17(c)(1) references all three handbooks; however, the National Soils Handbook itself also incorporates the other two handbooks by reference. Therefore, the Director finds the proposed Colorado amendment to be no less effective than this Federal rule.

C. Bonding and Insurance Requirements

(1) *Letters of credit.* Colorado Rule 3.02.4(2)(d) establishes requirements for letters of credit used for reclamation bonding purposes. Subsection (d)(ii) specifies that a letter is irrevocable unless, at least 90 days prior to its anniversary date, the bank otherwise notifies MLRD and the permittee. To clarify this de facto automatic renewal provision, Colorado is adding a new subsection (d)(vii), which specifically states that letters of credit will be automatically renewed on their anniversary dates unless notice is given pursuant to subsection (d)(ii).

The corresponding Federal regulations at 30 CFR 800.21(b) have no provision for automatic renewal of letters of credit, nor do they require advance notice of any intention not to renew. By including these requirements Colorado is providing additional safeguards against lapses in bond coverage. None of the amendment's provisions conflicts with the Federal letter of credit requirements. Therefore, the Director finds that the proposed amendment to Colorado Rule 3.02.4(2)(d) is consistent with the requirements of SMCRA and the Federal regulations at 30 CFR Part 800.

(2) *Opportunity for bond release hearing.* Unlike the corresponding Federal rules at 30 CFR 800.40, the Colorado program (CRS 34–33–125 and Rule 3.03.2) requires separate public notices for the bond release application and MLRD's subsequent proposed decision on that application. Like 30 CFR 800.40(f), Colorado Rule 3.03.2 (3) allows certain government agencies and any person with a valid legal interest which might be adversely affected by release of the bond to file written comments, objections or requests for an informal conference with MLRD within 30 days of the last publication of the bond release application notice. However, unlike 30 CFR 800.40(f), the Colorado rule does not also allow requests for public hearings to be filed at this time. Instead, such requests must be made after MLRD actually proposes a decision on the application.

The Secretary previously approved this arrangement since the advertised decision on the application is proposed, not final, and since, in addition to the newspaper notice required by the State statute, Colorado Rule 3.03.2(5) requires that written notification of the proposed decision be provided to the permittee and all interested parties. This notification must include an opportunity to request a hearing. The term "all interested parties" includes all persons and agencies who commented on the bond release application. Since the two notice periods cannot run concurrently, the Colorado program provides more opportunity and time for public participation than do the Federal rules.

As originally approved, Rule 3.03.2(6)(a) stated that requests for a hearing must be received within 30 days of the date notice of the proposed decision was mailed.

Colorado is now proposing to revise this timeframe to 30 days after the first newspaper publication of the proposed decision pursuant to CRS 34–33–125(4). In practice, the new deadline will likely be later than the one originally approved since the letters usually will be mailed before the notice is published. For this reason, and since Colorado provides a greater overall opportunity and length of time for public and interested party participation in the bond release process than SMCRA and the Federal rules, the Director finds that revised Rule 3.03.2 is no less stringent than section 519(f) of SMCRA and no less effective than 30 CFR 800.40(f) with respect to public notice and opportunity to request a hearing on proposed bond releases.

D. Lands Unsuitable and Related Areas

Colorado proposes to amend Rule 2.07.6(2)(d)(iii) to add a new paragraph (E). This paragraph would require that, should MLRD or the Colorado Mined Land Reclamation Board be unable to determine whether a proposed operation is located on lands specified in Rule 2.07.6(d)(iii) (A) and (D) (lands where mining is limited or prohibited), the permit application be transmitted within 30 days to the appropriate governmental agency for a determination of the relevant boundaries or distances. Additionally, the National Park Service, the U.S. Fish and Wildlife Service and the U.S. Forest Service (USFS) would be provided a 30-day comment period (with a 30-day extension available upon request) on all requests for valid existing rights determinations on lands under their jurisdiction.

The corresponding Federal regulation at 30 CFR 761.12(b)(2) is substantively identical to the proposed State rule except that it does not require that the USFS be notified of requests for valid existing rights determinations. Since the USFS is the Federal agency with jurisdiction over some of the lands listed in Rule 2.07.6(2)(d)(iii) (A) and (D), it is logical to include it in the notification requirements. Notification will provide an additional safeguard against improper authorization of mining in protected areas; it does not conflict with any Federal provisions. Therefore, the Director finds that Colorado's proposed Rule 2.07.6(2)(d)(iii)(E) is no less effective than the corresponding Federal regulation at 30 CFR 761.12(b)(2).

E. Topsoil

(1) *Soil analyses.* Colorado proposes to amend Rule 2.04.9(1)(b) to allow a waiver of the requirement that permit applications include analyses of certain specific parameters (pH, electrical conductivity, sodium absorption ratio and texture) as part of the baseline information on soils. Analysis of soil samples for one or more of these parameters could be waived if the applicant demonstrates that such analyses are not necessary, based on site-specific conditions.

The corresponding Federal regulation at 30 CFR 779.21 requires a description of the soils but does not specify the parameters to be described. in this respect, the existing Colorado rule is more specific than the Federal rule. The proposed amendment would provide Colorado with the flexibility to determine what parameters should be analyzed based on site-specific conditions and the ability to waive certain analyses when it is decided that they are not needed. Therefore, the Director finds that the Colorado rule at 2.04.9(1)(b), as amended, is no less effective than the corresponding Federal regulation at 30 CFR 779.21.

(2) *Topsoil removal.* Colorado proposes to amend Rule 4.06.2(5) to delete language giving MLRD explicit authority to limit the size of topsoil removal areas to minimize air or water pollution. It also proposes to revise Rule 4.06.2(5)(b) to specify that, to the extent practicable, the surface soil layer shall be removed (rather than redistributed as in the current rule) at a time when the physical and chemical properties of the topsoil can be protected and erosion can be minimized. Similar standards for topsoil redistribution are being retained in Rule 4.06.4(2). Current Rule 4.06.2(5)(c), which authorizes MLRD to require such measures as are necessary

to control topsoil erosion, is also being retained as new Rule 4.06.2(6). Air pollution will continue to be controlled by the State Air Quality Control Division.

The corresponding Federal regulations at 30 CFR 816.22 and 817.22 no longer contain requirements specifically limiting the size of topsoil removal areas because, as explained in the preamble to those rules (48 FR 22099, May 16, 1983), OSMRE believes other rules concerning topsoil protection, effluent limitations and erosion control will adequately limit the size of such areas in a de facto sense. The preamble further states that the regulatory authority has the discretion to limit the size of disturbed areas if local soil and climatic conditions necessitate such action.

Therefore, for the above reasons, the Director finds proposed Colorado Rules 4.06.2 (5) and (6) to be no less effective than the corresponding Federal topsoil regulations at 30 CFR 816.22 and 817.22 and surface stabilization (air pollution attendant to erosion) regulations at 30 CFR 816.95(a) and 817.95(a).

IV. Summary and Disposition of Comments

As discussed in the section of this notice entitled "Submission of Proposed Amendments," the Director solicited public comment and provided opportunity for a public hearing on the proposed amendments. No public comments were received, and since no one requested an opportunity to testify at a public hearing, no hearing was held.

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11), comments were also solicited from various Federal agencies with an actual or potential interest in the Colorado program. Only the USFS provided substantive comments, which are summarized and discussed below.

The first comment concerns proposed Colorado Rules 2.06.2 (4) and (5), which relate to experimental practices. The USFS is concerned that any experimentation conducted on a Federal lease by the Federal land management agency may require the prior approval of a State agency. The USFS states that, as a matter of course, it will be involved in mining-related research on revegetation and reclamation and the maintenance or improvement of water, air and soil quality on National Forest lands. The agency requests that the proposed rules be modified to provide an exemption for experimentation conducted by Federal agencies on the Federal lands for which they have administrative responsibility.

In response, the Director notes that, in accordance with section 711 of SMCRA, the State rules contain requirements similar to those of the Federal regulations at 30 CFR 785.13 (b) and (h). Neither the Federal rules nor SMCRA provide an exemption for experimentation conducted by a Federal agency. However, OSMRE does not believe that these rules will unduly interfere with Federal land management experimentation or research activities because the rules apply only when such activities would require a variance from a specific State program performance standard. Most research can be accommodated without resorting to such a variance.

The second comment concerns proposed Colorado Rule 2.07.6(2)(d)(iii)(E), which pertains to lands on which mining is prohibited or limited. The USFS requests that it be included by name as a Federal agency that must be contacted when the boundaries of such lands cannot be determined by Colorado. The USFS reasons that, since a majority of the lands in Rule 2.07.6(2)(d)(III)(A) (the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, and National Recreation Areas) are located within National Forests, the USFS should be notified when there are boundary questions. As noted in Finding D, Colorado has modified its rule as requested.

V. Director's Decision

The Director, based on the above findings, is approving the amendments as submitted by Colorado on May 26, 1987, and as revised and clarified on December 17, 1987, provided that Colorado promulgates these regulations in a form identical to that submitted to and reviewed by OSMRE and the public, with the exception of the correction of typographical errors. The Director is amending 30 CFR Part 906 to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs to the Federal standards without undue delay. Consistency of State and Federal standareds is required by SMCRA.

VI. Procedural Determinations

Compliance with the National Environmental Policy Act

The Secretary had determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB. The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 906

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: March 27, 1989.

Nancy C. Garrett,

Acting Director.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below.

PART 906—COLORADO

1. The authority citation for Part 906 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 906.15 is amended by adding a new paragraph (k) to read as follows:

§ 906.15 Approval of regulatory program amendments.

* * * * *

(k) The following amendments, which concern exemptions, experimental practices, prime farmland, subsidence control, fish and wildlife, revegetation, topsoil, bonding and insurance requirements, lands unsuitable for mining and related areas, civil penalties and inspection and enforcement, are approved effective March 31, 1989. Revisions to the following provisions of 2 CCR 407–2, the rules and regulations of the Colorado Mined Land Reclamation Board, as submitted on May 26, 1987,

and clarified and modified on December 17, 1987:

1.04(25), (57), (59), (71), (116), (120) and (153)
1.05.1
2.03.7(3)
2.04.9(1)
2.04.12
2.05.4(2)
2.05.6(6)(f)
2.06.2(4), (5), (8), (9) and (10)
2.06.6(1) and (2)
2.07.6(2)(d) and (e)
3.02.1(4), (5) and (6)
3.02.2(4)
3.02.4(1) and (2)
3.03.1(2)
3.03.2(5) and (6)
3.04.2(5) and (6)
4.06.2(2), (4), (5) and (6)
4.15.1(1)
4.15.2
4.15.7(2) and (3)
4.15.8(2), (3), (4), (7) and (9)
4.18
4.20.1(3)
4.20.4(1) and (3)
4.25.5(2) and (3)
5.02.4(1)
5.03.3(5)
5.04.3(2) and (3)
7.03(3)(f)
7.04(5)
7.06.2(1) and (2)
7.06.3(1) and (2)
7.06.5(2).

[FR Doc. 89-7615 Filed 3-30-89; 8:45 am]
BILLING CODE 4310-05-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket RM 83-4B]

Registration of Claims to Copyright Deposit Requirements for Computer Programs Containing Trade Secrets and for Computer Screen Displays

AGENCY: Library of Congress, Copyright Office.

ACTION: Final regulations.

SUMMARY: This document is issued to inform the public that the Copyright Office of the Library of Congress is amending portions of 37 CFR 202.20 concerning deposit of computer programs. The amendments establish special deposit procedures for computer programs containing trade secrets, and for computer screen displays.

EFFECTIVE DATE: May 1, 1989.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S Copyright Office, Library of Congress, Washington, DC 20559, (202) 707-8380.

SUPPLEMENTARY INFORMATION:

1. Background

Under section 408 of Title 17 of the United States Code, the Copyright Act, copyright registration of both published and unpublished works requires a deposit of a copy, phonorecord, or other material to identify the work for which registration is sought and to permit examination of the claim by the Copyright Office, in accordance with section 410 of the Act. Except as provided by subsection (c) of section 408, subsection (b) generally requires the deposit of one complete copy or phonorecord in the case of an unpublished work, or two complete copies or phonorecords of the best edition in the case of a published work. For works first published outside the United States, the Act requires deposit of one complete copy or phonorecord as so published. Subsection (c) of section 408 authorizes the Register of Copyrights to specify administrative classes of works for purposes of desposit and registration, to determine the nature of the copies to be deposited, and to permit or require the deposit of identifying materials in lieu of actual copies.

In reliance on this authorization, the Copyright Office established regulations governing the deposit for registration of claims to copyright at 37 CFR Ch. II § 202.20 and § 202.21. Special provisions are established for machine-readable copies (§ 202.20(c)(2)(vii)) and so-called "secure tests" (§ 202.20(c)(2)(vi)). In addition, § 202.20(d) establishes a procedure for special relief in cases where the normally applicable deposit requirements pose an undue hardship.

Section 705(b) of the copyright law requires all desposits retained under the control of the Copyright Office to be available for public inspection. As a result of the public inspection requirement, some copyright claimants have asserted that the deposit of material containing trade secrets jeopardizes trade secret protection under state law. No court, however, has specifically ruled on this issue.

Under the deposit procedures now in force, in order to register a claim to copyright in a computer program, the applicant is required to deposit the first and last twenty-five pages of the program in the form of source code. If the applicant cannot or will not deposit source code, registration can be made based on object code under the rule of doubt. Claimants are warned that the Copyright Office has merely accepted their assertion of original authorship and has made no independent determination of copyrightable authorship.

Rather than deposit fifty pages of source code, some applicants invoke the special relief (waiver) provisions of the deposit regulation. The Examining Division of the Copyright Office developed three categories of deposits for which special relief would automatically be granted, based on the administrative experience of several years. (See Compendium II of Copyright Office Practices (§ 324.05(a)). The three alternatives are: (1) The first and last 25 pages of source code with some portions blocked out, provided that the blocked-out portions are proportionately less than the material still remaining; (2) at least the first and last ten pages of source code alone with no blocked-out portions; or (3) the first and last 25 pages of object code plus any ten or more consecutive pages of source code with no blocked-out portions.

Despite the existence of trade secrecy concerns, over 90% of computer program remitters continue to submit the required 50 pages of source code without portions blocked out. Of the remitters seeking special relief due to trade secrecy concerns, most are able to utilize one of the three automatic grants of special relief. A small portion of claims in computer programs fall outside the three categories and are processed under the general special relief procedures of § 202.20(d).

In order to evaluate and consider the issue of trade secrecy in relation to computer program deposits, the Copyright Office initiated a rulemaking proceeding by publishing a Notice of Inquiry in the **Federal Register** requesting public comments on the matter. (48 FR 22951). The Notice summarized the statutory framework of the deposit requirement and discussed the special deposit provisions for "secure tests" and the nature of trade secret protection.

The Copyright Office received a total of 41 responses to the Notice of Inquiry. The vast majority of the responses were from members of the computer industry and the overwhelming sentiment was in favor of establishing special deposit procedures to mitigate the alleged uncertainties associated with depositing material containing trade secrets in a public office.

On the basis of the comments received, the Copyright Office concluded that the particular problems of the computer industry merited special deposit provisions. On September 30, 1986, the Copyright Office published a proposed regulation advancing four alternative deposits in the case of computer programs containing trade secrets. (51 FR 34667). Three of the alternatives were based on the three automatic grants of special relief

described above. A fourth alternative, covering small computer programs of less than 25 pages, was also proposed. In addition, the Copyright Office proposed adding a provision requiring the disclosure in the copyright application of the number of lines in the program.

2. Summary of the Public Comments

The Copyright Office received six comments to its proposed regulation. Only four of the comments, however, addressed the changes in the deposit procedures concerning computer programs containing trade secrets.[1] A summary of the four comments follows:

One computer equipment and software company opposed the requirement of indicating the number of lines in the program on the grounds that there is "no standard of measure across the software industry in the U.S. or worldwide that provides a uniform count of lines of source code. . . ." Additionally, the company criticized the object code practice of the Copyright Office, and argued that the policy should be clarified in the regulations. Finally, the commentator stated that the regulations should be clarified regarding the continued availability of special relief for computer programs containing trade secrets.

Another computer equipment and software company also criticized the requirement of indicating the number of lines as ambiguous. In addition, this company pointed out that proposed § 202.20(c)(2)(vii)(A)(2) (concerning the four alternative deposits) was not made specifically applicable to revised computer programs.

The Information Industry Association (IIA) asked whether the use of diagonal stripping would be an acceptable means of blocking-out under the proposed regulation. The IIA voiced support for the stripping method because it could be conducted by clerical staff without supervision of expensive professional staff. In addition, the IIA requested that the regulation be clarified concerning continued availability of special relief.

One private practitioner recommended specifying source code in § 202.20(c)(2)(vii)(A)(1). In addition he generally favored the deposit of brief descriptions of any deleted material and specification of the lines deleted.

3. Summary of the Regulatory Decisions

In addition to consideration of the public comments, the Copyright Office reviewed the administrative experience with respect to computer programs. As a result of this consideration and review, the Copyright Office has made the following changes in the proposed regulations:

(1) The suggestion that source code be specified in § 202.20(c)(2)(vii)(A)(1) is adopted.

(2) The proposed requirement of indicating the number of lines in the program is not adopted.

(3) The four alternative deposits specified in § 202.20(c)(2)(vii)(A)(2) are clarified.

(4) The practice of accepting object code under the rule of doubt is made a part of the regulations.

(5) Source code stripped in a manner that virtually blocks out all computer code expression will not be an acceptable form of deposit. Sufficient copyrightable expression must remain unblocked to enable the Office to determine that registration should be made.

(6) Section 202.20(c)(2)(vii)(A)(2) has been clarified explicitly to cover revised computer programs.

(7) The continued availability of special relief for computer programs containing trade secrets is reaffirmed, but without any change in the special relief regulation.

4. Explanation of the Regulatory Decisions

(1) *Specification of source code.* The suggestion that § 202.20(c)(2)(vii)(A)(1) formally designate source code is a good one and is adopted. By specifying source code, the regulation will more accurately reflect the long standing policy of the Copyright Office.

(2) *Deletion of the requirement of indicating the number of lines in the program.* Two computer equipment and software companies criticized the proposed requirement to specify the approximate number of lines in the program on the grounds that the proposal was ambiguous and that the information was often not readily available to the applicant. A random survey of deposits submitted to the Copyright Office confirmed the nonexistence of uniform numbering patterns. In light of the lack of uniformity concerning the numbering of lines, the Copyright Office has decided not to adopt this requirement.

(3) *Clarification of the four alternatives specified in § 202.20(c)(2)(vii)(A)(2).* Three of the four alternatives specified in proposed § 202.20(c)(2)(vii)(A)(2) were taken directly from Compendium II of the Copyright Offices Practices. From the comments it appears some ambiguity exists as to when "blocking-out" is permissible. Specifically, the question was raised whether blocking-out is permissible only for trade secret material, or is it permissible systematically to block-out the entire program by diagonal stripping or other similar means. Also, in the case of programs in which executable computer code comprises less than 50% of the source code, is it permissible to block-out all of the executable computer code, leaving only scattered data, generic terms, and nonexecuting comments?[2]

Under the practices of the Copyright Office, in the case of computer programs, blocking-out has been allowed with respect to the trade secret material. The Office has also made registration based on "stripped" computer code deposits.

In registering all copyright claims, the Copyright Office examines the deposit to determine the existence of copyrightable authorship. In the vast majority of cases involving computer programs, the presence of copyrightable computer code is apparent. In the unusual case, however, where all of the copyrightable expression has been blocked-out, and only noncopyrightable elements remain, no registration would be warranted on the basis of that deposit. This would be true even if the desposit met the 50% test, whereby the unblocked (but uncopyrightable) portion was greater than the blocked-out portion.

In order to address these concerns, the Copyright Office is clarifying the circumstances under which some portion of the code can be blocked-out. First, in the case of computer programs, we re-affirm that blocking-out is permitted only with respect to trade secret material. This has been the general practice of the Office, and we see no justification for blocking-out the code unless trade secrecy concerns override the public interest in disclosure of the material in which copyright is claimed. This rule applies irrespective of the form of blocking-out, whether entire words and phrases are blocked or the stripping method is used. Second, a requirement is added that the unblocked portions contain "an appreciable amount of original computer code." This requirement is intended to ensure that the deposit discloses sufficient computer code to constitute recognizable copyright expression to justify registration under sections 102 and 410 of the Copyright Act.[3]

[1] Two comments addressed possible changes in the "secure test" regulations.

[2] The Office does not distinguish between executable code and nonexecuting comments or data—either can be copyrightable.

[3] The Copyright Office has not attempted to quantify how much computer code must be included

Continued

(4) *Specification of the object code practice in the regulations.* There are typically two versions of a computer program, i.e., the source code and the object code. The source code is the version of the program written in computer language by the programmer. To be usable by the computer, however, the source code must be converted into binary form called object code. In general, object code cannot be read by humans without great difficulty, and then only by experts.

In developing copyright registration practices concerning computer programs, the Copyright Office took the position that source code is the best representation of the authorship in the program. It can be more readily understood by the public, the courts, and copyright examiners. Accordingly, the Office requested that the deposit of "identifying portions" should consist of source code. Registration based solely on object code has been considered only under the "rule of doubt" and the claimant is cautioned accordingly.

The Notice of Inquiry, which started this rulemaking process, opened the object code practice for public comment. While many criticized the practice, there is an acknowledgment of the fact that examiners cannot determine the existence of copyrightable authorship by examining identifying material consisting of object code alone. Most of those criticizing the practice cited the willingness of federal courts to recognize copyright protection in object code versions. The Copyright Office finds, however, that these cases are not precedents for reversing the object code policy. While courts have found that the copying of object code infringes the computer program copyright, they have done so primarily under registrations based on an examination of source code. Therefore, it is clear that the registration policy of the Copyright Office has not prevented copyright holders from securing protection for infringement of object code versions. Section 408 of title 17 clearly authorizes the Register of Copyrights to determine the nature of the deposit for registration. Decisions of the Copyright Office on this issue have not materially affected the rights of copyright holders in the object code versions of their computer programs.

To the extent registrations are made without full examination for copyrightable authorship, the burden is placed on the federal courts to make that determination without benefit of an administrative record. The case presumably would require more judicial scrutiny, and therefore the judicial process will take more time and expend more resources. The courts, in an adversary proceeding under the federal rules of discovery and evidence, are, of course, better equipped than the Copyright Office to make decisions on the copyrightability of object code versions of computer programs. The Office's object code practice provides an avenue for that judicial examination. At the same time, the courts must know that a different kind of agency examination has been made.

In its publication of the proposed regulation, the Copyright Office announced the continuation of the object code policy. On reflection, the Copyright Office has decided to make the policy a part of the regulations. Litigation is clearly expanding in the area of computer software, and it is only prudent to minimize the chances for misunderstanding the Office position.

(5) *Deposits of stripped source code.* Stripping is essentially a means for covering up the creative expression in a computer program through diagonal or vertical stripes.

The Copyright Office will not accept source code stripped in a manner that virtually blocks out all copyrightable expression. This has been the general practice of the Office, and we now confirm and clarify this practice in the regulations. Enough copyrightable expression must remain visible to enable the Office to make a determination that the work is entitled to registration.

(6) *Clarification of § 202.20(c)(2)(vii)(A)(2) to cover revisions.* Section 202.20(c)(2)(vii)(A)(2) is amended specifically to cover revisions.

(7) *Reaffirmation of continued availability of special relief.* Virtually all of the comments were concerned about the continued availability of special relief in cases where the applicant believes the four alternatives are insufficient. The Copyright Office hopes to allay these concerns by reaffirming the continued availability of special relief in cases of computer programs containing trade secrets. However, all applicants seeking special relief must be willing to deposit some source code revealing copyrightable expression if they want a certificate which has not been annotated in the manner of applications accompanied by object code or stripped source code deposits.

Most of the comments requested amendment of the regulations to make clear the continued availability of special relief. The Copyright Office declines to do this for two reasons. First, nothing in the present regulations restricts the seeking of special relief for computer programs containing trade secrets. Second, the inclusion of such a provision would imply that for many programs the present deposit requirements are unreasonable. The deposits actually received by the Copyright Office reveal this is not the case. The vast majority of the deposits for computer program registrations consist of the first and last 25 pages of source code. In the remaining cases, most have been able to utilize one of the automatic grants of special relief. The Office finds the deposit regulations are reasonable, and waivers of the regulations are necessary only in a relatively small number of cases.

5. Computer Screen Deposit Requirements.

On June 10, 1988, the Copyright Office announced and published a policy decision with respect to registration of computer screen displays. (53 FR 21817). This policy decision was reached based on a thorough review of Copyright Office regulations and practices of the statute, of comments received at a public hearing on September 9–10, 1987 and of written comments. The Office confirmed the applicability to computer screen registration claims of existing regulations (37 CFR 202.3(b) (3) and (6)) establishing general registration policies. The Office determined that all copyrightable expression owned by the same claimant and embodied in a computer program, or first published as a unit with a computer program, including computer screen displays, is considered a single work and should be registered on a single application form.

With respect to deposit requirements, the Office gave general guidance and stated that the regulations would be amended at a later time. The Office now amends the deposit requirements for computer programs with respect to computer screen material. As stated in the June 10, 1988 policy decision, claimants have the option to include or omit on the registration application any specific reference to a claim in computer screen material. If computer screen material is specifically claimed, however, then the deposit must include appropriate reproductions of the screen displays.

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because determination of copyrightable expression can never be based on an arbitrary formula. "An appreciable amount of original computer code" is intended to mean enough computer code to constitute recognizable copyrightable expression. Whether a deposit meets this standard will be decided on a case by case basis.

The amended regulations require deposit of visual reproductions, such as printouts, photographs, or drawings in most cases. A computer program manual will not constitute an acceptable deposit to identify the computer screen authorship. Separate printouts, photographs, or drawings are required. A one-half inch VHS videotape is generally acceptable identifying material where the authorship is predominantly audiovisual, for example, as in the case of a videogame. Videotape is not acceptable where the literary authorship predominates. Moreover, even where the claim relates to predominantly audiovisual authorship, videotape is not an acceptable form of deposit if the audiovisual material simply demonstrates the functioning of the computer program.

In the situations described above, the Office has decided not to accept a computer program manual or a videotape as identifying material for computer screen displays because its experience in examining a variety of claims has proved that the manual and the videotape deposit confuse the nature of authorship for the examiner and the public record. That is, the authorship relating to the screen displays may be confused with other authorship represnted in the material object. The Office finds that, in these situations, printouts, photographs, or drawings provide a clearer record of the claim in the computer screen displays.

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Regulatory Flexibility Act Statement. With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress, which is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5 Chapter 5 of the U.S. Code, Subchapter II and Chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since the Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.[4]

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined and hereby certifies that this regulation will have no significant impact on small businesses.

List of Subjects in 37 CFR Part 202

Copyright registration, Computer program.

Final Regulations

In consideration of the foregoing, Part 202 of 37 CFR, Chapter II is amended in the manner set forth below.

PART 202—[AMENDED]

1. The authority citation for Part 202 continues to read as follows:

Authority: Copyright Act, Pub. L. 94-553, 90 Stat. 2541 (17 U.S.C. 702).

2. Section 202.20 is amended by revising paragraph (c)(2)(vii) introductory text and (c)(2)(vii(A), by redesignating (c)(2)(vii)(B) as (c)(2)(vii)(D), and by adding paragraphs (c)(2)(vii)(B) and (C) to read as follows:

§ 202.20 Deposit of copies and phonorecords for copyright registration.

* * * * *

(c) * * *

(2) * * *

(vii) *Computer programs and databases embodied in machine-readable copies.* In cases where a computer program, database, compilation, statistical compendium or the like, if unpublished is fixed, or if published is published only in the form of machine-readable copies (such as magnetic tape or disks, punched cards, semiconductor chip products, or the like) from which the work cannot ordinarily be perceived except with the aid of a machine or device, the deposit shall consist of:

(A) For published or unpublished computer programs, one copy of identifying portions of the program, reproduced in a form visually perceptible without the aid of a machine or device, either on paper or in micoform. For these purposes "identifying portions" shall mean one of the following:

(*1*) The first and last 25 pages or equivalent units of the source code if reproduced on paper, or at least the first and last 25 pages or equivalent units of the source code if reproduced in microform, together with the page or equivalent unit containing the copyright notice, if any. If the program is 50 pages or less, the required deposit will be the entire source code. In the case of revised versions of computer programs, if the revisions occur throughout the entire program, the deposit of the page containing the copyright notice and the first and last 25 pages of source code will suffice; if the revisions do not occur in the first and last 25 pages, the deposit should consist of the page containing the copyright notice and any 50 pages of source code representative of the revised material; or

(*2*) Where the program contains trade secret material, the page or equivalent unit containing the copyright notice, if any, plus one of the following: the first and last 25 pages or equivalent units of source code with portions of the source code containing trade secrets blocked-out, provided that the blocked-out portions are proportionately less than the material remaining, and the deposit reveals an appreciable amount of original computer code; or the first and last 10 pages or equivalent units of source code alone with no blocked-out portions; or the first and last 25 pages of object code, together with any 10 or more consecutive pages of source code with no blocked-out portions; or for programs consisting of or less than 25 pages or equivalent units, source code with the trade secret portions blocked-out, provided that the blocked-out portions are proportionately less than the material remaining, and the remaining portion reveals an appreciable amount of original computer code. If the copyright claim is in a revision not contained in the first and last 25 pages, the deposit shall consist of either 20 pages of source code representative of the revised material with no blocked-out portions, or any 50 pages of source code representative of the revised material with portions of the source code containing trade secrets blocked-out, provided that the blocked-out portions are proportinately less than the material remaining and the deposit reveals an appreciable amount of original computer code. Whatever method is used to block out trade secret material, at least an appreciable amount of original computer code must remain visible.

(B) Where registration of a program containing trade secrets is made on the basis of an object code deposit the Copyright Office will make registration under its rule of doubt and warn that no determination has been made concerning the existence of copyrightable authorship.

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[4] The Copyright Office was not subject to the Administrative Procedure Act before 1978, and is now subject to it only in areas specified by section 701(d) of the Copyright Act (i.e., "all actions taken by the Register of Copyrights under this title [17]," except with respect to the making of copies of copyright deposits). (17 U.S.C. 706(b)). The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA-FOIA requirements.

(C) Where the application to claim copyright in a computer program includes a specific claim in related computer screen displays, the deposit, in addition to the identifying portions specified in paragraph (c)(2)(vii)(A) of this section, shall consist of:

(*1*) Visual reproductions of the copyrightable expression in the form of printouts, photographs, or drawings no smaller than 3x3 inches and no larger than 9x12 inches; or

(*2*) If the authorship in the work is predominantly audiovisual, a one-half inch VHS format videotape reproducing the copyrightable expression, except that printouts, photographs, or drawings no smaller than 3x3 inches and no larger than 9x12 inches must be deposited in lieu of videotape where the computer screen material simply constitutes a demonstration of the functioning of the computer program.

* * * * *

Dated: March 22, 1989.

Ralph Oman,

Register of Copyrights.

Approved by:

Donald C. Curran,

Acting Librarian of Congress.

[FR Doc. 89-7716 Filed 3-30-89; 8:45 am]

BILLING CODE 1410-07-M

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37 CFR Part 202

[Docket RM 85-4B]

Registration of Claims to Copyright Registration and Deposit of Databases

AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulations.

SUMMARY: The Copyright Office of the Library of Congress issues this notice to inform the public that it is adopting final regulations permitting group registration of an automated database and its updates or other revisions, and implementing deposit requirements in connection with their registration, under Section 408 of the Copyright Act of 1976. This section authorizes the Register of Copyrights to prescribe rules for administrative classification and deposit requirements for copyright registration. Pursuant thereto, this regulation specifies conditions under which a single automated database, together with its updates and other revisions may be registered on a single application with a single deposit and fee even though the database and its revised versions have been published at different times.

EFFECTIVE DATE: March 31, 1989.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, DC 20559, (202) 707-8380.

SUPPLEMENTARY INFORMATION:

1. Background

Under the Copyright Act of 1976, Title 17, U.S. Code, copyright may ordinarily subsist in an automated database either as an original compilation or as some other original work of authorship. Automated databases provide special problems for copyright deposit and examination, however, because many of them are constantly changing or the updates or other revisions may consist of small increments of information. To the extent that the basic database and the revisions are copyrightable, questions arise as to how best to register the claims.

Current regulations allow the claimant to determine how frequently to register updates and other revisions of databases, but they do not allow grouping of separately published revised versions on a single registration. Special relief provisions already provide some flexibility in deposit requirements and those provisions continue to be available to automated database registrants. 37 CFR 202.20(d); see H.R. Rep. No. 94-1476, 94th Cong., 2d Sess. 151 (1976). Specific regulations for machine-readable databases are provided in 37 CFR 202.20(c)(2)(vii)(B).

The Copyright Act of 1976 encourages registration by conferring benefits on the claimant. Registration is a prerequisite to suit, 17 U.S.C. 411(a);[1] if the registration is made before publication or within five years of first publication, the certificate of registration is prima facie evidence of the facts it states and of the validity of the copyright, 17 U.S.C. 410(c), and by registering the work within three months of publication, the copyright owner reserves the right to claim statutory damages and discretionary counsel fees. 17 U.S.C. 412.

Pursuant to 17 U.S.C. 103, "copyright in a compilation or derivative work extends only to the material contributed by the author of such work, as distinguished from the preexisting material employed in the work, and does not imply any exclusive right in the preexisting material." The Copyright Act requires special information in connection with registration of such works.

[1] Registration will no longer be a prerequisite to suit for Berne Convention works whose country of origin is not the United States, effective March 1, 1989. Pub. L. 100-568, 102 Stat. 2853 (October 31, 1988).

Section 408 of the Copyright Act requires deposit of material in connection with applications for copyright registration of unpublished and published works. Subsection 408 (c)(1) authorizes the Register of Copyrights to specify classes into which works may be placed for purposes of deposit and registration. One of the alternatives is "a single registration for a group of related works."

When the Copyright Office issued initial deposit regulations under the 1976 general revision of the copyright law, several comments requested provisions for group registration of revisions and updates of automated databases. 43 FR 763 (Jan. 4, 1978). At that time the Office invited further comments and suggestions as to the type of related works that could be covered by group registration and the deposit and registration requirements applicable in those cases. In 43 FR 965 (January 5, 1978), however, the Office "reserved for implementation in a separate proceeding the possibility of providing for 'a single registration for a group of related works' under paragraph (c)(1) of section 408." The allowance for group registration, except for certain published contributions to periodicals, 17 U.S.C. 408(c)(2), is discretionary with the Copyright Office, and the Office heretofore has elected not to exercise this discretionary authority.

On February 14, 1985, (50 FR 6208), the Copyright Office requested public comment on proposed amendments to the regulations governing deposit. In response to this general request, the Association of American Publishers (AAP) and the Information Industry Association (IIA) commented specifically on the deposit and registration of databases. AAP suggested that the Copyright Office develop regulations to meet the problems of deposit for dynamic databases subject to regular revision, expansion, or other change. AAP proposed regulations that would permit a single "group" registration for varying versions (enhancements, updates, and other modifications) of a database, and related databases, published within a twelve month period or any lesser period within twelve months, on the basis of a single deposit and application. AAP also proposed that the Copyright Office accept for deposit reasonable portions of output, rather than 'raw data' or the like, and that generally, deposit requirements for successive or single group registrations of revised databases should be diminished.

IIA also urged the addition of a new regulation that would permit group

registration of databases, under certain conditions. The group registration would require that works have the same copyright claimant, the same general title, and similar general content, including subject and organization. IIA proposed that if the works are published, each must bear a separate copyright notice as first published and have the same copyright owner, and the work or works must be first published within three months before registration. This organization suggested that since a deposit for databases would not show the full extent of the registration or the entirety of the work, the Copyright Office should accept relevant evidence for the examination of authorship. Such evidence might be documentary evidence of the continuing process of creation, hard copy extracts (for example, the first and last 25 pages), and the same direct online access as is offered the customer. Finally, IIA advocated the use of special relief that would allow the Register of Copyrights to "permit the deposit of identifying material which does not comply with § 202.21 of the regulations."

On June 10, 1985 (50 FR 24240), the Copyright Office published a Notice of Inquiry inviting public comment on the feasibility of a single group registration for databases, deposit based on reasonable portions of output, and deposit based on description of content and its relation to prior deposits. Additionally, the Office invited public comment specifically on the recommendations made by IIA and AAP.

In response to comments received regarding that notice, the Office, on October 5, 1987 (52 FR 37167), proposed regulations providing for single group registration for automated databases with deposit based on reasonable portions of output. The Office received fourteen comments in response to its proposed rulemaking. After careful consideration, we have decided to implement in final form the provision for group registration, § 202.3(b)(4), and to amend for purposes of clarification the deposit provisions in connection with group registration at § 202.20(c)(2)(vii).

All of the commentators supported the decision to provide for group registration of automated databases, including their revised versions, however, most commentators disagreed with two specific requirements in the Office's proposed procedures for making such registrations. The IIA submitted the most detailed comments, which, for the most part, incorporated the recommendations made by other commentators, six of whom expressly endorsed the IIA's position. In issuing this regulation, we reconfirm and incorporate the rationale stated in the proposed regulation regarding the experimental nature of regulations to implement the discretionary authority for group registration. Additionally, we discuss below the comments received in response to the proposed rule.

2. Identification of New Material

Under 17 U.S.C. 408(c)(1), the Register of Copyrights is authorized "to specify by regulation the administrative classes into which works are to be placed for purposes of deposit and registration. * * * The regulations may require or permit * * * a single registration for a group of related works." Thus, the Copyright Office proposed group registration of automated databases as a special and discretionary provision. These deposit regulations provide that the applicant identify the original authorship in which copyright is being claimed in a revised database by marking the deposit. Specifically, the identifying portions must be "marked to disclose the copyrightable revision added on at least one representative publication * * * or * * * creation date" and be accompanied by a descriptive statement that identifies the location within the database where the copyrightable changes may be found.

IIA and nine other commentators objected to this requirement. Three other proprietors, and one database user, however, supported adoption of the regulations without challenging the marking feature.

Most commentators who opposed the requirement of marking the deposit and identifying the location of changes did so on the grounds that the requirements are too burdensome and that automated databases are not distinguishable from other databases. Therefore, they should not be subject to different registration requirements from other works. They point out that registration regulations for other derivative works do not require marking or locating the changes. Additionally, some commentators state that publishers would be required to devote substantial staff resources to the preparation of a deposit.

Electronic Data Systems Corporation (EDS), the sole comment representing a database user, considered the Office's effort in assuring that identifying portions adequately disclose the copyrightable content of the changes a critical factor in the proposed regulations. "This is a key provision both in your comments and in your proposed regulations. What changes really were made to justify the updated copyright and [are] those noted with enough specificity that it would be easy for the Copyright Office to distinguish between databases submitted at different times?" This comment indicates that the biggest problem for the user is determining what data is covered by copyright and what is not.

Recognition of the special nature of automated databases moved the Copyright Office in its 1978 regulations to establish a more liberal form of deposit for such works; i.e., databases were exempted from the complete copy requirement and allowed to deposit the equivalent of 50 pages. Group registration represents another liberalization in special recognition of registration and deposit problems unique to automated databases. In limiting this proposal exclusively to online automated databases, both published and unpublished, the Office considered their unique nature—the size of databases, their periodic revision, and the dissemination of the work in machine-readable format.

The effect of these regulations is to significantly liberalize the registration requirements for a large group of published works, heretofore registrable only with a separate deposit, application and fee for each separately published version. Under the proposed regulations, the applicant may submit one deposit where previously as many as ninety deposits, with as many accompanying applications and fees, might have been required to register the same copyrightable content.

In explaining the proposed regulation, we found that sufficient factors such as size, complexity and technological characteristics exist to distinguish the automated database from other groups of related works and that these factors justify group registration for automated databases under a certain set of facts, at least on an experimental basis. In general, one salient technological characteristic is the rapidly changing content of databases.

In light of these factors, it is unrealistic to expect the Copyright Office to treat databases exactly the same as other derivative works, although the Office sees more equivalency in the procedures than some commentators. The requirements that have been criticized were designed to alleviate some of the burdens of examining a group of works based on a single application and deposit. They are also responsive to the unique nature of automated databases: frequent updates; incremental changes, which are sometimes minor; the absence of a hard-copy record of the changes in general; and the tendency to commingle

copyrightable and uncopyrightable matter. Moreover, the Office must consider not only its own administrative burdens, but also its obligation to identify the work being claimed and to establish an adequate public record for the benefit of the courts and in the general public interest. Given the strong presumption of copyright validity that attaches to registered works, it is incorrect to argue that defects in the registration record harm only the proprietor-plaintiff.

As a second major point in support of its objection to marking and locating the revised material, IIA contends that such individual marking would not necessarily reveal copyrightable material. In addition to the overall general support for the IIA position expressed by other commentators, the AAP and Dunn and Bradstreet also expressly objected to the marking requirement for this reason.

The proposed registration calls for the disclosure of revisions that would be registrable under the standards applicable to all other periodically revised works—that is, revisions that as a whole constitute an original work of authorship and entitle the work to registration.

Examination of the work to determine whether it constitutes copyrightable subject matter is the principal responsibility of the Copyright Office in making registration of claims to copyright. 17 U.S.C. 410(a). Most of the other material allegations to support a registration (e.g., the name and citizenship of the author, the name of the claimant, the place of publication, etc.) cannot be verified by the Copyright Office, and yet are accorded a legal presumption of validity. The requirement of marking the deposit to identify some copyrightable changes in one representative update should facilitate the processing of applications for group registration of automated databases. The alternative would be for the Office to correspond in many cases to obtain a more complete description of the copyrightable changes, if we adopted the IIA proposal. We reject this alternative as administratively burdensome.

Some misunderstanding may exist as to the nature of the marking requirement. We do not require that every copyrightable change be marked and identified for the representative date selected by the applicant. We require instead that sufficient copyrightable changes be marked and identified to enable the Copyright Office to carry out its statutory responsibility of determining that the revised version is indeed an original work of authorship. The applicant can select the particular revised version that evinces sufficient authorship, including the most recent version, since the last registration of the database. If in fact the nature of the changes in the three month interval does not satisfy the original work of authorship standard for copyright protection, then no new registration is necessary or warranted. If the work has not been changed to constitute a new original work of authorship, copyright for the preceding (or original) version should protect against any copying of the database.

Accordingly, group registration will be made for periodically updated or otherwise revised databases only upon a showing that changes give rise to another original work of authorship. Where the Office determines that only a few minor revisions have been made in the representative deposit, registration will be subject to question, and absent more justification, will be denied. The Office will not make registration based solely on a claim of structure, sequence, and organization. These terms are ambiguous, and may refer to uncopyrightable ideas, systems, or processes. Therefore, claims described as so-called "SSO" are unacceptable. Claims in "selection and arrangement" are of course acceptable since these terms appear in the statutory definition of "compilation."

The requirement for marking revisions from one representative publication or creation date is related also to the Office's view that each separately published version is potentially a separate and independent work of authorship. As such, whether a derivative work is copyrightable depends on the content of each version as compared to earlier versions of the work. Contrary to the IIA's argument, comparison with earlier versions is relevant when copyright is claimed as a derivative work. 17 U.S.C. 103(b). The same policy is reflected in the regulation providing that there should be only one basic registration per work. 37 CFR 202.3(6). See also H.R. Rep. No. 94–1476, 94th Cong., 2d Sess. 155 (1976). If Congress granted a new copyright upon every republication of a work, copyright could be extended in perpetuity in basic conflict with the limited times provision of the Constitution's clause. Thus, at best, no purpose is served by reregistering material already covered by an earlier registration. At worst, extending the copyright without new authorship exceeds the statutory and constitutional grant.

For these reasons then the Office considers reasonable a requirement that the claimant delineate with some particularity a claim in revised automated databases seeking group registration. The Office, of course, will accept deposit of a copy disclosing only the actual additions or modifications made on a representative day (for example the data input), in lieu of a marked print-out showing the changes. We have revised § 202.20(c)(2)(vii)(B)(*5*) to clarify that a deposit showing only the new matter is acceptable.

3. Description of the Origins of Data

Two commentators objected to the requirement that a description of the origins of data be included in the statement to accompany identifying portions. We have already addressed the charges of disparate treatment of databases, noting the general equivalency of the requirements but also justifying departures from equivalency on the ground of the special nature of automated databases. Some of the departures favor proprietors, and some do not. Congress intended that the application contain information about preexisting works and that information is required for other works. 17 U.S.C. 409(9). On this point, the House Report states that this requirement that, "in the case of a 'compilation or derivative work' the application include an identification of any preexisting work or works that it is based on or incorporates * * *" is intended to elicit a clear statement of the copyright status of material included in a compilation. H.R. Rep. at 156. The origin of data requirement is merely a request for information about preexisting works in order to make a more meaningful group registration record.

4. Reasonable Portions of Output

Earlier in this proceeding, the AAP proposed that the Office prescribe deposits for dynamic databases based on reasonable portions of output rather than raw data. The Office has proceeded on the assumption that either output or raw data is acceptable as a deposit, and the regulation clarifies this matter.

5. Representative Day

The proposed deposit requirements specify that identifying portions shall be from a revised version as it existed on one representative publication or creation date. As stated earlier, the intent is to obtain identifying portions of copyrightable content from one self-contained work rather than several works. The IIA asked us to clarify that the Office intends no implication that only one work can come into being on a given day. We agree that it is

theoretically possible for more than one new version to be created on one day. The Office decided, however, to restrict the requirement for identifying portions merely to one day, for administrative purposes. As a practical matter, we also think that one day's updates are particularly relevant in the case of published databases. It would not be meaningful to attempt separate identification of changes made during a period of time less than one day.

The regulations do not negate the possibility of special relief, under appropriate circumstances. 37 C.F.R. 202.20(d). Also, individual registration of revised versions continues to be available as an option. Some comments assert that for constantly changing databases it would be virtually impossible to identify all of one edition's changes and appropriately mark a deposit copy. This concern is misplaced. As discussed under Item 2 above, it is not necessary to identify all changes. The requirement is to identify sufficient changes to establish that the work submitted for registration is an original work of authorship. Additionally, it is possible to submit 50 pages or a set of 50 data records of entirely new material accompanied by a descriptive statement that gives information to that effect.

6. Three-Month Period

The AAP urges a single, group registration for all revisions to a database covering a twelve month period. Although it originally suggested a three-month period, IIA now supports the AAP proposal. Except for one other comment, which noted that even if we established a one year period as the outer limit, most registrations would likely occur within three months, no other comments expressed a desire for a broader window of registration than three months.

At this time, the Office adopts the three month period for group registration of a database and its updates. Prompt registration has been an important objective since the beginning of copyright in the United States. There is even more reason to adhere to a three month provision where not all of any one work will be deposited and the archival record for the work must necessarily be less than complete. Registration on a yearly basis exacerbates the problems presented by this kind of deposit and would create the potential for registering more than 300 works on one application, with a modicum of identifying deposit material.

We have concluded that a three month registration interval, accompanied by a suitable deposit, creates a better archival record and would be more useful and reliable as a source of information on the content of the works being registered. While registration fees are not a primary consideration, database registrants will enjoy substantial savings even for quarterly filings. Above all, the Office is concerned about the administrative difficulties of examining an application that covers multiple works. Group registration of databases must be viewed as experimental and must be re-evaluated after an appropriate period. Finally, we clarify in the final regulation that the three-month span must fall within a single calendar year. Since most databases are works made for hire, the date of publication affects the term. The Office concludes that a single registration should not be made for related works whose terms of copyright differ.

7. Online Access in Lieu of Deposit

Several commentators have suggested that the Office accept online access in lieu of deposit. We have not at this time adopted this suggestion because administrative procedures have not been developed to monitor revisions and then capture some physical representation of the work for archival purposes. While the Office does not rule out such a deposit solution for the future, more information is needed than is currently available. Moreover, the Office assumes that copyright proprietors would expect some assurances that the online access would be strictly limited to examining purposes. Assurances of that kind, if possible, would require careful consultation with other departments of the Library to establish the necessary controls.

8. Notice of Copyright

The Berne Implementation Act of 1988 eliminates the mandatory nature of the notice of copyright for works first published on or after March 1, 1989. We have accordingly modified the references to notice of copyright in the final regulation. Mandatory notice is retained in section § 202.3(b)(4)(i)(E) for works published before March 1, 1989. The identifying descriptive statement must disclose the notice, "if the work bears a notice." Where notice of copyright is used, group registration is possible only if the notices identify the same claimant for each update.

9. Special Instructions in Lieu of New Form

In the proposed regulations, the Copyright Office indicated that Form TX would be used to register the first version of a database submitted for registration and an adjunct form would be used to register subsequent updates or revisions.

The final regulations provide instead that Form TX will be used to register both the initial version and subsequent updates of automated databases. Instead of a new adjunct form, the Office, on an experimental basis, has prepared special instructions for completing the Form TX when applying for group registration of an automated database and its updates. The Special Instructions for Group Registration of Automated Databases may be obtained upon request on the same basis as any Copyright Office form or publication.

After acquiring experience with respect to group registration of automated databases, the Office may prepare a new adjunct form.

10. Clarification of Miscellaneous Points

IIA and several other commentators suggested certain other clarifying amendments. Among the technical amendments adopted, the following should be especially noted:

a. Instead of using the term "updates" alone, the language has been expanded to avoid any implication that only the revisions made in response to developments occurring after creation of the previously registered work are subject to group registration.

b. We have clarified that deposit of output is appropriate. Identifying portions sufficient to satisfy the deposit requirements may be submitted in the form of output, rather than input, or raw data. It is the acceptance of output as deposit material that clearly necessitates the applicant's distinguishing between material that has been added in the version being registered and output that was stored in machine-readable form in earlier versions of the work.

c. We have substituted "general" for "collective" title in § 202.3(b)(4)(i)(B) to avoid any implication that the database must conform to the definition of "collective work" under 17 U.S.C. 101.

d. We confirm that group registration is available for both published and unpublished databases.

e. We have renumbered subsections to clarify that the applicant need not submit a descriptive statement for a single file database that is not a derivative work.

In this first exercise of our administrative discretion to register a group of related works under section 408(c)(1) of the Copyright Act, we will evaluate administrative experience and the experience of applicants filing under this new rule. We will also continue to

monitor emerging decisional law with respect to automated databases, and will reconsider the proper scope of, and conditions for group registration of databases, as appropriate. Further refinements may be indicated.

* * * * *

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to the Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress and is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (Title 5, Chapter 5 of the U.S. Code, Subchapter II and Chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since the Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.[2]

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined and hereby certifies that this regulation will have no significant impact on small businesses.

List of Subjects in 37 CFR Part 202

Registration of Claims to Copyright, Claims to copyright, Copyright registration.

Final Regulations

In consideration of the foregoing, Part 202 of 37 CFR, Chapter II is amended as follows:

1. The authority citation for Part 202 continues to read as follows:

Authority: Sec. 702, 90 Stat. 2541, 17 U.S.C. 702; §§ 202.3, 202.19, 202.20, and 202.21 are all issued under 17 U.S.C. 407 and 408.

2. Section 202.3(b)(3)(B)(ii) is revised by striking the phrase "paragraphs (b)(3) and (b)(5)" in the first sentence and inserting in lieu there of "paragraphs (b)(3) through (b)(5)."

3. Section 202.3(b)(4) is added to read as follows:

§ 202.3 [Amended]

* * * * *

(b) * * *

(4) *Group registration of related works: Automated databases.*

(i) Pursuant to the authority granted by section 408(c)(1) of Title 17 of the United States Code, the Register of Copyrights has determined that, on the basis of a single application, deposit, and filing fee, a single registration may be made for automated databases and their updates or other derivative versions that are original works of authorship, if, where a database (or updates or other revisions thereof), if unpublished, is (or are) fixed, or if published is (or are) published only in the form of machine-readable copies, all of the following conditions are met:

(A) All of the updates or other revisions are owned by the same copyright claimant;

(B) All of the updates or other revisions have the same general title;

(C) All of the updates or other revisions are similar in their general content, including their subject;

(D) All of the updates or other revisions are similar in their organization;

(E) Each of the updates or other revisions as a whole, if published before March 1, 1989, bears a statutory copyright notice as first published and the name of the owner of copyright in each work (or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner) was the same in each notice;

(F) Each of the updates or other revisions if published was first published, or if unpublished was first created, within a three-month period in a single calendar year; and

(G) The deposit accompanying the application complies with § 202.20(c)(2)(vii)(B).

(ii) A single registration may be made on one application for both a database published on a single date, or if unpublished, created on a single date, and also for its copyrightable revisions, including updates covering a three-month period in a single calendar year. An application for group registration of automated databases under section 408(c)(1) of Title 17 and this subsection shall consist of:

(A) A Form TX, completed in accordance with the basic instructions on the form and the Special Instructions for Group Registration of an Automated Database and its Updates or Revisions;

(B) A filing fee of $10; and

(C) The deposit required by 202.20(c)(2)(vii)(B).

* * * * *

4. Section 202.20(c)(2)(vii)(B) is revised to read as follows:

§ 202.20 [Amended]

* * * * *

(c) Nature of required deposit.

(1) * * *

(2) * * *

(vii) * * *

(B) For published and unpublished automated databases, compilations, statistical compendia, and the like, so fixed or published, one copy of identifying portions of the work, reproduced in a form visually perceptible without the aid of a machine or device, either on paper or in microform. For these purposes:

(*1*) "Identifying portions" shall generally mean either the first and last 25 or equivalent units of the work if reproduced on paper or in microform.

(*2*) "Data file" and "file" mean a group of data records pertaining to a common subject matter regardless of their size or the number of data items in them.

(*3*) In the case of individual registration of a revised version of the works identified in this paragraph (c)(2)(vii)(B), the identifying portions deposited shall contain 50 representative pages or data records which have been added or modified.

(*4*) If the work is an automated database comprising multiple separate or distinct data files, "identifying portions" shall instead consist of 50 complete data records from each data file or the entire data file, whichever is less, and the descriptive statement required by paragraph (c)(2)(vii)(B)(5).

(*5*) In the case of group registration for revised or updated versions of a database, the claimant shall deposit identifying portions that contain 50 representative pages or equivalent units, or representative data records which have been marked to disclose (or do in fact disclose solely) the new material added on one representative publication date if published, or on one representative creation date, if unpublished, and shall also deposit a brief typed or printed descriptive statement containing the notice of copyright information required under "(*6*)" or "(*7*)" immediately below, if the work bears a notice, and:

(*i*) The title of the database;

(*ii*) A subtitle, date of creation or publication, or other information, to distinguish any separate or distinct data files for cataloging purposes;

(*iii*) The name and address of the copyright claimant;

[2] The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is not subject to it only in areas specified by section 701(d) of the Copyright Act (i.e., "all actions taken by the Register of Copyrights under this title [17]," except with respect to the making of copies of copyright deposits). [17 U.S.C. 706(b)]. The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA-FOIA requirements.

(*iv*) For each separate file, its name and content, including its subject, the origin(s) of the data, and the approximate number of data records it contains; and

(*v*) In the case of revised or updated versions of an automated database, information as to the nature and frequency of changes in the database and some identification of the location within the database or the separate data files of the revisions.

(*6*) For a copyright notice embodied in machine-readable form, the statement shall describe exactly the visually perceptible content of the notice which appears in or with the database, and the manner and frequency with which it is displayed (e.g., at user's terminal only at sign-on, or continuously on terminal display, or on printouts, etc.).

(*7*) If a visually perceptible copyright notice is placed on any copies of the work (or on magnetic tape reels or containers therefor), a sample of such notice must also accompany the statement.

* * * * *

Dated: March 22, 1989.

Ralph Oman,

Register of Copyrights.

Approved by:

James H. Billington,

Acting Librarian of Congress.

[FR Doc. 89-7715 Filed 3-30-89; 8:45 am]

BILLING CODE 1410-07-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3547-2]

Approval and Promulgation of State Implementation Plans; Colorado; Stack Height Demonstration Analysis

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is today approving the stack height demonstration analysis for the State of Colorado. All States were required to review their State Implementation Plan (SIP) for consistency within nine months of final promulgation of the stack height regulations. The intended effect of this action is to formally document that Colorado has satisfied its obligation under Section 406 of the Clean Air Act (CAA) to review its SIP with respect to EPA's revised stack height regulations. The stack height regulations were challenged by the Natural Resource Defense Council and resulted in the remand of three provisions of the regulation to EPA for reconsideration. Because none of the Colorado sources in the demonstration analysis receive credit under the provisions remanded to EPA, EPA is going forth with this action. EPA proposed to approve this action November 25, 1988 (53 FR 47730). No comments were received. (EPA proposed to approve Colorado's stack height regulations on February 3, 1988 (53 FR 3052).)

EFFECTIVE DATE: The rules will become effective on May 1, 1989.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, Air Programs Branch, Environmental Protection Agency, Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202-2405, (303) 293-1814, (FTS) 564-1814.

SUPPLEMENTARY INFORMATION:

Background

On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credits and other dispersion techniques as required by Section 123 of the CAA. These regulations were challenged in the U.S. Court of Appeals for the D.C. Circuit by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., and the Commonwealth of Pennsylvania in *Sierra Club* v. *EPA*. On October 11, 1983, the court issued its decision ordering EPA to reconsider portions of the stack height regulations, reversing certain portions and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a writ of certiorari with the U.S. Supreme Court. On July 2, 1984, the Supreme Court denied the petition, and on July 18, 1984, the Court of Appeals mandate was formally issued, implementing the court's decision and requiring EPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985.

Revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 44878), and promulgated on July 8, 1985 (50 FR 27892). The revisions redefined a number of specific terms including "excessive concentrations", "dispersion techniques", "nearby", and other important concepts, and modified some of the bases for determining good engineering practice (GEP) stack height.

Pursuant to section 406(d)(2) of the CAA, all States were required to (1) review and revise, as necessary, their SIPs to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations, and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credits above GEP or any other dispersion techniques. For any limitations so affected, states were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA within nine months of the EPA stack height regulations promulgation.

Subsequently, EPA issued detailed guidance on carrying out the necessary reviews. For the review of emission limitations, states were to prepare inventories of stacks greater than 65 meters in height and sources with emissions of sulfur dioxide (SO_2) in excess of 5,000 tons per year. These limits correspond to the *de minimis* stack height and the *de minimis* SO_2 emission exemption from prohibited dispersion techniques. These sources were then subjected to detailed review for conformance with the revised regulations. State submissions were to contain an evaluation of each stack and source in the inventory.

Since the July 8, 1985, promulgation, however, the EPA's stack height regulations were challenged in *NRDC* v. *Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). On January 22, 1988, the U.S. Court of Appeals for the D.C. Circuit issued its decision affirming the regulations in large part, but remanding three provisions to the EPA for reconsideration. These are:

1. Grandfathering pre-October 11, 1983, within-formula stack height increases from demonstration requirements (40 CFR 51.100(kk)(2));

2. Dispersion credit for sources originally designed and constructed with merged or multiflue stacks (40 CFR 51.100(hh)(2)(ii)(A)); and

3. Grandfathering pre-1979 use of the refined H + 1.5L formula (40 CFR 51.100(ii)(2)).

State Submittal

A. Demonstration Analysis

The Colorado stack height review was submitted on October 23, 1985, with subsequent submittals dated June 20, 1986, December 4, 1986, February 3, 1987, March 3, 1988, March 15, 1988, July 6, 1988, and August 16, 1988. Colorado has found that no existing emissions limitations have been affected by stack height credits above GEP or any other dispersion technique prohibited by EPA regulations.

EPA has determined that the State's inventories above *de minimis* height and *de minimis* emission level are complete.

EPA has carefully reviewed the State's findings that no emission limits have been affected by prohibited dispersion techniques. Summaries of the State's findings are presented in the chart below. EPA is acting on all of the sources identified in the chart below because it has found that none of the sources receive credit under the provisions remanded to EPA in *NRDC* v. *Thomas*. Detailed documentation of the State's findings and of EPA's review is contained in EPA's technical support document, its air compliance files, and state files, all of which are available for public inspection.

With this notice, the actual height of those stacks whose GEP height was calculated to be greater than the actual height will now become the GEP height.

EPA proposed to approve this action on November 25, 1988 (53 FR 47730). No comments were received.

Colorado

Plant name	Stack I.D.	Actual stack height (M)	Applicable GEP formula	GEP height (M)	SO_2 4 (t/yr)
City of Colo. Springs:					
Drake	7	76.3	2.5H [2]	107.5	7022
Nixon	1	140.3	2.5H [2]	154.8	10770
Public Service Co:					
Valmont	3	76.3	Grandfathered [1]	[1](1964)	9461
	1	113.5	Grandfathered [1]	[1](1924)	
	2	99	Grandfathered [1]	[1](1937)	
Zuni [7]	1	87	Grandfathered [1]	[1](1948)	
	3	76.3	Grandfathered [1]	[1](1949–50)	
Arapahoe	[5]1	76.3	Grandfathered [1]	[1](1950)	5886
	[6]3	76.3	Grandfathered [1]	[1](1951)	9513
Pawnee	1	167.8	2.5H [2]	196.8	28540
Commache	1	152.5	2.5H [2]	160	18396
	2	152.5	2.5H [2]	180	18396
Cherokee	[5]1	91.5	Grandfathered [1]	[1](1957)	11984
	[6]3	91.5	Grandfathered [1]	[1](1968)	7674
	4	122.5	Grandfathered [1]	[1](1968)	17870
Colorado State Hospital		71.7	Grandfathered [1]	[1](1939)	
So. Colo. Power, Pueblo	1	77.8	Grandfathered [1]	[1](1922)	
Platte River Power, Rawhide		152.5	H+1.5L [2]	161	
Ideal Basic (LaSalle Kilns)		75.6	H+1.5L [2]	98.8	
Colorado Ute:					
Craig	1	183	2.5H [2]	194.4	22043
	2	183	2.5H [2]	194.4	22043
	3	183	H+1.5L [2]	194.4	7534
Nucla	[3]1	65.6	H+1.5L [2]	130.4	
Hayden	1	76.3	Grandfathered [1]	[1](1965)	8898
	2	120.5	2.5H [2]	156.3	13644

Note:
[1] Documentation provided. Grandfathered means stack in existence in year indicated.
[2] Documentation to show reliance provided.
[3] Under construction.
[4] Stacks with allowable emissions greater than 5000 t/yr.
[5] Stack for boiler units 1 and 2.
[6] Stack for boiler units 3 and 4.
[7] In the proposal of this action, the grandfathered dates for stack I.D. 1 and 3 were transposed. The correct grandfathered dates are shown above.
[8] In the proposal of this action, the grandfathered data was shown to be 1962. Further review by EPA has indicated that the grandfathered data should be 1968.

B. Stack Height Regulation

EPA proposed to approve Colorado's stack height regulations on February 3, 1988 (53 FR 3052). Final action on Colorado's stack height regulations will be addressed in a separate notice.

Final Action: The stack height demonstration analysis submitted by Colorado has been determined to be acceptable. Therefore, EPA approves the stack height demonstration.

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

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 30, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Particulate matter, Sulfur dioxide.

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

Authority: 42 U.S.C. 7401–7642.

Date: March 23, 1989.

Jack W. McGraw,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7642.

Subpart G—Colorado

2. Section 52.320 is amended by adding paragraph (c)(47) to read as follows:

§ 52.320 Identification of plan

* * * * *

(c) * * *

(47) In a letter dated October 23, 1985, the Director of the Air Pollution Control Division submitted the stack height demonstration analysis. Supplemental information was submitted on June 20, 1986, December 4, 1986, February 3, 1987,

March 3, 1988, March 15, 1988, July 6, 1988 and August 16, 1988.

(i) *Incorporation by reference.* Stack height demonstration analyses submitted by the State on October 23, 1985, June 20, 1986, December 4, 1986, February 3, 1987, March 3, 1988, March 15, 1988, July 6, 1988 and August 16, 1988.

[FR Doc. 89-7620 Filed 3-30-89; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[FRL-3547-1]

Approval and Promulgation of Implementation Plans; State of Missouri; Stack Heights

AGENCY: Environmental Protection Agency, (EPA).

ACTION: Final rule.

SUMMARY: In this document, EPA is approving a revision to the Missouri state air pollution control regulations as part of the Missouri State Implementation Plan (SIP). The purpose of this revision is to limit the use of dispersion techniques rather than emission reductions to meet ambient air quality standards in the vicinity of major sources of air pollution. The use of certain dispersion techniques is prohibited by Section 123 of the Clean Air Act.

DATE: This action is effective May 1, 1989.

ADDRESSES: Copies of the documents relevant to this action are available for inspection during normal business hours at the following locations: Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101; Missouri Department of Natural Resources, Air Pollution Control Program, Jefferson State Office Building, 205 Jefferson Street, Jefferson City, Missouri 65101; and Environmental Protection Agency, Public Information Reference Unit, Room 2922, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Larry A. Hacker at (913) 236-2893 (FTS 757-2893).

SUPPLEMENTARY INFORMATION: On July 8, 1985 (50 FR 27892), EPA published final rules regulating the manner in which techniques for dispersion of air pollutants from smokestacks may be considered in setting limits on the emissions of pollutants into the air. These rules are required by Section 123 of the Clean Air Act and are codified in 40 CFR Part 51. All states are required to adopt consistent requirements for regulating sources of air pollution within their borders.

On November 23, 1987 (52 FR 44920), EPA proposed approval of revised Missouri regulations which limit stack height credit for dispersion modeling purposes. For a complete discussion of the state submittal and EPA's rationale for approval, the reader is referred to the proposed rulemaking.

As discussed in the proposal, the August 18, 1986, state submittal did not include definitions of "stack" and "stack in existence" consistent with 40 CFR 51.100(ff) and 51.100(gg), respectively. Appropriate definitions for these terms were adopted after proper notice and public hearing by the Missouri Air Conservation Commission and became effective on August 25, 1988. These definitions were submitted as a SIP revision by the Governor's designated representative on October 18, 1988.

During the public comment period, EPA received no comments relating to its proposed action on the Missouri stack height regulation.

EPA Action

In today's notice, EPA take final action to approve the August 18, 1986, and October 18, 1988, submittals of revisions to the Missouri SIP which implement EPA's revised stack height requirements. The August 18, 1986, submittal also included source-specific stack height analyses. EPA is not taking any action on these analyses today as these will be addressed in a future **Federal Register** action.

The EPA's stack height regulations were challenged in *NRDC* v. *Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). On January 22, 1988, the U.S. Court of Appeals for the D.C. Circuit issued its decision affirming the regulations in large part, but remanding three provisions to the EPA for reconsideration. These are:

1. Grandfather pre-October 11, 1983, within-formula stack height increases from demonstration requirements (40 CFR 51.100(kk)(2));

2. Dispersion credit for sources originally designed and constructed with merged or multiflue stacks (40 CFR 51.100(hh)(2)(ii)(A)); and

3. Grandfather pre-1979 use of the refined H+1.5L formula (40 CFR 51.100(ii)(2)).

Although the EPA generally approves Missouri's stack height rules on the grounds that they satisfy 40 CFR Part 51, the EPA also provides notice that this action may be subject to modification when EPA completes rulemaking in response to the decision in *NRDC* v. *Thomas*, 838 F.2d 1224 (D.C. Cir. 1989). If the EPA's response to the *NRDC* remand modifies the July 8, 1985, regulations, the EPA will notify the State of Missouri that its rules be changed to comport with the EPA's modified requirements. This may result in revised emission limitations or may affect other actions taken by Missouri and source owners or operators.

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the U.S. Court of Appeals for the appropriate circuit by May 30, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Particulate matters, Sulfur oxides.

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

Date: March 21, 1989.

William Rice,

Acting Regional Administrator.

40 CFR Part 52, Subpart AA, is amended as follows:

PART 52—[AMENDED]

Subpart AA—Missouri

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

Authority: 42 U.S.C. 7401—7642.

§ 52.1320 [Amended]

2. Section 52.1320 is amended by adding paragraph (c)(67) to read as follows:

* * * * *

(c) * * *

(67) Plan revisions were submitted by the Missouri Department of Natural Resources on August 18, 1986, and October 18, 1988, which implement EPA's July 8, 1985, revised stack height requirements.

(i) Incorporation by reference:

(A) Revisions to rules 10 C.S.R. 10–6.020, Definitions, and 10 CSR 10–6.060, Permits Required, effective May 11, 1986.

(B) New rule 10 C.S.R. 10–6.140, Restriction of Emissions Credit for Reduced Pollutant Concentrations from the Use of Dispersion Techniques, effective May 11, 1986.

(C) Revisions to rule 10 CSR 10–6.020, Definitions, effective August 25, 1988.

[FR Doc. 89–7624 Filed 3–30–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[FRL–3546–8; NC–032]

Approval and Promulgation of Implementation Plans; North Carolina; Stack Height Review; Correction

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correction.

SUMMARY: This document corrects an error in the regulatory text of a document concerning the North Carolina stack height review published in the **Federal Register** on Tuesday, March 7, 1989. The regulatory text added to § 52.1781 is incorrectly designated paragraph "(b)".

FOR FURTHER INFORMATION CONTACT: Walter Bishop at 404/347–2864 (FTS 257–2864).

Dated: March 22, 1989.

Joe R. Franzmathes,

Acting Regional Administrator.

1. On page 9434, amendatory instruction 2 is corrected to read as follows: Section 52.1781 is amended by adding paragraph (d) as follows:

2. On page 9434, the designation of the added text is corrected to read as follows:

§ 52.1781 Control strategy: Sulfur oxides and particulate matter.

* * * * *

(d) * * *

[FR Doc. 89–7625 Filed 3–30–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 81

[FRL–3546–1]

Designation of Air Quality Control Regions, Louisiana; St. John the Baptist Parish Redesignation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice approves the request by the Governor of Louisiana to redesignate the air quality status for St. John the Baptist Parish, Louisiana, from nonattainment to attainment for the national ambient air quality standard (NAAQS) for ozone. This action is necessary because under section 107(e)(1) of the Clean Air Act, a Governor may redesignate an air quality control region with the approval of the Administrator of EPA. This notice serves as a declaration of that approval.

DATES: This action will become effective on May 30, 1989 unless notice is received within 30 days of publication that someone wishes to submit adverse comments. Such notice may be submitted to Mr. Thomas H. Diggs, Chief, SIP/New Source Section, at the address given below for EPA Region VI.

ADDRESSES: Copies of the State's submittal and other relevant documents are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region VI, 1445 Ross Avenue, Mail Code 6T–AN, Dallas, TX 75202–2733.

Louisiana Department of Enviromental Quality, Air Quality Division, 625 North Fourth Street, Eighth Floor, Baton Rouge, LA 70804–4096.

and

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

If you plan to visit any of these offices, please contact the person named below to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Barbara Durso, (214) 655–7214 or FTS 255–7214.

SUPPLEMENTARY INFORMATION: St. John the Baptist (St. John) is a rural parish located between Baton Rouge and New Orleans along the Mississippi River. On September 11, 1978, EPA published a final rule that designated the parish "nonattainment" for the ozone NAAQS. (See 43 FR 40425.) Based on the criteria set by EPA in a series of policy statements, the State of Louisiana can now demonstrate attainment of the ozone NAAQS in St. John and is seeking to redesignate the parish's air quality status for that pollutant.

In an October 8, 1985, memorandum to the Air Division Directors of the ten regional EPA offices, Darryl D. Tyler, then Director of Control Programs Development Division, notes that the EPA redesignation policy for ozone is composed of two parts: Sufficient measured data and evidence that "real and enforceable emission reductions have caused the improvement in air quality."

To satisfy the need for sufficient, measured data, the State must show that "the expected number of days per calendar year with maximum hourly average concentrations above 0.12 parts per million (235 ug/m^3) is equal to or less than 1, as determined at (40 CFR Part 51 Appendix H) [1] (This expected number of days is also known as the "expected number of exceedances.")

EPA requires that the expected number of exceedances be averaged over the most recent three years of monitored data. Furthermore, the data set for one year must be 75 percent complete for the ozone season, that time of year when the meteorology might be conducive to an exceedance. For Louisiana, the ozone season is a calendar year from January through December.[2] (See 40 CFR Part 58, Appendix D.) Since 1982, Louisiana has had greater than 90 percent data capture at the ozone monitoring site in St. John (site ID 192580002F01). During the most recent three years of monitoring, there has only been one reading above 0.12 ppm and the expected number of exceedances averaged over the most recent three years of data is less than one.[3]

One must note, however, that in 1987 the parish experienced four ozone readings at the 0.12 ppm standard. To assure that the parish remains in attainment, EPA is requiring that LDEQ continue to operate the ozone monitor in St. John.

The second criterion is to show that the improvement in air quality is a result of "real and enforceable reductions" of emissions. The State must show that the area is covered by a fully approved State Implementation Plan (SIP), which means that the SIP has under gone final, unconditional rulemaking in the **Federal Register** and contains the appropriate measures for the type of area involved (e.g., extension or Post '82 SIP call). The State must also show that all sources are in compliance with the applicable regualtions.[4]

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[1] 40 CFR 50.9(a).

[2] 40 CFR Part 58, Appendix D.

[3] Ozone values are read to three decimal places and then rounded to the nearest one-hundredth of a part per million (ppm). Any reading of 0.124 ppm or less is rounded down to 0.12 ppm. On May 15, 1988, the St. John monitor registered an hourly average of 0.125 ppm at 1300 hours. This reading is rounded up to 0.13 ppm and is thus over 0.12 ppm.

[4] See the April 6, 1987 memorandum from Gerald Emison, Director, Office of Air Quality Planning and Standards, to the regional Air Division Directors, Attachment, at page 1.

Because St. John is a rural parish originally designated nonattainment in 1978, EPA requires that the State implement reasonably available control technology (RACT) for certain industrial categories, i.e., Set I and II Control Techniques Guidance (CTG) sources in the parish.[5] The 1979 Louisiana ozone SIP, which EPA approved, meets this requirement. (See 45 FR 9909 and 47 FR 6015.)

The State also shows that all these sources were in compliance as of October 8, 1988, and that permits issued since 1982 to implement RACT show real, enforceable reductions of volatile organic compounds (VOCs), a precursor to ozone formation, in the St. John area. Total emissions are down by about 3000 tons of VOCs per year in St. John based on permit actions alone.

The State of Louisiana is confident that this redesignation will not lead to a degradation of air quality in St. John, because the State already has in place more than the minimum controls require by EPA. For example, the State has enacted an automobile emissions inspection and maintenance program in the parish.

Because ozone SIPs are designed to satisfy the requirements of Part D of the Clean Air Act (the Act) and to provide for attainment and maintenance of the ozone NAAQS, today's redesignation should not be interpreted as authorizing the State to delete, alter, or rescind any of the VOC emission limitations and restrictions contained in the approved ozone SIP. Changes to ozone SIP VOC regulations that render them less stringent than those contained in the EPA-approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding of nonimplementation under Section 173(b) of the Act and in a SIP deficiency call made pursuant to section 110(a)(2)(H) of the Act.

Final Action

Today's notice approves the redesignation of St. John the Baptist Parish, Louisiana, from nonattainment to attainment for the ozone NAAQS. To assure future attainment, EPA is also requiring that LDEQ continue to operate the ozone monitor in St. John until otherwise notified by EPA.

[5] CTGs are documents that identify methods of controlling emissions from various types of industrial sources. Set I and Set II CTGs cover seventeen sources of emissions including petroleum refineries, surface coaters, and metal degreasers.

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

Under Executive Order 12291, this action is not "Major." It does not need to be submitted to the Office of Management and Budget (OMB) for review.

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

List of Subjects in 40 CFR Part 81

Air pollution control.

Authority: 42 U.S.C. 7401–7642

Date: February 13, 1989.

Joseph D. Winkle,

Acting VR, Regional Administrator (6A).

40 CFR Part 81, Subpart C, is amended as follows:

Subpart C—Section 107 Attainment Status Designation

PART 81—[AMENDED]

1. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

40 CFR Part 81, Subpart C, is amended as follows:

2. Section 81.319 is amended by revising the attainment status designation table for ozone (O_3) to read as follows:

§ 81.319 Louisiana

* * * * *

* * * * *

LOUISIANA—OZONE (O_3)

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
AQCR 019		[1] X
AQCR 022:		
Caddo Parish	[1] X	
Bossier Parish	[1] X	
Remainder of AQCR		[1] X
AQCR 106:		
Ascension Parish	X	
Iberville Parish	X	
St. James Parish	X	
St. John the Baptist Parish.		X
West Baton Rouge Parish.	X	
East Baton Rouge Parish.	X	
Calcasieu Parish	X	

LOUISIANA—OZONE (O_3)—Continued

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
Orleans Parish	X	
Jefferson Parish	X	
St. Bernard Parish	X	
St. Charles Parish	X	
Grant Parish	X	
Beauregard Parish	[1] X	
Lafourche Parish	[1] X	
Pointe Coupee Parish.	[1] X	
Lafayette Parish	[1] X	
St. Mary Parish	[1] X	
Remainder of AQCR		[1] X

[1] EPA designation replaces State designation.

* * * * *

[FR Doc. 89-7626 Filed 3-30-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 228

[FRL-3546-9]

Ocean Dumping: Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates an existing dredged material disposal site located off the Louisiana coast at the mouth of the Mississippi River for the continued disposal of dredged material removed from the Southwest Pass Channel. This action is necessary to provide an acceptable ocean dumping site for the current and future disposal of this material. This final site designation is for an indefinite period of time but is subject to continued monitoring in order to insure that unacceptable impacts do not occur.

DATE: This designation shall become effective May 1, 1989.

ADDRESSES: The file supporting this designation is available for public inspection at the following locations:

EPA, Region 6 (E–FF), 1445 Ross Avenue, 9th Floor, Dallas, Texas 75202.

Corps of Engineers, New Orleans District, Foot of Prytania Street, Room 296, New Orleans, Louisiana 70160.

FOR FURTHER INFORMATION CONTACT: Norm Thomas 214/655–2260.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the

Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, Section 228.4) state that ocean dumping sites will be designated by publication in Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*). That list established the Southwest Pass-Mississippi River site for the disposal of material dredged from the Southwest Pass Channel. In January 1980, the interim status of the Southwest Pass site was extended indefinitely.

B. EIS Development

Section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, ("NEPA") requires that Federal agencies prepare Environmental Impact Statements (EISs) on proposals for major Federal actions significantly affecting the quality of the human environment. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean dumping site designations such as this (39 FR 16186, May 7, 1974).

In August 1984 EPA distributed a Draft Environmental Impact Statement entitled "Environmental Impact Statement (EIS) for the Southwest Pass-Mississippi River Ocean Dredged Material Disposal Site Designation" to the public for a 45-day review and comment period. Eight comment letters were received on the Draft EIS. The Agency responded to the comments in the Final EIS. Editorial or factual corrections required by the comments were incorporated in the text and noted in the Agency's response. Comments which could not be appropriately treated as text changes were addressed point by point in the Final EIS. On December 9, 1988, a notice of availability of the Final EIS for public review and comment was published in the **Federal Register**. The public comment period on the Final EIS closed on January 9, 1989. One letter was received on the Final EIS; it contained "no comments". The EIS is available for review at the addresses given above.

The action discussed in the EIS is designation for continuing use of an ocean disposal site for dredged material. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal. The appropriateness of ocean disposal is determined on a case-by-case basis. Prior to each use of the Corps of Engineers (COE) will comply with 40 CFR 227 by providing EPA a letter containing all the necessary information.

The EIS discussed the need for the action and examined ocean disposal sites and alternatives to the proposed action. Land based disposal alternatives were examined in a previously published EIS and the analysis was updated in EPA's Final EIS based on information from the COE.

About 1200 acres of marshes have been built on the west side of the Southwest Pass Channel using dredged material. However, use of the dredged material disposed at the Southwest Pass site for marsh creation purposes is not feasible because of technical and cost considerations. Long pipelines would be required to transport the material and the COE has determined that pipeline dredges in this area were impractical and unsafe because of the length of pipe and cable required, concerns over pipe breakage in rough seas and difficulties with currents in the area. Consideration was also given to the use of these materials for beach nourishment. The same difficulties associated with transport of the materials by pipeline for marsh creation would apply. Also the materials consist primarily of fines, which are generally considered unsuitable for beach nourishment. Upland disposal was also evaluated but there are no upland disposal sites located in the vicinity of the Gulf portion of Southwest Pass.

Four ocean disposal alternatives—two shallow water areas (including the proposed site), a mid-shelf area and a deepwater area—were evaluated. Use of the mid-shelf and deepwater sites would involve: (1) Increased transportation costs without any corresponding environmental benefits; (2) increased surveillance and monitoring costs due to the greater depths of water and distance from shore; and (3) increased safety hazards resulting from transporting dredged material greater distances through areas of active oil and gas development. Because of these reasons, the mid-shelf area and the deepwater area were eliminated from further consideration. An alternate shallow-water site located northeast or northwest of the existing site was also evaluated. However, no environmental benefits would be gained by its selection. Rather, the alternate site would be located in more biologically productive waters nearer to estuarine areas.

In accordance with the requirements of the Endangered Species Act, EPA has completed a biological assessment and determined that no adverse effects to endangered/threatened species will result from site designation. The National Marine Fisheries Service has concurred with this determination. EPA has also coordinated with the State of Louisiana under requirements of the Coastal Zone Management Act. The State of Louisiana has concurred with EPA's determination that final designation of the Southwest Pass disposal site is consistent, to the maximum extent practicable, with the Louisiana Coastal Resources Program.

The EIS evaluated the suitability of ocean disposal areas for final designation and is based on a disposal site environmental study. The study and final designation process are being conducted in accordance with the Act, the Ocean Dumping Regulations and other applicable Federal environmental legislation. This final rulemaking notice serves the same purpose as the Record of Decision required under regulations promulgated by the Council on Environmental Quality for agencies subject to NEPA.

C. Site Designation

On January 3, 1989, EPA proposed designation of the Southwest Pass-Mississippi River disposal site for the continuing disposal of dredged materials from the Southwest Pass Channel. The public comment period on this proposed action closed on February 17, 1989. One comments letter from the Department of the Interior (DOI) was received. DOI indicated that the disposal site overlays a small portion of two existing Federal oil and gas leases. DOI expressed "no objection" to site designation if disposal activities would not unduly interfere with current or future outer continental shelf mineral development operations. Based on past experience, EPA does not anticipate that dredged material disposal will unduly interfere with mineral development activities.

The disposal site is located on the west side of the Southwest Pass Channel approximatley 1.75 nautical miles from shore. Water depths within the site range from 2.7 to 32.2 meters. The boundary coordinates are as follows: 28° 54′ 12″ N, 89° 27′ 15″ W; 28° 54′ 12″ N, 89° 26′ 00″ W; 28° 51′ 00″ N, 89 27′ 15″ W; 28° 51′ 00″ N, 89° 26′ 00″ W.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize

interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at a site cause unacceptable adverse impacts, further use of the site may be terminated or limitations placed on the use of the site to reduce the impacts to acceptable levels. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations; § 228.6 lists eleven specific factors used in evaluating a proposed disposal site to assure that the general criteria are met.

EPA has determined, based on information presented in the Draft and Final EISs, that the existing site is acceptable under the five general criteria. The Continental Shelf location is not feasible and no environmental benefit would be obtained by selecting such a site. Historical use of the existing site has not resulted in substantial adverse effects to living resources of the ocean or to other uses of the marine environment. The characteristics of the site are reviewed below in terms of the eleven specific factors.

1. Geographical Position, Depth of Water, Bottom Topography and Distance from Coast (40 CFR 228.6(a)(1))

Geographical position, average water depth, and distance from the coast for the disposal site are given above. Bottom topography is irregular.

2. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases (40 CFR 228.6(a)(2))

The northwestern Gulf of Mexico is a breeding, spawning, nursery and feeding area for shrimp, menhaden and bottomfish. The Mississippi Delta in the vicinity of Southwest Pass is a highly productive area with a wide variety of plankton and nekton. Due to runoff from the Mississippi River, the Delta area near the mouth of Southwest Pass experiences changing salinity, temperature, turbidity and nutrient conditions over an annual cycle. During periods of active dredged material disposal, there would be short-term interferences with breeding, spawning, feeding and passage of the nekton. However, it would be difficult to differentiate this interference from that resulting from high flows of the Mississippi River. The existing disposal site is seaward of any estuaries or bays.

3. Location in Relation to Beaches and Other Amenity Areas (40 CFR 228.6(a)(3))

There are no beaches in the vicinity of the existing disposal site. The area around Southwest Pass is not readily accessible by land. Recreation in the area is limited to boating related activities, primarily sport fishing.

4. Types and Quantities of Wastes Proposed to be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Wastes, If Any (40 CFR 228.6(a)(4))

Dredged material released at approved dredged material disposal sites must conform to the EPA criteria in the Ocean Dumping Regulations (40 CFR Part 227). The dredged material to be disposed of consists of about 4 percent sand and 96 percent fines. Historically, an average of 14.5 million cubic yards (mcy) of material is dredged annually, with a range of 1.8 to 32.5 mcy. Similar quantities will continue to be dredged and disposed of annually using either agitation dredging in high river flows or hopper dredges for transport during low flows. The dredged material will not be packaged in any way.

5. Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5))

Surveillance and monitoring are both feasible at this site. Surveillance can be accomplished by inspection of logs, observation by ship riders or from aircraft and observation from the light station at the end of Southwest Pass. The shallow depth of the site and its close proximity to the shore facilitate monitoring at the site. Based on historic data, an intense monitoring program is not warranted. However, in order to provide adequate warning of environmental harm, EPA will develop a monitoring plan in coordination with the COE. The plan would concentrate on periodic depth soundings and sediment and water quality testing.

6. Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction and Velocity, if Any (40 CFR 228.6(a)(6))

The Mississippi River plume passes through the site in a westerly or southwesterly direction and may mask the turbidity plume from dredged material disposal. Prevailing currents at the site are southwest at speeds of 0 to 4 knots. Disposed dredged material fines become mixed with the Mississippi River plume and move generally southwest. Net movement of the heavier dredged materials which settle is to the west. Freshwater discharge from the Mississippi River results in stratification at the mouth of Southwest Pass; seaward of the Pass vertical mixing increases.

7. Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects) (40 CFR 228.6(a)(7))

The materials dredged from the Southwest Pass Channel are similar to the materials in the Mississippi River flow. And therefore, the sediments at the disposal site are similar to the sediments in the broad area off the mouth of Southwest Pass. Previous site surveys have not detected any effects of disposal at the existing site.

8. Interference with Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance and Other Legitimate Uses of the Ocean (40 CFR 228.6(a)(8))

Some interference with shipping, recreational and commercial fishing and boating are expected during dredged material disposal operations. Although there is no fish or shellfish culture within the site, there will be some impacts on naturally occurring fish and shellfish within the site. The only mineral extraction within the site is oil and gas; past experience has indicated no interference during dredged material disposal.

9. The Existing Water Quality and Ecology of the Site as Determined by Available Data or by Trend Assessment or Baseline Surveys (40 CFR 228.6(a)(9))

The water quality and ecology at the existing site is generally similar to the nearshore region off the Louisiana coast affected by discharges from the Southwest Pass of the Mississippi River. The water quality varies depending on the amount and mixing of fresh water runoff occurring at the time. Data gathered during the 1980 and 1981 surveys indicated that trace metal concentrations and clorinated hydrocarbon concentrations were comparable to historic data for the area.

10. Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site (40 CFR 228.6(a)(10))

Past disposal of dredged material at the existing site has not resulted in the development or recruitment of nuisance species. Considering the similarity of the dredged material with the existing sediments, it is not expected that continued disposal of dredged material

will result in the development of such species.

11. *Existence at or in Close Proximity to the Site of Any Significant Natural or Cultural Features of Historical Importance (40 CFR 228.6(a)(11))*

There are no known features of historical or cultural significance that occur within the site. There are some shipwrecks located about 3.5 miles from the site.

E. Action

Based on the completed EIS process and available data, EPA concludes that the Southwest Pass-Mississippi River ocean dredged material disposal site may appropriately be designated for use. The existing site is compatible with the general criteria and specific factors used for site evaluation. The designation of the Southwest Pass site as an EPA approved ocean dumping site is being published as final rulemaking.

While the Corps does not administratively issue itself a permit, the requirements that must be met before dredged material derived from Federal projects can be discharged into ocean waters are the same as where a permit would be required. EPA has the authority to approve or to disapprove or to propose conditions upon dredged material permits for ocean dumping.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This final rule does not contain any information collection requirements subject to the Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: March 14, 1989.

Robert E. Layton Jr.,

Regional Administrator of Region 6.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. Sections 1412 and 1418.

2. Section 228.12 is amended by removing from paragraph (a)(3) under "Dredged Material Sites" the entry for Mississippi River, Baton Rouge to the Gulf of Mexico, La.—Southwest Pass and by adding paragraph b(73) to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(73) Southwest Pass-Mississippi River, Louisiana—Region VI Location: 28°54'12" N., 89°27'15" W.; 28°54'12" N., 89°26'00" W.; 28°51'00" N., 89°27'15" W.; 28°51°00" N., 89°26'00" W.

Size: 3.44 square nautical miles.

Depth: Ranges from 2.7 to 32.2 meters.

Primary Use: Dredged material.

Period of Use: Continuing use.

Restriction: Disposal shall be limited to dredged material from the vicinity of the Southwest Pass Channel.

[FR Doc. 89-7622 Filed 3-30-89; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-7

[FPMR Temp. Reg. A-30, Supp. 4]

Use of Contract Airline/Rail Passenger Service Between Selected Cities/Airports

AGENCY: Federal Supply Service, GSA.

ACTION: Temporary regulation.

SUMMARY: This supplement extends the expiration date of FPMR Temp. Reg. A-30 and supplement 3 thereto to January 31, 1990. It also amends par. 7b of attachment A, as amended by supplement 3, by revising the reference to "Government Travel System (GTS) accounts" to read "centrally-billed accounts" and by revising the reference to "FPMR Temp. Reg. A-25" to read "FPMR Temp. Reg. A-31."

DATES: *Effective*: February 1, 1989.

Expiration: January 31, 1990, unless sooner canceled or revised.

FOR FURTHER INFORMATION CONTACT: Phyllis Hickman, Travel and Transportation Management Division (FBT), Washington, DC 20406, telephone FTS 557-1264 or commercial (703) 557-1264.

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

List of Subjects in 41 CFR Part 101-7

Government employees, Travel, Travel allowances, Travel and transportation expenses.

PART 101-7—[AMENDED]

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

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

March 9, 1989

Federal Property Management Regulations Temporary Regulation A-30 Supplement 4

To: Heads of Federal agencies

Subject: Use of contract airline/rail passenger service between selected cities/airports

1. *Purpose.* This supplement extends the expiration date of FPMR Temp. Reg. A-30 and of supplement 3 thereto to January 31, 1990. It also amends par. 7b of attachment A, as amended by supplement 3.

2. *Effective date.* This supplement is effective February 1, 1989.

3. *Expiration date.* This supplement expires January 31, 1990, unless sooner canceled or revised.

4. *Explanation of changes.* Make the following pen-and-ink changes to FPMR Temp. Reg. A-30 and supplement 3 thereto:

a. The expiration date in par. 3 is revised to January 31, 1990.

b. Par. 7b of attachment A is amended by revising the reference to "Government Travel System (GTS) accounts" to read "centrally-billed accounts" and by revising the reference to "FPMR Temp. Reg. A-25" to read "FPMR Temp. Reg. A-31."

5. *Effect on other directives.* This supplement and supplement 3 contain all changes to FPMR Temp. Reg. A-30.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 89-7729 Filed 3-30-89; 8:45 am]

BILLING CODE 6820-24-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-219; RM-6213]

Radio Broadcasting Services; Uniontown, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The document allots Channel 298A to Uniontown, Alabama, as that community's first local FM service, in response to a petition for rule making filed on behalf William A. Gunter and Robert J. Long. Reference coordinates utilized for Channel 298A at Uniontown are 32-24-46 and 87-32-25. With this action, the proceeding is terminated.

EFFECTIVE DATE: May 8, 1989. The window period for filing applications on Channel 298A at Uniontown, Alabama, will open on May 9, 1989, and close on June 8, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-219, adopted February 28, 1989 and released March 22, 1989. 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 contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, by adding Uniontown, Channel 298A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-7639 Filed 3-30-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-368; RM-6286]

Radio Broadcasting Services; Burnside, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 230C2 for Channel 230A at Burnside, Kentucky, and modifies the license for Station WJDJ(FM) to specify operation on the higher powered channel at the request of Lenn A. Pruitt ("petitioner"). Channel 230C2 can be allotted to Burnside in compliance with the Commission's minimum distance separation requirements with a site restriction of 19.1 kilometers (11.9 miles) northeast of the city. The coordinates for this allotment are 37-08-30 and 84-30-00. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 8, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-368, adopted February 22, 1989, and released March 22, 1989. 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 contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Burnside, Kentucky, is amended by removing Channel 230A and adding Channel 230C2.

Karl A. Kensinger

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-7641 Filed 3-30-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-398; RM-6389]

Radio Broadcasting Services; Rogers City, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 244C2 to Rogers City, Michigan, and modifies the license for Station WMLQ, Channel 249A, to specify operation on Channel 244C2. This action is taken in response to a petition filed by North South Radio Group, Inc., licensee of Station WMLQ. Canadian concurrence has been obtained for the allotment of Channel 244C2 at Rogers City. The coordinates for Channel 244C2 are 45-25-17 and 83-49-00. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 8, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-398, adopted February 28, 1989, and released March 22, 1989. 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 contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Rogers City, Michigan is amended by removing Channel 249A and adding Channel 244C2.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-7642 Filed 3-30-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-434; RM-6416]

Radio Broadcasting Services; Flora, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 248A to Flora, Mississippi, as that community's first FM broadcast service, in response to a petition filed by John H. Pembroke. There is a site restriction 9.4 kilometers (5.8 miles) northwest of the community at coordinates 32-36-03 and 90-23-14. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 8, 1989. The window period for filing applications will open on May 9, 1989, and close on June 8, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-434, adopted February 28, 1989, and released March 22, 1989. 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 contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments under Mississippi is amended by adding Flora, Channel 248A.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-7640 Filed 3-30-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-415; RM-6401]

Radio Broadcasting Services; Kalispell, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 280C1 to Kalispell, Montana, and modifies the construction permit for Channel 280A, to specify operation on Channel 280C1. This action is taken in response to a petition filed by KOFI, Inc. Canadian concurrence has been obtained for the allotment of Channel 280C1 at Kalispell. The coordinates for Channel 280C1 are 48-11-52 and 114-15-03. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 8, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuertle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-415, adopted February 28, 1989, and released March 22, 1989. 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 contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kalispell, Montana is amended by removing Channel 280A and adding Channel 280C1.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-7643 Filed 3-30-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611, 672, and 675

[Docket No. 90370-9070]

Foreign Fishing; Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands

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

ACTION: Emergency interim rule.

SUMMARY: The Secretary of Commerce (Secretary) has determined that an emergency exists in the groundfish fisheries off Alaska, because the current definitions of directed fishing are overly broad, and because the current percentages used to define directed fishing for sablefish in the Bering Sea and Aleutian Islands Area (BSAI) allow inappropriate bycatch harvests of these species. The Secretary is amending the directed fishing definition as recommended by the North Pacific Fishery Management Council (Council). These actions are necessary to promote effective management of the groundfish fishery and to prevent wastage of sablefish. The intended effect of these actions is to promote the objectives of the Fishery Management Plans for the Groundfish of the Gulf of Alaska and the Groundfish Fishery of the Bering Sea and Aleutian Islands Area.

EFFECTIVE DATE: March 28, 1989 until June 26, 1989. Comments are invited on the environmental assessment until April 27, 1989.

ADDRESS: Copies of the environmental assessment may be obtained from Steven Pennoyer, Regional Director, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Management Biologist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the exclusive economic zone (EEZ or 3-200 miles offshore) of the Gulf

of Alaska (GOA) and the Bering Sea and Aleutian Islands Area (BSAI) are managed under the Fishery Management Plans for Groundfish of the Gulf of Alaska and the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMPs), respectively. These FMPs were prepared by the Council under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and are implemented by regulations for the foreign fishery at 50 CFR Part 611 and for the U.S. fishery at 50 CFR Parts 672 and 675.

Regulatory measures sometimes are necessary that cannot be implemented through normal procedures provided by the Magnuson Act for conservation and management of the groundfish resources. Section 305(e) of the Magnuson Act provides authority to the Secretary temporarily to amend fishery management plans and implement measures that resolve fishery problems that the Secretary determines pose emergencies in the fishery. Under this section, the Secretary may implement an emergency rule in response to recommendations made by the Council or on his own authority.

The Council has recommended certain changes in regulations that implement the FMPs. The first recommendation is to change the general definitions of directed fishing in regulations implementing the FMPs. These definitions are found at 50 CFR Parts 611, 672, and 675. The second recommendation is to implement a change specific to the definition of directed fishing for sablefish. Council recommendations and determinations by the Secretary are explained as follows:

1. General Definitions of Directed fishing at 50 CFR Parts 611, 672, and 675

Directed fishing is defined in regulations implementing both FMPs. With one exception for the Gulf of Alaska FMP, directed fishing currently means fishing that is intended or can be reasonably expected to result in the catching, taking, or harvesting of quantities of a species of groundfish that amount to 20 percent or more of the catch, take, or harvest, or 20 percent or more of the total amount of fish or fish products on board at any time. The exception for the Gulf of Alaska FMP restricts the percentage to 4 percent, rather than 20 percent, for sablefish caught with hook-and-line gear. This definition of directed fishing is referred to as the directed fishing rule.

Incidental catches in directed fisheries for other groundfish species are generally referred to as bycatches. Under the current directed fishing rule, retention of bycatches of groundfish species up to 20 percent of the total amount of the groundfish catch is allowed during times when directed fishing for the bycatch species is prohibited, as long as the directed fishing rule at 50 CFR 672.2 and 675.2 is not violated. Catches of 20 percent or more of a species have been presumed, for regulatory purposes, to result from directed fishing.

Representatives of the fishing industry contend that the current directed fishing rule is overly broad, placing the fisherman at unreasonable risk, because the rule is applied to the catching, rather than retention, of groundfish. Typically a fisherman does not know the composition of his catch until it is on board. Fishermen have commented to the Council and to NMFS that the strict application of this rule inappropriately causes its violation if the catch composition of a single longline set or trawl haul inadvertently includes species in excess of permissible proportions, prior to the fishermen's knowledge of the catch.

The Council has responded by recommending at its June, 1988, meeting that the definition be changed by regulatory amendment to allow enforcement on the basis of the amount of a groundfish species retained on board a fishing vessel rather than the amount caught. Under this definition, a fisherman would be allowed to sort his catch and discard at sea excess bycatch such that any amount retained on board would not exceed the allowable rate. This action would formalize what effectively has become the status quo in this fishery.

When the Council made this recommendation at the June 1988 meeting, the NOAA General Counsel announced that further prosecution of cases involving the directed fishing definition would be consistent with the Council's recommendation. Most fishermen operated during the remainder of the 1988 fishing year with this understanding. The Secretary conducted a review of the impacts that would result, should the definition be amended as the Council recommended. In December, 1988, the Secretary determined that certain objectives in the FMPs that discouraged wasteful discarding of fish at sea might be undermined by the Council's recommendation. The Secretary published his intent to retain the directed fishing definition as currently written in the regulations (54 FR 986, January 11, 1989). The Council reviewed the Secretary's announced intent at its January 1989 meeting and received public testimony on expected impacts of that action.

Many fishermen testified that, although they would have been in violation of a definition based on the standard of catch, take, or harvest, they would not have been in violation of a definition based on amounts retained on board. Part of that testimony made clear that, as a practical matter, detecting a violation based on observing catch, take, or harvest compared to amounts retained on board was more difficult. The Council further determined that its objectives of reducing waste were in reality not in jeopardy and, in light of problems under the current definition, reaffirmed its June 1988, recommendation that the directed fishing definition should be based on amounts of groundfish retained on board a vessel.

2. Definitions of Directed Fishing for Sablefish in the Bering Sea and Aleutian Islands Management Area

Definition of directed fishing for sablefish—The Secretary has established total allowable catches (TACs) for each of the target groundfish species in 1989, including sablefish. The TAC for sablefish in the Bering Sea Subarea is 2,380 mt. This amount is only 70 percent of that available in 1988. The Regional Director determined that this amount is necessary as bycatch in fisheries for other groundfish species during the remainder of the fishing year. Therefore, the Secretary has prohibited directed fishing for sablefish in the Bering Sea Subarea, effective February 3, 1989 (54 FR 6134, February 8, 1989). Due to the leniency of current sablefish bycatch regulations and because sablefish are highly valued, the opportunity and incentive to harvest in excess of actual bycatch needs remain. This situation is detrimental to the resource and its proper conservation and management. At its December 1988 meeting, the Council reviewed the TAC it had recommended for the Bering Sea Subarea and the consequences that the current directed fishing definition would have on the 1989 sablefish fishery.

Part of the Council's concern is a result of a management action taken by the Secretary in 1988 that closed the directed sablefish fishery at midyear. In 1988, the TAC for sablefish was set at 3,400 mt in the Bering Sea Subarea. Of this amount, 3,363 mt was allocated to domestic annual processing (DAP). This amount of the DAP was small in relation to DAPs for other target species, but its poundage value to fishermen was large. In 1988, U.S. fishermen received an average of about $1.70 per pound for

sablefish. Fishermen received only about $0.06 per pound when fishing for other groundfish, particularly trawl-caught pollock and flounders.

The high value of sablefish encouraged U.S. fishermen to target on them. On June 11, 1988, the Secretary closed the sablefish fishery based on calculations made by the Regional Director that the directed fishery had caught 1,680 mt, which was only 50 percent of the DAP (53 FR 22328, June 15, 1988). The balance was set aside as bycatch to support other target fisheries, which under the current directed fishery definition allowed fishermen to catch and retain sablefish up to 20 percent of the total amount of groundfish on board a vessel as bycatch. Had the directed fishing definition required a bycatch rate of sablefish closer to the typical incidental catch rate, the Secretary might have been able to allow the directed fishery to continue longer into the fishing year.

Under the current directed fishing definition, the Regional Director was required to use 20 percent when calculating the amount of bycatch needed to implement the 1988 sablefish directed fishing closure. Although amounts of sablefish retained on board as bycatches of up to 20 percent technically would not have been in violation of the directed fishing definition, actual incidental catches of sablefish, especially in pollock, Pacific cod, and flounder fisheries by trawl, hook-and-line, and pot gear, are usually as low as 1 percent. Thus, even when directed sablefish fishing was prohibited, the incentive and opportunity to harvest in excess of actual bycatch needs prevailed. An unnecessary result was the early declaration of prohibited species status for sablefish as required at 50 CFR 675.20(a)(8), resulting in excessive waste of this resource.

The Council recommended that the Secretary implement an emergency rule to amend the directed fishing definition with respect to sablefish in the Bering Sea subarea by reducing the allowable percentage considered to be directed fishing for sablefish. The Council recommended that directed fishing for sablefish be defined as fishing that results in quantities of sablefish that are 1 percent or more of the total amount of fish or fish products, excluding Pacific ocean perch (POP) and Greenland turbot, retained on board at any time expressed in round weight equivalents. When POP or Greenland turbot are part of the amount retained on board, the Council recommended directed fishing for sablefish be defined as fishing that results in quantities of sablefish that are 10 percent or more of the total amount of POP and Greenland turbot retained on board at any time, expressed in round weight equivalents. This latter quantity may be added to the amount of sablefish which may be allowed as measured against other fish. The Council determined that these percentages of sablefish closely approximate actual sablefish rates in the groundfish fisheries. Amounts of sablefish less than these percentages shall be considered to be bycatches in other directed fisheries.

Determinations by the Secretary

The Secretary has reviewed the Council's recommendations on each of the above issues. With respect to enforcing the directed fishing definition on the basis of the amount of groundfish retained on board rather than on the basis of the amount of groundfish caught, the Secretary recognizes the concerns regarding the current directed fishing definition. While the Council did not specifically vote at its June, 1988, meeting to recommend that the Secretary amend the definition by emergency rule, the Secretary has considered the record developed by the Council at its December 1988 meeting, and has determined under section 305(e)(1) that an emergency exists in the fishery due to the overly broad directed fishing definition, and that the definition should be changed. The Secretary hereby rescinds the policy statement as published in the **Federal Register** at 54 FR 986 (January 11, 1989), regarding the intent to retain the existing directed fishing definition for all groundfish species on the basis of catch, take, or harvest.

With respect to the definition of a directed sablefish fishery, the Secretary concurs with the Council's recommendation that the current regulation at 50 CFR 675.2, which defines directed fishing for sablefish, causes an emergency in the sablefish fishery. The Secretary is making this determination under section 305(e)(2)(B) of the Magnuson Act. To take no action would undermine NMFS's intended management of the sablefish harvest, as authorized at 50 CFR 675.20(a)(7). Under this regulation, NMFS closed the directed sablefish fishery in the Bering Sea Subarea, effective February 3, 1989, and intends that the entire remaining TAC be available as bycatch to support other directed fisheries during the fishing year. This action will effectively conserve sablefish only if small amounts of sablefish are actually caught as bycatch. Since the 1 percent and 10 percent amounts for defining directed fishing approximate the actual bycatch rates, the Regional Director expects this action to minimize sablefish bycatch and the extent to which sablefish would be discarded during the fishing year. Should the new limitations of bycatch combined with the current closure in the directed fishery provide more than the amount of sablefish needed for bycatch, the Regional Director would allow a directed fishery for sablefish near year's end under § 675.20.

Although the Council did not stipulate that a change in the definition of the sablefish fishery should also apply to the Aleutian Islands Subarea, the Regional Director has determined that, for the same reasons given above, the current definition of directed fishing as its applies to sablefish also constitutes an emergency in this subarea. The Secretary has established the sablefish TAC in the Aleutian Island Subarea at 3,400 mt. The initial DAP equals the initial TAC of 2,890 mt. The 1988 catch in this subarea was 3,400 mt. Directed fishing for sablefish in the Aleutian Islands Subarea currently is allowed. The Regional Director expects that this directed fishery will be closed to allow enough sablefish to be used in other target fisheries. True bycatch rates are also as small as they are in the Bering Sea Subarea. Therefore, the Secretary concurs with the Regional Director's determination under section 305(e)(1) of the Magnuson Act and declares that an emergency exists in the Aleutians Islands Subarea sablefish fishery and is implementing the new definition of a directed sablefish fishery in this subarea also.

While the definition of directed fishing in the Gulf of Alaska uses a 20 percent lower limit, the Regional Director has reviewed the conditions in this fishery and determined that the 20 percent limit does not constitute an emergency justifying action in this rule.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson Act and other applicable law. This rule is implemented for 90 days under section 305(e) of the Magnuson Act and may be extended for an additional 90 days with the agreement of the Council.

The Assistant Administrator also finds for good cause that the reasons justifying promulgation of this rule on an emergency basis also make it impractical and contrary to the public interest to provide prior notice and opportunity for comment or to delay for 30 days its effective date, under

provisions of section 553 (b) and (d) of the Administrative Procedure Act. This rule must be implemented as soon as possible to relieve a restriction and to minimize wastage of sablefish and pollock in the Bering Sea and Aleutian Islands Management Area.

The Regional Director prepared an environmental assessment for this action. The Assistant Administrator concluded that no significant impact on the human environment would result from this rule. A copy of this document may be obtained from the Regional Director at the address listed above.

This emergency interim rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. It is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the regular procedures of that order.

This emergency interim rule is exempt from the requirements of the Regulatory Flexibility Act, because it is issued without opportunity for prior public comment.

This rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

List of Subjects in 50 CFR Parts 611, 672, and 675

Fisheries.

Dated: March 28, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, Parts 611, 672, and 675 are amended as follows:

PART 611—FOREIGN FISHING

1. The authority citation for Part 611 continues to read as follows:

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

2. In § 611.92, paragraph (c)(1)(iii) is temporarily added and effective March 28, 1989, until June 26, 1989, to read as follows:

§ 611.92 Gulf of Alaska Groundfish fishery.

* * * * *

(c) * * *

(1) * * *

(iii) Notwithstanding the definition of *directed fishing* in § 611.2, directed fishing means: (A) With respect to any species, stock, or other aggregation of fish, other than sablefish caught with hook-and-line gear, fishing that results in the retention on board a fishing vessel of any groundfish species or species group, whether caught by foreign vessels or caught by U.S. vessels, in an amount equal to or greater than 20 percent of the total amount of fish and fish products on board, as calculated in round weight equivalents, at any time.

(B) With respect to sablefish caught with hook-and-line gear, fishing that results in the retention on board a fishing vessel of sablefish, whether caught by foreign vessels or caught by U.S. vessels, in an amount equal to or greater than 4 percent of the total amount of fish and fish products on board, as calculated in round weight equivalents, at any time.

* * * * *

3. In § 611.93, paragraph (b)(1)(iii) is temporarily suspended and (b)(1)(iv) is temporarily added, effective March 28, 1989, until June 26, 1989, to read as follows:

§ 611.93 Bering Sea and Aleutian Islands groundfish fishery.

* * * * *

(b) * * *

(1) * * *

(iv) Notwithstanding the definition of *directed fishing* in § 611.2, directed fishing means (A) With respect to any species, stock, or other aggregation of fish, other than sablefish in both the Bering Sea and Aleutian Island Subareas and fishing that results in the retention on board a fishing vessel of any groundfish species or species group in an amount equal to or greater than 20 percent of the total amount of fish and fish products on board, as calculated in round weight equivalents, at any time.

(B) With respect to sablefish, fishing that results in the retention on board a fishing vessel of sablefish in an amount equal to or greater than:

(1) 1 percent or more of the total amount of fish and fish products, other than Pacific ocean perch and Greenland turbot, as calculated in round weight equivalents, at any time, plus

(2) 10 percent or more of the total amount of Pacific ocean perch and Greenland turbot and Pacific ocean perch and Greenland turbot products, as calculated in round weight equivalents, at any time.

* * * * *

PART 672—GROUNDFISH OF THE GULF OF ALASKA [AMENDED]

4. The authority citation for Part 672 continues to read as follows:

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

5. In § 672.2, the definition of *Directed Fishing* is temporarily revised and effective March 28, 1989, until June 26, 1989, to read as follows:

§ 672.2 Definitions.

* * * * *

Directed Fishing means (1) with respect to any species, stock, or other aggregation of fish, other than sablefish caught with hook-and-line gear, fishing that results in the retention on board a fishing vessel of any groundfish species or species group in an amount equal to or greater than 20 percent of the total amount of fish and fish products on board, as calculated in round weight equivalents, at any time.

(2) With respect to sablefish caught with hook-and-line gear, fishing that results in the retention on board a fishing vessel of sablefish in an amount equal to or greater than 4 percent of the total amount of fish and fish products on board, as calculated in round weight equivalents, at any time.

* * * * *

PART 675—[AMENDED]

6. The authority citation for Part 675 continues to read as follows:

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

7. In § 675.2, the definition of *Directed Fishing* is temporarily revised and effective March 28, 1989, until June 26, 1989, to read as follows:

§ 675.2 Definitions.

* * * * *

Directed Fishing means (1) with respect to any species, stock, or other aggregation of fish, other than sablefish in the Bering Sea and Aleutian Island subareas fishing that results in the retention on board a fishing vessel of any groundfish species or species group in an amount equal to or greater than 20 percent of the total amount of fish and fish products on board, as calculated in round weight equivalents, at any time.

(2) With respect to sablefish, fishing that results in the retention on board a fishing vessel of an amount of sablefish equal to or greater than:

(i) 1 percent or more of the total amount of fish and fish products, other

than Pacific ocean perch and Greenland turbot, as calculated in round weight equivalents, at any time, plus

(ii) 10 percent or more of the total amount of Pacific ocean perch and Greenland turbot and Pacific ocean perch and Greenland turbot products, as calculated in round weight equivalents, at any time.

* * * * *

[FR Doc. 89-7645 Filed 3-28-89; 2:41 pm]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 61
Friday, March 31, 1989

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 531

Pay Under the General Schedule

AGENCY: Office of Personnel Management.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) proposes to revise the maximum payable rate rules to allow agencies, under certain conditions, to use a special rate of pay as the employee's highest previous rate upon reassignment to a nonspecial rate position under the General Schedule. In addition, OPM proposes certain other revisions in the highest previous rate provisions of the regulations to clarify and simplify the rules governing Federal agencies' pay-setting actions. These regulations are being proposed as part of a continuing effort to simplify and deregulate the Federal personnel system.

DATE: Comments must be received on or before May 30, 1989.

ADDRESS: Written comments may be sent or delivered to Barbara L. Fiss, Assistant Director for Pay and Performance Management, Personnel Systems and Oversight Group, Office of Personnel Management, Room 7H30, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Robert T. Gatewood, (202) 632-5056.

SUPPLEMENTARY INFORMATION: Federal agencies currently have authority to determine a General Schedule employee's rate of basic pay upon reemployment, transfer, reassignment, promotion, demotion, or change in type of appointment. In the exercise of this authority, agencies are governed by the "maximum payable rate rules" found in 5 CFR 531.203(c).

OPM has determined that agencies should have greater flexibility to determine an employee's rate of basic pay when the employee is reassigned within the employing agency from a special rate position to a nonspecial rate position under the General Schedule. The numbers and kinds of positions covered by special rates have increased significantly over the past several years. Employees receiving special rates of pay represent a valuable resource to the organizations for which they work. Many employees receiving special rates of pay also have capabilities and potential needed by the organization beyond the skills used in the special rate positions to which they are assigned. However, agencies are reluctant to offer reassignments to employees when the reassignment from a special rate position to a nonspecial rate position would mean a loss of the special rate of pay.

Under current regulations, agencies are permitted to use an employee's special rate of pay as the basis for setting pay upon reassignment to a nonspecial rate position only with prior written approval by OPM. While this procedure ensures the integrity of the special rates program, it also prevents organizations from considering employee reassignments to resolve immediate staffing problems, and it may contribute to delays in program and mission accomplishment.

OPM now finds that there are good reasons to add this pay-setting authority to the other pay-setting authorities already delegated to agencies. Under the proposed regulations, agencies would be permitted to make the determination to use a special rate as an employee's highest previous rate when reassigning employees to nonspecial rate positions in the same agency. An official designated to make such determinations would be required to find that the need for the services of the employee, and his or her contribution to the program of the agency, will be greater in the position to which he or she is being reassigned. In addition, the special rate of pay must be the employee's current rate of pay, and the employee must have held the special rate position for 120 calendar days or more. In the event an agency determines not to use a special rate as an employee's highest previous rate, the proposed regulations provide an alternative means of determining the basis for the employee's highest previous rate (5 CFR 531.203(d)(3)).

In an effort to clarify and simplify the highest previous rate provisions of the regulations, OPM also proposes to make certain other changes in these regulations. For example, we are proposing to revise the definition of "highest previous rate" to make it clear that agencies have the authority to use the rate of basic pay for the highest grade and step held in a General Schedule position, even when that rate is not the highest actual rate of basic pay ever received by the employee.

In addition, we are proposing to revise the procedure for determining the maximum payable rate for Performance Management and Reconciliation System (PMRS) employees. We want to make it clear that if the employee's highest previous rate was less than or equal to the minimum rate for the grade in which pay is being set, the employee is paid the minimum rate for the new grade. If, on the other hand, the employee's highest previous rate was within the rate range of the grade in which pay is being set, a two-step procedure is used for calculating the employee's maximum payable rate. The first step in this procedure (5 CFR 531.203(c)(2)(ii)) is used to determine the employee's relative position in the former rate range. The second step in this procedure (5 CFR 531.203(c)(2)(iii)) is used to determine the maximum payable rate itself. In addition, the proposed regulations would make it clear that the maximum payable rate rules do not authorize the payment of a rate greater than the maximum rate for the grade in which pay is being set.

Finally, we propose to make certain additional changes in the rules governing the basis for an employee's highest previous rate. These changes include (1) a requirement that an employee must have actually held a position for at least 120 days before the rate of basic pay for that position can be used as the employee's highest previous rate; (2) a prohibition against using a rate earned during a temporary promotion of less than 1 year; (3) a prohibition against using a rate earned in a position from which the employee was reassigned or reduced in grade because of failure to complete a supervisory probationary period; (4) a prohibition against using a rate received under a void appointment; and (5) a prohibition against using a rate received by an employee of the government of the

District of Columbia who was first employed by that government on or after October 1, 1987. (Agencies should note that the current regulations continue to permit the use of a rate paid to an individual while employed in a position in the government of the District of Columbia. The proposed regulations would prohibit only the use of a rate received by an individual first employed in such a position on or after October 1, 1987, the date on which newly hired DC government employees became subject to newly established DC government retirement and leave systems.)

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities, since they apply only to Federal employees and agencies.

List of Subjects in 5 CFR Part 531

Government employees, Wages, Administrative practice and procedure.

U.S. Office of Personnel Management

Constance Horner,

Director.

Accordingly, OPM proposes to amend Part 531 of Title 5 of the Code of Federal Regulations as follows:

PART 531—PAY UNDER THE GENERAL SCHEDULE

1. The authority citation for Part 531 is revised to read as follows:

Authority: 5 U.S.C. 5115, 5338, and Chapter 54; Subpart B also issued under 5 U.S.C. 5303(g), 5333(a), 5334(a), 5402, and section 203 of E.O. 11721, as amended; Subpart D also issued under 5 U.S.C. 5301, 5335, and section 402 of E.O. 11721, as amended; Subpart E also issued under 5 U.S.C. 5336 and section 403 of E.O. 11721, as amended.

2. In § 531.202, paragraph (f) is revised to read as follows:

§ 531.202 Definitions.

* * * * *

(f) "Highest previous rate" means—

(1) The highest actual rate of basic pay previously received by an individual while employed in a position in a branch of the Federal Government (executive, legislative, or judicial); a Government corporation, as defined in 5 U.S.C. 103; the United States Postal Service or the Postal Rate Commission; or the government of the District of Columbia (except as provided in § 531.202(d)(2)(v) of this part); without regard to whether the position was subject to the General Schedule; or, at the discretion of the employing agency,

(2) The actual rate of basic pay for the highest grade and step previously held by an individual while employed in a position subject to the General Schedule.

* * * * *

3. In § 531.203, the introductory language in paragraph (c) and paragraphs (c)(2) and (d) are revised to read as follows:

§ 531.203 General provisions.

* * * * *

(c) *Maximum payable rate rules.* In determining an employee's rate of basic pay upon reemployment, transfer, reassignment, promotion, demotion, or change in type of appointment, the following rules apply unless the employee is entitled to a higher rate under the promotion provisions of 5 U.S.C. 5334(b) and § 531.204(a) of this part or the grade and pay retention provisions of 5 U.S.C. 5362 and 5363 and Part 536 of this chapter:

* * * * *

(2) *For PMRS employees.* The maximum rate of basic pay that may be paid an employee covered by the Performance Management and Recognition System shall be determined as follows:

(i) Compare the emplyee's highest previous rate (expressed as an annual rate) with the range of rates of basic pay *in effect at the time the highest previous rate* was earned for the grade in which pay is currently being fixed. If the employee's highest previous rate was less than or equal to the minimum rate for the grade in which pay is being fixed, the maximum rate for the grade in which pay is being fixed, the maximum rate of basic pay that may be paid the employee is the minimum rate for the grade in which pay is being fixed. If the employee's highest previous rate was equal to or greater than the maximum rate of basic pay that may be paid the employee is the maximum rate for that grade. If the employee's highest previous rate was greater than the minimum rate, but less than the maximum rate for the grade in which pay is being fixed, the maximum payable rate shall be determined as follows:

(ii) Using the pay rates in effect at the time the highest previous rate was earned for the grade in which pay is being fixed, find the difference between the employee's highest previous rate and the minimum rate for that grade—(a). Find the difference between the maximum rate and the minimum rate for the same grade—(b). Divide (a) by (b); the quotient—(c)—is a factor representing the employee's relative position in the rate range.

(iii) Using current pay rates, find the difference between the maximum rate and the minimum rate for the grade in which pay is being fixed—(d). Multiply (d) times the factor (c). Add the product of this multiplication to the minimum rate for the grade in which pay is being fixed. This figure, rounded to the next higher whole dollar, is the maximum rate of basic pay that may be paid the employee.

(d) *Basis for highest previous rate.* (1) Except as otherwise provided in this paragraph, the highest previous rate may be based on any rate of basic pay received by an individual while serving in a permanent or temporary position for at least 120 calendar days (except in the case of an employee serving under a temporary Schedule C appointment that is intended to be made permanent), with a full-time or part-time work schedule under any pay system.

(2) The highest previous rate may not be based on the following:

(i) A rate received under an appointment as an expert or consultant under 5 U.S.C. 3109;

(ii) A rate received in a position to which the employee was temporarily promoted for less than 1 year, except upon permanent placement in a position at the same or higher grade;

(iii) A rate received in a position from which the employee was reassigned or reduced in grade for failure to complete satisfactorily a probationary period as a supervisor or manager;

(iv) A rate received under a void appointment or a rate otherwise contrary to applicable law or regulation;

(v) A rate received by an employee of the government of the District of Columbia who was first employed by that government on or after October 1, 1987; or

(vi) A special rate established under 5 U.S.C. 5303 and Part 530 of this chapter; § 532.403(c) of this chapter; or other legal authority; unless, in a reassignment to another position in the same agency—

(A) The special rate of pay is the employee's current rate of basic pay;

(B) The employee has held the special rate position for 120 calendar days or more; and

(C) An agency official specifically designated to make such determinations finds that the need for the services of the employee, and his or her contribution to the program of the agency, will be greater in the position to which he or she is being reassigned. Such determinations shall be made on a case-by-case basis, and in each case the

agency shall make a written record of its positive determination to use the special rate as an employee's highest previous rate.

(3) In the case of an employee who has received or is receiving a special rate established under 5 U.S.C. 5303 and Part 530 of this matter, § 532.403(c) of this chapter, or other legal authority; who is placed in a position in which a special rate does not apply; and for whom the special rate is *not* used as the highest previous rate under paragraph (d)(2)(vi) of this section; the highest previous rate may be based on the rate of basic pay for the step (or relative position) in the regulat rate range that corresponds to the employee's existing step (or relative position) in the special rate range for the employee's current grade or pay level.

* * * * *

[FR Doc. 89-7637 Filed 3-30-89; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule; Reopening and extension of public comment period.

SUMMARY: OSMRE is announcing the reopening of public comment period on a proposed amendment to the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky Program). This is in accordance with the Surface Mining Control and Reclamation Act of 1977 (SMCRA). On February 23, 1989, Kentucky submitted additional information (Administrative Record No. KY-859) that explains six bills enacted by the 1988 Kentucky General Assembly.

OSMRE published a notice in the June 21, 1988, **Federal Register** (53 FR 23287-23289) announcing receipt of the six bills and inviting public comment on their adequacy. The public comment period closed July 21, 1988. Review of the proposed amendment identified several apparent deficiencies for five of the bills. OSMRE identified these deficiencies in a letter to Kentucky dated September 29, 1988 (Administrative Record No. KY-831).

On February 23, 1989, Kentucky responded to OSMRE's letter of September 29, 1988, by submitting additional information on five of the six bills. In view of the additional information submitted by Kentucky, OSMRE is reopening the public comment period on the proposed amendment. This action will afford the public an opportunity to review these proposals in light of the additional information provided by Kentucky.

DATES: Written comments must be received by 4:00 p.m. on May 1, 1989. Comments received after that date will not necessarily be considered in the Director's decision to approve or disapprove this amendment.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. W. Hord Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504. Copies of the Kentucky program, the proposed amendment, and all written comments received in response to this notice will be available for public review. The public may review the proposed amendment at the locations listed below during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSMRE's Lexington Field Office.

Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504, Telephone: (606) 233-7327.

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, NW., Room 5135, Washington, DC 20240, Telephone: (202) 343-5492.

Office of Surface Mining Reclamation and Enforcement, Eastern Field Operations, Ten Parkway Center, Pittsburgh, Pennsylvania 15220, Telephone: (412) 937-2828.

Department for Surface Mining Reclamation and Enforcement, No. 2 Hudson Hollow Complex, Frankfort, Kentucky 40501, Telephone: (502) 564-6940.

FOR FURTHER INFORMATION CONTACT: W. Hord Tipton, Director, Lexington Field Office, Telephone (606) 233-7327.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior conditionally approved the Kentucky regulatory program effective May 18, 1982. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the December 14, 1981 **Federal Register** (47 FR 21404-21435). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 917.15, 917.16, and 917.17.

II. Discussion of Amendments

A discussion of the original proposed amendment is contained in the June 21, 1988, **Federal Register** (53 FR 23287-23289). The additional information submitted on February 23, 1989, further explains and clarifies five of the six bills enacted by the 1988 Kentucky General Assembly. The additional information on these bills is summarized as follows:

1. Senate Bill 258

A new subsection (c) is added to Kentucky Revised Statutes (KRS) 350.093(1)(6) to limit the bonded liability of a permittee. Kentucky proposes to relieve permittees of bond liability for third party actions beyond their control and influence. Examples of actions beyond the permittee's control are illegal mining operations, disturbances by oil and gas operations, and damage to revegetation by livestock.

2. Senate Bill 338

Senate Bill 338 modifies the criteria for membership in the Kentucky bond pool and broadens the authority of the Bond Pool Commission. The Commission will operate both the bond pool program and the AML enhancement program. Both programs will be financed from one fund, the Bond Pool Fund. The additional information submitted by Kentucky on February 23, 1989, provides further explanation of the funding and liability of the Bond Pool Fund.

3. Senate Bill 377

Senate Bill 377 amends KRS 350.020 to clarify that government responsiblity for regulating surface mining rests with the State government rather than with local governments. Kentucky clarified the interpretation of the bill so as not to limit Federal authority.

4. House Bill 657

House Bill 657 modifies sections of KRS 350.060, KRS 350.093, KRS 350.130, and KRS 350.131. Kentucky provided further justification for adjusting the time frames for newspaper advertisement for bond release, notification of land owners for bond release, and notification of Kentucky's decision on bond release. In addition, Kentucky provided clarification of a punctuation error in KRS 350.093(8).

5. House Bill 709

House Bill 709 amends KRS 350.060 by deleting "penal" from the description of a bond. It adds a provision to KRS 350.151 requiring that, in the event of a forfeiture, the Cabinet shall forfeit the entire amount of the bond posted for the permit area or increment. The bill amends KRS 350.064 by substituting the term "reclamation bond" for "bond." Kentucky provided additional information and clarification on the term "reclamation bond."

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the amendments proposed by Kentucky satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Kentucky program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Lexington Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determinations

1. Compliance with the National Environmental Policy Act.

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1291(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order 12291 and the Regulatory Flexibility Act.

On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act.

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917:

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: March 23, 1989.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 89-7613 Filed 3-30-89; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 241

Conservation of Fish and Wildlife and Their Habitat, Chugach National Forest, AK

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule provides management direction for the conservation of fish and wildlife and their habitat within the Copper River-Rude River and Controller Bay areas of the Chugach National Forest in Alaska. The intended effect of this proposed rule is to establish a standard by which forest multiple-use activities can be evaluated for consistency with the conservation of fish and wildlife and their habitat. Public comment on this proposed rule is invited.

DATES: Comments must be received in writing June 29, 1989.

ADDRESSES: Send written comments to Michael A. Barton, Regional Forester, (2600) Forest Service, Box 21628, Juneau, Alaska 99802-1628.

The public may inspect comments received on this proposed rule in the office of the Director of Wildlife and Fisheries Management, Federal Office Building, Room 541, Juneau, Alaska 99802-1628 from 8:00 a.m. to 4:30 p.m. AT.

FOR FURTHER INFORMATION CONTACT: Director, Wildlife and Fisheries Management, Alaska Region (907) 586-8752 or Philip J. Janik, Assistant Director, Forest Service, Wildlife and Fisheries Management, P.O. Box 96090, Washington, DC 20090-9060 (703) 235-8016.

SUPPLEMENTARY INFORMATION:

Background and Statutory Authority

Section 501(a) of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 539) added four areas totaling 1,900,000 acres of public lands to the Chugach National Forest, Anchorage, Alaska. Section 501(b) of the Act provides that, subject to valid existing rights, the lands added to the National Forest are to be administered by the Secretary of Agriculture in accordance with the Act and the laws, rules, and regulations applicable to the National Forest System.

Section 501(b) further specifies that the Copper River-Rude River addition and the Copper River-Bering River portion of the existing Chugach National Forest ". . . be managed primarily to assure the conservation of fish and wildlife and their habitat." The Act permits the taking of fish and wildlife pursuant to the Act and other applicable State and Federal law, but specifies that only multiple-use activities consistent with the conservation of fish and wildlife and their habitat shall be permitted. Finally, section 501(b) requires the Secretary of Agriculture to issue rules and regulations to implement the provisions of this section.

National Forest System lands are managed for multiple uses and the sustained yield of products and services. As provided by the National Forest Management Act (16 U.S.C. 1600 (note)) the mix of uses and outputs from national forests is determined through the execution of a land and resource management plan in accordance with the rules at 36 CFR Part 219. The effect of section 501(b) is to recognize the outstanding fish and wildlife resource on two areas of the Chugach National Forest and to require that these values be given primacy in determining management direction for these two areas. The areas are still subject to multiple-use sustained yield management and to the land management planning process set forth by National Forest Management Act and the regulations at 36 CFR Part 219.

The effect and intent of these proposed rules is to integrate the special management direction of section 501 of ANILCA with the other statutory requirements governing the management of National Forest lands. Because there are extensive regulations governing land management planning, authorizations of special uses, and environmental analysis documentation, these proposed rules are limited to the mechanisms necessary to integrate management of the two units with those processes and

to give adequate notice to affected parties of how uses will be evaluated.

Explanation of Proposed Rule

Section 241.20 Scope and applicability

Paragraph (a) of this proposed section would establish the regulatory framework in which this rule is being promulgated; that is, that the proposed rule is supplemental to the general regulations governing use and occupancy of the National Forest both nationwide and in Alaska.

Paragraph (b) establishes the geographic area and land ownership status to which the rule applies. Geographically, the rule will apply to the Copper River-Bering River portion of the Chugach National Forest as well as the area added to the Chugach National Forest by section 501(a) of the Alaska National Interest Lands Conservation Act and referred to in that section of the Act as the "Copper/Rude River addition". In combination, the Copper River-Bering River portion of the Chugach National Forest and the Copper/Rude River addition comprise the Copper River Management Area as described and displayed in the Chugach National Forest Land and Resource Management Plan, July 1984. There are significant Non-Federal and private land holdings within the Copper River Management Area, primarily owned by the State of Alaska as well as Native Corporations organized under the provisions of the Alaska Native Claims Settlement Act. This section clarifies that the provisions of this rule do not apply to these non-Federal lands.

Paragraph (c) clarifies that the regulations have no effect on the long established responsibility and authority of the State of Alaska for management of fish and wildlife.

Paragraph (d) would provide a clear statement that the primary purpose for the management of the Copper/Rude River addition and the Copper River-Bering River portion of the Chugach National Forest as provided by section 501(b) of ANILCA is the conservation of fish and wildlife and their habitat and that direction for managing fish and wildlife resources shall be documented in the land and resource management plan.

Section 241.22 Consistency determinations

This section is the core of the regulations. It includes the standards by which multiple-use activities would be evaluted for their impacts on conservation of fish and wildlife as well as necessary administrative and procedural mechanisms for implementation.

Paragraph (a) would require that all proposed multiple-use activities be evaluated as to their consistency with the primary management purpose of conservation of fish and wildlife and their habitat. ANILCA section 501(b) clearly states that ". . . the conservation of fish and wildlife and their habitat shall be the primary purpose for the management . . ." of the Copper River Delta. As previously noted, the full range of multiple-use activities normally associated with National Forest management are also permitted by section 501(b) but only to the extent that such activities are consistent with the primary management purpose. The standards proposed in this section of the regulations are designed to ensure that permitted multiple-use activities on the Copper River Delta either (1) further the primary management purpose of conservation of fish and wildlife and their habitat, or (2) do not adversely affect the conservation of fish and wildlife and their habitat.

Paragraph (b) is an administrative provision that directs the responsible forest officer to incorporate the consistency determination required by paragraph (a) into the environmental analysis process.

Paragraph (c) would provide for the development of guidelines for carrying out or permitting specific multiple-use activities through the land management planning process required by the National Forest Management Act and implementing regulations at 36 CFR Part 219. As part of the land management planning process, the forest would identify classes or categories of uses and activities, develop generic management requirements for each, and develop prescriptions necessary to ensure that the specific proposed activity is consistent with conservation of fish and wildlife and their habitat. The responsible forest officer would evaluate a prospective activity against the guidelines in the approved forest plan in making the determination required by paragraph (a). Under the proposed rule, the guidelines would be the starting point for a more site-specific analysis of a specific proposed activity.

Paragraph (d) would affirm the authority of the responsible forest officer to incorporate into any permit or other authorization any reasonably practicable measures which are determined to be necessary to maintain consistency with the primary management purpose of conservation of fish and wildlife and their habitat. This ability to alter authorizations is fundamental to being able to achieve conservation of fish and wildlife and their habitat and is already authorized by 36 CFR 251.56, which requires that special use authorizations contain terms and conditions to "minimize damage to scenic and esthetic values and fish and wildlife habitat and otherwise protect the environment."

Likewise, paragraph (e) would affirm the authority granted at 36 CFR 25 1.60 and 251.61 for the responsible Forest Officer to terminate, suspend, revoke, or otherwise modify any activity if it is determined that such measures are required to ensure conservation of fish and wildlife and their habitat. The provision also provides for notification and the opportunity to comment to affected parties unless the provision of such opportunity would likely result in irreparable harm to the conservation of fish and wildlife and their habitat.

Paragraph (f) would affirm that these regulations in no way affect subsistence activities in accordance with § 241.23 of these regulations or other applicable law.

Section 241.23 Taking of fish and wildlife

The taking of fish and wildlife for subsistence, sport, and commercial purposes are important activities in the Copper River Management Area and paragraph (a) affirms that these activities would be allowed to continue under the proposed rule in accordance with applicable State and Federal law and regulation.

Paragraph (b) gives notice that the taking of fish and wildlife for subsistence would be continued to the extent that such takings would be consistent with the conservation of fish and wildlife and their habitats.

Similarly paragraph (c) recognizes the importance of the continued opportunity for the establishment and use of temporary facilities and equipment directly and necessarily related to the taking of fish and wildlife. However, this paragraph permits the Forest Supervisor to restrict or prohibit such uses if they materially interfere with or adversely affect fish and wildlife conservation.

Public Involvement

In addition to publishing this notice in the **Federal Register**, the Forest Service intends to ask local businesses, local government entities, the State of Alaska, affected Alaska Native Corporations, the congressional delegation, the Alaska Land Use Council and other Federal agencies to comment on these proposed regulations to ensure that interested

parties continue to be involved in their development.

Regulatory Impact

These regulations have been evaluated as to their effect on subsistence uses in accordance with section 810 of the Alaska National Interest Lands Conservation Act (Pub. L. 96–487). As a result of the evaluation, it has been determined that no significant restriction of subsistence uses will occur as a result of the promulgation of these regulations.

This proposed rule has been reviewed under Executive Order 12291, and it has been determined that it is not a major rule. The regulations will have little or no effect on the economy. Moreover, the Secretary of Agriculture has determined that this action will not have a significant economic impact on a substantial number of small entities. These regulations contain no information collection or recordkeeping requirements as defined by the Paperwork Reduction Act of 1980. Based on both past experience and environmental analysis, this proposed rule will have no significant effect on the human environment, individually or cumulatively. Therefore, this action is categorically excluded from any requirement for documentation in an environmental assessment or environmental impact statement (40 CFR 1508.4).

List of Subjects in 36 CFR Part 241

Intergovernmental relations, National Forests, Wildlife, Wildlife refuges.

Therefore, for the reasons set forth above, it is proposed to amend Title 36 of the Code of Federal Regulations, Chapter II, Part 241 as follows:

PART 241—FISH AND WILDLIFE

1. Revise the authority citation for Part 241 to read as follows:

Authority: 16 U.S.C. 472, 551, 683; 16 U.S.C. 539.

2. Revise the heading for Part 241 to read as set forth above.

3. Designate §§ 241.1, 241.2, and 241.3 as Subpart A—General Provisions.

4. Add a new Subpart B consisting of §§ 241.20–241.23 to read as follows:

Subpart B—Conservation of Fish, Wildlife, and their Habitats, Chugach National Forest, Alaska

Sec.

241.20 Scope and applicability.
241.21 Definitions.
241.22 Consistency determinations.
241.23 Taking of fish and wildlife.

Subpart B—Conservation of Fish, Wildlife, and their Habitats, Chugach National Forest, Alaska.

§ 241.20 Scope and applicability.

(a) The regulations in this subpart apply to management of the Copper River-Rude River addition and Copper River-Bering River portion of the Chugach National Forest, for the conservation of fish and wildlife and their habitat by the Alaska National Interest Lands Conservation Act (16 U.S.C. 539). These regulations supplement the general regulations governing use and occupancy of National Forest System lands nationwide in 36 CFR Part 251—Land Uses.

(b) The rules of this subpart are applicable only on Federally-owned lands within the boundaries of the Copper River-Rude River addition and the Copper River-Bering River portion of the Chugach National Forest, Alaska, known as the Copper River Management Area and as described and displayed in the Chugach National Forest Land and Resource Management Plan, July 1984.

(c) Nothing in these regulations is intended to enlarge or diminish the responsibility and authority of the State of Alaska for management of fish and wildlife.

(d) The primary purpose for the management of the Copper River-Rude River addition and the Copper River-Bering River portion of the Chugach National Forest, Alaska, is the conservation of fish and wildlife and their habitat. Consistent with the regulations at Part 219 of this chapter, direction for managing the fish and wildlife resources of these units shall be documented in the land and resource management plan for the Chugach National Forest.

§ 241.21 Definitions.

For the purposes of this subpart, the terms listed in this section shall be defined as follows:

ANILCA refers to The Alaska National Interest Lands Conservation Act, 16 U.S.C. 539.

Federally-owned lands means land and interests held or retained by the United States, but does not include those land interests: (1) tentatively approved, legislatively conveyed, or patented to the State of Alaska, or (2) conveyed or patented, in the interim, to a Native corporation or person.

Fish and wildlife means any member of the animal kingdom, including without limitation any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring thereof, or dead body or part thereof. For the purposes of this subpart, birds also includes any migratory, or endangered bird for which protection is afforded by treaty or other international agreement.

Land means lands, waters, and interests therein.

Responsible Forest Officer is the Forest Service employee who has the authority to select, authorize, permit, and/or carry out a specific multiple-use activity.

Multiple-use activity is a specific management or permitted activity, use, measure, course of action, or treatment of National Forest System lands carried out under the statutory charter of the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528(note)) and the National Forest Management Act (16 U.S.C. 1600 (note)).

§ 241.22 Consistency determinations.

(a) Subject to valid existing rights, a multiple-use activity may be permitted or authorized within the areas of the Chugach National Forest subject to this subpart only after a determination by the responsible Forest Officer that such activity is consistent with the conservation of fish, wildlife, and their habitats. A use of activity may be determined to be consistent if it will not materially interfere with or detract from the conservation of fish, wildlife, and their habitat.

(b) Where the responsible forest officer prepares an environmental assessment (EA) or environmental impact statement (EIS) or decision memorandum categorically excluding an activity from documentation in an EA or EIS, pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321(note)) for a proposed multiple-use activity, the consistency determination required by this section for the use or activity shall be included as a part of such document.

(c) Guidelines that are consistent with this section may be developed for specific multiple-use activities as a part of the planning and implementation process required by the National Forest Management Act and the implementing regulations at 36 CFR Part 219.

(d) Subject to valid existing rights, the responsible Forest Officer may incorporate into any permit or other authorization issued pursuant to 36 CFR Part 251 or the regulations of this subpart any reasonably practicable measures that are determined to be necessary to maintain consistency with this section.

(e) Subject to valid existing rights, the responsible Forest Officer may

terminate, suspend, restrict, or require modification of any activity if it is determined that such measures are required to conserve wildlife, fish, or their habitat. Prior to taking action to terminate, suspend, restrict, or require modification of an activity under this section, the responsible Forest Officer shall give affected parties reasonable prior notice and an opportunity to comment, unless it is determined that doing so would likely result in irreparable harm to conservation of fish, wildlife, and their habitat.

(f) Nothing in this section affects subsistence activities in accordance with § 241.23 of this subpart or other applicable law.

§ 241.23 Taking of fish and wildlife.

(a) The taking of fish and wildlife by hunting, trapping, and fishing from lands subject to the rules of this Subpart is authorized in accordance with applicable State and Federal law.

(b) To the extent consistent with the conservation of fish and wildlife and their habitat in accordance with recognized scientific management principles, local rural residents who depend upon the Chugach National Forest for subsistence needs shall continue to have the opportunity to engage in a subsistence way of life on the lands to which this Subpart is applicable pursuant to applicable State and Federal law.

(c) To the extent consistent with the conservation of fish and wildlife and their habitat, the continuance of existing uses and the future establishment and use of temporary campsites, tent platforms, shelters, and other temporary facilities and equipment directly and necessarily related to the taking of fish and wildlife may be authorized in accordance with applicable law and regulations. However, the Forest Supervisor may restrict or prohibit facilities or uses on the Copper River-Rude River addition or Copper River-Bering River area if it is determined, after adequate notice to the affected parties, that the continuance of such facilities or uses would materially interfere with or adversely affect the conservation of fish and wildlife and their habitat.

Date: March 7, 1989.

F. Dale Robertson,

Chief.

[FR Doc. 89-7617 Filed 3-20-89; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 795 and 799

[OPTS-42085B; FRL-3546-6]

Diethylene Glycol Butyl Ether and Diethylene Glycol Butyl Ether Acetate; Pharmacokinetics Test Standard and Reporting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the pharmacokinetics test standard in 40 CFR 795.225 by revising the dose occlusion requirements for diethylene glycol butyl ether (DGBE) and diethylene glycol butyl ether acetate (DGBA) in the conduct of the study, reducing the dermal exposure time of the test animals to DGBA and DGBE from 96 to 24 hours, and adding a requirement to administer a neat low dose of DGBE to an additional group of animals. EPA is also proposing to amend the associated test rule in 40 CFR 799.1560 by modifying the submission of the progress and final pharmacokinetics test reports to EPA. These amendments are in response to the test sponsor's request to amend the rules because of documented difficulties encountered in attempting to perform the pharmacokinetics test.

DATES: Submit written comments on or before May 1, 1989. If persons request an opportunity to submit oral comments by May 1, 1989, EPA will hold a public meeting on this proposed rule in Washington, DC. For further information on arranging to speak at the meeting, see Unit VI of this preamble.

ADDRESS: Submit written comments, identified by the document control number (OPTS-42085B) in triplicate to: TSCA Public Docket Office (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. NE-G004, 401 M Street SW., Washington, DC 20460. (202) 554-1404.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. EB-44, 401 M Street SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: EPA is proposing to amend the dermal pharmacokinetics test standard and final rule for DGBE and DGBA by reducing the exposure time to the test substance in the pharmacokinetics test and extending the reporting deadlines.

I. Background

EPA issued a final rule under TSCA section 4(a)(1)(A) and (B), published in the **Federal Register** of February 26, 1988 (53 FR 5932), that established health effects testing requirements for DGBE and DGBA. The rule required dermal pharmacokinetics testing in rats to determine the absorption and biotransformation of DGBE administered dermally, and the dermal absorption of DGBA. The test standard, in 40 CFR 795.225(b)(2)(iv)(E), required that rats be dosed once dermally, and that the dose be kept on the skin for the duration of the study (96 hours). After dosing, the animals were to be placed in metabolism cages for excreta collection for at least 96 hours and, if necessary, daily thereafter until at least 90 percent of the dose had been excreted, or until 7 days after dosing. The final rule required completion of this test and submission of a final report by April 11, 1989, 12 months after the effective date of the final rule, 40 CFR 799.1560(c)(4)(ii).

On July 25, 1988, the Chemical Manufacturers Association (CMA) contacted EPA concerning the pharmacokinetics test requirement to occlude the dosed area with an aluminum patch secured in place with adhesive tape, 40 CFR 795.225(b)(2)(ii)(B). CMA requested that the test sponsor, Eastman Kodak, be allowed to use a glass containment device to occlude the dosed area instead of the aluminum foil patch required by the test standard (Ref. 1). EPA requested that CMA submit a formal request to make this change. CMA did so on September 8, 1988 (Ref. 2).

In the interim, CMA reported difficulties with test substance leakage and with keeping the glass cell containment device on the animals' backs for more than 24 hours (Ref. 3). EPA officials had several discussions and a meeting with CMA and Eastman Kodak concerning alternative techniques which might enable a 96-hour dermal exposure (Refs. 5 and 6). EPA also gave CMA a copy of a similar study which had achieved a 96-hour dermal exposure time (Refs. 8 and 9). As a result, the Eastman Kodak laboratory conducted a number of pilot studies to test different wrapping techniques, occlusive devises, and brands of glue (Refs. 2, 6, 10). None of these studies was successful in maintaining the test substance in contact with the animals' backs for more than 24 to 48 hours (Ref. 2).

CMA, therefore, proposed that the requirement to keep the test substance on the animals' backs be reduced from

96 hours to 24 hours. CMA also requested that the requirement to occlude the dosed area with an aluminum patch be eliminated because it had been shown to be ineffective (Ref. 2). CMA proposed that any test material remaining on the skin 24 hours after application be washed off at that time and the cell removed. Radiolabelled material in the wash would be accounted for in the total recovery, and excreta would continue to be collected and analyzed at 48, 72, and 96 hours, and daily thereafter up to 7 days if necessary. CMA also proposed repeating the already completed low dose DGBA study using this procedure so that the test methodologies would be comparable, even though it appeared that all the low dose DGBA had been absorbed by 24 hours (Ref. 2).

Precedent exists for this proposed modification, since other section 4 rules and consent orders have required dermal exposure times of 24 hours or less. The only other final test rule, besides DGBE and DGBA, which required a dermal pharmacokinetics test with a 96-hour exposure period was 2-ethylhexanoic acid (EHA), 40 CFR 799.1650 (Ref. 7). Eastman Kodak was also the test sponsor for this experiment with EHA. No leakage problems were encountered with EHA, however, because EHA was absorbed before the glass cells dislodged from the animals' backs (Ref. 4).

In the course of the discussions between EPA and CMA, EPA suggested and CMA agreed that a neat (i.e. undiluted, nonaqueous) low dose would make the data more comparable to the neat high dose in the pharmacokinetics study, and would avoid introducing confusion due to the different absorption properties of water (Ref. 6). At the same time, there are advantages to having an aqueous low dose of DGBE. The low dose allows comparison with the aqueous low dose of DGBE in the subchronic toxicity and neurotoxicity studies (Ref. 2). It also mimics a common condition of human exposure, in which a DGBE-containing product is diluted in water. Kodak has, therefore, volunteered to add another group of eight animals so that the low-dose DGBE experiment could be done with both aqueous and neat doses (REf. 2). Accordingly, EPA proposes this modification and believes it will produce more useful results.

CMA did not offer to conduct a neat low-dose test with DGBA, although, as with DGBE, it would improve comparability of low-dose and high dose data.

There is less reason to use an aqueous low dose of DGBA, since it is not diluted in water in consumer applications. Further, there are no required studies of DGBA with a aqueous dilutions that EPA could compare with the absorption studies. Although not specifically required by the test standard, it is EPA's understanding that Eastman Kodak will use an aqueous low dose DGBA.

Eastman Kodak has suspended the pharmacokinetics testing of DGBE and DBGA until the problems discussed above can be resolved. CMA has requested an extension of the reporting deadline for the pharmacokinetics study that would require submission of final reports 10 months after CMA is notified about EPA's decision concerning the proposed modifications. Kodak supported CMA's request with a detailed plan listing the time to complete key study phases (Ref. 10). EPA agrees that the reporting deadlines should be extended. However, due to the considerable experience that Eastman Kodak has had to date in attempting to perform this test, and the fact that certain study phases can be run concurrently, EPA believes that 8 months is sufficient to complete the test and submit results.

II. Proposed Modifications

Based on the difficulties encountered and documented by Eastman Kodak in attempting to perform the pharmacokinetics test of DGBE and DGBA as required by the section 4 test rule, EPA proposes to modify the pharmacokinetics test standard as follows:

Section 795.225(b)(2)(iv)(E) will require that the test substance be kept on the animal for 24 hours instead of 96 hours. After 24 hours, any test material remaining on the skin will be washed off and the containment cell removed. Radiolabeled material in the wash will be accounted for in the total recovery. Urine and feces will be collected at 8, 24, 48, 72, and 96 hours after dosing, and if necessary, daily thereafter until at least 90 percent of the dose has been excreted or until 7 days after dosing (whichever occurs first).

Under § 795.225(b)(2)(ii)(B), EPA proposes to eliminate the requirement to occlude the dosed area with an aluminum foil patch secured in place with adhesive tape.

In order to produce better data, CMA has volunteered to test two low doses of DGBE, one neat and one a 10 percent aqueous solution. EPA, therefore, proposes that § 795.225(b)(2)(ii)(A) be modified to reflect this.

III. Proposed Extension

Due to the need to suspend pharmacokinetics testing because of technical problems, it is proposed that the reporting deadlines under § 799.1560(c)(4)(ii) (A) and (B) be modified to allow 8 months from the effective date of the amendment for the completion of the test and submission of final results. One progress report would be due 6 months after the effective date of the final amendment.

IV. Economic Analysis

The modifications in this proposed amendment will not significantly alter the cost of testing. Thus, the economic analysis for the final test rule for DGBE and DGBA is unchanged.

V. Issue for Comment

Should the low dose of DGBA be administered neat for better comparison with the neat high dose, or would an aqueous dilution of the low dose which is equal in volume to the high dose be a better study of absorption properties?

VI. Public Meetings

If persons indicate to EPA that they wish to present oral comments on this proposed amendment to EPA officials who are directly responsible for developing the amendment and supporting analyses, EPA will hold a public meeting after the close of the public comment period in Washington, DC. Persons who wish to attend or to present comments at the meeting should call the TSCA Assistance Office (TAO): (202) 554–1404, by May 1, 1989. A meeting will not be held if members of the public do not indicate that they wish to make oral presentations. While the meeting will be open to the public, active participation will be limited to those persons who arrange to present comments and to designated EPA participants. Persons wishing to attend should call the TAO before making travel plans to verify whether a meeting will be held.

Should a meeting be held, EPA would transcribe the meeting and include the written transcript in the rule-making record. Participants are invited, but not required, to submit copies of their statements prior to or on the day of the meeting. All such written materials will become part of EPA's record for this rulemaking.

VII. Rulemaking Record

EPA has established a record for this rulemaking (docket number OPTS–42085B). This record includes information considered by the EPA in developing this proposed amendment and appropriate **Federal Register** notices.

This record includes the following information:

A. Supporting Documentation

(1) **Federal Register** notices consisting of:

(a) Notice of proposed test rule for DGBE and DGBA (51 FR 27880; August 4, 1986).

(b) Notice of final test rule for DGBE and DGBA (53 FR 5932; February 26, 1988).

(2) Communications consisting of:

(a) Letters.

(b) Contact reports of telephone conversations and meetings.

B. References

(1) USEPA. Contact report of phone conversation between Fred DiCarlo, Health and Environmental Review Division, Office of Toxic Substance (OTS), and Dr. Carol Stack, Chemical Manufacturers Assoc. (CMA), Washington, DC (July 25, 1988).

(2) CMA. Letter from Dr. Geraldine Cox, CMA, to the Director, Office of Compliance Monitoring, Office of Pesticides and Toxic Substances, USEPA, (September 8, 1988).

(3) USEPA. Contact report of phone conversation between Catherine Roman, Test Rules Development Branch (TRDB), and Dr. Carol Stack, CMA. (August 3, 1988).

(4) USEPA. Contact report of phone conversation between Catherine Roman, TRDB, and Dr. Carol Stack (CMA). (August 29, 1988).

(5) USEPA. Contact report of phone conversation between Catherine Roman, TRDB, and Dr. Carol Stack, CMA. (August 5, 1988).

(6) USEPA. Contact report of meeting between EPA officials and Dr. Carol Stack, CMA, and Dr. Derek Guest, Eastman Kodak. (August 23, 1988).

(7) Notice of final test rule for 2-Ethylhexanoic Acid (51 FR 40318; November 6, 1986).

(8) Southern Research Institute, Birmingham, Alabama 35255–5305. "Absorption and Disposition of 2-mercaptobenzothiazole-Ring-UL-^{14}C and 2-Mercaptobenzothiazole Disulfide-Ring-UL-^{14}C in Fischer 344 Male and Female Rats and Female Guinea Pigs Dosed Topically." SoRI-86-1200, Report 5873-V, Contract RA-4.0-SRI PHARM. Contracted by CMA, Washington, DC. (May 27, 1987).

(9) USEPA. Letter from Richard Troast, TRDB, to Dr. Carol Stack, CMA. (October 19, 1988).

(10) CMA. Letter and attachments from Dr. Carol Stack, CMA, to the Director, Office of Compliance Monitoring, Office of Pesticides and Toxic Substances, USEPA (November 16, 1988).

VIII. Other Regulatory Requirements

A. Executive Order 12291

EPA judged that the final test rule was not subject to the requirement of a Regulatory Impact Analysis under Executive Order 12291. EPA has determined that the proposed modifications to the rule do not alter this determination.

This proposed amendment was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, (5 U.S.C. 601 *et seq.*, Publ. L. 96-354, September 19, 1980), EPA certified that the final test rule would not have a significant impact on a substantial number of small businesses. The proposed changes to the final rule will not change this determination.

C. Paperwork Reduction Act

The information collection requirements associated with this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2070-0033.

EPA has determined that this proposed rule does not change existing recordkeeping or reporting requirements nor does it impose any additional recordkeeping or reporting requirements on the public.

Send comments regarding this rule to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 40 CFR Parts 795 and 799

Chemicals, Environmental protection, Hazardous substances, Laboratories, Recordkeeping and reporting requirements, Testing.

Dated: March 21, 1989.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR Chapter I, Subchapter R, be amended as follows:

PART 795—[AMENDED]

1. In Part 795:

a. The authority citation would continue to read as follows:

Authority: 15 U.S.C. 2603.

b. In § 795.225 by revising paragraphs (b)(2)(ii) (A), (B), and (iv)(E) to read as follows:

§ 795.225 Dermal pharmacokinetics of DGBE and DGBA.

* * * * *

(b) * * *

(2) * * *

(ii) *Dosage and treatment.* (A) Two doses of DGBA shall be used in the study, a "low" dose and a "high" does. Three doses of DGBE shall be used in the study, a neat "low" dose, an aqueous "low" dose, and a neat "high" dose. When administered dermally, the "high" dose level should ideally induce some overt toxicity such as weight loss. The "low" dose level should correspond to a no observed effect level.

(B) For dermal treatment, the doses shall be applied in a volume adequate to deliver the prescribed doses. The backs of the rats should be lightly shaved with an electric clipper shortly before treatment. The dose shall be applied with a micropipette on a specific area (for example, 2 cm^2) on the freshly shaven skin.

* * * * *

(iv) * * *

(E) The high and low doses of ^{14}C-DGBE and ^{14}C-DGBA shall be kept on the skin for 24 hours. After application, the animals shall be placed in metabolism cages for excreta collection. After 24 hours, any test material remaining on the skin will be washed off and the containment cell removed. Radiolabeled material in the wash will be accounted for in the total recovery. Urine and feces shall be collected at 8, 24, 48, 72, and 96 hours after dosing, and if necessary, daily thereafter until at least 90 percent of the dose has been excreted or until 7 days after dosing (whichever occurs first).

* * * * *

PART 799—[AMENDED]

2. In Part 799:

a. The authority citation would continue to read as follows:

Authority: 15 U.S.C. 2063, 2611, 2625.

b. In § 799.1560 by revising paragraphs (c)(4)(ii) (A), (B), and (e) to read as follows:

§ 799.1560 Diethylene glycol butyl ether and diethylene glycol butyl ether acetate.

* * * * *

(c) * * *

(4) * * *

(ii) * * *

(A) The pharmacokinetics tests shall be completed and the final reports submitted to EPA within 8 months of the effective date of the final amendment.

(B) A progress report shall be submitted to EPA 6 months from the effective date of the final amendment.

* * * * *

(e)(1) 40 CFR 799.1560 is effective on April 11, 1988 except for the provisions of paragraphs (c)(4)(ii) (A) and (B) which are effective on (insert 44 days after publication of the final rule).

(2) The guidelines and other test methods cited in this section are referenced here as they exist on April 11, 1988 except for the provisions in 40 CFR 795.225(b)(2)(ii) (A) and (B) and (iv)(E) of this Chapter, which are effective on (insert 44 days after publication of the final rule).

* * * * *

[FR Doc. 89-7627 Filed 3-30-89; 8:45 am]

BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 54, No. 61
Friday, March 31, 1989

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

March 24, 1989.

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.

Reinstatement

- Farmers Home Administration, 7 CFR 1910–A, Receiving and Processing Applications, None, Recordkeeping; On occasion, Individuals or households; Farms; Businesses or other for-profit; 225,000 responses; 200,900 hours; not applicable under 3504(h), Jack Holston (202) 382–9736.
- Farmers Home Administration, Application for FmHA Services, FmHA–410–1, On occasion, Individuals or households; Farms; Businesses or other for-profit; Small businesses or organizations; 80,000 responses; 80,000 hours; not applicable under 3504(h), Jack Holston (202) 382–9736.

Donald E. Hulcher,
Acting Departmental Clearance Officer.

[FR Doc. 89–7616 Filed 3–30–89; 8:45 am]

BILLING CODE 3410–01–M

Commodity Credit Corporation

Milk Price Support Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of milk price support level and Commodity Credit Corporation milk support purchase prices.

SUMMARY: This notice affirms the determination of the Secretary of Agriculture that the support price for milk containing 3.67 percent milkfat shall be $11.10 per hundredweight (cwt.) for the period April 1 through June 30, 1989. The prices at which butter, cheese and nonfat dry milk will be purchased by the Commodity Credit Corporation ("CCC") in order to support the price of milk at that level are also set forth in this notice.

EFFECTIVE DATE: April 1, 1989.

FOR FURTHER INFORMATION CONTACT: Indulis Kancitis, Dairy Division, ASCS–USDA, 5747 South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–3385.

The Final Regulatory Impact Analysis regarding this Notice of Determination is available from Charles N. Shaw, Dairy/Sweeteners Group, ASCS–USDA, P.O. Box 2415, Washington, DC 20013, (202) 447–7601.

SUPPLEMENTAL INFORMATION: This Notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "major" since the provisions of this notice will have an effect on the economy exceeding $100 million.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loans and Purchases; Number—10.051, as found in the Catalog of Federal Domestic Assistance.

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

It has been determined by an environmental evaulation that the determination set forth in this notice is not expected to have any significant impact on the quality of the human environment. In addition, this action will not adversely affect environmental factors such as water quality or air quality. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is required.

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

In accordance with section 201(d) of the Agricultural Act of 1949 ("1949 Act"), as amended by section 101 of the Food Security Act of 1985 (Pub. L. 99–198) ("1985 Act"), the Secretary of Agriculture, through CCC, for the period January 1, 1986 through December 31, 1990, supports the price of milk by purchases of milk and milk products; specifically, by the purchase of butter, nonfat dry milk and cheese. Section 102 of the 1985 Act provides that the notice and rulemaking provisions of 5 U.S.C. 553 shall not apply with respect to the implementation by the Secretary of section 201(d), including determinations made regarding the level of price support for milk.

Section 102 of the Disaster Assistance Act of 1988 (Pub. L. 100–387) provides that the rate of price support for milk in effect under section 201(d) of the 1949 Act immediately before April 1, 1989, shall be increased by 50 cents throughout the period beginning on April 1, 1989 and ending on June 30, 1989.

The Secretary has previously announced (54 FR 1197) that the support price for milk containing 3.67 percent milkfat would be continued at $10.60 per hundredweight for the period January 1, 1989 through March 31, 1989.

Pursuant to section 102 of the 1988 Act, it has been determined that the support price for milk containing 3.67 percent milkfat shall be $11.10 per hundredweight for the period beginning April 1, 1989, and ending on June 30,

1989. It has been further determined that purchases by the CCC of butter, cheese, and nonfat dry milk at the prices set forth in this notice wil support the price of milk at that price support level. Because of current market conditions, all of the price support increase, with respect to CCC purchases of butter and nonfat dry milk, has been applied to the CCC purchase price for nonfat dry milk.

The purchase prices set out in this notice are subject to additional terms and conditions as CCC may announce. CCC milk support purchase prices for the period following June 30, 1989, will be announced at a later time.

Determinations

Accordingly:

(1) The level of price support for the period April 1 through June 30, 1989, shall be $11.10 per cwt. for milk containing 3.67 percent milkfat.

(2) The purchase of butter, cheese, and nonfat dry milk produced on or after April 1, 1989, at the prices set forth below will support the price of milk at a rate equivalent to $11.10 per cwt. for milk containing 3.67 percent milkfat. Therefore, effective April 1, 1989, through June 30, 1989, CCC purchase prices for butter, cheese, and nonfat dry milk shall be as follows:

	Products produced before Apr. 1, 1989	Products produced on or after Apr. 1, 1989
	Dollars per pound	
Butter, 64- & 68-lb. blocks: (U.S. Grade A or higher)	1.3200	1.3200
Nonfat dry milk (spray), 50-lb. bags: (U.S. Extra Grade, but not more than 3.5 percent moisture) Nonfortified	0.7275	0.7900
Fortified (Vitamins A and D)	0.7375	0.8000
Cheddar cheese, standard moisture basis: [1] 40- & 60-pound blocks, U.S. Grade A or higher (No vat shall contain more than 38.5 percent moisture)	1.1525	1.2025
500 lb. in fiber barrels, U.S. Extra Grade (No vat shall contain more than 36.5 percent moisture)	1.1125	1.1625

[1] The cheese price will be adjusted for moisture content as shown in the Moisture Adjustment Cheese Price Chart (Form ASCS-150).

(3) Further terms and conditions for CCC price-support purchases of butter, cheese, and nonfat dry milk will be set forth in CCC purchase announcements for such purchases.

Authority: 7 U.S.C. 1446; 15 U.S.C. 714b and c; 7 U.S.C. 1446 note.

Signed at Washington, DC on March 27, 1989.

Milton J. Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89-7684 Filed 3-30-89; 8:45 am]

BILLING CODE 3410-05-M

Farmers Home Administration

Department of Agriculture Programs and Activities Excluded From Executive Order 12372

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule related notice.

SUMMARY: The purpose of this Notice is to inform all interested persons that the Farmers Home Administration's Technical Assistance and Training Grants Program (TAT) is being excluded from coverage under Executive Order (EO) 12372, "Intergovernmental Review of Federal Programs." A full understanding of the requirements of the Order may be gained by referring to the final rules published in 7 CFR Part 3015, Subpart V, at 48 FR 29115, dated June 24, 1983.

DATE: March 31, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. T. W. Davis, Loan Specialist, Water and Waste Disposal Division, FmHA, Room 6338—South Building, Washington, DC 20250 (Telephone 202-382-9586).

SUPPLEMENTARY INFORMATION:

Background

On November 3, 1988, the Department published a Notice (53 FR 44505), which proposed to exclude the Technical Assistance and Training Grants Program from coverage under Executive Order 12372 on the basis that it does not directly affect State and local governments. Comments were invited on or before December 5, 1988.

Discussion of Comments

Only three comments were received during the comment period. Two of the commenters stated they would continue to review all grant applications for Federal Assistance. One commenter indicated that even though the recipients for the TAT Grants are private nonprofit organizations, the end result of the technical assistance could have an effect on a governmental entity that owns a system. It is acknowledged that a governmental entity may be affected by technical assistance and/or training given by the recipient, however, since funds cannot be used for construction or development, intergovernmental review would not be required. If the assistance were to result in the entity proposing development or construction to be Federally financed, the "Intergovernmental Review of Federal Programs," would come into play when either a preapplication or application for federal assistance was filed. After carefully considering the comments, it is believed that the intent of the Executive Order is being met. Therefore, the following program, listed by Catalog of Federal Domestic Assistance number, is excluded from the scope of Executive Order 12372.

10.436 Technical Assistance and Training Grants.

Date: March 27, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89-7696 Filed 3-30-89; 8:45 am]

BILLING CODE 3410-07-M

Forest Service

Woewodski Island; Stikine Area Tongass National Forest, Petersburg, AK; Environmental Impact Statement Cancellation

The Department of Agriculture, Forest Service, is postponing its proposal to harvest timber from Woewodski Island until further notice.

The Notice Of Intent, published in the **Federal Register** of Monday, May 12, 1986 is hereby rescinded (45 FR 54386). Another Notice of Intent will be published when the proposal is again considered.

For further information contact: David C. Schmitt; Timber Management Assistant, Petersburg Ranger District, Box 1328, Petersburg, AK 99833, telephone 907-772-3871.

Ronald R. Humphrey,

Forest Supervisor.

Date: March 21, 1989.

[FR Doc. 89-7724 Filed 3-30-89; 8:45 am]

BILLING CODE 3410-11-M

Appalachian Integrated Pest Management Gypsy Moth Demonstration Project

AGENCY: Forest Service, USDA.

ACTION: Notice of a record of decision.

SUMMARY: On March 20, 1989 the Northeastern Area Director for State and Private Forestry made the decision to select Alternative 5 for implementing the Appalachian Integrated Pest Management (AIPM) Gypsy Moth Demonstration Project in Virginia and

West Virginia. The Director of the National Park Service, a cooperating agency in preparing the EIS, has adopted the AIPM EIS and agreed to implement Alternative 5 on lands administered by the National Park Service. The primary objective of this project is to slow the spread and reduce adverse effects of gypsy moth within the Project Area. The Project Area includes 18 counties in Virginia and 20 counties in West Virginia totaling approximately 12.8 million acres of private, municipal, county, State and Federal lands. Under the selected alternative (one of 6 considered in detail) gypsy moth populations could be treated in the General Project Area using gypsy moth-specific tactics, biological tactics and the chemical insecticide diflubenzuron. Treatment of gypsy moth populations in wilderness and National Park Service lands zoned as "natural", would not normally be considered. However, if specific extenuating circumstances caused by high population levels of gypsy moth occur with the potential to cause significant adverse effects to these areas, treatment with gypsy moth specific tactics or biological tactics would be considered.

DATE: The Record of Decision was signed on March 20, 1989.

ADDRESSES: The final environmental impact statement and record of decision may be reviewed at the Northwestern Area Directors Office, 370 Reed Rd., Broomall Pennsylvania, or the AIPM Program Managers Office, 180 Canfield St., Morgantown, West Virginia. Copies of the documents are available upon request from these offices.

FOR FURTHER INFORMATION CONTACT: Questions concerning the project on National Forest System lands should be directed to: Forest Supervisor, George Washington National Forest, P.O. Box 233, Harrison Plaza, Harrisburg, VA 22801, Phone (703) 433-2491; Forest Supervisor, Monongahela National Forest, USDA Bldg., Sycamore St., Box 1548, Elkings, WV 26241-1548, Phone (304) 636-1800; Forest Supervisor, Jefferson National Forest, 210 Franklin Road SW., Roanoke, VA 24001, Phone (703) 982-6270. Questions concerning the project on the National Park Service lands should be directed to the Park Superintendent, Shenandoah National Park, Route 4, Box 292, Luray, VA 22835-9051, Phone (703) 999-2243 or Park Superintendent, Blue Ridge Parkway, 700 Northwestern Bank Building, Asheville, NC, 28801, Phone (704) 259-0718.

SUPPLEMENTARY INFORMATION: This decision as it pertains to National Forest System lands is subject to appeal pursuant to 36 CFR Part 217 (published in the **Federal Register**, Volume 54, No. 13, January 23, 1989). Notices of appeal must be in writing and filed within 90 days of the date below and submitted to: Chief, USDA Forest Service, South Building, 12th and Independence Avenue, SW., Washington, DC 20250.

Simultaneously, a copy of the notice of appeal must be sent to the Northeastern Area Director for State and Private Forestry, 370 Reed Rd., Broomall, PA, 19008.

Leigh S. Beck,

Deputy Director, N.E. Area.

Date: March 23, 1989.

[FR Doc. 89-7725 Filed 3-30-89; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Bliss Township Lake Park Critical Area Treatment Measure, MI

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of 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 Bliss Township Park RC&D Measure, Emmet County, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. Homer R. Hilner, State Conservationist, Soil Conservation Service, 1405 South Harrison Road, East Lansing, Michigan 48823, telephone 517-337-6702.

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. A contact has been made with the State Historical Preservation Officer and concludes that it will have no effect on any cultural resources either eligible for or listed on the National Register of Historic Places. The state Archaeologist will be contacted if any land disturbance associated with this project and archaeological sites, features, or materials are encountered during actual construction. As a result of these findings, Mr. Homer R. Hilner, state Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This measure concerns a plan for the installation of measures for critical area treatment. The planned works of improvement include the following items: 11 acres of beachgrass plantings, 2,200 feet of wood vehicle barriers, 200 feet of rock vehicle barriers, 150 feet of erosion control walkway, 600 feet of wood chip trail and one project sign. Total construction cost is $46,000; RC&D funds will pay 50% and local funds will pay 50%.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Homer R. Hilner. The FONSI has been sent 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.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Homer R. Hilner,

State Conservationist.

Date March 23, 1989.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requries intergovernmental consultation with State and local officials.)

[FR Doc. 89-7726 Filed 3-30-89; 8:45 am]

BILLING CODE 3410-16-M

Hanbury Lake Park Critical Area Treatment Measure, MI

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of 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 Hanbury Lake Park RC&D Measure, Dickinson County, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. Homer R. Hilner, State

Conservationist, Soil Conservation Service, 1405 South Harrison Road, East Lansing, Michigan 48823, telephone 517-337-6702.

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. A contact has been made with the State Historical Preservation Officer and concludes that it will have no effect on any cultural resources either eligible for or listed on the National Register of Historic Places. The State Archaeologist will be contacted if any land disturbance associated with this project and archaeological sites, features, or materials are encountered during actual construction. As a result of these findings, Mr. Homer R. Hilner, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This measure concerns a plan for the installation of measures for critical area treatment. The planned works of improvement include the following items: 300 ft. of fencing, 500 ft. of stairs, 900 yds. of earth fill, 1.5 acres of tree planting, 250 yds. of topsoil, 25 yds. of gravel, 450 ft. of diversion, 4 acres of seeding, 10 tons of mulch, 1 ton of fertilizer, 700 ft. of trail, 140 tons of wood chips, 12 tons of lime and one project sign. Total construction cost is $28,000; RC&D funds will pay 65% and local funds will pay 35%.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Homer R. Hilner. The FONSI has been sent 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.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Homer R. Hilner,

State Conservationist.

Date: March 23, 1989.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

[FR Doc. 89-7727 Filed 3-30-89; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC 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).

Agency: Bureau of the Census.

Title: Survey of Income and Program Participation—1988 Panel Wave 6.

Form Numbers: Agency—SIPP 8600 Wave 6 Questionnaire, SIPP 8605 (L) Introductory Letter; OMB—0607-0595.

Type of Request: Revision.

Burden: 24,360 respondents; 12,180 reporting hours.

Average Time Per Response: 30 minutes.

Needs and Uses: This survey will provide statistics concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. These data are used by the Executive and Legislative branches to formulate domestic policy.

Affected Public: Individuals or households.

Frequency: One time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle 395-7340.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Don Arbuckle, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20530.

Dated: March 24, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-7610 Filed 3-30-89; 8:45 am]

BILLING CODE 3510-07-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC 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).

Agency: Bureau of Export Administration.

Title: National Security Assessment of Defense Subcontractor Foreign Dependency.

Form Number: Agency-BXA 9061; OMB-N/A.

Type of Request: New Collection.

Burden: 1,000 respondents; 1,500 reporting hours. Average time per respondent is 1.5 hours.

Needs And Uses: As specified in Executive Order 12656, the Department is responsible for performing industry analyses to assess the capabilities of the commercial industrial bases to support the national defense. In this capacity, the Department has been asked to do a joint study with the Department of the Navy to evaluate the extent of foreign sourcing and its impact on the production of three Navy systems. Vulnerabilities and other problems related to foreign dependency by subcontractors will be identified and corrective options recommended to the Defense community.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations.

Frequency: One-time only.

Respondent's Obligation: Mandatory.

OMB Desk Officer: John Horrigan, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Horrigan, OMB Desk Officer, Room 32308, New Executive Office Building, Washington, DC 20503.

Dated: March 27, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-7673 Filed 3-30-89; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC 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).

Agency: United States Travel and Tourism Administration.

Title: Survey of International Air Travelers.

Form Number: Agency—N/A; OMB—0605-0007.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 165,600 respondents; 24,840 reporting hours. Average minutes per response is nine.

Needs and Uses: The National Tourism Policy Act directs the Department to assist in the collection, analysis, and dissemination of tourism data. This survey provides consumer marketing data on international travelers and is used to identify and analyze specific foreign travel markets. It is used by private and public sector entities in developing marketing programs.

Affected Public: Individuals.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Donald Arbuckle, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Donald Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 27, 1989.

Edward Michals,

Department Clearance Officer, Office of Management and Organization.

[FR Doc. 89-7674 Filed 3-30-89; 8:45 am]

BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget (OMB).

DOC 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).

Agency: Bureau of the Census.

Title: Recordkeeping Practices Survey.

Form Number: EC-92-1 through EC-92-5.

Type of Request: New Collection.

Burden: 5000 hours.

Number of Respondents: Mail—2000, Interview—250.

Average Hours Per Response: Mail—2 hrs., Interview—4 hrs.

Needs and Uses: The Bureau of the Census will use the Recordkeeping Practices Survey to determine if recordkeeping practices have changed over the past few years and how these changes affect our ability to collect data.

Affected Public: Businesses or other for-profit institutions.

Frequency: One time only.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Don Arbuckle, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 37-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 28, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-7675 Filed 3-30-89; 8:45 am]

BILLING CODE 3510-07-M

Agency Form Under Review by the Office of Management and Budget (OMB).

DOC 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).

Agency: Bureau of the Census.

Title: 1990 Decennial Census—Post-census Local Review Recanvass.

Form Number: D-111A.

Type of Request: New Collection.

Burden: 30,560 hours.

Number of Respondents: 995,000.

Average Hours Per Response: 2 minutes.

Needs and Uses: This survey will provide local and tribal governments the opportunity to: participate in a review of preliminary census counts; inform the Census Bureau of possible count discrepancies; and have major problems field reviewed before completion of the census. Enumerators recanvass selected geographical areas with count discrepancies to resolve possible coverage or geographic coding problems. The data are used by the Census Bureau to update final census counts.

Affected Public: Individuals or households.

Frequency: One time only.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Don Arbuckle, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 37-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 28, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-7676 Filed 3-30-89; 8:45 am]

BILLING CODE 3510-07-M

Foreign-Trade Zones Board

[Docket No. 41-87]

Foreign-Trade Zone 41—Milwaukee, Wisconsin Withdrawal of Application for Proposed Subzone for Square D Company, Milwaukee

Notice is hereby given of the withdrawal of the application submitted by the Foreign-Trade Zone of Wisconsin, Ltd., grantee of Foreign-Trade Zone 41, for a subzone at the industrial computer and controller equipment manufacturing plant of Square D Company in Milwaukee, Wisconsin. The application was filed on December 4, 1987 (52 FR 47439, 12/14/87).

The withdrawal is being requested because of changed circumstances.

The case has been withdrawn without prejudice, and FTZ Board Docket 41-87 is closed.

Dated: March 27, 1989.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 89-7691 Filed 3-30-89; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with §§ 353.53a or 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review

Not later than April 30, 1989, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in April for the following periods:

	Period
Antidumping Duty Proceeding:	
Canada: Steel Reinforcing Bars (A-122-004)	04/01/88-03/31/89
Canada: Sugar and Syrups (A-122-085)	04/01/88-03/31/89
France: Sorbitol (A-427-001)	04/01/88-03/31/89
Italy: Spun Acrylic Yarn (A-475-084)	04/01/88-03/31/89
Japan: Calcium Hypochlorite (A-588-401)	04/01/88-03/31/89
Japan: Cyanuric Acid (A-588-019)	04/01/88-03/31/89
Japan: Dichloroisocyanurates (A-588-019)	04/01/88-03/31/89
Japan: Trichloroisocyanuric Acid (A-588-019)	04/01/88-03/31/89
Japan: Roller Chain, Other Than Bicycle (A-588-028)	04/01/88-03/31/89
Japan: Spun Acrylic Yarn (A-588-086)	04/01/88-03/31/89
Kenya: Standard Carnations (A-779-602)	04/01/88-03/31/89
Mexico: Certain Fresh Cut Flowers (A-201-601)	04/01/88-03/31/89
The Republic of Korea: Color Television Receivers (A-580-008)	04/01/88-03/31/89
Taiwan: Color Television Receivers (A-583-009)	04/01/88-03/31/89
United Kingdom: Diamond Tips for Phonograph Needles (A-412-027)	04/01/88-03/31/89
Suspended Investigations:	
Columbia: Leather Wearing Apparel (C-301-001)	10/01/87-12/31/88
Countervailing Duty Proceeding:	
Argentina: Cold Rolled Carbon Steel Flat-Rolled Products (C-357-005)	10/01/88-12/31/88
Argentina: Wool (C-357-002)	01/01/88-12/31/88
Brazil: Pig Iron (C-351-062)	01/01/88-12/31/88
Malaysia: Carbon Steel Wire Rod (C-557-701)	04/22/88-12/31/88
Mexico: Leather Wearing Apparel (C-201-001)	01/01/88-12/31/88
Peru: Pompon Chrysanthemums (C-333-601)	01/01/88-12/31/88
Thailand: Rice (C-549-503)	01/01/88-12/31/88

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by April 30, 1989.

If the Department does not receive by April 30, 1989 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entires at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

Date: March 24, 1989.

[FR Doc. 89-7686 Filed 3-30-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-402]

Certain Dried Heavy Salted Codfish From Canada; Final Results of Administrative Review of Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of administrative review of antidumping duty order.

SUMMARY: On April 28, 1988, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on certain dried heavy salted codfish from Canada. The preliminary results covered eight manufacturers and/or exporters of this merchandise to the United States and generally the period July 1, 1986 through June 30, 1987.

We gave interested parties an opportunity to comment on the preliminary results. We received comments from the petitioner, six respondents, and two importers. Based on our analysis of the comments received and correction of clerical errors, we have changed the margins from those presented in the preliminary results. We have also determined to defer review of Bay Harbour Fisheries, Ltd., because we found that its principal U.S. customer is a related party. The final results therefore cover seven manufacturers and/or exporters.

EFFECTIVE DATE: March 31, 1989.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Phyllis Derrick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-8312/2923.

SUPPLEMENTARY INFORMATION:

Background

On April 28, 1988, the Department of Commerce ("the Department") published in the **Federal Reigster** (53 FR 15256) the preliminary results of its administrative review of the antidumping duty order on certain dried heavy salted codfish from Canada (50 FR 27836, July 8, 1985). The Department has now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the *Harmonized Tariff Schedule* ("HTS"), as provided for in section 1201 et seq. of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of certain dried heavy salted codfish, including soft-dried codfish, from Canada. The term "certain dried heavy salted codfish" covers dried heavy salted codfish, including soft dried, whole or processed by removal of heads, fins, viscera, scales, vertebral columns, or any combination thereof, but not otherwise processed, and not in airtight containers. During the review period, such merchandise was classifiable under items 111.2200 of the *Tariff Schedules of the United States Annotated.* This merchandise is currently classifiable under HTS items 0305.30.60 and 0305.51.00. We note that this changes our earlier designation of HTS 0305.62.00 for this product. HTS item numbers are provided for convenience and Customs purposes. The written descriptions remain dispositive.

As previously noted, we have determined to defer reviewing Bay Harbour Fisheries, Ltd. until the next administrative review. Therefore, the final results now cover seven manufacturers and/or exporters of this merchandise to the United States and generally the period July 1, 1986 through June 30, 1987.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results of this review. We received comments from the petitioner, Codfish Corporation, from six respondents, Canadian Saltfish Corporation ("CSC"), Bay Harbour, Groupe Purdel, R.E. Newell, Sable, Sans Souci, and Island Saltfish, and from two importers, BMT Commodity Corporation ("BMT") and Delca Distributors Inc. ("Delca"). We have considered rebuttal comments only with regard to issues raised by comments. We have not accepted any additional untimely information or corrections submitted by the respondents. Certain comments from the petitioner and respondents concerned clerical errors. We have corrected currency conversion errors noted by the petitioner in the calculations for R.E. Newell Fisheries Ltd., Sable Fish Packers Ltd. and Le Groupe Purdel and we have also corrected an error noted by CSC, BMT and Delca in computation of an adjustment for differences in physical characteristics with respect to CSC.

Comment 1: The petitioner alleges that the Department failed to exclude below cost sales in two product categories in calculating the foreign market value ("FMV") for CSC. In one category, the petitioner alleges that all of the sales were made below the cost of production. The petitioner further notes that the Department used these categories containing below cost sales to establish the FMV not only for those two product categories, but also for two other product categories.

In rebuttal comments, CSC argues that it made below cost sales in these two product categories during only one month of the review period.

Department's Position: We agree with the petitioner. We have determined that more than ten percent by volume of the sales in these two categories were made below the cost of production. For the one category all of the sales were made at less than cost. For the other category all of the below cost sales were made on one day. However, for that category the sales were not frequent and continuous throughout the period of review. Sales of this product category occurred only on three dates. We determine that the sales made at less than the cost of production occurred over an extended period relative to the number of days on which all sales occurred for this product category. Finally, we have no evidence that such prices would recover costs within a reasonable period. Therefore, we have disregarded the below-cost-sales in our calculations of FMV, and used the weighted average of the remaining sales above cost or the most similar merchandise including adjustments for physical differences, where applicable.

Comment 2: The petitioner argues that, in calculating the margin for all of the firms subject to this administrative review, the Department misapplied the methodology selected to make product comparisons. The petitioner understood that the Department intended to apply the following methodology in this review. The Department would construct a month-by-month matrix of weighted average FMV's for each product category sold in the United States during the review period. If, in the absence of home market sales, there were third-country sales of given product in a particular month, then the weighted average price of such third-country sales would establish the FMV for that month. If there were neither home market sales nor third-country sales of that product for a particular month, then the Department would apply its standard "90-day back, 60-day forward" practice to establish FMV. In accordance with this practice the Department first compares a U.S. sale with the monthly weighted average home market price of sales made as early as 90 days before the U.S. sale. If there were no home market sales during this period, then the Department compares the U.S. sale to the monthly weighted average home market price of sales made as late as 60 days after the U.S. sale. The petitioner argues that, in a number of instances, the Department did not adhere to this methodology. The petitioner concludes, as a result, that the Department made price-to-price comparisons for sales that were not contemporaneous.

Specifically, the petitioner notes that for CSC, the Department compared home market sales made up to eleven months later or four months earlier than the U.S. sale and contends that these home market sales cannot be used as the basis of FMV. Similarly, the petitioner notes that for Sable Fish Packers Ltd., Le Groupe Purdel, and Island Saltfish Inc., the Department compared the monthly weighted average price of home market sales made seven months, six months, and five months earlier than the corresponding U.S. sale. For R.E. Newell Fisheries Ltd. and Lelievre, the petitioner further notes that the Department compared a U.S. sale made during one month with a home market sale during another month even though there was a home market sale during the same month as the U.S. sale.

As a result of the lack of contemporaneous home market or third-country sales, the petitioner expressly urges the Department to resort to the best information otherwise available pursuant to section 776 of the Tariff Act, as amended (19 U.S.C. 1677e(c)) with respect to Le Groupe Purdel and Island Saltfish, Inc. Specifically, for Le Groupe Purdel, the petitioner contends that the best information available is the cash deposit rate (*i.e.*, 16.30 percent) from the original investigation.

In rebuttal comments, CSC notes that the Department did not adhere to its "90–60" practice during the last administrative review and instead made comparisons to identical merchandise outside that range in preference to similar merchandise within the 90–60 day period. For this review, CSC urges the Department not to adhere to the "90-60" practice in this administrative review.

Department's Position: We agree with the petitioner's argument that the Department should adhere to its "90–60" practice in the review, absent evidence to indicate another comparison is more suitable but disagree with the petitioner's characterization of that practice. Typically, the Department compares U.S. sales to identical home market sales using the 90–60 practice and then to similar home market sales also using the 90–60 practice, before considering third-country sales in the same sequence, *i.e.*, identical, then similar. If no comparisons are possible,

then we use constructed value or best information available to establish FMV. We have corrected programming errors that resulted in the comparisons for R.E. Newell and Lelievre noted by petitioner.

For CSC, we strictly adhered to the "90–60" practice for purposes of the final results of this review. For the other respondents, we similarly adhered to the "90–60" practice. In those cases in which adherence to the practice did not yield a sale for comparison purposes, we relied on constructed value information, if available, or used best information available. For example, with regard to Island Saltfish, there was no such or similar merchandise sold in the home market or third-countries contemporaneously with U.S. sales. Therefore, we made comparisons with a non-contemporaneous home market sale as best information available, because we had no constructed value information and because this sale was the only home market sale made during the review period.

With respect to CSC's rebuttal comments, we note that the Department attempts to be consistent from one review period to the next. However, we review each period independently and may determine that a change in analysis is appropriate, as is the case in this review. Thus, the Department is not bound in a current administrative review to strictly adhere to the methodology or practice used in a previous review.

Comment 3: The petitioner contends that Bay Harbour Fisheries Ltd. made some or all of its U.S. sales to a related party and, as a result, those sales prices cannot be used for determining U.S. price.

Department's Postion: Based on information received, we determined that Bay Harbour Fisheries Ltd. made some or all its U.S. sales to a related company located in the United States. Since we require respondents to report the price to the first unrelated party in the United States for such sales, we are unable to complete the analysis of Bay Harbour's sales with information that is already on record for this administrative review. Thus, we are deferring Bay Harbour to the next review to gather the necessary data. As a result, we have not addressed other comments regarding Bay Harbour.

Comment 4: The petitioner alleges that for one expense category R.E. Newell Fisheries Ltd. failed to distinguish the expense as a direct or indirect selling expense in its questionnaire response. The pettioner contends, therefore, that the Department must resort to best information available and should treat such expenses as direct selling expenses for the U.S. sales and indirect selling expenses for the home market sales.

Department's Postion: We disagree. Based on follow up information, we determined that the selling expense in question was an agent's handling fee and was the identical expense in both markets. We therefore have treated such expenses as direct selling expenses in both markets.

Comment 5: The petitioner calls into question the accuracy of Le Groupe Purdel's questionnaire response. Specifically, the petitioner notes that Le Groupe Purdel stated in the response that it sells through a reseller, Les Exportations Gaspe Cured Inc. However, invoices and bank drafts submitted with the response have the name of another company, Pecheries Cartier. This discrepancy, according to the petitioner, casts substantial doubt on the accuracy of all the data submitted and should cause the Department to use best information available for Le Groupe Purdel.

Department's Postion: We disagree. We determined that Pecheries Cartier, Inc. is part of Le Groupe Purdel. Le Groupe Purdel provided the documentation in question as an example of a sale and a payment. We do not find this information inconsistent with the response. Accordingly, we find the request to use best information otherwise available is not warranted in this case.

Comment 6: For Island Saltfish Inc., the petitioner argues under 19 CFR 353.4(a) that the home market sales of the product category selected as the "most similar" to the product sold in the United States constitute less than five percent of the volume of U.S. sales and, therefore, provide as an inadequate basis to determine FMV.

In rebuttal comments, Island Saltfish notes that the petitioner is confusing the applicable test for adequacy of home market sales in determining FMV. The appropriate test is to compare home market sales to third country sales.

Department's Position: Island Saltfish is correct that § 353.4(a) of the Commerce Regulations stipulates that the quantity of such or similar merchandise sold in the home market provides an inadequate basis for determining FMV only if the quantity of such merchandise is "so small in relation to the quantity sold for exportation to countries other than the United States (normally, less than five percent) of the amount sold to third-countries . . ." In this case, Island Saltfish's home market sales were greater than five percent of third-country sales, and therefore satisfied the requirement of § 353.4(a). Furthermore, the petitioner erroneously compared value rather than quantity. Island Saltfish's home market sales were also more than five percent of its U.S. sales by quantity.

Comment 7: The petitioner cites four cases where the Department lacked sufficient data to properly compare U.S. and home market or third-country sales, *i.e.*, respondents failed to identify the physical characteristics of the sales and/or failed to submit adjustments for physical differences in merchandise.

For R.E. Newell Fisheries Ltd., the Department made certain comparisons between non-identical merchandise without making any adjustments for difference in merchandise. Specifically, the petitioner argues that the Department erroneously compared U.S. sales with home market sales having a higher moisture content and consequently a lower value than the corresponding U.S. sales.

For Sans Souci Seafoods Ltd., the petitioner contends that respondent reported that two product categories were sold in the United States for which there were no identical merchandise sold in the home market. The questionnaire response did not suggest most similar merchandise for comparison nor provide the necessary data regarding difference in merchandise adjustments to make such comparisons. The petitioner therefore argues that, as best information otherwise available, as FMV for these categories the Department must use a sale of the next larger size, higher grade, or better quality product, without any adjustment. Additionally, for four product categories, the petitioner asserts that, as best information otherwise available, the Department should use sales of identical merchandise, even though such sales were not contemporaneous, rather than sales of similar merchandise that were contemporaneous.

Sans Souci objects to petitioner's suggestion as grossly unfair as it did not understand the necessity of providing these data. Sans Souci suggests the Department adjust for physical differences using relative price differences.

For Lelievre the petitioner argues that the Department arbitrarily established FMV for certain categories for which there were no contemporaneous identical home market sales. Lelievre provided inadequate information regarding selection of similar merchandise and difference in merchandise adjustments. In this instance, the Department should use as best information otherwise available the

highest home market price of any product sold during the administrative review period.

For Sable Fish Packers Ltd., the petitioner notes respondent failed to categorize some of its U.S. sales by degree of moisture content and quality, thereby making proper price comparisons impossible. The petitioner contends, therefore, that the Department must use, as best information otherwise available, the less-than-fair-value margin of 10.95 percent calculated for sales in the original investigation.

Department's Position: We agree that the use of best information available is warranted for these adjustments for these firms. We requested these data in our questionnaire; respondents failed to provide such data on a timely basis. However, the questionnaire responses were sufficiently complete to limit the use of best information available to these adjustments. In this review, we have changed our comparisons from those presented in the preliminary results and we have used the following as best information available indicated in order of preference. Where there were contemporaneous sales, we used either sales of greater value, *e.g.* higher grade, with no adjustment for difference in merchandise, or sales of lesser value with an adjustment for difference of merchandise based on industry standards. Where there were no contemporaneous sales and we did not have constructed value data, we used identical non-contemporaneous sales or similar non-contemporaneous sales as indicated above.

We do not find it appropriate to rely on price differentials as suggested by Sans Souci. Our regulations indicate that we will be guided primarily by differences in the cost of production. Sans Souci has not presented convincing evidence that we should alter this practice in this review. (*See* 19 CFR 353.16).

For R.E. Newell Fisheries Ltd. and Sans Souci, we have identified the disputed sales and recalculated the results by making a difference in merchandise adjustment using an industry standard, as there were no home market sales of greater value.

For Lelievre, we used as best information available contemporaneous sales of a higher priced grade without making any adjustments for differences in physical characteristics using industry standards and non-contemporaneous sales of identical merchandise, as appropriate.

For Sable Fish Packers Ltd., in those instances in which Sable Fish Packers Ltd. did not specify the moisture content and/or the grade of the sale, we compared the U.S. sale to contemporaneous home market sales of the highest grade and/or driest grade in making comparisons as the best information available. Where the physical characteristics were identified and when necessary, we used non-contemporaneous sales of identical merchandise or similar merchandise with differences in merchandise based on industry standards.

Comment 8: CSC, BMT, and Delca contend that the Department's error with respect to CSC in making an adjustment based on differences in physical characteristics resulted in an erroneous margin above *de minimis.* Since they believe the correct margin should be *de minimis* margin during the last administrative review, they request that the Department publish a notice of tentative determination in this review to revoke the outstanding antidumping duty order with respect to CSC.

Department's Position: We disagree. Although we corrected our calculations, with all changes resulting from our final analysis incorporated, we still found a margin greater than *de minimis* for CSC. Since CSC has not satisifed the requirement under 19 CFR 353.54(b) of having no sales at less than fair value for at least a two-year period following the date of publication of the antidumping duty order covering the subject merchandise, we deny CSC's request for a tentative revocation of that order with respect to CSC.

Final Results of the Review

As a result of the comments received and the correction of clerical errors, we have revised our preliminary results. We determine that the following weighted-average margins exist for the period July 1, 1986 through June 30, 1987:

Manufacturer/exporter	Margin (percent)
Canadian Saltfish Corporation [1]	0.73
Island Saltfish Inc.	0
Le Groupe Purdel	0
Lelievre	1.82
R.E. Newell Fisheries Ltd.	4.20
Sable Fish Packers Ltd.	3.42
Sans Souci Seafoods Ltd.	2.29

[1] The period of review for CSC was July 1, 1986 through July 7, 1987.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and FMV may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. For any shipments from the remaining known manufacturers and/or exporters not covered by this review, a cash deposit shall be required at the last rate published for that manufacturer and/or exporter in the antidumping duty order (50 FR 20819, July 8, 1985) or the last final results of administrative review (52 FR 42702, November 6, 1987). For any future entries of this merchandise from a new exporter not covered by this or prior administrative reviews, whose first shipments occurred after June 30, 1987 and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of 4.20 percent shall be required. These deposit requirements are effective for all shipments of Canadian certain dried heavy salted codfish entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Date: March 27, 1989.

Timothy N. Bergan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-7687 Filed 3-30-89; 8:45 am]

BILLING CODE 3510-DS-M

Quarterly Update of Foreign Government Subsidies on Articles of Quota Cheese

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Publication of quarterly update of foreign government subsidies on articles of quota cheese.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared a quarterly update to its annual list of foreign government subsidies on articles of quota cheese. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: April 1, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Paul J. McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 ("the TAA") requires the Department of Commerce ("the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of quota cheese, as defined in section 701(c)(1) of the TAA, and to publish an annual list and quarterly updates of the type and amount of those subsidies.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h)(2) of the TAA) being provided either directly or indirectly by foreign governments on articles of quota cheese.

In the current quarter the Department has determined that the subsidy amounts have changed for each of the countries for which subsidies were identified in our January 1, 1989 annual subsidy list. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amount of each subsidy on which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of quota cheese to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the TAA (19 U.S.C. 1202 note).

Jan W. Mares,

Assistant Secretary for Import Administration.

Date: March 4, 1989.

Appendix—Quota Cheese Subsidy Programs

Country	Program(s)	Gross [1] subsidy	Net [2] subsidy
Belgium	European Community (EC) Restitution Payments	25.1¢/lb.	25.1¢/lb.
Canada	Export Assistance on Certain Types of Cheese	29.3¢/lb.	29.3¢/lb.
Denmark	EC Restitution Payments	30.0¢/lb.	30.0¢/lb.
Finland	Export Subsidy	133.4¢/lb.	133.4¢/lb.
	Indirect Subsidies	21.0¢/lb.	21.0¢/lb.
France	EC Restitution Payments	154.4¢/lb.	154.4¢/lb.
Greece	EC Restitution Payments	24.8¢/lb.	24.8¢/lb.
Ireland	EC Restitution Payments	26.3¢/lb.	26.3¢/lb.
Italy	EC Restitution Payments	80.0¢/lb.	80.0¢/lb.
Luxembourg	EC Restitution Payments	52.3¢/lb.	52.3¢/lb.
Netherlands	EC Restitution Payments	25.1¢/lb.	25.1¢/lb.
Norway	Indirect (Milk) Subsidy	29.6¢/lb.	29.6¢/lb.
	Consumer Subsidy	18.7¢/lb.	18.7¢/lb.
		41.5¢/lb.	41.5¢/lb.
Portugal	EC Restitution Payments	60.2¢/lb.	60.2¢/lb.
Spain	EC Restitution Payments	26.7¢/lb.	26.7¢/lb.
Switzerland	Deficiency Payments	27.6¢/lb.	27.6¢/lb.
U.K.	EC Restitution Payments	97.5¢/lb.	97.5¢/lb.
W. Germany	EC Restitution Payments	29.4¢/lb.	29.4¢/lb.
		38.2¢/lb.	38.2¢/lb.

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 89-7690 Filed 3-30-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-508-064]

Fresh Cut Roses From Israel; Termination of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of termination of countervailing duty administrative review.

SUMMARY: The Department of Commerce has terminated the countervailing duty administrative review of fresh cut roses from Israel initiated on December 5, 1988.

EFFECTIVE DATE: March 31, 1989.

FOR FURTHER INFORMATION CONTACT: Paul McGarr or Bernard Carreau, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: On September 30, 1988, the Government of Israel requested a countervailing duty administrative review of fresh cut roses from Israel for the period October 1, 1986 through September 30, 1987.

No other interested party requested the review. On December 5, 1988, the Department of Commerce initiated the administrative review for that period (53 FR 48951). The Government of Israel withdrew its request for review on March 6, 1989. As a result, the Department has determined to terminate the review.

This notice is published in accordance with § 355.22(a)(3) of the Commerce Regulations published in the **Federal Register** on December 27, 1988 (53 FR 52306) (to be codified at 19 CFR 355.22).

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 89-7688 Filed 3-30-89; 8:45 am]

BILLING CODE 3510-DS-M

Thomas Jefferson University et al; Consolidated Decision on Applications for Duty-Free Entry of Accessories

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 88-173.

Applicant: Thomas Jefferson University, Philadelphia, PA 19107.
Instrument: Computer/Filter Circuit for Force Transducer.
Manufacturer: Dr. K. Guth, West Germany.
Intended Use: See notice at 53 FR 18330, May 23, 1988.
Advice Submitted By: The National Institutes of Health, September 6, 1988.

Docket Number: 88-184.
Applicant: University of Hawaii, Honolulu, HI 96822.
Instrument: Cryo Stage and Transfer System.
Manufacturer: Carl Zeiss, Inc., West Germany.
Intended Use: See notice at 53 FR 20153, June 2, 1988.
Advice Submitted By: The National Institutes of Health, September 6, 1988.

Docket Number: 88-245.
Applicant: University of Colorado, Boulder, CO 80309.
Instrument: Goniometer, Objective Lens Beam Deflector Kit and other Accessories for an Electron Mircroscope.
Manufacturer: JEOL Ltd., Japan.
Intended Use: See notice at 53 37017, September 23, 1988.
Advice Submitted By: The National Institutes of Health, September 27, 1988.

Comments. None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instruments, for the purposes for which the instruments are intended to be used, is being manufactured in the United States.

Reasons: These are compatible accessories for instruments previously imported for the use of the applicants. In each case, the instrument and accessory were made by the same manufacturer. NIH advises us that the accessories are pertinent to the intended uses and that it knows of no comparable domestic accessories.

We know of no domestic accessories which can be readily adapted to the previously imported instruments.

Frank W. Creel,
Director, Statutory Import Programs Staff.

[FR Doc. 89-7689 Filed 3-30-89; 8:45 am]
BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Federative Republic of Brazil

March 27, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for a new agreement year.

EFFECTIVE DATE: April 3, 1989.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, 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:

Authority: EO 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

The current Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement between the Governments of the United States and the Federative Republic of Brazil establishes limits for the new agreement year which begins on April 1, 1989 and extends through March 31, 1990. The limits for Categories 347/348 and 607 and sublimit for Category 410 include adjustments for carryforward used during the previous agreement year.

A copy of the agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 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

March 27, 1989.

Commissioner of Customs
Department of the Treasury
Washington, DC 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated September 15 and 19, 1988 between the Governments of the United States and the Federative Republic of Brazil; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 3, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in the Federative Republic of Brazil and exported during the twelve-month period which begins on April 1, 1989 and extends through March 31, 1990, in excess of the following levels of restraint:

Category	Twelve-Month Restraint Limit
200-239, 300-369, 400-469 and 600-670, as a group.	288,045,876 square meters.
Sublevels in the Group	
218	3,545,180 square meters.
219	11,521,835 square meters.
225	6,204,065 square meters.
300/301	4,808,079 kilograms.
313	32,615,656 square meters.
314	4,874,623 square meters.
315	14,623,868 square meters.
317/326	13,294,425 square meters.
334/335	95,400 dozen.
336	53,000 dozen.
338/339/638/639.	954,000 dozen.
342/642	280,900 dozen.
347/348	650,000 dozen.
350	90,100 dozen.
361	720,800 numbers.
363	17,172,000 numbers.
369-D [1]	343,590 kilograms.
410/624	7,090,360 square meters of which not more than 2,303,531 square meters shall be in Category 410.
433	17,000 dozen.
445/446	66,598 dozen.
604	336,566 kilograms of which not more than 257,232 kilograms shall be in Category 604-A.[2]
607	2,948,350 kilograms.
647/648	318,000 dozen.
669-P [3]	1,145,300 kilograms.

[1] In Category 369-D, only HTS numbers 6302.60.0010 and 6302.91.0020.

[2] In Category 604-A, only HTS number 5509.32.0000.

[3] In Category 669-P, only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

Imports charged to these category limits, except Category 439, for the period April 1, 1988 through March 31, 1989 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The foregoing limits may be adjusted in the future under the provisions of the current bilateral agreement between the Governments of the United States and the Federative Republic of Brazil.

The conversion factor for Categories 338/339/638/639 is 10 square meters per dozen.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

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. 89-7606 Filed 3-30-89; 8:45 am]

BILLING CODE 3510-DR-M

Establishment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Colombia

March 27, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit for the new agreement year.

EFFECTIVE DATE: April 3, 1989.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, 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:

Authority: EO 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

The current Bilateral Textile Agreement between the Governments of the United States and Colombia establishes a specific limit for cotton sateen fabric in Category 326 for the period which begins on April 1, 1989 and extends through March 31, 1990.

A copy of the agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. State Department (202) 647-1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 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

March 27, 1989

Commissioner of Customs
Department of the Treasury
Washington, DC 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); the Bilateral Textile Agreement, effected by exchange of notes dated January 6 and March 3, 1988, between the Governments of the United States and Colombia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 3, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 326, produced or manufactured in Colombia and exported during the period which begins on April 1, 1989 and extends through March 31, 1990, in excess of 4,697,364 square meters.

Imports charged to Category 326 for the period April 1, 1988 through March 31, 1989 shall be charged against the level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

This limit may be adjusted in the future under the provisions of the bilateral agreement.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of 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. 89-7607 Filed 3-30-89; 8:45 am]

BILLING CODE 3510-DR-M

Amendment and Adjustment of Import Limits and Amendment of Restraint Period for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

March 27, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending and adjusting limits and amending restraint period.

EFFECTIVE DATE: April 3, 1989.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, 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 Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: EO 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and the Dominican Republic agreed to amend the current specific limits for certain cotton and man-made fiber textile products exported from the Dominican Republic for two separate periods beginning June 1, 1988 and extending through November 30, 1988 and December 1, 1988 through May 31, 1989. These limits are being amended to cover shipments qualifying for entry under the Special Access Program which are being charged to the specific limits pending implementation of the guaranteed access levels. The limits for the December 1, 1988 through May 31, 1989 period include adjustments for carryover between the two periods.

A copy of the current bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff

Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 20357, published on June 3, 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

March 27, 1989.

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 May 31, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns, among other things, imports of certain cotton and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the period which began on June 1, 1988 and extends through May 31, 1989.

Effective on April 3, 1989, the limits for cotton and man-made fiber textile products in the following categories are being amended and adjusted for the new restraint period which began on December 1, 1988 and extends through May 31, 1989:

Category	New 6-month restraint limit [1]
338/638	281,250 dozen
339/639	281,250 dozen
342/642	187,500 dozen
347/348/647/648	625,000 dozen of which not more than 384,146 dozen shall be in Categories 347/348 and not more than 375,000 dozen shall be in Categories 647/648

[1] The limits have not been adjusted to account for any imports exported after November 30, 1988.

Charges already made to the limits for the foregoing categories shall be retained. However, you are directed to deduct the following amounts from these charges:

Category	Amount to be deducted
338/638	264,982 dozen
339/639	308,579 dozen
342/642	160,756 dozen
347/348	305,854 dozen
647/648	531,278 dozen

The following amounts shall be charged to the limits for the June 1, 1988 through November 30, 1988 period:

Category	Amount to be charged
338	215,533 dozen
339	221,554 dozen
342	66,814 dozen
347	130,780 dozen
348	175,074 dozen
638	49,449 dozen
639	87,025 dozen
642	93,942 dozen
647	296,029 dozen
648	235,249 dozen

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. 89-7608 Filed 3-30-89; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Limit for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in Panama

March 27, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing an import limit.

EFFECTIVE DATE: April 3, 1989.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, please 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:

Authority: EO 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Textile Agreement, effected by exchange of notes dated August 13, 1987 and October 3, 1987, between the Governments of the United States and Panama establishes an import limit for wool and man-made fiber sweaters in Categories 445/446/645/646 for the period April 1, 1989 through March 31, 1990.

A copy of the bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 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

March 27, 1989.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Textile Agreement, effected by exchange of notes dated August 13, 1987 and October 3, 1987, between the Governments of the United States and Panama; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 3, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of wool and man-made fiber textile products in Categories 445/446/645/646, produced or manufactured in Panama and exported during the twelve-month period which begins on April 1, 1989 and extends through March 31, 1990, in excess of the following restraint limit:

Category	12-month restraint limit
445/446/645/646	185,000 dozen of which not more than 25,503 dozen shall be in Categories 445/446

Imports charged to the category limit for the period April 1, 1988 through March 31, 1989 shall be charged against the level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

The limit is subject to adjustment in the future under the provisions of the current bilateral textile agreement between the Governments of the United States and Panama.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption

to include entry for consumption into the Commonwealth of Puerto Rico.

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. 89-7609 Filed 3-30-89; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR THE PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to Procurement List 1989 commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: May 1, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On December 23, 1988, January 13, 1989, January 27, 1989 and February 3, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (53 FR 51872 and 54 FR 1407, 4060, and 5543) of proposed additions to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018).

No comments were received concerning the proposed additions to the Procurement List. After consideration of the material presented to it concerning capabilities of qualified workshops to produce the commodities and services at fair market prices and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities listed.

c. The actions will result in authorizing small entities to produce the commodities procured by the Government.

Accordingly, the following commodity is hereby added to Procurement List 1989:

Commodities

Blackboard
7110-00-132-6650
7110-00-843-7917

Cushion Seat, Vehicular
2540-00-831-6948

Wrench, Pipe
5120-00-277-1485
5120-00-277-1486
5120-00-277-1461

Services

Janitorial/Custodial

U.S. Army Reserve Center, 5200 Wissahickon Avenue, Philadelphia, Pennsylvania

U.S. Army Reserve Center, 1250 Fox Hollow Road, State College, Pennsylvania

Reproduction Service

Headquarters, U.S. Marine Corps, Clarendon Square Office Building, 3033 Wilson Boulevard, Arlington, Virginia.

Beverly L. Milkman,

Executive Director.

[FR Doc. 89-7647 Filed 3-30-89; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1989; Proposed Addition

AGENCY: Committee for Purchase From the Blind and Other Severely Handicapped.

ACTION: Proposed addition to procurement list.

SUMMARY: The Committee has received a proposal to add to Procurement List 1989 a service to be provided by a workshop for the blind or other severely handicapped.

DATES: *Comments.* Must be received on or before May 1, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, all entities of the Federal Government will be required to procure the service listed below from a workshop for the blind or other severely handicapped.

It is proposed to add the following service to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018):

Service

Janitorial/Custodial

Buildings 280 and 281, Area A, Wright-Patterson Air Force Base, Ohio.

Beverly L. Milkman,

Executive Director.

[FR Doc. 89-7646 Filed 3-30-89; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Dates of Meeting: 24-25 April 1989

Time of Meeting: 0800-1700 hours

Place: The Pentagon, Washington, DC

Agenda: The Army Science Board 1989 Summer Study on International Cooperation and Data Exchange to Enhance the Army's Technology Base will meet for the purpose of reviewing the results of the recent European visit and examining the Pacific rim issues and related informational needs and approaches. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89-7728 Filed 3-30-89; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee Panel on Survivability of Navy Tactical Communications in a Hostile Environment will meet on April 19–20, 1989. The meeting will be held at the Center for the Naval Analyses, 4401 Ford Avenue, Alexandria, Virginia. The meeting will commence at 9:00 a.m. and terminate at 4:00 p.m. on April 19 and 20, 1989. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the panel members related to the survivability of Navy tactical communications in a hostile environment. The agenda will include briefings and discussions on the connectivity for C3I, C3I appraisal, threat analysis, and program summaries. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander L.W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000, Telephone Number: (202) 696–4488.

Date: March 28, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–7604 Filed 3–30–89; 8:45 am]

BILLING CODE 3810-AE-M

Navy Resale Advisory Committee; Partially Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Navy Resale System Advisory Committee will meet in two sessions from 7:45 a.m. to 9:00 a.m. and from 9:15 a.m. to 5:00 p.m. May 6, 1989 in the Ballroom, the Perdido Beach Hilton Hotel, Highway 182, Orange Beach, Alabama 36561. The purpose of the meetings is to examine policies, operations, and organizations of the Navy Resale System and to submit recommendations to the Secretary of the Navy. The agenda will include discussions of the organization of the Resale System, planning, financial management, merchandising, field support, and industrial relations.

The Secretary of the Navy has determined in writing that the public interest requires that the second session of the meeting be closed to the public because it will involve discussions of information pertaining solely to trade secrets and confidential commercial or financial information. These matters fall within the exemptions listed in subsections 552b (c)(2)(4), and (9)(B) of WR 18 April 86 Title 5, United States Code. Therefore, the second session will be closed to the public.

For further information concerning this meeting, contact: Commander W.T. Kaloupek, SC, USN, Naval Supply Systems Command, NAVSUP 09B, Room 606, Crystal Mall, Building No. 3, Arlington, Virginia 22202, Telephone Number: (202) 695–5457.

Date: March 28, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–7603 Filed 3–30–89; 8:45 am]

BILLING CODE 3810-AE-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 May 1, 1989.

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: March 28, 1989.

Carlos U. Rice,

Director, for Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: Application for Grants under Library Literacy Program.

Frequency: Annually.

Affected Public: Non-profit institutions.

Reporting Burden

Responses: 600.

Burden Hours: 9,600.

Recordkeeping Burden

Recordkeepers: 0.

Burden Hours: 0.

Abstract: This application will be used by eligible institutions of higher education to apply for grants under the Library Literacy Program. The Department uses the information to make grant awards.

Office of Postsecondary Education

Type of Review: Extension.
Title: Performance Report and Financial Status Report for the Supplemental Funds Program for Cooperative Education.
Frequency: Annually.
Affected Public: Non-profit institutions.

Reporting Burden

Responses: 646.
Burden Hours: 2584.

Recordkeeping Burden

Recordkeepers: 0.
Burden Hours: 5.
Abstract: Non-profit institutions of higher education that have participated in the supplemental funds for Cooperative Education Program are required to submit these reports to the Department. The Department uses the information to monitor and close out formula grant awards.

[FR Doc. 89-7718 Filed 3-30-89; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Assistant Secretary of 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 Sweden concerning Peaceful Uses of Nuclear Energy, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (ERATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer:

RTD/EU(SW)-80, for the transfer of one irradiated fuel rod containing 393 grams of uranium enriched to 4.3 percent in the isotope uranium-235 and 2 grams of plutonium from Sweden to Denmark for further irradiation and post-irradiation examination, and ultimately storage in Denmark.

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.

For the Department of Energy.
Date: March 27, 1989.
George J. Bradley, Jr.,
Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 89-7721 Filed 3-30-89; 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 Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Sweden concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following transfer:

RTD/EU(SW)-79, for the retransfer from Sweden to the Federal Republic of Germany of 5,755 kilograms of uranium enriched to 3.23 percent in the isotope uranium-235 in the form of fuel assemblies for use in the power reactor KKB Brunsbuttel.

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.

For the Department of Energy.
Date: March 28, 1989.
George J. Bradley, Jr.,
Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 89-7722 Filed 3-30-89; 8:45 am]
BILLING CODE 6450-01-M

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 agreements involves approval for the following sale:

Contract number S-JA-400, for the sale of 8.006 grams of uranium enriched to an average of 25 percent in the isotope uranium-235, 212 grams of natural uranium, 0.005 grams of uranium-233, and 0.1 grams of plutonium, for use as standard reference materials at the Tokai-Mura facility in Japan.

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.

For the Department of Energy.
Date: March 28, 1989.
George J. Bradley, Jr.,
Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 89-7723 Filed 3-30-89;8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 2389 Maine]

Augusta Development Corp.; Intent To File an Application for a New License

March 24, 1989

Take notice that on December 27, 1988, Augusta Development Corporation (Edwards Manufacturing Co., Inc., Lessee), the existing licensee for the Edwards Hydroelectric Projet No. 2389, filled a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2389 was issured effective May 1, 1954, and expires December 31, 1993.

The project is located on the Kennebec River in Kennebec County, Maine. The principal works of the

Edwards Project include a rock-filled timber crib dam; a 17-mile-long reservoir at elevation 24.0 feet m.s.l.; headgates to a 450-foot-long canal; a 13-foot-diamater, 240-foot-long penstock and a 9-foot-diameter, 200-foot-long penstock; a powerhouse with an installed capacity of 3,500 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE, Washington, DC 20426. The above information as described in the rule is now available from the licensee at Miller Hydro Group, Canal Street, Lisbon Falls, ME 04252.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applictions for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89-7654 Filed 3-30-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-128-002]

CNG Transmission Corp.; Amendment to Application

March 27, 1989.

Take notice that on March 23, 1989,[1] CNG Transmission Corporation (Applicant), 445 West Main Street, Clarksburg, West Virginia 26302-2450, filed in Docket No. CP88-128-002, an amendment to its application for a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act in Docket No. CP88-128-000 filed December 11, 1987, so as to request authorization for an interim combination of sales and transportation services for the 100,000 dt equivalent of natural gas per day until Baltimore Gas and Electric Company (BG&E) secures contract reductions from Columbia Gas Transmission Corporation (Columbia) or until November 1, 1990, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

[1] The amendment was tendered for filing on March 16, 1989; however, the fee required by § 381.207 of the Commission's Rules (18 CFR 381.207) was not paid until March 23, 1989. Section 381.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

It is indicated that Applicant proposed in Docket No. CP88-128-000 to increase the authorized Rate Schedule CD sales levels of BG&E and Washington Gas Light Company (WGL) from 60,000 dt equivalent of natural gas per day to 100,000 dt equivalent of natural gas per day each.

Applicant states that has structured a package of services to provide BG&E with limited demand charge exposure until BG&E could separately negotiate contract reductions with Columbia. Applicant also states that it interpreted the original certificate orders, issued in Docket No. CP85-756-000, *et al.*, to provide that, by authorizing service "up to 60,000 dt per day", the service level included a reduced amount as well. Applicant indicates that it is currently providing BG&E with a package of services totalling 60,000 dt per day, consisting of 14,300 dt of CD sales service and 45,700 dt of firm transportation under Applicant's Rate Schedule FT and its open access blanket certificate.

Applicant proposes an interim combination of sales and transportation services for BG&E for the 100,000 dt per day, with higher levels of 25,000 dt of CD sales service and 75,000 dt of FT transportation service, until BG&E secures contract reductions from Columbia or until November 1, 1990. Applicant indicates that if BG&E secures contract reductions from Columbia before November 1, 1990, then Applicant would increase the CD to 100,000 dt per day to BG&E within 30 days of Applicant's notice to the Commission that BG&E has secured the necessary contract reductions. Applicant further states that, after November 1, 1990, if the firm sales level increase has not been accomplished, then Applicant's firm sales level would remain at 25,000 dt per day and Applicant would apply for further certificate authorization to increase service from that level.

Any person desiring to be heard or to make any protest with reference to said amendment to amend should on or before April 3, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 384.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Persons who have heretofore intervened in Docket No. CP88-128-000 need not do so again.

Lois D. Cashell,

Secretary.

[FR Doc. 89-7657 Filed 3-30-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2519, Maine]

Central Maine Power Co.; Intent To File an Application for a New License

March 24, 1989.

Take notice that on December 30, 1988, Central Maine Power Company, the existing licensee for the North Gorham Hydroelectric Project No. 2519, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Public Law 99-495. The original license for Project No. 2519 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Presumpscot River in Cumberland County, Maine. The principal works of the North Gorham Project include a cut stone, masonry and concrete dam with a 256-foot-long spillway section, a sluiceway and a gated intake section; a reservoir of 98 acres at elevation 221.8 feet USGS Datum; four 8-foot-diameter steel penstocks; a powerhouse with an installed capacity of 2,250 kW; transformers and transmission line connections; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE, Washington, DC 20426. The above information as described in the rule is now available from the licensee at Edison Drive, Augusta, ME 04336.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89-7656 Filed 3-30-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI88-346-002]

Cabot Energy Marketing Corp.; Application for Extension of a Blanket Limited-Term Certificate With Pregranted Abandonment

March 24, 1989.

Take notice that on March 23, 1989, Cabot Energy Marketing Corporation (Cabot) of P.O. Box 4544, Houston, Texas 77210-4544, 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 limited-term certificate with pregranted abandonment previously issued by the Commission for a term expiring March 31, 1989, to extend such authorization for an unlimited term, and to authorize for sales by others to Cabot and sales by Cabot's suppliers with Cabot acting as agent, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before March 20, 1989, 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 Cabot to appear to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 89-7655 Filed 3-30-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2422, New Hampshire]

James River—New Hampshire Electric, Inc; Intent To File an Application for a New License

March 24, 1989

Take notice that on December 28, 1988 James River—New Hampshire Electric, Inc., the existing licensee for the Sawmill Hydroelectric Project No. 2422, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. § 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Public Law 99-495. The original license for Project No. 2422 was issued effective January 1, 1953, and expires December 31, 1993.

The project is located on the Androscoggin River in Coos County, New Hampshire. The principal works of the Sawmill Project include a 714-foot-long concrete gravity dam with a floodgate section, an overflow section and a steel flashboard section; a reservoir of 72.5 acres; a gatehouse to a powerhouse with an installed capacity of 3,174 kW; transformers and transmission lines; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 650 Main Street, Berlin, NH 03570-2489, Attn: David L. Dunham, telephone (603) 752-4600.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89-7652 Filed 3-30-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2326 New Hampshire]

James River—New Hampshire Electric, Inc; Intent To File and Application for a New License

March 24, 1989.

Take notice that on December 28, 1989, James River—New Hampshire Electric, Inc., the existing licensee for the Cross Hydroelectric Project No. 2326, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Public Law 99-495. The original license for Project No. 2326 was issued effective July 1, 1958, and expires December 31, 1993.

The project is located on the Androscoggin River in Coos County, New Hampshire. The principal works on the Cross Project include a concrete gravity dam with a 292-foot-long overflow section at crest elevation 918.1 feet m.s.l., topped with flashboards, and a wing dam at the right bank with a rock-filled, timber crib section and a concrete section with a waste gate; a reservoir of 22 acres; a gated intake section to a powerhouse with an installed capacity of 3,080 kW; transformers and transmission lines; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 650 Main Street, Berlin, NH 03570-2489, Attn: David L. Dunham, telephone (603) 752-4600.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89-7653 Filed 3-30-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF89-198-000]

Kalaeloa Partners Limited Partnership; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

March 24, 1989.

On March 15, 1989, Kalaeloa Partners Limited Partnership (Applicant), c/o ABB Hawaiian Cogeneration, Inc., 1460 Livington Avenue, North Brunswick, New Jersey 08902, submitted for filing an application for certification 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 in the James

Campbell Industrial Park, Barbers Point, Oahu, Hawaii. The facility will consist of two combustion turbine generators, two waste heat recovery steam generators, one extraction/condensing steam turbine generator, and associated equipment. The thermal output of the facility, in the form of steam, will be sold to Hawaiian Independent Refinery, Inc. for refinery process use. The maximum net electric power production capacity of the facility will be 192.2 MW. Construction of the facility is expected to begin in mid-1989.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition 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. All such petitions or protests must be filed within 30 days after the date or publication of this notice and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-7649 Filed 3-30-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87-378-000]

Midwestern Gas Transmission Co.; Application

March 27, 1989.

Take notice that on June 2, 1987, Midwestern Gas Transmission Company (Applicant), P.O. Box 2511, Houston, Texas 77252, filed pursuant to section 7(c) of the Natural Gas Act and § 157.7 of the Commission's Regulations an abbreviated application for a certificate of public convenience and necessity authorizing Applicant to provide additional points of delivery for Northern States Power Company (Wisconsin) and Northern States Power Company (Minnesota) (jointly NSP), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant currently transports certain quantities of natural gas for NSP to the following delivery points:

1. East Grand Forks and Polk County, Minnesota;
2. Grand Forks in Grand Forks County, North Dakota;
3. Dilworth in Clay County, Minnesota;
4. Moorehead in Clay County, Minnesota;
5. Fargo in Cass County, North Dakota;
6. Menomonie in Dunn County, Wisconsin;
7. Chippewa Falls in Chippewa County, Wisconsin;
8. Control Data in Chippewa County, Wisconsin; and
9. Eau Claire in Eau Claire County, Wisconsin.

Applicant requests authorization to add two points of delivery to NSP, located at Cambridge, Isanti County, Minnesota, and North Branch, Chisago County, Minnesota. It is stated that upon Commission approval, Applicant would amend its Rate Schedule T-9 to reflect the addition of the delivery points.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 7, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests must filed with the Commission will be considered by it in determinating the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene if filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing

This notice was previously issued on June 24, 1987 but inadvertently was not published in the **Federal Register.**

Lois D. Cashell,

Secretary.

[FR Doc. 89-7658 Filed 3-30-89 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-209-02]

Natural Gas Pipeline Co. of America; Changes in FERC Gas Tariff

March 24, 1989

Take notice that on March 17, 1989, Natural Gas Pipeline Company of America (Natural) submitted for filing tariff sheets to be a part of its FERC Gas Tariff with an effective date of February 1, 1989.

Natural states that the tariff sheets set out the base rate levels reflected in Natural's Interim Settlement at Docket No. RP88-209-015. The Interim Settlement was approved by the Federal Energy Regulatory Commission's (Commission) Order issued February 22, 1989 (February 22 Order) with an effective date of March 1, 1989. On March 6, 1989, Natural filed tariff sheets in compliance with the February 22 Order. On March 10, 1989, the Commission issued an Order Granting Rehearing and allowed the Interim Settlement rates to become effective February 1, 1989.

Natural has requested that the Commission approve the tariff sheets as filed in the March 6th filing to be effective on February 1, 1989. Those tariff sheets are set forth at Appendix B. Natural has also requested waiver of the Commission's Regulations to the extent necessary to permit both sets of tariff sheets to become effective February 1, 1989.

A copy of the filing was mailed to Natural's jurisdictional sales customers, interested state regulatory agencies and all parties set out on the official service list at Docket No. RP88-209.

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 Sections 385.214 and 385.211. All such motions or

protests must be filed on or before March 31, 1989. 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. 89-7650 Filed 3-30-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP87-86-005, RP86-11-002, RP85-11-019]

K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

March 24, 1989.

Take notice that K N Energy, Inc. ("K N") on March 20, 1989 tendered for filing revised tariff sheets reflecting commensurate changes in sales rates caused by the filing of transportation Rate Schedules with projected units of transportation service and the allocation of costs thereto, in compliance with the Commission's February 17, 1989 Order approving offer of settlement subject to modifications. The proposed effective date for these tariff sheets is April 1, 1989.

Copies of the filing were served upon K N's jurisdictional customers, and interested public bodies.

Any person desiring to be heard or to make any protest with reference to this filing should, on or before March 31, 1989, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a petition to intervene or a protest in accordance with Rules 211 and 214 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 proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-7651 Filed 3-30-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI86-7-005 and CI88-356-001]

Seagull Marketing Services, Inc. and Seagull Energy E&P Inc.; Application for Extension of a Blanket Limited-Term Certificate With Pregranted Abandonment

March 24, 1989.

Take notice that on March 22, 1989, Seagull Marketing Services, Inc. and Seagall Energy E&P Inc. (Seagull) of 1001 Fannin, Suite 1700, Houston, Texas 77002, 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 their blanket limited-term certificates with pregranted abandonment previously issued by the Commission for a term expiring Marcn 31, 1989, to extend such authorization for a three-year term, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before March 30, 1989, 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 Seagull to appear to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 89-7659 Filed 3-30-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-1055-000 et al.]

Southern Natural Gas Company et al.; Natural Gas Certificate Filings

March 24, 1989.

Take notice that the following filings have been made with the Commission:

1. Southern Natural Gas Co.

[Docket No. CP89-1055-000]

Take notice that on March 21, 1989, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP89-1055-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Enron Gas Marketing Inc. (Enron), under Southern's blanket certificate issued in Docket No. CP88-316-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern requests authorization to transport, on an interruptible basis, up to a maximum of 50,000 MMBtu of natural gas per day for Enron from receipt points located in Matagorda Island Area and Mustang Island Area, offshore Texas to various delivery points located in Refugio County, Texas. Southern anticipates transporting, on an average day 50,000 MMBtu and an annual volume of 18,250,000 MMBtu.

Southern states that the transportation of natural gas for Enron commenced December 23, 1988, as reported in Docket No. ST89-2551-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Southern in Docket No. CP88-316-000.

Comment date: May 8, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Panhandle Eastern Pipe Line Co.

[Docket No. CP89-1034-000]

Take notice that on March 17, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77251-1642, filed in Docket No. CP89-1034-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas for Phillips Natural Gas Company (Phillips) under the blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle states that it proposes to transport up to 3,450 dt per day on interruptible basis on behalf of Phillips pursuant to a Transportation Agreement dated November 11, 1988 between Panhandle and Phillips (Transportation Agreement). The Transportation Agreement provides for Panhandle to

receive gas from various existing points of receipt on its system in Texas, Oklahoma, Kansas, Colorado, Wyoming, and Illinois. Panhandle will then transport and redeliver subject gas, less fuel used and unaccounted for line loss to Phillips Petroleum in Miami and Coffey Counties, Kansas.

Panhandle also states that the estimated daily and estimated annual quantities would be 3,450 dt and 1,259,250 dt, respectively.

Panhandle further states that it commenced on February 1, 1989, as reported in Docket No. ST89-2051-000.

Comment date: May 8, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. United Gas Pipe Line Co.

[Docket No. CP89-1057-000]

Take notice that on March 21, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1057-000 a request pursuant to §§ 157.205 and 284.223(2)(b) of the Commission's Regulations under the Natural Gas Act for authorization to transport gas for Tenngasco Corporation (Tenngasco), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000 under Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

United States that it would transport, on an interruptible basis, up to a maximum of 20,600 MMBtu of natural gas per day for Tenngasco. United states that the receipt point and the delivery points would be located in Louisiana. United indicates that the total volume of gas to be transported for Tenngasco on a peak day would be 20,600 MMBtu; on an average day would be 20,600 MMBtu; and an annual basis would be 7,519,000 MMBtu. United indicates it would perform the proposed transportation service for Tenngasco pursuant to a service agreement dated January 30, 1989, between United and Tenngasco.

United states that it commenced the transportation of natural gas for Tenngasco on February 21, 1989, at Docket No. ST89-2588-000 for a 120-day period, pursuant to § 284.223(a)(1) of the Commission's Regulations. United further states existing facilities would be used in order to provide this transportation service.

Comment date: May 8, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. United Gas Pipe Line Co.

[Docket No. CP89-1073-000]

Take notice that on March 22, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1479, filed in Docket No. CP89-1073-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of LaSER Marketing Company (LaSER), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport on an interruptible basis up to 103,000 MMBtu of natural gas on a peak day, 103,000 MMBtu on an average day and 37,595,000 MMBtu on an annual basis for LaSER. United states that it would perform the transportation service for LaSER under United's Rate Schedule ITS. It is explained that the service has commenced under the automatic authorization provisions of Section 284.223 of the Commission's Regulations, as reported in Docket No. ST89-2591. United indicates that no new facilities would be necessary to provide the subject service.

Comment date: May 8, 1989 in accordance with Standard Paragraph G at the end of the notice.

Standard Paragraph

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-7664 Filed 3-30-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9319-000, Montana]

Keith and Marilyn Peterson; Availability of Environmental Assessment

March 24, 1989.

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 reviewed the application for minor license for the proposed Circle Arrow Hydroelectric Project, located on the Clearwater River in Missoula County, Montana, near the town of Seeley Lake, and prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff analyzes the potential environmental impacts of the proposed project and concludes that approval of the proposed amendment, 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. 89-7665 Filed 3-30-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-1000-000 et al.]

Williams Natural Gas Co. et al.; National Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Williams Natural Gas Co.

[Docket No. CP89-1000-000]

March 23, 1989.

Take notice that on March 13, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-1000-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for permission and approval to abandon by reclaim measuring, regulating and appurtenant facilities and to abandon in place 1.75 miles of 8-inch lateral pipeline serving West Texas Gas, Inc.'s (West Texas) irrigation operations in Gray County, Texas, and to abandon the transportation of gas through these facilities under WNG's blanket authorization issued in Docket No. CP82-479-000 pursuant to section 7 of

the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG states that West Texas has agreed to the abandonment of the facilities. It is stated that the total cost of the abandonment would be $1,760 with an estimated salvage value of $300.

Comment date: May 8, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. United Gas Pipe Line Co.

[Docket No. CPC9-1018-000]

March 23, 1989.

Take notice that on March 15, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1018-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide interruptible transportation service on behalf of Citizens Gas Supply Corporation (Citizens), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Pursuant to an interruptible gas transportation agreement dated October 21, 1988, United proposes to transport up to 116,548 MMBtu of natural gas per day for Citizens from existing points of receipt located offshore Louisiana to existing points of delivery located in Ouachita and St. Mary Parishes, Louisiana. Citizens has informed United that it expects to have the full 116,548 MMBtu transported on an average day and, based thereon, estimates that the annual transportation quantity would be 42,540,020 MMBtu. United advises that the transportation service commenced on February 8, 1989, as reported in Docket No. ST89-2426-000, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: May 8, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Texas Gas Transmission Corp.

[Docket No. CP89-1005-000]

March 23, 1989.

Take notice that on March 14, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-1005-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas on an interruptible basis for Reed Minerals a Division of Harsco Corporation (Reed) under the blanket certificate issued in Docket No. CP88-686-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas states that the maximum day, average day and annual transportation volume would be approximately 4,000 MMBtu, 500 MMBtu and 182,500 MMBtu, respectively.

Texas Gas further states that it commenced this service February 1, 1989, are reported in Docket No. ST89-2343-000.

Comment date: May 8, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Northern Natural Gas Co., Division of Enron Corp.

[Docket No. CP89-1054-000]

March 23, 1989.

Take notice that on March 20, 1989, Northern Natural Gas Co. Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-1054-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Hanover Energy, Inc. (Hanover), a marketer of natural gas, under Northern's blanket certificate issued in Docket No. CP86-435-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to transport, on an interruptible basis up to 50,000 MMBtu per day for Hanover. Northern states that construction of facilities would not be required to provide the proposed service.

Northern further states that the maximum day, average day, and annual transportation volumes would be approximately 50,000 MMBtu, 37,500 MMBtu and 18,250,000 MMBtu respectively.

Northern advises that service under § 284.223(a) commenced February 1, 1989, as reported in Docket No. ST89-2476.

Comment date: May 8, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Panhandle Eastern Pipe Line

[Docket No. CP89-1036-000]

March 23, 1989.

Take notice that on March 17, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1036-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Amgas, Inc. (Amgas), a shipper and marketer of natural gas, under its blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle states that pursuant to a Transportation Agreement dated January 5, 1989, between Panhandle and Amgas (Agreement), it would transport up to 5,000 Dt. per day on an interruptible basis on behalf of Amgas. Panhandle further states that the Agreement provides for it to receive the natural gas from various existing points of receipt on its system in Texas, Oklahoma, Kansas, Colorado, Wyoming and Illinois. Panhandle would then transport and deliver the natural gas, less fuel used and unaccounted for line loss, to Great River Gas Company in Marion and Ralls Counties, Missouri.

Panhandle states that Amgas has indicated that the estimated daily and estimated annual quantities would be 1,370 Dt. and 500,050 Dt., respectively.

Panhandle states that it commenced the transportation of natural gas for Amgas on February 1, 1989, as reported in Docket No. ST89-2528-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)).

Comment date: May 8, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. United Gas Pipe Line Co.

[Docket No. CP89-1048-000]

March 23, 1989.

Take notice that on March 20, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1048-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for LaSER Marketing Company (LaSER), a marketer, under the blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

United states that pursuant to a transportation agreement dated December 22, 1988, under its Rate

Schedule ITS, it proposes to transport up to 618,000 MMBtu per day equivalent of natural gas for LaSER. United states that it would transport the gas from multiple receipt points as shown in Appendix "A" of the transportation agreement and would deliver the gas to multiple delivery points shown in Appendix "B" of the agreement.

United advises that service under § 284.223(a) commenced February 1, 1989, as reported in Docket No. ST89-2409-000 (filed February 27, 1989). United further advises that it would transport 618,000 MMBtu on an average day and 225,570,000 MMBtu annually.

Comment date: May 8, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. United Gas Pipe Line Co.

[Docket No. CP89-1053-000]

March 23, 1989.

Take notice that on March 20, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1053-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide a transportation service for Houston Gas Exchange Corporation (HGEC), a marketer, under United's blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United states that pursuant to an agreement dated January 25, 1989, it proposes to transport up to 100,000 Mcf of natural gas per day on an interruptible basis. United indicates that it would receive that gas at specified points in Webster Parish, Louisiana and redeliver the gas at specified points in Louisiana.

United also states that no construction of facilities would be required to provide this service. United further states that the peak day and average day volumes would be 103,000 million Btu, and the annual volumes would be 37,595,000 million Btu. United indicates that it would charge the rates and abide by the terms and conditions set forth in its Rate Schedule ITS.

United states that it would provide the service for a primary term of one month from the date of first delivery and continue service for successive one-month terms thereafter until terminated. United advises that service under § 284.223(a) of the Commission's Regulation commenced on February 1, 1989, as reported in Docket No. ST89-2408.

Comment date: May 8, 1989 in accordance with Standard Paragraph G at the end of the notice.

8. United Gas Pipe Line Co.

[Docket No. CP89-1052-000]

March 23, 1989.

Take notice that on March 20, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1052-000 a request pursuant § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Marathon Oil Company (Marathon), a producer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport on an interruptible basis up to 142,313 MMBtu equivalent of natural gas on a peak day, 142,313 MMBtu equivalent on an average day, and 51,944,260 MMBtu equivalent on an annual basis. It is stated that United would receive the gas for HGE's account at existing points on United's system in Louisiana, offshore Louisiana, Mississippi, Texas and offshore Texas, and would deliver equivalent volumes at existing points in Louisiana, Mississippi, Alabama, Texas, Florida. It is asserted that the transportation service would be effected utilizing existing facilities and would not require any construction of additional facilities. It is explained that the transportation service commenced February 8, 1989, as reported in Docket No. ST89-2407.

Comment date: May 8, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. United Gas Pipe Line Co.

[Docket No. CP89-989-000]

March 23, 1989.

Take notice that on March 10, 1989, United Gas Pipe Line Company (United), 600 Travis Street, Houston, Texas 77002, purusant to section 7(c) and 7(b) of the Natural Gas Act, as amended, filed in Docket No. CP89-989-000 an application requesting (1) a certificate of public convenience and necessity authorizing United to provide a natural gas sales service to Mississippi River Transmission Corporation (MRT) at MRT's Perryville compressor station in Monroe Field, Louisiana under a superceding service agreement, dated November 1, 1988 and (2) authority permitting and approving abandonment of United sales service to MRT at the Perryville station under a service agreement which expired on November 1, 1988, to the extend such service will not be required under the superceding service agreement, effective November 1, 1988, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, United states that under the superseding service agreement MRT's Maximum Daily Quantity will be reduced from 524,000 Mcf to 50,000 Mcf of natural gas.

Comment date; April 13, 1989, in accordance with Standard Paragraph F at the end of this notice.

10. Trunkline Gas Co.

[Docket No. CP89-1039-000]

March 23, 1989

Take notice that on March 17, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642 filed in Docket No. CP89-1039-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Trunkline proposes to transport natural gas for Exxon Corporation (Exxon), a Shipper and Producer of natural gas, pursuant to a transportation agreement dated February 1, 1989. Trunkline explains that service commenced February 1, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-2524. Trunkline further explains that the peak day quantity would be 70,500 dekatherms, the average daily quantity would be 70,500 dekatherms, and that the annual quantity would be 25,732,500 dekatherms. Trunkline explains that it would receive natural gas for Exxon's account at various points of receipt on its system. Trunkline states that it would transport and redeliver the natural gas to ten parties in St. Mary Parish, Louisiana.

Comment date: May 8, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. United Gas Pipe Line Co.

[Docket No. CP89-1049-000]

March 23, 1989.

Take notice that on March 20, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-

1478, filed in Docket No. CP89-1049-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide interruptible transportation service on behalf of Midcon Marketing Corporation (Midcon), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Pursuant to an interruptible gas transportation agreement dated November 30, 1988, United proposes to transport up to 391,400 MMBtu of natural gas per day for Midcom from two existing points of receipt located in Refugio and Polk Counties, Texas, to two existing points of delivery located in Pike County, Mississippi. Midcon has informed United that it expects to have the full 391,400 MMBtu transported on an average day and, based thereon, estimates that the annual transportation quantity would be 142,861,000 MMBtu. United advises that the transportation service commenced on February 15, 1989, as reported in Docket No. ST89-2516-000, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: May 8, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. United Gas Pipe Line Co.

[Docket No. CP89-1050-000]

March 23, 1989.

Take notice that on March 20, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1050-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Houston Gas Exchange Corporation (HGE), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport on an interruptible basis up to 103,000 MMBtu equivalent of natural gas on a peak day, 103,000 MMBtu equivalent on an average day, and 37,595,000 MMBtu equivalent on an annual basis. It is stated that United would receive the gas for HGE's account at existing points on United's system in Louisiana and offshore Louisiana, and would deliver equivalent volumes at existing points in Louisiana. It is asserted that the transportation service would be effected utilizing existing facilities and would not require any construction of additional facilities. It is explained that the transportation service commenced January 20, 1989, as reported in Docket No. ST89-2518.

Comment date: May 8, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Trunkline Gas Co.

[Docket No. CP89-1040-000]

March 23, 1989.

Take notice that on March 17, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1040-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport natural gas for American Central Gas Marketing Company (American Central or shipper), a shipper and marketer of natural gas, under Trunkline's blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Trunkline requests authority to transport up to 25,000 dt. equivalent of natural gas per day on an interruptible basis on behalf of American Central pursuant to a transportation agreement dated October 6, 1988, between Trunkline and American Central. It is stated that the transportation agreement provides for Trunkline to receive gas from various existing points of receipt on its sytem, after which Trunkline will transport and redeliver the subject gas, less fuel and unaccounted for line loss, to Southern Natural Gas Company in St. Mary Parish, Louisiana. Trunkline further states that the estimated daily and estimated annual quantities would be 20,000 dt. equivalent of natural gas and 7,300,000 dt. equivalent of natural gas, respectively. Trunkline states that, under the 120-day automatic provisions of § 284.223(a), service commenced on February 1, 1989, as reported in Docket No. ST89-2522.

Comment date: May 8, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Trunkline Gas Co.

[Docket No. CP89-1037-000]

March 23, 1989.

Take notice that on March 17, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642 filed in Docket No. CP89-1037-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Trunkline proposes to transport natural gas for Exxon Corporation (Exxon) pursuant to a transportation agreement dated February 1, 1989. Trunkline explains that service commenced February 1, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-2527. Trunkline further explains that the peak day quantity would be 16,500 dekatherms, the average daily quantity would be 16,500 dekatherms, and that the annual quantity would be 6,022,500 dekatherms. Trunkline explains that it would receive natural gas for Exxon's account at various points of receipt on its system. Trunkline states that it would transport and redeliver the natural gas to Transcontinental Pipe Line Company in Beauregard Parish, Louisiana.

Comment date: May 8, 1989 in accordance with Standard Pargraph G at the end of the notice.

15. Trunkline Gas Co.

[Docket No. CP89-1033-000]

March 23, 1989.

Take notice that on March 17, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642 filed in Docket No. CP89-1033-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural Gas under its blanket certificate issued in Docket No. CP86-586-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Trunkline proposes to transport natural gas for American Central Gas Marketing Company (American Central), a marketer, pursuant to a transportation agreement dated October 6, 1989. Trunkline explains that service commenced February 4, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-2526. Trunkline further explains that the peak day quantity would be 25,000 dekatherms, the average daily quantity would be 20,000 dekatherms, and that the annual quantity would be 7,300,000 dekatherms. Trunkline explains that it would receive natural gas for American Central's account at

various points of receipt on its system. Trunkline states that it would transport and redeliver the natural gas to Columbia Gulf in St. Mary Parish, Louisiana.

Comment date: May 8, 1989, in accordance with Standard Paragraph G at the end of the notice.

16. Northwest Pipeline Corp.

[Docket No. CP89-1044-000]

March 23, 1989.

Take notice that on March 20, 1989, Northwest Pipeline Corporation (Northwest) 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-1044-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon its Rate Schedule SGS-1, natural gas storage service to Greeley Gas Company (Greeley), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Commission Order issued April 1, 1982 in Docket No. CP82-140, authorized Northwest to sell and deliver storage gas to Greeley pursuant to a Service Agreement dated January 1, 1982 under Rate Schedule SGS-1 of Northwest's FERC Gas Tariff, Volume No. 1, for a term expiring October 31, 1989. The Service Agreement covers a seasonal quantity of up to 165,000 therms, a firm daily demand of delivery of up to 4,591 therms, and a daily best efforts delivery of up to 1,245 therms.

Service under Rate Schedule SGS-1 is available only to distribution and pipeline customers who have firm service agreements for the purchase of gas under Northwest's Rate Schedule ODL-1. Greeley, an ODL-1 customer, requested a change of sales service from ODL-1 to DS-1 and entered into a new Service Agreement, dated February 1, 1989, for firm sales under Northwest's Rate Schedule DS-1, which replaced and superceded the preexisting ODL-1 Agreement, effective February 1, 1989. Therefore, to be consistent with the switch from ODL-1 to DS-1 sales service, Northwest and Greeley entered into a Letter Agreement, date January 19, 1989, which terminated Greeley's SGS-1 Service Agreement, effective February 1, 1989, which among other things required Greeley to pay Northwest all Demand and Capacity Demand charges for the remaining nine months of the storage agreement.

Northwest requests permission and approval to abandon its presently authorized storage gas sales service to Greeley under Rate Schedule SGS-1. Northwest requests that the abandonment be made effective February 1, 1989, to coincide with the effective date of the Letter Agreement dated January 19, 1989, and the change from Rate Schedule ODL-1 to DS-1 for firm sales service to Greeley. Northwest does not propose to abandon any of its pipeline facilities in conjunction with the abandonment of service.

Comment date: April 13, 1989, in accordance with Standard Paragraph F at the end of this notice.

17. Eastern Shore Natural Gas Co.

[Docket No. CP89-1024-000]

March 23, 1989.

Take notice that on March 17, 1989, Eastern Shore Natural Gas Company (Eastern Shore), P.O. Box 615, Dover, Delaware 19903-0615, filed in Docket No. CP89-1024-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Eastern Shore to (1) provide additional firm contract demand service to several of its existing customers, (2) increase or decrease firm storage service to several of its existing customers, (3) make permanent an existing temporary authorization to supply firm storage service to Elkton Gas Service, and (4) construct and operate certain new pipeline and compressor facilities required to provide the additional firm sales and storage service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Eastern Shore states that the increased contract demand and firm storage service would be supplied by allocating to existing customers the 17,500 dekatherms of storage capacity and 350 dekatherms per day of withdrawal capability of firm storage service to be made available as a result of the proposed reduction in Formosa Plastics Corporation's firm storage service and by Eastern Shore's request for Columbia Gas Transmission Corporation to provide up to 391,592 dekatherms of storage capacity and up to 7,832 dekatherms per day of withdrawal capability.

Eastern Shore estimates the total cost of the additional pipeline and compressor facilities required to provide the proposed increased contract demand and firm storage service to be $10,569,509. Eastern Shore states that it will finance this amount initially from internally generated funds and short-term notes. It is stated that permanent financing will be arranged through the sale of first mortgage bonds after construction has been completed.

Comment date: April 13, 1989, in accordance with Standard Paragraph F at the end of this notice.

18. Texas Gas Transmission Corp.

[Docket No. CP89-1006-000]

March 23, 1989.

Take notice that on March 14, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-1006-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon jurisdictional sales service provided to Columbia Gas Transmission Corporation (Columbia), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas states that the sale to Columbia has been made under Texas Gas' Rate Schedule CDL-4 pursuant to a Service Agreement dated July 1, 1969. The Service Agreement was for a primary term of 20 years from the effective date of November 1, 1969, with a provision for extension on a year-to-year basis after the expiration of the primary term, unless such agreement was terminated by either party upon twelve months prior written notice. The Service Agreement was approved in Docket No. CP69-115 and authorized a sale of up to 295,856 MMBtu per day to Columbia.

Texas Gas states that by a letter agreement dated September 12, 1988, as amended by a letter dated February 15, 1989, Texas Gas and Columbia have agreed to the abandonment of Texas Gas' sales obligations for 162,856 MMBtu per day of Contract Demand (CD) effective November 1, 1989. Texas Gas proposes to abandon only its sales obligation related to this portion of Columbia's service, as Columbia intends to convert the 162,856 MMBtu per day to firm transportation on the Texas Gas system, pursuant to Section 284.10 of the Commission's Regulations. Such transportation will, according to Texas Gas, be performed pursuant to § 284.222 of the Commission's Regulations and the blanket certificate issued to Texas Gas in Docket No. CP88-686-000. No abandonment of facilities is required in connection with the proposed abandonment of sales service to Columbia.

Texas Gas states that the proposed abandonment will not have a detrimental impact on its currently served customers. In fact, the abandonment will aid both Columbia and Texas Gas in balancing their supply portfolios with the needs of their

respective customers and assist in promoting the implementation of long-term supply strategies consistent with future defined sales markets on both system.

Texas Gas states that it has already applied in Docket No. CP89-610-000 to abandon its sales obligation for 133,000 MMBtu per day of CD, the purchase of which was abandoned by Columbia pursuant to the automatic provisions of § 157.21(a) of the Commissions Regulations implementing Order No. 490.

Comment date: April 13, 1989, in accordance with Standard Paragraph F at the end of this notice.

19. Panhandle Eastern Pipe Line Co.

[Docket No. CP89-996-000]

March 24, 1989.

Take notice that on March 13, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP89-996-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain measuring facilities by removal, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle states that it proposes to abandon by removal the measuring facilities authorized in Docket No. ST84-1145 that were constructed at a well, produced by Consolidated Fuel Supply, Inc. located in Ellis County, Oklahoma, which has ceased production. These facilities were constructed as a receipt point for natural gas that was transported to Central Illinois Light Company for ultimate delivery to Pabst Brewing Company (Pabst), it is stated. Panhandle indicates that the transportation agreement between Panhandle and Pabst expired on October 31, 1985, and that Pabst no longer requires this transportation service and has consented to the removal of these facilities pursuant to a letter agreement dated May 12, 1987.

Comment date: April 14, 1989, in accordance with Standard Paragraph F at the end of this notice.

20. Northwest Pipeline Corp.

[Docket No. CP89-1026-000]

March 24, 1989.

Take notice that on March 17, 1989, Northwest Pipeline Corporation (Northwest), P.O. Box 8900, Salt Lake City, Utah 84108-0899, filed in Docket No. CP89-1026-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide a transportation service for Xebec Gas Company (Xebec), under Northwest's blanket certificate issued in Docket No. CP86-578-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest states that pursuant to an agreement dated October 12, 1988, as amended January 27, 1989, it proposes to transport up to 10,000 dt equivalent of natural gas per day on an interruptible basis. Northwest indicates that it would receive that gas at specified points on its system and redeliver the gas at existing points on its system in the states of Oregon, Washington, Colorado, and Idaho.

Northwest also states that no construction of facilities would be required to provide this service. Northwest further states that the maximum day, average day, and annual volumes would be 10,000 dt equivalent of natural gas, 1,000 dt equivalent of natural gas, and 365,000 dt equivalent of natural gas, respectively. Northwest indicates that it would charge the rates and abide by the terms and conditions set forth in its Rate Schedule TI-1.

Northwest indicates that it would provide the service until October 31, 1989, or year to year thereafter subject to termination on a 30-day notice. Northwest advises that service under § 284.223(a) of the Commission's Regulations commenced on February 3, 1989, as reported in Docket No. ST89-2616-000.

Comment date: May 8, 1989, in accordance with Standard Paragraph G at the end of this notice.

21. Northwest Pipeline Corp.

[Docket No. CP89-1028-000]

March 24, 1989.

Take notice that on March 17, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-1028-000, a prior notice request, pursuant to § 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Amoco Production Company (Amoco), a producer of natural gas, under the blanket certificate issued Northwest in Docket No. CP86-578-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest states that pursuant to a Transportation Agreement dated February 10, 1988, as amended November 10, 1988, December 5, 1988, and February 1, 1989, under Rate Schedule TI-1, it proposes to transport up to 400,000 MMBtu of natural gas per day for Amoco from various existing receipt points on Northwest's system in Utah, Colorado, Wyoming, Oklahoma, Oregon and Washington and redeliver the gas to various delivery points on Northwest's system in Colorado, Idaho, New Mexico, Oklahoma, Oregon, Utah, Washington and Wyoming.

Northwest states that no construction of facilities would be required to provide the transportation service.

Northwest further states that the maximum day, average day, and annual transportation volumes would be approximately 400,000 MMBtu, 4,000 MMBtu and 1,500,000 MMBtu, respectively.

Northwest advises that service under § 284.223(a) commenced February 2, 1989, as reported in Docket No. ST89-2612-000.

Comment date: May 8, 1989, in accordance with Standard Paragraph G at the end of the notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if

the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-7648 Filed 3-30-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3547-4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 13, 1989 through March 17, 1989 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13318).

Draft EISs

ERP No. D-COE-E30034-NC, Rating EC2, West Onslow Beach and New River Inlet Beach (Topsail Beach), Erosion Control and Hurricane Wave Protection Plan, Implementation, Pender and Onslow Counties, NC.

Summary: EPA has some environmental concerns about certain secondary/induced consequences of the proposal and would like to see these matters clarified in the final EIS.

ERP No. D-COE-H35018-KS, Rating EC2, Kansas River Commercial Dredging Project, Junction City to Kansas-Missouri State Line, Section 10 Permits, Douglas, Geary, Jefferson, Johnson, Leavenworth, Pottawatomie, Riley, Shawnee, Wabawnsee and Wyandotte Counties, KS.

Summary: EPA supports the Army Corps of Engineers recommendation that the restricted dredging alternative is the preferred option to control commerical dredging on the Kansas River. However, EPA emphasized that the EC-2 rating is based on (1) adherence to the restricted dredging alternative as stated; (2) expeditious implementation of the Monitoring Program; and (3) a phase-in period of restrictions within three years or less. EPA also requested that the COE clarify and discuss the impacts of dredging on the aquatic ecosystem (fishery/benthos) in the upper versus lower reaches of the Kansas River.

ERP No. DS-FHW-E40129-TN, Rating EC1, I-40/I-275 (formerly I-75) Interchange Connector Reconstruction to Henley Street and the Western Avenue Viaduct Replacement, Funding and 404 Permit, Knoxville, Knox County, TN.

Summary: EPA expressed environmental concerns over possible noise impacts of the project. Water quality impacts due to the potential for increased urban runoff and mitigation measures should be discussed. Further documentation is necessary to support the need for a portion of the project. Compliance with NEPA is questioned due to the fact that some project construction continued prior to completion of the EIS process.

Final EISs

ERP No. F-AFS-L65111-WA, Colville National Forest, Land and Resource Managment Plan, Implementation, Perry, Pend Oreille and Stevens Counties, WA.

Summary: EPA's concerns of the draft EIS was repsonded to in this document. EPA's remaining main concern is that the forest-wide water quality and fish resource monitoring plan needs to be further developed specific to the issues on the Colville National Forest.

ERP No. F-BLM-J01070-CO, Northwest Colorado Coal Preference Right Lease Applications, Chapman-Riebold (C-0125366) and Jensen-Miller (C-4275), Leasing, Rio Blanco County, CO.

Summary: EPA agreed with the Preferred Alternative in that it could be implemented without significant impact to the environment.

ERP No. F-BLM-L67020-AK, Forty mile River Watershed, Multiple Placer Mining Management Plan, Approval, Implementation and 404 Permit, Upper Yukon-Canada Subregion, AK.

Summary: EPA requested that site-specific criteria be developed to assist in determining what additional reclamation requirements will be required. EPA also has concerns regarding the limited water quality data incorporated into the final EIS and associated predictive uncertainties pertaining to cumulative effects.

ERP No. F-FHW-E40696-GA, Georgia Project F-111-1 (16) Spur Construction, Abercorn Street/GA-204 to GA-21/I-516/Lynes Parkway, 404 Permit, USGC Permit and Funding, Chatham County, GA.

Summary: EPA expressed concern about impacts to protected wildlife species, water quality, and potential increased noise levels, EPA has requested the development of measures to protect the aquatic environment, and agency coordination to mitigate wetland loss.

ERP No. F-UPS-C81011 NY, Manhattan General Mail Facility Complex Development, Implementation, New York City, New York County, NY.

Summary: EPA believes that implementation of the project as proposed will cause a violation of the National Ambient Air Quality Standards for carbon monoxide. Accordingly, EPA has recommended that the design of the proposed project be altered to provide appropriate mitigation for the air quality impacts, and that documentation of the redesign be forwarded to EPA for review prior to the issuance of the record of decision.

Dated: March 28, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-7741 Filed 3-30-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3549-3]

Designation of an Ocean Dredged Material Disposal Site (ODMDS) off San Francisco, CA; Intention To Prepare an Environmental Impact Statement

AGENCY: U.S. Environmental Protection Agency (EPA), Region 9.

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS) on the designation of an ODMDS off San Francisco, California.

Purpose: The U.S. EPA, Region 9, in accordance with section 102(2)(c) of the National Environmental Policy Act

(NEPA) and in cooperation with the San Francisco District of the U.S. Army Corps of Engineers, will prepare a Draft EIS (DEIS) on the designation of an ODMDS for dredged material off San Francisco, California. An EIS is needed to provide the information necessary to designate a suitable site. This Notice of Intent is issued pursuant to Section 102 of the Marine Protection, Research and Sanctuaries Act (MPRSA) of 1972, and 40 CFR Part 228 (Criteria for the Management of Disposal Sites for Ocean Dumping).

For Further Information and to be Placed on the Mailing List Contact: Patrick Cotter, Oceans and Estuaries Section (W-7-1), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, California 94105, telephone number (415) 974-0257, or FTS 454-0257.

SUMMARY: Designation of the San Francisco ODMDS is needed to provide a suitable disposal site for dredged material removed from San Francisco Bay and other locations in the vicinity. Disposal of dredged material at any ODMDS is not permitted unless EPA and the Corps determine that the material is acceptable for disposal under EPA's Ocean Dumping criteria at 40 CFR 225 and 40 CFR 227. The Corps issues permits under Section 103 of MPRSA subject to EPA review.

EPA and the Corps are evaluating several geographical areas for suitable disposal sites. These geographical areas include continental shelf to a depth of 100 fathoms (fm), the shelf break from 100-300 fm, the continental slope 300-500 fm, the deep slope area 500-1,000 fm, Pioneer Canyon 300-1,000 fm, and areas deeper than 1,000 fm.

The Corps will complete all environmental and economic studies related to the San Francisco site in support of EIS preparation. EPA is responsible for reviewing the information used in preparation of the DEIS and publishing the document. The Corps will assist EPA in responding to any comments received on the DEIS and subsequent site designation work.

Need for Action: The Corps of Engineers, San Francisco District has requested that EPA designate an ODMDS offshore of San Francisco, California. An EIS is required to provide the necessary information to evaluate disposal alternatives and to designate the preferred ODMDS. If the proposed dredged material from San Francisco Bay and other locations in the vicinity meets the criteria for ocean disposal at 40 CFR Parts 225 and 227 then the material may be disposed at the designated site.

Alternatives: The EIS will characterize environmental parameters, assess environmental impacts and evaluate a reasonable range of alternatives to determine whether designation of an ocean disposal site is acceptable. The alternatives include: (1) No Action, (2) Existing In-Bay Disposal Sites, (3) New In-Bay Disposal Sites, (4) Upland Disposal, (5) Historical Ocean Dumping Sites, and (6) Ocean Disposal at any of the geographical areas described above.

Scoping: Preliminary scoping meetings were held on January 18, 1989 and March 1, 1989 to develop thise NOI. Two scoping meetings for the general public are scheduled on April 11, 1989, from 1:00 to 4:00 p.m., and from 7:00 to 10:00 p.m. The meetings will be held at the Bay Motel, 2100 Bridgeway, Sausalito, California, 94965. Written comments on this Notice of Intent should be sent to the contact person listed above no later than 45 days after the date of publication.

Estimated Date of Release: The DEIS will be made available in March 1991.

Responsible Official:

Daniel W. McGovern,

Regional Administrator, Region 9.

Date: March 28, 1989.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 89-7742 Filed 3-30-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL 3543-1]

Intention To Prepare a Draft Environmental Impact Statement (EIS); City of San Diego Wastewater Treatment Facilities, California

AGENCY: U.S. Environmental Protection Agency (EPA) Region IX.

ACTION: Preparation of a Draft Environmental Impact Statement on the conversion of San Diego's wastewater treatment facilities from advanced primary treatment to secondary treatment and water reclamation.

Purpose: In accordance with section 511(c) of the Clean Water Act (CWA) and section 102(2)(c) of the National Environmental Policy Act (NEPA), EPA has identified a need to prepare an EIS and therefore issues this Amended Notice of Intent.

For Further Information and to be Placed on the Project Mailing List Contact: Mr. Enio Sebastiani, Construction Grants Branch, U.S. EPA, (W-2-2), 215 Fremont St., San Francisco, CA 94105, Telephone: (Commercial) 415-974-8316 or (FTS) 454-8316.

SUMMARY: The City of San Diego has initiated a new program, the Clean Water Program for Greater San Diego, with a goal of attaining full compliance with the CWA and NEPA. The program is currently in the facilities planning stage. The resulting plan will recommend both secondary treatment and water reclamation facilities of sufficient size to serve the San Diego metropolitan area through the middle of the twenty-first century. Facilities covered by the plan will include an upgrade of the City's Point Loma wastewater treatment plant, one or two other secondary treatment plants, a number of water reclamation plants, sludge handling and disposal facilities, and associated pump stations and pipelines.

Need for Action: On September 30, 1986, EPA announced its decision to tentatively deny the City of San Diego's 1979 and 1983 applications for a waiver under Section 301(h) of the CWA. On November 3, 1986, the City Council authorized the City Manager to send EPA a letter of intent to file a revised waiver application. On February 17, 1987, the City Council decided to discontinue waiver efforts and to pursue secondary treatment.

Alternatives: Six alternatives plus the No Project alternative are presently under consideration for providing secondary treatment in the San Diego area. The alternatives involve variations in the size and extent of treatment facilities in the North City area, at the existing Point Loma treatment site, at locations near Lindbergh Field, and at sites along the U.S./ Mexico border. Alternative sites are also being considered for a number of reclamation plants throughout the San Diego metropolitan area.

Scoping: The City of San Diego has held initial public scoping meetings and continues to seek public input that will be used to analyze the alternatives. The next scoping meeting will be held on Wednesday, April 26, 1989 at 7:30 p.m. at the Ramada Hotel, Grand Ballroom, Eighth Floor, 660 K" Street, San Diego, CA.

Estimated Date of Draft EIS Release: June 15, 1990.

Responsible Official: Daniel W. McGovern, Regional Administrator.

Dated: March 28, 1989.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 89-7743 Filed 3-30-89; 8:45 am]

BILLING CODE 6560-50-M

[WH-FRL-3546-7]

Reallotment of Funds Under Municipal Wastewater Treatment Works Construction Grants Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of reallotment of funds under Municipal Wastewater Treatment Works Construction Grants Program (40 CFR Part 35, Subpart I).

SUMMARY: This notice announces the distribution of unobligated fiscal year (FY) 1987 construction grant funds subject to reallotment after September 30, 1988, under section 205 of the Clean Water Act, 33 U.S.C. 1285, and explains the procedure by which the reallotment distribution was determined.

The construction grants program operates under authority of the Clean Water Act (the Act), Pub. L. No. 92-500, as amended. Section 205(d) of the Act requires that funds allotted to a State which are not obligated by the end of the second year of their availability ". . . shall be immediately reallotted by the Administrator. . . ." This notice advises the public of the reallotted amounts made available to the eligible States and of $1 million made available to the National Small Flows Clearinghouse as required under section 104(q) of the Act. Funds reallotted to participating States are added to their allotments for grants for the construction of municipal wastewater treatment facilties. Under section 205(d), these funds are available for obligation until September 30, 1990.

DATE: March 31, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard Fitch, Program Management Branch, Municipal Construction Division, Office of Municipal Pollution Control, (202) 382-5858.

SUPPLEMENTARY INFORMATION: Sums allotted to a State under section 205 of the Act remain available for obligation during the fiscal year in which appropriated and the following 12 months (40 CFR 35.2010[b]). Funds not obligated at the end of this period of availability are reallotted under section 205(d) to the States which fully obligated their allotments, after funds are made available to the National Small Flows Clearinghouse as required in section 104(q) of the Act. Section 104(q) requires the Administrator to make available to the Small Flows Clearinghouse, from unobligated funds reserved for innovative and alternative projects under section 205(i), an amount equal to those unobligated funds or $1 million, whichever is less. In Pub. L. 99-500 and Pub. L. 100-71, Congress appropriated a total of $2.361 billion for FY 1987 funding of the construction grants program. At the close of the availability period for the FY 1987 allotment (September 30, 1988), 14 States and territories had not obligated $4,387,246 of their FY 1987 State allotments. The $4,387,246 consists of $3,406,404 of funds reserved under section 205(i) for innovative and alternative projects and $980,842 of funds reserved for small communities under section 205(h).

As explained below, not all of the unobligated funds remaining after the period of availability are subject to reallotment under section 205(d), as modified by section 104(q). Due to the following exception the total amount reallotted is $4,360,931.

Northern Mariana Islands: Section 3(b)(2) of Pub. L. No. 95-348 provides that any funds made available to the Northern Mariana Islands (NMI) by the Congress after March 24, 1976 ". . . are hereby authorized to remain available until expended." Accordingly, construction grant funds allotted to the NMI which remain unobligated at the close of the period of availability prescribed by section 205(d) of the Act are not subject to reallotment. Because the NMI would have lost $26,315 to reallotment without this statutory provision, section 205(d) prevents the NMI from receiving any funds reallotted from other States.

Reallotment Procedure

To distribute the $4,360,931 that is subject to reallotment in accordance with the requirements of sections 205(d) and 104(q) of the Act, the following procedure was used:

1. The sum of $1 million was subtracted from the total subject to reallotment. This amount will be made available to the Small Flows Clearinghouse and reduce the amount for reallotment to the participating States to $3,360,931.

2. The State allotment shares listed in section 205(c)(3) of the Act were adjusted to reflect the absence of States which did not fully obligate their funds (40 CFR 35.2010[b]).

3. The resulting allotment shares were applied to the $3,360,931 to arrive at each participating State's reallotment amount.

4. The resulting figures (rounded to the nearest $100, except for New York which is used as the balancing factor) are listed in the table which follows in the column titled "Reallotment." The table also indentifies the States which did not fully obligate their funds and displays these amounts in the column titled "Subject to Reallotment."

These reallotted funds are available for obligation until September 30, 1990. After that date, unobligated balances will be reallotted under section 205(d) of the Act (40 CFR 35.2010). Grants from these funds may be awarded as of the date that advices of allowance are issued to the EPA Regional Administrators by the Comptroller of EPA.

Dated: March 24, 1989.

William K. Reilly,

Administrator.

State	Subject to Reallotment	Reallotment
Alabama	$0	$41,900
Alaska	0	22,400
Arizona	0	25,300
Arkansas	666,657	0
California	0	268,100
Colorado	0	30,000
Connecticut	272,765	0
Delaware	518,259	0
Dist. of Columbia	0	18,400
Florida	0	126,500
Georgia	0	63,400
Hawaii	737,600	0
Idaho	0	18,400
Illinois	0	169,500
Indiana	0	90,300
Iowa	0	50,700
Kansas	0	33,800
Kentucky	0	47,700
Louisiana	0	41,200
Maine	0	29,000
Maryland	0	90,700
Massachusetts	0	127,300
Michigan	0	161,200
Minnesota	0	68,900
Mississippi	0	33,800
Missouri	0	103,900
Montana	0	18,400
Nebraska	0	19,200
Nevada	0	18,400
New Hampshire	478,500	0
New Jersey	0	153,200
New Mexico	0	18,400
New York	0	413,931
North Carolina	0	67,700
North Dakota	259,618	0
Ohio	0	211,000
Oklahoma	0	30,300
Oregon	0	42,300
Pennsylvania	0	148,500
Rhode Island	634,713	0
South Carolina	0	38,400
South Dakota	0	18,400
Tennessee	0	54,500
Texas	0	171,300
Utah	0	19,800
Vermont	6,859	0
Virginia	0	76,700
Washington	69,545	0
West Virginia	0	58,400
Wisconsin	0	101,300
Wyoming	0	18,400
American Samoa	65,480	0
Guam	61,840	0
Northern Marianas	0	0
Puerto Rico	360,210	0
Pacific Trust Terr	9,685	0
Virgin Islands	199,200	0
National Small Flows Clearing House	0	1,000,000
Total	$4,360,931	$4,360,931

[FR Doc. 89-7623 Filed 3-30-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3547-5]

Science Advisory Board Sludge Incineration Subcommittee, Environmental Engineering Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a meeting of the Sludge Incineration Subcommittee of the Science Advisory Board will be held on April 26-27, 1989 in the Conference Center, One Washington Circle Hotel, One Washington Circle, NW., Washington, DC. This meeting will start at 9:00 a.m. on April 26, and will adjourn no later than 5 p.m. April 27, and is open to the public.

The main purpose of this meeting will be to review the technical bases for the proposed Use/Disposal Regulation of Sewage Sludge at 40 CFR Part 503. The review will focus on aspects of the proposed regulation relating to incineration, including evaluation of air dispersion models, definition of a most exposed person, evaluation of air pollution control device efficiency assumptions, evaluation of the use of continuous monitoring of total hydrocarbons as a surrogate for total organic emissions, and evaluation of operational requirements for good combustion.

Documentation for this meeting is available from Dr. Alan Rubin, Office of Water, WH 585, U.S. Environmental Protection Agency, Washington, DC 20460.

An Agenda for the meeting is available from Marie Miller, Staff Secretary, Science Advisory Board (A101F), U.S. Environmental Protection Agency, Washington, DC 20460, (202-383-2552). Members of the public desiring additional information should contact Mr. Samuel Rondberg, Executive Secretary, Research and Development Budget Review Committee, by telephone at (202) 382-2552, or by mail to the Science Advisory Board (A101F) 401 M Street, SW., Washington, DC 20460 no later then c.o.b. April 17, 1989. Anyone wishing to make a presentation at the meeting should forward a written statement to Mr. Rondberg by the date noted above. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes.

Dated: March 23, 1989.

Donald Barnes,

Director, Science Advisory Board.

[FR Doc. 89-7621 Filed 3-30-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3547-3]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed March 20, 1989 Through March 24, 1989 Pursuant to 40 CFR 1506.9.

EIS No. 8900050, Final, BLM, CO, James Creek Coal Preference Right Lease Application (PRLA), Approval and White River Resource Area Resource Managmeent Plan Amendment, Rio Blanco County, CO, Due: April 24, 1989, Contact: Greg Goodenow (303) 824-8261.

This Notice of Availability should have appeared in the 3-24-89 **Federal Register.** The 30 day NEPA wait period is calculated from 3-24-89.

EIS No. 890061, Draft, COE, WA, North and South Puget Sound Unconfined Open-Water Disposal for Dredged Material, Phase II, Site Designation, Section 10 and 404 Permits, Whatcom, Skagit, Challam and Pierce, Counties, WA, Due: May 1, 1989, Contact: Frank Urabeck (206) 764-3708.

EIS No. 890062, FSuppl, IBR, CO, Dolores Water Supply Project, Salinity Control Program and Towaoc Canal Realignment, Implementation, Mc Elmo Creek Drainage, Delores and Montezuma Counties, CO, Due: May 1, 1989, Contact: Harold Sersland (801) 524-5580.

EIS No. 890063, Final, COE, IL, MN, WI, MO, IA, Mississippi River Locks and Dams 2-22 Major Rehabilitation Effort, Illinois Waterway from La Grande to Lockport Locks and Dams, Implementation, IL, MO, IA, MN and WI, Due: May 1, 1989, Contact: Karen L. Bahus (309) 788-6361.

EIS No. 890064, Final, AFS, CA OR, Siskiyou National Forest, Land and Resource Management Plan, Implementation, Curry, Coos and Josephine Counties, OR and Del Norte County, CA, Due: May 1, 1989, Contract: Ronald J. McCormick (503) 479-5301.

Amended Notices

EIS No. 880405, Draft, SFW, SEV, PRO, National Wildlife Refuges Managmeent Plan, Implementation, Due: April 13, 1989, Contact: Bruce Blanchard (202) 343-3891. Published FR 12-16-88—Review period extended.

EIS No. 890011, Draft, DOE, KS, Kansas River Commercial Dredging Project, Junction City to Kansas-Missouri State Line, Section 10 Permits, Douglas, Geary, Jefferson, Johnson, Leavenworth, Pottawatomie, Riley, Shawnee, Wabawnsee and Wyandotte Counties, KS, Due: April 17, 1989, Contact: Robert Smith (816) 426-2118. Published FR 01-17-89—Review period extended.

EIS No. 890026, Draft, FAA, CO, New Denver Airport Development, Construction and Operation Plan for Replacement of the Stapleton International Airport, Approval and Funding, Denver County, CO, Due: April 6, 1989, Contact: Dennis G. Ossenkop (206) 431-2646. Published FR 02-10-89—Review period extended.

Dated: March 28, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-7757 Filed 3-30-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-821-DR]

Amendment to Notice of a Major Disaster Declaration; Kentucky

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Kentucky (FEMA-821-DR), dated February 24, 1989, and related determinations.

DATED: March 24, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the Commonwealth of Kentucky,

dated February 24, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 24, 1989:

The counties of Ballard, Hickman, and Hopkins for Individual Assistance and Public Assistance.

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

[FR Doc. 89-7635 Filed 3-30-89; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL HOME LOAN BANK BOARD

[No. 89-1039]

Borrower Information for FSLIC Financed Sales of Real Estate Owned

Date March 28, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board ("Board") has submitted a new information collection request, "Borrower Information for FSLIC Financed Sales of Real Estate Owned," to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The collected information from prospective borrowers of FSLIC funds will be used to ensure the integrity of such loans and to minimize the probability of borrower default on such loans. We estimate it will take approximately 6.25 hours per respondent to complete the information collection. The estimated number of respondents is 300.

DATES: Comments on the information collection request are welcome and should be received on or before April 17, 1989.

ADDRESS: Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503. Attention: Desk officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Request for copies of the proposed information collection requests and supporting documentation are obtainable at the Board address given below: Director, Information Services Division, Office of Secretariat, Federal Home Loan Bank Board, 801 17th Street, NW., Washington, DC 20006. Phone: 202-416-2751.

FOR FURTHER INFORMATION CONTACT: N. Jack Taylor, Jr., Operations and Liquidation Division, Federal Savings and Loan Insurance Corporation, 202-416-4592, Federal Home Loan Bank Board, 801 17th Street, NW., Washington, DC 20006.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-7695 Filed 3-30-89; 8:45 am]

BILLING CODE 6720-01-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.: 212-011180-001.

Title: Neptuno/CSAV Service Agreement.

Parties:

Naviera Neptuno, S.A.

Compania Sud Americana De Vapores

Synopsis: The proposed modification would extend the term of the Agreement until April 30, 1990. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission

Joseph C. Polking,

Secretary.

Dated: March 28, 1989.

[FR Doc. 89-7644 Filed 3-30-89; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

On Fridays, the Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those information collections recently submitted to OMB.

1. State Medicaid Fraud Control Units Application and Recertification Report (42 CFR 1002, Subpart C)—0990-0162—The regulation establishes application and annual recertification reporting requirements to enable State governments to receive Federal funding for the operation of certified Medicaid Fraud Control Units. The information collected is necessary for monitoring to ensure that Federal funds are expended for costs which are allowable and pertain to fraud against the Medicaid program. Respondents: State or local governments. Annual Reporting Burden Information for the Application—Number of Respondents: 2; Frequency of Response: 1; Average Burden per Response: 96 hours; Estimated Annual Burden: 192 hours. Annual Reporting Burden Information for the Annual Recertification Report—Number of Respondents: 38; Frequency of Response: 1; Average Burden per Response: 24 hours; Estimated Annual Burden: 912 hours. Total Annual Burden: 1,104 hours.

2. Physician Manpower Survey—NEW—A nationwide phone survey will be conducted to determine physicians' attitudes about the practice of medicine and plans for retirement and the future. The information will be used to project the impact these factors may have on the physician supply in the near future. Respondents: Business or other for-profit. Reporting Burden Information for Mail Notification—Number of Respondents: 4,000; Frequency of Response: 1; Average Burden per Response: 20 minutes; Estimated Burden: 1,333 hours. Reporting Burden Information for Physician Manpower Survey—Number of Respondents: 1,000; Frequency of Response: 1; Average Burden per Response: 20 minutes; Estimated Burden: 333 hours. Total Burden: 1,666 hours.

3. Short-Term Evaluation of State and Local General Assistance Programs—NEW—This questionnaire will collect information on eligibility and payment standards for state and local General Assistance programs, as well as special programs for the homeless and legalized aliens, which will be used for policy and program planning at the federal, state and local levels. The information will be used to update the 1982 Catalog of General Assistance Programs. Respondents: State or local governments; Number of Respondents: 50; Frequency of Response: 1; Average Burden per Response: 3 hours; Estimated Burden: 150 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 245-6511. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: March 27, 1989.

James F. Trickett,

Deputy Assistant Secretary for Management and Acquisition.

[FR Doc. 89-7611 Filed 3-30-89; 8:45 am]

BILLING CODE 4110-60-M

Food and Drug Administration

[Docket No. 89M-0090]

Abbott Laboratories; Premarket Approval of Murine® PureSept® Disinfection System

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Abbott Laboratories, Columbus, OH, for premarket approval, under the Medical Device Amendments of 1976, of Murine® PureSept® Disinfection System. The device is to be manufactured under an agreement with Paco Pharmaceutical Services, Inc., Lakewood, NJ, which has authorized Abbott Laboratories to incorporate information contained in its approved premarket approval application for the Charter Labs Hydrogen Peroxide Disinfection System. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of February 16, 1989, of the approval of the application.

DATE: Petitions for administrative review by May 1, 1989.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460); Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On August 9, 1988, Abbott Laboratories, Columbus, OH 43216, submitted to CDRH an application for premarket approval of Murine® PureSept® Disinfection System. The device is indicated for disinfecting, rinsing, and soaking for the chemical (not heat) disinfection of daily and extended wear soft (hydrophilic) contact lenses. The application includes authorization from Paco Pharmaceutical Services, Inc., Lakewood, NJ 08701, to incorporate information contained in its approved premarket approval application for the Charter Labs Hydrogen Peroxide Disinfection System.

On February 16, 1989, the CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 1, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: March 23, 1989.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 89-7601 Filed 3-30-89; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Privacy Act of 1974; Systems of Records

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Notice of enhancements to the Expanded Modified MEDPAR and the QC/MEDPAR Files.

SUMMARY: HCFA is enhancing two of the routine use provisions included in the notice of system of records for the Medicare Bill File (Statistics) system, No. 09-70-0005.

EFFECTIVE DATE: This notice is effective March 31, 1989.

FOR FURTHER INFORMATION CONTACT: Glenn J. Martin, Office of Statistics and Data Management, G-D-2 Meadows East Building, 6325 Security Boulevard,

Baltimore, Maryland 21207, (301) 966-6110.

SUPPLEMENTARY INFORMATION: The notice for the Medicare Bill File (Statistics) System No. 09-70-0005, was most recently published in the **Federal Register** on December 29, 1988 (53 FR 52792). This system contains records on bills for services furnished to persons enrolled in Part A (hospital insurance) and/or Part B (supplementary medical insurance) of the Medicare program. Data in this system are used primarily for statistical and research purposes related to evaluating the operation and effectiveness of the Medicare program. HCFA has developed a subfile (Expanded Modified MEDPAR File) from data in this system to release to entities for statistical analyses bearing on Medicare payment policies for inpatient hospital services and published a routine use provision (5) in the system notice specifying the conditions that must be met in order to obtain the subfile. HCFA has also developed a subfile for quality and effectiveness of care (QC/MEDPAR) research and published a routine use (7) governing the release of this subfile. We are now proposing to enhance these two routine use provisions.

Both routine uses are to be enhanced by making subsets of the files available to qualified requestors. A subset consisting of data for one to five specified States will be available for either subfile as well as a subset of one to five DRGs; one to five ICD codes (three positions); or a standard sample of 5, 10, or 20 percent. Combination of subsets will not be provided.

In addition, the QC/MEDPAR subfile will be enhanced by providing the beneficiary's age rather than age interval, and by adding type of admission, source of admission, and the day of the week of the beneficiary's admission. (See Appendix A.)

These enhancements are being made at the suggestion of potential users of the subfiles to increase their usefulness for payment policy analysis and quality and effectiveness of care research. These changes will not affect beneficiary privacy.

This action does not require a report of altered system under 5 U.S.C. 552a(o).

Date: March 24, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 89-7598 Filed 3-30-89; 8:45 am]

BILLING CODE 4120-03-M

Health Resources and Services Administration

National Vaccine Injury Compensation Program List of Petitions Received

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Public Health Service (PHS) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the PHS Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Claims Court is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program generally contact the Clerk, United States Claims Court, 717 Madison Place, NW. Washington, DC 20005, (202) 633-7257. For information on the Public Health Service's role in the Program, contact the Director, Vaccine Injury Compensation Program, Parklawn Building, 5600 Fishers Lane, Room 4-101, Rockville, MD 20857, (301) 443-6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa-10 *et seq.* provides that those seeking compensation are to file a petition with the U.S. Claims Court and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to PHS. The Claims Court is directed by statute to appoint special masters to take evidence, conduct hearings as appropriate, and to submit to the Court proposed findings of fact and conclusions of law.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table set forth at section 2114 of the PHS Act. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa-12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below as a list of petitions received by PHS from March 7 through March 21, 1989. Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in a petition that the petitioner either:

(a) "sustained or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table (see section 2114 of the PHS Act) but which was caused by" one of the vaccines referred to in the table, or

(b) "sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Claims Court at the address listed above (under the heading **"FOR FURTHER INFORMATION CONTACT"**), with a copy to PHS addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, Suite 8-05, Rockville, MD 20857. The Court's caption (Petitioner's name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of Title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions Received

1. Ronald D. Morris and Mary L. Morris on Behalf of Ronald Dean Morris Jr., Fresno, California, Claims Court Docket No. 89–17V

2. Patrick Davis and Sharon Davis on Behalf of Joseph A. Davis, Chesapeake, Virginia, Claims Court Docket No. 89–18V

3. Barry Berning and Lyene Berning on Behalf of Adam Kenton Berning, Midland, Texas, Claims Court Docket No. 89–19V

4. Karen Saleen on Behalf of Jessica Saleen, Twin Falls, Idaho, Claims Court Docket No. 89–20V

5. Mary F. Sheehan on Behalf of Daniel Sheehan, Escanara, Michigan, Claims Court Docket No. 89–21V

Dated: March 24, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89–7679 Filed 3–30–89; 8:45 am]

BILLING CODE 4160–15–M

Office of Human Development Services

Fiscal Year 1990 Federal Allotment to States for Developmental Disabilities Basic Support and Protection and Advocacy Formula Grant Programs

AGENCY: Administration on Developmental Disabilities, Office of Human Development Services.

ACTION: Notification of Fiscal Years 1990 Federal Allotment for States for Developmental Disabilities Basic Support and Protection and Advocacy Formula Grant Programs.

SUMMARY: This notice sets forth the individual allotments for States for Fiscal Year 1990 pursuant to section 125 of the Developmental Disabilities Assistance and Bill of Rights Act (Act). The allotment for the States published herein are based upon the Fiscal Year 1989 funding levels, and are contingent upon Congressional appropriation action for Fiscal Year 1990. If Congress appropriates and the President approves an amount different from the Fiscal Year 1989 funding level, adjustments will be made accordingly. For example, should the funding level change, the statutory minimum funding provision would require changes to the percentages for individual States.

EFFECTIVE DATE: October 1, 1989.

FOR FURTHER INFORMATION CONTACT: Bettye Mobley, Chief, Formula Grants Management Branch, Division of Grants and Contracts Management, Office of Human Development Services, Department of Health and Human Services, 330 "C" Street SW, Room 318, Washington, DC 20201, telephone (202) 245–7220.

SUPPLEMENTARY INFORMATION: Section 125(a)(2), of the Act requires that adjustments in the amounts of State allotments may be made not more often than annually and that States are to be notified not less than six (6) months before the beginning of any fiscal year of any adjustments to take effect in that fiscal year.

The Administration on Developmental Disabilities has updated the data for issuance of Fiscal Year 1990 formula grants. The data elements used in the update are:

A. The Number of Beneficiaries in each State and Territory under the Childhood Disabilities Beneficiary Program, December 1985, are from Table 137 of the "Social Security Bulletin: Annual Statistical Supplemental 1987" issued by the Social Security Administration, U.S. Department of Health and Human Services. The numbers for the Northern Mariana Islands and the Trust Territory of the Pacific Islands (the Federated States of Micronesia, the Marshall Islands, and Palau), included under 'Abroad' in the Table, were obtained from the Social Security Administration.

B. State data on Average Per Capita Income, 1985–87, are from Table 1, page 30, of the "Survey of Current Business", August 1988, issued by the Bureau of Economic Analysis, U.S. Department of Commerce; comparable data for the Trust Territories also were obtained from that Bureau; and

C. State data on Total Population as of July 1, 1987, are from Table 1 of "Current Population Reports: Population Estimates and Projections," Series P–25, Number 1017, issued October 1988 by the Bureau of the Census, U.S. Department of Commerce. The Working Population (ages 18–64) are from Series P–25, Number 1024, issued May 1988. The Territories' estimated populations were obtained from the Bureau of Census.

FISCAL YEAR 1990 FEDERAL ALLOTMENT—ADMINISTRATION ON DEVELOPMENT DISABILITIES

	Basic support	Protection and advocacy
Total	$59,774,000	$19,760,000
Alabama	1,223,607	366,464
Alaska	300,000	185,250
Arizona	719,274	229,426
Arkansas	696,601	209,336
California	4,976,688	1,492,481
Colorado	599,299	204,874
Connecticut	601,737	197,241
Delaware	300,000	185,250
District of Columbia	300,000	185,250
Florida	2,467,515	740,077
Georgia	1,519,285	455,260
Hawaii	300,000	185,250
Idaho	300,000	185,250
Illinois	2,419,440	724,877
Indiana	1,353,824	405,653
Iowa	712,172	213,265
Kansas	538,167	185,250
Kentucky	1,135,501	339,978
Louisiana	1,287,235	385,679
Maine	314,101	185,250
Maryland	856,349	256,640
Massachusetts	1,171,178	350,567
Michigan	2,165,167	648,262
Minnesota	918,148	275,101
Mississippi	889,913	266,618
Missouri	1,215,950	364,233
Montana	300,000	185,250
Nebraska	372,692	185,250
Nevada	300,000	185,250
New Hampshire	300,000	185,250
New Jersey	1,408,496	421,737
New Mexico	390,079	185,250
New York	3,782,123	1,131,934
North Carolina	1,700,956	509,603
North Dakota	300,000	185,250
Ohio	2,623,795	785,758
Oklahoma	809,852	242,831
Oregon	604,444	194,515
Pennsylvania	2,865,055	857,783
Rhode Island	300,000	185,250
South Carolina	972,877	291,545
South Dakota	300,000	185,250
Tennessee	1,331,183	398,792
Texas	3,663,343	1,099,031
Utah	436,012	185,250
Vermont	300,000	185,250
Virginia	1,256,348	376,405
Washington	907,011	272,054
West Virginia	667,472	207,875
Wisconsin	1,164,367	348,695
Wyoming	300,000	185,250
Puerto Rico	2,225,643	666,910
American Samoa	160,000	98,800
Guam	160,000	98,800
No. Mariana Islands	160,000	98,800
Trust Territories	269,101	98,800
Virgin Islands	160,000	98,800

Dated: March 24, 1989.

Carolyn Doppelt Gray,

Commissioner, Administration on Developmental Disabilities.

Aproved: March 27, 1989.

Sydney Olson,

Assistant Secretary, Office of Human Development Services.

[FR Doc. 89–7663 Filed 3–30–89; 8:45 am]

BILLING CODE 4130–01–M

National Institutes of Health

Meeting of the Biomedical Research Technology Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Biomedical Research Technology Review Committee (BRTRC), Division of Research Resources (DRR), April 17–18, 1989, Bethesda Marriott, Pooks Hill Suite, Bethesda, Maryland 20814.

This meeting will be open to the public on April 18, from 2:00 p.m. until adjournment, during which time there will be comments by the Acting Director, DRR, and a report of the Acting Director, Biomedical Research Technology Review Program. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from approximately 9:00 a.m., April 17 until recess and from 8:30 a.m. to 2:00 p.m. on April 18 for the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Michael Fluharty, Public Affairs Specialist, DRR, Westwood Building, Room 857, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–5545, will provide a summary of the meeting and a roster of committee members upon request. Dr. Daniel Eskinazi, Acting Executive Secretary, Biomedical Research Technology Review Committee, DRR, Westwood Building, Room 10A18, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4390, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 13.371, Biotechnology Research, National Institutes of Health.)

Dated: March 23, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–7698 Filed 3–30–89; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting—Board of Scientific Counselors, Division of Cancer Prevention and Control

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Prevention and Control, National Cancer Institute, May 4–5, 1989, Building 31, "C" Wing, 6th Floor, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public on May 4 from 8:30 a.m. to recess and on May 5 from 8:30 a.m. to adjournment to discuss administrative details and for the discussion and review of concepts and programs within the Division. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892–3100 (301/496–5708) will provide a summary of the meeting and a roster of committee members, upon request.

Other information pertaining to this meeting can be obtained from the Executive Secretary, Linda M. Bremerman, National Cancer Institute, Executive Plaza-North, Room 318, National Institutes of Health, Bethesda, Maryland 20892 (301–496–8526), upon request.

Dated: March 27, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–7699 Filed 3–30–89; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of Blood Diseases and Resources Advisory Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Blood Diseases and Resources Advisory Committee, National Heart, Lung, and Blood Institute, May 12, 1989, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. The Committee will meet in Building 31, Conference Room 7, C Wing.

The entire meeting will be open to the public from 9 a.m. on May 12, 1989, to adjournment to discuss the status of the Blood Diseases and Resources program needs and opportunities. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Fann Harding, Assistant to the Director, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, Federal Building, Room 5A–08, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–1817, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: March 24, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–7700 Filed 3–30–89; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of meetings of the National Institute on Aging.

These meetings will be open to the public to discuss administrative details for approximately one-half hour at the beginning of the first session of the first day of the meetings. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, for the review, discussion, and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June C. McCann, Committee Management Officer, National Institute on Aging, Building 31, Room 5C05, National Institutes of Health, Bethesda, Maryland, 20892, (301/496–9322), will provide summaries of the meetings and rosters of the committee members upon request.

Other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Committee: Gerontology and Geriatrics Review Committee, Subcommittee A.

Executive Secretary: Dr. Walter Spieth, Dr. Maria Mannarino, Building 31,

Room 5C12, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301/496-9666.
Dates of Meeting: June 21-23, 1989.
Place of Meeting: Building 31, Conference Room 8, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301/496-9666.
Open: June 21, 8:30 a.m.-9:00 a.m.
Closed: June 21, 9:00 a.m. to recess, June 22, 9:00 a.m. to recess, June 23, 9:00 a.m. to adjournment.
Name of Committee: Gerontology and Geriatrics Review Committee, Subcommittee C.
Executive Secretary: Dr. James Harwood, Subcommittee C, Building 31, Room 5C12, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301/496-9666.
Dates of Meeting: May 14-16, 1989.
Place of Meeting: Omni Parker House, Tremont and School Streets, Boston, Massachusetts 02108.
Open: May 14, 7:30 to 8:00 p.m.
Closed: May 15, 9:00 a.m. to recess, May 16, 9:00 to adjournment.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health.)

Dated: March 23, 1989.

Betty J. Beveridge,
Committee Management Officer, NIH.

[FR Doc. 89-7701 Filed 3-30-89; 8:45 am]
BILLING CODE 4140-01-M

National Institute on Aging; Meeting of the National Advisory Council on Aging

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Council on Aging, National Institute on Aging (NIA), on May 17-18, 1989, in Building 31, Conference Room 10, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public on Wednesday, May 17, from 10:30 a.m. until 12:30 p.m. for a status report by the Director, National Institute on Aging, and a report on the Neurosciences and Neuropsychology of Aging Program. It will again be open to the public Thursday, May 18, from 9:00 a.m. until adjournment for a report on the ad hoc Committee on Program, a report on the Work Group on Minority Aging, a report on the MacArthur Foundation Project on Successful Aging and for discussions of program policies and issues, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. and section 10(d) of Pub. L. 92-463, the meeting of the Council will be closed to the public on May 17 from 1:30 p.m. to recess for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June McCann, Council Secretary for the National Institute on Aging, National Institutes of Health, Building 31, Room 5C02, Bethesda, Maryland 20892, (301/496-9322), will provide a summary of the meeting and a roster of committee members upon request.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: March 23, 1989.

Betty J. Beveridge,
Committee Management Officer, NIH.

[FR Doc. 89-7702 Filed 3-30-89; 8:45 am]
BILLING CODE 4140-01-M

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Meeting, National Arthritis and Musculoskeletal and Skin Diseases Advisory Council

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council to provide advice to the National Institute of Arthritis and Musculoskeletal and Skin Diseases on May 25 and 26, 1989, Conference Room 6, Building 31, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public May 25 from 8:30 a.m. to 12 noon to discuss administrative details relating to Council Business and special reports. Attendance by the public will be limited to space available.

The meeting of the Advisory Council will be closed to the public on May 25 from 1 p.m. to adjournment and again on May 26, from 8:30 a.m. to adjournment at approximately 12 noon in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual grant applications. These deliberations could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Council meeting may be obtained from Dr. Steven J. Hausman, Executive Secretary, National Arthritis and Musculoskeletal and Skin Diseases Advisory Council, NIAMS, Westwood Building, Room 403, Bethesda, Maryland 20892, (301) 496-7495.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIAMS, Building 31, Room 4C32, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-0803.

(Catalog of Federal Domestic Assistance Program No. 13.846, Arthritis, Bone and Skin Diseases, National Institutes of Health)

Dated March 23, 1989.

Betty J. Beveridge,
Committee Management Officer, NIH.

[FR Doc. 89-7705 Filed 3-30-89; 8:45 am]
BILLING CODE 4140-01-M

National Cancer Institute; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Etiology on June 29-30, 1989. The meeting will be held in Building 31, C Wing, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public from 11 a.m. to recess on June 29 and from 9 a.m. to adjournment on June 30 for discussion and review of the Division budget and review of concepts for grants and contracts. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 9 a.m. to approximately 11 a.m. on June 29 for the review, discussion and evaluation of individual programs and projects conducted by the Division of Cancer Etiology. These programs, projects, and discussions could reveal personal information concerning individuals associated with the programs and projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will

provide summaries of the meeting and rosters of committee members, upon request.

Dr. David McB. Howell, Executive Secretary of the Board of Scientific Counselors, Division of Cancer Etiology, National Cancer Institute, Building 31, Room 11A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-6927) will furnish substantive program information.

Dated: March 23, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-7706 Filed 3-30-89; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Child Health and Human Development; Meeting of the Board of Scientific Counselors, NICHD

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Child Health and Human Development, June 2, 1989, in Building 31, Room 2A52.

This meeting will be open to the public from 9:00 a.m. to 12 noon on June 2 for the review of the Intramural Research Program and scientific presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on June 2 from 1:00 p.m. to adjournment for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Linda Hall, Committee Management Officer, NICHD, Executive Plaza North, Room 520, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496-1485, will provide a summary of the meeting and a roster of Board members, and substantive program information upon request.

Dated: March 23, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-7707 Filed 3-30-89; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Child Health and Human Development; Meeting of the National Advisory Child Health and Human Development Council

Pursuant to Pub. L. 92-463, notice is hereby given of meeting of the National Advisory Child Health and Human Development Council, June 5-6, 1989, in Building 1, Wilson Hall, National Institutes of Health, Bethesda, Maryland, and the meeting of the Subcommittee on Planning on June 5 from 8:30 a.m. to 9:30 a.m. in Building 31, Room 2A03.

The Council meeting will be open to the public on June 5 from 9:30 a.m. until 5:00 p.m. The agenda includes a report by the Director, NICHD, and a presentation by the Genetics and Teratology Branch. The meeting will be open on June 6 immediately following the review of applications if any policy issues are raised which need further discussion. The Subcommittee meeting will be open on June 5 from 8:30 a.m. to 9:30 a.m. to discuss program plans and the agenda for the next Council meeting. Attendance by the public will be limited to space available.

In accordance with the provision set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on June 6 from 8:30 a.m. to completion of the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Linda Hall, Council Secretary, NICHD, Executive Plaza North, Room 520, National Institutes of Health, Bethesda, Maryland 20892, Area Code 301, 496-1485, will provide a summary of the meeting and a roster of Council members as well as substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.864, Population Research, and 13.865, Research for Mothers and Children, National Institutes of Health.)

Dated: March 23, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-7708 Filed 3-30-89; 8:45 am]

BILLING CODE 4140-01-M

National Institute of General Medical Sciences; Meeting of the National Advisory General Medical Sciences Council

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Sciences, National Institutes of Health, on May 17, 1989, Building 1, Wilson Hall, and May 18 and 19, Building 31, Conference Room 6, Bethesda, Maryland.

This meeting will be open to the public on May 17, in Building 1, Wilson Hall, from 1:00 p.m. to 6:00 p.m. for opening remarks; report of the Director, NIGMS; a scientific presentation; and other business of the Council. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on May 18 from 8:30 a.m. to 6:00 p.m., and on May 19 from 8:30 a.m. until adjournment, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, Room 4A52, Bethesda, Maryland 20892, Telephone: 301, 496-7301 will provide a summary of the meeting, roster of council members. Dr. David Wolff, Acting Executive Secretary, NAGMS Council, National Institutes of Health, Westwood Building, Room 953, Bethesda, Maryland 20892, Telephone: 301, 496-7061 will provide substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13-821, Biophysics and Physiological Sciences; 13-859, Pharmacological Sciences; 13-862, Genetics Research; 13-863, Cellular and Molecular Basis of Disease Research; and 13-880, Minority Access to Research Careers [MARC]

Dated: March 23, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-7709 Filed 3-30-89; 8:45 am]

BILLING CODE 4140-01-M

Division of Research Resources; Meeting of the National Advisory Research Resources Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Research Resources Council (NARRC), Division of Research Resources (DRR), on June 8–9, 1989, at the National Institutes of Health, Conference Room 10, Building 31C, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on June 8, from 9 a.m. until recess and from 8:30 a.m. until approximately 11 a.m. on June 9 during which time there will be discussions on administrative matters such as previous meeting minutes; the Report of the Acting Director, DRR; and review of budget and legislative updates. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 9 from approximately 11 a.m. until adjournment for the review, discussion and evaluation of individual grant applications.

The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Michael Fluharty, Public Affairs Specialist, DRR, Westwood Building, Room 857, National Institutes of Health, Bethesda, Maryland 20892, 301/496–5545, will provide a summary of the meeting and a roster of the Council members upon request. Dr. James F. O'Donnell, Deputy Director, DRR, Westwood Building, Room 8A16, National Institutes of Health, Bethesda, Maryland 20892, 301/496–6023, will furnish substantive program information upon request, and will receive any comments pertaining to this announcement.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, Laboratory Animal Sciences and Primate Research; 13.333, Clinical Research; 13.337, Biomedical Research Support; 13.371, Biomedical Research Technology; 13.375, Minority Biomedical Research Support; 13.389 Research Centers in Minority Institutions, National Institutes of Health.)

Dated: March 23, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–7710 Filed 3–30–89; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-09-4333-11: NV5-89-16]

Nevada; Temporary Closure of Selected Public Lands in Clark County, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary closure of selected Public Lands in Clark County, Nevada, during the operation of the 1989 Mint 400 off road vehicle race.

SUMMARY: The Las Vegas District Manager announces the temporary closure of selected public lands under his administration. This action is being taken to provide for public safety and prevent unnecessary environmental degradation during the official permitted running and pre-running of the 1989 High Desert Racing Association, Binion's/Nissan/Mint 400 off road vehicle race.

EFFECTIVE DATES: April 15, 1989 through April 23, 1989.

FOR FURTHER INFORMATION CONTACT: Bob Dieli, Outdoor Recreation Planner, Stateline Resource Area, P.O. Box 26569, Las Vegas, Nevada 89126, (702) 646–8800.

SUPPLEMENTARY INFORMATION: Specific restrictions and closure periods are as follows:

1. The entire course will be closed to public vehicle use from 6 a.m., Saturday, April 15, 1989, to 6 a.m., Sunday, April 23, 1989.

2. Beginning at 6 a.m., Friday, April 21, 1989, through 6 a.m., Sunday, April 23, 1989, vehicles are prohibited within 1 mile of either side of existing roads making up the officially approved course. Access roads leading to the course will also be closed. All closed routes will be posted throughout the closure period.

3. Areas designated for viewing the event are limited to three designated "spectator areas" located at:

a. The Las Vegas Speedrome, which is located on private land.

b. North US Highway 93 east of the course/highway crossing, T.17 S. R.63 E. sections 27 and 34, which is on BLM land.

c. Ute Road, just west of I–15, T. 16 S., R. 65 E., sections 9 & 10, which is on Moapa Indian Reservation Land.

Vehicle travel or parking outside these designated locations is prohibited. All vehicles operating within the BLM spectator location must be legally registered for street and highway operation.

4. Pitting activity is limited to seven designated areas. The three spectator areas listed above are official pitting areas. No spectators will be allowed at the four pit only areas.

The four additional areas are located at:

a. Ute Road, T. 15 S., R. 64 E., sections 26 and 27.

b. Byron Road gravel pit, T. 16 S., R. 66 E., sections 5 and 6.

c. Dry Lake gravel pit, T. 18 S., R. 64 E., sections 6 and 7.

d. Apex area, T. 19 S., R. 63 E., sections 4 and 9.

5. Vehicle parking and viewing the race along US highway 93 is prohibited.

6. All vehicles operated within designated pit areas must be legally registered for street and highway operation.

Signs and maps directing the public to spectator areas will be provided by the event sponsor/promoter.

The above restrictions do not apply to emergency vehicles and vehicles owned by the United States, the State of Nevada, Clark County, licensed permittees and right-of-way grantees. Vehicles under permit for operation by event participants must follow the race and pre-race stipulations. Operators of permitted vehicles shall maintain a maximum speed limit of 30 mph on all BLM roads and ways. This speed shall not apply to vehicles entered in the race during race day, Saturday and Sunday, April 22 and 23, 1989.

Authority for closure of public lands is found in 43 CFR 8340, Subpart 8341; 43 CFR 8360, Subpart 8364.1, and 43 CFR 8372. Persons who violate this closure order are subject to arrest and, upon conviction, may be fined not more than $1,000 and/or imprisoned for not more than 12 months.

Dated: March 22, 1989.

Ben F. Collins,

District Manager, Las Vegas District.

[FR Doc. 89–7570 Filed 3–30–89; 8:45 am]

BILLING CODE 4310-HC-M

[UT-020-09-4212-13; U-53695]

Realty Action: Exchange of Public Lands in Tooele County, UT

The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and

Management Act of 1976 (90 Stat. 2756; 43 U.S.C. 1716):

T. 3 S., R. 8 W., SLM, Ut,
Sec. 1, Lots 2, 3, SW¼NE¼, SE¼NW¼, NE¼SW¼, NW¼SE¼;
T. 2 S., R. 8 W., SLM, Ut,
Sec. 10, NW¼, N½SW¼, N½NE¼, SW¼NE¼, NW¼SE¼;
Sec. 29, S½NW¼, NE¼NW¼, SW¼;
Sec. 30, Lots 3, 4, E½SW¼, SE¼;
Sec. 31, Lots 1–4, E½W½, E½;
T. 3 S., R. 9 W., SLM, Ut,
Sec. 25, S½;
Sec. 26, S½;
Sec. 35, All;
T. 4 S., R. 8 W., SLM, Ut,
Sec. 5, Lots 1–4, S½N½, S½;
Sec. 6, Lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, Lots 1–4, E½W½, E½;
Sec. 8, All;
Sec. 9, S½;
Sec. 17, All;
Sec. 18, Lots 1–4, E½W½, E½;
Sec. 19, Lots 1–4, E½W½, E½;
Sec. 20, All;
Sec. 21, NW¼, SW¼NE¼, N½SW¼, NW¼SE¼;
Sec. 30, Lots 1–4, E½W½, E½;
Sec. 31, Lots 1–4, E½W½, E½;
T. 4 S., R. 9 W., SLM, Ut,
Sec. 1, Lots 1–4, S½N½, S½.
Comprising 10,860.32 acres of public land.

In exchange for these lands, the United States will acquire the following described lands from the Skull Valley Company, of Salt Lake City, Utah:

T. 1 S., R. 7 W., SLM, Ut,
Sec. 32, S½, S½NE¼, SE¼NW¼;
T. 2 S., R. 8 W., SLM, Ut,
Sec. 22, SE¼SE¼;
Sec. 23, S½SW¼, SW¼SE¼;
Sec. 26, N½NW¼, NW¼NE¼;
Sec. 27, NE¼NE¼;
T. 2 S., R. 9 W., SLM, Ut,
Sec. 32, All;
T. 2 S., R. 10 W., SLM, Ut,
Sec. 16, S½S½;
Sec. 32, All;
Sec. 36, All;
T. 2 S., R. 11 W., SLM, Ut,
Sec. 2, Lots 1–4, S½N½, S½, (All);
Sec. 36, N½, SE¼, NW¼SW¼, E½SW¼;
T. 3 S., R. 9 W., SLM, Ut,
Sec. 32, S½S½;
T. 4 S., R. 9 W., SLM, Ut,
Sec. 16, All;
Sec. 32, S½S½;
T. 3 S., R. 10 W., SLM, Ut,
Sec. 2, Lots 1–4, S½N½, S½ (All);
Sec. 8, NW¼SE¼;
Sec. 16, All;
Sec. 32, All;
Sec. 36, Lots 1–4, W½E½, W½ (All);
T. 4 S., R. 10 W., SLM, Ut,
Sec. 2, Lots 1–4, N½S½, S½ (All);
Sec. 17, SE¼SE¼;
Sec. 31, SE¼NW¼;
Sec. 32, All;
Sec. 36, Lots 1–4, W½E½, W½ (All);
Comprising 9664.20 acres.

The purpose of this exchange is to acquire non-Federal lands which contain high public values for wildlife, wild horses, and wetlands. The exchange would create a more logical and efficient land management pattern. The acquisition of the water rights of the offered lands will benefit range, wildlife, and wild horses. The public interest will be served by completing the exchange.

The values of the lands to be exchanged area approximately equal; full equalization of values will be achieved either by an adjustment in the acreage or by payment to the United States of funds in an amount not to exceed 25 percent of the total value of the lands to be transferred out of Federal ownership.

Lands to be transferred from the United States will contain the following reservations:

(1) A right-of-way thereon for ditches and canals constructed by the authority of the United States, pursuant to the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

(2) Oil and gas, along with the right of ingress and egress for exploration and development.

(3) Geothermal resources on Section 1, T. 3 S., R. 8 W., and Sections 25, 26, and 35, T. 3 S., R. 9 W., SLM, along with the right of ingress and egress for exploration and development.

The transfer of land from the United States will also be made subject to following existing rights:

(1) A buried fiberoptic telephone cable identified as U–63224, granted to U. S. West Communications, in Section 10, T. 3 S., R. 8 W., and Section 9, T. 4 S., R. 8 W., SLM.

(2) An existing county road, known as the Skull Valley Highway, which involves the same public land as stated above.

Publication of this notice segregates the public lands from the operation of all other public land laws, including the general mining laws, for a period of 2 years from the date of first publication.

Further information concerning the exchange, including the environmental assessment, is available for review at the Salt Lake District Office.

For a period of 45 days from the date of the first publication, interested parties may submit comments to the Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119.

A. Lowell Decker,

Salt Lake District Manager.

[FR Doc. 89–7586 Filed 3–30–89; 8:45 am]

BILLING CODE 4310-DQ-M

[WY-040-09-4212-14; W-102132]

Wyoming; Realty Action; Direct Sale of Public Land

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—Sale of public lands in Uinta County, Wyoming.

SUMMARY: The Bureau of Land Management has determined that the lands described below are suitable for public sale under section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713, 1719).

Sixth Principal Meridian, Wyoming

T. 14. N., R. 119W.,
Sec. 8: SW¼SE¼, S½NW¼SE¼.
The above land aggregate 60.00 acres.

FOR FURTHER INFORMATION CONTACT: Darrel J. Short, Area Manager, Kemmerer Resource Area, Bureau of Land Management, P.O. Box 632, Kemmerer, Wyoming 83101, (307) 877–3933.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes to sell the surface estate to Dennis Cornelison, pursuant to seciton 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750 43 U.S.C. 1713). Mr. Cornelison wishes to acquire the land to be used for future agricultural purposes. The proposed direct sale will be made at fair market value.

The proposed sale is consistent with the Kemmerer Resource Area Management Plan. The planning document and environmental assessment/land report covering the proposed sale are available for review at the Bureau of Land Management, Kemmerer Resource Area Office, Kemmerer, Wyoming.

Conveyance of the above public lands will be subject to:

1. Reservation of a right-of-way for ditches or canals pursuant to the Act of August 30, 1890, 43 U.S.C. 945.

2. Reservation of all minerals to the United States.

3. Those rights for a fiber optic cable right-of-way as have been granted to U.S. Telecom.

4. Those rights for a railroad right-of-way as have been granted to Union Pacific Railroad Co.

The public lands described above shall be segregated from all forms of appropriation under the public land laws, including the mining laws upon publication of this notice in the Federal Register. The segregative effect will end upon issuance of the patent or 270 days

from the date of this publication, whichever occurs first.

For a period of forty-five (45) days from the date of issuance of this notice, interested parties may submit comments to the Bureau of Land Management, Area Manager, Kemmerer Resource Area Office, Kemmerer, Wyoming 83101. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections this proposed realty action will become final.

Darrel J. Short,

Area Manager.

March 21, 1989.

[FR Doc. 89-7569 Filed 3-30-89; 8:45 am]

BILLING CODE 4310-22-M

[CO-070-09-4212-11-C-45440]

Notice of Realty Actions; Colorado

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification, Colorado.

SUMMARY: The 1251.27 acres of public land described herein is proposed for lease to the Board of County Commissioners, Mesa County, Colorado, for a Paleontological Recreational Area.

SUPPLEMENTARY INFORMATION: The following public lands in Mesa County, Colorado, have been examined and found suitable for classification for lease or conveyance to Mesa County, Colorado, under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). Mesa County proposes to use the lands for recreational purposes associated with paleontological interpretation.

Ute Principal Meridian

T. 1 S., R. 1 W.
- Sec. 28: Lots 1–10, 12–14, 17, 18, 20, SWNE, S½NW, SW, NWSE, N½SWSE, SWSWSE and W½SESWSE;
- Sec. 29: Lots 1–3, S½NE, NESW and N½SE;
- Sec. 32: NE, and E½NW;
- Sec. 33: Lots 9–11, 26 and 49. Containing 1251.27 acres more or less.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest.

The lease/patent, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. Those rights for powerline purposes granted to Public Service Company by Permit No. C–23327.

5. Those rights for telephone line purposes granted to Mountain States Telephone Company by Permit No. C–15555.

6. An easement for the Little Park Road in accordance with the transportation plan for Mesa County.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Grand Junction District, 764 Horizon Drive, Grand Junction, Colorado 81506.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, Grand Junction District Office, 764 Horizon Drive, Grand Junction, Colorado 81506. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Bruce Conrad,

District Manager, Grand Junction District.

[FR Doc. 89-7619 Filed 3-30-89; 8:45 am]

BILLING CODE 4310-JB-M

Realty Action; Exchange, California

AGENCY: Bureau of Land Management, Department of the Interior, California (CA-065-09-3110-10-DTNA).

ACTION: Notice of Realty Action, Exchange of Public and Private Lands in Kern County, CA 23914, CA 23920.

SUMMARY: The following public lands in Kern County have been examined and determined suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

CA 23914, Selected public lands:

Mount Diablo Meridian, California

T. 32S., R. 38E.,
- Sec. 22, W½, W½SW¼SE¼.
- Containing 340 acres of public land, more or less.

In exchange for these lands, the United States will acquire the following private lands in Kern County from B. W. Welsh and Olivia Paris Welsh. CA 23914, offered lands:

Mount Diablo Meridian, California

T. 31S., R. 38E.,
- Sec. 21, SE¼NW¼, NW¼NW¼,
- Sec. 27, E½NW¼NE¼, E½SE¼, S½N½SW¼NW¼, SE¼SW¼Sw¼NW¼,
- Sec. 33, NE¼NE¼, E½E½SW¼NE¼, S½NW¼, W½E½NE¼SW¼, E½E½NE¼SW¼.
- Containing 342.5 acres of non-federal lands, more or less.

CA 23920, Selected public lands:

Mount Diablo Meridian, California

T. 32S., R. 38E.,
- Sec. 22, N½NE¼, N½SE¼NE¼, SW¼SE¼NE¼.
- Containing 110 acres of public land, more or less.

In exchange for these lands, the United States will acquire the following private lands in Kern County from Walter A. Detjen and Patricia A. Detjen. CA 23920, offered lands:

Mount Diablo Meridian, California

T. 31S., R. 38E.,
- Sec 27, SW¼SW¼, W½NW¼SW¼, NE¼NW¼SW¼, NE¼SW¼.
- Containing 110 acres of non-federal lands, more or less.

SUPPLEMENTARY INFORMATION: The purpose of the exchanges is to acquire non-federal lands within the designated Desert Tortoise Research Natural Area. The designated area encompasses lands which have historically supported the highest and most stable population of tortoise within its range.

Publication of this Notice in the **Federal Register** segregates the public lands from the operation of the public land laws and the general mining laws, but not the mineral leasing laws. This notice is issued to provide supplementary information to Notice of Realty Action CA 23082, published in Volume 54, Number 4, of the **Federal Register**, January 6, 1989. The segregative effect will end upon issuance of patent or two years from the date of first publication, whichever occurs first.

The values of the land to be exchanged are approximately equal; equalization of values required by law will be achieved by acreage adjustments or by cash payments in amounts not to exceed 25 percent of the fair market value of the selected lands.

Lands transferred out of federal ownership will be subject to the following reservations, terms and conditions:

1. Reservations to the United States: (a). Right of way for ditches and canals, pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. Subject to: (a). Public easements in favor of the city of California City for road and utility purposes.

Private lands to be acquired by the United States will be subject to easements and mineral reservations noted in the preliminary title reports.

FOR FURTHER INFORMATION CONTACT: Tom Gey, Ridgecrest Resource Area (619) 375-7125. Information relating to these exchanges is available for review at the Ridgecrest Resource Area Office, 112 East Dolphin Street, Ridgecrest, California 93555.

DATES: For period of 45 days from the date of first publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, California Desert District Office, 1695 Spruce Street, Riverside, California 92507. Objections will be reviewed by the State Director, who may sustain, vacate or modify this realty action. In the absence of objections, this realty action will become the final determination of the Department of the Interior.

Date: March 21, 1989.

H. W. Riecken,

Acting District Manager.

[FR Doc. 89-7730 Filed 3-30-89; 8:45 am]

BILLING CODE 4310-40-M

Realty Action; Exchange, California

AGENCY: U.S. Bureau of Land Management, Department of the Interior, California (CA-065-09-3110-10-DTNA).

ACTION: Notice of Realty Action, Exchange of Public and Private Lands in Kern County, CA 23834, CA 23839, CA 23915, CA 24290, CA 24291.

SUMMARY: The following public lands in Kern County have been examined and determined suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

CA 23834, Selected public lands:

Mount Diablo Meridan, California

T. 32S., R. 38E.,
Sec. 14, NW¼SW¼.
Containing 40 acres of public land, more or less.

In exchange for these lands, the United States will acquire the following private lands in Kern County from Hans and Elizabeth Niederberger. CA 23834 offered lands:

Mount Diablo Meridian, California

T. 31S., R. 38E.,
Sec. 31, Parcel 3 of Parcel Map 2199, in the City of California City, County of Kern, State of California, as filed June 14, 1974 in Book 10 Page 109 of Parcel Maps, in the Kern Count Recorder's Office.
Containing 38.75 acres of non-federal lands, more or less.

CA 23839, Selected public lands:

Mount Diablo Meridian, California

T. 32S., R. 38E.,
Sec. 14, E½NE¼, W½NW¼.
Containing 160 acres of public land, more or less.

In exchange for these lands, the United States will acquire the following private lands in Kern County from Victor Maron. CA 23839, offered lands:

Mount Diablo Meridian, California

T. 31S., R. 38E.,
Sec. 19, E½SE¼,
Sec. 31, Parcels 2 and 4 of Parcel Map 2199, in the City of California City, County of Kern, State of California, as filed June 14, 1974 in Book 10 Page 109 of Parcel Maps, in the Kern County Recorder's Office.
Containing 157.41 acres of non-federal lands, more or less.

CA 23915, Selected public lands:

Mount Diablo Meridian, California

T. 32S., R. 38E.,
Sec. 14, SW¼SW¼.
Containing 40 acres of public land, more or less.

In exchange for these lands, the United States will acquire the following private lands in Kern County from George and Betty Novicoff. CA 23915, offered lands:

Mount Diablo Meridian, California

T. 31S., R. 38E.,
Sec. 31, Lot 3 of Parcel Map 1593, in the City of California City, County of Kern, State of California, as filed November 29, 1973 in Book 8, Page 20 of Parcel Maps, in the Kern County Recorder's Office.
Containing 38.89 acres of non-federal lands, more or less.

CA 24290, Selected public lands:

Mount Diablo Meridian California

T. 32S., R. 38E.,
Sec. 14, NE¼NW¼.
Containing 40 acres of public land, more or less.

In exchange for these lands, the United States will acquire the following private lands in Kern County from Gwendolyn Day, Raymond Smith, Henry Sanchez, Dorothy Ferguson, John Hendon Jr., Earl Miller, Chris and Guyla Stahl, Ronald Stahl, Dennis Stahl, Odysseas and Anastasia Christou, and Gloria Berry. CA 24290, offered lands:

Mount Diablo Meridian, California

T. 31S., R. 38E.,
Sec. 31, Lot 4 of Parcel Map 1593, City of California City, County of Kern, State of California, as filed November 29, 1973, in Book 8, Page 20 of Parcel Maps, in the Kern County Recorder's Office.
Containing 38.90 acres of non-federal lands, more or less.

CA 24291, selected public lands:

Mount Diablo Meridian, California

T. 32S., R. 38E.,
Sec. 14, SE¼NW¼.
Containing 40 acres of public land, more or less.

In exchange for these lands, the United States will acquire the following private lands in Kern County from Ronald Ortt, Henry Loustalot, Clarice Gorman, William and Francis Howard. CA 24291, offered lands:

Mount Diablo Meridian, California

T. 31S., R. 38E.,
Sec. 31, Lot 2 of Parcel Map 1593 in the City of California City, County of Kern, State of California, as filed November 29, 1973 in Book 8, Page 20 of Parcel Maps, in the Kern County Recorder's Office.
Containing 38.82 acres of non-federal lands, more or less.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to acquire non-federal lands within the designated Desert Tortoise Research Natural Area. The designated area encompasses lands which have historically supported the highest and most stable population of tortoise within its range.

Publication of this Notice in the **Federal Register** segregates the public lands from the operation of the public land laws and the general mining laws, but not the mineral leasing laws. This Notice is issued to provide supplementary information to Notice of Realty Action CA 23082, published in Volume 54, Number 4, of the **Federal Register**, January 6, 1989. The segregative effect will end upon issuance of patent or two years from the date of first publication, whichever occurs first.

The values of the lands to be exchanged are approximately equal; equalization of values required by law will be achieved by acreage adjustments or by cash payments in amounts not to exceed 25 percent of the fair market value of the selected lands.

Lands transferred out of federal ownership will be subject to the following reservations, terms and conditions:

1. Reservations to the United States: (a). Right of way for ditches and canals, pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. Subject to: (a). Restrictions that may be imposed by the City of California

City in accordance with floodplain regulations established under California City Ordinance 81-301 adopted on December 18, 1981, as amended. (Applies to 100-year flood zones shown on Federal Insurance Rate Maps 060440 0050 B and 0075 B as affecting the selected public lands in exchanges CA 23834 and CA 23915). (b). Public easements in favor of the City of California City for road and utility purposes.

Private lands to be acquired by the United States will be subject to easements and mineral reservations noted in the preliminary title reports.

FOR FURTHER INFORMATION CONTACT: Tom Gey, Ridgecrest Resource Area (619) 375-7125. Information relating to these exchanges is available for review at the Ridgecrest Resource Area Office, 112 East Dolphin Street, Ridgecrest, California 93555.

DATES: For a period of 45 days from the date of first publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, California Desert District Office, 1695 Spruce Street, Riverside, California 92507. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of objections, this realty action will become the final determination of the Department of the Interior.

Date: March 21, 1989.

H.W. Riecken,

Acting District Manager.

[FR Doc. 89-7731 Filed 3-30-89; 8:45 am]

BILLING CODE 4310-40-M

Realty Action Sale of Public Lands in Kane County, UT U-60070

AGENCY: Bureau of Land Management Interior (UT-040-09-4212-14).

ACTION: Under section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716) public land described as SLM, Utah, T. 40 S., R. 7 W., section 26, SE1/4SW1/4SW1/4 (containing 10.0 acres), is proposed for direct sale to the Western Kane County Special Service District #1 for the fair market value of $2000.00. The lands described are hereby segregated from all forms of appropriation under the public land laws, including the mining laws, pending disposition of this action.

SUMMARY: The purpose of this sale is to provide land for the establishment of a sanitary landfill site for the Long Valley Area and for the construction of a county equipment storage building.

DATES: Comments will be accepted for 45 days from the date of publication of this notice. The sale will be held no less than 60 days from the date of publication of this notice.

ADDRESS: Detailed information concerning the sale is available at the Bureau of Land Management Kanab Area Office, 318 North First East, Kanab Utah 84741, (801) 644-2672. Comments should be sent to the same address. The sale will be held in the Kanab Area Office.

SUPPLEMENTARY INFORMATION: The terms and conditions applicable to the sale are:

1. The sale will be for surface estate only. Minerals will remain with the United States Government.

2. There is reserved to the United States a right-of-way for ditches or canals constructed by the Authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

3. Title transfer will be subject to valid existing rights.

Any comments received during the comment period will be evaluated and the State Director may vacate or modify this realty action. In the absence of any objections, this Realty Notice will become the final determination of the Department of the Interior.

Dated: March 22, 1989.

Gordon R. Staker,

District Manager.

[FR Doc. 89-7732 Filed 3-30-89; 8:45 am]

BILLING CODE 4310-DQ-M

[OR-943-09-4214-10; GP9-162; OR-44954]

Proposed Withdrawal and Public Meeting; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, has filed an application to withdraw 11,675.51 acres of National Forest System lands for the Pringle Falls Experimental Forest in the Deschutes National Forest. This notice closes the lands for up to 2 years from location and entry under the United States mining laws.

DATE: Comments must be received by June 29, 1989.

ADDRESS: Comments should be sent to the Oregon State Director, BLM, P.O. Box 2965, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

SUPPLEMENTARY INFORMATION: On March 3, 1989, the U.S. Department of Agriculture, Forest Service, filed an application to withdraw the following described National Forest System lands from location and entry under the mining laws, subject to valid existing rights:

Willamette Meridian

T. 20 S., R. 9 E.,
- Sec. 28, SW¼;
- Sec. 29, S½;
- Sec. 30, E½SW¼ and SE¼;
- Sec. 31, E½ and E½W½;
- Sec. 32;
- Sec. 33, W½NE¼, SE¼NE¼, W½, and SE¼;
- Sec. 34, SW¼SW¼.

T. 21 S., R. 9 E.,
- Sec. 4, lots 1, 2, 3, and 4, and S½N½;
- Sec. 5, lots 1, 2, 3, and 4, and S½N½;
- Sec. 6, lots 1 to 5, inclusive, S½NE¼, and SE¼NW¼;
- Secs. 21 and 22;
- Sec. 23, NW¼ and S½;
- Secs. 24 to 28, inclusive;
- Secs. 32 to 36, inclusive.

The areas described aggregate 11,675.51 acres in Deschutes County, Oregon.

The purpose of the proposed withdrawal is to protect the integrity of research plots and the Pringle Falls Research Natural Area units located within the boundaries of the Pringle Falls Experimental Forest located approximately 20 miles southwest of Bend, Oregon.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that a public meeting in connection with the proposed withdrawal will be held at a later date. A notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. All temporary uses are permitted during this segregative period with the exception of the disposal of the mineral resources under the mining laws.

The temporary segregation of the lands in connection with this withdrawal application shall not affect

the administrative jurisdiction over the lands.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

Dated: March 22, 1989.

[FR Doc. 89-7733 Filed 3-30-89; 8:45 am]

BILLING CODE 4310-33-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Samedan Oil Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 6717, Block 247, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on March 21, 1989. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. W. Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2874.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: March 23, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-7734 Filed 3-30-89; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office; Chevron Corporation; 225 Bush Street, San Francisco, CA 94104.

2. Wholly owned subsidiaries which will participate in the operations, and states of incorporation:

(i) Chevron U.S.A. Inc., a Pennsylvania corporation.

(ii) Chevron Chemical Company, a Delaware corporation.

Noreta R. McGee,

Secretary.

[FR Doc. 89-7634 Filed 3-30-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31417]

Terre Haute, Brazil & Eastern Railroad Co. Trackage Rights Exemption—Soo Line Railroad Co.

Soo Line Railroad Company has agreed to grant overhead trackage rights to Terre Haute, Brazil & Eastern Railroad Company between milepost 175.5 and milepost 177.4 in Terre Haute, IN. The trackage rights became effective on March 16, 1989.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on William F. Baker, Terre Haute, Brazil & Eastern Railroad Company, Suite 500, Inland Building, 156 East Market Street, Indianapolis, IN 46204 and Larry D. Starns, Soo Line Railroad Company, Soo Line Building, Box 530, 105 South Fifth Street, Minneapolis, MN, 55440.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. (1980).

Dated: March 24, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-7632Filed 3-30-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31418]

Wisconsin Central Ltd.—Trackage Rights Exemption—Soo Line Railroad Co.

Soo Line Railroad Company (Soo) has agreed to grant overhead trackage rights to Wisconsin Central Ltd. between milespost 355.487 at Ladysmith, WI, and milespost 461.74 at Superior, WI. The trackage rights are in substitution for trackage rights exempted in Finance Docket No. 31102, *Wisconsin Central Ltd. Exemption—Acquisition and Operation—Certain Lines Soo Line Railroad Company*, served October 8, 1987 (52 FR 38156-38157, October 14, 1987). The substituted trackage rights became effective on March 16, 1989.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the

transaction. Pleadings must be filed with the Commission and served on: Janet H. Gilbert, Wisconsin Central Ltd., 1420 Renaissance Drive, Suite 201, Park Ridge, IL 60069, and Larry D. Starns, Soo Line Railroad Company, Soo Line Building, Box 530, 105 South Fifth Street, Minneapolis, MN 55440.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: March 24, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-7633 Filed 3-30-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-6 (Sub-No. 311X)]

Burlington Northern Railroad Co.—Abandonment Exemption—in Fergus County, MT

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon its 9.34-mile line of railroad between milepost 1.10 near Lewiston and milepost 10.44 near Health, in Fergus County, MT.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal compliant filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the adandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on April 30, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by April 10, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by April 20, 1989, with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative:

William R. Power, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an evnironmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by April 5, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditons will be imposed, where appropriate, in a subsequent decision.

Decided: March 24, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-7631 Filed 3-30-89; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

[Docket No. AB-55 (Sub-No. 295X)]

CSX Transporation, Inc.—Abandonment Exemption—in Fayette County, WV

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* abandon its 6.95-mile line of railroad between milepost 0.0 at Mt. Carbon and milepost 6.95 near Elkridge, in Fayette County, WV.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon *Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on April 30, 1989 (unless stayed pending reconsideration). Petitions to say that do not involve environmental issues,[1]

[1] A stay will be rountinely issued by the Commission in these proceedings were an informed decision on environmental issues (whether 4 raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by April 10, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by April 20, 1989, with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative:

Patricia Vail, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by April 5, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115), Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Baush, Chief, SEE at (202) 275-7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: March 23, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 7630 Filed 3-30-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31386]

Exemption; CSX Transportation, Inc.—Trackage Rights Exemption—Grand Trunk Western Railroad Co.

Grand Trunk Western Railroad Company has agreed to grant overhead trackage rights to CSX Transportation, Inc. between milepost 272.5 in Flint, MI and milepost 332.3 in Port Huron, MI. The trackage rights became effective on March 20, 1989.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

As a condition to the use of this exemption, any employees affected by the trackage rights, will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: March 27, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-7692 Filed 3-30-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31416]

Exemption; Red River Valley and Western Railroad Co.; Trackage Rights Exemption—Soo Line Railroad Co.

Soo Line Railroad Company has agreed to grant overhead trackage rights to Red River Valley and Western Railroad Company between milepost 252.62 near Sheldon, ND, and milepost 265.11 near Lucca, ND. The trackage rights became effective on March 21, 1989.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Larry D. Starns, Soo Line Building, Suite 1000, 105 South Fifth Street, Minneapolis, MN 55440.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: March 27, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

[FR Doc. 89-7693 Filed 3-30-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31419]

Exemption; Soo Line Railroad Co—Trackage Rights Exemption—Indiana Harbor Belt Railroad Co.

Decided: March 27, 1989.

Indiana Harbor Belt Railroad Company has agreed to grant overhead trackage rights to Soo Line Railroad Company between Baltimore & Ohio, Chicago Terminal Railway Company milepost 10.7 and CSX Transportation Company milepost ZA 16.92 at Dolton, IL. The trackage became effective March 17, 1989.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleading must be filed with the Commission and served on: Larry D. Starns, Soo Line Railroad Company, Soo Line Building, Box 530, 105 South Fifth Street, Minneapolis, MN 55440, and Anna M. Kelly, Indiana Harbor Belt Railroad Company, P.O. Box 389, 2721 161st Street, Hammond, IN 46325.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-7694 Filed 3-30-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31415]

Soo Line Railroad Co.; Joint Project for Relocation of a Line of Railroad and Trackage Rights Exemptions; Burlington Northern Railroad Co.

On March 10, 1989, Soo Line Railroad Company (SOO) filed a notice of exemption under 49 CFR 1180.2(d) (5) and (7) for the acquisition of overhead trackage rights over lines of the Burlington Northern Railroad Company (BN) between: (1) Milepost 58.5 at Hinckley, MN and milepost 11.43 at Minneapolis, MN; and (2) milepost 11.14 and the end of BN's Saunders Yard Track number 5 at Saunders, WI. The trackage rights became effective on March 17, 1989.

The joint project involves the relocation of a line of railroad that does not disrupt service to shippers, and, incidental thereto, the discontinuance of

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[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

trackage rights used by SOO over other BN lines. The Commission will assume jurisdiction over the abandonment and discontinuance components of a relocation project only in cases where the proposal involves, for example, a change in service to shipppers, expansion into new territory, or a change in existing competitive situations. *See, generally, Denver & R.G.W.R. Co.—Jt. Proj.—Relocation Over BN,* 4 I.C.C.2d 95 (1987). Under these standards, the discontinuance of trackage rights is not subject to the Commission's jurisdiction. The remainder of the joint relocation project, involving the acquisition of overhead trackage rights, qualifies under the class exemption procedures at 49 CFR 1180.2(d) (5) and (7).[1]

Use of this exemption will be conditioned on appropriate labor protection. Any employee affected by the trackage rights agreement will be protected by the conditions in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on:

Larry D. Starns, Soo Line Railroad Company, Soo Line Building, Box 530, 105 South Fifth Street, Minneapolis, MN 55440.

Peter M. Lee, Burlington Northern Railroad Company, 777 Main Street, 3800 Continental Plaza, Forth Worth, TX 76102.

Dated: March 28, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-7744 Filed 3-30-89; 8:45 am]

BILLING CODE 7035-01-M

[1] Embraced in the notice is a request for waiver of the environmental report. In a decision in Finance Docket No. 31342, *Soo Line Railroad Company and Burlington Northern Railroad Company—Exemptions—Joint Project for Relocation of a Line of Railroad and Trackage Rights* (not printed), served December 22, 1988, I determined that there is no basis for conducting environmental review of transactions such as these. Accordingly, inasmuch as there is no requirement for an environmental report, waiver is unnecessary.

[Finance Docket No. 31420]

Soo Line Railroad Co. & Kansas City Southern Railway Co.; Joint Project for Relocation of a Line of Railroad and Trackage Rights Exemptions; Missouri Pacific Railroad Co.

On March 9, 1989, Soo Line Railroad Company (SOO) and Kansas City Southern Railway Company (KCS) filed a notice of exemption under 49 CFR 1180.2(d)(5) and (7) for the acquisition of overhead trackage rights over the line of the Missouri Pacific Railroad Company (MP) between milepost 281.93 at Troost and Forest Avenue and milepost 283.59 at Henning Street, in Kansas City, MO. The trackage rights became effective on March 16, 1989.

The joint project involves the relocation of a line of railroad that does not disrupt service to shippers, and, incidental thereto, the abandonment of certain KCS track, including the removal of a bridge over MP track and the discontinuance of trackage rights used by SOO over the KCS line. The Commission will assume jurisdiction over the abandonment and discontinuance components of a relocation project only in cases where the proposal involves, for example, a change in service to shippers, expansion into new territory, or a change in existing competitive situations. *See, generally, Denver & R.G.W.R. Co.—Jt. Proj.—Relocation Over BN,* 4 I.C.C.2d 95 (1987). Under these standards, the abandonment of track and discontinuance of trackage rights are not subject to the Commission's jurisdiction. The remainder of the joint relocation project, involving the acquisition of overhead trackage rights, qualifies under the class exemption procedures at 49 CFR 1180.2(d)(5) and (7).[1]

Use of this exemption will be conditioned on appropriate labor protection. Any employees affected by the trackage rights agreement will be protected by the conditions in *Norfolk and Western Ry. Co.) Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on:

Larry D. Starns, Soo Line Railroad Company, Soo Line Building, Box 530, 105 South Fifth Street, Minneapolis, MN 55440.

Richard P. Bruening, Kansas City Southern Railway Company, 114 W. Eleventh Street, Kansas City, MO 64105-1804.

Jim P. Dolan, Missouri Pacific Railroad Company, 1416 Dodge Street, Omaha, NE 68179.

Dated: March 28, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-7745 Filed 3-30-89; 8:45 am]

BILLING CODE 7035-01-M

[1] Embraced in the notice is a request for waiver of the environmental report. In a decision in Finance Docket No. 31342, *Soo Line Railroad Company and Burlington Northern Railroad Company—Exemptions—Joint Project for Relocation of a Line of Railroad and Trackage Rights* (not printed), served December 22, 1988, I determined that there is no basis for conducting environmental review of transactions such as these. Accordingly, inasmuch as there is no requirement for an environmental report, waiver is unnecessary.

DEPARTMENT OF JUSTICE

[AAG/A Order No. 32-89]

Privacy Act of 1974; Modified System of Records

Under the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Civil Rights Division, Department of Justice, proposes to modify an existing system of records entitled "Central Civil Rights Division Index File and Associated Records (JUSTICE/CRT-001)." Notice of the system was last published in the **Federal Register** on October 17, 1988 (53 FR 40508).

The system notice is being revised primarily to reflect new "Categories of Individuals Covered by the System" and "Categories of Records in the System." The new data will be added to the system pursuant to Section 105 of the Civil Liberties Act of 1988 (50 U.S.C. App. 1989b) which authorizes the Attorney General to identify, locate and make restitution payments to eligible persons of Japanese ancestry who were interned during World War II. For clarity purposes, some additional changes to the routine use section have been made. All changes have been italicized for public convenience.

Title 5 U.S.C. 552a(e)(11) provides that the public be given a 30-day period in which to comment on the routine uses for the system. In addition, the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires that it be given a 60-day period in which to review proposed changes to the system. However, the Department has requested a waiver of the 60-day requirement.

Therefore, please submit any comments by May 1, 1989. The public, OMB and Congress are invited to send written comments to Patricia E. Neely, Staff Assistant, Facilities and Administrative Services Staff, Justice Management Division, Department of Justice, Room 529, 633 Indiana Avenue NW., Washington, DC 20530.

In accordance with Privacy Act requirements, the Department of Justice has provided a report on the proposed system modification to the Director, OMB, the Senate Committee on Governmental Affairs, and the House Committee on Government Operations.

Date: March 22, 1989.

Harry H. Flickinger,

Assistant Attorney General for Administration.

JUSTICE/CRT-001

SYSTEM NAME:

Central Civil Rights Division index File and Associated Records.

SYSTEM LOCATION:

United States Department of Justice Civil Rights Division (CRT) 10th and Constitution Avenue NW., Washington, DC 20530; HOLC Building, 320 First Street NW., Washington, DC 20534; *1100 Connecticut Avenue;* and Federal Records Center, Suitland, Maryland 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

These persons may include: Subjects of *investigations,* victims, potential witnesses, *individuals of Japanese ancestry who are eligible, or potentially eligible, for restitution benefits as a result of their evacuation, relocation, or internment during World War II,* correspondents on subjects directed or referred to CRT or other persons or organizations referred to in potential or actual cases and matters of concern to CRT, and CRT employees who handle complaints, cases or matters of concern to CRT.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of alphabetical indices bearing the names of those individuals identified above and the associated record to which the indices relate containing the general and particular records of all CRT correspondence cases, matters, and memoranda, including, but not limited to, investigative reports, correspondence to and from the Division memoranda, legal papers, evidence, and exhibits. The names of some individuals, e.g., witnesses, may not yet be on the central indices. Records relating to such individuals may be obtained by direct access to the file jackets. Such file jackets are located within the respective sections of CRT according to the legal subject matter assigned to each CRT section. The delegated legal duties and responsibilities of each section are described as follows:

The records related to the duties of the Appellate Section of CRT include records generated by all *CRT* cases that have entered the U.S. Supreme Court and the Courts of Appeal. Other records include those generated in the course of Appellate Section duties such as advising Members of Congress on legislative matters, providing legal counsel on civil rights issues to Federal agencies and providing counsel to the various components of the Department of Justice, and such other matters as may be required to fulfill the duties mandated by Congress.

The record related to the duties of the Coordination and Review Section *of CRT* include letters, studies, and reports concerning the implementation of Executive Orders 12250 and 12236. Under E.O. 12250, the Attorney General coordinates and monitors the enforcement of Title VI of the Civil Rights Act of 1964. Title IX of the Education Amendments of 1972, as amended, and the civil rights provisions of any Federal assistance grant which forbids discrimination in federally assisted programs on the basis of race, color, national origin, sex, handicap or religion. The Coordination and Review Section also works with Federal agencies under E.O. 12236 to monitor review of their enabling legislation on the basis of sex. Other records relate to litigation involving the civil rights statutes coordinated by the Department of Justice, and such other matters as may be required to fulfill the duties mandated by the President and Congress.

The records related to the duties of the Criminal Section of CRT include cases or matters arising under 18 U.S.C. 241 and 242 which prohibit persons acting under color of law or in conspiracy with others to interfere with or deny the exercise of Federal constitutional rights, cases involving criminal violations of the Voting Rights Act of 1965 (42 U.S.C. 1971 through 1974), cases or matters involving criminal interference with housing rights as is prohibited by 42 U.S.C. 3631 and criminal interference with other federally protected rights as is prohibited by 18 U.S.C. 245. Other Criminal Section records include cases or matters involving 18 U.S.C. 1581 through 1588 which prohibit involuntary servitude, some cases involving maritime law, and such other matters as may be required to fulfill the duties mandated by Congress.

The records related to the duties of the Educational Opportunities Section of CRT include cases or matters arising under Federal laws requiring nondiscrimination in public education such as Titles IV and IX of the Civil Rights Act of 1964 (42 U.S.C. 2000c, 42 U.S.C. 2000h-2) which prohibit discrimination on the basis of race, color, religion, sex, or national origin: Title IX of the 1972 Education Amendments (20 U.S.C. 1681) which prohibits discrimination on the basis of sex in educational programs or activities receiving federal financial assistance and section 504 of the Rehabilitation Act of 1973 which grants rights to handicapped persons participating in educational programs receiving federal financial assistance. In addition, the records related to the duties of the Educational Opportunities Section include cases or matters arising under the Equal Educational Opportunities Act of 1974 (20 U.S.C. 1701), and such other matters as may be required to fulfill the duties mandated by Congress.

The records related to the duties of the Employment Litigation Section *of CRT* include cases or matters arising under Federal laws prohibiting discriminatory employment practices by State and local governments such as the equal employment opportunity provisions contained within the Revenue Sharing Act of 1972, as amended. Other records include cases or matters arising under Title VII of the Civil Rights Act of 1964 and its amendment which is the Pregnancy Discriminatory Act of 1978 (42 U.S.C. 2000e(k)). In addition, the records related to the duties of the Employment Litigation Section include cases or matters arising under Executive Order No. 11246 involving equal opportunity laws applicable to public employers. Federal contractors and subcontractors involved in federally financed projects, and such other matters as may be required to fulfill the duties mandated by Congress.

The records related to the duties of the Housing and Civil Enforcement Section of CFT include cases or matters involving the Fair Housing Act of 1968 (42 U.S.C. 3501 through 3619), and cases or matters involving fair credit laws such as the Equal Credit Opportunity Act (15 U.S.C. 1691 through 1691g) as well as its implementing regulations. Regulation B (12 CFR Part 202). Other records include cases or matters arising under Title II and Title III of the Civil Rights Act of 1964 which prohibit discrimination in public facilities (except

those Title III matters that involve prison facilities) and cases or matters arising under the nondiscrimination provisions of the Revenue Sharing Act and the Housing and Community Development Act of 1974, and such other matters as may be required to fulfill the duties mandated by Congress.

The records related to the duties of the Special Litigation Section of CRT includes cases or matters arising under Title III of the Civil Rights Act of 1964 as it applies to prison facilities, cases or matters arising under the Civil Rights of Institutionalized Persons Act of 1980 (42 U.S.C. 1997), cases or matters involving the constitutional rights of institutional juveniles, and the constitutional rights of mentally and physically handicapped persons of all ages, cases arising under section 504 of the Rehabilitation Act of 1973, as amended, and such other matters as may be required to fulfill the duties mandated by Congress.

The records relate to the duties of the Office of Redress Administration (ORA) and include records pertaining to the identification, location and authorization for restitution payments to eligible individuals of Japanese ancestry who were evacuated, relocated or interned during World War II. Such restitution payments are authorized by Section 105 of the Civil Liberties Act of 1988 (50 U.S.C. App. 1989b). Records will also relate to any criminal or civil cases arising under this Act which occur as a result of fraud, challenges to ORA administrative regulations, and to any other such matters as may be required to fulfill the duties mandated by Congress.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The records in the system of records are kept under the authority of 44 U.S.C. 3101 and in the ordinary course of fulfilling the responsibility assigned to *CRT* under the provisions of 28 CFR 0.50, 0.51.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Information in the system may be used by employees and officials of the Department to make decisions in the course of investigations and legal proceedings: to assist in preparing responses to correspondence from persons outside the Department to prepare budget requests, and various reports on the work product of *CRT or* to carry out other authorized Department *functions.*

B. A record maintained in this system of records may be disseminated as a routine use of such records as follows: (1) A record relating to a possible or potential violation of law, whether civil, criminal, or regulatory in nature may be disseminated to the appropriate federal, state or local agency charged with the responsibility of enforcing or implementing such law; (2) in the course *of the Administration by CRT of a federally mandated program, or the* investigation or litigation of a case or matter, a record may be disseminated to a federal, state or local agency, or to an individual or organization, if there is reason to believe that such agency, individual or organization possesses information or has the expertise in an official or technical capacity to *assist in the administration of such program or to* analyze information relating to the investigation, trial or hearing and the dissemination is reasonably necessary to elicit such assistance, information or expert analysis, or to obtain the cooperation of a prospective witness; (3) A record relating to a case or matter, or any facts derived therefrom, may be disseminated in a proceeding before a court, grand jury, administrative or *regulatory* proceeding or any other adjudicative body before which *CRT* is authorized to appear, when the United States, or any agency or subdivision thereof, is a party to litigation or has an interest in litigation and such records are determined by *CRT* to be arguably relevant to the litigation; (4) a record relating to a case or matter may be disseminated to an actual or potential party to litigation or the party's attorney (a) for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining or (b) in formal or informal discovery proceedings; (5) a record relating to a case or matter that has been referred for investigation may be disseminated to the referring agency to notify such agency of the status of the case or matter or of any determination that has been made; (6) a record relating to a person held in custody or probation during a criminal proceeding or after conviction, may be disseminated to any agency or individual having responsibility for the maintenance, supervision or release of such person; (7) a record may be disseminated to the United States Commission on Civil Rights in response to its request and pursuant to 42 U.S.C. 1975d.; (8) a record may be disseminated to volunteer student workers and students working under a work-study program as is necessary to enable them to perform their assigned duties.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information in the system may be disclosed as is necessary to respond to inquiries by Members of Congress on behalf of individual constituents that are subject to CRT records.

Release of information to the National Archives and Records Administration:

(NARA) and to the General Services Administration (GSA):

A record from a system of records may be disclosed as a routine use to *NARA and GSA* in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETRAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in this system is stored on index cards, in file jackets, and on computer disks or *tapes.*

RETRIEVABILITY:

Information is retrieved through either use of an index card system or logical queries to the computer-based system. Entries are arranged alphabetically by the names of individuals *covered by the system.* (Complaints received from individuals which have not been investigated by the Department have not been systematically indexed and information pertaining to such individuals may or may not be retrievable.) Information on such individuals may be retrievable from the file jackets by a number assigned and appearing on the index cards.

SAFEGUARDS:

Information in manual and computer form is safeguarded and protected in accordance with applicable Department security regulations for systems of records. Only a limited number of staff members who are assigned a specific indentification code will be able to use the computer to access the stored information.

RETENTION AND DISPOSAL:

Records are maintained on the system while current and required for official Government use. When no longer needed on an active basis, the paper files are transferred to the Federal Records Center, Suitland, Maryland and some records are transferred to

computer tape and stored in accordance with Department security regulations for system of records. Final disposition is in accordance with records retirement or destruction as scheduled by *NARA*.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Officer. Administrative Management Section, Civil Rights Division, United States Department of Justice, Washington, DC 20530.

NOTIFICATION PROCEDURE:

Part of this system is exempted from this requirement under 5 U.S.C. 552a (j)(2) and (k)(2). Address inquiries to the System Manager listed above.

RECORD ACCESS PROCEDURES:

Part of this system is exempted from this requirement under 5 U.S.C. 552a (j)(2) and (k)(2). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received. A request for access to a record retrievable in this system shall be made in writing, with the envelope and letter clearly marked "Privacy Access Request." Include in the request the full name of the individual, his or her current address, date and place of birth, notarized signature (28 CFR 16.41(b)), the subject of the case or matter as described under "Categories of records in the system," and any other information which is known and may be of assistance in locating the record, such as the name of the civil rights related case or matter involved, where and when it occurred and the name of the judicial district involved. The requester will also provide a return address for transmitting the information. Access requests should be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend non-exempt information retrievable in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system may be an agency or person who has or offers information related to the law enforcement responsibilities and/or other statutorily-mandated duties of CRT.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted parts of this system from subsections (c)(3), (d), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(c) and (e) and have been published in the **Federal Register.**

These exemptions apply only to the extent that information in a record pertaining to a particular individual relates to an official Federal investigation and/or law enforcement matter. Those files indexed under an individual's name which concern only the administrative management of restitution payments under Section 105 of the Civil Liberties Act of 1988 are not being exempted pursuant to 5 U.S.C. 552a (j)(2) and (k)(2).

[FR Doc. 89-7638 Filed 3-30-89; 8:45 am]
BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 88-39]

Leonard Merkow, M.D.; Revocation of Registration

On March 22, 1988, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause to Leonard Merkow, M.D., of 5301 Darlington Road, Pittsburgh, Pennsylvania, proposing to revoke his DEA Certificate of Registration AM5075305. The Order to Show Cause alleged that the continued registration of Respondent would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f) and 824(a)(4). Additionally, citing his preliminary finding that Respondent's continued registration posed an imminent danger to the public health and safety, the Administrator ordered the immediate suspension of the registration pending the outcome of these proceedings. 21 U.S.C. 824(d).

Respondent, through counsel, requested a hearing in a letter dated March 31, 1988. The matter was docketed before Administrative Law Judge Francis L. Young. Following prehearing procedures, a hearing was held in Pittsburgh, Pennsylvania on September 7 and 8, 1988. On January 5, 1989, the Administrative Law Judge issued his opinion and recommended ruling. On January 23, 1989, counsel for the Respondent filed exceptions to the recommended ruling. On February 13, 1989, the Government filed a response to Respondent's exceptions and on February 15, 1989, Judge Young transmitted the record of these proceedings, including the aforementioned exceptions, to the Administrator. The Administrator has considered the record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

Respondent is a physician licensed to practice medicine in the State of Pennsylvania. Among Respondent's patients was one Patrick Noon. Patrick Noon first saw Respondent as a patient on August 9, 1986. Mr. Noon's medical history indicated that he was taking methadone and had been a drug addict. From August 9, 1986, to October 21, 1986, Mr. Noon's medical chart indicated that he visited Respondent's office on nine occasions and received prescriptions for controlled substances totalling 24 Percocet, 28 Halcion, 14 Vicodin, 26 Anexsia-D, and 52 Valium. On November 3, 1986, Patrick Noon began receiving prescriptions for Tylenol with Codeine #4 and Doriden.

Mr. Noon began working as a confidential informant for DEA following his arrest by the Oakdale Police Department in October 1987 for driving under the influence. Laboratory analysis revealed that Mr. Noon was driving under the influence of Valium and Doriden. Mr. Noon told DEA Agents that he was a drug addict, had been a heroin addict since the age of 15, had been arrested several times, and had been receiving "fours and dors" from a physician in Oakdale for two years. "Fours and dors" is the street name given to the widely abused combination of Tylenol #4 (with codeine) and Doriden. Evidence presented at the hearing established that Respondent was well aware of the popularity of this combination of drugs with addicts and abusers, and that he was well aware of the danger of taking them together. In Western Pennsylvania the combination of Doriden and Tylenol with codeine is highly abused. In Erie, Pennsylvania, approximately 120 miles from Pittsburgh, there have been over 200 overdoses directly related to this combination of drugs.

Under the supervision of DEA Task Force Agents, Mr. Noon began to wear a concealed recording device when he visited the Respondent's office. Mr. Noon made thirteen such monitored visits to Respondent's office. On seven of these occasions Mr. Noon saw and talked with Respondent and received "fours and dors" prescription from Respondent. The Administrative Law Judge found that the transcripts of the conversations between the two men on

these occasions make it perfectly clear that Respondent was not prescribing "fours and dors" for Mr. Noon for any legitimate medical purpose. In fact, in one conversation, after Mr. Noon requested "fours and dors," Respondent replied, "we're all going to jail."

In addition to the prescriptions Mr. Noon received from Respondent, Mr. Noon also received controlled substances from the receptionist at Respondent's office on a number of occasions. Some of these occasions were times when Mr. Noon also obtained prescriptions from Respondent. From late October 1987, to late December 1987, Mr. Noon obtained from the receptionist more than 300 tablets of Valium, a Schedule IV substance, and 144 Doriden tablets. The Administrative Law Judge was unswayed by Respondent's testimony at the hearing in which he disclaimed any knowledge of these transactions between his receptionist and Mr. Noon. The Administrative Law Judge found that Respondent is properly faulted for these transactions. Respondent ordered large quantities of controlled substances for dispensing in his practice amounting to almost 200,000 dosage units in nine months in 1987. Respondent is responsible for the proper dispensing and accounting for these controlled substances. Indeed, Respondent testified at the hearing that he stored the controlled substances at his home and only brought them to his office as needed. Respondent presented no evidence to rebut the Government's evidence that Mr. Noon was dispensed controlled substances by the receptionist whom he employed.

The Administrative Law Judge found that Respondent unlawfully prescribed Tylenol #4 (with codeine) and Doriden, both Schedule III controlled substances, to Mr. Noon and that Respondent permitted his receptionist to give Mr. Noon sizeable quantities of Valium and Doriden unlawfully.

The Administrative Law Judge also found that Respondent received, stored and dispensed controlled substances at unregistered locations. During all or part or the time pertinent to this proceeding, Respondent maintained three offices. He had an office at 15 State Street, Oakdale, Pennsylvania and another one at 3944 Nantasket Street, Pittsburgh, Pennsylvania. He also maintained an office in his home at 5301 Darlington Road, Pittsburgh. The Darlington Road address remained registered with DEA until the show cause and immediate suspension order was served on Respondent on March 23, 1988. The Oakdale registration lapsed on January 31, 1987, and was not renewed. The Nantasket Street office was not registered with DEA at any time.

During the entire period relevant in these proceedings, and for some years previously, Respondent received all shipments of controlled substances to be used in his medical practice at his home. Respondent testified that for seventeen years, it was his routine to transport the controlled substances from his Darlington Road home to his Oakdale office where they would be dispensed to patients. Often controlled substances would be kept stored at home for some period of time until needed for dispensing at the Oakdale office. The Administrative Law Judge found that it was unlawful for Respondent to dispense controlled substances from his Oakdale office after January 31, 1987, when his registration at that address lapsed. The Controlled Substances Act requires that a separate registration be maintained at each place of professional practice where the registrant dispenses controlled substances. 21 U.S.C. 822(e). At the hearing, Respondent asserted that he was unaware of this requirement and would willingly have complied had he known of it. The Administrative Law Judge found that ignorance of the law is no excuse. Although Respondent's failure to maintain a registration at his Oakdale office, alone, would not be sufficient to warrant revocation of Respondent's DEA registration, the Administrative Law Judge found such failure to be another indication of his lack of fitness to hold a DEA registration.

The Administrative Law Judge also found that Respondent was convicted on February 26, 1986, in a Pennsylvania State Court of 47 counts of submitting false Medicaid claims, felony violations of Pennsylvania law. This conviction arose from forty-seven separate instances during 1981 and 1982, in which Respondent submitted bills to Medicaid for x-rays, when, in fact, the x-rays actually taken did not meet the description of what was billed. Respondent was sentenced to three years probation, a $50,000 fine, restitution in the amount of $6,580, and investigative costs totalling $2,747.87. Respondent was given a public reprimand by the Pennsylvania Bureau of Professional and Occupational Affairs. The Administrative Law Judge found that although the circumstances leading up to Respondent's conviction in the state court may not, themselves, warrant revocation of a DEA registration, they show professional carelessness and neglect and are appropriately considered in determining whether Respondent should continue to be entrusted with a DEA registration.

Respondent's medical practice license was suspended by the State of Pennsylvania on March 22, 1988. This temporary suspension was based upon a petition by an attorney for the Bureau of Professional and Occupational Affairs. The Administrative Law Judge noted that the Pennsylvania Bureau of Professional and Occupational Affairs reinstated Respondent's medical practice license on April 20, 1988, after a hearing. However, in light of the adverse evidence presented at this proceeding concerning Respondent's activities, the Administrative Law Judge gave little weight to the reinstatement of Respondent's license.

The final matter in support of the revocation of Respondent's DEA Certificate of Registration is the fact that Respondent received a shipment of controlled substances after his DEA registration had been suspended, and he failed promptly to return them to the shipper or turn them over to DEA. On March 23, 1988, at approximately 5:30 p.m., Respondent was notified that his DEA Certificate of Registration had been suspended. Respondent was told that if he received any controlled substances subsequent to the suspension of his registration he should notify DEA. On March 23, 1988, Respondent ordered 19,200 dosage units of controlled substances. These drugs were delivered to Respondent by United Parcel Service (UPS) on March 28, 1988. Respondent did not advise DEA that a shipment of controlled substances had been delivered to him. On April 13, 1988, a search warrant was executed at Respondent's residence. The controlled substances from the shipment delivered on March 28, 1988, were not present. The substances were subsequently recovered from Respondent's attorney's garage. Therefore, even though Respondent was specifically advised by DEA to notify them if he received such a shipment, he only notified his attorney and did not take any action to notify DEA.

No one may lawfully possess controlled substances in the United States except as authorized by the Controlled Substances Act, as amended, and regulations issued pursuant thereto. Respondent cited no authority for the claim that he or his attorney, more than two weeks after the delivery, was entitled to be in possession of these controlled substances. The Administrative Law Judge found that Respondent flouted the law with respect to the controlled substances he received

after his DEA registration was summarily suspended.

Based upon the foregoing, the Administrative Law Judge recommended that the Administrator revoke Respondent's Certificate of Registration. The Administrator may revoke a DEA Certificate of Registration if he determines that such registration is inconsistent with the public interest. Included among the factors to be considered in determining the public interest is an individual's experience in dispensing controlled substances, his compliance with applicable laws relating to controlled substances, and such other conduct which may threaten the public health and safety. Respondent's experience in dispensing controlled substances is appalling. Respondent has a history of unlawfully dispensing prescriptions for Tylenol #4 (with codeine) and Doriden to an individual, and permitting his receptionist to give the same individual large quantities of Valium and Doriden tablets. Respondent's failure to comply with laws relating to controlled substances is evidenced by his lack of control over, and failure to keep records required for the controlled substances which he dispensed in his office; his failure to be properly registered with DEA to dispense controlled substances at his Oakdale office, and his prescribing of controlled substances for other than a legitimate medical purpose. The Administrative Law Judge also found that the circumstances leading up to Respondent's convictions in the state court and his fraudulent billing for x-rays under Medicaid constitute conduct threatening the public health and safety. Upon consideration of the factors set out in 21 U.S.C. 823(f), Respondent's registration is clearly inconsistent with the public interest. The Administrator adopts the opinion and recommended ruling of the Administrative Law Judge that Respondent's Certificate of Registration be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AM5075305, previously issued to Leonard Merkow, M.D., be, and it hereby is, revoked. It is further ordered that any pending applications for renewal of said registrations be, and they hereby are, denied.

At the time the Order to Show Cause and Immediate Suspension were served on Respondent, all controlled substances possessed by Respondent under the authority of his then-suspended registration were placed under seal until the time for disposition of this proceeding and taking appeals had elapsed. Accordingly, these controlled substances shall remain under seal until May 1, 1989, or until any appeal of this order has been concluded. At that time, all such controlled substances shall be forfeited to the United States and shall be disposed of pursuant to 21 U.S.C. 881(3).

This order is effective March 27, 1989.

John C. Lawn,

Administrator.

Dated: March 27, 1989.

[FR Doc. 89-7678 Filed 3-30-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-41]

Alan Liebowitz, R.Ph. d/b/a Prairie Clinical Pharmacy, Inc.; Revocation of Registration

On March 14, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Alan Liebowtiz, R.Ph., d/b/a Prairie Clinical Pharmacy, Inc., 7409 Puritan, Detroit, Michigan 48238 (Respondent), proposing to revoke DEA Certificate of Registration Ap6401119, previously issued to Respondent, and deny any pending applications for renewal of the registration as a retail pharmacy under 21 U.S.C. 823(f). The statutory predicate for seeking revocation of the registration is that the pharmacy's continued registration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

Respondent, through counsel, timely filed a request for a hearing on the issues raised by the Order to Show Cause. The matter was placed on the docket of Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, the matter was scheduled for a hearing on November 30, 1988, in Washington, DC. Pursuant to a request by counsel for Respondent, the hearing was rescheduled for January 4, 1989. By letter dated December 6, 1988, counsel for Respondent notified Government counsel that Respondent was closing his pharmacy and therefore had no interest in defending the proceedings brought against him by DEA. On December 20, 1988, Government counsel filed a Motion for Termination of Proceedings. On December 21, 1988, the Administrative Law Judge terminated the proceedings before her.

Based upon the foregoing, the Administrator concludes that Respondent has waived its opportunity for a hearing on the issues raised in the Order to Show Cause and, pursuant to 21 CFR 1301.57, issues this final order revoking the pharmacy's DEA Certificate of Registration and denying any pending applications for renewal of the registration based upon the DEA investigative file.

The Administrator finds that the Federal Bureau of Investigation (FBI) conducted court authorized telphone wiretaps of several individuals and medical clinics suspected of being involved in the illegal sale and distribution of controlled substances. During the course of the wiretaps, a suspect by the name of Henry Chaney telephoned Alan Liebowitz, registered pharmacist and owner of Respondent pharmacy, in order to illegally obtain controlled substances.

As a result of the telephone conversation, the FBI interviewed Alan Liebowitz on June 17, 1986, and December 5, 1986, concerning his involvement with Henry Chaney and the sale of controlled substances. Alan Liebowitz admitted that on three separate occasions, he unlawfully sold "T's and Blues" to Henry Chaney. "T" is the street name for Talwin, a Schedule IV controlled substance. "Blues" is the street name for the non-controlled prescription drug pyribenzamine, also known as PBZ, which is commonly taken in combination with Talwin by abusers in order to enhance its effects. Respondent stated that he sold 3,000 Talwin tablets and 3,00 PBZ tablets to Henry Chaney in exchange for $3,000. These controlled substances were dispensed without prescriptions and for no legitimate medical purpose. Respondent advised the FBI that Henry Chaney had connections "down south" where he resold the "T's and Blues."

The Administrator notes that a complete investigation of Respondent pharmacy was not conducted because records could not be produced. By letter dated June 20, 1986, just three days after the FBI initially contacted Alan Liebowitz, he informed DEA that there had been a flood in the basement where the pharmacy's records were kept and as a result the pharmacy's records were destroyed.

The investigative file further reveals that on June 16, 1986, Respondent filled

a prescription, which called for the brand name Valison ointment, with the less expensive generic equivalent. He then billed Blue Cross/Blue Shield as if the brand name drug had been dispensed at a higher price. Respondent thereafter received, through the United States mail, reimbursement for the fraudulent generic substitution. As a result, on November 14, 1986, in the United States District Court for the Eastern District of Michigan, Alan Liebowitz was charged with one count of mail fraud in violation of 18 U.S.C. 1341. He pled guilty to this offense and was convicted on May 7, 1987. Alan Liebowitz was sentenced to one year imprisonment and execution of the sentence was suspended. He was placed on three years probation and was required to pay a fine of $50,000, plus a special felony assessment of $50, to perform 200 hours of community service work and to continue treatment in a mental health program as directed by the probation department, if necessary.

Based on this conviction, the State of Michigan, Department of Licensing and Regulation, Board of Pharmacy, suspended Alan Liebowitz's pharmacist license for ninety days, imposed a fine of $500.00, and placed him on probation for three years. This order became effective on July 21, 1988.

Based on the foregoing, the Administrator concludes that the continued registraiton of Respondent would be inconsistent with the public interest. Alan Liebowitz ignored both his professional obligation as a pharmacist and his legal responsibility as a registrant when he unlawfully sold controlled substances. Furthermore, he committed insurance fraud and was convicted of that offense. He has clearly demonstrated that he can no longer be entrusted with a DEA controlled substances registration.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AP6401119, previously issued to Alan Liebowitz, d/b/a Prairie Clinical Pharmacy, Inc., be, and it hereby is, revoked. It is further ordered that any pending applications for renewal be, and they thereby are, denied.

This order is effective May 1, 1989.

John C. Lawn,

Administrator.

Dated: March 27, 1989.

[FR Doc. 89-7577 Filed 3-30-89; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General Wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions being added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume I

North Carolina:
NC89-32 ..... pp. 586a-586b

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modifieo are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Alabama:
AL89-23 (Jan. 6, 1989) ..... pp. 46-47
AL89-24 (Jan. 6, 1989) ..... p. 50
AL89-26 (Jan. 6, 1989) ..... p. 54

AL89-29 (Jan. 6, 1989) ..... p. 60
AL89-30 (Jan. 6, 1989) ..... p. 60b
MA89-1 (Jan. 6, 1989) ..... pp. 372-386b
MA89-2 (Jan. 6, 1989) ..... pp. 388-399
MA89-3 (Jan. 6, 1989) ..... pp. 402-405
NY89-2 (Jan. 6, 1989) ..... p. 691
NY89-4 (Jan. 6, 1989) ..... p. 713
NY89-6 (Jan. 6, 1989) ..... pp. 730-731
NY89-10 (Jan. 6, 1989) ..... p. 773
NY89-15 (Jan. 6, 1989) ..... p. 814
NY89-17 (Jan. 6, 1989) ..... p. 820
VA89-4 (Jan. 6, 1989) ..... p. 1132
VA89-16 (Jan. 6, 1989) ..... pp. 1168-1169

Volume II

Arkansas:
AR89-1 (Jan. 6, 1989) ..... p. 4
AR89-3 (Jan. 6, 1989) ..... p. 10
Iowa:
IA89-6 (Jan. 6, 1989) ..... pp. 52-53
Texas:
TX89-23 (Jan. 6, 1989) ..... p. 1041
Wisconsin:
WI89-1 (Jan. 6, 1989) ..... pp. 1138-1140
WI89-16 (Jan. 6, 1989) ..... p. 1120

Volume III

Alaska:
AK89-1 (Jan. 6, 1989) ..... p. 3
Arizona:
AZ89-1 (Jan. 6, 1989) ..... pp. 10-11
AZ89-2 (Jan. 6, 1989) ..... pp. 17, 22
AZ89-3 (Jan. 6, 1989) ..... p. 30
California:
CA89-4 (Jan. 6, 1989) ..... pp. 70-104b
North Dakota:
ND89-4 (Jan. 6, 1989) ..... p. 238
ND89 5 (Jan. 6, 1989) ..... p. 240b

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 24th day of March 1989.

Robert V. Setera,

Acting Director, Division of Wage Determinations.

[FR Doc. 89-7482 Filed 3-30-89; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL ADVISORY COMMISSION ON LAW ENFORCEMENT

Meeting

AGENCY: National Advisory Commission on Law Enforcement.

ACTION: Notice of Commission meeting.

SUMMARY: Notice of Commission Meeting on the Methods and Rates of Compensation of Federal Law Enforcement Officers as well as Comparisons with Their Nonfederal Counterparts.

DATES: The second Commission meeting is scheduled for Tuesday, April 11, 1989, from 2:00 to 4:00 p.m.

ADDRESSES: The meeting will be held in room 116, Senate Dirksen Office Building, Constitution Ave., between First and Second Streets NE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Drew Valentine, Staff Director, or Patrick Mullen, Deputy Staff Director, at (202) 275-1777.

SUPPLEMENTARY INFORMATION: The National Advisory Commission on Law Enforcement (ACLE) was created by the Anti-drug Abuse Act of 1988 (Pub. L. 100-690, Sec. 6160). The Commission was created to study "the methods and rates of compensation, including salary, overtime pay, retirement policies, and other benefits of law enforcement officers in all Federal agencies, as well as the methods and rates of compensation of State and local law enforcement officers in a representative number of areas where Federal law enforcement officers are assigned."

Among the items to be discussed are (1) the number and type of law enforcement personnel to be surveyed, (2) the basic approach to the study, (3) the use of outside consultants to supplement the Commission staff, and (4) issues to be addressed in the study. Members of the public wishing to attend the Commission meeting should notify the Commission staff on 275-1777 by close of business on April 5, 1989.

Charles A. Bowsher,

Chairman, National Advisory Commission on Law Enforcement.

[FR Doc. 89-7720 Filed 3-30-89; 8:45 am]

BILLING CODE 1610-01-M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Meeting

Notice is hereby given that a meeting of the Nuclear Waste Technical Review Board will be held on Tuesday, April 11, 1989, from 9:00 a.m.-4:30 p.m., and on Wednesday, April 12, 1989, from 8:00 a.m.-12:30 p.m. at the Yucca Mountain Project Office, Conference Room, 101 Convention Center Drive, Las Vegas, NV.

The purpose of the meeting is to obtain information which the Board has requested from the Department of Energy (DOE). DOE will brief the Board on regulatory considerations in site characterization. The public is permitted to attend these meetings only as observers. The meetings will be transcribed and procedures to obtain transcripts will be provided at the meeting. To ensure that adequate facilities are provided for public attendance, persons planning to attend should contact Dennis Condie on (202) 472-9058 by 4:00 p.m. (EST), Friday, April 7, 1989.

Dennis G. Condie,

Acting Administrative Officer, Nuclear Waste Technical Review Board.

Date: March 29, 1989.

[FR Doc. 89-7760 Filed 3-30-89; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-334]

Duquesne Light Co.; Ohio Edison Co., Pennsylvania Power Co., Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-66 issued to Duquense Light Company, et. al. (the licensee), for operation of the Beaver Valley Power Station, Unit 1, located in Beaver County, Pennsylvania.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise Table 3.5-5 of the Technical Specifications to include the time required for suction switchover from the volume control tank to the refueling water storage tank. These changes would permit an increase of response time for the safety injection system. In addition, there are a few editorial changes.

The proposed amendment is in accordance with Duquesne Light Company's application dated November 12, 1987.

The Need for the Proposed Action

The proposed changes to the Technical Specifications are needed to correct the inadvertent omission of the switchover time in the total response time. The editorial changes are needed to clarify current requirements.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to Technical Specifications. The proposed revisions would only permit a slightly longer response time for the safety injection system, and will have no other effect on plant design or operation. 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 these proposed actions would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed changes to the Technical Specifications involve the containment system which is located within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impacts. 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 Prior Hearing in connection with this action was published in the **Federal Register** on January 7, 1988 (53 FR 459). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed actions, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would only continue to require that unnecessary tests be performed.

Alternative Use of Resources

These actions do not involve the use of any resources not previously considered in the Final Environmental Statement (FES) for the Beaver Valley Power Station, Unit 1, dated July 1973.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The staff has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed actions will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated November 12, 1987, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, Washington, DC. and at the B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Dated at Rockville, Maryland, this 27th day of March, 1989.

For the Nuclear Regulatory Commission

Michael L. Boyle,

Acting Director, Project Directorate I-4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-7671 Filed 3-30-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-245]

Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-21, issued to Northeast Nuclear Energy Company (NNECO), for operation of the Millstone Nuclear Power Station, Unit 1, located in Waterford, Connecticut.

By letter dated January 24, 1989, NNECO proposed an amendment to the license for Millstone Unit 1. The proposed amendment will change Technical Specification (TS) 3.5.F.7(e) to clarify emergency core cooling system (EECS) availability and power requirements. This clarification was requested because of maintenance activities on 4160 volt busses to be conducted during the next refueling outage, which is scheduled to start April 1, 1989. In addition, editorial changes are being made to delete references to TS 3.5.F.8, 3.7.C.1.c and 3.7.C.1.d since these specifications were deleted in Amendment No. 1 to the Millstone Unit 1 license.

During the 1989 refueling outage, 4160 volt busses 14C and 14D are scheduled to be removed from service for extended periods of time (not concurrently) to conduct maintenance and inspections. The net effect of the licensee's proposed change is that additional breaker manipulation by the operator will be required to permit injection from a second EECS subsystem with a separate power supply.

Before 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.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided the following evaluation of the above three criteria in their application.

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The clarification of power requirements during refueling will not impact the consequences of the reactor vessel draining event since the means to ensure that adequate water level (>12 inches) is maintained above the irradiated fuel in the vessel draining event due to the additional operator actions which would be needed to align separate power to ECCS equipment, is not significant. The other proposed changes are administrative.

2. Create the possibility of a new or different kind of accident from any previously analyzed. The proposed changes to Specification 3.5.F.7.(e) do not impact plant response to any event to the point where it should be considered a new accident. No new failure modes are associated with this change. Assurance that the fuel will remain covered will be maintained, even though additional breaker manipulation will be required to provide separate power.

3. Involve a significant reduction in a margin of safety. The basis for the ECCS system requirements specified in Technical Specification 3.5.F is to ensure that water to the vessel is available to maintain water

level above the fuel during refueling operations. As specified in Technical Specifications 2.1.1.D, at least 12 inches of water must remain above the top of active fuel with fuel in the vessel during refueling. This change will not decrease the margin of safety as defined in the basis of any Technical Specification.

The staff reviewed and agrees with the licensee's analysis provided above. Accordingly, the Commission proposes to determine that this change does not involve significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the 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, and should cite the publication date and page number of the **Federal Register** notice. Written comments may also be delivered to Room P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 1, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 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 promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3494, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for

the granting of a late petition and/or request. That determination will be 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 January 24, 1989, which is available for public inspection at the Commission's Public Documents Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the Local Public Document Room, Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Dated at Rockville, Maryland, this 27th day of March 1989.

For the Nuclear Regulatory Commission.

Michael L. Boyle,

Project Manager, Project Directorate I–4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–7672 Filed 3–30–89; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50–275 and 50–323]

Pacific Gas and Electric Co.; Denial of Amendments to Facility Operating Licenses and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) has denied a request by the Pacific Gas and Electric Company (the licensee) for amendments to Facility Operating Licenses Nos. DPR–80 and DPR–82, issued to the licensee for operating of the Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2 (the facility), located in San Luis Obispo County, California.

The denied amendments, as proposed by the licensee, would modify the combined Diablo Canyon Unit 1 and Unit 2 Technical Specifications to allow continued power operation with the reactor vessel level indication system (RVLIS) inoperable.

The licensee's application for the amendments was dated March 13, 1987. Notice of Consideration of issuance of these amendments was published in the Federal Register on August 12, 1987 at 52 FR 29927.

The purpose of the RVLIS is to provide the plant operator with additional information on reactor vessel water level, particularly during transient events. RVLIS supplements existing instrumentation in order to ensure an unambiguous, easy-to-interpret indication of inadequate reactor core cooling.

The existing Diablo Canyon RVLIS technical specifications are in accordance with NRC guidelines given in (1) Regulatory Guide 1.97, Revision 3, "Instruction for Light-Water-Cooled Nuclear Power Plants to Assess Plant Conditions During and Following an Accident," May 1983; (2) NUREG-0737, "Clarification of TMI Action Plan Requirements," November 1980; and (3) the current standard technical specifications (STS) for Westinghouse pressurized water reactors. Specifically, the existing Diablo Canyon technical specifications for RVLIS meet the required number of instrument channels, and the frequency for checks, calibration, and testing of the system, and the operability requirements for all accidents monitoring instrumentation. The operability of the accident monitoring instrumentation ensures that sufficient information is available on important plant parameters to monitor and assess these variables following an accident.

If the proposed change were granted, the RVLIS operability requirements would revert to those that were in place during the first cycle of operation. When the Diablo Canyon Technical Specifications were originally issued, the staff considered this issue and made the finding that relaxation of the STS requirements was appropriate only for the first cycle. The staff sees no reason to modify this finding at this time.

Accordingly the request was denied. The licensee was notified of the Commission's denial of the request by letter dated March 27, 1989.

By May 1, 1989 the licensee may demand a hearing with respect to the denial described above and any person whose interest may be affected by the proceeding may file a written petition for leave to intervene.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Officer of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

For further details with respect to this action, see (1) the application for amendments dated March 13, 1987, and (2) the Commission's letter to Pacific Gas and Electric Company dated March , 1989, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Calfornia Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 27th day of March, 1989.

For the Nuclear Regulatory Commission.

Harry Rood,

Senior Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 89–7670 Filed 3–30–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–266 and 50–301]

Wisconsin Electric Power Co. Point Beach Nuclear Plant, Unit Nos. 1 and 2; Issuance of Amendment to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–24 and DPR–27, issued to the Wisconsin Electric Power Company (the licensee), for operation of the Point Beach Nuclear Plant, Unit Nos. 1 and 2, located at the licensee's site in Manitowoc County, Wisconsin.

The amendments would revise provisions of the Point Beach Nuclear Plant, Unit Nos. 1 and 2, Technical Specifications (TS's) relating to the permissible enrichments for storage of fuel assemblies in the new fuel storage vault and spent fuel storage pool. Specifically, the amendments would increase the U–235 content permitted for OFA fuel assemblies from 39.4 grams per axial centimeter to 40.0 grams per axial centimeter. In addition, the word "assemblies" is changed to "assembly" in two places in order to clarify the intent of the TS in that it applies to each fuel assembly and not to an average over more than one assembly.

The licensee believes that exigent circumstances exist. On July 6, 1988, the licensee submitted a license amendment application which would permit the storage of fuel with U–235 content of up to 46.8 grams per axial centimeter of OFA fuel assemblies. The application included discussion of the criticality analysis for both the new fuel storage vault and for the spent fuel storage pool showing that adequate margin exists for

maintaining the 5 percent shutdown margin stated in TS 15.5.4.2. The licensee also provided an evaluation of the potential effects of the higher enriched fuel and the associated increase in discharge burnup in relation to decay heat, radiation effects, and gamma heating on the spent fuel pool. The licensee concluded that these parameters were generally insensitive to increasing U-235 content because higher discharge burnups result in fewer fuel assemblies discharged per cycle and that heating and gamma dose considerations were bounded by previous analysis.

In mid-February 1989, the NRC notified the licensee that it was necessary for the NRC to engage an outside consultant to review possible environmental effects of potential accidents involving the more highly enriched/higher burnup fuel. As a result, it is unlikely that the July 6, 1988 request for amendments would be approved before the end of 1989. At that time, the licensee notified the NRC that 16 fuel assemblies had been ordered at a nominal enrichment of 4.0 weight percent U-235 (equivalent to 39.4 grams per axial centimeter) and that it was possible that some assemblies could exceed the specification limit of 39.4 grams of U-235 per axial centimeter due to normal enrichment process tolerances (+/− 0.05 weight percent). All fuel assemblies have now been fabricated and the final fuel assays indicate that 9 of the 16 assemblies exceed the 39.4 gram per axial centimeter limit for U-235 content. The W-235 content in the 16 fuel assemblies varied from 39.19 grams per axial centimeter to 39.64 grams per axial centimeter with an average of 39.415 grams per axial centimeter. On March 20, 1989, the licensee provided this information to the NRC along with their conclusion that these assemblies satisfied the intent of the TS's based on the region average U-235 content taken to 3 significant digits (as expressed in the TS's). On March 21, 1989, the NRC informed the licensee that the licensee's interpretation was contrary to that of the NRC staff and that each of the fuel assemblies must comply with the TS 15.5.4.2 limit on U-235 loading.

The licensee believes that exigent circumstances exist in that failure to obtain relief from the NRC TS interpretation could cause a delay in the resumption of operation of Point Beach Unit 1. Unless TS 15.5.4.2 is revised, the licensee will be unable to store those fuel assemblies with U-235 content exceeding 39.4 grams per axial centimeter in the spent fuel storage pool. This will result in significant delay in the sequencing of the core load and fuel shuffle, since those fuel assemblies will require extraordinary measures and special procedures to be moved from the new fuel shipping containers to the reactor vessel. The resulting delays could extend the refueling outage and delay return to power by 1½ days. Furthermore, in the event that the licensee had to subsequently unload the core, startup could be delayed indefinitely, since the licensee would have no storage area authorized to receive these fuel assemblies.

The licensee submitted an application to revise the TS limit concerning U-235 fuel loading 9 months prior to the scheduled refueling shutdown and could not have foreseen the delay necessary to complete processing of their application. Further, the licensee had no actual knowledge that certain OFA fuel assemblies did in fact exceed the fuel loading limit until fuel fabrication was complete. Finally, wording of the TS (use of the word "assemblies") seemed to indicate that an average U-235 content over a region (consisting of two or more fuel assemblies) was implied. The licensee believes that such an interpretation is reasonable and had no prior knowledge that the NRC staff interpretation would be more restrictive.

Before 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.

The Commission has made a proposed determination that the amendment request involves no significant hazards considerations. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated since the U-235 loading level is not a parameter that is considered in accident analyses for operations of the Point Beach Nuclear Plant. Futhermore, the new fuel storage vaults and the spent fuel pool have already been evaluated for higher enrichment levels than requested for these amendments. Criticality analyses for the new fuel storage vault and the spent fuel pool show that, with a U-235 fuel loading of 40.0 grams per axial centimeter for OFA fuel assemblies, more than adequate margin exists to meet the 5 percent shutdown margin stated in TS 15.5.4.2. The probability or consequences of a spent fuel accident related to increased decay heat, radiation effects, or gamma heating remain unchanged because there is no associated increase in discharge burnup. The proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated since the amendments do not result in any physical changes either to plant equipment (other than the increased U-235 loading) or procedures. Finally, the proposed amendments would not involve a significant reduction in a margin of safety for the same reasons discussed above under the probability or consequences of an accident previously evaluated. No other safety margins are affected.

The Commission has provided guidance concerning the application of the criteria by providing examples of actions not likely to involve significant hazards considerations (51 FR 7751). One of the examples of actions not likely to involve significant hazards considerations is "(i) A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction or an error, or a change in nomenclature." The change in the U-235 loading limit for OFA fuel assemblies is an administrative change since the limit would be changed to correct an error in that the TS, as written, did not account for the normal enrichment process tolerances for nominal 4.0 weight percent fuel. Further, to remove the ambiguity in interpretation of the U-235 loading limit the word "assemblies" has been changed to "assembly" for both the standard and OFA fuel loading limits. This is an administrative change clarifying the intent of the technical specification in that the U-235 loading limit applies to each fuel assembly individually. The proposed amendments match the Commission's example and on this basis, a proposed determination of no significant hazards is made.

Accordingly, the Commission proposes to determine that this change does not involve significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final

determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and should cite the publication date and page number of the **Federal Register** notice.

Written comments may also be delivered to Room P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L. Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 1, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rule of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendments are issued before the expiration of 30-days, the Commission will make a final determination on the issue of no significant hazards considerations. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards considerations, the Commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendment request involves significant hazards considerations, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue an amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 15-day notice period, provided that its final determination is that the amendments involve no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 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 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 John N. Hannon: 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, D.C. 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC, 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 23, 1989, which is available for public inspection at the Nuclear Regulatory Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the Local Public Document Room, Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Dated at Rockville, Maryland, this 28th day of March 1989.

For the Nuclear Regulatory Commission.

James R. Hall,

Acting Director, Project Directorate III-3, Division of Reactor Projects – III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-7823 Filed 3-30-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 30-55]

Unfair Trade Practices; Icicle Seafoods; USTR Determination and Hearing

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of Section 304 Determination; Notice of Public Hearing and Request for Public Comments on Possible U.S. Action in Response to Certain Canadian Unfair Trade Practices.

SUMMARY: In May 1986, the United States Trade Representative (USTR) initiated an investigation under section 302 of the Trade Act of 1974, as amended, 19 U.S.C. 2411 *et seq.* ("the Act"), concerning Canada's prohibition on the export to the United States of unprocessed Pacific herring and pink and sockeye salmon. In March 1988, the General Agreement on Tariffs and Trade (GATT) Council of Representatives adopted a panel report finding that Canada's export prohibition is inconsistent with Canada's obligations under the GATT.

Based on the Council's findings, and because Canada continues to maintain its export prohibition, the USTR has determined under section 304(a)(1)A) of the Act, subject to the direction of the President, that Canada's export prohibition consultations with the Government of Canada. These consultations were held on September 3 and October 27, 1986. They failed to yield a satisfactory resolution of the issue. Consequently, the USTR invoked the formal dispute settlement procedures of the GATT and won a favorable panel decision that was adopted by the GATT Council in March 1988.

Representatives of the United States and Canada again consulted on March 9-11, 1988. On March 22, 1988, the Government of Canada announced that it would eliminate the export restrictions effective January 1, 1989. The Government of Canada also announced that it intended to impose new requirements for landing and inspection of certain species of fish prior to exportation.

On August 30, 1988, the USTR invited public comments, pursuant to section 304(b)(1)(A), on a proposed USTR determination regarding the Canadian export prohibition. 53 FR 33207. Canada has not as yet eliminated its export restrictions nor imposed landing and inspection requirements.

Notice of Determinations and Public Hearing

On the basis of the findings adopted by the GATT Contracting Parties, and because Canada continues to maintain the export prohibition, the USTR determined on March 28, 1989 that Canada's export prohibition denies a right to which the United States is entitled under a trade agreement. The USTR also directed the denies rights to which the United States is entitled under a trade agreement. Pending further developments in this case, the USTR has directed the Section 301 Committee to conduct a public hearing on possible U.S. action under section 301 as a result of this determination. This hearing will be held on April 26, 1989.

FOR FURTHER INFORMATION CONTACT: Questions about products under consideration for increased duties or other import restrictions should be directed to Mr. Jukka Kolhonen, U.S. Department of Commerce, (301) 427-2383. Questions concerning the status of this case, or other questions, should be referred to Mr. Peter Murphy, Assistant United States Trade Representative, Office of the United States Trade Representative (202) 395-4866.

SUPPLEMENTARY INFORMATION: On April 1, 1986, Icicle Seafoods and nine other companies with fish processing facilities in southeastern Alaska and the State of Washington filed a petition under section 301 of the Trade Act of 1974 alleging that Canada prohibited exports of unprocessed Pacific herring and pink and sockeye salmon, and that this policy was an unjustifiable trade practice in violation of Article XI of the GATT. Article XI prohibits most types of export restrictions.

On May 16, 1986, pursuant to 19 U.S.C. 2412(a), the USTR initiated an investigation on the basis of the petition (51 FR 19648). On the same date, the United States requested Section 301 Committee to conduct a public hearing pursuant to section 304(b)(1)(A) on possible U.S. action as a result of this determination.

Legal Authority

The Trade Act of 1974, as amended, requires the USTR in this case to determine under section 304(a)(1)(A) whether rights to which the United States is entitled under a trade agreement are being denied. In the event that the USTR finds that such rights are being denied, the USTR must take appropriate and feasible action in response, subject to the specific direction, if any, of the President, unless an exception specified in section 301(a)(2) applies. Section 301(c)(1)(B) expressly authorizes the USTR to impose duties or other import restrictions on the goods of a foreign country for such time as the USTR determines appropriate. Measures under section 301 may be taken against the country concerned or against all countries, at the discretion of the USTR.

Public Hearing

The section 301 Committee will hold a public hearing on a list of products exported from Canada under consideration for inclusion on a final list of products that would be subject to increased duties or other trade restrictions. The hearing will be held on April 26, 1989, at 10:00 a.m. in Court Room A, Room 100, of the U.S. International Trade Commission, 500 E Street SW., Washington, DC.

The public is invited to comment at the hearing on: (1) The appropriateness of subjecting the products listed in Annex A to an increase in duties or to other trade restrictions; (2) the levels at which U.S. customs duties or other import restrictions on particular products should be set; and (3) the degree to which increased duties or other import restrictions might have an adverse effect on U.S. consumers of the products concerned. The comments submitted will be considered in recommending any action under section 301 to the USTR.

Interested persons wishing to testify must provide written notice of their intention by noon, April 14, 1989, to Ms. Jane Bradley, Chairman of the Section 301 Committee, Office of the United States Trade Representative, Room 222, 600 17th Street NW., Washington, DC 20506. The written notice must provide the following information: (1) Name, firm or affiliation, address and telephone number; and (2) a summary of the proposed testimony, including the products, by tariff subheading numbers, to be discussed. In addition, such persons must submit a complete written statement in copies, in English, by noon, April 17, 1989, at the above address.

Remarks at the hearing will be limited to five minutes.

Persons not wishing to participate in the public hearing may submit written comments, in 20 copies, by noon, April 21, 1989, at the same address. All written comments must be filed in accordance with 15 CFR 2006.8.

A. Jane Bradley,

Chairman, Section 301 Committee.

ANNEX

HTS subheading [1]	Article description
[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
	Fish, fresh or chilled, excluding fish fillets and other fish meat of heading 0304: Livers and roes: [Sturgeon roe]
0302.70.40	Other.
	Fish, frozen, excluding fish fillets and other fish meats of heading 0304: Livers and roes: [Sturgeon roe]
0303.80.40	Other.
	Fish fillets and other fish meat (whether or not minced), fresh, chilled or frozen:
	Fresh or chilled: [Cod, cusk, haddock, hake (*Urophycis* spp.), pollock and Atlantic ocean perch (rosefish)]
	Other: [Fresh-water fish] [Flatfish]
0304.10.4050	Other.
	Frozen fillets: [Skinned, whether or not divided into pieces, and frozen into blocks each weighing over 4.5 kg, imported to be minced, ground or cut into pieces of uniform weights and dimensions]
	Other: [Cod, cusk, haddock, hake (*Urophycis* spp.), pollock, and Atlantic ocean perch (rosefish)]
	Other: [Fresh-water fish]
	Flatfish:
0304.20.6050	Halibut
0304.20.6055	Greenland turbot (*Reinhardtius hippoglossoides*)
0304.20.6060	Other: [Wolf fish (sea catfish)]
0304.20.6080	Other.
	Other.
0304.90.10	In bulk or in immediate containers weighing with their contents over 6.8 kg each.
	Fish, dried, salted or in brine; smoked fish, whether or not cooked before or during the smoking process; fish meal fit for human consumption: Livers and roes, dried, smoked, salted or in brine: [Sturgeon roe]
0305.20.40	Other.
	Smoked fish, including fillets:
0305.41.00	Pacific salmon (*Oncorhynchus* spp.), Atlantic salmon (*Salmo salar*), and Danube salmon (*Hucho hucho*).
	Herrings, (*Clupea harengus, Clupea pallasii*): [Whole or beheaded but not otherwise processed].
0305.42.0040	Other.
	Fish, salted but not dried or smoked and fish in brine: [Herrings (*Clupea harengus, Clupea Pallasii*); cod (*Gadus morhua, Gadus ogac, Gadus macrocephalus*); anchovies (*Engraulis* spp.)].
	Other:
0305.69.40	Salmon.
	Crustaceans, whether in shell or not, live, fresh, chilled, frozen, dried, salted or in brine; crustaceans, in shells, cooked by steaming or by boiling in water, whether or not chilled, frozen, dried, salted or in brine:
	Frozen:
0306.12.00	Lobsters (*Homarus* spp.)
	Not frozen:
0306.22.00	Lobsters (*Homarus* spp.)
	Prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs: Fish, whole or in pieces, but not minced:
	Salmon:
1604.11.20	In oil, in airtight containers
	Herrings: [In oil, in airtight containers] Other: [In tomato sauce, smoked or kippered, and in immediate containers weighing with their contents over 0.45 kg each]
1604.12.60	Other.
	Sardines, sardinella and brisling or sprats: In oil, in airtight containers: [Smoked sardines, neither skinned nor boned, valued $1 or more per kg in tin-plate containers, or $1.10 or more per kg in other containers]
	Other:
1604.13.20	Neither skinned nor boned
1604.13.40	Other: In immediate containers weighing with their contents under 225 grams each.
	[Tunas, skipjack and Atlantic bonito (*Sarda* spp.); mackerel; anchovies]
	Other [including yellowtail): [In airtight containers]
	Other: Fish sticks and similar products of any size or shape, fillets or other portions or fish, if breaded, coated with batter or similarly prepared:
1604.19.40	Neither cooked nor in oil.
	Caviar and caviar substitutes: Caviar substitutes: [Boiled and in airtight containers]
1604.30.40	Other.

[1] Harmonized Tariff Schedule of the United States (USITC Publication 2030).

[FR Doc. 89-7660 Filed 3-3-89; 8:45 am]

BILLING CODE 3190-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s):

(1) *Collection title:* Supplement to Claim of Person Outside the United States.

(2) *Form(s) submitted:* G–45.

(3) *OMB Number:* 3220–0155.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency or response:* On occasion.

(7) *Respondents:* Individuals or households.

(8) *Estimated annual number of respondents:* 100.

(9) *Total annual responses:* 100.

(10) *Average time per response:* .17 minutes.

(11) *Total annual reporting hours:* 17.

(12) *Collection description:* Under Public Law 98–21 railroad retirement beneficiaries' Tier 1, or overall minimum portion of an annuity and Medicare benefits payable under the Railroad Retirement Act may be withheld effective January 1, 1985. The collection obtains the information needed by the Board to implement the benefit withholding provisions of Pub. L. 98–21.

Additional Information or Comments: Copies of the proposed forms and supporting documents can be obtained from Pauline Lohens, the agency clearance officer (312–751–4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Justin Kopca (202–395–7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information Resources Management.

[FR Doc. 89–7735 Filed 3–30–89; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26671; File No. 600-25)

Self-Regulatory Organizations; Participants Trust Company; Order Granting Registration as a Clearing Agency and Statement of Reasons

The Participants Trust Company ("PTC"), on October 3, 1988, filed an application under section 19(a)(1) of the Securities Exchange Act of 1934 ("Act") with the Securities and Exchange Commission ("Commission"), for registration as a clearing agency under section 17A of the Act.[1] Notice of the application appeared in the **Federal Register** on November 15, 1988,[2] to solicit public comment. On December 23, 1988, PTC filed an amendment to its application, notice of which appeared in the **Federal Register** on January 19, 1989.[3] One comment letter was received.[4] This Order grants PTC registration for a period not to exceed 12 months.

I. Overview

PTC is a user-owned and user-governed clearing agency that will provide clearing agency services for transactions in mortgage-backed securities. Most of the PTC participants are dealers and banks that currently are participants in the MBS Clearing Corporation's ("MBSCC") [5] Depository Division, which PTC has negotiated to buy from the Midwest Stock Exchange, Incorporated ("Midwest").[6] At the time of the filing of the Form CA–1, PTC did not have an independent corporate existence. As a result, the Participant Depository Association ("PDA"), an association of the Public Securities Association ("PSA") and the New York Clearing House Association ("NYCHA"), submitted an application on behalf of PTC.[7] Concurrent with the filing of this application, PTC's incorporators filed with the New York State Banking Department an application to organize and operate PTC as a limited purpose trust company under the Banking Law of New York State, approval of which is conditioned on approval of PTC's Federal Reserve System ("Fed") membership application. On February 8, 1989, PDA filed an application on behalf of PTC with the Federal Reserve Bank of New York ("NY Fed") for membership in the Fed.[8]

PTC essentially will provide the same clearing agency services for mortgage-backed securities issued or guaranteed by the Federal National Mortgage Association ("FNMA"), Federal Home Loan Mortgage Corporation ("FHLMC"), and Government National Mortgage Association ("GNMA") currently provided by MBSCC's Depository Division.[9] Those services include

[1] 15 U.S.C. 78q–1 (1988).

[2] *See* Securities Exchange Act Release No. 26285 (November 8, 1988), 53 FR 46008.

[3] *See* Securities Exchange Act Release No. 26457 (January 12, 1989), 54 FR 2251.

[4] *See* letter from Michael O. Magdol, Executive Vice President and Chief Financial Officer, Fiduciary Trust Company International, to Jonathan G. Katz, Secretary, Commission, dated December 14, 1988. *See* discussion following note 60, *infra.*

The Commission notes that although Bear Stearns & Co., Inc. ("Bear Stearns") did not file a comment letter to PTC's application, it has held an open dialogue over the past 18 months with the MBS Clearing Corporation ("MBSCC") and the Government National Mortgage Association ("GNMA") regarding its concerns about the operation of MBSCC. A number of Bear Stearns' concerns were considered carefully during the formulation of changes to MBSCC's rules (which were carried over into PTC's rules) and also in the consideration of PTC's rules as filed in its registration application. Those areas included participation standards, end-of-day participant defaults, participants fund use and security interests. *See* letter from MarySue Sullivan, Associate Director, Bear Stearns, to Kathryn S. Pruim, Vice President, MBSCC, dated August 29, 1988; letter from Kathryn S. Pruim, Vice President, MBSCC, to MarySue Sullivan, Associate Director, Bear Stearns, dated August 16, 1988; and letter from MarySue Sullivan, Vice President, Bear Stearns, to Kathryn S. Pruim, Vice President, MBSCC, dated June 30, 1988.

[5] MBSCC consists of two divisions—a Clearing Division and a Depository Division. MBSCC was granted registration as a clearing agency by the Commission for a period of eighteen months in February 1987 [*See* Temporary Registration Order (Securities Exchange Act Release No. 24046 (February 2, 1987), 52 FR 4218) ("MBSCC TRO")]. Registration was extended for an additional twelve months in August 1988 [*See* Securities Exchange Act Release No. 25957 (August 2, 1988), 53 FR 29537)].

Since MBSCC's initial registration, the MBSCC Depository Division has centralized its operations and revised many of its rules in order to address Commission concerns and to encourage widespread use of the MBSCC Depository Division by industry members. The Commission understands that these changes constitute a consensus in the mortgage-backed securities industry concerning operations in a user-owned and user-operated depository. PTC's rules essentially are identical to MBSCC's Depository Division rules including the most recently proposed rule changes. [*See* Securities Exchange Act Release Nos. 26101 (September 22, 1988), 53 FR 37895; 25660 (May 4, 1988), 53 FR 16812; 25662 (May 4, 1988), 53 FR 16808; 25659 (May 4, 1988), 53 FR 16818 (File Nos. SR–MBS–88–14, MBS–88–7, MBS–88–9 and MBS–88–11).] Those proposals reflect the anticipated buyout of the MBSCC Depository Division by PTC. The Commission notes that some changes have been made to reflect PTC's expected status as a member of the Federal Reserve System and its status as a limited purpose trust company under the Banking Law of New York State.

MBSCC's Clearing Division will continue to be owned and operated by Midwest and will continue to provide trade recording and comparison services for settlement of mortgage-backed securities transactions. The MBSCC Clearing Division has performed clearing agency services since 1979 and has been registered with the Commission as a clearing agency since February 1987. The buyout of MBSCC's Depository Division by PTC is not expected to affect the MBSCC Clearing Division's operations except to the extent that it will interact with an independent depository instead of a Midwest subsidiary.

[6] MBSCC is a wholly-owned subsidiary of Midwest.

[7] PSA and NYCHA formed the PDA on behalf of their members, many of whom are participants in the MBSCC Depository Division or expect to be participant shareholders in PTC. PDA exists to expedite the buyout of the MBSCC Depository Division by PTC and to lead PTC through a number of regulatory and organizational requirements.

[8] Action on that application is expected within the next three weeks.

[9] PTC will provide some added services that are not currently offered by the MBSCC Depository

Continued

certificate safekeeping, book-entry deliveries, an automated facility for the pledge or segregation of securities and other services related to the immobilization of securities certificates.[10] MBSCC will continue to provide its members (primarily dealers) clearing agency services for mortgage-backed securities, such as trade recording and comparison, and trade netting to reduce the number of settlements.[11]

II. Statutory Standards

Section 17A of the Act requires a clearing agency, as defined in section 3(a)(23) of the Act and subject to certain exceptions, to register with the Commission.[12] PTC, a depository for mortgage-backed securities, falls within the section 3(a)(23) definition of a clearing agency and therefore is required to register with the Commission.

Subparagraphs (A) through (I) of section 17A(b)(3) of the Act [13] set forth specific determinations the Commission must make in granting registration. The Commission has published clearing agency registration standards ("Standards") that provide additional guidelines concerning the Division of Market Regulation's ("Division") interpretation of subparagraphs (A) through (I).[14]

III. Discussion

A. Scope of the Order

This Order concerns the temporary registration of PTC as a clearing agency under section 17A of the Act for a period not to exceed 12 months. The determinations made in this Order reflect a review of PTC's application for registration, including its by-laws, rules and procedures and all other aspects of its operations contained in the application. The determinations also reflect the Commission's experience during the past two years with the operation of MBSCC's Depository Division, which PTC has purchased, and discussions among Commission staff, GNMA and MBSCC officials, PDA representatives, federal bank regulators, bankers and dealers.

The Commission believes it is appropriate to grant PTC registration for a period of 12 months. Although PTC will have a fully operable depository from the start, because of the recent revisions to MBSCC's rules in anticipation of a buyout many aspects of PTC's operations [*e.g.*, PTC's net debit monitoring levels, repurchase agreement ("repo") accounting procedures and collateral loan facility] will be new, if not novel, in a high volume environment. Indeed, although PTC has devoted considerable attention to training its staff and its participants to handle trade processing at foreseeable peak processing volumes, indirect users of PTC services including issuers, warehouse lenders, dealers and investors may be less familiar with PTC's operations and may require extensive training during the next few months. PTC plans to review its procedures to eliminate any inconsistencies between PTC's rules and its operating procedures.[15] Furthermore, PTC will make a number of operational and procedural changes.[16]

The Commission expects to review its determinations within 12 months to consider whether to grant PTC full registration as a clearing agency. During this time, the Commission will monitor and oversee PTC operations through various regulatory methods, including review of Rule 19b–4 submissions.[17]

Division or were recently added in anticipation of the buyout, such as the collateral loan facility. *See* discussion following note 45, *infra*.

While MBSCC and now PTC have the authority to provide depository services for the listed securities above, currently only certain GNMA securities are depository eligible. PTC anticipates making all GNMA securities depository eligible by the end of 1989. PTC will consider making FNMA and FHLMC securities depository eligible at a future date.

[10] PTC enables participants to deposit securities into PTC, which are credited to participants' accounts and registered in PTC's nominee name. Deposited securities are then available for book-entry delivery for transaction settlements, repurchase agreements, or pledge as collateral for loans. PTC collects principal and interest payments on deposited securities and credits those payments to appropriate participant accounts. PTC also provides repurchase agreement accounting, bulk segregation services for financing purposes, money settlement services, and withdrawals of deposited securities.

[11] *See* MBSCC TRO, *supra*, note 5, for a more complete description of MBSCC's Clearing Division services.

[12] The term "clearing agency" is defined, in pertinent part, as any person, such as a securities depository, who (1) acts as a custodian of securities in connection with a system for the central handling of securities whereby all securities of a particular class or series of any issuer deposited within the system are treated as fungible and may be transferred, loaned, or pledged by bookkeeping entry without physical delivery of securities certificates, or (2) otherwise permits or facilitates the settlement of securities transactions or the hypothecation or lending of securities without physical delivery of securities certificates. *See* 15 U.S.C. 78c(23) (1988).

[13] 15 U.S.C. 78q–1(b)(3) (1988).

[14] *See* Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920. The Commission notes that the Standards were developed in the context of registration of ten clearing agencies engaged primarily in clearing domestic corporate debt and equity securities and to a lesser extent, municipal securities. The Commission recognizes that some of the Standards may not be appropriate for clearing agencies that provide services for other investment products such as mortgage-backed securities. Accordingly, the Commission intends to apply the Division Standards flexibly and on a case-by-case basis. In addition, the Standards allow clearing agencies to submit reasons why a particular Standard may be inappropriate and to suggest alternatives that are consistent with the Act.

[15] The Commission recognizes that the formation of PTC and the revision of MBSCC's Depository Division rules in recent months raises the potential for apparent inconsistencies between PTC's rules as filed and the participant operating procedures distributed and used by the MBSCC Depository Division during the last two years. PTC's rules, as currently filed, to the extent they apparently conflict with those procedures and to the extent not noted otherwise in this Order, govern and supersede those procedures. PTC expects to review all of its procedures in the next few months to assure consistency with its rules and to incorporate any recent operational enhancements to PTC systems. (*See* letter from Lois J. Radisch, Esq., Milbank, Tweed, Hadley & McCloy, to Jonathan Kallman, Assistant Director, Division, Commission, dated February 24, 1989.) Revisions to those procedures would be rules of a clearing agency under section 3(a)(27) of the Act and as such must be filed for review under section 19(b) of the Act. To facilitate Commission, participant and public review of those procedures, the Commission encourages PTC to file its procedures on a system-by-system basis as PTC conducts its review. PTC also must modify its principal and interest collection and payment procedures to allow for voluntary instead of mandatory advances of principal and interest. *See* Securities Exchange Act Release No. 25800 (June 13, 1988), 53 FR 23162.

[16] *See* letter from Lois J. Radisch, Esq., Milbank, Tweed, Hadley & McCloy, to Jonathan Kallman, Assistant Director, Division, Commission, dated February 8, 1989. Briefly, those changes include:

(1) Eliminating trade reversals from the procedures to cover a participant default;

(2) Phasing out the aggregate excess net debit limitation for extensions under the net debit monitoring level procedures;

(3) Making principal and interest advances, now mandatory, optional;

(4) Allowing participants to retrieve securities in the abeyance account and not allowing participants to reverse a transfer because its customer may not be able to fulfill its financial obligations to the participant;

(5) Eliminating the deliverer's security interest and replacing it with a substitute; and

(6) Reexamining the account structures rules to make them consistent with the new lien procedure. (See notes 42, 43 and 48 and discussion following note 23, *infra*.)

[17] Rule 19b–4 requires proposed rule changes by a self-regulatory organization ("SRO") (including clearing agencies) to be filed with the Commission for approval pursuant to Section 19(b) of the Act.

Rules of a clearing agency include, among other things, its articles of incorporation, by-laws, rules and such of the stated policies, practices and interpretations ("SPPI") of such clearing agency as the Commission, by rule, may determine necessary to be deemed rules of such clearing agency. *See* section 3(a)(27) of the Act. Rule 19b–4 defines an SPPI as: (1) Any material aspect of the operation of the facilities of the SRO; or (2) any statement made generally available to the membership of, to all participants in, or to persons having or seeking access ("specified person") to facilities of an SRO that establishes or changes any standard, limit, or guideline, with respect to: (i) The rights, obligations, or privileges of specified persons; or (ii) the meaning, administration or enforcement of an existing rule.

Continued

notices to members[18] and disciplinary filings.[19]

B. Capacity To Promote the Prompt and Accurate Clearance and Settlement of Securities

Section 17A(b)(3)(A) of the Act requires that a clearing agency be organized and that its rules be designed to promote the prompt and accurate clearance and settlement of securities transactions for which it is responsible. As discussed below, the Commission believes that PTC meets the requirements of section 17A(b)(3)(A) of the Act.

The need for a centralized depository facility for certificated mortgage-backed securities is without question. GNMA pass-through securities remain one of the few certificated investment securities that are processed in a decentralized, physical delivery environment, in spite of substantial trading volume in active cash, forward and repurchase agreement markets.

The formation of PTC is another important step in the effort to immobilize certificates during the trade settlement process. PTC is a necessary complement to MBSCC's Clearing Division in achieving the goal of prompt and accurate clearance and settlement of mortgage-backed securities transactions. Absent a mortgage-backed securities depository, the benefits of centralized clearance and settlement and netting cannot be fully realized. Although netting of trades by MBSCC's Clearing Division reduces the number of settlements among dealers, without a mortgage-backed securities depository, settlement of net inter dealer trades and all customer transactions still must be made by physical delivery of certificates. PTC will provide long-term benefits to the industry in a number of areas, including certificate custody, secondary market trading and primary distributions.[20]

PTC's user-shareholders have invested a substantial amount of funds to support the infrastructure necessary for market operations. Development, hardware, software and personnel costs are likely to exceed $15 million during the next three to five years. Thus, it is possible that initial costs to establish and maintain PTC's operations may exceed the benefits PTC's participants (particularly those participants who purchase stock in PTC) realize during those initial years. Nevertheless, experience in other markets has shown that an initial investment can yield geometrically greater benefits in the long-term. For example, the Commission notes that the cost of executing a trade in corporate securities today is significantly less than the cost of such a trade before 1975, because securities and banking industries have made substantial investments in centralized depository and clearing facilities (*e.g.*, the Depository Trust Company, the National Securities Clearing Corporation, the Midwest Securities Clearing Corporation, the Midwest Securities Trust Company, the Options Clearing Corporation, the Philadelphia Depository Trust Company and the Stock Clearing Corporation of Philadelphia).

Physical delivery of certificates, with frequent multiple movements on the streets on settlement day, presents a high risk of certificate loss or theft. In 1986, the year prior to MBSCC's registration as a clearing agency, GNMA certificates with an approximate value of $60 million were reported either lost or stolen. Immobilization of certificates should reduce the risk of loss significantly.

A further benefit to deposit of securities into PTC is its ability to collect and disburse principal and interest ("P&I") payments. GNMA P&I payments frequently are delayed and in many cases misdirected. This is due in part to the way P&I payments on GNMA I securities are processed.[21] Because PTC will centralize holdings of GNMA securities and will devote substantial resources to collecting P&I on a timely basis, PTC participants and their customers can expect a steadier and more timely flow of P&I payments.

All securities deposited by participants and limited purpose participants will be registered in the name of PTC's nominee, MBSCC & Company. PTC will collect the P&I payment from the paying agents, and credit the appropriate participants' and limited purpose participants' accounts on PTC's distribution date (generally, the 16th day each month).[22] In the event issuers or paying agents do not make timely payments to PTC, PTC will advance P&I payments to participants, using its own funds, the cash portion of participants' mandatory deposits into the participants fund or borrowed funds. If a P&I payment is more than five days overdue, PTC will contact the paying agent. If the paying agent will not pay, PTC will seek payment from GNMA under its guarantee. To date, MBSCC has not been required to seek payment from GNMA because of a paying agent's failure to make P&I payments.

Financing for P&I advances will be secured by PTC's right, as record owner of the subject securities, to receive P&I payments, GNMA's guarantee of those payments, and PTC's right under its agreement with participants to collect PTC's financing costs and to reverse P&I credits to the extent those payments are not otherwise collectible by PTC. As a general matter, PTC will charge participants for any costs PTC incurs in using its credit facilities to meet P&I distributions. Thus, although

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The Commission has deemed certain SPPIs to be rules of a clearing agency. Generally, a clearing agency SPPI is deemed to be a proposed rule change unless it meets one of two exclusions: (1) It is reasonably and fairly implied by an existing SRO rule; or (2) it is concerned solely with the administration of the SRO and is not an SPPI with respect to the administration, meaning, or enforcement of an existing SRO rule. As explained in Securities Exchange Act Release No. 17258 (November 7, 1980), 45 FR 73906, neither of the two exclusions were intended to cover SPPIs that affect the manner in which members or others do business or in which the system functions, in a way that is not reasonably foreseeable from the rule to which the SPPI applies. *See* 45 FR 73906, 73913 at note 76. Procedures, processing timeframes, forms, and requirements for record layouts regarding operational aspects of clearing agency services that are widely distributed to clearing agency members and that establish industry practice, impose significant costs to clearing agency members, or change current industry practice would be considered proposed rule changes under Rule 19b-4 under the Act.

[18] Rule 17a-22 requires a registered clearing agency to file with the Commission within ten days of release, three copies of any material including manuals, notices, circulars, bulletins, lists or periodicals issued or made generally available to its participants or to other entities with whom it has a significant relationship.

[19] *See* section 19(d) of the Act.

[20] Section 17A(e) directs the Commission to use its authority under the Act to end the physical movement of securities certificates in connection with settlements among brokers and dealers of transactions in securities. The Commission believes registration of PTC will further that statutory objective.

[21] There are two types of GNMA securities. GNMA I securities, which were first issued in 1970, have a central transfer agent but no central paying agent. Each issuer of GNMA I securities makes P&I payments directly to the owners of each issue. GNMA II securities, which were first introduced in 1983, takes advantage of technological improvements made since 1970, thus allowing GNMA II securities issuers to make consolidated payments to owners through a centralized paying agent. GNMA I securities represent most of the GNMA market and most of the P&I payment problems. *See Progress and Prospects: Depository Immobilization of Securities and Use of Book-Entry Systems*. Draft Staff Report (June 14, 1985), which discussed the problem of delayed or misdirected P&I payments. The report indicates that the bulk of misdirected P&I payments involve GNMA I securities. The absence of a centralized payment system for GNMA I securities results in the use of considerable resources to research and claim erroneous P&I payments.

[22] Payable date is the date on which issuers and paying agents are required to make P&I payments to PTC, generally the 15th of the month. Distribution date is the next business day after payable date and is the day PTC distributes P&I payments to its participants.

participants gain certainty in P&I payment collections, they may do so at a price.

In response to objections from Bear Stearns and at the Commission's request, MBSCC agreed to give participants an option not to receive P&I credits until MBSCC receives funds from the paying agent, thereby permitting electing participants to forego PTC's financing costs.[23] Because of the need for programming and operational changes, MBSCC agreed to develop such an option by July 1989. In this regard, PTC has represented that it will honor MBSCC's commitment.[24]

MBSCC Depository Division experience collecting P&I payments over the last two years shows substantial improvement in timely P&I payments and correspondingly lower financing costs for P&I advances. As a result of improved industry practices and a continuing program at MBSCC to improve P&I payment receipts, timely payments of P&I to MBSCC over the six month period from August 1988 through January 1989 averaged 83% of the value of P&I payments to participants on distribution date. This compares favorably with 1987 when only 63% of the value of P&I payments were received by payable date.

PTC's facilities are likely to enhance secondary market trading of mortgage-backed securities by increasing efficiency, safety, reducing costs and, at the same time, allowing increased trading volume. Settlement of trades through PTC's book-entry system can be instantaneous and turnaround deliveries can be handled without delay. In addition, PTC's collateral loan facility provides a centralized loan facility which will give participants quicker access to funds to cover anticipated debit balances.

PTC's capacity to track repo positions also will allow continued growth and increased safety in that segment of the market. The ability to record ownership interests in particular pools of mortgage-backed securities and to track those interests even though the securities may have been delivered (and redelivered) in a chain of repo and reverse-repo transactions will bring greater certainty to repo participants. The Commission believes that this facility is long overdue.[25]

PTC expects to facilitate the delivery of newly-issued GNMA securities, among other things, by centralizing deliveries, including delivery for pledge financing, among issuers, warehouse lenders, dealers and custodians for institutional and other investors through limited purpose participant accounts. Issuers who meet PTC's financial and operational criteria for limited purpose participants[26] will be eligible to participate in PTC for certain services, including transfer of securities out of their accounts (free or for value) to another participant, and pledge of securities to a warehouse lender by book-entry movement. To guard against the risk of financial loss, however, issuers who use PTC services as limited purpose participants will not be eligible to receive securities against payment.

The Commission believes that providing a facility to centralize the distribution of newly-issued GNMA securities will increase the efficiency of the mortgage-backed securities market. A centralized distribution system will decrease costs associated with an initial distribution including personnel, transfer agent communication, distribution procedures and other associated costs. In addition, the securities will be on deposit at PTC from the start, eliminating extra movement of certificates, thereby decreasing costs. Finally, the limited purpose participant category will allow warehouse lenders, issuers and others to process loans in a safe and efficient manner.

C. Capacity to Safeguard Funds and Securities

As discussed below in detail, the Commission believes that PTC has the capacity to safeguard securities and funds in its custody or control or for which it is responsible, as required by section 17A(b)(3)(A) of the Act. The Commission bases that determination on its review of PTC's rules, procedures, and facilities management arrangements. Specifically, the Commission has reviewed the facilities management arrangements, the physical security procedures surrounding PTC's certificate custody functions, PTC's internal accounting controls related to recordkeeping and PTC's financial risk management rules.[27]

1. Facilities Management

Unlike its predecessor, PTC will perform most of its own services and operations in-house at its data center located at 40 Rector Street, New York, New York. PTC has its own dedicated computer hardware and software and approximately 75 employees to perform PTC services.[28] Among other things, PTC will perform its own data processing, credit administration and account maintenance. PTC plans to operate its own wire room to handle payment and collection for the settlement of participant accounts—*i.e.*, PTC plans to effect money settlement directly with its participants on a daily basis through PTC's Fedwire account at the NY Fed. PTC has agreements with outside entities to provide any services that PTC does not have in-house.

PTC will succeed to MBSCC's custodial agreement with Chemical Bank whereby Chemical Bank will provide comprehensive services for certificate processing and safekeeping. On PTC's behalf, Chemical Bank will: (1) Accept securities deposits by PTC participants or limited purpose participants; (2) segregate all securities from all other physical securities maintained by Chemical Bank, and (3) hold, release or otherwise dispose of securities pursuant to PTC's instructions. Chemical Bank, as a national bank and member of the Fed, is regulated and examined by the Office of the Comptroller of the Currency ("Comptroller") and the Fed. Chemical Bank stores all securities held for PTC in a segregated area of time-locked vaults monitored by closed circuit television and armed guards. Chemical Bank also maintains several alarm systems and has procedures to monitor and control employee access to the vault. Chemical Bank's procedures for safeguarding PTC-related securities and funds will be audited by Chemical Bank's internal and external auditors and by PTC's auditors.

Chemical Bank is the contractor to GNMA to perform transfer agent functions for both GNMA I and II securities. Chemical Bank will receive securities deposits for PTC accounts and Will register those securities in PTC's nominee name. In addition, Chemical Bank will issue and deposit into PTC new GNMA certificates in PTC's nominee name for limited purpose participant issuers. Chemical Bank also will process securities withdrawal requests, register certificates according to participant instructions and make

[23] *See* Securities Exchange Act Release No. 25800 (June 23, 1988), 53 FR 23162 ("P&I Order").

[24] *See* note 18, *supra*.

[25] *See, e.g.*, SEC, Request for Comments on the Oversight of the U.S. Government and Agency Securities Markets, Securities Exchange Act Release No. 21959 (April 19, 1985), 50 FR 15905.

[26] *See* discussion following note 59, *infra*.

[27] The Commission notes that PTC's appropriate regulatory agency, at such time as PTC becomes a member of the Federal Reserve System, will be the Fed. See 15 U.S.C. 78c(a)(42).

[28] The 40 Rector Street office computer hardware and software and personnel come to PTC as part of the MBSCC Depository Division buyout. Prior to performing operations in-house, MBSCC had a facilities management agreement with Chemical Bank, which performed Depository Division services at MBSCC's direction.

those certificates available for pick-up by participants. In each case, Chemical Bank's role as custodian and transfer agent will eliminate physical shipment to multiple third-party transfer agents. Under the custodian agreement between Chemical Bank and PTC, Chemical Bank is required to maintain Banker's Blanket Bond Insurance that includes mortgage-backed securities and covers breach of fidelity, theft, loss on premises and in transit, and forgery. Chemical Bank currently maintains insurance coverage in the amount of $100,000,000. Irrespective of insurance coverage, Chemical Bank is required to replace any securities in its custody that are lost, stolen, or misappropriated.

2. Recordkeeping and Data Processing

The Commission believes that systemic and other controls surrounding the PTC recordkeeping and data processing functions satisfy the requirements of the Act. In addition, the Commission believes that PTC's recordkeeping and data processing systems have the capacity to facilitate the prompt and accurate clearance and settlement of securities.

Participants will use on-line computer terminals, linked to PTC by dedicated lines to communicate instructions to PTC and from which they can receive real-time information on their net settlement positions and collateralization requirements. At the end of every business day, PTC will provide participants with reports, including transaction and position reports. Under PTC rules, participants must review daily reports and report any errors or discrepancies to facilitate daily reconciliation with PTC.

PTC's computer system is designed to prevent unauthorized access, among other things, by using a dual-level security password system. The system edits for invalid entry codes and other invalid data in an on-line environment. Each participant and limited purpose participant has access to PTC through a separate leased line.

PTC's computer equipment has been configured to assure back-up capability in all critical areas. PTC's hardware includes 4 DEC 8700 mainframe computers, 13 DEC Micro Vax II minicomputers and 23 gigabytes of disk storage. This provides PTC 100% redundancy for any or all failing hardware components at its 40 Rector Street office. [29] All production files on disk, both applications and programs, will be backed up each night and shipped for offsite storage. In addition, a back-up copy of application files and one previous version of programs will be retained for one week at the 40 Rector Street office. The back-up copy will be used to restore data or programs in the event of disk failure. For communications backup, all modems and participants' sites will be configured with dial-up back-up support for protection against leased-line outages. In addition, PTC can support up to 24 lines on dial-up back-up at the same time. [30]

PTC's internal audit program reviews the adequacy of its systems and controls. The audit committee of PTC's Board of Directors, composed of non-management directors, oversees that program as implemented by internal auditors, selects PTC's independent public accountant, and reviews the system of internal accounting controls with both internal auditors and PTC's independent public accountant. Under PTC's rules, the independent public accountant performs annually an evaluation of PTC internal accounting controls and PTC must make the independent public accountant's opinion and report available to all participants and limited purpose participants. The New York State Banking Department and the NY Fed will examine PTC periodically. In addition, Chemical Bank undergoes internal and external audits and is subject to periodic examinations by the Fed and Comptroller.

3. Financial Risk Manaqement

The Commission has determined that PTC has the capacity to safeguard funds and securities in a manner consistent with the Act. The principal financial risk to PTC and its participants is the failure of a participant to pay its net cash debit balance. As discussed below, PTC safeguards against such risks include membership applicant standards and continuing financial qualifications for participants, [31] a participants fund, full collateralization of delivery-generated payment obligations, net debit caps (i.e., an individually-tailored limit on the amount each participant can owe PTC at any time during the day), specific procedures to manage participant defaults and insolvencies, including committed lines of credit to allow PTC to meet its immediate settlement obligations if a participant defaults, and rules allocating losses in the event any occur.

a. *Participants. Depository Accounts and Participants Fund.* PTC has two categories of participants: (1) Participants that have access to the full range of PTC services (*e.g.*, broker-dealers and banks), and (2) limited purpose participants whose access, capital requirements and participants fund contributions are limited because they cannot receive securities for payment. Limited purpose participants include issuers who take delivery of GNMA securities originally issued through PTC and warehouse lenders who advance funds to prospective issuers secured by the mortgages that underlie such GNMA securities.

A participant may maintain one or more depository accounts, which are called master accounts.[32] Each master account contains three types of sub-accounts: (1) A proprietary account, for a participant acting as principal; (2) an agency account, for a participant acting as an agent for third parties; and (3) a pledgee account, for a participant acting in a lending capacity. Each proprietary, agency and pledgee account has an associated transfer account, in which securities transferred versus payment are kept intraday.[33] Each proprietary

[29] PTC intends to implement a plan developed by the MBSCC Depository Division to create a New Jersey data center and to revise the participant's network. PTC will have two live, active data centers at two separate locations with a participants' network that can switch from site to site. This would provide PTC an instant contingency site in the event that the other site suffered a complete failure. PTC will begin the construction process once the buyout is completed. Construction is expected to take 3–6 months. PTC has committed $237,000 of its initial capitalization of $15 million toward construction and development of the backup site. See letter from Lois J. Radisch, Esq., Milbank, Tweed, Hadley & McCloy, to Ester Saverson, Jr., Branch Chief, Division, Commission, dated February 22, 1989.

[30] In 1988, MBSCC's processing and file updating functions experienced less than 1% downtime. The longest period of continuous downtime was 90 minutes and was due to an error within a new release of software. A stress test of the system conducted in August 1987 indicated that the system is capable of processing 50,000 transactions per day and 16,000 transactions in just over a one hour period. Current volume averages between 2,000 and 3,000 transactions per day with a peak of 10,000 transactions. PTC projects these figures to increase to 8,700 and 42,000, respectively, in 1989. PTC plans upgrades to its hardware in 1989 that will double processing capacity. See letter from Charles F. Martin, President, MBSCC, to Joseph McDonald, Attorney, Division, Commission, dated February 17, 1989.

[31] See discussion following note 59, infra.

[32] A separate contribution to the participants fund, computation of net free equity and determination of account transfers is maintained for each master account of a participant. A participant may transfer both securities and funds between master accounts. In order to effectively monitor a participant's aggregate net debit, however, a participant's net debit monitoring level will be calculated from the aggregate of the securities and funds held in its master account.

[33] All securities transfers subject to money payment are transferred first to the receiving participant's appropriate transfer account. Those transfers are deemed to be transfers to PTC and not to the receiving participant, and PTC holds title to those securities for the purpose of securing

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and agency account also has an associated segregation ("seg") account into which fully-paid-for securities may be transferred for segregation purposes. Securities in seg accounts are not subject to PTC's lien and the value of those securities are not included in the computation of net free equity. Because securities held in the pledgee account do not expose PTC to risk, PTC does not hold a lien on those securities nor does it include them in the computation of net free equity.

PTC maintains a participants fund, composed of minimum cash deposits and PTC-approved government securities [34] to cover losses due to participant default or insolvency. Each participant (other than a limited purpose participant) must make a mandatory deposit ranging from $1,000,000 to $10,000,000 based on a prescribed percentage of the prior month's average monthly gross debits on settlement days announced by the PSA [35] or other days which PTC determines are appropriate. A participant must deposit a minimum of $150,000 in cash while the remaining deposit may be in cash or securities. Limited purpose participants have a mandatory participants fund deposit of $50,000 in cash. Participants may make additional contributions to the participants fund to collateralize transactions and additional cash contributions (prefunding) to allow intra-day withdrawals or free transfers of securities which are the subject of a transaction that day.

b. *Collateral.* PTC differs from most securities depositories registered under the Act in two important respects. First, PTC's rules require participants to collateralize all movements that could expose PTC to financial loss. Other securities depositories generally do not provide explicit collateralization requirements.[36] Second, PTC generally limits participant liability for PTC's potential losses in connection with participant default to participants that received cash credits from the defaulting participant on the day of default. Other securities depositories generally can assess all participants, pro rata, for such potential losses in excess of the defaulting participant's available assets subject to depository liens.

One of PTC's fundamental financial safeguards is that movements for value must be fully collateralized before they will be processed. Full collateralization means that PTC at all times possesses sufficient cash or securities at least equivalent in value to a transfer for payment for each transaction made by a participant.[37] PTC will not process an account transfer versus payment that would result in negative "net free equity" [38] for either the delivering participant or the receiving participant in the applicable account that is not offset by other collateral. Negative net free equity can be offset by other collateral in the form of additional contributions to the participants fund.

c. *Net Debit Monitoring Level.* PTC rules require that a participant's aggregate net debit not exceed the individual "net debit monitoring level" ("NDML") set for that participant. The NDML is designed to provide PTC with sufficient end-of-day liquidity to complete settlement in the event of a participant default. No participant will be permitted to incur an aggregate net debit balance for all of its master accounts in excess of its NDML (even if the participant has a positive net free equity) except as senior PTC management may permit on a case-by-case basis. The maximum NDML for a participant will be the aggregate of the committed credit lines available to PTC for this purpose [39] or a lesser amount which PTC may determine from time to time. The NDML for a particular participant will be determined according to a number of factors, including the participant's financial condition reflected in financial statements submitted to PTC, the type of business in which the participant is engaged and the committed lines of credit available to the participant for settling transactions processed through PTC. A participant can increase its NDML by arranging and paying for a committed line of credit with an acceptable credit facility, upon which PTC may freely draw.

PTC will monitor the net amount of a participant's debit and credit balances for all of its accounts. If a participant's aggregate net debit balance reaches 80% of its NDML, PTC's management will be alerted. PTC will notify the participant and request it to monitor the situation. If the participant's aggregate net debit balance reaches its NDML, PTC will notify the participant and halt any transactions for the participant that would increase the participant's aggregate net debit balance. PTC then will allow transactions to proceed if the participant: (1) reduces its aggregate net debit balance to within the NDML by prefunding or initiating an intraday transfer for payment, or (2) effectively increases its NDML by arranging and

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participant obligations to PTC. In addition, the securities are subject to a security interest held by the delivering participant. The receiving participant may not redeliver securities in the transfer account or withdraw securities from that account intraday unless that participant "prefunds," or makes an optional deposit of cash into its participants fund equal to or greater than the contract value of the securities. At the end of each business day, PTC transfers securities in the transfer account to the receiving participant's associated depository account only after the receiving participant has paid its cash settlement obligation for that account. Limited purpose participants may not receive securities versus payment and, therefore, may not incur debit balances as a result of account transfers. Accordingly, PTC does not impose a lien on securities in limited purpose accounts and does not compute net free equity with respect to those accounts.

[34] PTC-approved government securities include U.S. Treasury Notes, Bills, Bonds and FHLMC and FNMA securities, regardless of maturity. FHLMC and FNMA securities currently are ineligible for deposit at PTC, but accordingly can be deposited with PTC as collateral for participants fund contribution requirements. At such time as PTC determines to make these securities eligible for safekeeping and other services, the Commission believes that, in order to decrease risk, PTC should not accept those securities to satisfy participants fund contribution requirements.

[35] The PSA, an association of brokers, dealers and banks active in U.S. Government and securities markets, designates settlement dates for each class of securities in the mortgage-backed securities market. Generally, high-volume classes settle on the third Wednesday each month and other classes settle on the Tuesday before the third Wednesday or the following Monday.

[36] An exception is the Depository Trust Company's Same-Day Funds Settlement ("SDFS") Service, which provides settlement services for transactions that settle in sameday funds and which requires full collateralization on all transactions. See Securities Exchange Act Release No. 26051 (August 31, 1988), 53 FR 34852.

[37] In valuing securities for collateralization purposes, PTC will discount or apply a "haircut" of 5% of the market value of the securities. Market value of securities is computed from securities prices provided daily by pricing services to which PTC subscribes. The pricing services contact dealers that actively trade in the securities being priced. Three to five prices are obtained each day for each security for each type and coupon rate. Extreme prices are discarded and the average of the remaining quotations constitutes the market value of the security in PTC for the following day. PTC will review the validity and accuracy of prices on a daily basis and may from time to time reconsider and revise its pricing methods. See letter from Lois J. Radisch, Milbank, Tweed, Hadley & McCloy, to Jonathan Kallman, Assistant Director, Division, Commission, dated February 22, 1989.

[38] Net free equity measures the collateral available to PTC to pledge or liquidate in the event a participant defaults on its net debit balance. Net free equity is defined separately for each of the three types of depository accounts. Net free equity for each account includes: (1) securities in the account on which PTC has a lien; (2) securities in the associated transfer account; (3) the net credit or debit balance for the account; (4) a portion of cash and securities deposited by the participant in the participants fund; and (5) securities in the proprietary account of the participant, on which PTC has a lien, and the net credit balance, if any, for that proprietary account, to the extent that this collateral has not been allocated to previous transactions. Net free equity does not include securities held in segregated accounts associated with the proprietary and agency accounts, and PTC does not assert a lien over those segregated positions.

[39] See discussion accompanying notes 49–51, *infra*.

paying for a committed line of credit acceptable to PTC.

A participant that has reached its NDML and intends to prefund its excess net debit (to bring its net debit below its NDML) can request PTC senior management for an extension of time to prefund (deposit cash into the participants fund), during which time the participant can continue to trade (and increase its net debit above its NDML).[40] PTC can grant the request, subject to several conditions. Among other things, PTC will not allow the participant's net debit balance to exceed twice its established NDML and PTC will not allow the aggregate of the excess net debits for all participants concurrently granted extensions to exceed 300% of the committed credit lines [41] of PTC. [42] The latter condition is designed to limit PTC's ability to grant multiple extensions, thereby vitiating the safety gained from net debit caps.[43]

The purpose of PTC's NDML is to assure PTC and its participants that one or more participants will not accumulate an intra-day net debit so large as to compromise the integrity of PTC's system. Although all transactions must be fully collateralized to proceed, default by one or more participants with a large net debit relative to PTC's committed lines of credit would strain PTC's ability to meet its settlement obligations on the day of default. This concern is more significant in light of the anticipated increase in processing volume as more coupons become eligible for deposit into PTC. The Commission believes that the NDML is a practical response to a legitimate concern not only for mortgage-backed securities and other securities that settle in same-day funds,[44] but also for other areas of the securities industry.[45]

d. *Collateral Loan Facility.* A participant's ability to borrow to meet its settlement obligations, or to pay an increased debit balance when a participant with whom it has dealt defaults, will be enhanced by PTC's collateral loan facility ("CLF"). CLF will allow participants to pledge securities in bulk to lenders by a transfer of securities to a receiving participant's pledgee account. CLF also can be used to effect bulk segregation movements into a participant's own hold in custody account [46] (and therefore borrow from a non-participant lender). Under CLF, the segregating participant may either manually identify the securities it wishes to pledge or segregate or have CLF automatically select the securities. A CLF transaction may occur only if after giving effect to the transaction, both delivering and receiving accounts will have sufficient net free equity to cover settlement obligations on those accounts and the NDML of the receiving participant is not exceeded.

e. *Default Procedures.* At the end of each business day, PTC will effect cash settlement with its participants. Participants with a net debit balance in any depository account must pay PTC the balance in immediately available funds (*i.e.*, by Fedwire transfer).[47] Shortly thereafter, PTC will pay those participants who have net credit balances. PTC will make those payments in immediately available funds by deposit or Fedwire transfer to participants' designated settlement bank accounts.

PTC is obligated to fund system-wide settlement, that is, to pay each participant having a net credit balance, regardless of whether any other participant with a net credit balance has settled. To protect itself, PTC holds a lien on securities deposited to the participants fund and on securities in the proprietary and agency accounts, and retains ownership of securities transferred versus payment intraday (i.e., securities in the associated transfer accounts) until settlement is made. If a participant fails to pay a debit balance, PTC would take certain steps, as outlined below, to provide sufficient liquidity to cover the default until the participant pays PTC or PTC can liquidate the securities.

PTC uses a five-step process to cover the default and to assess any remaining loss to certain participants that received funds from the defaulting participant. Generally, those steps are: (1) To offset against the unpaid debit balance any credit balance in a proprietary account of the defaulting Participant, (2) to use PTC's own funds or borrow funds collateralized by the defaulting participant's securities, (3) to charge cash and securities deposited in the participants fund by the defaulting participant, and if the defaulting participant is not insolvent, draw on the required cash deposits of other participants, (4) to solicit voluntary ad hoc lending by participants or by outside banks, secured by the defaulting participant's collateral on the books of PTC or otherwise, and (5) to borrow overnight from participants secured by the pledge of the participant's collateral.[48]

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[40] PTC will permit these requests only prior to 1:00 p.m. on the trading date.

[41] *See* discussion accompanying notes 49–51, *infra*.

[42] The other conditions are:

1. The participant has positive net free equity and no transaction during the extension would reduce the participant's net free equity to a negative position;

2. Prior to granting the extension, the participant identifies to PTC the prefunding banks and the amount to be prefunded, to the satisfaction of PTC senior management; and

3. The extension is for no longer than ninety minutes.

PTC will grant extensions on a first-come, first-serve basis. If PTC reaches its aggregate excess net debit limit, or "supercap," subsequent requests for extensions will be queed and permitted to proceed in turn when the aggregate excess net debit is sufficiently reduced below the 300% limit to accomodate the extension. PTC has the discretion to grant an extension for up to ninety minutes, however, the Commission understands that PTC will not permit an extension to last beyond 2:30 p.m.

PTC has represented that the supercap is a transitional feature to allow participants to adjust to their NDMLs as PTC's activities increase. The net debit cap is a novel device in the mortgage-backed securities market and for dealers generally. PTC will monitor its consequences closely and expects that it will conduct a thorough review of the NDML system after all GNMA securities coupon rates have been made eligible for deposit into PTC. PTC intends to phase out the supercap within 3–6 months after its review. *See* letter from Lois J. Radisch, Esq., Milbank, Tweed, Hadley & McCloy, to Jonathan Kallman, Assistant Director, Division, Commission, dated February 8, 1989.

[43] To address extremely urgent situations, however, PTC has the authority to waive or suspend its rules and procedures, including the supercap (*See* PTC Rules, Article VI, Rule 12). Those circumstances might arise if halting participant transactions that exceed the aggregate excess net debit limit would cause a participant or participants to default or disrupt the market.

The Commission directs PTC to report to the Commission, on a monthly basis, until such time that the supercap is phased out or other time as the Commission may direct, each instance in which the aggregate excess net debit for all participants concurrently granted extensions exceeds 100% of the committed lines of credit of PTC. Such reports should include the identity of participants granted extensions, the total of the aggregate excess net debits and the duration of each instance. In addition, PTC should report to the Commission, on a same-day basis, any instances in which PTC suspends or waives the supercap and concurrently grants extensions in which the aggregate excess net debit exceeds 300% of its committed lines of credit.

[44] The Depository Trust Company's SDFS System handles securities that settle in same-day funds. See note 36, supra.

[45] Indeed, a net debit cap system of some type may have had a positive effect had one been in place during the market break on October 19, 1987. *See* Division, The October 1987 Market Break, Chapter X, February 1988.

[46] A hold in custody account is a seg account not associated with a proprietary or agency account and into which participants transfer securities for segregation purposes.

[47] Funds transferred by Fedwire are available immediately for delivery and are irrevocable once received.

[48] On December 23, 1988, PTC filed an amendment to its application for registration as a clearing agency which included, among other things, procedures for financing settlement defaults by participants. See Securities Exchange Act Release No. 26457 (January 12, 1989), 54 FR 2251. See also PTC Rules, Article II, Rule 6, Section I. In the filing, however, PTC noted that in the event of an inconsistency between its default rules and the default procedures, the December 23, 1988 default

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PTC's first procedure in the event of default is to offset the defaulting participant's unpaid debit balance with any proprietary account credit balance payable by PTC to the defaulting participant. If, for example, a defaulting participant maintained a proprietary account with a credit balance and also maintained an agency or pledgee account with an unpaid debit balance, PTC would charge the proprietary account credit balance to cover the unpaid debit balance.

If the cash available in the defaulting participant's proprietary account is not sufficient to cover the default, PTC would use its own funds or borrow funds from third party lenders by pledging the defaulting participants' securities. PTC could pledge: (a) Securities held in the transfer account associated with the account in which the unpaid debit balance resides, (b) if the account in which the unpaid debit balance resides is a proprietary or agency account, securities held in such account (but not securities in any associated seg account or hold in custody account), and (c) any excess securities in the associated proprietary account that are not needed to collateralize a proprietary account transaction. In addition, PTC would be able to pledge securities in the participants fund for the master account that includes the account to which the debit balance relates and, to the extent necessary, any other master account of the defaulting participant. To facilitate borrowing under those procedures, PTC maintains a $250 million committed line of credit to finance PTC's obligations in the event of a participant default. PTC intends to increase its committed lines of credit from $250 million to $2 billion during 1989 as PTC declares more securities coupon rates eligible for depository services and PTC's processing volume increases.

If an unpaid debit balance remains after employing the above procedures, PTC would apply to the unpaid debit balance the cash portion of the defaulting participant's mandatory deposit to the participants fund in excess of the required cash deposit for the master account which includes the account with the unpaid debit balance. In addition, PTC would apply proceeds from the liquidation of any securities not pledged pursuant to the above paragraph which reside in the participants fund for the master account which includes the account with the unpaid debit balance. In both instances, PTC, to the extent necessary, may similarly apply cash and proceeds of liquidated securities from any other master accounts of the defaulting participant. In addition, if the defaulting participant is not insolvent, PTC may draw on the required cash deposits of other participants as well.

If the above procedures cannot raise sufficient funds to cover the defaulting participant's unpaid debit balance, PTC would solicit voluntary ad hoc lending by participants or by outside banks. PTC would secure the loans with the defaulting participant's collateral. Finally, if further funds are necessary, PTC would require its participants to lend funds overnight to PTC in the following order, secured by the defaulting participant's collateral: first, from each participant which delivered to the defaulting participant that day, *pro rata*, based on the aggregate of contract values of deliveries made to the defaulting participant, and second, from some or all of the remaining participants. PTC may extend the time for the transfer of securities to pledgee accounts to accommodate this financing. Lending participants would be repaid the following day when the default is cured or the defaulting participant's collateral is liquidated.

If either PTC or any lending participant suffers a loss or incurs an obligation that remains unsatisfied after the liquidation or if PTC cannot restore the required cash deposits of non-defaulting participants, participants that received credits to their cash balances in transactions with the defaulting participant on the day of default would be assessed for the deficiency pro rata, based upon the amount of those credits. If an assessed participant thereupon defaults, its contra parties would be likewise assessed and so on. If a loss remains after the assessment process, it would be charged to the undivided profits and retained earnings of PTC. PTC would, to that extent, be paid first out of any recovery which shall thereafter be distributed to assessed participants, pro rata in accordance with the amounts assessed.

The Commission believes that PTC's rules are well designed to limit PTC's and its participants' risks related to participant payment defaults or insolvencies. The requirement that all transactions be fully collateralized, the haircut on securities used as collateral, the individual limit on each participant's aggregate net debit level and the ability to assess the required cash deposits of non-defaulting participants should minimize PTC's exposure in the event of default or insolvencies.

PTC's plan to increase its committed lines of credit is essential to timely settlements in the event of a participant default. Because a default is likely to occur only minutes before PTC must pay other participants in same-day funds, committed lines of available credit appear to be essential. [49] Moreover, to the extent possible, no question should exist in the event of a default that cash will be forthcoming from those facilities, for example, because of either a bank failure [50] or, under the terms of the credit facility, lenders are not obligated to meet their credit commitments. [51] Accordingly, as PTC increases its lines of credits from $250 million to $2 billion, PTC will diversify its credit lines among several financial institutions and will receive assurances that a participant default or an extraordinary decline in market prices will not affect PTC's ability to draw on its credit lines.

The Commission believe that PTC's default procedures appropriately separate the process of funding PTC's

procedures will control. PTC's counsel has represented to the Commission that PTC expects to review PTC's default rules within the next few months and file changes with the Commission that will eliminate any apparent inconsistencies between the rule and the procedures. See letter from Lois J. Radisch, Esq., Milbank, Tweed, Hadley & McCloy, to Jonathan Kallman, Assistant Director, Division, Commission, dated February 8, 1989. The process described in this Order reflects the participant default procedures filed on December 23, 1988.

The changes to PTC's default procedures assure the finality of transactions processed through PTC. Generally, once a transaction has been effected, PTC will not undo, or "reverse," the transaction in trying to cover a defaulting participant's debit balance. The voluntary and involuntary loan aspects of the default procedures have replaced the reversal steps and are only used as an overnight source of funds. As described in the text, any loss resulting from an outstanding debit remaining the day after default will be covered by assessments of those participants who traded with the defaulting participant on the day of the default.

[49] The Commission does not believe that committed lines of credit are the only way clearing agencies can secure funding to meet their payment obligations. For example, clearing agencies could look to participants for emergency funds and draw on cash deposits in the participants fund to meet settlement obligations. If a clearing agency intends to rely on this funding source, the amount of participants fund cash on deposit with the clearing agency in advance of a settlement failure should be sufficient, in combination with the clearing agency's credit facilities, to meet foreseeable cash requirements associated with a default.

[50] If PTC's credit lines were limited to a single lender, the failure of that lender could create financial exposure to PTC. *Cf.* Securities Exchange Release No. 21118 [(July 5, 1984), 49 FR 28491 (File No. SR–OCC–84–8), approving a change in the Options Clearing Corporation's ("OCC") rules authorizing OCC to draw against its clearing funds in the event of a failure by a bank engaged in settling, on behalf of OCC, payment obligations to OCC clearing members].

[51] Some credit agreements contain provisions that allow lenders to withhold credit in the event of a material adverse change in the borrower's financial condition. Such provisions could defeat the purpose of a committed line of credit.

end-of-day payment obligations from the process for allocating participant default losses. Because participants tend to commit funds credited to their clearing agency accounts during the day—to meet other payment obligations within the clearing agency or outside the clearing agency to lenders, customers and other dealers—requiring participants who dealt with the defaulting participant to return those credits could create a potential cascade of participant defaults. PTC's default procedures specifically incorporate substantial new credit sources and allow participants to volunteer excess funds to help finance end-of-day settlements during a crisis. Thus, PTC's rules and, when in place, PTC's enhanced credit facilities, will add substantial back-up liquidity to the settlement process and contain the risk of multiple defaults.

The Commission believes that PTC's rules have been drafted to assure that PTC will have title to, and perfected security interests in, securities that serve as collateral for participant payment obligations. All securities transfers subject to money payment are held in a participant's appropriate transfer account pending payment by the receiving participant. Those transfers are deemed to be transfers to PTC and PTC holds title to those securities until payment is made and the securities are transferred into the receiving participant's appropriate account. [52]

4. *Standard of Care.* The Standards provide that the rules of a clearing agency, subject to several exceptions, require the clearing agency to promptly deliver securities in its custody or control to, or as directed by, the participant for whom they are held. [53] The Standards exempt from that requirement securities delivered against payment (for which the participant has not made payment) and securities pledged by the participant through the clearing agency. The Standards also require that a clearing agency's rules and agreements enable broker-dealers to comply with applicable provisions of the Act and related Commission rules concerning protection of customer assets, such as Sections 8 and 15 of the Act and Rules 8c–I, [54] 15c2–1 [55] and 15c3–3 under the Act. [56]

PTC's rules clearly provide for lien-free segregated accounts where participants can maintain fully-paid-for securities in compliance with customer protection rules in a number of ways. For example, participants can move securities to a segregated position free of any third party liens. Therefore, for the reasons discussed in the MBSCC TRO,[57] the Commission believes that PTC's rules are consistent with the Act concerning the protection of customer assets and the standard of care with respect to deposited securities and property.[58]

D. Participation Standards

Section 17A(b)(3)(B) of the Act lists certain categories of persons a clearing agency's rules must authorize as potentially eligible for access to clearing agency membership and services.[59] Section 17A(b)(4)(B) of the Act contemplates that a registered clearing agency have financial responsibility, operational capability, experience and competency standards that are used to accept, deny or condition participation of any participant or any category of participants enumerated in section 17A(b)(3)(B). In addition, the Standards state that a clearing agency's rules be designed to prevent unfair discrimination in the admission of participants and among participants.

PTC's rules provide that persons eligible for PTC membership and services include broker-dealers, banks, thrift institutions, insurance companies, investment companies, clearing agencies and any other firms which PTC may determine and which meet PTC qualifications. In addition, PTC provides a limited membership category for GNMA issuers, warehouse lenders and clearing agencies which limit their transactions to book-entry pledges from their participants.

PTC membership standards require bank applicants to have equity capital, determined in accordance with generally accepted accounting principles ("GAAP"), of at least $100,000,000, and a broker or dealer should have net capital determined pursuant to Rule 15c3–1 of the Act or liquid capital after deduction of haircuts determined pursuant to 17 CFR 402.2, of at least $50,000,000. Any other type of applicant should maintain equity capital or regulatory capital in at least equivalent amounts. A limited purpose participant applicant should have equity capital, determined in accordance with GAAP, of at least $10,000,000, unless the applicant is a clearing agency, in which case the clearing agency should have a net worth acceptable to PTC. PTC's rules authorize PTC to grant admission to organizations that do not meet these standards where PTC determines that such standards are unfair to the applicant, PTC or other participants and limited purpose participants.

The only commentator on the PTC application, Fiduciary Trust Company International ("Fiduciary"),[60] argued that PTC should provide in more detail the factors that would serve to qualify a bank applicant with less than $100,000,000 in equity capital and protect against arbitrary exclusion from the GNMA market. In its response,[61] PTC stated that it will look at a number of criteria, including the amount of equity capital, in determining whether to waive the $100,000,000 equity capital requirement. Specifically, it will review a number of factors, including:

(1) The prospective participant's operational and management capabilities, which may affect its ability

[52] This portion of the rules originally was drafted by MBSCC, which consulted with counsel to the NY Fed, clearing and custodian banks, dealers (including Bear Stearns), GNMA and other interested parties.

[53] See Securities Exchange Act Release No. 16900 (June 17 1980), 45 FR at 41930, at note 57.

[54] Rule 8c–1 generally prohibits a broker-dealer from commingling customer securities under specified circumstances and from subjecting customer securities to certain liens. Rule 8c–1(g) provides that customer securities and other securities may be held by a brokerdealer at a clearing agency that maintains certificates in a fungible bulk and provides a system for securities hypothecation by bookkeeping entry. The rule states that such an arrangement will not in and of itself violate Rule 8c–1 if certain conditions are met. Those conditions generally require the clearing agency's custodian to agree not to refrain from promptly delivering such securities (other than securities then hypothecated in accordance with the system) to the clearing agency or as directed by the clearing agency itself. Rule 8c–1(g) also requires that the clearing agency system provide adequate safeguards for handling securities certificates, maintain fidelity bonding coverage, and be examined periodically by an independent public accountant.

[55] Rule 15c2–1 parallels Rule 8c–1 and prohibits hypothecation of customer securities under specified circumstances. Rule 15c2–1 provides broader coverage than Rule 8c–1 by defining prohibited hypothecation of customer securities to be a "fraudulent, deceptive, or manipulative act or practice" under section 15(c)(2) of the Act.

[56] Rule 15c3–3 generally requires broker-dealers promptly to obtain possession or control of securities purchased by customers and maintain customers' fully-paid-for and excess-margin securities and free credit balances in accounts that are free of liens and claims against the broker-dealer.

[57] *See* note 5, *supra.*

[58] *See* Securities Exchange Act Release No. 20221 (September 23, 1980), 48 FR 45641, at notes 134–137.

[59] Those persons include, among others: registered brokerdealers, other registered clearing agencies, registered investment companies, banks and insurance companies.

[60] *See* note 4, *supra.*

[61] *See* letter from Lois J. Radisch, Esq., Milbank, Tweed, Hadley & McCloy, to Jonathan G. Katz, Secretary, Commission, dated January 12, 1989.

to monitor its positions and to satisfy its obligations to PTC;

(2) The anticipated volume of transactions to be processed through PTC for the prospective participant, which will indicate the level of settlement exposure PTC will have with respect to that participant;

(3) The type of transactions to be processed through PTC including, for example, whether the prospective participant is a dealer trading as principal or an agent acting on behalf of others; if the potential participant would act in an agency capacity, PTC would examine what types of institutions the participant's customers are and whether it requires them to prefund their obligations to it;

(4) The prospective participant's profitability and overall financial condition as indicators of its ability to monitor and control its exposure and to discharge its obligations in a timely manner; and

(5) If the prospective participant was a participant in the MBSCC Depository Division, the participant's history of conformity to the rules and procedures of the MBSCC Depository Division. (PTC will weigh heavily a good record of performance in MBSCC among the factors it considers in reviewing an application.)

Further, PTC notes that participants and applicants are protected from the arbitrary application of participation standards by section 17A of the Act and the rules and regulations thereunder, and by PTC's rules, which provide a right of appeal and a procedure to exercise that right in the event that an application to participate is denied. The Commission believes that PTC's flexible membership standards and criteria, along with the protection afforded by PTC's rules and the Act and the rules and regulations thereunder, serve as protection against unfair discrimination in the admission of participants into PTC.

All applicants are required to submit recent financial statements independently certified without qualification and copies of the applicant's or its parent guarantor's most recent financial filing to its appropriate regulatory agency.[62] An applicant must also satisfy PTC that it has sufficient financial ability to meet its obligations under PTC's rules. If admitted, a participant or limited purpose participant must maintain these minimum capital requirements and must continue to submit audited financial statements. If a participant or limited purpose participant fails to meet these requirements, PTC is authorized to take a variety of actions, including notifying the participant or limited purpose participant that it has 30 days to satisfy the requirements, limiting the participant's or limited purpose participant's activity, or ceasing to act for the participant.[63]

Although PTC's capital requirements for participants are substantially higher than those of its predecessor,[64] those requirements will increase user and investor confidence in PTC as a central depository providing long-term custodian services and intra-day settlement payment facilities, in same-day funds, for a multi-billion dollar market. Although some institutions may be unable to meet the capital requirements for direct PTC participation, these institutions can access PTC's services through other PTC participants that offer clearing or custodial services on a wholesale or retail basis.[65] Moreover, any applicant denied membership in PTC has a right to appeal such a denial to the Commission.[66] Thus, the Commission believes that PTC has reached an appropriate balance among the right of access, any anti-competitive effect and the ability of a clearing agency to protect itself and its participants from unreasonable financial and operational risk.

E. Fair Reoresentation

Section 17A(b)(3)(C) requires that a clearing agency's rules assure fair representation to its participants and shareholders in the selection of its directors and administration of its affairs. The Act does not define fair representation or set up particular standards of representation. Instead it provides that the Commission must determine whether the rules of the clearing agency regarding the manner in which decisions are made give fair voice to participants as well as to shareholders in the selection of directors and the administration of its affairs. With respect to providing participants with a meaningful opportunity to be represented in the selection of the board of directors and the administration of the clearing agency's affairs, the Division's Standards counsel that each clearing agency's procedures be evaluated on a case-by-case basis. The Standards suggest that a number of methods could comply with the fair representation standard. Those suggestions include direct participation in the election of directors through the allocation of voting stock to all participants based on their usage of the clearing agency.[67]

PTC will provide participants with an opportunity to participate in the selection of directors and in the administration of its affairs through stock ownership. PTC represents in its application that initially it intends to provide all MBSCC Depository Division participants and known potential PTC participants the opportunity to purchase shares of PTC. PTC intends to issue one million shares of stock, par value $5.00 per share. Each interested PTC participant is eligible to purchase an equal number of shares (the number of shares offered will be determined by the number of subscribers). Participants that choose not to purchase shares will not have a direct voice in the selection of directors or in the administration of PTC's affairs; these participants however, may later purchase shares during the reallocation process (described below) or through a private purchase from another shareholder participant.

Each participant purchasing stock must execute a stockholders agreement. The stockholders agreement provides for the initial allocation of shares, imposes a limit on ownership of 5% or more of the shares issued and outstanding, and provides for an annual reallocation of shares among current

[62] For example, if the applicant or its parent guarantor is a registered broker-dealer, the applicant must submit to PTC copies of Form X-17A-5 FOCUS Reports to the Commission or its Form G-405 Report on Finances and Operations to the U.S. Department of Treasury.

[63] PTC will maintain a staff of credit analysts to monitor participants' and limited purpose participants' financial condition and will alert PTC management if conditions warrant such notice.

[64] MBSCC membership standards required applicants to have a minimum net worth of $10,000,000, except mortgage bankers, which must have a net worth of $5,000,000. *See* MBSCC TRO, note 5, *supra*, at 4223.

[65] Alternatively, these institutions might apply to PTC for direct access to PTC services and assert that PTC should approve the application without strict regard to PTC's existing member capital requirements. The Commission expects that PTC will exercise its discretionary authority judiciously consistent with its responsibilities as a clearing agency to safeguard securities and funds and its responsibility as a clearing agency and SRO to administer its admission standards on a non-discriminatory basis.

[66] *See* section 19(d) of the Act.

[67] The other suggestions in the Standards are: (1) solicitation of board of director nominations from all participants; (2) selection of candidates for election to the board of directors by a nominating committee which would be composed of, and selected by, the participants or representatives chosen by participants; (3) election by participants of a slate of nominees for which stockholders of the clearing agency would be required to vote their shares; or (4) a number of directors chosen by, and from among, the participants. *See* Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41930.

and prospective stockholders. All non-shareholder participants and shareholder participants may participate in the annual reallocation of PTC shares.[68] Shareholder participants may offer for sale some or all of the shares they hold. Participants are not required to purchase a specific number of shares during the annual reallocation process.

The annual reallocation process will occur during the first quarter, before the April shareholders meeting where directors will be selected. PTC will have the right to sell shares in each allocation, if it so decides. Participants also may sell their shares, but PTC's shares always will be allocated first. If demand for shares exceeds the supply of new and tendered shares, PTC will seek regulatory approval to issue a sufficient number of shares to satisfy the demand.[69] Shareholders may hold only up to 5% of all PTC shares issued and outstanding after giving effect to the reallocation.

The process, while not allocating shares to shareholders directly in proportion to their use of PTC, does allow a participant to decide whether to purchase none, some or all the shares allocated to that participant. The allocation and reallocation process allows each participant to place its own economic value on its participation in the selection of directors and in the administration of PTC's affairs and thus choose its participation level in accordance with its use and the economic benefits that the participant perceives from its participation in PTC. Moreover, the 5% limit of ownership restricts one or a few large participants from effectively controlling PTC to the detriment of smaller participants. The Commission believes that it is reasonable to conclude that participants are afforded a reasonable opportunity to acquire voting stock of PTC, indirectly, in reasonable proportion to their use of such clearing agency and, thus, that the plan for representation of participants is fair.

The proposed stockholders agreement, PTC By-Laws and PTC Organization Certificate set the guidelines for the election of directors and conduct of business. The stockholders agreement provides for cumulative voting in the election of directors. Shareholders may cast as many votes for one or more candidates as it has shares times the number of directors positions to be selected. Candidates for the director positions are recommended by the nominating committee. The PTC By-Laws provide that the nominating committee consist of three persons, each of whom may or may not be a director, designated by a resolution adopted by a majority of the entire Board of Directors ("Board").

The By-Laws state that the Board will consist of 10 directors unless changed as allowed by the Banking Law of the State of New York. Shareholders can, by a majority vote at a meeting where a quorum is present,[70] vary the number of directors to as few as 7 or as many as 20. The By-Laws do not provide for the Board to vote upon a change in the number of directors; however, vacancies not exceeding one-third of the entire Board may be filled for the remainder of the unexpired term by a majority vote of the directors then in office. A majority of directors then in office present at a meeting constitutes a quorum and an issue will be decided by a majority of those directors.

The By-Laws may be amended or repealed by either a ⅔ affirmative vote of the Board or by a ⅔ affirmative vote of shareholders having the power to vote at the time the amendment is sought. Thus, although the Board does not have the power to change the number of directors constituting the Board, it could provide itself that power to do so by amending the By-Laws. A by-law adopted by shareholders, however, may provide that such by-law shall not be subject to amendment or repeal by the Board. Therefore, the shareholders can exercise ultimate control over the nature of the By-Laws.

The selection of PTC directors conforms to the Commission's Standards. The stockholders agreement and the By-Laws allow each participant to vote based upon the number of shares it owns. In addition, the By-Laws call for cumulative voting to provide small participants and those who represent differing views from the majority of shareholders a greater opportunity to participate on the Board and in the administration of PTC's affairs. Also, shareholders may amend the By-Laws to provide direction to the Board and can insure the integrity of those changes by restricting the Board from amending them. Thus, the Commission believes that the process of selecting directors provides participants a fair voice in the selection of directors and in the administration of PTC.

The Commission believes that PTC's governance structure is designed to assure fair representation of PTC participants and shareholders. The allocation and annual reallocation process provides each participant the opportunity to purchase an interest in PTC and to adjust that interest upward or downward on at least an annual basis. The stockholders agreement balances the right to buy stock in proportion to use of PTC services with the potential for a large concentration of stock in one or a few shareholders. Finally, the By-Laws provide shareholder participants the power to choose directors and direct the administration of PTC affairs through cumulative voting.

F. Other Determinations

1. Capacity to Comply With the Act and Enforce Compliance by Members and Participants

Section 17A(b)(3)(A) of the Act requires that PTC have the capacity to comply with the provisions of the Act and the rules and regulations thereunder. Commission rules require PTC to keep and preserve certain records,[71] obtain and retain fingerprints from personnel,[72] and register and

[68] Shareholder and non-shareholder participants also may purchase shares from current shareholders. Private purchases, however, generally will result in a process similar to the annual reallocation because PTC and PTC shareholders have a right of first refusal on shareholder sales.

[69] PTC's registration application, as originally filed with the Commission, provided that if demand exceeded the supply of new and tendered shares, participants who did not seek to buy shares must sell shares to purchasers. The Commission staff, however, was concerned that such a procedure would result in an inequitable allocation of shares because participants that wish to maintain their holdings during reallocation may be forced to sell off part of their positions if demand for shares exceeds the supply of shares. This could result in a situation where a participant, during reallocation, would need to show an interest in purchasing shares just to maintain its holdings. On December 23, 1988, PTC amended its registration application to more fairly allocate shares to participants seeking ownership participation. Under the amended stockholders agreement, PTC will use its best efforts to issue more shares if demand exceeds the supply of new and tendered shares. PTC needs approval of the New York State Banking Department to issue more shares. If such approval is not forthcoming, PTC will allocate *pro rata* the supply of new and tendered shares to participants wishing to purchase shares.

[70] The By-Laws provide that a majority of shares entitled to vote present at a meeting, either in person or by proxy, constitutes a quorum of shareholders.

[71] Rule 17a-1 requires a registered clearing agency to keep and preserve at least one copy of all documents, including correspondence, memoranda, papers, books, notices, accounts, and other records as are made or received by it in the course of business.

[72] Rule 17f-2 requires a registered clearing agency to obtain and maintain a record of fingerprints of each of its directors, officers, and employees who do not qualify for an exemption from fingerprinting contained within the rule. A copy of each set of fingerprints also must be sent to the Federal Bureau of Investigation.

participate in the Commission's Lost and Stolen Securities Program. [73] The Commission staff intends to monitor PTC to assure its compliance with the Act. Based upon a review of PTC's rules and procedures, and the Commission's experience with PTC's predecessor, the MBSCC Depository Division, the Commission believes PTC has the capacity to comply with the Act and the rules thereunder.[74]

Section 17A(b)(3)(A) of the Act also requires PTC to have the capacity to enforce member compliance with its rules. PTC must have the authority and ability to discipline participants that violate PTC's rules with appropriate sanctions for such violations [75] and must provide fair procedures for the imposition of such sanctions. [76] Inasmuch as PTC's rules for disciplinary procedures to enforce compliance with its rules are almost identical to those of its predecessor, the MBSCC Depository Division, whose rules the Commission previously considered and found consistent with the Act, [77] the Commission believes that PTC has the ability to enforce member compliance with its rules.

2. Competition

Section 17A of the Act directs the Commission to have due regard for the maintenance of fair competition among brokers, dealers, clearing agencies [78] and transfer agents. [79] Section 17A(b)(3)(I) provides that a clearing agency's rules not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In MBSCC's TRO, the Commission stated in its discussion that it believed that MBSCC fulfilled the requirements of this section of the Act. After 2 years of operation as a clearing agency, the Commission believes that MBSCC has continued to comply with the fair competition requirements of the Act. The Commission believes that PTC's buyout of MBSCC's Depository Division will bring to PTC MBSCC's due regard for fair competition. Therefore, the Commission believes that PTC's rules and its registration as a clearing agency will not impose any inappropriate burdens on competition, and in all likelihood, will promote increased competition. [80]

3. PTC Fees

Section 17A(b)(3) of the Act requires a clearing agency's rules to allocate equitably among participants reasonable fees, dues, and other charges. That section also provides that clearing agency rules not impose any schedule of prices, or fix rates, for services rendered by participants. The Commission has reviewed PTC's fee schedules and found each service fee to apply equally to all participants using that service. Moreover, the Commission believes that PTC fees are reasonably based on near-term volume estimates and in many instances, provide significant cost savings compared to clearance and settlement outside PTC's system. Finally, PTC's rules do not in any manner impose prices or fix rates for services provided by its participants. Accordingly, the Commission believes that PTC's rules and fees are consistent with the above statutory standards.

IV. Conclusions and Determinations

PTC has made an application for registration as a clearing agency pursuant to sections 17A(b) and 19(a)(1) of the Act and the Commission has made the following determinations: (1) That PTC is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible; to safeguard securities and funds in its custody or control or for which it is responsible; to assure fair representation to its participants and members in the selection of its directors and administration of its affairs; to comply with the provisions of the Act and the rules and regulations thereunder and to carry out the purposes of section 17A of the Act; (2) that the rules of PTC do not impose any schedule of prices, or fix rates or other fees for services rendered by its participants; (3) that the rules of PTC are designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and in general, to protect investors and the public interest; and (4) that the rules of PTC do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

It is ordered, That PTC's registration be and it hereby is granted, subject to the terms contained in this order, this 28 day of March, 1989, to be effective for not more than 12 months.

By the Commission.

Jonathan G. Katz,

Secretary.

Dated: March 28, 1989.

[FR Doc. 89-7719 Filed 3-30-89; 8:45 am]

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[73] Rule 17f-1 requires a registered clearing agency to register and participate in the Lost and Stolen Securities Program ("Program"). Under the Program, a participant is required to report the discovery of a theft or loss of a security and to inquire with respect to securities which come into its possession whether the security has been reported lost, missing or stolen.

[74] The Commission notes that MBSCC, pursuant to Rule 17a-4 of the Act, is required to keep a copy of all documents, for a period of five years, made or received by the Depository Division in the course of its business and in the conduct of its regulatory activity. *See* 17 CFR 240.17a-4. In that regard, PTC has agreed to maintain and preserve on behalf of MBSCC the Depository Division's books and records, to permit examination of such by the Commission and to furnish to the Commission copies of any or all such records. *See* letter from Michael Urkowitz, Vice Chairman, PTC, to Joseph B. McDonald, Jr., Staff Attorney, Division, Commission, dated March 1, 1989.

[75] *See* section 17A(a)(3)(G) of the Act.

[76] *See* section 17A(a)(3)(H) of the Act.

[77] *See* MBSCC TRO, note 5, *supra*, for a discussion regarding MBSCC's ability to enforce member compliance with its rules.

[78] PTC is the only clearing agency that provides depository services for mortgage-backed securities. PTC will perform this function in a manner that is complementary to MBSCC's Clearing Division services. Therefore, the Commission does not believe PTC's registration would directly affect clearing agency competition. Nonetheless, PTC's rules provide that all clearing agencies are eligible for participation in PTC.

[79] Only a limited number of transfer agents service mortgage-backed securities. GNMA, FNMA and FHLMC each appoint the transfer agent for their securities.

[80] *See* MBSCC's TRO, *supra*, note 5, for a more complete discussion on fair competition.

[Rel. No. IC-16896; 812-7175]

The Guardian Insurance & Annuity Company, Inc., et al.; Application for Exemption Under the Investment Company Act of 1940

March 24, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

Applicants: The Guardian Insurance & Annuity Company, Inc. ("Guardian"), Guardian Investor Services Corporation ("GISC") and The Guardian Separate Account B ("Separate Account B" or "Account").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from section 27(a)(1) and Rules 6e-2(b)(1), 6e-2(b)(13) and 6e-2(c)(4) thereunder.

Summary of Application: Applicants seek an order to the extent necessary to permit the use of 1980 CSO Table rather than the 1958 CSO Table in calculating the cost of insurance deduction for the variable life insurance contracts funded through Separate Account B ("Contracts").

Filing Date: November 17, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m. on April 18, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. The Guardian Insurance & Annuity Company, Inc., 201 Park Avenue South, New York, NY 10003.

FOR FURTHER INFORMATION CONTACT: Cindy Rose, Financial Analyst (202) 272-2058 or Clifford E. Kirsch, Special Counsel (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicant's Representations

1. Guardian is a stock life insurance company organized under the laws of the State of Delaware in 1970, with its principal office located in New York, New York. It is authorized to do business in 48 states and the District of Columbia. Guardian is a wholly-owned subsidiary of The Guardian Life Insurance Company of America ("Guardian Life"), a mutual life insurance company organized in the State of New York in 1860.

2. GISC is a wholly-owned subsidiary of Guardian Life and was incorporated in the State of New York in 1968. GISC provides services to Guardian and acts as the principal underwriter, or distributor, of the Contracts. GISC is registered with the Commission as a broker-dealer and is a member of the National Association of Securities Dealers, Inc. GISC is also registered with the Commission as an investment adviser.

3. Separate Account B was established by Guardian under Delaware law pursuant to a resolution of its Board of Directors adopted on November 16, 1984. Separate Account B is maintained as a unit investment trust. Assets of the Account are used to purchase shares at net asset value issued by the Value Line Strategic Asset Management Trust, the Value Line Centurion Fund, Inc., the Value Line U.S. Government Securities Trust, The Guardian Cash Fund, Inc., The Guardian Stock Fund, Inc., or The Guardian Bond Fund, Inc., (the "Funds"), or to purchase units of a designated trust ("Trust") within a unit investment trust, The Shearson Lehman Brothers Fund of Stripped ("Zero") U.S. Treasury Securities, Series A and any subsequent series ("Zero Trust"). Currently, there are nine investment divisions within the Account. The Account currently serves as a funding vehicle for single premium Contracts. In the future, the Account may serve as the funding vehicle for scheduled or flexible premium contracts as well.

4. A Contract provides a death benefit that is payable to the beneficiary upon the insured's death. Regardless of a Contract's investment performance, the death benefit will never be less than the "Guaranteed Insurance Amount" as stated in the Contract. During the first policy month of each Contract the death benefit will equal the Guaranteed Insurance Amount. Afterwards, the death benefit may increase or decrease on each monthly anniversary, depending on a Contract's excess investment experience, but it will never decrease below the Guaranteed Insurance Amount.

5. The death benefit of a Contract, after the first policy month, will equal the Guaranteed Insurance Amount plus the Variable Insurance Amount, if positive, on the immediately preceding monthly anniversary (less any contract debt). The Variable Insurance Amount represents the amount of additional insurance that can be purchased for the insured at his current age with the net earnings of Separate Account B in excess of that assumed under the Contract (4.0 percent annually). More technically, the Variable Insurance Amount equals the amount of insurance that can be purchased based upon the Contract's excess investment return divided by the net single premium rates included in the Contract. The Contract's excess investment return is a dollar amount computed from the account value of the Contract at the beginning of the month times the actual rate of return less of the Contract's cash value at the beginning of the month multiplied by the assumed rate of return.

6. The net premium will be intitially allocated to the Cash Fund Division. On the investment date (i.e., the later of 45 days from the date of the completed application or 10 days after issuance of the Contract), Guardian will automatically allocate the account value to up to four of the investment divisions.

7. A Contract's account value in each division is derived from the amount allocated to that division. The portion of the Contract's account value allocated to each division will be adjusted daily to reflect the investment experience of that division. The total account value is the total amount that a Contract provides for investment at any time. It is the sum of the account values for a Contract held in each investment division in Separate Account B plus any amount set aside for contract debt.

8. A Contract's cash value will be derived from the Contract's total account value and, therefore, will fluctuate on a daily basis to reflect the investment experience of the account value. The cash value for a Contract at the end of a Contract month is equal to the net single premium per one dollar of paid-up whole life insurance on that date multiplied by the sum of the Guaranteed Insurance Amount and the Variable Insurance Amount. On any date during a Contract month, the cash value equals the cash value for the Contract at the end of the preceding month, plus the actual rate of return for a Contract for the period since the prior monthly anniversary applied to the account value at the beginning of the month less the charge for the cost of insurance protection provided since the end of the preceding month. The net cash value of a Contract is calculated by further reducing the above amount by the amount of any contract debt.

9. A cost of insurance charge is deducted at the end of each policy month. This charge is based on (1) the Mortality Table specified in the Contract, (2) the sum of the Guaranteed Insurance Amount and the Variable Insurance Amount provided during the month and (3) the insured's age, sex and risk class. For the Contracts issued since Separate Account B was established, the Mortality Table specified in the Contract has been the 1958 Commissioners Standard Ordinary Mortality Table ("1958 CSO Table") with an adjustment for female lives. For Contracts issued in the future, the 1980 Commissioner Standard Ordinary Mortality Table ("1980 CSO Table") will be specified. For standard risk classes,

the cost of insurance charge rate will not exceed the rates in the 1980 CSO Table. The rates for substandard risk classes may exceed the rates in such Table.

10. A daily mortality and expense risk charge, at an effective annual rate of .50% of the account value at the beginning of the year, is deducted from the Account to compensate Guardian for its assumption of certain mortality and expense risks incurred in connection with the Contracts.

11. Guardian makes a daily charge against the assets of each investment division investing in the Zero Trust. This charge, equivalent to an effective annual rate of .25% of the account value, compensates Guardian for the transaction charge paid directly by Guardian to the sponsor of the Zero Trust on the sale of Trust units to the Account. This charge may be increased in the future but in no event will it exceed .50% of the account value.

12. Applicants request an exemption from section 27(a)(1) of the Act and Rule 6e-1(b)(1), 6e-2(b)(13) and 6e-2(c)(4) thereunder, on the same terms specified in Rule 6e-2(b)(13)(i) and 6e-2(c)(4), except that, in the circumstances specified in the application, life expectancy and the cost of insurance deduction for Contracts issued through Separate Account B will be based upon rates derived from the 1980 CSO Table rather than from the 1958 CSO Table.

13. Applicants state that section 27(a)(1) of the Act prohibits an issuer of periodic payment plan certificates from imposing a sales load exceeding 9% of the payment to be made on such certificates. Applicants also state that Rule 6e-2(b)(13)(i) provides an exemption from section 27(a)(1) to the extent that the sales load, as defined in Rule 6e-2(c)(4), for a variable life insurance contract does not exceed 9% of the payments to be made on the variable life insurance contract during the period equal to the lesser of 20 years or the anticipated life expectancy of the insured based on the 1958 CSO Table. Applicants further state that Rule 6e-2(c)(4), in defining sales load, contemplates the deduction of an amount for the cost of insurance based on the 1958 CSO Table and the assumed investment return specified in the contract.

14. Applicants represent that the 1980 CSO Table were adopted subsequent to the adoption of Rule 6e-2 and reflect more recent information and date about mortality. As of January 1, 1989, state insurance law will require that all life insurance contracts issued after such date use the 1980 CSO Table. In general, insurance charges based on the 1980 CSO Table are lower than those based on the 1958 CSO Table.

15. Applicants represent that Guardian will use the 1980 CSO Table in establishing premium rates and determining reserve liabilities for the Contracts. Accordingly, Applicants submit that it is appropriate that, in determining what is deemed to be sales load under the Contracts, the deduction for the cost of insurance should be based on the 1980 CSO Table rather than the 1958 CSO Table. For the most part, basing the deductions on the 1980 CSO Table will result in lower charges and higher contract values than if such deductions were to be based upon the 1958 CSO Table.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-7683 Filed 3-30-89; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-16897; 812-7106]

Home Group Trust; Application March 24, 1989

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for amendment to an order of exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Home Group Trust ("Applicant" or "Trust").

Relevant 1940 Act Section: Approval requested pursuant to section 6(c) and section 11(a), permitting certain offers of exchange.

Summary of Application: Applicant seeks to amend a previous order issued on July 7, 1988 (Investment Company Act Release No. 16475) exempting Applicant from sections 2(a)(32), 2(a)(35), 22(c) and 22(d), and Rule 22c-1 ("Prior Order"). The amended order requested pursuant to section 6(c) and 11(a) of the 1940 Act would approve certain offers of exchange by Applicant's current and future funds. The amended order requested will substitute for the Prior Order granted, and, in effect, will operate to rescind the Prior Order.

Filing Dates: The application was filed on August 12, 1988, and amended on January 27 and March 20, 1989.

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 April 17, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, 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. Applicant, c/o Steven R. Howard, Esq., Gaston & Snow, 14 Wall Street, New York, New York 10005.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Regina Hamilton (202) 272-3024, or Branch Chief Karen L. Skidmore (202) 272-3023 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commerical copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant was organized on August 3, 1987 as a Massachusetts business trust of the series type. Applicant is an open-end management investment company registered under the 1940 Act. The Applicant currently has seven separate investment portfolios, each with one class of shares: Home Cash Reserves, Home Government Reserves, Home Federal Tax-Free Reserves, Home New York Tax-Free Reserves, (each of these four individually, a "Money Market Fund," and collectively, the "Money Market Funds"), Home Growth and Income Fund, Home High Yield Bond Fund, and Home Government Securities Fund (each of these three individually, a "Mutual Fund," and collectively the "Mutual Funds") (each of the seven funds individually, a "Fund," and collectively, the "Funds"). Home capital Services, Inc. ("Home") serves as investment adviser for the Funds. Provident Financial Processing Corporation is the Funds' transfer agent ("Transfer Agent"). Gruntal & Co., Incorporated ("Gruntal & Co.") currently is the principal distributor ("Distributor") for the Funds, but the Trust intends to substitute a wholly-owned subsidiary of Home, HCS Brokerage Services, Inc., as the Trust's principal distributor in the near future (all references to the Distributor shall be

deemed to include HCS Brokerage Services, Inc., as the Trust's principal distributor in the near future (all references to the Distributor shall be deemed to include HCS Brokerage Services, Inc.). Gruntal & Co. and Home are wholly-owned subsidiaries of the Home Group, Inc.

2. Applicant has requested that any amended order issued by the Commission pertain not only to Applicant's initial Funds, but also to any additional funds the Applicant may offer in the future on substantially the same basis as the Applicant offers the shares of its initial Funds. Such prospective relief shall be availed of only on the terms and conditions described in the application.

3. Applicant currently charges investors a front-end sales load on the purchase of Mutual Fund shares, which varies according to the amount being invested. The sales loads for the Mutual Funds begin at 4.75% as a percentage of the offering price for purchases of less than $100,000, and decrease at different breakpoints through purchases of $4,000,000 and over, for which no sales loads are charged. Waivers of sales charges are granted under certain circumstances, and rights of accumulation, statements of intention, or reinvestment of redeemed shares may affect payment of sales loads as described in Applicant's prospectus filed with the SEC on March 14, 1988. No charges are imposed on Mutual Fund shares acquired through reinvestment of dividends or capital gains distributions. Applicant does not impose sales loads on the purchase of Money Market shares. No redemption charges, contingent deferred sales loads or other back-end charges will be assessed against shares of the Funds, but Rule 12b–1 fees apply to all shares.

4. Applicant finances the Funds' distribution expenses pursuant to a plan adopted in accordance with Rule 12b–1 under the 1940 Act ("the Plan"). The Plan permits a monthly payment by each Fund to pay the Distributor in such amounts that the Distributor may request for payments to broker-dealers, including Gruntal & Co., and other financial intermediaries for their assistance in the distribution of Fund shares and otherwise promoting the sale of such shares. Each distribution payment is based on the average daily value of each Fund's net assets during the preceding month and is calculated at an annual rate not to exceed 0.25% of such net assets. Distribution expenses incurred in one year may not be carried forward into and reimbursed in the next year. The Glass-Steagall Act and other applicable laws generally prohibit federally chartered or supervised banks from engaging in the business of underwriting, selling or distributing securities. Accordingly, the Funds will engage banks and other depository institutions as shareholder servicing agents only to perform administrative and shareholder servicing functions, such as sub-accounting services.

5. The Prior Order was issued to permit Applicant both to impose and to waive contingent deferred sales loads on certain redemptions of its shares, and to offer to exchange shares on a basis other than net asset value. However, the Trust subsequently determined to offer its shares on a front-end sales load basis instead. Consequently, it has filed the current application under section 6(c) and section 11(a) to amend the Prior Order, thus permitting the Trust as a front-end load fund to offer the proposed exchange program for its current and future funds. Applicant acknowledges that the amended order requested by this application will be prospective in nature. Applicant further represents that it will not rely on such amended order to limit or modify any exchange offer previously made to shareholders.

6. The proposed exchange offer will permit exchanges on the basis of relative net asset value per share, plus imposition of a sales load for initial exchanges from a Money Market Fund to a Mutual Fund (described below). A nominal administrative fee of $5.00 for each exchange effected through the Transfer Agent (but not for exchanges effected through the Distributor) will also be imposed. None of the Distributor, HCS Brokerage Services, Inc. or Home receives any portion of the $5.00 administrative fee. An unlimited number of exchanges will be permitted, although the minimum requirement for each exchange will be $500. Unless an investor closes out his account in a Fund by making an exchange, he could not exchange his shares if the effect of the exchange would be to leave less than $500 in his account. The Trust will also require that an investment in a Fund be made for seven days prior to the excercise of the exchange privilege.

7. A sales load will be imposed in connection with the exchange of Money Market Fund shares for Mutual Fund shares, in accordance with the load schedule for Mutual Fund shares described above. No sales load will be imposed on the exchange of Mutual Fund shares for Money Market Fund shares, nor upon the subsequent re-exchange of such Money Market Fund shares for Mutual Fund shares: The sales load, having been previously paid by such shareholder upon his original purchase of Mutual Fund shares, will not be imposed on the same shares twice. Money Market Fund shares acquired through dividend reinvestment or capital gains distributions are subject to the same charges, if exchanged for Mutual Fund shares. No sales load is charged, however, if a shareholder exchanges all or a portion of his shares of one Mutual Fund for shares of another Mutual Fund, whether such Mutual Fund shares were originally acquired through initial investment, dividend reinvestment or capital gains distributions.

8. Exchanges will be made solely at the request of shareholders. The Trust does not believe that the payment of the nominal fee provides an economic incentive for the Distributor to initiate such exchanges for its own benefit. However, if a shareholder exchanges shares of a Money Market Fund for shares of a Mutual Fund, sales loads may provide such economic incentive. As a result, the Distributor will notify its registered representatives of the exchange program and instruct them not to solicit such exchanges and not to notify investors of the exchange privilege by telephone. The Distributor has established adequate internal monitoring and review procedures to insure that such exchanges are made at the request of investors, and not for the gain of the Distributor or its registered representatives. The Distributor also requires by the terms of its dealer agreements that a participating dealer make its books and records available for the Distributor's inspection.

Applicant's Legal Conclusions

1. Applicant submits that all of the elements of its proposed exchange program are in the interests of the Applicant's shareholders, and are appropriate and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Nonetheless, to avoid questions about any inconsistency with specific provisions of the 1940 Act, the Trust is requesting an amended order to the extent necessary to permit it to offer the proposed exchange program.

2. Applicant represents that the described exchange privilege is consistent with the requirements of proposed Rule 11a–3 under the 1940 Act. Applicant reserves the right to modify or terminate the exchange privilege, such right being fully disclosed in the prospectus for each Fund as well as in any sales literature and advertising for the Funds which refer to such privilege.

The Trust will give shareholders a minimum of 60 days' written notice before any termination or modification of the exchange privilege will take effect. The Trust will secure an order approving any modification to the exchange privilege, except a reduction of the adminstrative fee, but not upon termination of the privilege. The administrative fee or scheduled variation thereof will be applied uniformly to all shareholders. The Trust's prospectuses, as well as all sales literature and advertising referring to the exchange privilege, will disclose the fee. In addition, prior to the effective date of Rule 11a-3, the Applicant will not increase the administrative fee beyond its nominal amount absent receipt of an exemptive order from the SEC.

3. Applicant represents that because the Funds make available a variety of investment portfolios, the exchange privilege gives investors an inexpensive and convenient means of responding to changes in investment needs or market conditions. The imposition of a nominal $5.00 fee upon exchanges effected through the Transfer Agent and not through the Distributor is fair and consistent with the protection of shareholders. Neither the Distributor not HCS Brokerage Services, Inc. incurs any administrative expenses in effecting exchanges because each has computer software in place to effect the exchanges automatically. Each shareholder has the option of making an exchange through the Distributor rather than the Transfer Agent, thereby avoiding the $5.00 fee. The fee is used only to defray administrative expenses which would otherwise be borne by the shareholders as a whole.

Applicant's Conditions

If the requested amended order is granted, Applicant agrees to the following conditions:

1. The Applicant will comply with proposed Rule 11a-3 as currently proposed (Investment Company Act Release No. 16504), adopted or modified in the future;

2. The Applicant will comply with Rule 12b-1 as currently adopted or modified in the future;

3. Any future offers of exchange among additional funds the Applicant may offer will be subject to the representations and conditions described in this restated application; and

4. For any modification to the exchange offer described herein, the Applicant will seek from the Commission an order amending the amended order requested hereby.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

FR Doc. 89-7681 Filed 3-30-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26670; File No. SR-MSE-89-1]

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Immediate Effectiveness of Proposed Rule Change Relating to a Reduced Transaction Fee Schedule.

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 March 15, 1989, the Midwest Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change

The Midwest Stock Exchange, Incorporated ("MSE") proposes to modify its transaction fee schedule as follows: (*Additions italicized* [deletions bracketed]).

VALUE CHARGE

Total gross dollar value/month (in millions)	Rate (per $1,000)
0.0 to 10.0	16.0
10.1 to 25.0	12.0
25.1 to 125.0	8.5
125.1 to 250.0	8.0
250.1 to 350.0	7.5
350.1 to 450.0	6.5
450.1 to 550.0	4.5
550.1 to 1,000	2.5
Over 1,000	1.5

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

The new fee change to take effect April 1, 1989, is designed as an incentive for customers to do greater dollar volume of trading on the Midwest Stock Exchange.

The revised fee schedule is consistent with Section 6 of the Securities Exchange Act of 1934 in that it provides for the equitable allocation of reasonable dues fees and other charges among MSE's members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Stock Exchange does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

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 in the caption above and should be submitted by April 21, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: March 27, 1989.

[FR Doc. 89-7680 Filed 3-30-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26669; File No. SR-PHLX-89-02]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Responsibility to Make Ten-Up Markets.

On February 2, 1989, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend PHLX Rule 1033 and restate PHLX Options Floor Procedure Advice A-11 to require specialists and Registered Options Traders ("ROTs") to make ten-up markets in all options series traded on the PHLX, regardless of expiration month or strike price.

The proposed rule change was published for comment in Securities Exchange Act Release No. 26566 (February 22, 1989), 54 FR 8614 (March 1, 1989). No comments were received on the proposed rule change.

Currently, as approved by the Commission in June 1987,[3] PHLX specialists and ROTs quoting the best bid or offer in the nearest expiration options series that are at, just in, and just out-of-the-money are required to ensure that public customer orders are filled to a minimum depth of ten contracts. This requirement, however, only applies when the specialist or ROT is quoting the best bid or offer for his or her own account.[4] In addition, specialists and ROTs can be excused from the requirement under exceptional circumstances (e.g., fast market conditions) or for good cause if approved by two PHLX floor officials. Any such exemption must be in writing and must set forth the basis upon which the exemption is granted. Finally, Advice A-11 contains a fine schedule for violations of the Rule.

According to the PHLX, however, because the current ten-up requirement is limited to certain near-term options and applies only when a specialist or ROT is quoting the best bid or offer for his or her own account, the benefits to be derived from the requirement (i.e., assured execution of public customer orders and enhanced competition on the PHLX options floor) have not been fully realized. In addition, there has been some confusion among PHLX members about when and to which option series the ten-up requirement applies.

To remove the limitations of the Rule, the PHLX proposed the current rule change. Under the proposed rule change, the ten-up requirement will apply to every option series traded at the PHLX, regardless of expiration month or strike price. In addition, if the best bid or offer is made for an account other than a floor trader for less than ten contracts, then the floor trader(s) at the next best bid or offer must ensure the balance of the ten contract minimum at the best bid or offer.[5] In all other respects, including the fine schedule and exemption from the Rule for good cause shown, Advice A-11 is substantively unchanged.

The Commission believes the PHLX proposal will benefit public customers by extending further the benefits associated with ten-up markets. In particular, by extending the ten-up requirement to all option series and to instances where a floor trader is not quoting the best bid or offer, more public customer orders will receive assured executions to a minimum depth of ten contracts at the best quoted bid or offer. This will enhance competition in the PHLX's options markets and eliminate confusion surrounding the applicability of the Rule. Moreover, as with the original ten-up requirement, by encouraging options specialists and ROTs to become more competitive in making size markets in out-of-the-money and further out term options series, the proposal should facilitate options transaction in these series, thereby contributing to a more free, open, and liquid market. Finally, as the Commission has not received any negative comments from any of the floor traders potentially affected by the proposal, the Commission has no reason to believe that expansion of the ten-up requirement will be particularly burdensome on them.

Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular sections 6 and 11A.[6] Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act because it will promote just and equitable principles of trade, protect investors, and promote the public interest by assuring a minimum ten contract execution of public customers' orders. Also, the Commission finds that the proposal is consistent with section 11A(a)(1)(C) (ii) and (iv) because it will promote "fair competition among brokers and dealers" and "the practicability of brokers executing investors' orders in the best market."

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR-PHLX-89-02) is approved.

For the Commission, by the division of Market Regulation, pursuant to delegated authority.[8]

Dated: March 27, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-7697 Filed 3-30-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26668, File No. SR-SCCP 89-02]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Filing and Immediate Effectiveness of Proposed Rule Change Regarding Fees

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 February 8, 1989, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and

[1] 15 U.S.C. 78s(b)(1) (1984).

[2] 17 CFR 240.19b-4 (1988).

[3] *See* Securities Exchange Act Release No. 24580 (June 11, 1987), 52 FR 23120 (June 17, 1987).

[4] Under the current Rule, however, when the specialist or ROT is not quoting the best bid or offer, he or she is still required to provide a fill of up to five contracts for a public customer order to sell (or buy) at a price calculated by subtracting (or adding) the maximum permitted quotation spread from (or to) the best offer (or bid) in the market.

[5] If the ten-up requirement must be satisfied by several floor traders, either because several traders are quoting the best bid or offer or the next best bid or offer, it shall be done as agreed upon by them or otherwise be divided proportionately.

[6] 15 U.S.C. 78f and 78k-1 (1984).

[7] 15 U.S.C. 78s(b)(2) (1984).

[8] 17 CFR 200.30-3(a)(12) (1988).

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

(a) The Stock Clearing Corporation of Philadelphia ("SCCP") proposes as a rule change revisions to certain fees charged to participants for services provided by the Corporation. The charges are proposed to take effect on March 1, 1989.

(b) SCCP does not expect that the proposed rule change will have any direct effect or significant indirect effect on any of its other rules.

(c) Not applicable.

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and statutory 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 Purpose of, and Statutory Basis for, the Proposed Rule Change

Presently, SCCP has in place trade "recording charges" that vary between 24 cents and $1.00 per trade side and "value charges" up to $50.00 per trade side. SCCP's Schedule of Charges identifies the aforementioned charges. Trades cleared through SCCP are subject to both recording and value charges. In a program to attract increased order flow through the Philadelphia Stock Exchange, Inc.'s ("PHLX") PACE system and to attract additional clearing business to SCCP, SCCP hereby proposes to establish a 77 cents per trade side cap on a participant's composite trade recording and value charges incurred at SCCP.

SCCP participants who deliver at least 200 trades per day or 4,000 trades per month through PACE would qualify for the capped fee. Those PACE trades would have to be settled through SCCP. The capped fee rate would not apply to trades cleared on behalf of a PHLX specialist by another entity.

The institution of this new fee does not raise any SCCP participant's rates as all participants not availing themselves of this program will be subject to existing trade recording and value charges. Moreover, participants currently meeting the eligibility criteria as well as those who do so in the future will be eligible for the special capped rate. Structured as a "fee cap", participants eligible for this rate will pay the new capped fee or their current fees, whichever is the lesser amount.

The proposed rule change is consistent with section 17A(b)(3)(D) of the Exchange Act in providing for equitable allocations of reasonable dues, fees and other charges among participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not perceive any burdens on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

A forthcoming SCCP/PHILADEP Member Bulletin will advise members of officials to whom they may direct questions.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

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 SCCP. All submissions should refer to the file number in the caption above and should be submitted by April 21, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 24, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–7682 Filed 3–30–89; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2343; Amdt. 2]

Kentucky (and Contiguous Counties in the States of Indiana, Ohio, West Virginia and Virginia); Declaration of Disaster Loan Area

The above-numbered Declaration (54 FR 9584), as amended (54 FR 11602), is hereby further amended in accordance with the Notice of Amendment to the President's declaration dated March 14, 1989, to include the following counties in the Commonwealth of Kentucky as a result of damages from severe storms and flooding between February 13 and March 8, 1989: Boyd, Breathitt, Floyd, Knott, Lawrence, Lee, Leslie, Letcher, Magoffin, Martin, Muhlenberg, Owsley, Perry, Pike, Rowan, and Wolfe.

In addition, applications for economic injury from small businesses located in the contiguous counties of Christian, Harlan and Todd, in the Commonwealth of Kentucky; Cabell, Mingo, and Wayne Counties in the State of West Virginia; Buchanan, Dickenson, and Wise Counties, and the Independent City of Norton, in the State of Virginia, may be filed until the specified date at the previously designated location.

The number assigned to the State of West Virginia for economic injury is 674100 and for Virginia the economic injury number is 674200.

All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on April 27, 1989, and for economic injury until the close of business on November 24, 1989.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: March 15, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-7602 Filed 3-30-89; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council; Public Meeting; California

The U.S. Small Business Administration, Region IX Advisory Council, located in the geographical area of Los Angeles, will hold a public meeting at 9:30 a.m. on Thursday, April 27, 1989, at the Bank of America Executive Board Room, 555 South Flower Street, Los Angeles, California, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. H. Hawley Smith, District Director, U.S. Small Business Administration, 350 South Figueroa Street, Suite #600, Los Angeles, California 90071, telephone number (213) 894-2977.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 22, 1989.

[FR Doc. 89-7588 Filed 3-30-89; 8:45 am]

BILLING CODE 8025-01-M

Region X Advisory Council; Public Meeting; Idaho

The U.S. Small Business Administration, Region X Advisory Council, located in the geographical area of Boise, will hold a public meeting at 9:30 a.m. on Monday, April 17, 1989, at the Trolley Square Convention Center, 117 South 9th Avenue, Room 7, Caldwell, Idaho (across from U.S. Post Office), to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Joseph Keappner, District Director, U.S. Small Business Administration, 1020 Main Street, Suite 290, Boise, Idaho, 208/334-9641.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 22, 1989.

[FR Doc. 89-7589 Filed 3-30-89; 8:45 am]

BILLING CODE 8025-01-M

Region V Advisory Council; Public Meeting; Illinois

The U.S. Small Business Administration, Executive Committee of Region V, located in the geographical area of Chicago, will hold a public meeting at 9:30 a.m. on Friday, April 21, 1989, at the O'Hare Marriott Hotel in Chicago to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Roy A. Olson, Assistant Regional Administrator for Public Affairs and Communications, U.S. Small Business Administration, 230 South Dearborn Street, Room 510, Chicago, Illinois 60604-1593; telephone number: 312/353-0359.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 22, 1989.

[FR Doc. 89-7590 Filed 3-30-89; 8:45 am]

BILLING CODE 8025-01-M

Region VII Advisory Council; Public Meeting; Iowa

The U.S. Small Business Administration, Region VII Advisory Council, located in the geographical area of Cedar Rapids together with the Region VII Advisory Council located in the geographic area of Des Moines, will hold a public meeting at 10:00 a.m. on Wednesday, May 3, 1989, at the Grinnell Community Center, 927 4th Avenue, Grinnell, Iowa, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call James N. Thomson, District Director, U.S. Small Business Administration, 373 Collins Road NE., Cedar Rapids, Iowa 52402-3118, telephone number (319) 399-2571.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 22, 1989.

[FR Doc. 89-7591 Filed 3-30-89; 8:45 am]

BILLING CODE 8025-01-M

Region V Advisory Council; Public Meeting; Indiana

The U.S. Small Business Administration, Region V Advisory Council, located in the geographical area of Indianapolis, will hold a public meeting at 9:30 a.m. on Tuesday, May 2, 1989, at Indiana University-Purdue University, School of Business, Indianapolis, Indiana, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Robert D. General, District Director, U.S. Small Business Administration, Minton-Capehart Federal Building, Room 578, 575 Pennsylvania Street, Indianapolis, Indiana 46204-1584, telephone number (317) 226-7275.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 22, 1989.

[FR Doc. 89-7592 Filed 3-30-89; 8:45 am]

BILLING CODE 8025-01-M

Region VIII Advisory Council; Public Meeting; Montana

The U.S. Small Business Administration, Region VIII Advisory Council, located in the geographical area of Helena, will hold a public meeting at 9:00 a.m. on Friday, April 28, 1989, at the Colonial Inn, 2301 Colonial Drive, Helena, Montana to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call John R. Cronholm, District Director, U.S. Small Business Administration, Federal Office Building, 301 South Park, Drawer 10054, Helena, Montana 59626-0054, telephone number (406) 449-5381.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 22, 1989.

[FR Doc. 89-7583 Filed 3-30-89; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/06-0209]

Rust Capital, Ltd.; Application for Conflict of Interest Transaction

Notice is hereby given that Rust Capital, Ltd. (Rust), 114 West 7th Street, Austin, Texas 78701, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act), has filed an application with the Small Business Administration (SBA) pursuant to § 107.903(b)(1) of the Regulations governing small business investment companies (13 CFR 107.903(b)(1) (1988)) for an exemption from the provisions of the cited Regulations.

Rust proposes to invest $200,000 in FABAL Southeast, Inc., (FABAL), 2304 Hancock Drive, #2, Austin, Texas 78756.

The proposed financing is brought within the purview of § 107.903(b)(1) of the Regulations because the proposed President and owner of 25 percent of FABAL is Thomas P. Francis, an Associate of Rust. Mr. Francis is an Associate of Rust by virtue of the fact that he was a Director of Rust Investment Corporation, the corporate General Partner of the Licensee, until December 13, 1988.

Notice is hereby given that any interested person may, not later than fifteen (15) days from the date of publication of this Notice, submit written comments on the proposed transaction to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Austin, Texas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: March 24, 1989.

[FR Doc. 89-7597 Filed 3-30-89; 8:45 am]

BILLING CODE 8025-01-M

[License No. 08/08-0039]

Associated Capital Corp.; License Surrender

Notice is hereby given that Associated Capital Corporation, 4891 Independence St., Wheat Ridge, Colorado 80033, has surrendered its license to operate as a small business investment company under section 301(c) of Small Business Investment Act of 1958, as amended (the Act). Associated Capital Corporation was licensed by the Small Business Administration on November 11, 1976.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on March 16, 1989, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 24, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89-7596 Filed 3-30-89; 8:45 am]

BILLING CODE 8025-01-M

Region VIII Advisory Council; Public Meeting

The U.S. Small Business Administration, Region VIII Advisory Council, located in the geographical area of Sioux Falls will hold a public meeting from 9:00 a.m. to 3:00 p.m., on Thursday, April 27, 1989, at the Metropolitan Federal Bank, 133 South Main Avenue, Sioux Falls, South Dakota 57102 to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Chester B. Leedom, District Director, U.S. Small Business Administration, Suite 101 Security Building, 101 South Main Avenue, Sioux Falls, South Dakota 57102, 605/330-4231.

Dated: March 23, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 89-7594 Filed 3-30-89; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council; Public Meeting

The U.S. Small Business Administration, Region IV Advisory Council, located in the geographical area of Nashville, will hold a public meeting at 8:30 a.m. on Wednesday, April 26, 1989, at Henry Horton State Park, Chapel Hill, Tennessee 37034, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Robert M. Hartman, District Director, U.S. Small Business Administration, Suite 1012 Parkway Towers, 404 James Robertson Parkway, Nashville, Tennessee 37219, telephone (615) 736-5850.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 23, 1989.

[FR Doc. 89-7595 Filed 3-30-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

[Docket No. 45466; Order No. 89-3-59

United States-Venezuela All-Cargo Exemption Proceeding

AGENCY: Department of Transportation.

ACTION: Order to Show Cause, United States-Venezuela All-Cargo Exemption Proceeding.

SUMMARY: By Order 88-2-56, February 25, 1988, the Department instituted the United States-Venezuela All-Cargo Exemption Proceeding to select a carrier to provide scheduled all-cargo service between the United States and Venezuela pursuant to the terms of the United States-Venezuela bilateral aviation agreement. In instituting the proceeding, the Department stated that the state of aviation relations with Venezuela required that it limit authorization of such service to just one additional carrier. (The Flying Tiger Line already holds authority to serve the U.S.-Venezuela market.) By Order 89-3-59, the Department tentatively concludes that due to the increase in the number of Venezuelan all-cargo carriers serving the market, the state of aviation relations permits it to select two U.S. carriers to serve the market. The Department has also tentatively decided to grant exemption authority to Challenge Air Cargo, Inc., and Arrow Air, Inc., to provide the all-cargo service at issue and to deny the competing applications of Federal Express Corporation and Amerijet International to serve the market. The authority granted would be effective for a period of one year. The Department also expressed its intent to institute a certificate proceeding in the near future to consider the long-term needs of the U.S.-Venezuela market.

DATES: Objections to the Department's tentative decision are due not later than April 10, 1989. Answers to any objections filed are due not later than April 19, 1989.

ADDRESS: Objections and any answers thereto should be filed in Docket 45466 addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, DC 20590, and should be served on all parties in Docket 45466.

Dated: March 27, 1989.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-7740 Filed 3-30-89; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

[Summary Notice No. PE-89-14]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and

participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: April 20, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, March 27, 1989.

Denise Donohue Hall,

Manager, Program Management Staff Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 25238
Petitioner: Chromalloy American Corporation
Regulations Affected: 14 CFR 145.49
Description of Relief Sought: To allow petitioner to continue to operate its Mexicali, Mexico, facility under its existing domestic repair station certificate.

Docket No.: 20816
Petitioner: Zephyrhills Parachute Center
Regulations Affected: 14 CFR 91.15(a)(2) and 105.43(a)(2)
Description of Relief Sought/ Disposition: To extend and amend Exemption No. 4301, as amended, that allows foreign nationals to participate in petitioner's competitive skydiving events without complying with the parachute equipment and packing requirements of the FAR; in addition, to permit continued authorization to carry 40 parachutists in the DC-3/C47 aircraft for parachuting activity.

Grant, March 24, 1989, Exemption No. 4301B

Docket No.: 25501
Petitioner: Tridair Helicopters
Sections of the FAR Affected: 14 CFR 21.19
Description of Relief Sought/ Disposition: To allow petitioner to convert a Bell Long Ranger Model 206 helicopter from a single-engine to a twin-engine configuration without the required new type certificate.

Grant, March 14, 1989, Exemption No. 5025

Docket No.: 25655
Petitioner: Stoddard-Hamilton Aircraft Incorporated
Section of the FAR Affected: 14 CFR 21.191
Description of Relief Sought/ Disposition: To allow the issuance of an experimental certificate for the purpose of operating amateur-built aircraft to customers who purchase petitioner's Glassair kit aircraft. In particular, this exemption would apply to two factory-owned and operated Glassair kit aircraft, N84AG and N540RG.

Denial, March 21, 1989, Exemption No. 5033

[FR Doc. 89-7712 Filed 3-30-89; 8:45 am]
BILLING CODE 4910-13-M

Federal Highway Administration

Supplemental Environmental Impact Statement; Boston, MA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a "projectwide" Supplement to the Final Environmental Impact Statement is being prepared for the proposed Central Artery (I-93)/Third Harbor Tunnel (I-90) project in Boston, MA. A previous Notice of Intent was published in the Thursday, January 26, 1989 **Federal Register** for a separate Supplement which is being prepared for the proposed "South Boston Haul Road", an early construction mitigation measure for the Artery/Tunnel Project.

FOR FURTHER INFORMATION CONTACT: Mr. Alexander Almeida, Project Manager, Central Artery/Third Harbor Tunnel Project, Federal Highway Administration, Transportation Systems Center, 55 Broadway, 10th Floor, Cambridge, MA 02142, Telephone: (617) 494-2319.

Ms. Martha Bailey, Manager, Planning and Environment, Central Artery/Third Harbor Tunnel Project, Massachusetts Department of Public Works, One South Station, Boston, MA 02110, (617) 951-6113.

Mr. Walter Kudlick, representative for Bechtel/Parsons Brinckerhoff, Management Consultant, One South Station, Boston, MA 02110, (617) 951-6151.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Massachusetts Department of Public Works (MDPW), is preparing a supplement to the final environmental impact statement (FEIS) on a proposal to improve Interstate Highway I-93 (Central Artery) and to extend eastward Interstate Highway I-90 (Third Harbor Tunnel) in Boston.

The approved FEIS for the Central Artery/Third Harbor Tunnel Project (FHWA-MA-EIS-82-02-F) is dated August 16, 1985. The proposed improvements to I-93 and I-90 described in the FEIS include:

- Construction of a widened (from six to eight lanes) and depressed Central Artery (I-93) from the Massachusetts Turnpike (I-90) Interchange on the Southeast Expressway (I-93) to the Gilmore Bridge area in Charleston.
- Construction of a four-lane Third Harbor Tunnel (I-90) from the Southeast Expressway (I-93) and present terminus of the Massachusetts Turnpike Extension (I-90) just south of the Central Artery (I-93) in Boston, to Logan Airport and Route 1A in East Boston via the waterfront industrial area of South Boston and Boston Harbor.

The FEIS identified 14 "significant unresolved issues" which were determined to be unresolvable until subsequent phases of project development could be completed. Recent project development activities have been undertaken to address these previously unresolved issues. Additional engineering studies have also evaluated a number of design concept revisions, culminating in a revised proposed action. The revised proposed action consists of the following elements:

- Construction of an 8 to 12 land depressed Central Artery (I-93) from just south of the Massachusetts Avenue Interchange on the Southeast Expressway (I-93) to just north of the Central Artery/North Area Interchange (I-93/Route 1) in Charleston.
- Construction of a 6 to 10 lane Seaport Access Highway and a 4 lane Third Harbor Tunnel (I-90) from the present terminus of the Massachusetts Turnpike Extension (I-90) at the Southeast Expressway (I-93) in Boston, to Logan Airport and Route 1A in East Boston via the waterfront industrial area of South Boston and Boston Harbor.
- Construction of a 2 lane South Boston Bypass Road in an existing Conrail railway right of way between

Southeast Expressway (I-93) and the Seaport Access Highway (I-90) and roads serving the South Boston waterfront area, designed to remove heavy truck traffic from local streets.

The total project length is approximately 7.5 miles of mainline Urban highway. A length of 3.2 miles are on the I-90 segment and 3.3 miles are on the I-93 segment. The proposed South Boston Bypass Road is approximately one mile in length. A "projectwide" Supplemental EIS (SEIS) is being prepared to address the issues left unresolved in the 1985 FEIS and to assess impacts due to the design concept revisions included in the proposed action described above. A separate supplement is being prepared for the proposed "South Boston Haul Road", an early construction mitigation measure for the Artery/Tunnel Project. A Notice of Intent for the "South Boston Haul Road" SEIS was published in the Thursday, January 26, 1989 Federal Register.

Letters describing the revised proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Public meetings have been held and will continue to be scheduled in the project area. A public hearing for the project is presently scheduled to be held in 1989. Public notice will be given of the time and place of the meetings and the official public hearing. The Draft SEIS will be available for public and agency review and comment prior to the public hearing. No formal Federal scoping meeting will be held. However, previous cooperating Federal agencies will continue in this capacity. Project briefings are being conducted for all cooperating agencies.

To ensure that the full range of issues related to this revised proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the SEIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Alexander Almeida,

Project Manager, Central Artery (I-93)/Third Harbor Tunnel (I-90) Project, Cambridge, MA.

[FR Doc. 89-7737 Filed 3-30-89; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Calhoun and Union Counties, Arkansas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for the replacement of a bridge over the Ouachita River in Calhoun and Union Counties, Arkansas.

FOR FURTHER INFORMATION CONTACT: E.C. Lydick, District Engineer, Federal Highway Administration, 3128 Federal Office Building, Little Rock, Arkansas, 72201, Telephone: (501) 378-5309.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Arkansas State Highway and Transportation Department will prepare an environmental impact statement (EIS) or a proposal to replace an existing bridge structure over the Ouachita River on U.S. Highway 167 in Calhoun and Union Counties, Arkansas.

Improvements to the corridor are necessary to provide a structurally sound structure to provide for the necessary loading. Alternatives under construction include (1) no action; (2) rehabilitation of the existing structure (3) replacement of the structure on existing location and (4) replacement at a location adjacent to the existing structure.

Coordination will be made with appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A public hearing will be held. Public notice will be given of the time and place for the hearing. A draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

The U.S. Coast guard will be a cooperating agency for this project because the Ouachita River is a navigable stream. Because of wetland involvement with the proposed project, the U.S. Army Corps of Engineers will be a cooperating agency.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: March 17, 1989.

Ed Lydick,

District Engineer, Federal Highway Administration.

[FR Doc. 89-7738 Filed 3-30-89; 8:45 am]

BILLING CODE 4910-22-M

Maritime Administration

[Docket S-847]

Ocean Carriers, Inc.; Application To Transfer Operating-Differential Subsidy Agreement MA/MSB-167 and Modify Application Pending in Docket S-832

By letter of March 16, 1989, Ocean Carriers, Inc., requested permission pursuant to section 608 of the Merchant Marine Act, 1936, as amended (Act), Article II-16 of Operating-Differential Subsidy Agreement (ODSA), Contract MA/MSB-167, and Article 36 of the Bareboat Charters between either OMI Patriot Transport, Inc.; or OMI Courier Transport, Inc.; or OMI Rover Transport, Inc., subsidiaries of OMI Bulk Transport, Inc. (OMI Bulk subsidiaries and OMI Bulk Transport Inc., respectively), to assign ODSA MA/MSB-167 to "Newco", a company that is to become the bareboat charterer of the COURIER, ROVER, RANGER, and PATRIOT. The OMI Bulk subsidiaries also request that the application of Ocean Carriers, submitted on May 20, 1988, be modified to reflect Newco as the contractor for ODSA MA/MSB-167 and bareboat charterer of the OMI MISSOURI and the OMI SACRAMENTO.

The application submitted by Ocean Carriers on May 20, 1988, requests (1) that Article I-3(a) of ODSA MA/MSB-167 be modified to incorporate the OMI MISSOURI and the OMI SACRAMENTO and (2) that the operating-differential subsidy (ODS) sharing system be established among the vessels named in the ODSA. On February 14, 1989, Ocean Carriers modified its May 20, 1988, application to request that if the contract is modified and ODS sharing is approved for ODSA MA/MSB-167, the ODSA be amended to

permit the vessels named in the contract to carry preference cargoes.

The applicants advise that Newco will be a separate corporate entity. It will not be a subsidiary or affiliate of any other company. Newco will be a citizen under the provisions of section 905(c) of the Act. A controlling interest in the company will be owned by U.S. citizens. The President, Chairman of the Board, and all directors of Newco will be U.S. citizens. Newco will also agree to be bound by all the rules and regulations applicable to ODS contractors. Newco will be located in New York City and may lease space from OMI. The applicants aver that Newco's structure is consistent with the Maritime Subsidy Board's approval of Ocean Carriers as the bareboat charterer of the four tankers currently named in the ODSA. It is also consistent with the organizational structures approved for other ODS contractors that time charter vessels to organizations not meeting the requirements of sections 804 or 805 of the Act.

Newco, as bareboat charterer of the six vessels to be included in the ODSA, will provide technical management services to the vessels, consistent with its role as bareboat charterer.

The four tanker vessels will be time chartered to OMI Bulk Transport and the two dry bulk vessels will be time chartered to OMI Missouri Transport, Inc. (OMI Missouri Transport) for operation in the preference or in the subsidized trade. Charter rates for the two dry bulk vessels while in the subsidized trade will reflect the receipt of subsidy. As time charterers, OMI Missouri Transport and OMI Bulk Transport will be responsible for all chartering functions relating to the vessel.

Interested parties may inspect the foregoing application in the Office of the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington DC 20590.

Any person, firm, or corporation having any interest in such application and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration. Comments must be received no later than 5:00 P.M. on Tuesday, April 18, 1989.

This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies))

By Order of the Maritime Administrator.

Date: March 28, 1989.

James E. Saarl,

Secretary.

[FR Doc. 89-7685 Filed 3-30-89; 8:45 am]

BILLING CODE 4910-81-M

Research and Special Programs Administration

[Notice No. 89-1]

Availability of Proposals for Revision to the International Atomic Energy Agency Regulations

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of availability and request for comment.

SUMMARY: The International Atomic Energy Agency (IAEA) has initiated its second cycle of changes to its Safety Series No. 6, "Regulations for the Safe Transport of Radioactive Materials, and its supporting documents, Safety Series Nos. 7, 37 and 80. The public is invited to review and comment on the IAEA's catalog of proposed amendments to its regulations. Any future changes to IAEA Safety Series No. 6 may affect the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-179).

DATE: Comments should be received by May 1, 1989.

ADDRESS: The IAEA's catalog of proposed amendments can be obtained from, and is available for review in, the Dockets Unit, Office of Hazardous Materials Transportation, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590, Room 8421. Office hours are 8:30 a.m. to 5:00 p.m., Monday through Friday, except public holidays. Additionally, comments on the catalog should be addressed to the Dockets Unit at the same address.

FOR FURTHER INFORMATION CONTACT: Michael E. Wangler, Chief, Radioactive Materials Branch, Technical Division, Office of Hazardous Materials Transportation, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366-4545.

SUPPLEMENTARY INFORMATION: Many countries and international transport organizations throughout the world have adopted the standards of IAEA's "Regulations for the Safe Transport of Radioactive Materials." These regulations are currently found in IAEA publication Safety Series No. 6, 1985 Edition (SS6-85). Section 171.12(e) of the HMR authorizes the import and export of radioactive materials, under certain conditions, if packages are prepared for shipment in accordance with the IAEA Regulations. Currently, § 171.12(e) references IAEA Safety Series No. 6, 1973 Revised Edition (as amended). However, the HMR are periodically amended to allow conformance with most of the IAEA Regulations for domestic transportation. It is anticipated that the HMR will be amended to allow conformance with SS6-85 and its revisions prior to January 1, 1990. Thus any changes to the SS6-85 may affect the HMR.

In 1985, IAEA instituted a new process for the continuing review and revision of its regulations. This process will lead to supplements to the IAEA Regulations and its supportive documents being issued every 2 years, thereby allowing the IAEA Regulations to remain current with technology..

The IAEA initiated this process in August 1986, when it requested that member states review SS6-85 and its supporting documents, Safety Series Nos. 7, 37, and 80, and submit suggestions for changes to those documents. As part of this process IAEA convened a Technical Committee meeting from June 22-26, 1987 to consider proposals for amendments and identified problems submitted by IAEA Member States and international organizations in connection with the IAEA regulations. Additionally, the Technical Committee considered advice and reports developed by consultant groups examining specific aspects of the regulatory standards for transport. The Technical Committee was charged with the tasks of examining the justification for the proposed amendments and of recommending changes suitable for early adoption in the IAEA Regulations.

Subsequent to this meeting the Director General of the IAEA transmitted copies of proposed amendments to SS6-85 and its supporting documents, to the U.S. and other Member States and invoked the "90 day notice procedure". The "90 day notice procedure" of IAEA gives Member States not less than 90 days to comment on proposed changes. On March 9, 1987, RSPA published in the **Federal Register** a "Notice of Availability and Request For Public Comment" (Notice No. 87-2; 52 FR 7254) requesting comments on those proposed amendments to SS6-85 and its supporting documents. Those amendments were accepted by the Member States and are expected to be published by IAEA in the near future.

The second revision cycle is now being initiated, and the U.S. and other Member States of IAEA are again being asked to comment on a catalog of proposed amendments to SS6–85 and its supporting documents. Since this catalog, through amendment of SS6, may have an effect on the HMR, the public is invited to review it and submit comments on the proposed changes. To facilitate this process, a copy of the catalog of proposed amendments and a copy of SS6–85 and its supporting documents have been placed in RSPA's Dockets Unit. Additionally, copies of the catalog of proposed amendments may be obtained upon request to the Dockets Unit. Individual copies of the IAEA documents may be purchased from Bernan-Unipub, 4611–F Assembly Drive, Lanham, MD 20706–4391. All public comments received by DOT will be considered and included, as appropriate, during its activities with the IAEA Review Panel.

Issued in Washington, DC on March 27, 1989 under authority delegated in 49 CFR Part 106, Appendix A.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 89–7739 Filed 3–30–89; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 9–89]

Treasury Notes of March 31, 1993, Series N–1993

Washington, March 23, 1989.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders approximately $7,500,000,000 of United States securities, designated Treasury Notes of March 31, 1993, Series N–1993 (CUSIP No. 912827 XJ 6), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated March 31, 1989, and will accrue interest from that date, payable on a semiannual basis on September 30, 1989, and each subsequent 6 months on March 31 and September 30 through the date that the principal becomes payable. They will mature March 31, 1993, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239–1500, prior to 1:00 p.m., Eastern Standard time, Wednesday, March 29, 1989. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, March 28, 1989, and received no later than Friday, March 31, 1989.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in the Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an

equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.000. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Friday, March 31, 1989. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Wednesday, March 29, 1989. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Friday, March 31, 1989. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89-7703 Filed 3-28-89; 8:33 am]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 8-89]

Treasury Notes of March 31, 1991, Series X-1991

Washington, March 23, 1989.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,250,000,000 of United States securities, designated Treasury Notes of March 31, 1991, Series X-1991 (CUSIP No. 912827 XH 0), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated March 31, 1989, and will accrue interest from that date, payable on a semiannual basis on September 30, 1989, and each subsequent 6 months on March 31 and September 30 through the date that the principal becomes payable. They will mature March 31, 1991, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation of interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United

States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500, prior to 1:00 p.m., Eastern Standard time, Tuesday, March 28, 1989. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, March 27, 1989, and received no later than Friday, March 31, 1989.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanies by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extend required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Friday, March 31, 1989. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Wednesday, March 29, 1989. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Friday, March 31, 1989. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completely timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessay, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issues under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89-7704 Filed 3-28-89; 4:33 pm]

BILLING CODE 4810-40-M

Customs Service

Entry/Entry Summary Required for Importation of Hong Kong Textiles

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of change of effective date.

SUMMARY: Customs published a notice in the **Federal Register** (54 FR 5201) on February 1, 1989, stating that Customs was delaying implementation of the requirement that an entry/entry summary ("live" entry) be filed for all textiles and textile entries of Hong Kong which have a textile category number. The effective date set for the requirement in that notice was April 1, 1989. A determination has been made to delay the effective date of the requirement until September 1, 1989.

EFFECTIVE DATE: September 1, 1989.

FOR FURTHER INFORMATION CONTACT: Dick Crichton, Office of Trade Operations, (202) 566-9443 or Ilene Gilbert, Office of Trade Operations, (202) 566-6006.

SUPPLEMENTARY INFORMATION: On January 5, 1989, Customs published a document in the **Federal Register** (54 FR 349), stating that Customs will require the filing of an entry/entry summary ("live" entry) for all textiles and textile products which have a textile category number, effective February 1, 1989. A correction document for that notice was published on January 17, 1989 (54 FR 1844). On February 1, 1989, Customs published a notice of change of effective date (54 FR 5201) to April 1, 1989. A decision has been made by Customs to delay the effective date of the entry/entry summary requirements for Hong Kong textiles and textile articles until September 1, 1989, to allow for a more modern environment in which it is anticipated that electronic filers will have available an option to separate payment from the filing of the entry summary documentation. This will allow for more expeditious flow of cargo while providing improved statistical data. This document is a notice of the delayed effective date.

Date: March 27, 1989.

William von Raab,

Commissioner of Customs.

[FR Doc. 89-7605 Filed 3-30-89; 8:45 am]

BILLING CODE 4820-02-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 61
Friday, March 31, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION
March 28, 1989.

FCC To Hold Special Open Meeting, Tuesday, April 4, 1989

The Federal Communications Commission will hold a Special Open Meeting on the subject listed below on Tuesday, April 4, 1989, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Agenda, Item No., and Subject

Common Carrier—1—Title: In the Matter of AT&T Communications Revisions to Tariff F.C.C. No. 12; CC Docket No. 87-568. Summary: The Commission will consider action in this docket.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sarah Lawrence, Office of Public Affairs, telephone number (202) 632-5050.

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 89-7828 Filed 3-29-89; 2:50 pm]
BILLING CODE 6712-01-M

FEDERAL ELECTION COMMISSION

DATE & TIME: Tuesday, April 4, 1989, 10:00 a.m.

PLACE: 999 E. Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Thursday, April 6, 1989, 2:00 p.m.

PLACE: 999 E. Street, NW., Washington, DC. (Ninth Floor)

STATUS: This meeting will be open to the public.

ITEMS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Draft AO 1989-01: Ron Haskins—Congressional Employee.
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Hilda Arnold,
Secretary of the Commission.
[FR Doc. 89-7783 Filed 3-29-89; 8:45 am]
BILLING CODE 6715-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m.—April 5, 1989.

PLACE: Hearing Room One—1100 L Street, NW., Washington, DC 20573-0001

STATUS: Open.

MATTERS TO BE CONSIDERED: 1. Docket No. 88-26—Agreements by Ocean Common Carriers and Other Persons Subject to the Shipping Act of 1984—Consideration of Comments on Proposed Rule.

2. Service Commitments and Damages Provisions in Service Contracts.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725.

Joseph C. Polking,
Secretary.
[FR Doc. 89-7782 Filed 3-29-89; 2:43 pm]
BILLING CODE 6730-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, April 5, 1989.

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.

Date: March 29, 1989.

William W. Wiles,
Secretary of the Board.
[FR Doc. 89-7750 Filed 3-29-89; 10:10 am]
BILLING CODE 6210-01-M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (54 FR 12049, March 23, 1989).

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Tuesday, March 21, 1989.

CHANGES IN THE MEETING: Additional items/time change.

The following additional items were considered at a closed meeting on Tuesday, March 28, 1989, at 2:00 p.m.:

Settlement of injunctive action;
Consideration of *amicus* participation;
Commissioner Fleischman, as duty officer, determined that Commission business required the above changes.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: John Kincaid at (202) 272-2200.

Jonathan G. Katz,
Secretary.
March 29, 1989.

[FR Doc. 89-7800 Filed 3-29-89; 2:44 pm]
BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 54, No. 61
Friday, March 31, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. 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

International Trade Administration

19 CFR Part 353

[Docket No. 60604-9015]

Antidumping Duties

Correction

In rule document 89-5009 beginning on page 12742 in the issue of Tuesday, March 28, 1989, make the following correction:

On page 12742, in the first column, under **EFFECTIVE DATE**, in the second, third, and fourth lines, "(Insert date 30 days after date of publication in the **Federal Register**.)" should read "April 27, 1989"; and in the sixth, seventh, eighth, and ninth lines, "(Insert date that is the first day of the first month beginning 60 days after the date of publication in the **Federal Register**.)" should read "June 1, 1989".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 89-14-NG]

Transamerican Natural Gas Corp.; Application To Export and Import Natural Gas

Correction

In notice document 89-6371 beginning on page 11265 in the issue of Friday, March 17, 1989, make the following correction:

On page 11265, in the 2nd column, under **SUPPLEMENTARY INFORMATION**, in the 15th line, "15" should read: "150".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-3537-7]

Kentucky; Final Authorization of State Hazardous Waste Management Program for Requirements Prior to Non-HSWA Cluster I, Non-HSWA Cluster I, Non-HSWA Cluster III, and Availability of Information

Correction

In rule document 89-6108 beginning on page 10986 in the issue of Thursday, March 16, 1989, make the following corrections:

1. On page 10986, in the first column, in the fifth line of the subject heading, "Cluster II" should read "Cluster I".

2. On the same page in the second column, in the ninth line, "Cluster II" should read "Cluster I".

3. On page 10987, in the second column, in the last paragraph, in the third line, "Cluster II" should read "Cluster I". Also in the third column, in the fourth line, "Cluster I" should read "Cluster II".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[BERC-478-IFC]

Medicare Program; Fee Schedules for Radiologist Services

Correction

In rule document 89-4939 beginning on page 8994 in the issue of Thursday, March 2, 1989, make the following corrections:

1. On page 8996, in the second column, in the last paragraph, in the second line, "international" should read "interventional"

§ 405.532 [Corrected]

2. On page 9004, in the second column, in § 405.532 (a), the second line should read: "schedules for services furnished in a".

3. On the same page, in the same column, in § 405.532 (b) (2), the first line should read: "Carriers establish new".

§ 405.533 [Corrected]

4. On page 9004, in the second column, in § 405.533 (b), the first line should read: "*Limit on actual charges*. The charge".

§ 405.555 [Corrected]

5. On page 9005, in the third column, in § 405.555 (c) (1), the seventh line should read: "schedule rules in § § 405.530 through".

BILLING CODE 1505-01-D

federal register

Friday
March 31, 1989

Part II

Environmental Protection Agency

40 CFR Part 300

National Priorities List for Uncontrolled Hazardous Waste Sites—Final Update #5; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-3546-3]

National Priorities List for Uncontrolled Hazardous Waste Sites—Final Update No. 5

AGENCY: Environmental Protection Agency.

ACTION: Final Rule.

SUMMARY: The Environmental Protection Agency ("EPA") is amending the National Oil and Hazardous Substances Contingency Plan ("NCP"), 40 CFR Part 300, which was promulgated on July 16, 1982, pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") (amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA")) and Executive Order 12580 (52 FR 2923, January 29, 1987). CERCLA requires that the NCP include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States, and that the list be revised at least annually. The National Priorities List ("NPL"), initially promulgated as Appendix B of the NCP on September 8, 1983 (48 FR 40658), constitutes this list and is being revised today by the addition of 93 sites. EPA has reviewed public comments on the listing of 29 of these sites and has decided that they meet the listing requirements of the NPL. No comments were received on the remaining 64 sites. In addition, today's action removes four sites from the proposed NPL. Information supporting these actions is contained in the Superfund Public Dockets.

This rule results in a final NPL of 890 sites, 41 of them in the Federal section; 273 sites are proposed to the NPL, 22 of them of them in the Federal section. Final and proposed sites now total 1,163.

EFFECTIVE DATE: The effective date for this amendment to the NCP shall be May 1, 1989. CERCLA section 305 provides for a legislative veto of regulations promulgated under CERCLA. Although *INS v. Chadha*, 462 U.S. 919, 103 S. Ct. 2764 (1983), cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Represenatives. If any action by Congress calls the effective date of this regulation into question, the Agency will publish notice of clarification in the **Federal Register**.

ADDRESSES: Addresses for the Headquarters and Regional dockets follow. For further details on what these dockets contain, see Section I of the **"SUPPLEMENTARY INFORMATION"** portion of this preamble.

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FOR FURTHER INFORMATION CONTACT: Robert Myers, Hazardous Site Evaluation Division, Office of Emergency and Remedial Response (OS-230), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460, or the Superfund Hotline, Phone (800) 424-9346 (382-3000 in the Washington, DC, metropolitan area).

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I. Introduction

Background

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. sections 9601-9657 ("CERCLA" or the "Act"), in response to the dangers of uncontrolled or abandoned hazardous waste sites. CERCLA was amended in 1986 by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law No. 99-499, stat. 1613 *et seq.* To implement CERCLA, the Environmental Protection Agency ("EPA" or "the Agency") promulgated the revised National Oil and Hazardous Substances Contingency Plan ("NCP"), 40 CFR Part 300, on July 16, 1982 (47 FR 31180) pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237), August 20, 1981). The NCP, further revised by EPA on September 16, 1985 (50 FR 37624) and November 20, 1985 (50 FR 47912), sets forth guidelines and procedures needed to respond under CERCLA to releases and threatened releases of hazardous substances, pollutants, or contaminants. On December 21, 1988 (53 FR 51394), EPA proposed revisions to the NCP in response to SARA.

Section 105(a)(8)(A) of CERCLA, as amended by SARA, requires that the NCP include criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, take into account the potential urgency of such action for the purpose of taking removal action. Removal action involves cleanup or other actions that are taken in response to releases or threats of releases on a short-term or temporary basis (CERCLA section 101(23)). Remedial action tends to be long-term in nature and involves response actions which are consistent with a permanent remedy for a release (CERCLA section 101(24)). Criteria for determining priorities for possible remedial actions financed by the Trust Fund established under CERCLA are included in the Hazard Ranking System ("HRS"), which EPA promulgated as Appendix A of the NCP (47 FR 31219, July 16, 1982). On December 23, 1988 (53 FR 51962), EPA proposed revisions to the HRS.

Section 105(a)(8)(B) of CERCLA, as amended by SARA, requires that the statutory criteria provided by the HRS be used to prepare a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is Appendix B of the NCP, is the National Priorities List ("NPL"). Section 105(a)(8)(B) also requires that the NPL be revised at least annually. A site can undergo CERCLA-financed remedial action only after it is placed on the NPL,

as provided in the NCP at 40 CFR 300.66(c)(2) and 300.68(a).

An original NPL of 406 sites was promulgated on September 8, 1983 (48 FR 40658). The NPL has since been expanded, most recently on July 22, 1987 (52 FR 27620) and, exclusively for Federal facility sites, on March 13, 1989 (54 FR 10512). The Agency has also published a number of proposed rulemakings to add sites to the NPL, most recently on June 24, 1988 (53 FR 23988).

EPA may delete sites from the NPL when no further response is appropriate, as provided in the NCP at 40 CFR 300.66(c)(7). To date, the Agency has deleted 26 sites from the NPL, two since March 13, 1989 (54 FR 10513):

• March 17, 1989 (54 FR 11203)
—New Castle Steel, New Castle County, Delaware

• March 23, 1989 (54 FR 11949)
—Wade (ABM), Chester, Pennsylvania

This rule adds 93 sites to the NPL. EPA has carefully considered public comments submitted for 29 of the sites in today's final rule and made some modifications in response to those comments. No comments were received on the remaining 64 sites. This rule results in a final NPL of 890 sites, 41 of them in the Federal section; 273 sites are in proposed status, 22 of them in the Federal section. In addition, four sites are being dropped from the proposed NPL. With these changes, final and proposed sites now total 1,163.

EPA includes on the NPL sites at which there are or have been releases or threatened releases of hazardous substances, pollutants, or contaminants. The discussion below may refer to "releases or threatened releases" simply as "releases", "facilities", or "sites".

Information Available to the Public

The Headquarters and Regional public dockets for the NPL (see **ADDRESSES** portion of this notice) contain documents relating to the scoring of sites in this final rule. The dockets are available for viewing "by appointment only" after the appearance of this notice. The hours of operation for the Headquarters docket are from 9:00 a.m. to 4:00 p.m., Monday through Friday excluding Federal holidays. Please contact individual Regional dockets for hours.

The Headquarters docket contains HRS score sheets for each final site, a Documentation Record for each site describing the information used to compute the score, pertinent information for any site affected by special study waste or other requirements or Resource Conservation and Recovery Act or other listing policies, a list of documents referenced in the Documentation Record, comments received, and the Agency's response to those comments. The Agency's responses are contained in the "Support Document for the Revised National Priorities List—Final Rule, Update #5."

Each Regional docket includes all information available in the Headquarters docket for sites in that Region, as well as the actual reference documents, which contain the data EPA relied upon in calculating or evaluating the HRS scores for sites in the Region. These reference documents are available only in the Regional dockets. They may be viewed "by appointment only" in the appropriate Regional Docket or Superfund Branch office. Requests for copies may be directed to the appropriate Regional docket or Superfund Branch.

An informal written request, rather than a formal request, should be the ordinary procedure for obtaining copies of any of these documents.

EPA has published a statement describing what background information (resulting from the initial investigation of potential CERCLA sites) the Agency discloses in response to Freedom of Information Act requests (52 FR 5578, February 25, 1987).

II. Purpose and Implementation of the NPL

Purpose

The primary purpose of the NPL is stated in the legislative history of CERCLA (Report of the Committee on Environment and Public Works, Senate Report No. 96-848, 96th Cong., 2d Sess. 60 (1980)):

> The priority lists serve primarily informational purposes, identifying for the States and the public those facilities and sites or other releases which appear to warrant remedial actions. Inclusion of a facility or site on the list does not in itself reflect a judgment of the activities of its owner or operator, it does not require those persons to undertake any action, nor does it assign liability to any person. Subsequent government action in the form of remedial actions or enforcement actions will be necessary in order to do so, and these actions will be attended by all appropriate procedural safeguards.

The purpose of the NPL, therefore, is primarily to serve as an informational and management tool. The initial identification of a site for the NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of the public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. The NPL also serves to notify the public of sites EPA believes warrant further investigation.

Federal facility sites are eligible for the NPL pursuant to the NCP at 40 CFR 300.66(c)(2). However, section 111(e)(3) of CERCLA, as amended by SARA, limits the expenditure of CERCLA monies at Federally-owned facilities. Federal facility sites are also subject to the requirements of CERCLA section 120, added by SARA.

Implementation

A site can undergo remedial action financed by the Trust Fund established under CERCLA only after it is placed on the final NPL as outlined in the NCP at 40 CFR 300.66(c)(2) and 300.68(a). However, EPA may take enforcement actions under CERCLA or other applicable statutes against responsible parties regardless of whether the site is on the NPL, although, as a practical matter, the focus of EPA's enforcement actions has been and will continue to be on NPL sites. Similarly, in the case of removal actions, EPA has the authority to act at any site, whether listed or not, that meets the criteria of the NCP at 40 CFR 300.65–67.

EPA's policy is to pursue cleanup of NPL sites using the appropriate response and/or enforcement actions available to the Agency, including authorities other than CERCLA. Listing a site will serve as notice to any potentially responsible party that the Agency may initiate CERCLA-financed remedial action. The Agency will decide on a site-by-site basis whether to take enforcement or other action under CERCLA or other authorities, proceed directly with CERCLA-financed response actions and seek to recover response costs after cleanup, or do both. To the extent feasible, once sites are on the NPL, EPA will determine high-priority candidates for Superfund-financed response action and/or enforcement action through both State and Federal initiatives. These determinations will take into account which approach is more likely to most expeditiously accomplish cleanup of the site while using CERCLA's limited resources as efficiently as possible.

Remedial response actions will not necessarily be funded in the same order as a site's ranking on the NPL—that is, its HRS score. The information collected to develop HRS scores is not sufficient in itself to determine either the extent of contamination or the appropriate response for a particular site. EPA relies on further, more detailed studies in the remedial investigation/feasibility study (RI/FS) to address these concerns.

The RI/FS determines the type and extent of contamination. It also takes into account the amount of contaminants in the environment, the risk to affected populations and environment, the cost to correct problems at the site, and the response actions that have been taken by potentially responsible parties or others. Decisions on the type and extent of action to be taken at these sites are made in accordance with the criteria contained in Subpart F of the NCP. After conducting these additional studies, EPA may conclude that it is not desirable to initiate a CERCLA remedial action at some sites on the NPL because of more pressing needs at other sites, or because a private party cleanup is already underway pursuant to an enforcement action. Given the limited resources available in the Trust Fund, the Agency must carefully balance the relative needs for response at the numerous sites it has studied. It is also possible that EPA will conclude after further analysis that the site does not warrant remedial action.

Revisions to the NPL such as today's rulemaking may move some previously listed sites to a lower position on the NPL. However, if EPA has initiated action such as an RI/FS at a site, it does not intend to cease such actions to determine if a subsequently listed site should have a higher priority for funding. Rather, the Agency will continue funding site studies and remedial actions once they have been initiated, even if higher-scoring sites are later added to the NPL.

RI/FS at Proposed Sites. An RI/FS can be performed at proposed sites (or even non-NPL sites) pursuant to the Agency's removal authority under CERCLA, as outlined in the NCP at 40 CFR 300.68(a)(1). (Section 101(23) of CERCLA defines "remove" or "removal" to include "such actions as may be necessary to monitor, assess and evaluate the release or threat of release * * *." The definition of "removal" also includes "action taken under Section 104(b) of this Act * * *," which authorizes the Agency to perform studies, investigations, and other information-gathering activities.)

Although an RI/FS is generally conducted at a site after the site has been placed on the NPL, in a number of circumstances the Agency elects to conduct an RI/FS at a proposed NPL site in preparation for a possible CERCLA-financed remedial action, such as when the Agency believes that a delay may create unnecessary risks to human health or the environment. In addition, the Agency may conduct an RI/FS to assist in determining whether to conduct a removal or enforcement action at a site.

Facility (Site) Boundaries. A "facility" is defined under CERCLA section 101(9) and the NCP at 40 CFR 300.6 as "(A) any building, structure, * * * well, pit, pond, or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located." (The term "site" is frequently used interchangeably with facility.) The "come to be located" language implements the broad remedial purposes of CERCLA, giving EPA authority to clean up contamination when it has spread from the original source. In *U.S. v. Bliss*, 667 F. Supp. 1298, 1305 (E.D. Mo. 1987), the courts have affirmed this interpretation:

> As the Special Master noted succinctly in *United States v. Conservation Chemical Co.*, 619 F. Supp. [162,] at 165 [(W.D.Mo. 1985)], "simply put, the term 'facility' includes any place where hazardous substances come to be located." Thus, to show that an area is a 'facility', the plaintiff need only show that a hazardous substance has been placed there or has "otherwise come to be located" there.

The extent of the contamination, and thus the "facility", is first described when a release or threatened release is scored using the HRS. However, HRS scoring and the subsequent listing of a release merely represent the initial determination that a certain area may need to be addressed under CERCLA. Accordingly, EPA contemplates that the preliminary description of facility boundaries at the time of scoring will need to be refined and improved as more information is developed as to where the contamination has come to be located; this refining step generally comes during the RI/FS stage. As the NCP provides at 40 CFR 300.68(d):

> An RI/FS shall . . . determine the nature and extent of the threat presented by the release and . . . evaluate proposed remedies. This includes . . . the gathering of sufficient information to determine the necessity for and proposed extent of remedial action.

The preliminary description of a facility when it is listed does not preclude the Agency, during the RI/FS, from following the contamination as far as it goes, and then considering the facility, for response purposes, as the entire area where hazardous substances have come to be located, even if that area extends beyond the boundary for which the site was named.

III. NPL Update Process

Placing Sites on the NPL

There are three mechanisms for placing sites on the NPL. The principal mechanism is the application of the HRS. The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to cause human health or safety problems, or ecological or environmental damage. The HRS score is calculated by estimating risks presented in three potential "pathways" of human or environmental exposure: ground water, surface water, and air. Within each pathway of exposure, the HRS considers three categories of factors "that are designed to encompass most aspects of the likelihood of exposure to a hazardous substance through a release and the magnitude or degree of harm from such exposure": (1) Factors that indicate the presence or likelihood of a release to the environment; (2) factors that indicate the nature and quantity of the substances presenting the potential threat; and (3) factors that indicate the human or environmental "targets" potentially at risk from the site. Factors within each of these three categories are assigned a numerical value according to a set scale. Once numerical values are computed for each factor, the HRS uses mathematical formulas that reflect the relative importance and interrelationships of the various factors to arrive at a final site score on a scale of 0 to 100. The resultant HRS score represents an estimate of the relative "probability and magnitude of harm to the human population or sensitive environment from exposure to hazardous substances as a result of the contamination of ground water, surface water, or air" (47 FR 31180, July 16, 1982). Those sites that score 28.50 or greater on the HRS are eligible for the NPL.

Under the second mechanism for adding sites to the NPL, each State may designate a single site as its top priority, regardless of the HRS score. This mechanism is provided by section 105(a)(8)(B) of CERCLA, as amended by SARA, which requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State.

The third mechanism for listing, included in the NCP at 40 CFR 300.66(b)(4) (50 FR 37624, September 16, 1985), has been used only in rare instances. It allows certain sites with HRS scores below 28.50 to be eligible for the NPL if all of the following occur:

- The Agency for Toxic Substances and Disease Registry of the U.S. Department of Health and Human Services has issued a health advisory

which recommends dissociation of individuals from the release.

• EPA determines that the release poses a significant threat to public health.

• EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

States have the primary responsibility for identifying sites, computing HRS scores, and submitting candidates sites to the EPA Regional Offices. EPA Regional Offices conduct a quality control review of the States' candidate sites, and may assist in investigating, sampling, monitoring, and scoring sites. Regional Office may also consider candidate sites in addition to those submitted by States. EPA Headquarters conducts further quality assurance audits to ensure accuracy and consistency among the various EPA and State offices participating in the scoring. The Agency then proposes the sites that meet one of the three criteria for listing (and EPA's listing policies) and solicits public comment on the proposal. Based on these comments and further review by EPA, the Agency determines final HRS scores and places those sites that still qualify for the final NPL.

Revised HRS Effective Date

EPA recently proposed revisions to the HRS in response to CERCLA section 105(c), added by SARA (53 FR 51926 (December 23, 1988); 54 FR 6153 (February 8, 1989)). Several commenters have questioned EPA's authority to include sites on the NPL after October 17, 1988 (the date 24 months after the enactment of SARA), because CERCLA section 105(c)(1), as amended, provides that EPA should revise the HRS by that date. The commenters urgue that the October 17, 1988, date is *the* effective date for all purposes of section 105(c)(1), and that the Agency cannot use the current HRS after that date to add sites to the NPL. Under the commenters' view, the Agency may not resume the listing of sites until the HRS revisions are issued and made effective. EPA disagrees with this interpretation.

First, the language of CERCLA section 105(c)(1) provides that the current HRS shall continue in force until the new HRS becomes effective:

> Such amended hazard ranking system shall be applied to any site or facility to be newly listed on the National Priorities List after the effective date established by the President. Until such effective date of the regulations, the hazard ranking system in effect on September 1, 1984 shall continue in full force and effect.

Although the section does call upon EPA (the President's delegate[1]) to establish an effective date by 24 months after the enactment of SARA (i.e., by October 17, 1988), the references to the applicability of the revised HRS, and to the continued applicability of the current HRS, are not to the date two years after the enactment of SARA, but rather to the effective date "established by the President [EPA" and "such" effective date. EPA has not yet established an effective date for the HRS revisions.

Section 105(c)(1) does not state that if no revised HRS is established by a date certain, there will be no HRS until a revised system is issued and effective, nor does it state that no sites may be listed in the interim period. Indeed, it states quite the opposite: the current HRS will remain in effect until a revised system is in place and effective. EPA notes that when Congress has wanted to prescribe specific consequences that would result from a failure to take a certain action, it has established a "hammer" provision, like that in section 116(d)(2) of CERCLA and section 3004(f)(3) of RCRA. Congress did not do so in the case of the HRS revisions.

EPA's interpretation is consistent with the overall goal of CERCLA to expeditiously list and address problem sites in the nation. See *Eagle-Picher* v. *EPA*, 759 F. 2d 905, 911 (D.C. Cir. 1985) (the purpose of the NPL is "to identify, quickly and inexpensively, sites that may warrant further action under CERCLA"). It is not reasonable to attribute to Congress the intent to leave the Agency without the means to list and address sites on the NPL, based simply on a delay in revising a rule. To do so would harm both the public and goal of protecting health and the environment.

In addition to being the best reading of the statutory language and the general statutory intent, the Agency's interpretation is also compelled by the legislative history behind CERCLA section 105(c)(1). In the Conference Report on SARA, the legislators adopted the Senate amendment, which they summarized as providing that the current HRS shall continue in force "until the new regulations are *in effect*." H.R. Rep. No. 962, 99th Cong., 2d Sess. 198 (1986) (emphasis added).

Similarly, the report on SARA of the Senate Committee on Environment and Public Works provided that,

> The provision is meant to deal with this problem *without interfering with* continued EPA progress toward assessing potential site hazards, *listing sites*, or beginning clean-up action. It would not affect any site or facility listed prior to the *actual* effective date of the new hazard ranking system, *nor would it require the ranking or listing of any site or facility to be delayed.* * * * (The amendment leaves) the present hazard ranking system in operation until the more accurate hazard ranking system can be *put into effect* for sites to be listed thereafter. S. Rep. No. 11, 99th Cong., 1st Sess. 41 (1985) (emphasis added).

Finally, in the floor debate over the CERCLA amendments, members of Congress made their intent clear:

> To allow the Administrator to continue adding sites to the NPL *while the HRS is being reviewed*, the new amendments provide that the current HRS be applied until the effective date of the revised HRS. 132 Cong. Rec. H9624 (daily ed., October 8, 1986) (statement of Rep. Eckhart) (emphasis added); and 132 Cong. Rec. S14931 (daily ed., October 3, 1986) (statement of Sen. Baucus).
>
> [T]he existing hazard ranking system would continue in effect until the revised system is in place. Thus, *the provision should not* disrupt progress to clean up exisitng NPL sites or *preclude EPA from listing new sites in the interim until the HRS is revised* as required by section [105] of the bill. 131 Cong. Rec. S11681 (daily ed., September 18, 1985) (statement of Sen. Baucus) (emphasis added).

EPA intends to issue the revised HRS as soon as possible. However, until that newly proposed system has been subject to public comment and put into effect, EPA will continue to list sites using the current HRS, in accordance with CERCLA section 105(c)(1) and Congressional intent.

IV. Statutory Requirements and Listing Policies

CERCLA restricts EPA's authority to respond to certain categories of releases of hazardous substances, pollutants, or contaminants by expressly excluding some substances, such as petroleum, from the response program. In addition, CERCLA section 105(a)(8)(B) directs EPA to list priority sites "among" the known releases or threatened releases of hazardous substances, pollutants, or contaminants, and section 105(a)(8)(A) directs EPA to consider certain enumerated and "other appropriate" factors in doing so. Thus, as a matter of policy, EPA has the discretion not to use CERCLA to respond to certain types of releases. For example, EPA has chosen not to list sites that result from contamination associated with facilities licensed by the Nuclear Regulatory Commission (NRC), on the grounds that NRC has the authority and expertise to clean up releases from those facilities

[1] The responsibility for the revision of the NCP and all of the other functions vested in the President by sections 105 (a), (b), (c), and (g), 125, and 301(f) of CERCLA, was delegated to the Administrator of EPA by Executive 12580, sec. 1(b)(1) (January 23, 1987).

(48 FR 40661, September 8, 1983). Where other authorities exist, placing the site on the NPL for possible remedial action under CERCLA may not be appropriate. Therefore, EPA has chosen to defer certain types of sites from the NPL even though CERCLA may provide authority to respond. If, however, the Agency later determines that sites deferred as a matter of policy are not being properly responded to, the Agency may place them on the NPL. The listing policies and statutory requirements of relevance to this final rule cover Resource Conservation and Recovery Act (RCRA) (U.S.C. 6901–6991i) sites, sites with "special study wastes," and mining waste sites, and are discussed below. Theses and other listing policies and statutory requirements have been explained in greater detail in previous rulemakings, the latest being June 24, 1988 (53 FR 23976 and 53 FR 23988).

Releases From Resource Conservation and Recovery Act (RCRA) Sites

On June 10, 1986 (51 FR 21054), EPA announced a decision on components of a policy for the listing or the deferral from listing on the NPL of several categories of non-Federal sites subject to RCRA Subtitle C corrective action authorities. Under the policy, sites not subject to RCRA Subtitle C corrective action authorities will continue to be placed on the NPL. Examples of such sites include:

- Facilities that ceased treating, storing, or disposing of hazardous waste prior to November 19, 1980 (the effective date of Phase I of the Subtitle C regulations) and to which the RCRA corrective action or other authorities of Subtitle C cannot be applied.
- Sites at which only materials exempted from the statutory or regulatory definition of solid waste or hazardous waste are managed.
- Contamination areas resulting from the activities of RCRA hazardous waste handlers to which RCRA Subtitle C corrective action authorities do not apply, such as hazardous waste generators or transporters, which are not required to have Interim Status or a final RCRA permit.

Also under the policy, certain RCRA sites at which Subtitle C corrective action authorities are available may also be listed if they meet the criteria for listing (e.g., an HRS score of 28.50 or greater) and they fall within one of the following categories:

- Facilities owned by persons who have demonstrated an inability to finance a cleanup as evidenced by their invocation of the bankruptcy laws.
- Facilities that have lost authorization to operate, and for which there are additional indications that the owner or operator will be unwilling to undertake corrective action.
- Sites, analyzed on a case-by-case basis, whose owners or operators have a clear history of unwillingness to undertake corrective action.

On August 9, 1988 (53 FR 30005), EPA published a policy for determining whether RCRA facilities are unwilling to perform corrective actions, and therefore should be proposed to the NPL. Additionally, on August 9, 1988 (53 FR 30002), EPA published a policy statement requesting comment on a policy for determining when an owner/operator should be considered unable to pay for addressing the contamination at a RCRA-regulated site.

On June 24, 1988 (53 FR 23978), EPA proposed to list RCRA sites in several other categories which the Agency considers appropriate for placement on the NPL. These categories are non- or late filers, converters, protective filers, and sites holding permits issued before enactment of the Hazardous and Solid Waste Amendments of 1984.

In today's final rule, EPA is adding four sites subject to Subtitle C corrective action authorities to the final NPL. These sites are not subject to deferral under the NPL/RCRA deferral policy because the site owners have invoked the protection of the bankruptcy laws.

Releases of Special Study Wastes

Section 105(g) of CERCLA, as amended by SARA, requires additional information before sites involving RCRA "special study wastes" can be added to the NPL. Section 105(g) applies to sites that (1) were not on or proposed for the NPL as of October 17, 1986 and (2) contain sufficient quantities of special study wastes as defined under RCRA sections 3001(b)(2) [drilling fluids], 3001(b)(3)(A)(ii) [mining wastes], and 3001(b)(3)(A)(iii) [cement kiln dust]. Before these sites can be added to the NPL, SARA requires that the following information be considered:

- The extent to which the HRS score for the facility is affected by the presence of the special study waste at or released from the facility.
- Available information as to the quantity, toxicity, and concentration of hazardous substances that are constituents of any special study waste at, or released from, the facility; the extent of or potential for release of such hazardous constituents; the exposure or potential exposure to human population and environment; and the degree of hazard to human health or the environment posed by the release of such hazardous constituents at the facility.

This final rule includes three sites containing or potentially containing special study wastes. EPA has placed in the dockets addenda that evaluate for each site the information called for in section 105(g). The addenda indicate the special study wastes present a threat to human health and the environment, and that the sites should be added to the NPL.

CERCLA section 125, as amended by SARA, addresses special study wastes described in RCRA section 3001(b)(3)(A)(i) [fly ash and related wastes]. No sites in this rule are subject to the provisions of section 125.

Releases from Mining Sites

The Agency's position is that mining wastes may be hazardous substances, pollutants, or contaminants under CERCLA and, therefore, mining waste sites are eligible for the NPL. This position was affirmed in 1985 by the United States Court of Appeals for the District of Columbia Circuit (*Eagle-Picher Industries, Inc. v. EPA*, 759 F. 2d 922 (D.C. Cir 1985)).

The Agency's policy, prior to listing mining sites, is to consider whether they might be satisfactorily addressed using State-share monies from the Abandoned Mine Land Reclamation (AMLR) Fund under the response authorities of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) (e.g., 53 FR 23988, 23993 (June 24, 1988); 54 FR 10512, 10514–15 (March 13, 1989)). The AMLR funds are primarily intended to address reclamation and restoration of land and water resources adversely affected by past coal mining. Sites not meeting the SMCRA eligibility requirements (e.g., abandoned prior to August 3, 1977) or located in States without an approved AMLR Fund have been routinely listed: a SMCRA-eligible site has also recently been listed (March 13, 1989; 54 FR 10512, 10514–16).

Although the AMLR Fund was designed primarily to address coal mining sites, SMCRA sections 409 (a) and (c) provided the States can use funds to address noncoal sites if either all coal sites have been addressed, or the Governor of the State declares that the noncoal project is necessary for the protection of public health or safety. It is important to note that generally the decision to use AMLR funds at a particular site resides with the State concerned.

EPA discussed in the preamble to the revisions to the NCP (53 FR 51394, December 31, 1988), a draft policy to add noncoal mining sites to the NPL should

States choose not to take action to respond to the site under SMCRA. The one exception to this is where a State has funded all of its known coal and noncoal mining projects, and is proposing to use its remaining AMLR funds for impact assistance (e.g., construction of roads, recreation facilities, etc.). EPA would not list a mining site if: (a) the site is discovered in a State where it was previously thought that all mining projects had been completed and impact assistance had been granted, (b) the site is eligible for AMLR funding, (c) sufficient AMLR funds remain to fund the entire response action, and (d) the State intends to use those funds for impact assistance.

While comment is being taken on the policy discussed in the preamble to the proposed NCP revisions, EPA is including one noncoal mining site in today's final rule to avoid delaying possible remedial activities. The applicability of SMCRA and the AMLR Fund to this site is discussed below.

V. DISPOSITION OF SITES IN TODAY'S FINAL RULE

This final rule promulgates 93 sites (Table 1) and drops four sites from several proposed rulemakings. These 97 sites are from the following proposed updates:

- Update #2 (49 FR 40320, October 15, 1984): 5 sites
- Update #4 (50 FR 37950, September 18, 1985): 2 sites
- Update #5 (51 FR 21099, June 10, 1986): 15 sites
- Update #6 (52 FR 2492, January 22, 1987): 13 sites
- Update #7 (53 FR 23988, June 24, 1988): 62 sites

TABLE 1.—NATIONAL PRIORITIES LIST, NEW FINAL SITES (BY RANK)

[March 1989]

NPL Gr [1]	NPL Rank	State	Site name	City/County	Response category [2]					Cleanup status [3]
2	59	MI	American Anodco, Inc.	Ionia	V			S		
2	94	WI	N.W. Mauthe Co., Inc.*	Appleton		R		S		O
3	115	NY	Circuitron Corp.	East Farmingdale					D	
3	129	MI	Bofors Nobel, Inc.	Muskegon		R		S		
3	137	NC	Aberdeen Pesticide Dumps	Aberdeen	V	R		S		O
3	138	VT	Burgess Brothers Landfill	Woodford					D	
4	155	PA	Hellertown Manufacturing Co.	Hellertown	V		F			
4	165	NY	Rosen Brothers Scrap Yard/Dump	Cortland		R				O
4	177	TX	Brio Refining, Inc.	Friendswood	V		F			
4	194	VT	Bennington Municipal Sanitary Lfl	Bennington					D	
4	199	CA	Southern Calif Edison (Visalia)	Visalia	V			S		O
5	213	WI	Hechimovich Sanitary Landfill	Williamstown					D	
5	214	IA	Mid-America Tanning Co.	Sergeant Bluff					D	
6	259	IL	Interstate Pollution Control, Inc.	Rockford					D	
6	260	NJ	Global Sanitary Landfill	Old Bridge Township					D	
6	265	WI	Tomah Municipal Sanitary Landfill	Tomah					D	
7	321	KS	Hydro-Flex Inc.	Topeka					D	
7	323	LA	Gulf Coast Vacuum Services	Abbeville					D	
7	324	IL	Tri-County Lf/Waste Mgmt Illinois	South Elgin		R				
7	327	CT	Nutmeg Valley Road	Wolcott					D	
7	350	IL	Southeast Rockford Grnd Wtr Con	Rockford					D	
8	351	IN	Galen Myers Dump/Drum Salvage	Osceola		R				O
8	368	IN	Southside Sanitary Landfill	Indianapolis	V			S		
8	371	NC	Koppers Co Inc (Morrisville Plnt)	Morrisville					D	I
8	381	PA	Delta Quarries/Stotler Landfill	Antis/Logan Twps	V		F	S		
8	386	GA	T.H. Agricul & Nutri (Albany)	Albany					D	I
8	399	NC	FCX, Inc. (Washington Plant)	Washington			F			
8	400	NM	Cleveland Mill	Silver City					D	
9	404	MD	Bush Valley Landfill	Abingdon					D	
9	417	PA	Boarhead Farms	Bridgeton Township					D	
9	427	TX	Sol Lynn/Industrial Transformers	Houston	V	R	F	S		I
9	432	NC	New Hanover Cnty Airport Burn Pit	Wilmington					D	
9	435	LA	PAB Oil & Chemical Service, Inc.	Abbeville					D	
10	459	KY	Red Penn Sanitation Co. Landfill	Peewee Valley					D	
10	461	OH	TRW, Inc. (Minerva Plant)	Minerva	V			S		I
10	471	FL	Wilson Concepts of Florida, Inc.	Pompano Beach					D	
10	476	WA	Hidden Valley Lndfl (Thun Field)	Pierce County	V			S		
10	477	WA	Yakima Plating Co.	Yakima					D	
10	480	MI	Carter Industrials, Inc.	Detroit		R				O
11	510	IN	Douglass Road/Uniroyal, Inc., Lf.	Mishawaka					D	
11	521	TN	Wrigley Charcoal Plant	Wrigley		R				O
11	539	PA	North Penn—Area 1	Souderton		R				
11	540	PA	North Penn—Area 7	North Wales		R				
11	541	PA	North Penn—Area 6	Lansdale		R				
11	542	PA	North Penn—Area 5	Montgomery Township		R				
12	551	CA	Newmark Ground Water Contamin	San Bernardino					D	
12	559	IN	Carter Lee Lumber Co.	Indianapolis					D	
12	560	NH	Fletcher's Paint Works & Storage	Milford		R				O
12	572	NY	C & J Disposal Leasing Co. Dump	Hamilton					D	
12	587	NY	Action Anodizing, Plating Polish	Copiague					D	
13	611	IA	Red Oak City Landfill	Red Oak		R				I

TABLE 1.—NATIONAL PRIORITIES LIST, NEW FINAL SITES (BY RANK)—Continued

[March 1989]

NPL Gr [1]	NPL Rank	State	Site name	City/County	Response category [2]	Cleanup status [3]
13	612	IN	Lakeland Disposal Service, Inc.	Claypool	D	
13	620	NY	Conklin Dumps	Conklin	D	
13	631	KY	Tri-City Disposal Co.	Shepherdsville	R	O
13	643	VA	H & H Inc., Burn Pit	Farrington	R	
14	652	GA	Cedartown Municipal Landfill	Cedartown	D	
14	660	ND	Minot Landfill	Minot	D	
14	664	NY	Islip Municipal Sanitary Landfill	Islip	V S	
14	667	IL	Yeoman Creek Landfill	Waukegan	D	
14	669	MI	Folkertsma Refuse	Grand Rapids	D	
14	675	NY	BioClinical Laboratories, Inc.	Bohemia	D	
14	681	OR	Joseph Forest Products	Joseph	D	
14	686	NJ	Industrial Latex Corp.	Wallington Borough	R	O
15	702	CA	Valley Wood Preserving, Inc.	Turlock	V S	
15	703	PA	Butz Landfill	Stroudsburg	D	
15	706	NH	Holton Circle Ground Water Contam	Londonderry	D	
15	717	NY	Mattiace Petrochemical Co., Inc.	Glen Cove	R	O
15	720	IN	Continental Steel Corp.	Kokomo	D	
15	726	MI	J & L Landfill	Rochester Hills	R	
15	730	SC	Medley Farm Drum Dump	Gaffney	V R F	O
15	731	SC	Elmore Waste Disposal	Greer	R	O
15	734	MI	Parsons Chemical Works, Inc.	Grand Ledge	D	
16	754	AK	Alaska Battery Enterprises	Fairbanks N Star Bor	R	I
16	757	OK	Double Eagle Refinery Co.	Oklahoma City	D	
16	758	GA	Mathis Bros Lf (S Marble Top Rd)	Kensington	D	
16	765	PA	Strasburg Landfill	Newlin Township	S	O
16	766	OK	Fourth Street Abandoned Refinery	Oklahoma City	D	
16	775	NJ	Higgins Farm	Franklin Township	R	O
16	778	VA	Rentokil, Inc. (VA Wood Pres Div)	Richmond	V F	
16	790	TX	Sheridan Disposal Services	Hempstead	V F	O
16	791	KS	Pester Refinery Co.	El Dorado	S	
16	795	PA	Berkley Products Co. Dump	Denver	D	
17	804	MI	Adam's Plating	Lansing	D	
17	812	NY	Warwick Landfill	Warwick	D	
17	813	NY	Sidney Landfill	Sidney	D	
17	819	NC	Potter's Septic Tank Service Pits	Maco	R	O
17	820	NC	ABC One Hour Cleaners	Jacksonville	D	
17	822	PA	Elizabethtown Landfill	Elizabethtown	D	O
17	823	AR	Arkwood, Inc.	Omaha	V F S	O
17	829	NJ	Pohatcong Valley Ground Water Con	Warren County	D	
17	830	NJ	Garden State Cleaners Co.	Minolta	D	
17	835	CA	Modesto Ground Water Contamin	Modesto	D	
17	848	NJ	Kauffman & Minteer, Inc.	Jobstown	D	

* State Top Priority Site.
[1] Sites are placed in group (Gr) corresponding to groups of 50 on the final NFL.
[2] V—Voluntary or negotiated response; F—Federal enforcement; D—Category to be determined; R—Federal and State response; S—State enforcement.
[3] I—Implementation activity underway, one or more operable units; O—or more operable units completed others may be underway; C—Implementation activity completed for all operable units.

EPA considered all comments received on these sites through March 2, 1989. Based on the comments received on the proposed sites, as well as further investigation by EPA and the States, EPA recalculated the HRS scores for individual sites where appropriate. EPA's response to site-specific public comments and explanations of any score changes made as a result of such comments are addressed in the "Support Document for the Revised National Priorities List—Final Rule, Update #5."

Resource Conservation and Recovery Act (RCRA) Sites

Four sites are subject to Subtitle C corrective action authorities, but each site owner has invoked the protection of the bankruptcy laws. The sites are being added to the final NPL under the June 1986 policy:

- Continental Steel Corp., Kokomo, IN
- Pester Refinery Co., El Dorado, KS
- Bofors Nobel, Inc., Muskegon, MI
- Mattiace Petrochemical Co. Inc., Glen Cove, NY

Special Study Waste Sites

Three sites containing or possibly containing special study wastes are being added to the NPL in this rule. The sites and the special study wastes are:

- Gulf Coast Vacuum Services, Abbeville, LA (oil drilling mud and produced waters)
- PAB Oil & Chemical Service, Inc., Abbeville, LA (oil drilling mud and produced waters)
- Cleveland Mill, Silver City, NM (mining wastes)

Mining Sites

One noncoal mining site, Cleveland Mill, Silver City, NM, is being added to the NPL in this final rule. It was abandoned prior to the enactment date of SMCRA. Since New Mexico has an approved AMLR program, the site is potentially eligible for SMCRA funds. However, available information suggests the site will not be addressed under SMCRA in the foreseeable future. Information outlining New Mexico's

position on use of AMLR funds at the site is available in the docket.

State Top Priority

One site being added to the final NPL, N. W. Mauthe Co., Appleton, WI, received an HRS score of 25.35. It has been designated as a State top priority. All other sites in today's rule received HRS scores of 28.50 or above. Mauthe and other lower scoring top priority sites are listed at the bottom of the first 100 sites on the NPL.

Score Revisions

EPA has revised the HRS scores for 17 sites based on its review of comments and additional information (Table 2). Some of the changes have placed the sites in different groups of 50 sites. In four cases, scores dropped below the cut-off of 28.50. Accordingly, these four sites are being dropped from the proposed NPL at this time:

- Montco Research Products, Inc., Hollister, FL
- E.I. Du Pont de Nemours & Co., Inc., (Montague Plant) Montague, MI
- Horstmann's Dump, East Hanover, NJ
- Olson/Neihart Reservoir, Wasatch County, UT

TABLE 2.—SITES WITH HRS SCORE CHANGES

State	Site name	Location	HRS score	
			Proposed	Final
AR	Arkwood Inc	Omaha	34.21	28.95
CA	Southern California Edison Co. (Visalia Poleyard)	Visalia	53.36	48.91
FL	Montco Research Products, Inc	Hollister	29.44	25.52
IN	Douglas Road/Uniroyal, Inc., Landfill	Mishawaka	42.39	36.61
IN	Southside Sanitary Landfill	Indianapolis	35.35	41.94
MI	American Anodco, Inc	Ionia	48.37	57.99
MI	E.I. Du Pont de Nemours & Co., Inc. (Montague Plant)	Montague	38.08	25.23
MI	J & L Landfill	Rochester Hills	37.23	31.65
NJ	Horstmann's Dump	East Hanover	28.96	21.84
NY	BioClinical Laboratories, Inc	Bohemia	36.64	32.91
PA	Hellertown Manufacturing Co	Hellertown	51.94	51.91
TX	Sheridan Disposal Services	Hempstead	30.67	30.16
UT	Olson/Neihart Reservoir	Wasatch County	33.75	19.90
VA	H&H, Inc., Burn Pit	Farrington	39.04	33.71
VA	Rentokil, Inc. (Virginia Wood Preserving Division)	Richmond	31.67	30.34
WA	Hidden Valley Landfill (Thun Field)	Pierce County	43.92	37.93
WI	Tomah Municipal Sanitary Landfill	Tomah	45.97	45.91

Name Revisions

The names of four sites addressed in this final rule have been changed in response to information received during the comment period (Table 3). The changes are intended to reflect more accurately the location, nature, or parties responsible for problems at the site.

TABLE 3.—SITES WITH NAME CHANGES

State/Site Name

Proposed NPL	Final NPL
PA American Electronics Laboratories, Inc.	North Penn—Area 5.
PA Gentle Cleaners, Inc./Granite Knitting Mills, Inc.	North Penn—Area 1.
PA J.W. Rex Co./Allied Paint Manufacturing Co., Inc./Keystone Hydraulics.	North Penn—Area 6.
PA Spra-Fin, Inc	North Penn—Area 7.

VI. Disposition of all Proposed Sites/Federal Facility Sites

To date, EPA has proposed seven major updates to the NPL (Table 4).

TABLE 4.—NPL PROPOSALS

Update No.	Date/Federal Register citation	Number of sites/Federal facility sites	
		Proposed	Remaining proposed
1	9/8/83, 48 FR 40674	132/1	2/0
2	10/15/84, 49 FR 40320	208/36	40/4
3	4/10/85, 50 FR 14115	26/6	6/2
4	9/18/85, 50 FR 37950	38/3	11/2
5	6/10/86, 51 FR 21099	43/2	12/2
6	1/22/87, 52 FR 2492	63/1	27/0
7	6/24/88, 53 FR 23988	215/14	153/12
Total		725/63	251/22

At this time, 251 sites and 22 Federal facility sites proposed in Updates #1 through 7 continue to be proposed pending completion of response to comment, resolution of technical issues, and various policy issues. Among them are 43 previously proposed RCRA sites. On June 24, 1988 (53 FR 23978), EPA proposed action on these sites based upon the application of the NPL/RCRA policy.

All sites that remain proposed will be considered for future final rules. Although these sites remain proposed, the comment periods have not been extended or reopened.

VII. Contents of the NPL

The 93 new sites added to the NPL in today's rule (Table 1) have been incorporated into the NPL in order of their HRS scores except where EPA modified the order to reflect top priorities designated by the States, as discussed in greater detail in previous rulemakings, the most recent on June 24, 1988 (53 FR 23988).

The NPL appears at the end of this final rule and will be codified as part of Appendix B to the NCP. Sites on the NPL are arranged according to their scores on the HRS. The NPL is presented in groups of 50 sites to emphasize that minor differences in HRS scores do not necessarily represent significantly different levels of risk. Except for the first group, the score range within the groups, as indicated in the list, is less than 4 points. EPA considers the sites within a group to have approximately the same priority for response actions. For convenience, the sites are numbered.

One site—the Lansdowne Radiation Site in Lansdowne, PA—was placed on the NPL because it met the requirements of the NCP at section 300.66(b)(4), as explained in section III of this rule; it has an HRS score less than 28.50, and appears at the end of the list.

No new sites have been added to the Federal facility section of the NPL since it was last amended (54 FR 10512, March 13, 1989).

Each entry on the NPL contains the name of the facility and the State and city or county in which it is located.

For informational purposes, each entry is accompanied by one or more notations reflecting the status of response and cleanup activities at these sites at the time this list was prepared. Because this information may change periodically, these notations may become outdated.

Five response categories are used to designate the type of response underway. One or more categories may apply to each site. The categories are: Federal and/or State response (R), Federal enforcement (F), State enforcement (S), Voluntary or negotiated response (V), and Category to be determined (D).

EPA also indicates the status of significant CERCLA-financed or private party cleanup activities underway or completed. Three cleanup status codes are used. Only one is necessary to designate the status of actual cleanup activity at each site since the codes are mutually exclusive. The codes are: Implementation activities are underway for one or more operable units (I), Implementation activities are completed for one or more (but not all) operable units (O), and Implementation activities are completed for all operable units (C). These categories and codes are explained in detail in earlier rulemakings, the most recent on June 10, 1986 (51 FR 21075).

VIII. Regulatory Impact Analysis

The costs of cleanup actions that may be taken at sites are not directly attributable to placement on the NPL, as explained below. Therefore, the Agency has determined that this rulemaking is not a "major" regulation under Executive Order 12291. EPA has conducted a preliminary analysis of economic implications of today's amendment to the NCP. EPA believes that the kinds of economic effects associated with this revision are generally similar to those effects identified in the regulatory impact analysis (RIA) prepared in 1982 for the revisions to the NCP pursuant to section 105 of CERCLA and the economic analysis prepared when amendments to the NCP were proposed (50 FR 5882, February 12, 1985). The Agency believes the anticipated economic effects related to adding 93 sites to the NPL can be characterized in terms of the conclusions of the earlier RIA and the most recent economic analysis. This rule was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Costs

EPA has determined that this rulemaking is not a "major" regulation under Executive Order 12291 because inclusion of a site on the NPL does not itself impose any costs. It does not establish that EPA will necessarily undertake remedial action, nor does it require any action by a private party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Nonetheless, it is useful to consider the costs associated with responding to all sites included in this rulemaking.

The major events that follow the proposed listing of a site on the NPL are a search for potentially responsible parties and a remedial investigation/feasibility study (RI/FS) to determine if remedial actions will be undertaken at a site. Design and construction of the selected remedial alternative follow completion of the RI/FS, and operation and maintenance (O&M) activities may continue after construction has been completed.

EPA initially bears costs associated with responsible party searches. Responsible parties may bear some or all the costs of the RI/FS, remedial design and construction, and O&M, or EPA and the States may share costs.

The State cost share for site cleanup activities has been amended by section 104 of SARA. For privately-owned sites, as well as at publicly-owned but not publicly-operated sites, EPA will pay for 100% of the costs of the RI/FS and remedial planning, and 90% of the costs associated with remedial action. The State will be responsible for 10% of the remedial action. For publicly-operated sites, the State cost share is at least 50% of all response costs at the site, including the RI/FS and remedial design and construction of the remedial action selected. After the remedy is built, costs fall into two categories:

- For restoration of ground water and surface water, EPA will share in startup costs according to the criteria in the previous paragraph for 10 years or until a sufficient level of protectiveness is achieved before the end of 10 years.
- For other cleanups, EPA will share for up to 1 year the cost of that portion of response needed to assure that a remedy is operational and functional. After that, the State assumes full responsibilities for O&M.

In previous NPL rulemakings, the Agency estimated the costs associated with these activities (RI/FS, remedial design, remedial action, and O&M) on an average per site and total cost basis. EPA will continue with this approach, using the most recent (1988) cost estimates available; these estimates are presented below. However, there is wide variation in costs for individual sites, depending on the amount, type, and extent of contamination.

Additionally, EPA is unable to predict what portions of the total costs responsible parties will bear, since the distribution of costs depends on the extent of voluntary and negotiated response and the success of any cost-recovery actions.

Cost category	Average total cost per site [1]
RI/FS	1,100,000
Remedial Design	750,000
Remedial Action	[2] 13,500,000
Net present value of O&M [3]	[2] 3,770,000

[1] 1988 U.S. dollars.
[2] Includes State cost-share.
[3] Assumes cost of O&M over 30 years, $400,000 for the first year and 10% discount rate.
Source: Office of Program Management, Office of Emergency and Remedial Response, U.S. EPA.

Costs to States associated with today's final rule arise from the required State cost-share of: (1) 10% of remedial actions and 10% of first-year O&M costs at privately-owned sites and sites which are publicly-owned but not publicly-operated; and (2) at least 50% of the remedial planning (RI/FS and remedial design), remedial action, and first-year O&M costs at publicly-operated sites. States will assume the cost for O&M after EPA's period of participation. Using the assumptions developed in the 1982 RIA for the NCP, EPA has assumed that 90% of the 93 sites added to the NPL in this rule will be privately-owned and 10% will be State- or locally-operated. Therefore, using the budget projections presented above, the cost to States of undertaking Federal remedial planning and actions, but excluding O&M costs, would be approximately $193 million. State O&M costs cannot be accurately determined because EPA, as noted above, will share O&M costs for up to 10 years for restoration of ground water and surface water, and it is not known how many sites will require this treatment and for how long. However, based on past experience, EPA believes a reasonable estimate is that it will share startup costs for up to 10 years at 25% of sites. Using this estimate, State O&M costs would be approximately $308 million.

Placing a hazardous waste site on the final NPL does not itself cause firms

responsible for the site to bear costs. Nonetheless, a listing may induce firms to clean up the sites voluntarily, or it may act as a potential trigger for subsequent enforcement or cost-recovery actions. Such actions may impose costs on firms, but the decisions to take such actions are discretionary and made on a case-by-case basis. Consequently, precise estimates of these effects cannot be made. EPA does not believe that every site will be cleaned up by a responsible party. EPA cannot project at this time which firms or industry sectors will bear specific portions of the response costs, but the Agency considers: the volume and nature of the waste at the sites; the strength of the evidence linking the wastes at the site to the parties; the parties' ability to pay; and other factors when deciding whether and how to proceed against the parties.

Economy-wide effects of this amendment to the NCP are aggregations of effects on firms and State and local governments. Although effects could be felt by some individual firms and States, the total impact of this amendment on output, prices, and employment is expected to be negligible at the national level, as was the case in the 1982 RIA.

Benefits

The real benefits associated with today's amendment placing additional sites on the NPL are increased health and environmental protection as a result of increased public awareness of potential hazards. In addition to the potential for more Federally-financed remedial actions, expansion of the NPL could accelerate privately-financed, voluntary cleanup efforts. Listing sites as national priority targets may also give States increased support for funding responses at particular sites.

As a result of the additional CERCLA remedies, there will be lower human exposure to high-risk chemicals, and higher-quality surface water, ground water, soil, and air. These benefits are expected to be significant, although difficult to estimate in advance of completing the RI/FS at these sites.

Associated with the costs are significant potential benefits and cost offsets. The distributional cost to firms of financing NPL remedies have corresponding "benefits" in that funds expended for a response generate employment, directly or indirectly (through purchased materials).

IX. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 requires EPA to review the impact of this action on small entities, or certify that the action will not have a significant impact on a substantial number of small entities. By small entities, the Act refers to small businesses, small government jurisdictions, and nonprofit organizations.

While modifications to the NPL are considered revisions to the NCP, they are not typical regulatory changes since the revisions do not automatically impose costs. The placing of sites on the NPL does not in itself require any action of any private party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, it is hard to predict impacts on any group. Placing a site on the NPL could increase the likelihood that adverse impacts to responsible parties (in the form of cleanup costs) will occur, but EPA cannot identify the potentially affected business at this time nor estimate the number of small businesses that might be affected.

The Agency does expect that certain industries and firms within industries that have caused a proportionately high percentage of waste site problems could be significantly affected by CERCLA actions. However, EPA does not expect the impacts from the listing of these 93 sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would only occur through enforcement and cost-recovery actions, which are taken at EPA's discretion on a site-by-site basis. EPA considers many factors when determining what enforcement actions to take, including not only the firm's contribution to the problem, but also the firm's ability to pay.

The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Date: March 22, 1989.

Henry L. Longest II,

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

Part 300—[AMENDED]

40 CFR Part 300 is amended as follows:

1. The authority citation for Part 300 continues as follows:

Authority: 42 U.S.C. 9605; 42 U.S.C. 9620; 33 U.S.C. 1321(c)(2); E.O. 11735 (38 FR 21243); E.O. 12580 (52 FR 2923).

2. Appendix B of Part 300 is revised to read as set forth below.

APPENDIX B.—NATIONAL PRIORITIES LIST (BY RANK) MARCH 1989

NPL Rank	EPA Reg	St	Site Name	City/County	Response Category [1]				Cleanup Status [2]
			Group 1 (HRS Scores 75.60—58.41)						
1	02	NJ	Lipari Landfill	Pitman		R	F		O
2	03	DE	Tybouts Corner Landfill *	New Castle County	V	R	F		O
3	03	PA	Bruin Lagoon	Bruin Borough		R	F		O
4	02	NJ	Helen Kramer Landfill	Mantua Township		R		S	
5	01	MA	Industri-Plex	Woburn	V	R	F		O
6	02	NJ	Price Landfill *	Pleasantville	V	R	F		O
7	02	NY	Pollution Abatement Services *	Oswego		R			O
8	07	IA	LaBounty Site	Charles City	V		F		O
9	03	DE	Army Creek Landfill	New Castle County	V	R	F		O
10	02	NJ	CPS/Madison Industries	Old Bridge Township	V			S	
11	01	MA	Nyanza Chemical Waste Dump	Ashland		R	F		

APPENDIX B.—NATIONAL PRIORITIES LIST (BY RANK) MARCH 1989—Continued

NPL Rank	EPA Reg	St	Site Name	City/County	Response Category [1]					Cleanup Status [2]
12	02	NJ	GEMS Landfill	Gloucester Township		R		S		I
13	05	MI	Berlin & Farro	Swartz Creek	V	R	F	S		O
14	01	MA	Baird & McGuire	Holbrook		R	F			O
15	02	NJ	Lone Pine Landfill	Freehold Township	V	R	F			
16	01	NH	Somersworth Sanitary Landfill	Somersworth		R				
17	05	MN	FMC Corp. (Fridley Plant)	Fridley	V					O
18	06	AR	Vertac, Inc.	Jacksonville	V		F	S		O
19	01	NH	Keefe Environmental Services	Epping		R		S		O
20	08	MT	Silver Bow Creek/Butte Area	Sill Bow/Deer Lodge		R				
21	08	SD	Whitewood Creek*	Whitewood	V					
22	06	TX	French, Ltd.	Crosby	V	R	F			O
23	01	NH	Sylvester *	Nashua		R		S		O
24	05	MI	Liquid Disposal, Inc.	Utica		R				O
25	03	PA	Tysons Dump	Upper Merion Twp	V	R	F			O
26	03	PA	McAdoo Associates *	McAdoo Borough	V	R	F			O
27	06	TX	Motco, Inc. *	La Marque	V	R	F			O
28	05	OH	Arcanum Iron & Metal	Darke County		R	F			
29	08	MT	East Helena Site	East Helena	V		F			
30	06	TX	Sikes Disposal Pits	Crosby		R				O
31	04	AL	Triana/Tennessee River	Limestone/Morgan	V	R	F			O
32	09	CA	Stringfellow *	Glen Avon Heights		R	F			O
33	01	ME	McKin Co.	Gray	V	R	F	S		O
34	06	TX	Crystal Chemical Co.	Houston		R	F			O
35	02	NJ	Bridgeport Rental & Oil Services	Bridgeport		R				O
36	08	CO	Sand Creek Industrial	Commerce City		R	F			O
37	06	TX	Geneva Industries/Fuhrmann Energy	Houston		R	F			O
38	01	MA	W.R. Grace & Co Inc (Acton Plant)	Acton	V		F	S		O
39	02	NJ	Burnt Fly Bog	Marlboro Township		R		S		O
40	02	NJ	Vineland Chemical Co., Inc.	Vineland	V	R				
41	04	FL	Schuylkill Metals Corp.	Plant City					D	O
42	05	MN	Reilly Tar (St. Louis Park Plant) *	St. Louis Park		R	F	S		O
43	05	MN	New Brighton /Arden Hills	New Brighton		R				O
44	02	NY	Old Bethpage Landfill	Oyster Bay	V			S		
45	04	FL	Reeves Southeast Galvanizing Corp.	Tampa			D			O
46	02	NJ	Shieldalloy Corp.	Newfield Borough	V			S		
47	08	MT	Anaconda C. Smelter	Anaconda	V		F			I
48	10	WA	Western Processing Co., Inc.	Kent	V	R	F	S		O
49	05	WI	Omega Hills North Landfill	Germantown				S		
50	04	FL	American Creosote (Pensacola Pit)	Pensacola		R	F			O
			Group 2 (HRS Scores 58.30—55.71, except for State top priority sites)							
51	02	NJ	Caldwell Trucking Co.	Fairfield		R	F			
52	02	NY	GE Moreau	South Glen Falls	V		F	S		O
53	04	FL	Peak Oil Co./Bay Drum Co.	Tampa		R				
54	05	OH	United Scrap Lead Co., Inc.	Troy		R				O
55	06	OK	Tar Creek (Ottawa County)	Ottawa County		R				C
56	07	KS	Cherokee County	Cherokee County		R				I
57	05	IN	Seymour Recycling Corp.*	Seymour	V	R	F			O
58	02	NJ	Brick Township Landfill	Brick Township	V			S		
59	05	MI	American Anodco, Inc.	Ionia	V			S		O
60	05	MI	Northernaire Plating	Cadillac		R				O
61	05	WI	Janesville Old Landfill	Janesville			F			
62	10	WA	Frontier Hard Chrome, Inc.	Vancouver		R				
63	04	SC	Independent Nail Co.	Beaufort		R				
64	05	WI	Janesville Ash Beds	Janesville			F			
65	04	SC	Kalama Specialty Chemicals	Beaufort			F	S		
66	04	FL	Davie Landfill	Davie	V	R	F	S		I
67	05	OH	Miami County Incinerator	Troy			F			
68	05	IN	International Minerals (E. Plant)	Terre Haute			F			
69	04	FL	Gold Coast Oil Corp.	Miami		R				O
70	05	WI	Wheeler Pit	La Prairie Township				S		
71	09	AZ	Tucson International Airport Area	Tucson		R				
72	09	CA	Operating Industries, Inc. Landfill	Monterey Park			F			
73	02	NY	Wide Beach Development	Brant		R				O
74	09	CA	Iron Mountain Mine	Redding		R				I
75	02	NJ	Scientific Chemical Processing	Carlstadt	V		F	S		O
76	08	CO	California Gulch	Leadville			F			
77	02	NJ	D'Imperio Property	Hamilton Township		R				I
78	05	MN	Oakdale Dump	Oakdale	V					O
79	05	MI	Gratiot County Landfill *	St. Louis	V	R	F	S		O
80	01	RI	Picillo Farm *	Coventry		R	F	S		O
81	01	MA	New Bedford Site *	New Bedford	V	R	F	S		O
82	06	LA	Old Inger Oil Refinery *	Darrow		R				O

APPENDIX B.—NATIONAL PRIORITIES LIST (BY RANK) MARCH 1989—Continued

NPL Rank	EPA Reg	St	Site Name	City/County	Response Category [1]					Cleanup Status [2]
83	05	OH	Chem-Dyne *	Hamilton	V	R	F	S		O
84	04	SC	SCRDI Bluff Road *	Columbia	V		R	F		O
85	01	CT	Laurel Park, Inc. *	Naugatuck Borough	V		F	S		
86	08	CO	Marshall Landfill *	Boulder County			F			O
87	05	IL	Outboard Marine Corp.*	Waukegan		R	F			
88	06	NM	South Valley*	Albuquerque		R	F			I
89	01	VT	Pine Street Canal *	Burlington			F			
90	03	WV	West Virginia Ordnance *	Point Pleasant	V		F			O
91	07	MO	Ellisville Site *	Ellisville		R	F	S		O
92	08	ND	Arsenic Trioxide Site *	Southeastern ND		R				I
93	07	IA	Aidex Corp. *	Council Bluffs		R				O
94	05	WI	N.W. Mauthe Co., Inc. *	Appleton		R		S		O
95	04	TN	North Hollywood Dump *	Memphis	V	R		S		O
96	04	KY	A.L. Taylor (Valley of Drums) *	Brooks		R	F			I
97	09	GU	Ordot Landfill *	Guam		R				
98	04	MS	Flowood Site *	Flowood	V					
99	08	UT	Rose Park Sludge Pit *	Salt Lake City	V					C
100	07	KS	Arkansas City Dump *	Arkansas City		R				I
			Group 3 (HRS Scores 55.58—52.05)							
101	05	IL	Parsons Casket Hardware Co	Belvidere					D	
102	05	IL	A & F Material Reclaiming, Inc	Greenup			F			O
103	03	PA	Douglassville Disposal	Douglassville		R				I
104	05	MN	Koppers Coke	St. Paul	V			S		
105	01	MA	Plymouth Harbor/Cannon Eng. Corp	Plymouth	V	R	F	S		O
106	10	ID	Bunker Hill Mining & Metallurg	Smelterville		R	F			I
107	02	NY	Hudson River PCBs	Hudson River		R				I
108	02	NJ	Universal Oil Products (Chem Div)	East Rutherford	V			S		
109	09	CA	Aerojet General Corp	Rancho Cordova			F			I
110	10	WA	Corn Bay, South Tacoma Channel	Tacoma	V	R	F	S		O
111	03	PA	Osborne Landfill	Grove City	V		F	S		I
112	08	UT	Portland Cement (Kiln Dust 2 & 3)	Salt Lake City	V			S		
113	01	CT	Old Southington Landfill	Southington	V		F	S		
114	02	NY	Syosset Landfill	Oyster Bay	V		F			
115	02	NY	Circuitron Corp	East Farmingdale					D	
116	09	AZ	Nineteenth Avenue Landfill	Phoenix				S		
117	10	OR	Teledyne Wah Chang	Albany	V		F			
118	10	WA	Midway Landfill	Kent				S		O
119	02	NY	Sinclair Refinery	Wellsville		R				O
120	04	AL	Mowbray Engineering Co	Greenville		R				
121	05	MI	Spiegelberg Landfill	Green Oak Township		R				O
122	04	FL	Miami Drum Services	Miami		R	F			O
123	02	NJ	Reich Farms	Pleasant Plains		R				
124	10	ID	Union Pacific Railroad Co	Pocatello			F			
125	02	NJ	South Brunswick Landfill	South Brunswick	V		F			O
126	04	AL	Ciba-Geigy Corp. (McIntosh Plant)	McIntosh					D	I
127	04	FL	Kassauf-Kimerling Battery	Tampa	V	R		S		I
128	05	IL	Wauconda Sand & Gravel	Wauconda		R				
129	05	MI	Bofors Nobel, Inc	Muskegon		R		S		
130	06	TX	Bailey Waste Disposal	Bridge City		R	F			
131	01	NH	Ottati & Goss/Kingston Steel Drum	Kingston	V	R	F	S		O
132	05	MI	Ott/Story/Cordova Chemical Co	Dalton Township	V	R	F	S		O
133	05	MI	Thermo-Chem, Inc	Muskegon			F			
134	03	VA	Greenwood Chemical Co	Newtown		R				O
135	02	NJ	NL Industries	Pedricktown	V		F			
136	05	MN	St. Regis Paper Co	Cass Lake				S		I
137	04	NC	Aberdeen Pesticide Dumps	Aberdeen	V	R		S		O
138	01	VT	Burgess Brothers Landfill	Woodford					D	
139	02	NJ	Ringwood Mines/Landfill	Ringwood Borough	V		F			
140	04	FL	Whitehouse Oil Pits	Whitehouse		R				O
141	04	GA	Hercules 009 Landfill	Brunswick					D	
142	02	NY	Jones Sanitation	Hyde Park				S		
143	05	MI	Velsicol Chemical (Michigan)	St. Louis	V			S		I
144	05	OH	Summit National	Deerfield Township		R				O
145	02	NY	Love Canal	Niagara Falls		R	F	S		O
146	03	DE	Coker's Sanitation Service Lndfls	Kent County	V					
147	05	MI	Rockwell International (Allegan)	Allegan			F			
148	05	MN	Pine Bend Sanitary Landfill	Dakota County				S		
149	07	IA	Lawrence Todtz Farm	Camanche	V					
150	05	IN	Fisher-Calo	LaPorte			F			

APPENDIX B.—NATIONAL PRIORITIES LIST (BY RANK) MARCH 1989—Continued

NPL Rank	EPA Reg	St	Site Name	City/County	Response Category [1]				Cleanup Status [2]
			Group 4 (HRS Scores 51.97—48.89)						
151	04	FL	Pioneer Sand Co	Warrington		R		S	
152	05	MI	Springfield Township Dump	Davisburg		R			
153	03	PA	Hranica Landfill	Buffalo Township	V		F	S	O
154	04	NC	Martin-Marietta, Sodyeco, Inc	Charlotte	V				
155	03	PA	Hellertown Manufacturing Co	Hellertown	V		F		
156	04	FL	Zellwood Ground Water Contamin	Zellwood			F		I
157	05	MI	Packaging Corp. of America	Filler City	V		F		
158	05	WI	Muskego Sanitary Landfill	Muskego			F		
159	02	NY	Hooker (S Area)	Niagara Falls	V		F	S	
160	03	PA	Lindane Dump	Harrison Township	V			S	O
161	08	CO	Central City-Clear Creek	Idaho Springs		R			
162	02	NJ	Ventron/Velsicol	Wood Ridge Borough	V	R		S	
163	04	FL	Taylor Road Landfill	Seffner	V		F		O
164	01	RI	Western Sand & Gravel	Burrillville	V	R		S	O
165	02	NY	Rosen Brothers Scrap Yard/Dump	Cortland		R			O
166	04	SC	Koppers Co Inc (Florence Plant)	Florence				S	
167	02	NJ	Maywood Chemical Co	Maywood/Rochelle Pk		R			O
168	02	NJ	Nascolite Corp	Millville		R			
169	05	OH	Industrial Excess Landfill	Uniontown		R		S	I
170	06	OK	Hardage/Criner	Criner		R	F		
171	05	MI	Rose Township Dump	Rose Township		R			
172	05	MN	Waste Disposal Engineering	Andover	V	R	F	S	
173	02	NY	Liberty Industrial Finishing	Farmingdale	V			S	O
174	02	NJ	Kin-Buc Landfill	Edison Township	V	R	F		O
175	05	IN	Waste, Inc., Landfill	Michigan City	V		F	S	
176	05	OH	Bowers Landfill	Circleville	V		F		
177	06	TX	Brio Refining, Inc	Friendswood	V		F		
178	02	NJ	Ciba-Geigy Corp	Toms River	V		F		
179	05	MI	Butterworth #2 Landfill	Grand Rapids			F		
180	02	NJ	American Cyanamid Co	Bound Brook	V			S	
181	03	PA	Heleva Landfill	North Whitehall Twp	V	R	F		O
182	02	NJ	Ewan Property	Shamong Township		R			
183	02	NY	Batavia Landfill	Batavia	V		F		
184	05	MN	Boise Cascade/Onan/Medtronics	Fridley				S	O
185	01	RI	Landfill & Resource Recovery	North Smithfield			F	S	
186	03	PA	Butler Mine Tunnel	Pittston	V	R	F		O
187	04	FL	Northwest 58th Street Landfill	Hialeah	V	R	F	S	I
188	02	NJ	Delilah Road	Egg Harbor Township		R			
189	03	PA	Mill Creek Dump	Erie		R			O
190	02	NJ	Glen Ridge Radium Site	Glen Ridge		R			O
191	02	NJ	Montclair/West Orange Radium Site	Montclair/W Orange		R			O
192	04	FL	Sixty-Second Street Dump	Tampa		R			I
193	05	MI	G&H Landfill	Utica		R			
194	01	VT	Bennington Municipal Sanitary Lfl	Bennington				D	
195	04	NC	Celanese (Shelby Fiber Operations)	Shelby	V				I
196	02	NJ	Metaltec/Aerosystems	Franklin Borough		R			
197	05	WI	Schmalz Dump	Harrison		R			
198	05	MI	Motor Wheel, Inc	Lansing			F		O
199	09	CA	Southern Calif Edison (Visalia)	Visalia	V			S	O
200	02	NJ	Lang Property	Pemberton Township			F		
			Group 5 (HRS Scores 48.86–46.44)						
201	06	TX	Stewco, Inc	Waskom		R	F		O
202	02	NJ	Sharkey Landfill	Parsippany/Troy Hls		R			
203	09	CA	Selma Treating Co	Selma			F		
204	06	LA	Cleve Reber	Sorrento		R			I
205	05	IL	Velsicol Chemical (Illinois)	Marshall		R			C
206	05	MI	Tar Lake	Mancelona Township			F		
207	02	NY	Johnstown City Landfill	Town of Johnstown		R			
208	04	NC	NC State U (Lot 86, Farm Unit #1)	Raleigh				D	
209	08	CO	Lowry Landfill	Arapahoe County	V	R			O
210	05	MN	MacGillis & Gibbs/Bell Lumber	New Brighton		R		S	I
211	03	PA	Hunterstown Road	Straban Township	V	R	F		O
212	03	MD	Woodlawn County Landfill	Woodlawn				D	
213	05	WI	Hechimovich Sanitary Landfill	Williamstown				D	
214	07	IA	Mid-America Tanning Co	Sergeant Bluff				D	
215	02	NJ	Combe Fill North Landfill	Mount Olive Twp		R			
216	01	MA	Re-Solve, Inc	Dartmouth	V	R	F		I
217	02	NJ	Goose Farm	Plumstead Township	V	R	F	S	O
218	04	TN	Velsicol Chem (Hardeman County)	Toone				S	O
219	02	NY	York Oil Co	Moira		R	F		O

APPENDIX B.—NATIONAL PRIORITIES LIST (BY RANK) MARCH 1989—Continued

NPL Rank	EPA Reg	St	Site Name	City/County	Response Category [1]					Cleanup Status [2]
220	04	FL	Sapp Battery Salvage	Cottondale		R				O
221	04	SC	Wamchem, Inc	Burton	V					
222	02	NJ	Chemical Leaman Tank Lines, Inc	Bridgeport	V		F			
223	05	WI	Master Disposal Service Landfill	Brookfield		R				
224	07	KS	Doepke Disposal (Holliday)	Johnson County		R				I
225	02	NJ	Florence Land Recontouring Lndfll	Florence Township		R				
226	01	RI	Davis Liquid Waste	Smithfield		R		S		O
227	01	MA	Charles-George Reclamation Lndfll	Tyngsborough		R	F			O
228	02	NJ	King of Prussia	Winslow Township	V		F			
229	03	VA	Chisman Creek	York County	V	R				I
230	05	OH	Nease Chemical	Salem	V			S		I
231	08	CO	Eagle Mine	Minturn/Redcliff		R		S		O
232	02	NJ	Chemical Control	Elizabeth		R		S		O
233	04	NC	Charles Macon Lagoon & Drum Stor	Cordova		R	F			O
234	04	SC	Leonard Chemical Co., Inc	Rock Hill			F	S		O
235	05	OH	Allied Chemical & Ironton Coke	Ironton		R	F			I
236	05	MI	Verona Well Field	Battle Creek		R				I
237	07	MO	Lee Chemical	Liberty					D	O
238	01	CT	Beacon Heights Landfill	Beacon Falls	V	R	F			
239	04	AL	Stauffer Chem (Cold Creek Plant)	Bucks	V					
240	05	MN	Burlington Northern (Brainerd)	Brainerd/Baxter	V					O
241	05	MI	Torch Lake	Houghton County		R				
242	01	RI	Central Landfill	Johnston	V		F	S		
243	03	PA	Malvern TCE	Malvern					D	O
244	02	NY	Facet Enterprises, Inc	Elmira	V		F			
245	03	DE	Delaware Sand & Gravel Landfill	New Castle County		R				O
246	03	PA	MW Manufacturing	Valley Township		R		S		O
247	03	VA	C & R Battery Co., Inc	Chesterfield County		R				O
248	04	TN	Murray-Ohio Dump	Lawrenceburg	V			S		
249	05	IN	Envirochem Corp	Zionsville	V	R	F			O
250	05	IN	MIDCO I	Gary			F			O
			Group 6 (HRS Scores 46.44–43.78)							
251	05	OH	Ormet Corp	Hannibal	V		F	S		
252	05	OH	South Point Plant	South Point			F			I
253	03	PA	Whitmoyer Laboratories	Jackson Township		R				
254	04	FL	Coleman-Evans Wood Preserving Co	Whitehouse		R	F	S		O
255	02	NJ	Dayco Corp./L.E Carpenter Co	Wharton Borough	V			S		O
256	03	PA	Shriver's Corner	Straban Township	V	R	F			O
257	03	PA	Dorney Road Landfill	Upper Macungie Twp		R				O
258	05	IN	Northside Sanitary Landfill, Inc	Zionsville			F	S		
259	05	IL	Interstate Pollution Control, Inc	Rockford					D	
260	02	NJ	Global Sanitary Landfill	Old Bridge Township					D	
261	04	FL	Florida Steel Corp	Indiantown	V					O
262	05	IL	Pagel's Pit	Rockford			F			O
263	05	MN	University Minn Rosemount Res Cen	Rosemount				S		
264	05	MN	Freeway Sanitary Landfill	Burnsville				S		
265	05	WI	Tomah Municipal Sanitary Landfill	Tomah					D	
266	09	AZ	Litchfield Airport Area	Goodyear/Avondale			F			
267	09	CA	Firestone Tire (Salinas Plant)	Salinas				S		O
268	02	NJ	Spence Farm	Plumstead Township	V	R		S		I
269	06	AR	Mid-South Wood Products	Mena	V		F			I
270	04	MS	Newsom Brothers/Old Reichold	Columbia		R				O
271	09	CA	Atlas Asbestos Mine	Fresno County		R				
272	09	CA	Coalinga Asbestos Mine	Coalinga		R				
273	04	FL	Brown Wood Preserving	Live Oak	V		F			
274	02	NY	Port Washington Landfill	Port Washington		R	F			
275	05	IN	Columbus Old Municipal Lndfll #1	Columbus			F			
276	02	NJ	Combe Fill South Landfill	Chester Township		R				
277	02	NJ	JIS Landfill	Jamesburg/S. Brnswck				S		
278	02	NY	Tronic Plating Co., Inc	Farmingdale	V		F			
279	03	PA	Centre County Kepone	State College Boro				S		O
280	05	OH	Fields Brook	Ashtabula		R				I
281	01	CT	Solvents Recovery Service New Eng	Southington			F			I
282	08	CO	Woodbury Chemical Co	Commerce City		R				
283	02	NJ	Waldwick Aerospace Devices, Inc	Wall Township		R		S		O
284	01	MA	Hocomonco Pond	Westborough		R				
285	04	KY	Distler Brickyard	West Point		R	F			O
286	02	NY	Ramapo Landfill	Ramapo	V	R		S		
287	09	CA	Coast Wood Preserving	Ukiah				S		
288	09	CA	South Bay Asbestos Area	Alviso		R				I
289	02	NY	Mercury Refining, Inc	Colonie	V			S		O
290	04	FL	Hollingsworth Solderless Terminal	Fort Lauderdale		R				I

APPENDIX B.—NATIONAL PRIORITIES LIST (BY RANK) MARCH 1989—Continued

NPL Rank	EPA Reg	St	Site Name	City/County	Response Category [1]					Cleanup Status [2]
291	02	NY	Olean Well Field	Olean	V	R	F			O
292	05	MN	Joslyn Manufacturing & Supply Co	Brooklyn Center	V			S		
293	03	PA	York County Solid Waste/Refuse Lf	Hopewell Township	V			S		O
294	05	WI	Spickler Landfill	Spencer		R				
295	08	CO	Denver Radium Site	Denver		R				I
296	03	PA	Route 940 Drum Dump	Pocono Summit	V			S		I
297	04	FL	Tower Chemical Co	Clermont		R	F			O
298	03	PA	C & D Recycling	Foster Township	V	R				O
299	07	MO	Syntex Facility	Verona	V		F			O
300	08	MT	Milltown Reservoir Sediments	Milltown		R				I
			Group 7 (HRS Scores 43.75–42.24)							
301	05	MN	Arrowhead Refinery Co	Hermantown		R				I
302	10	OR	Martin-Marietta Aluminum Co	The Dalles	V		F			
303	08	CO	Uravan Uranium (Union Carbide)	Uravan					D	
304	02	NJ	Pijak Farm	Plumstead Township	V	R		S		I
305	02	NJ	Syncon Resins	South Kearny		R				O
306	05	MN	Oak Grove Sanitary Landfill	Oak Grove Township		R				
307	09	CA	Liquid Gold Oil Corp	Richmond				S		
308	09	CA	Purity Oil Sales, Inc	Malaga		R				O
309	01	NH	Tinkham Garage	Londonderry			F	S		O
310	04	FL	Alpha Chemical Corp	Galloway	V					
311	02	NJ	Bog Creek Farm	Howell Township		R				
312	01	ME	Saco Tannery Waste Pits	Saco		R				O
313	02	PR	Frontera Creek	Rio Abajo			F			
314	04	FL	Pickettville Road Landfill	Jacksonville	V		F			I
315	05	OH	Alsco Anaconda	Gnadenhutten				S		
316	01	MA	Iron Horse Park	Billerica		R				O
317	03	PA	Palmerton Zinc Pile	Palmerton	V		F			O
318	05	IN	Neal's Landfill (Bloomington)	Bloomington	V		F			
319	05	WI	Kohler Co. Landfill	Kohler	V					
320	04	AL	Interstate Lead Co. (ILCO)	Leeds	V	R	F	S		O
321	07	KS	Hydro-Flex Inc	Topeka					D	
322	09	AZ	Hassayampa Landfill	Hassayampa	V					
323	06	LA	Gulf Coast Vacuum Services	Abbeville						
324	05	IL	Tri-County Lf/Waste Mgmt Illinois	South Elgin		R				
325	01	MA	Silresim Chemical Corp	Lowell		R		S		O
326	01	MA	Wells G&H	Woburn	V		F			
327	01	CT	Nutmeg Valley Road	Wolcott					D	
328	02	NJ	Chemsol, Inc	Piscataway	V			S		
329	05	WI	Lauer I Sanitary Landfill	Menomonee Falls				S		
330	05	MI	Petoskey Municipal Well Field	Petoskey			F			
331	05	MN	Union Scrap Iron & Metal Co	Minneapolis				S		
332	02	NJ	Radiation Technology, Inc	Rockaway Township	V			S		
333	02	NJ	Fair Lawn Well Field	Fair Lawn	V			S		
334	05	IN	Main Street Well Field	Elkhart		R				
335	05	MN	Lehillier/Mankato Site	Lehillier/Mankato		R				O
336	10	WA	Lakewood Site	Lakewood		R				O
337	03	PA	Industrial Lane	Williams Township		R	F			
338	05	IN	Fort Wayne Reduction Dump	Fort Wayne		R				
339	05	WI	Onalaska Municipal Landfill	Onalaska		R				
340	05	WI	National Presto Industries, Inc	Eau Claire			F			
341	02	NJ	Monroe Township Landfill	Monroe Township	V			S		O
342	02	NJ	Rockaway Borough Well Field	Rockaway Township		R				
343	05	IN	Wayne Waste Oil	Columbia City		R	F			
344	03	MD	Mid-Atlantic Wood Preservers, Inc	Harmans	V		F			
345	10	ID	Pacific Hide & Fur Recycling Co	Pocatello		R	F			O
346	07	IA	Des Moines TCE	Des Moines		R				I
347	02	NJ	Beachwood/Berkley Wells	Berkley Township		R				
348	02	NY	Vestal Water Supply Well 4-2	Vestal	V			S		I
349	02	PR	Vega Alta Public Supply Wells	Vega Alta			F			
350	05	IL	Southeast Rockford Grnd Wtr Con	Rockford					D	
			Group 8 (HRS Scores 42.24–40.37)							
351	05	IN	Galen Myers Dump/Drum Salvage	Osceola		R				O
352	05	MI	Sturgis Municipal Wells	Sturgis		R				
353	05	MN	Washington County Landfill	Lake Elmo				S		
354	06	TX	Odessa Chromium #1	Odessa		R				
355	06	TX	Odessa Chromium #2 (Andrews Hgwy)	Odessa		R				
356	07	NE	Hastings Ground Water Contamin	Hastings		R				I
357	09	AZ	Indian Bend Wash Area	Scottsdale/Tmpe/Phnx	V		F			
358	09	CA	San Gabriel Valley (Area 1)	El Monte		R				I

APPENDIX B.—NATIONAL PRIORITIES LIST (BY RANK) MARCH 1989—Continued

NPL Rank	EPA Reg	St	Site Name	City/County	Response Category [1]					Cleanup Status [2]
359	09	CA	San Gabriel Valley (Area 2)	Baldwin Park Area		R				
360	09	CA	San Fernando Valley (Area 1)	Los Angeles					D	
361	09	CA	San Fernando Valley (Area 2)	Los Angeles/Glendale					D	
362	09	CA	San Fernando Valley (Area 3)	Glendale					D	
363	09	CA	T.H. Agriculture & Nutrition Co	Fresno					D	
364	10	WA	Com Bay, Near Shore/Tide Flats	Pierce County	V	R	F	S		
365	05	IL	LaSalle Electric Utilities	LaSalle		R				I
366	05	IL	Cross Brothers Pail (Pembroke)	Pembroke Township		R				I
367	04	NC	Jadco-Hughes Facility	Belmont					D	
368	05	IN	Southside Sanitary Landfill	Indianapolis	V			S		
369	02	NJ	Monitor Devices/Intercircuits Inc	Wall Township		R				
370	02	PR	Upjohn Facility	Barceloneta	V		F			O
371	04	NC	Koppers Co Inc (Morrisville Plnt)	Morrisville					D	I
372	09	CA	McColl	Fullerton		R	F			I
373	03	PA	Henderson Road	Upper Merion Twp	V		F			
374	02	NY	Hooker Chemical/Ruco Polymer Corp	Hicksville			F			
375	10	WA	Colbert Landfill	Colbert	V	R	F			O
376	06	LA	Petro-Processors of Louisiana Inc	Scotlandville	V	R	F	S		O
377	02	NY	Applied Environmental Services	Glenwood Landing	V			S		O
378	02	PR	Barceloneta Landfill	Florida Afuera			F			
379	01	NH	Tibbets Road	Barrington		R				O
380	03	MD	Sand, Gravel & Stone	Elkton	V	R	F			O
381	03	PA	Delta Quarries/Stotler Landfill	Antis/Logan Twps	V		F	S		
382	01	CT	Revere Textile Prints Corp	Sterling					D	
383	05	MI	Spartan Chemical Co	Wyoming	V			S		
384	02	NJ	Roebling Steel Co	Florence		R				
385	03	PA	East Mount Zion	Springettsbury Twp		R				
386	04	GA	T.H. Agricul & Nutri (Albany)	Albany					D	I
387	04	TN	Amnicola Dump	Chattanooga		R				
388	02	NJ	Vineland State School	Vineland	V			S		I
389	01	MA	Groveland Wells	Groveland	V	R		S		
390	02	NY	General Motors (Cent Foundry Div)	Massena	V		F			O
391	01	NH	Mottolo Pig Farm	Raymond		R	F	S		O
392	04	SC	SCRDI Dixiana	Cayce		R	F	S		O
393	05	MI	Roto-Finish Co., Inc	Kalamazoo			F			O
394	05	MN	Olmsted County Sanitary Landfill	Oronoco				S		
395	07	MO	Quality Plating	Sikeston		R				
396	07	MO	Fulbright Landfill	Springfield			F			I
397	02	NJ	Williams Property	Swainton		R				
398	02	NJ	Renora, Inc	Edison Township	V		F			O
399	04	NC	FCX, Inc. (Washington Plant)	Washington			F			
400	06	NM	Cleveland Mill	Silver City					D	
			Group 9 (HRS Scores 40.36—38.29)							
401	02	NJ	Denzer & Schafer X-Ray Co.	Bayville	V			S		
402	02	NJ	Hercules, Inc. (Gibbstown Plant)	Gibbstown					D	
403	05	IN	Ninth Avenue Dump	Gary		R				
404	03	MD	Bush Valley Landfill	Abingdon					D	
405	04	SC	Golden Strip Septic Tank Service	Simpsonville					D	
406	06	TX	Texarkana Wood Preserving Co	Texarkana		R				O
407	06	AR	Gurley Pit	Edmondson			F			O
408	04	FL	Petroleum Products Corp	Pembroke Park	V		F	S		O
409	01	RI	Peterson/Puritan, Inc	Lincoln/Cumberland	V		F			
410	07	MO	Times Beach Site	Times Beach		R				O
411	05	MI	Wash King Laundry	Pleasant Plains Twp		R				
412	05	MN	Whittaker Corp	Minneapolis				S		
413	05	WI	Algoma Municipal Landfill	Algoma		R				
414	05	MN	NL Industries/Tara Corp/Golden	St. Louis Park				S		I
415	09	CA	Westinghouse Elec (Sunnyvale Plt)	Sunnyvale					D	
416	01	CT	Kellogg-Deering Well Field	Norwalk		R				
417	03	PA	Boarhead Farms	Bridgeton Township					D	
418	01	MA	Cannon Engineering Corp. (CEC)	Bridgewater	V	R	F	S		
419	05	MI	H. Brown Co., Inc	Grand Rapids		R				
420	02	NY	Nepera Chemical Co., Inc	Maybrook	V			S		
421	02	NY	Niagara County Refuse	Wheatfield		R				
422	04	FL	Sherwood Medical Industries	Deland					D	
423	04	AL	Olin Corp. (McIntosh Plant)	McIntosh					D	
424	05	MI	Southwest Ottawa County Landfill	Park Township	V			S		
425	02	NY	Kentucky Avenue Well Field	Horseheads	V	R				O
426	02	NY	Pasley Solvents & Chemicals, Inc	Hempstead	V	R				
427	06	TX	Sol Lynn/Industrial Transformers	Houston	V	R	F	S		I
428	02	NJ	Asbestos Dump	Millington	V		F			
429	04	KY	Lee's Lane Landfill	Louisville	V		F			O
430	06	AR	Frit Industries	Walnut Ridge	V		F			C

APPENDIX B.—NATIONAL PRIORITIES LIST (BY RANK) MARCH 1989—Continued

NPL Rank	EPA Reg	St	Site Name	City/County	Response Category [1]					Cleanup Status [2]
431	05	OH	Fultz Landfill	Jackson Township		R				I
432	04	NC	New Hanover Cnty Airport Burn Pit	Wilmington					D	
433	05	OH	Coshocton Landfill	Franklin Township			F			O
434	04	TN	Arlington Blending & Packaging	Arlington		R	F			O
435	06	LA	PAB Oil & Chemical Service, Inc	Abbeville					D	
436	01	RI	Davis (GSR) Landfill	Glocester				S		
437	03	PA	Lord-Shope Landfill	Girard Township	V			S		O
438	10	WA	FMC Corp. (Yakima Pit)	Yakima			F			I
439	05	WI	Northern Engraving Co	Sparta	V		F			
440	06	TX	South Cavalcade Street	Houston	V		F			
441	01	MA	PSC Resources	Palmer				S		O
442	05	MI	Forest Waste Products	Otisville		R	F			
443	03	PA	Drake Chemical	Lock Haven		R	F			O
444	01	NH	Kearsarge Metallurgical Corp	Conway				S		
445	04	SC	Palmetto Wood Preserving	Dixiana		R				O
446	05	IL	Peterson Sand & Gravel	Libertyville		R				
447	05	MI	Clare Water Supply	Clare		R	F			
448	03	PA	Havertown PCP	Haverford	V	R	F			O
449	03	DE	New Castle Spill	New Castle County	V			S		I
450	08	MT	Idaho Pole Co	Bozeman					D	
			Group 10 (HRS Scores 38.2-36.88)							
451	03	DE	NCR Corp. (Millsboro Plant)	Millsboro	V			S		I
452	05	IN	Lake Sandy Jo (M&M Landfill)	Gary		R				
453	05	IL	Johns-Manville Corp	Waukegan			F			
454	05	MI	Chem Central	Wyoming Township				S		
455	05	MI	Novaco Industries	Temperance		R				
456	05	MN	Windom Dump	Windom				S		
457	02	NJ	Jackson Township Landfill	Jackson Township					D	O
458	05	IL	NL Industries/Taracorp Lead Smelt	Granite City	V		F	S		
459	04	KY	Red Penn Sanitation Co. Landfill	Peewee Valley					D	
460	05	MI	K&L Avenue Landfill	Oshtemo Township			F			
461	05	OH	TRW, Inc. (Minerva Plant)	Minerva	V			S		I
462	10	WA	Kaiser Aluminum Mead Works	Mead	V			S		O
463	05	MN	Perham Arsenic Site	Perham		R				O
464	05	MI	Charlevoix Municipal Well	Charlevoix		R				I
465	02	NJ	Montgomery Township Housing Devel	Montgomery Township		R				
466	02	NJ	Rocky Hill Municipal Well	Rocky Hill Borough		R				
467	92	NJ	Cinnaminson Ground Water Contamin	Cinnaminsion Township		R				
468	02	NY	Brewster Well Field	Putnam County		R				I
469	02	NY	Vestal Water Supply Well 1-1	Vestal		R				I
470	03	PA	Bally Ground Water Contamination	Bally Borough	V		F			I
471	04	FL	Wilson Concepts of Florida, Inc	Pompano Beach					D	
472	04	NC	Bypass 601 Ground Water Contamin	Concord		R				I
473	07	MO	Solid State Circuits, Inc	Republic		R	F	S		O
474	07	NE	Waverly Ground Water Contamin	Waverly		R				O
475	09	CA	Advanced Micro Devices, Inc	Sunnyvale	V			S		O
476	10	WA	Hidden Valley Lndfl (Thun Field)	Pierce County	V			S		
477	10	WA	Yakima Plating Co	Yakima					D	
478	05	MN	Nutting Truck & Caster Co	Faribault				S		
479	02	NJ	U.S. Radium Corp	Orange		R	F			
480	05	MI	Carter Industrials, Inc	Detroit		R				O
481	06	TX	Highlands Acid Pit	Highlands		R				C
482	03	PA	Resin Disposal	Jefferson Borough	V			S		O
483	08	MT	Libby Ground Water Contamination	Libby			F			
484	04	KY	Newport Dump	Newport		R				
485	03	PA	Moyers Landfill	Eagleville		R				
486	01	NH	Savage Municipal Water Supply	Milford			F			
487	05	MN	LaGrand Sanitary Lnadfill	LaGrand Township				S		
488	05	IN	Poer Farm	Hancock County		R	F			O
489	03	PA	Brown's Battery Breaking	Shoemakersville	V	R	F			O
490	02	NY	SMS Instruments, Inc	Deer Park			F			
491	05	MI	Hedblum Industries	Oscoda			F			
492	06	TX	United Creosoting Co	Conroe		R	F			O
493	02	NY	Byron Barrel & Drum	Byron		R	F			O
494	08	WY	Baxter/Union Pacific Tie Treating	Laramie	V		F	S		O
495	02	NY	Anchor Chemicals	Hicksville				S		
496	05	MI	Waste Management-Mich (Holland)	Holland				S		
497	06	TX	North Cavalcade Street	Houston		R				
498	02	NJ	Sayreville Landfill	Sayreville					D	
499	01	NH	Dover Municipal Landfill	Dover	V	R	F			
500	02	NY	Ludlow Sand & Gravel	Clayville	V	R		S		

APPENDIX B.—NATIONAL PRIORITIES LIST (BY RANK) MARCH 1989—Continued

NPL Rank	EPA Reg	St	Site Name	City/County	Response Category [1]						Cleanup Status [2]
				Group 11 (HRS Scores 36.84—35.57)							
501	05	WI	City Disposal Corp. Landfill	Dunn			F	S			
502	02	NJ	Tabernacle Drum Dump	Tabernacle Township	V	R	F				O
503	07	MO	Minker/Stout/Romaine Creek	Imperial		R					O
504	04	KY	Howe Valley Landfill	Howe Valley					D		
505	01	CT	Yaworski Waste Lagoon	Canterbury		R		S			
506	03	WV	Leetown Pesticide	Leetown	V	R					O
507	04	FL	Cabot/Koppers	Gainesville		R	F	S			O
508	02	NJ	Evor Phillips Leasing	Old Bridge Township		R					
509	03	PA	William Dick Lagoons	West Caln Township	V						O
510	05	IN	Douglass Road/Uniroyal, Inc., Lf	Mishawaka					D		
511	03	PA	Lackawanna Refuse	Old Forge Borough		R					O
512	06	OK	Compass Industries (Avery Drive)	Tulsa		R					
513	02	NJ	Mannheim Avenue Dump	Galloway Township	V		F				I
514	05	IN	Neal's Dump (Spencer)	Spencer			F	S			O
515	02	NY	Fulton Terminals	Fulton	V	R					O
516	06	LA	Dutchtown Treatment Plant	Ascension Parish		R					
517	03	PA	Westinghouse Elevator Co. Plant	Gettysburg	V	R	F				O
518	01	NH	Auburn Road Landfill	Londonderry		R	F	S			
519	03	WV	Fike Chemical, Inc	Nitro			F				O
520	05	MN	General Mills/Henkel Corp	Minneapolis				S			
521	04	TN	Wrigley Charcoal Plant	Wrigley		R					O
522	05	OH	Laskin/Poplar Oil Co	Jefferson Township	V	R	F				O
523	05	OH	Old Mill	Rock Creek		R					O
524	07	KS	John's Sludge Pond	Wichita	V		F				O
525	05	WI	Stoughton City Landfill	Stoughton		R					
526	09	CA	Del Norte Pesticide Storage	Crescent City		R					
527	02	NJ	De Rewal Chemical Co	Kingwood Township			F				
528	03	PA	Middletown Air Field	Middletown	V	R					O
529	02	NJ	Swope Oil & Chemical Co	Pennsauken	V	R	F				O
530	04	GA	Monsanto Corp. (Augusta Plant)	Augusta	V			S			O
531	01	NH	South Municipal Water Supply Well	Peterborough	V		F	S			
532	01	ME	Winthrop Landfill	Winthrop	V		F	S			O
533	03	WV	Ordnance Works Disposal Areas	Morgantown			F				
534	06	AR	Cecil Lindsey	Newport		R					I
535	05	OH	Zanesville Well Field	Zanesville	V			S			
536	02	NY	Suffern Village Well Field	Village of Suffern		R					
537	02	NY	Endicott Village Well Field	Village of Endicott	V	R					I
538	03	PA	Aladdin Plating	Scott Township		R					I
539	03	PA	North Penn—Area 1	Souderton		R					
540	03	PA	North Penn—Area 7	North Wales		R					
541	03	PA	North Penn—Area 6	Lansdale		R					
542	03	PA	North Penn—Area 5	Montgomery Township		R					
543	04	FL	Harris Corp. (Palm Bay Plant)	Palm Bay	V			S			O
544	05	MN	Kummer Sanitary Landfill	Bemidji		R					I
545	05	OH	Sanitary Landfill Co. (IWD)	Dayton			F				
546	05	WI	Eau Claire Municipal Well Field	Eau Claire		R					
547	07	MO	Valley Park TCE	Valley Park		R					I
548	09	CA	San Fernando Valley (Area 4)	Los Angeles					D		
549	09	CA	Monolithic Memories	Sunnyvale	V			S			
550	09	CA	National Semiconductor Corp	Santa Clara	V			S			
				Group 12 (HRS Scores 35.57–34.47)							
551	09	CA	Newmark Ground Water Contamin	San Bernardino					D		
552	04	GA	Powersville Site	Peach County		R	F				
553	05	MI	Grand Traverse Overall Supply Co	Greilickville			F				
554	05	MI	Metamora Landfill	Metamora		R					
555	05	MI	Whitehall Municipal Wells	Whitehall		R					
556	03	DE	Standard Chlorine of Delaware, Inc	Delaware City	V			S			I
557	05	MN	South Andover Site	Andover		R					O
558	02	NJ	Diamond Alkali Co	Newark	V	R	F	S			O
559	05	IN	Carter Lee Lumber Co.	Indianapolis					D		
560	01	NH	Fletcher's Paint Works & Storage	Milford		R					O
561	03	VA	Avtex Fibers, Inc.	Front Royal	V		F				
562	05	MI	Kentwood Landfill	Kentwood	V		F				
563	05	MI	Electrovoice	Buchanan		R					
564	02	NY	Katonah Municipal Well	Town of Bedford		R					O
565	09	CA	Teledyne Semiconductor	Mountain View					D		
566	02	PR	Fibers Public Supply Wells	Jobos	V		F				
567	05	IN	Marion (Bragg) Dump	Marion		R					
568	05	OH	Pristine, Inc	Reading		R	F				I
569	05	WI	Mid-State Disposal, Inc Landfill	Cleveland Township		R					

APPENDIX B.—NATIONAL PRIORITIES LIST (BY RANK) MARCH 1989—Continued

NPL Rank	EPA Reg	St	Site Name	City/County	Response Category [1]					Cleanup Status [2]
570	04	TN	American Creosote (Jackson Plant)	Jackson		R				O
571	08	CO	Broderick Wood Products	Denver	V		F			
572	02	NY	C & J Disposal Leasing Co. Dump	Hamilton					D	
573	05	OH	Buckeye Reclamation	St. Clairsville	V		F			I
574	02	NY	Preferred Plating Corp	Farmingdale		R				
575	06	TX	Bio-Ecology Systems, Inc	Grand Prairie		R				C
576	08	UT	Monticello Rad Contaminated Props	Monticello		R				I
577	02	NJ	Woodland Route 532 Dump	Woodland Township	V	R		S		
578	05	IN	American Chemical Service, Inc	Griffith			F			
579	01	MA	Salem Acres	Salem	V					
580	02	NY	Richardson Hill Road Lndfil/Pond	Sidney Center	V	R				
581	01	VT	Old Springfield Landfill	Springfield	V		F			O
582	02	NY	Solvent Savers	Lincklaen			F			
583	03	VA	U.S. Titanium	Piney River	V		F	S		O
584	05	IL	Galesburg/Koppers Co	Galesburg				S		
585	02	NY	Hooker (Hyde Park)	Niagara Falls	V		F	S		
586	05	MI	SCA Independent Landfill	Muskegon Heights				S		
587	02	NY	Action Anodizing, Plating Polish	Copiague					D	
588	09	CA	MGM Brakes	Cloverdale				S		
589	06	LA	Bayou Sorrel Site	Bayou Sorrel			F			I
590	05	MI	Duell & Gardner Landfill	Dalton Township		R				
591	10	WA	Mica Landfill	Mica				S		
592	02	NJ	Ellis Property	Evesham Township		R				O
593	04	KY	Distler Farm	Jefferson County		R	F			O
594	09	CA	Waste Disposal, Inc	Santa Fe Springs					D	
595	10	WA	Harbor Island (Lead)	Seattle			F			
596	05	WI	Lemberger Transport & Recycling	Franklin Township		R				
597	05	OH	E.H. Schilling Landfill	Hamilton Township		R				I
598	05	MI	Cliff/Dow Dump	Marquette			F			
599	02	NY	Clothier Disposal	Town of Granby	V	R				I
600	03	PA	Ambler Asbestos Piles	Ambler	V	R	F	S		O
			Group 13 (HRS Scores 34.38—33.62)							
601	10	WA	Queen City Farms	Maple Valley	V		F	S		O
602	02	NJ	Curcio Scrap Metal, Inc	Saddle Brook Twp	V		F			
603	03	VA	L.A. Clarke & Son	Spotsylvania County	V	R	F			
604	05	WI	Scrap Processing Co., Inc	Medford				S		
605	03	MD	Southern Maryland Wood Treating	Hollywood		R				O
606	06	NM	Homestake Mining Co.	Milan	V		F			O
607	09	CA	Beckman Instruments (Porterville)	Porterville					D	
608	04	FL	Dubose Oil Products CO	Cantonment				S		O
609	05	MI	Mason County Landfill	Pere Marquette Twp		R	F			
610	05	MI	Cemetery Dump	Rose Center		R				
611	07	IA	Red Oak City Landfill	Red Oak		R				I
612	05	IN	Lakeland Disposal Service, Inc	Claypool					D	
613	02	NJ	Hopkins Farm	Plumstead Township	V			S		
614	04	NC	Cape Fear Wood Preserving	Fayetteville		R				O
615	01	RI	Stamina Mills, Inc	North Smithfield					D	
616	05	WI	Lemberger Landfill, Inc	Whitelaw				S		
617	05	IN	Reilly Tar (Indianapolis Plant)	Indianapolis			F			
618	01	ME	Pinette's Salvage Yard	Washburn		R				O
619	02	NJ	Wilson Farm	Plumstead Township	V	R				
620	02	NY	Conklin Dumps	Conklin					D	
621	03	PA	Old City of York Landfill	Seven Valleys	V		F	S		I
622	03	PA	Modern Sanitation Landfill	Lower Windsor Twp	V			S		I
623	05	IL	Byron Salvage Yard	Byron		R				I
624	05	MI	North Bronson Industrial Area	Bronson		R				
625	03	PA	Stanley Kessler	King of Prussia			F			O
626	02	NJ	Imperial Oil/Champion Chemicals	Morganville		R				
627	02	NJ	Cosden Chemical Coatings Corp	Beverly					D	O
628	05	MN	St. Augusta San Lndfil/Engen Dump	St. Augusta Township				S		
629	02	NJ	Myers Property	Franklin Township	V	R				O
630	02	NJ	Pepe Field	Boonton		R				
631	04	KY	Tri-City Disposal Co	Shepherdsville		R				O
632	10	WA	Northwest Transformer	Everson		R				O
633	02	NY	Genzale Plating Co	Franklin Square		R				
634	05	WI	Sheboygan Harbor & River	Sheboygan			F			
635	05	MI	Ossineke Ground Water Contamin	Ossineke		R				
636	03	WV	Follansbee Site	Follansbee	V		F			I
637	03	PA	Keystone Sanitation Landfill	Union Township				S		O
638	04	NC	Carolina Transformer Co	Fayetteville		R	F			O
639	02	NY	North Sea Municipal Landfill	North Sea	V	R	F			O
640	03	PA	Bendix Flight Systems Division	Bridgewater Township	V			S		O

APPENDIX B.—NATIONAL PRIORITIES LIST (BY RANK) MARCH 1989—Continued

NPL Rank	EPA Reg	St	Site Name	City/County	Response Category [1]					Cleanup Status [2]
641	09	CA	Koppers Co Inc (Oroville Plant)	Oroville				S		
642	09	CA	Louisiana-Pacific Corp	Oroville					D	
643	03	VA	H & H Inc., Burn Pit	Farrington		R				
644	05	MI	South Macomb Disposal (Lf 9 & 9A)	Macomb Township			F			
645	05	MI	U.S. Aviex	Howard Township	V		F			
646	03	PA	Walsh Landfill	Honeybrook Township		R	F			O
647	02	NJ	Landfill & Development Co	Mount Holly				S		
648	02	NJ	Upper Deerfield Township San Lndf	Upper Deerfield Twp		R	F			
649	02	NY	Hertel Landfill	Plattekill		R				
650	02	NY	Haviland Complex	Town of Hyde Park		R				
			Group 14 (HRS Scores 33.62–32.04)							
651	02	NY	Malta Rocket Fuel Area	Malta					D	
652	04	GA	Cedartown Municipal Landfill	Cedartown					D	
653	05	MI	Kent City Mobile Home Park	Kent City			F			
654	05	MN	Adrian Municipal Well Field	Adrian		R				
655	06	NM	AT & SF (Clovis)	Clovis	V		F			
656	07	KS	Strother Field Industrial Park	Cowley County	V			S		O
657	07	KS	Obee Road	Hutchinson					D	
658	02	NJ	Fried Industries	East Brunswick Twp		R				O
659	02	NY	American Thermostat Co	South Cairo	V	R	S			I
660	08	ND	Minot Landfill	Minot					D	
661	04	TN	Lewisburg Dump	Lewisburg	V					
662	05	MI	McGraw Edison Corp	Albion	V			S		
663	02	NY	Goldisc Recordings, Inc.	Holbrook	V			S		
664	02	NY	Islip Municipal Sanitary Landfill	Islip	V			S		
665	04	KY	Airco	Calvert City	V					I
666	03	PA	Metal Banks	Philadelphia	V		F			O
667	05	IL	Yeoman Creek Landfill	Waukegan					D	
668	02	NY	Sarney Farm	Amenia		R	F			
669	05	MI	Folkertsma Refuse	Grand Rapids					D	
670	01	MA	Rose Disposal Pit	Lanesboro	V		F	S		
671	05	OH	Van Dale Junkyard	Marietta			F			
672	08	MT	Montana Pole and Treating	Butte		R				I
673	04	KY	B.F. Goodrich	Calvert City	V					I
674	05	MI	Organic Chemicals, Inc	Grandville				S		
675	02	NY	BioClinical Laboratories, Inc	Bohemia					D	
676	02	NY	Volney Municipal Landfill	Town of Volney	V	R		S		O
677	02	NY	FMC Corp. (Dublin Road Landfill)	Town of Shelby	V			S		
678	05	WI	Tomah Fairgrounds	Tomah		R				
679	01	MA	Sullivan's Ledge	New Bedford		R	F			
680	04	KY	Smith's Farm	Brooks		R				O
681	10	OR	Joseph Forest Products	Joseph					D	
682	02	PR	Juncos Landfill	Juncos	V		F			O
683	07	KS	Big River Sand Co	Wichita		R				I
684	05	IN	Bennett Stone Quarry	Bloomington	V		F			O
685	10	WA	Wyckoff Co./Eagle Harbor	Bainbridge Island			F			
686	02	NJ	Industrial Latex Corp	Wallington Borough		R				O
687	04	FL	Munisport Landfill	North Miami			F			
688	04	AL	Stauffer Chem (LeMoyne Plant)	Axis	V					
689	02	NJ	M&T Delisa Landfill	Asbury Park	V		F			
690	06	TX	Crystal City Airport	Crystal City		R				O
691	04	SC	Geiger (C & M Oil)	Rantoules		R				
692	05	WI	Moss-American (Kerr-McGee Oil Co.)	Milwaukee		R	F			
693	05	WI	Waste Research & Reclamation Co	Eau Claire				S		
694	10	OR	Gould, Inc	Portland	V		F			
695	02	NY	Cortese Landfill	Vil of Narrowsburg	V			S		
696	05	MN	St. Louis River Site	St. Louis County		R				I
697	05	MI	Auto Ion Chemicals, Inc	Kalamazoo	V		F			O
698	05	WI	Hagen Farm	Stoughton				S		
699	04	SC	Carolawn, Inc	Fort Lawn	V	R	F			O
700	07	IA	Midwest Manufacturing/North Farm	Kellogg		R				I
			Group 15 (HRS Scores 32.02–31.02)							
701	03	PA	Berks Sand Pit	Longswamp Township		R				O
702	09	CA	Valley Wood Preserving, Inc	Turlock	V			S		
703	03	PA	Butz Landfill	Stroudsburg					D	
704	05	MI	Sparta Landfill	Sparta Township				S		
705	05	IL	Acme Solvent (Morristown Plant)	Morristown	V	R				I
706	01	NH	Holton Circle Ground Water Contam	Londonderry					D	
707	02	NJ	Pomona Oaks Residential Wells	Galloway Township		R				O
708	02	NY	Rowe Industries Ground Water Cont	Noyack/Sag Harbor	V	R	F			O

APPENDIX B.—NATIONAL PRIORITIES LIST (BY RANK) MARCH 1989—Continued

NPL Rank	EPA Reg	St	Site Name	City/County	Response Category [1]					Cleanup Status [2]
709	03	PA	Hebelka Auto Salvage Yard	Weisenberg Township		R				
710	04	FL	Hipps Road Landfill	Duval County	V	R	F			O
711	05	MN	Long Prairie Ground Water Contam	Long Prairie		R				
712	05	MN	Waite Park Wells	Waite Park		R				
713	09	CA	Applied Materials	Santa Clara	V			S		O
714	09	CA	Intel Magnetics	Santa Clara	V			S		
715	09	CA	Intel Corp. (Santa Clara III)	Santa Clara	V			S		I
716	04	FL	Pepper Steel & Alloys, Inc	Medley		R	F			O
717	02	NY	Mattiace Petrochemical Co., Inc	Glen Cove		R				O
718	01	ME	O'Connor Co	Augusta	V	R				
719	05	WI	Oconomowoc Electroplating Co. Inc	Ashippin		R				
720	05	IN	Continental Steel Corp	Kokomo					D	
721	05	MI	Rasmussen's Dump	Green Oak Township		R				O
722	02	NY	Kenmark Textile Corp	Farmingdale	V			S		I
723	03	PA	Westline Site	Westline		R				O
724	04	KY	Maxey Flats Nuclear Disposal	Hillsboro	V	R	F	S		
725	08	MT	Mouat Industries	Columbus					D	
726	05	MI	J&L Landfill	Rochester Hills		R				
727	02	NY	Claremont Polychemical	Old Bethpage	V			S		
728	05	OH	Powell Road Landfill	Dayton		R				I
729	03	PA	Croydon TCE	Croydon		R				
730	04	SC	Medley Farm Drum Dump	Gaffney	V	R	F			O
731	04	SC	Elmore Waste Disposal	Greer		R				O
732	07	IA	Vogel Paint & Wax Co	Orange City				S		I
733	05	MN	Kurt Manufacturing Co	Fridley				S		
734	05	MI	Parsons Chemical Works, Inc	Grand Ledge					D	
735	03	PA	Revere Chemical Co	Nockamixon Township		R				O
736	05	MI	Ionia City Landfill	Ionia	V		F			I
737	06	TX	Koppers Co Inc (Texarkana Plant)	Texarkana	V		F			
738	08	CO	Lincoln Park	Canon City			F			
739	08	CO	Smuggler Mountain	Pitkin County	V		F			
740	05	IN	Wedzeb Enterprises, Inc	Lebanon			F	S		I
741	02	PR	GE Wiring Devices	Juana Diaz	V		F			
742	05	MI	Avenue "E" Ground Water Contamin	Traverse City				S		
743	05	OH	New Lyme Landfill	New Lyme		R				
744	02	NJ	Woodland Route 72 Dump	Woodland Township	V	R		S		
745	02	PR	RCA Del Caribe	Barceloneta	V		F			
746	05	MN	Koch Refining Co./N-Ren Corp	Pine Bend	V			S		
747	03	PA	Brodhead Creek	Stroudsburg	V	R	F	S		O
748	05	WI	Fadrowski Drum Disposal	Franklin			F			
749	10	OR	United Chrome Products, Inc	Corvallis		R				O
750	05	MI	Anderson Development Co	Adrian		R				
			Group 16 (HRS Scores 31.02–29.78)							
751	05	WI	Hunts Disposal Landfill	Caledonia			F			
752	05	MI	Shiawassee River	Howell		R				
753	06	OK	Tenth Street Dump/Junkyard	Oklahoma City		R	F			O
754	10	AK	Alaska Battery Enterprises	Fairbanks N Star Bor		R				I
755	03	PA	Taylor Borough Dump	Taylor Borough		R	F			C
756	03	DE	Halby Chemical Co	New Castle		R	F			
757	06	OK	Double Eagle Refinery Co	Oklahoma City					D	
758	04	GA	Mathis Bros Lf (S Marble Top Rd)	Kensington					D	
759	03	DE	Harvey & Knott Drum, Inc	Kirkwood	V	R				O
760	04	TN	Gallaway Pits	Gallaway		R	F			O
761	05	OH	Big D Campground	Kingsville			F			
762	06	AR	Midland Products	Ola/Birta		R				I
763	02	NY	Robintech, Inc./National Pipe Co	Town of Vestal	V	R	F			
764	02	NY	BEC Trucking	Town of Vestal			F			
765	03	PA	Strasburg Landfill	Newlin Township				S		O
766	06	OK	Fourth Street Abandoned Refinery	Oklahoma City					D	
767	05	WI	Tomah Armory	Tomah		R				
768	03	DE	Wildcat Landfill	Dover		R				
769	05	MI	Burrows Sanitation	Hartford	V	R				O
770	03	PA	Blosenski Landfill	West Caln Township		R	F			I
771	03	VA	Rhinehart Tire Fire Dump	Frederick County	V	R	F			O
772	03	DE	Delaware City PVC Plant	Delaware City	V		F			I
773	03	MD	Limestone Road	Cumberland	V	R				O
774	02	NY	Hooker (102nd Street)	Niagara Falls	V		F	S		
775	02	NJ	Higgins Farm	Franklin Township		R				O
776	06	NM	United Nuclear Corp	Church Rock	V		F			I
777	03	PA	Reeser's Landfill	Upper Macungie Twp		R				
778	03	VA	Rentokil, Inc. (VA Wood Pres Div)	Richmond	V		F			
779	06	AR	Industrial Waste Control	Fort Smith			F			

APPENDIX B.—NATIONAL PRIORITIES LIST (BY RANK) MARCH 1989—Continued

NPL Rank	EPA Reg	St	Site Name	City/County	Response Category [1]					Cleanup Status [2]
780	09	CA	Celtor Chemical Works	Hoopa		R				O
781	01	MA	Haverhill Municipal Landfill	Haverhill					D	
782	04	AL	Perdido Ground Water Contamin	Perdido	V					O
783	02	NY	Marathon Battery Corp	Cold Springs		R				
784	02	NY	Colesville Municipal Landfill	Town of Colesville	V			S		O
785	04	FL	Yellow Water Road Dump	Baldwin	V	R	F			O
786	05	OH	Skinner Landfill	West Chester		R				I
787	03	VA	First Piedmont Quarry (Route 719)	Pittsylvania County					D	
788	04	NC	Chemtronics, Inc	Swannanoa	V	R	F			
789	05	IN	MIDCO II	Gary	V	R	F			O
790	06	TX	Sheridan Disposal Services	Hempstead	V		F			O
791	07	KS	Pester Refinery Co	El Dorado				S		
792	03	MD	Kane & Lombard Street Drums	Baltimore		R				O
793	07	MO	Shenandoah Stables	Moscow Mills			F			I
794	07	IA	Shaw Avenue Dump	Charles City	V					I
795	03	PA	Berkley Products Co. Dump	Denver					D	
796	10	WA	Silver Mountain Mine	Loomis		R				O
797	06	TX	Petro-Chemical (Turtle Bayou)	Liberty County		R				I
798	05	OH	Republic Steel Corp. Quarry	Elyria			F			
799	05	MN	Ritari Post & Pole	Sebeka		R				
800	06	LA	Bayou Bonfouca	Slidell		R	F			I
			Group 17 (HRS Scores 29.76-28.50, except for health-advisory sites)							
801	09	CA	Intel Corp. (Mountain View Plant)	Mountain View	V		F			
802	09	CA	Raytheon Corp	Mountain View			F			I
803	05	MN	Agate Lake Scrapyard	Fairview Township		R				O
804	05	MI	Adam's Plating	Lansing					D	
805	06	AR	Jacksonville Municipal Landfill	Jacksonville		R				
806	06	AR	Rogers Road Municipal Landfill	Jacksonville		R				
807	03	VA	Saltville Waste Disposal Ponds	Saltville	V	R		S		O
808	04	SC	Palmetto Recycling, Inc	Columbia				S		O
809	01	MA	Shpack Landfill	Norton/Attleboro					D	
810	03	PA	Kimberton Site	Kimberton Borough	V			S		O
811	01	MA	Norwood PCBs	Norwood		R				O
812	02	NY	Warwick Landfill	Warwick					D	
813	02	NY	Sidney Landfill	Sidney					D	
814	10	WA	Pesticide Lab (Yakima)	Yakima					D	
815	05	IN	Lemon Lane Landfill	Bloomington	V		F			I
816	05	IN	Tri-State Plating	Columbus		R				
817	10	ID	Arrcom (Drexler Enterprises)	Rathdrum		R				I
818	01	NH	Coakley Landfill	North Hampton	V	R		S		O
819	04	NC	Potter's Septic Tank Service Pits	Maco		R				O
820	04	NC	ABC One Hour Cleaners	Jacksonville					D	
821	03	PA	Fischer & Porter Co	Warminster	V		F			O
822	03	PA	Elizabethtown Landfill	Elizabethtown					D	O
823	06	AR	Arkwood, Inc	Omaha	V		F	S		O
824	09	CA	Jibboom Junkyard	Sacramento		R				C
825	02	NJ	A.O. Polymer	Sparta Township		R				
826	05	WI	Wausau Ground Water Contamination	Wausau		R				O
827	02	NJ	Dover Municipal Well 4	Dover Township		R				
828	02	NJ	Rockaway Township Wells	Rockaway					D	O
829	02	NJ	Pohatcong Valley Ground Water Con	Warren County					D	
830	02	NJ	Garden State Cleaners Co	Minotola					D	
831	05	WI	Delavan Municipal Well #4	Delavan				S		
832	07	MO	North-U Drive Well Contamination	Springfield		R				O
833	09	CA	San Gabriel Valley (Area 3)	Alhambra		R				
834	09	CA	San Gabriel Valley (Area 4)	La Puente		R				
835	09	CA	Modesto Ground Water Contamin	Modesto					D	
836	10	WA	American Lake Gardens	Tacoma	V	R	F			I
837	10	WA	Greenacres Landfill	Spokane County	V	R				
838	10	WA	Northside Landfill	Spokane	V	R	F			O
839	06	OK	Sand Springs Petrochemical Cmplx	Sand Springs		R	F			O
840	06	TX	Pesses Chemical Co	Fort Worth		R	F			O
841	05	MN	East Bethel Demolition Landfill	East Bethel Township				S		
842	06	TX	Triangle Chemical Co	Bridge City		R				O
843	02	NJ	PJP Landfill	Jersey City		R		S		O
844	03	PA	Craig Farm Drum	Parker	V			S		O
845	03	PA	Voortman Farm	Upper Saucon Twp		R				O
846	05	IL	Belvidere Municipal Landfill	Belvidere		R				I
847	07	MO	Bee Cee Manufacturing Co	Malden		R				
848	02	NJ	Kauffman & Minteer, Inc	Jobstown					D	
849	03	PA	Lansdowne Radiation Site	Lansdowne		R				O

Number of NPL Sites: 849.

* = State top priority site.

[1] V = Voluntary or negotiated response R = Federal and State response. F = Federal enforcement S = State enforcement. D = Category to be determined.

[2] I = Implementation activity underway, one or more operable units O = One or more operable units completed; others may be underway C = Implementation activity completed for all operable units.

[FR Doc. 89-7419 Filed 3-30-89; 8:45 am]

BILLING CODE 6560-50

federal register

Friday
March 31, 1989

Part III

Department of Veterans Affairs

38 CFR Part 36

Loan Guaranty: Determination of Net Value and Payment of Loan Guaranty Claims; Proposed Regulations

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN: 2900-AD93

Loan Guaranty: Determination of Net Value

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulatory amendments.

SUMMARY: The Department of Veterans Affairs (VA) is proposing amendments to its loan guaranty regulations to revise the definition of the "net value" of a property to the Secretary of Veterans Affairs. Under the revised definition, the Government's cost of borrowing funds will be taken into account in determining "net value".

DATES: Comments must be received on or before May 1, 1989. Comments will be available for public inspection until May 10, 1989. The VA proposes to make these amendments effective October 1, 1989.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in room 132, Veterans Services Unit, at the above address between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until May 10, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard A. Levy, Assistant Director for Loan Management (261), Loan Guaranty Service, Veterans Benefits Administration, (202) 233-6376.

SUPPLEMENTARY INFORMATION: Under section 1810 of Title 38, United States Code, the VA guarantees a portion of the loan made to an eligible veteran to acquire or refinance a home, condominium, or manufactured home which is treated as real estate under State law, or to install certain energy conservation features or other home improvements. The guaranty is a promise by the Government to pay to the holder a portion of the veteran's indebtedness in the event of a loan default and eventual termination through foreclosure or other proceedings.

When a VA guaranteed loan goes into default and servicing efforts by the holder and VA fail, the holder proceeds with termination of the loan. The rights and duties of the holder and the VA in connection with termination of the loan and disposition of the property are governed by 38 CFR 36.4320. In most cases, the VA establishes a maximum price which the holder may bid at the loan foreclosure sale. Establishment of such a price, known as the "specified amount," occurs when it is determined that the net value of the real property to VA exceeds the unguaranteed portion of the indebtedness, and VA can reduce its maximum claim liability by acquiring and reselling the property. If the property is sold to the holder at the foreclosure sale for a price no higher than the amount specified by the VA, the holder may convey the property to the VA in return for payment of the specified amount. VA also pays the holder's claim for the difference between the price paid for the property, which must be credited to the loan indebtedness by the holder, and any balance remaining on the loan, but not to exceed the maximum amount of loan guaranty. In this manner, the VA may acquire the loan security (the home) and reduce its claim liability.

The formula for determining whether VA will offer the lender an election to convey the foreclosed property to the VA is set forth at 38 CFR 36.4320. A key component of this formula is the "net value" of the property, as defined in 38 CFR 36.4301. Essentially, "net value" is the fair market value of the property, minus the total of the costs the Secretary estimates would be incurred by the Government resulting from the acquisition and disposition of the property for property taxes, assessments, liens, property maintenance, property improvement, administration and resale. It is proposed to amend the definition to include the cost of funds to the Government during the expected period that VA would hold an acquired property in inventory as one of the cost items to be subtracted from the fair market value of the property to arrive at net value of the property to the Government.

The Federal Government is presently required to borrow money in the capital markets in order to cover all its operating expenses. The cost of borrowing these funds is a part of the true cost of running the Government. In the VA loan guaranty program, VA's outlays to acquire a foreclosed property are not recouped until such time as the property is sold. The cost of borrowing funds to acquire property can be estimated by multiplying the average holding time (expressed in years for properties sold during the preceding fiscal year), from property acquisition to resale, by a rate of interest to be determined by the Treasury Department in the last month of the preceding year. The rate would be based on market yields of outstanding obligations of the United States with remaining periods of maturity comparable to the average property holding time. This rate is similar to rates determined by Treasury for other agencies.

By including the imputed interest cost of holding properties in inventory, the revised definition of "net value" will more realistically reflect the true cost to the Government of a decision to provide the holder of a loan the option of conveying the property to the VA. This in turn will assure that VA does not acquire foreclosed properties except when it is in the best interest of the Government to do so.

Under 38 CFR 36.4323(e), any amounts paid by VA on account of a VA guaranteed home loan constitute a debt owing to the United States by the veteran. It is proposed to amend this section to exclude from the veteran's debt any amount attributable to the estimated interest costs to the Government for property acquisition and holding time which would not otherwise be included in such debt. VA does not believe it would be equitable to charge the veteran with the Government's estimated cost of borrowing the money to pay for the property to be acquired.

Editorial changes have also been made, to eliminate the use of gender specific pronouns, to assure the use of plain English, and to correct typographical errors in §§ 36.4319 through 36.4323.

The Secretary hereby certifies that these proposed regulatory amendments will not, if promulgated, have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. These proposed regulations simply assure that the VA's "net value" determinations realistically reflect the true cost to the Government of accepting conveyance of the property rather than paying the maximum claim. Lenders and holders of VA guaranteed loans will retain the right to payment of the full amount prescribed by law for claims on defaulted VA guaranteed loans. Pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory analysis requirements of sections 603 and 604.

The proposed regulatory amendments have been reviewed pursuant to Executive Order 12291 and have been found to be nonmajor regulation changes. The regulations will not impact on the public or private sectors as major rules. They will not have an annual effect on the economy of $100 million or

more; cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or have other 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.

Catalog of Federal Domestic Assistance Program Number is 64.114.

List of Subjects in 38 CFR Part 36

Condominium, Handicapped, Housing loan programs—housing and community development, Veterans.

These amendments are promulgated under authority granted the Secretary by sections 210(c), 1803(c)(1), 1820 and 1832 of title 38 United States Code, and the enabling legislation.

Approved: March 10, 1989.

Edward J. Derwinski,

Administrator.

38 CFR Part 36, Loan Guaranty, is proposed to be amended by as follows:

PART 36—[AMENDED]

1. In § 36.4301, the first sentence of the introductory text for the definition for "net value" is revised, an authority citation is added for the introductory text, and paragraph (4) and an authority citation are added to read as follows:

§ 36.4301 Definitions.

* * * * *

"Net value". The fair market value of real property, minus the total of the costs the Secretary estimates would be incurred by the Government resulting from the acquisition and disposition of the property for the Government's costs of funds from the time the property is acquired until it is sold, property taxes, assessments, liens, property maintenance, property improvement, administration, and resale. * * *

(Authority: 38 U.S.C. 1832)

* * * * *

(4) *Government cost of funds.* The estimated interest cost of funds payable for property acquisition is determined by multiplying the average holding time (expressed in years) from property acquisition to resale for properties acquired under § 36.4320 of this part which were sold during the preceding fiscal year by an interest rate equivalent to the yield on Treasury obligations with a maturity comparable to such average holding time. This yield is calculated from the "Treasury Market Bid Yields at Constant Maturities: Bills, Notes and Bonds" as prepared by the Department of the Treasury showing the average yields on Treasury obligations for selected maturities. Source data for the calculation are the average yields during the last month of the preceding fiscal year for the next lower and next higher maturities as compared to the average holding time. The yield for the average holding time is interpolated from the yields for these maturities. Based on fiscal year 1988 data, the percentage of fair market value representing the Government's cost of funds will be 4.45 percent. The fiscal year and the percentage will be updated annually through a notice in the **Federal Register.** The first three cost averages will be added and the sum will be divided by the average fair market value at the time of acquisition for properties which were sold during the 3 preceding fiscal years, and the percentage of fair market value representing the Government's cost of funds will be added to the quotient, to derive the percentage to be used in estimating net value. (The Secretary may, when determining property management costs, group properties in incremental value brackets.) The calculation of net value will be based on the actual cost incurred over the last 3 years plus the estimated interest cost to the Government of funds payable for property acquisition in the current fiscal year. Based on fiscal year 1988 data, the percentage to be used when calculating net value will be 15.08 percent, which consists of 10.63 percent representing estimated actual costs plus 4.45 percent representing estimated interest costs. The fiscal year and the percentages will be updated annually through a notice in the **Federal Register.**

(Authority: 38 U.S.C. 1832)

* * * * *

§ 36.4323 [Amended]

2. In § 36.4323, paragraph (a), remove the word "his" where it appears in the first sentence and add, in its place, the word "the".

In § 36.4323, paragraph (b), remove the word "him" where it appears.

In § 36.4323, paragraph (g), remove the word "1817(a)" where it appears and add, in its place, the word "1813".

3. In § 36.4323, paragraph (e) is revised and to read as follows:

§ 36.4323 Subrogation and indemnity.

* * * * *

(e) Any amounts paid by the Secretary on account of the liabilities of any veteran guaranteed or insured under the provisions of 38 U.S.C. Chapter 37 shall constitute a debt owing to the United States by such veteran. The amount of debt owing pursuant to this paragraph will exclude the amount by which inclusion of estimated interest costs to the Government for property acquisition and holding time in the determination of the net value of the property increased the claim paid by the Secretary.

(Authority: 38 U.S.C. 1832)

[FR Doc. 89-7661 Filed 3-29-89; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN: 2900-AD39

Loan Guaranty: Payment of Loan Guaranty Claims

AGENCY: Department of Veterans Affairs.[1]

ACTION: Proposed regulations.

SUMMARY: The Department of Veterans Affairs (VA) is proposing amendments to its loan guaranty regulations to implement the provisions of the Veterans' Home Loan Program Improvements and Property Rehabilitation Act of 1987. VA will continue to specify a minimum amount for credit to the veteran's indebtedness and accept conveyance of the security property only if, based on the net value of the property, it is in the Government's best interest to do so. The new law prescribes the use of different dates for use in computation of the loan indebtedness in connection with the determination of net value and payment of the claim under loan guaranty in cases involving VA requested forbearance, voluntary bankruptcy or excessive delay, caused by VA, in the liquidation sale. These amendments are designed to conform the regulations to the new law.

DATES: Comments must be received on or before May 1, 1989. Comments will be available for public inspection until May 10, 1989. It is proposed to make these regulations effective 30 days after final publication in the **Federal Register.**

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these changes to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in room 132, Veterans Services Unit, at the above

[1] On March 15, 1989, the Veterans Administration became the Department of Veterans Affairs (see 54 FR 10476).

address only between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays) until May 10 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard Levy, Assistant Director for Loan Management (261), Loan Guaranty Service, (202) 233–6376.

SUPPLEMENTARY INFORMATION: Under section 1810 of Title 38, United States Code, VA guarantees a portion of the loan made to an eligible veteran to acquire or refinance a home, condominium, or manufactured home which is treated as real estate under State law, or to install certain energy conservation features or other home improvements. The guaranty is a promise by the Government to pay a portion of the veteran's indebtedness in the event of a loan default and eventual termination through foreclosure or other proceedings.

When a VA guaranteed loan goes into default and servicing efforts by the holder and VA fail, the holder proceeds with termination of the loan. The rights and duties of the holder and VA in connection with termination of the loan and disposition of the property are governed by 38 CFR 36.4320. In most cases, VA established a maximum price which the holder may bid at the loan foreclosure sale. Establishment of such a price, known as the "specified amount," occurs when it is determined that the net value of the real property to VA exceeds the unguaranteed portion of the indebtedness, and VA can reduce its maximum claim liability by acquiring and reselling the security. If the property is sold to the holder at the foreclosure sale for a price no higher than the amount specified by VA, the holder may convey the property to VA in return for payment of the specified amount. VA also pays the holder's claim for the difference between the price paid for the property, which must be credited to the loan indebtedness by the holder, and any balance remaining on the loan, but not to exceed the maximum amount of loan guaranty. In this manner, VA acquires the loan security (the home) and normally reduces its claim liability.

The total indebtedness upon which a guaranty claim is based usually includes interest from the date of first uncured default until the date of loan termination. When the termination of a loan is delayed, the potential claim amount increases because of the interest charge which continues to accrue. If the delay extends for a sufficient time, a case in which VA would otherwise have acquired the property could become one in which VA will pay the maximum claim and allow the lender to dispose of the property. Lenders prefer having the election to convey the property to the Administrator and try to minimize the number of cases in which they must themselves dispose of the foreclosed property. These cases are sometimes referred to as "no-bid" cases, as VA does not provide a minimum bid which the lender must make at foreclosure, since VA will not be offering to accept conveyance of the property at that price.

Pub. L. 100–198 reduces the number of no-bids in cases involving either VA requested forbearance, voluntary bankruptcy or excessive delay in the liquidation sale caused by VA. In these cases, the law requires an adjustment of the dates used by VA to decide whether or not to offer the holder an election to convey the property and to compute the claim. Under the new formulas, VA will exclude from the guaranty claim payment and from the no-bid calculation interest which accrues during periods of forbearance granted at VA's request, and when the veteran files for voluntary bankruptcy. As a result, a number of cases which would otherwise result in "no-bids" will instead result in VA acquiring the property and paying a smaller claim. The cutoff adjustment in a VA-requested forbearance or bankruptcy situation will only be made if doing so will result in VA offering to acquire the property when the case would otherwise be a no-bid. In cases where VA is at fault for the delay in foreclosure, for example, a failure to provide bidding instructions in a timely manner, VA will also exclude from the no-bid calculation interest which accrues during the period of delay, but will allow such interest in the computation of the guaranty claim.

Section 36.4319(b) will be amended to revise and clarify the time frame within which the loan holder is expected to deliver a copy of the notice of sale. This section will also be amended to require the holder to submit a statement of the account indebtedness and a copy of the liquidation appraisal request at the time the notice of sale is delivered, unless these items were previously submitted. The statement of account is necessary for VA to determine whether VA will specify an amount and offer to acquire the property. The liquidation appraisal is also necessary in this regard and the appraisal request shows that it has been ordered by the holder in a timely fashion.

The second sentence of § 36.4320(f), concerning the period for which interest may be included in a claim, has been deleted as it unnecessarily duplicates the formulas set forth in § 36.4321.

Section 36.4321 has been revised to incorporate the new formulae for computing claims and net value, as previously discussed, in accordance with Pub. L. 100–198.

Editorial changes have also been made, to eliminate the use of gender specific pronouns, to assure the use of plain English, and to correct typographical errors.

The Secretary hereby certifies that these proposed regulatory amendments will not, if promulgated, have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. These proposed regulations simply implement new claims formulae in accordance with Pub. L. 100–198, for defaulted VA guaranteed loans. Pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory analysis requirements of sections 603 and 604.

The proposed regulatory amendments have been reviewed pursuant to Executive Order 12291 and have been found to be nonmajor regulation changes. The regulations will not impact on the public or private sectors as major rules. They will not have an annual effect on the economy of $100 million or more; cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or have other 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.

Catalog of Federal Domestic Assistance Program Number is 64.114.

These amendments are promulgated under authority granted the Secretary by sections 210(c), 1803(c)(1), 1832 and 1820 of Title 38, United States Code, and the enabling legislation.

List of Subjects in 38 CFR Part 36

Condominium, Handicapped, Housing loan programs-housing and community development, Veterans.

Approved: November 9, 1988.

Thomas K. Turnage,

Administrator.

38 CFR Part 36, Loan Guaranty, is proposed to be amended as follows:

PART 36—[AMENDED]

1. In § 36.4319, paragraph (b), the last sentence of paragraph (d), paragraph (f), and their authority citations and the authority citation for paragraph (e) are revised to read as follows:

§ 36.4319 Legal proceedings.

* * * * *

(b) A copy of a notice of sale shall be similarly delivered by the holder, or the holder's agent or trustee, to the Secretary at the VA Regional Office of jurisdiction within 30 days prior to the scheduled liquidation sale, or 5 days after the date of first publication of the notice, whichever is later. A copy of any other notice of sale or acquisition of the property served on the holder or advice of any sale of which the holder has knowledge shall be similarly delivered to the Secretary, including any such notice of a tax sale or other superior lien or judicial sale. Such notice shall be accompanied by a statement of the account indebtedness and a copy of the liquidation appraisal request, if not previously delivered.

(Authority: 38 U.S.C. 1832)

* * * * *

(d) * * * Within the time required by applicable law, or rule of court, the Administrator will cause appropriate special or general appearance to be entered in the case by an authorized attorney.

(Authority: 38 U.S.C. 1832)

(e) * * *

(Authority: 38 U.S.C. 1832)

(f) If following a default, the holder does not bring appropriate action within 30 days after requested in writing by the Secretary to do so, or does not prosecute such action with reasonable diligence, the Secretary may at the Secretary's option fix a date beyond which no further charges may be included in the computation of the indebtedness for the purposes of accounting between the holder and the Secretary. The Secretary may also intervene in, or begin and prosecute to completion any action or proceeding, in the Secretary's name or in the name of the holder, which the Secretary deems necessary or appropriate. The Secretary shall pay, in advance if necessary, any court costs or other expenses incurred by the Secretary or properly taxed against the Secretary in any such action to which the Secretary is a party, but may charge the same, and also a reasonable amount for legal services, against the guaranteed or insured indebtedness, or the proceeds of the sale of the security to the same extent as the holder (see § 36.4313 of this part), or otherwise collect from the holder any such expenses incurred by the Secretary because of the neglect or failure of the holder to take or complete proper action. The rights and remedies herein reserved are without prejudice to any other rights, remedies, or defenses, in law or in equity, available to the Secretary.

(Authority: 38 U.S.C. 1832)

2. In § 36.4320, the introductory text and authority citation for the introductory text of paragraph (f) are revised to read as follows:

§ 36.4320 Sale of security.

* * * * *

(f) The holder in accounting to the Secretary in connection with the disposition of any property in accordance with paragraph (a), (b), or (d) of this section, may include as a part of the indebtedness all actual expenses or costs of the proceedings, paid by the holder, within the limits defined in § 36.4313 of this part. In connection with the conveyance or transfer of property to the Secretary the holder may include in accounting to the Secretary the following expense items if actually paid by the holder, in addition to the consideration payable for the property under paragraph (g) of this section:

(Authority: 38 U.S.C. 1832)

* * * * *

3. Section 36.4321 is revised to read as follows:

§ 36.4321 Computation of guaranty claims; Subsequent accounting.

(a) Subject to the limitation that the total amounts payable shall in no event exceed the amount originally guaranteed, the amount payable on a claim for the guaranty shall be the percentage of the loan originally guaranteed applied to the indebtedness computed as of the earliest of the following dates:

(1) The date of the liquidation sale; or,

(2) The cutoff date established under paragraph (f) of § 36.4319 of this part; or,

(3) The cutoff date established under paragraph (b) of this section.

Deposits or other credits or setoffs legally applicable to the indebtedness on the date of computation shall be applied in reduction of the indebtedness on which the claim is based. Any escrowed or earmarked funds not subject to superior claims of third persons must likewise be so applied.

(b) In any case in which there is a delay in the liquidation sale caused by:

(1) The holder of the loan extending forbearance in excess of 30 days at the request of the Secretary, the cutoff date for computation of the indebtedness shall be 30 days after the date the Secretary determines the liquidation sale would have taken place if there had been no such delay, provided: the net value of the real property securing the loan does not exceed the unguaranteed portion of the indebtedness as of the actual liquidation sale date *and* such net value will exceed the unguaranteed portion of the indebtedness as of the cutoff date;

(2) The Secretary, including the Secretary's failure to provide the holder with advice as to the net value of the security within two working days prior to a scheduled liquidation sale but excluding forbearance exercised at the request of the Secretary, with respect to a holder which has complied with the provisions of § 36.4319(b) of this part, the cutoff date for computation of the indebtedness shall be the date the liquidation sale would have taken place if there had been no such delay;

(3) A voluntary case commenced under Title 11, United States Code (relating to bankruptcy), the cutoff date for computation of the indebtedness shall be 30 days after the date the Secretary determines the liquidation sale would have taken place if there had been no such delay, provided: the net value of the real property securing the loan does not exceed the unguaranteed portion of the indebtedness as of the actual liquidation sale date *and* such net value will exceed the unguaranteed portion of the indebtedness as of the cutoff date.

(c) *Adjustment of cutoff dates.* (1) Any cutoff date established under § 36.4319(f) of this part or paragraph (b) of this section will be adjusted by a period of months corresponding to the number of installment payments, if any, received by the holder and credited to the indebtedness after the cutoff date is established.

(2) When a cutoff date is established under paragraph (b)(2) of this section, the actual liquidation sale date will be used for purposes of computing the indebtedness in any subsequent accounting between the holder and the Secretary; if an earlier cutoff date is in effect at the time delay in a liquidation sale is caused by the Secretary, such date will not be modified by application of the provisions of paragraph (b)(2) of this section, but will be extended by an interval corresponding to the delay in the liquidation sale caused by the Secretary for purposes of computing the indebtedness in any subsequent accounting between the holder and the Secretary.

(3) Any cutoff date established under § 36.4319 of this part or paragraph (b) of this section will be considered to be the liquidation sale date. Such date will be modified in accordance with paragraph (b) of this section if the provisions of that paragraph are applicable after such date has been established.

(Authority: 38 U.S.C. 210(c))

(d) Credits accruing from the proceeds of a sale or other disposition of the security subsequent to the date of computation, and prior to the submission of this claim, shall be reported to the Secretary incident to such submission, and the amount payable on the claim shall in no event exceed the remaining balance of the indebtedness.

(Authority: 38 U.S.C. 210(c))

(e) The claimant shall be deemed to have received as trustee for the benefit of the United States any amounts received on account of the indebtedness after the date of the claim, from the proceeds of a sale of the security or otherwise, to the extent such credits exceed the balance of the indebtedness unsatisfied by the payment of the guaranty. The claimant shall immediately pay such amounts to the Secretary to the extent of the debtor's liability to the Secretary as guarantor.

(Authority: 38 U.S.C. 210(c))

[FR Doc. 89-7662 Filed 3-29-89; 8:45 am]

BILLING CODE 8320-01-M

federal register

Friday
March 31, 1989

Part IV

Department of Labor

Wage and Hour Division

29 CFR Part 500

Migrant and Seasonal Agricultural Worker Protection Regulations; Final Rule

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 500

Migrant and Seasonal Agricultural Worker Protection Regulations

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This document provides the final text of Regulations, 29 CFR Part 500 reflecting: (1) Changes in the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) concerning the utilization of undocumented workers brought about by the Immigration Reform and Control Act of 1986 (IRCA); (2) clarification of registration procedures concerning submission of renewal applications; and (3) clarification of the definition of "on a seasonal or other temporary basis." Proposed regulations were published on May 6, 1987.

Also included in the proposed rule were provisions applicable to employers of special agricultural workers, including "replenishment workers" (admitted beginning in 1990). Those provisions have been deleted from this final rule since the rules concerning Reporting and Employment Requirements for Employers of Certain Workers Employed in Seasonal Agricultural Services are covered in 29 CFR Part 502, which was published as a final rule on September 9, 1988. This document provides the Department's response to the remaining comments received on the proposed regulations. In addition, this document provides changes designed to clarify the administrative procedure under which a party may request review by the Secretary of an Administrative Law Judge Decision and Order.

EFFECTIVE DATE: These final regulations will become effective May 1, 1989.

FOR FURTHER INFORMATION CONTACT: Paula V. Smith, Administrator, Telephone (202) 523-8305. This is not a toll free number.

SUPPLEMENTARY INFORMATION: On May 6, 1987, a notice of proposed rulemaking with a request for comments was published in the **Federal Register** (52 FR 16859) to implement changes to MSPA resulting from IRCA and for other reasons.

Interested persons were afforded the opportunity to submit comments to the Wage and Hour Division within 30 days after publication of the proposed regulation.

Background

MSPA was enacted in 1983 and, like its predecessor the Farm Labor Contractor Registration Act (FLCRA), specifically prohibited the knowing employment of aliens not lawfully admitted for permanent residence or who had not been authorized by the Attorney General to accept employment. This prohibition was applicable only to farm labor contractors. Until 1986, FLCRA and MSPA were the only Federal laws with such a prohibition. Sanctions for violation included assessment of civil money penalties, injunctive action, and the revocation or refusal to issue or renew a contractor's certificate of registration.

Enactment of IRCA made the prohibition against the knowing employment of unauthorized workers applicable to all employers. The prohibition became part of the Immigration and Nationality Act (INA) and was removed from MSPA. Determinations regarding the status of aliens are the responsibility of the Immigration and Naturalization Service (INS) and are subject to regulations issued by that agency. Accordingly, MSPA regulations are amended to reflect the changes required by IRCA. It should be noted, however, that a determination by INS that a farm labor contractor has knowingly employed an unauthorized alien is still a basis for DOL action regarding that contractor's certificate of registration.

IRCA also requires the furnishing of certificates to an agent of the United States Government by all employers who, during the period October 1, 1988 to September 30, 1992, employ workers whose status was adjusted under Sections 210 (seasonal agricultural workers) and 210A (additional seasonal agricultural workers, or replenishment agricultural workers) of the INA in seasonal agricultural services. Additional reports are required during the period October 1, 1989, to September 30, 1992, to replenishment agricultural workers who are admitted under section 210A engaged in seasonal agricultural services. Special employment protection is also provided with respect to such replenishment workers. All of these requirements are set forth in full in 29 CFR Part 502, 53 FR 35154 (September 9, 1988). Therefore they are not included in this regulation.

Discussion of Comments

Three comments were received concerning seven sections of the proposed regulations. The following summarizes the comments received, states the Department's response to those comments and indicates any changes which have been made as a result of those comments on a section-by-section basis. Discussion of comments on §§ 500.171 and 500.172 concerning protections afforded with respect to replenishment workers is not included but these comments were considered in the promulgation of Part 502.

Section 500.20(y) Definitions

One commenter expressed the view that the language in paragraph (y) stating that "the Immigration and Nationality Act (INA) as amended by the Immigration Reform and Control Act of 1986 (IRCA) is codified in 8 U.S.C. 1101 *et seq.* . . ." is in error and has, in fact, never been codified. INA has, however, been set out in the U.S. Code at Title 8. The language in paragraph (y) is, therefore, amended to read "set out" instead of "codified."

Section 500.51(g) Refusal To Issue or To Renew, or Suspension or Revocation of Certificate of Registration

One commenter suggested that the taking of certificate action against a farm labor contractor who is found to have violated section 274(a) (1) or (2) of INA, which prohibits the knowing employment of illegal aliens, should be reserved for "pattern and practice" violators under INA and/or for violators who have not paid fines and penalties levied by INA after issuance of final orders. This section lists the criteria under which the Secretary may initiate an action to deny a farm labor contractor certificate of registration. Since paragraph (g) reflects the actual criteria of the INA, no change was made to this section.

Section 500.212 Request for Hearing

One commenter expressed concern that the time period for requesting a hearing was being changed from ". . . no later than thirty (30) days after service of the notice . . . 'to' . . . no later than thirty (30) days after the date of issuance of the notice. . . ." The time period for requesting a hearing has not been changed. The new language provides clarification of the existing procedures as governed by the "Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges" as stated in § 500.219 of these regulations. No change was made.

Other Provisions

No comments were received on the following proposed amendments, which are being adopted as final.

Section 500.1(i)(4) Purpose and Scope

Section 500.1(i)(4) discusses the fact that MSPA prohibits a farm labor contractor from recruiting, hiring, employing, or using, with knowledge, the services of aliens not lawfully admitted for permanent residence or who have not been authorized by the Attorney General to accept employment. It also discusses the use of optional form WH-509 to self certify that an applicant is a citizen of the U.S. Since IRCA removes the prohibition concerning illegal aliens from MSPA and these regulations, this section and form WH-509 are deleted.

Section 500.20 Definitions

Both "migrant agricultural worker" (defined in paragraph (p)) and "seasonal agricultural worker" (defined in paragraph (r)) are defined as "an individual who is employed in agricultural employment of a seasonal or other temporary nature. . . ." Following this common beginning, each definition explained the provisions unique to that category of worker. The term "on a seasonal or other temporary basis" was defined within the discussion of "seasonal agricultural worker," although it was intended to apply equally to both types of agricultural worker. In order to clarify that "on a seasonal or other temporary basis" pertains equally to both a "migrant agricultural worker" and a "seasonal agricultural worker," this definition is being redesignated as paragraph "s." All subsequent paragraphs are also redesignated to maintain the proper alphabetical sequence.

Section 500.50(b)(1) Duration of Certificate

Section 500.50(b)(1) is expanded to fully explain what constitutes the "filing" of an application for renewal of a certificate of registration.

Section 500.58 Prohibition Against Recruiting, Hiring, Employing, or Using an Alien not Lawfully Admitted for Permanent Residence or Authorized by Attorney General to Accept Employment

Since IRCA removes the prohibition concerning illegal aliens from MSPA and these regulations, this section is deleted.

Section 500.59 Good Faith Reliance on Documents

Since IRCA removes the prohibition concerning illegal aliens from MSPA and these regulations, this section is deleted.

Section 500.147 Continuation of Matters Involving Violations of Section 106 of MSPA

IRCA removed the prohibition concerning illegal aliens from MSPA and these regulations. This new section provides that any matter involving a certificate action or a civil money penalty assessment, for a violation of section 106 of MSPA or section 500.58 of these regulations, which occurred prior to June 1, 1987, shall continue through final administrative determination.

Additional Procedural Changes

The following procedural amendments contained in § 500.220 and §§ 500.263 through 500.269 are designed to clarify the administrative procedure under which a party may request review by the Secretary of an Administrative Law Judge Decision and Order, and are being adopted as a final rule without prior notice and comment. The Department has determined that these amendments need not be published as a proposed rule, as generally required by the Administrative Procedure Act (APA), since this rulemaking merely reflects agency organization, procedure, or practice, which is thus exempt from notice and comment by virtue of section 553(b)(A) of the APA.

Section 500.220 General

A minor amendment is made to § 502.220 to conform to the rules of the Department's Administrative Law Judges at 29 CFR Part 18. Thus the regulation provides that where an exception is filed by mail, five days will be added to the prescribed time for filing.

Section 500.263 Authority of the Secretary

Section 500.263 is amended to provide that the Secretary may modify a decision whenever in the Secretary's view it warrants modification.

Section 500.264 Procedures for Initiating Review

A new § 500.264 spells out the procedures for petitioning for review by the Secretary.

Section 500.265 Implementation by the Secretary

Section 500.265 makes it clear that the Secretary may exercise review on the Secretary's own motion or acceptance of a party's petition, and provides the content of the Secretary's Notice of Intent to Modify or Vacate the Decision.

Section 500.267 Filing and Service

This section specifies filing procedures.

Section 500.268 Final Decision of the Secretary

This section has been amended to provide that the Secretary's decision shall be issued within 120 days from the Secretary's Notice of Intent, granting the petition for review.

Section 500.269 Stay Pending Decision of the Secretary

This section has been amended to provide that the Secretary will seek a stay of proceedings in district court where the Secretary has issued a Notice of Intent. In addition, the section makes it clear that filing a petition with the Secretary does not toll the time for filing an appeal in district court.

Editorial Changes

The following editorial changes have been made to improve the rule.

Authority

The authority citation for Part 500 is revised to reference the Immigration and Nationality Act, section 210A(f), Pub. L. 99-603, 100 Stat. 3359 (8 U.S.C. 1161(f)).

Table of Contents

Subparts B, E, and F, of the Table of Contents have been revised.

Section 500.20 Definitions

In paragraphs (p)(1)(ii) and (r)(2)(i)(C), the section reference is corrected to read 101(a)(15)(H)(ii)(a).

Section 500.220 Service of Determinations and Computation of Time

The heading for this section has been changed but the content is essentially the same as stated in the proposed rule. The Department has concluded that the rule will be improved by adopting the language of those sections in 29 CFR Part 18 which were previously referenced.

Executive Order 12291

These regulations are not a major rule under Exective Order 12291 because they are not likely to result in (1) an annual effect in the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

The Department believes that this rule will have no "significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act (Pub. L. 96–354.94 Stat. 1164 (5 U.S.C. 605(b)). The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. This conclusion is reached because the rule does not, in itself, impose any additional requirements upon small entities. This rule implements changes to MSPA that result from the enactment of IRCA and makes other changes for clarification purposes. Accordingly, no regulatory flexibility analysis is required.

Paperwork Reduction Act

This regulation does not contain any new information collection requirements and does not modify any existing requirements. Thus, the regulation is not subject to section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3504(h).

List of Subjects in 29 CFR Part 500

Administrative practice and procedure, Agricultural associations, Agricultural worker, Aliens, Carpooling, Day-Haul, Farmer, Farm labor contractor, Health, Housing, Housing standards, Immigration, Insurance, Investigation, Migrant agricultural workers, Migrant labor, Motor carriers, Motor vehicle safety, Occupational safety and health, Penalties, Reporting requirements, Seasonal agricultural workers, Transportation, Wages, Manpower training programs, Labor, Safety.

For the reasons set out in the preamble, Chapter V of Title 29 of the Code of Federal Regulations, Part 500, is amended to read as set forth below.

Signed at Washington, DC this 23rd day of March, 1989.

Elizabeth Dole,

Secretary of Labor.

Alan C. McMillian,

Acting Assistant Secretary for Employment Standards.

Paula V. Smith,

Administrator, Wage and Hour Division, Employment Standards Administration.

PART 500—[AMENDED]

29 CFR Part 500 is amended as follows:

1. The authority citation for Part 500 is revised to read as set forth below.

Authority: Pub. L. 97–470, 96 Stat. 2583, as amended (29 U.S.C. 1801–1872); Secretary's Order No. 5–83, 48 FR 15352; and Employment Standards Order No. 83–1, 48 FR 15352; Immigration and Nationality Act, sec. 210A(f), Pub. L. 99–603, 100 Stat. 3359 (8 U.S.C. 1161 (f)).

2. Subparts B, E, and F of the table of contents have been revised to read as follows:

Subpart B—Registration of Farm Labor Contractors and Employees of Farm Labor Contractors Engaged in Farm Labor Contracting Activities

Registration Requirements: General

Sec.
500.40 Registration in general.
500.41 Farm labor contractor is responsible for actions of his farm labor contractor employee.
500.42 Certificate of Registration to be carried and exhibited.
500.43 Effect of failure to produce certificate.

Applications and Renewal of Farm Labor Contractor and Farm Labor Contractor Employee Certificates

500.44 Form of application.
500.45 Contents of application.
500.46 Filing an application.
500.47 Place for filing application.

Action on Application

500.48 Issuance of certificate.
500.50 Duration of certificate.
500.51 Refusal to issue or to renew, or suspension or revocation of certificate.
500.52 Right to hearing.
500.53 Nontransfer of certificate.
500.54 Change of address.
500.55 Changes to or amendments of certificate authority.
500.56 Replacement of Certificate of Registration or Farm Labor Contractor Employee Certificate.

Additional Obligations of Farm Labor Contractors and Farm Labor Contractor Employees

500.60 Farm labor contractors' recruitment, contractual and general obligations.
500.61 Farm Labor contractors must comply with all worker protections and all other statutory provisions.
500.62 Obligations of a person holding a valid Farm Labor Contractor Employee Certificate of Registration.

Subpart E—Enforcement

500.140 General.
500.141 Concurrent actions.
500.142 Representation of the Secretary.
500.143 Civil money penalty assessment.
500.144 Civil money penalties—payment and collection.
500.145 Registration determinations.
500.146 Continuation of matters involving violations of FLCRA.
500.147 Continuation of matters involving violations of section 106 of MSPA.

Agreements With Federal and State Agencies

500.155 Authority.
500.156 Scope of agreements with Federal agencies.
500.157 Scope of agreements with State agencies.
500.158 Functions delegatable.
500.159 Submission of plan.
500.160 Approved State plans.
500.161 Audits.
500.162 Reports.

Central Public Registry

500.170 Establishment of registry.

Subpart F—Administrative Proceedings

General

500.200 Establishment of procedures and rules of practice.
500.201 Applicability of procedures and rules.

Procedures Relating to Hearing

500.210 Written notice of determination required.
500.211 Contents of notice.
500.212 Request for hearing.

Procedures Relating to Substituted Service

500.215 Change of address.
500.216 Substituted service.
500.217 Responsibility of Secretary for service.

Rules of Practice

500.220 General.
500.221 Commencement of proceeding.
500.222 Designation of record.
500.223 Caption of proceeding.

Referral for Hearing

500.224 Referral to Administrative Law Judge.
500.225 Notice of docketing.
500.226 Service upon attorneys for the Department of Labor—number of copies.

Procedures Before Administrative Law Judge

500.231 Appearances; representation of the Department of Labor.
500.232 Consent findings and order.

Post-Hearing Procedures

500.262 Decision and order of Administrative Law Judge.

Modification of Vacation of Order of Administrative Law Judge

500.263 Authority of the Secretary.
500.264 Procedures for initiating review.
500.265 Implementation by the Secretary.
500.266 Responsibility of the Office of Administrative Law Judges.
500.267 Filing and Service.
500.268 Final decision of the Secretary.
500.269 Stay pending decision of the Secretary.

Record

500.270 Retention of official record.
500.271 Certification of official record.

3. Section 500.0 is amended by designating the existing undesignated paragraph as (a) and by adding a new paragraph (b) which reads as follows:

§ 500.0 Introduction.

* * * * *

(b) These regulations include provisions necessitated by the Immigration Reform and Control Act's (IRCA) amendment to the Immigration and Nationality Act (INA). IRCA amended MSPA to remove section 106 thereof prohibiting the employment of illegal aliens. Matters concerning certificate actions or the assessment of civil money penalties, for a violation of section 106 of MSPA which occurred prior to June 1, 1987, continue through final administrative determination as stated in § 500.147.

7. Section 500.20 is amended by revising paragraph (p)(1)(ii) to read as follows:

§ 500.20 Definitions.

* * * * *

(p) * * *

(1) * * *

(ii) Any temporary nonimmigrant alien who is authorized to work in agricultural employment in the United States under sections 101(a)(15)(H)(ii)(a) and 214(c) of the Immigration and Nationality Act.

* * * * *

8. Section 500.20 is amended by revising paragraph (r)(2)(i)(C) to read as follows:

§ 500.20 Definitions.

* * * * *

(r) * * *

(2) * * *

(i) * * *

(C) Any temporary nonimmigrant alien who is authorized to work in agricultural employment in the United States under sections 101(a)(15)(H)(ii)(a) and 214(c) of the Immigration and Nationality Act.

* * * * *

9. In § 500.20, paragraphs (s) through (w) are designated as paragraphs (t) through (x); and paragraph (r)(2)(iii), introductory text is redesignated as paragraph (s) introductory text; paragraph (r)(2)(iii)(A) is redesignated as paragraph (s)(1); paragraph (r)(2)(iii)(B) is redesignated as paragraph (s)(2): paragraph (r)(2)(iv) is redesignated as paragraph (s)(3); paragraph (r)(2)(v) is redesignated as paragraph (s)(4).

10. Section 500.20 is further amended by adding a new paragraph (y) which reads as follows:

§ 500.20 Definitions

* * * * *

(y) The "Immigration and Nationality Act" (INA) as amended by the "Immigration Reform and Control Act of 1986" (IRCA) to effectively control unauthorized immigration to the United States and for other purposes, is set out in 8 U.S.C. 1101 *et seq.*

* * * * *

13. In section 500.50, paragraph (b)(1) is revised to read as follows:

§ 500.50 Duration of certificate.

* * * * *

(b) *Certificate renewal of farm labor contractors and farm labor contractor employees.* (1) A certificate issued under the Act and these regulations may be temporarily extended by the filing of a properly completed and signed application with the Secretary at least thirty days prior to the expiration date. "Filing" may be accomplished by hand delivery, certified mail, or regular mail.

(i) If the application for renewal is filed by regular mail or if it is delivered in person by the applicant, it must be *received* by the Department of Labor or an authorized representative of the Department of Labor at least 30 days prior to the expiration date shown on the current certificate.

(ii) If the application for renewal is filed by certified mail, it must be *mailed* at least 30 days prior to the expiration date shown on the current certificate.

Where timely application for renewal has been filed, the authority to operate pursuant to a valid certificate under the Act and these regulations shall continue until the renewal application has been finally determined by the Secretary.

* * * * *

14. Section 500.51 is amended by adding a new paragraph (g) which reads as follows:

§ 500.51 Refusal to issue or to renew, or suspension or revocation of certificate.

* * * * *

(g) Has been found to have violated paragraph (1) or (2) of section 274A(a) of the Immigration and Nationality Act (INA) by hiring, recruiting, or referring for a fee, for employment in the United States, (1) an alien knowing the alien is an unauthorized alien as defined in section 274A(h)(3) of INA with respect to such employment, or (2) an individual without complying with the requirements concerning verification of the person's identity and employment authorization as stated in section 274A(b) of INA.

§§ 500.58 and 500.59 [Removed]

15. Sections 500.58 and 500.59 and the undesignated center heading preceding them are removed.

16. Section 500.147 is added to read as follows:

§ 500.147 Continuation of matters involving violations of section 106 of MSPA.

Any matter involving the revocation, suspension, refusal to issue or to renew a certificate of registration or any matter involving the assessment of a civil money penalty, for a violation of section 106 of MSPA, which occurred prior to June 1, 1987, shall continue through final administrative determination in accordance with the provisions of MSPA and these regulations.

19. In § 500.212, paragraph (a) is revised to read as follows:

§ 500.212 Request for hearing.

(a) Any person desiring to request an administrative hearing on a determination referred to in § 500.210 shall make such request in writing to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, no later than thirty (30) days after the date of issuance of the notice referred to in § 500.210.

* * * * *

20. In § 500.212, paragraph (b) is redesignated as paragraph (c); and paragraph (c) is redesignated as paragraph (b).

§ 500.220 [Redesignated as § 500.219]

21. Section 500.220 is redesignated as § 500.219.

22. A new § 500.220 is added to read as follows:

§ 500.220 Service of determinations and computation of time.

(a) Service of determinations to suspend, revoke, refuse to issue, or refuse to renew a certificate of registration or to assess a civil money penalty shall be made by personal service to the individual, officer of a corporation, or attorney of record or by mailing the determination to the last known address of the individual, officer, or attorney. If done by certified mail, service is complete upon mailing. If done by regular mail or in person, service is complete upon receipt by the addressee or the addressee's representative;

(b) Time will be computed beginning with the day following the action and includes the last day of the period unless it is a Saturday, Sunday, or Federally observed holiday, in which case the time period includes the next business day; and

(c) When a request for hearing is filed by mail, five (5) days shall be added to the prescribed period during which the party has the right to request a hearing on the determination.

23. Section 500.263 is revised as follows:

Modification or Vacation of Order of Administrative Law Judge

§ 500.263 Authority of the Secretary.

The Secretary may modify or vacate the Decision and Order of the Administrative Law Judge whenever he concludes that the Decision and Order:

(a) Is inconsistent with a policy or precedent established by the Department of Labor,

(b) Encompasses determinations not within the scope of the authority of the Administrative Law Judge,

(c) Awards attorney fees and/or other litigation expenses pursuant to the Equal Access to Justice Act which are unjustified or excessive, or

(d) Otherwise warrants modifying or vacating.

§ 500.264, 500.265, 500.266 [Removed and Redesignated]

24. Section 500.266 is removed, and §§ 500.264 and 500.265 are redesignated as §§ 500.265 and 500.266, and a new § 500.264 is added as follows:

§ 500.264 Procedures for initiating review.

(a) Within twenty (20) days after the date of the decision of the Administrative Law Judge, the respondent, the Administrator, or any other party desiring review thereof, may file with the Secretary an original and two copies of a petition for issuance of a Notice of Intent as described under section 500.265. The petition shall be in writing and shall contain a concise and plain statement specifying the grounds on which review is sought. A copy of the Decision and Order of the Administrative Law Judge shall be attached to the petition.

(b) Copies of the petition shall be served upon all parties to the proceeding and on the Chief Administrative Law Judge.

25. Section 500.265 as redesignated is revised to read as follows:

§ 500.265 Implementation by the Secretary.

(a) Whenever, on the Secretary's own motion or upon acceptance of a party's petition, the Secretary believes that a Decision and Order may warrant modifying or vacating, the Secretary shall issue a Notice of Intent to modify or vacate.

(b) The Notice of Intent to Modify or Vacate a Decision and Order shall specify the issue or issues to be considered, the form in which submission shall be made (i.e., briefs, oral argument, etc.), and the time within which such presentation shall be submitted. The Secretary shall closely limit the time within which the briefs must be filed or oral presentations made, so as to avoid unreasonable delay.

(c) The Notice of Intent shall be issued within thirty (30) days after the date of the Decision and Order in question.

(d) Service of the Notice of Intent shall be made upon each party to the proceeding, and upon the Chief Administrative Law Judge, in person or by certified mail.

§§ 500.267 and 500.268 [Redesignated as 500.268 and 500.269].

26. Sections 500.267 and 500.268 are redesignated as §§ 500.268 and 500.269 and a new § 500.267 is added as follows:

§ 500.267 Filing and service.

(a) *Filing.* All documents submitted to the Secretary shall be filed with the Secretary of Labor, U.S. Department of Labor, Washington, DC 20210.

(b) *Number of copies.* An original and two copies of all documents shall be filed.

(c) *Computation of time for delivery by mail.* Documents are not deemed filed with the Secretary until actually received by that office. All documents, including documents filed by mail, must be received by the Secretary either on or before the due date.

(d) *Manner and proof of service.* A copy of all documents filed with the Secretary shall be served upon all other parties involved in the proceeding. Service under this section shall be by personal delivery or by mail. Service by mail is deemed effected at the time of mailing to the last known address.

27. Section 500.268 as redesignated is revised to read as follows:

§ 500.268 Final decision of the Secretary.

(a) The Secretary's final Decision and Order shall be issued within 120 days from the notice of intent granting the petition, and served upon all parties and the Chief Administrative Law Judge, in person or by certified mail.

(b) Upon receipt of an Order of the Secretary modifying or vacating the Decision and Order of an Administrative Law Judge, the Chief Administrative Law Judge shall substitute such Order for the Decision and Order of the Administrative Law Judge.

28. Section 500.269 as redesignated is revised to read as follows:

§ 500.269 Stay pending decision of the Secretary.

(a) The filing of a petition seeking review by the Secretary of a Decision and Order of an Administrative Law Judge, pursuant to § 500.264, does not stop the running of the thirty-day time limit in which respondent may file an appeal to obtain a review in the United States District Court of an administrative order, as provided in section 103(b)(2) or section 503(b)(2) of the Act, unless the Secretary issues a Notice of Intent pursuant to § 500.265.

(b) In the event a respondent has filed a notice of appeal of the Administrative Law Judge's Decision and Order in a United States District Court and the Secretary issues a Notice of Intent, the Secretary will seek a stay of proceedings in the Court until such time as the Secretary issues the final decision, as provided in § 500.268.

(c) Where the Secretary has issued a Notice of Intent, the time for filing an appeal under sections 103(b)(2) or 503(b)(2) of the Act shall commence from the date of the issuance of the Secretary's final decision, as provided in § 500.268.

[FR Doc. 89-7540 Filed 3-30-89; 8:45 am]

BILLING CODE 4510-27-M

federal register

Friday
March 31, 1989

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 1, 19, 32, 36, and 52
Federal Acquisition Regulation (FAR); Prompt Pay and Definition of A-E Service; Interim Rule With Request for Comments and Final Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 19, 32, 36, and 52

[Federal Acquisition Circular 84-45]

Federal Acquisition Regulation (FAR); Prompt Pay and Definition of A-E Services

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment; and final rule.

SUMMARY: Federal Acquisition Circular (FAC) 84-45 amends the Federal Acquisition Regulation (FAR) with respect to the following: Prompt Pay and Definition of Architect-Engineer (AE) Services.

DATES: *Effective date:* April 1, 1989, for contracts awarded, contracts renewed, and options exercised on or after that date, except for §§ 36.102 and 36.601 (Item II) which are effective March 31, 1989.

Comment date: Comments on the interim rule, §§ 36.102 and 36.601, should be submitted to the FAR Secretariat, at the address below, on or before May 30, 1989 to be considered in the formulation of a final rule. Please cite FAC 84-45, Item II, in all correspondence on this subject.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523-4755.

SUPPLEMENTARY INFORMATION:

A. Determination to Issue an Interim Rule

FAC 84-45, Item II. A determination has been made under authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) to issue the regulations in Item II of FAC 84-45 as an interim rule. This action is necessary because the new statutory definition was effective on the date of enactment of Pub. L. 100-679, which was November 17, 1988. Accordingly, it is necessary to implement the definition in the Federal Acquisition Regulation as soon as possible.

DoD, GSA, and NASA have determined that compelling reasons exist to promulgate an interim rule without prior opportunity for public comment. However, pursuant to Pub. L. 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in formulating a final rule.

B. Background

FAC 84-45, Item I. Pub. L. 100-496, the Prompt Payment Act Amendments of 1988, significantly changes the bill paying practices of the Federal Government. The law provides that these changes apply to contracts awarded, contracts renewed, and contract options exercised after March 31, 1989. This final rule contains changes to the Federal Acquisition Regulation to incorporate the required revisions. These revisions include: (1) Elimination of the 15-day grace period during which the Government was entitled to make invoice payments without incurring interest penalties; (2) establishment of an additional penalty if a contractor is not paid an interest penalty owed by the Government; (3) establishment of a 15-day payment period for contracts providing for "fast payment" procedures; (4) a requirement that construction contract progress payments generally be paid within 14 days; and (5) a requirement for specific provisions to be included in construction subcontracts.

C. Regulatory Flexibility Act

FAC 84-45, Item I. The proposed rule published in the **Federal Register** on December 30, 1988 (53 FR 53364) contained an Initial Regulatory Flexibility Analysis. A Final Regulatory Flexibility Analysis has been prepared and is on file in the FAR Secretariat. The Final Analysis will be submitted to the Chief Counsel for Advocacy, Small Business Administration.

FAC 84-45, Item II. The revisions of §§ 36.102 and 36.601 of the FAR implement a statutory amendment that Congress has stated is intended to clarify the statutory definition of A-E services, rather than expand that definition. Accordingly, the revision is not expected to have a significant economic impact on a substantial number of small entities, and an Initial Regulatory Flexibility Analysis has not been prepared. However, comments received from small entities concerning the affected sections will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite section 89-610 pertaining to Item II of FAC 84-45.

D. Paperwork Reduction Act

FAC 84-45, Item I. The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501, et seq., under OMB Control Number 9000-0102.

FAC 84-45, Item II. The Paperwork Reduction Act (Pub. L. 96-511) does not apply because this interim rule does not impose any reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

E. Public Comments

FAC 84-45, Item I. On December 30, 1988, a proposed rule was published in the **Federal Register** (53 FR 53364). The comments that were received from 51 individuals and organizations were considered by the Councils and a number of changes were made in the development of this final rule.

List of Subjects in 48 CFR Parts 1, 19, 32, 36, and 52

Government procurement.

Dated: March 27, 1989.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84-45 is effective April 1, 1989, for contracts awarded, contracts renewed, and options exercised on or after that date, except for Sections 36.102 and 36.601 (Item II) which are effective March 31, 1989.

Eleanor Spector,

Assistant Secretary of Defense for Procurement, DOD.

Richard H. Hopf III,

Associate Administrator for Acquisition Policy, GSA.

S.J. Evans,

Assistant Administrator for Procurement, NASA.

Federal Acquisition Circular (FAC) 84-45 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Prompt Payment

FAR 1.105, Subparts 19.2 and 32.9, and the clauses of 52.232-5, 52.232-8, and 52.232-25 are revised and the clauses at 52.232-26, 52.232-27, and 52.232-28 are added to change the bill paying practices of the Federal Government. These revisions eliminate the 15-day grace period during which the Government is entitled to make invoice

payments without incurring interest penalties, establish an additional penalty if a contractor is not paid an interest penalty owed by the Government, establish a 15-day payment period for contracts providing for "fast payment" procedures, require that construction contract progress payments generally be paid within 14 days, and require that construction contractors substantiate the amount of their progress payment requests and certify the requests. These changes apply to contracts awarded, contracts renewed, and contract options exercised after March 31, 1989.

Item II—Definition of Architect-Engineer (A-E) Services

FAR 36.102 and 36.601 are amended to clarify the definitions of services to be acquired using the selection procedures of 36.602. Pub. L. 100-656 and Pub. L. 100-679 have amended that portion of the Brooks Act (40 U.S.C. 541-544 (1972)) defining A-E services. The definition of Architect-Engineer Services at 36.102 also appears on Standard Forms 254 and 255. The standard forms are being revised to reflect the new definition. Until such time as the revised standard forms are available, a pen and ink change to the Architect-Engineer Services definition thereon is authorized.

Therefore, 48 CFR Parts 1, 19, 32, 36, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 19, 32, 36, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 1.105 is amended by adding in numerical order two FAR segments and corresponding OMB Control numbers to read as follows:

1.105 OMB approval under the Paperwork Reduction Act.

* * * * *

FAR segment	OMB control No.
* * * * *	
32.9	9000-0102
* * * * *	
52.232-27	9000-0102
* * * * *	

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

3. Section 19.201 is amended by redesignating paragraphs (c) (5), (6), and (7) as (c) (6), (7), and (8) and by adding a new paragraph (c)(5) to read as follows:

19.201 General policy.

* * * * *

(c) * * *

(5) Assist small business concerns to obtain payments, late payment interest penalties, or information, in conformity with chapter 39 of Title 31, United States Code.

PART 32—CONTRACT FINANCING

4. Section 32.900 is revised to read as follows:

32.900 Scope of subpart.

This subpart prescribes policies, procedures, and clauses for implementing Office of Management and Budget (OMB) Circular A-125, "Prompt Payment."

5. Section 32.901 is revised to read as follows:

32.901 Applicability.

This subpart applies to all Government contracts (including small purchases as defined in Subpart 13.1), except for contracts where payment terms and late payment penalties have been established by other governmental authority (e.g., tariffs). The interest penalty provisions of this subpart do not apply to contracts awarded to foreign vendors outside the United States for work performed outside the United States.

6. Section 32.902 is amended by revising the definitions, "Contract financing payment", "Designated billing office", "Discount for prompt payment", "Due date", and "Proper invoice" to read as follows:

32.902 Definitions.

"Contract financing payment," as used in this subpart, means a Government disbursement of monies to a contractor under a contract clause or other authorization prior to acceptance of supplies or services by the Government. Contract financing payments include advance payments, progress payments based on cost under the clause at 52.232-16, Progress Payments, progress payments based on a percentage or stage of completion (see 32.102(e)(1)) other than those made under the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts or the clause at 52-232-10, Payments Under Fixed-Price Architect-Engineer Contracts, and interim payments on cost-type contracts. Contract financing payments do not include invoice payments or payments for partial deliveries.

* * * * *

"Designated billing office," as used in this subpart, means the office or person designated in the contract where the contractor first submits invoices and contract financing requests. This might be the Government disbursing office, contract administration office, office accepting the supplies delivered or services performed by the contractor, contract audit office, or a nongovernmental agent. In some cases, different offices might be designated to receive invoices and contract financing requests.

* * * * *

"Discount for prompt payment" means an invoice payment reduction voluntarily offered by the contractor, in conjunction with the clause at 52.232-8, Discounts for Prompt Payment, if payment is made by the Government prior to the due date. The due date is calculated from the date of the contractor's invoice.

"Due date" means the date on which payment should be made.

* * * * *

"Proper invoice" means a bill or written request for payment which meets the minimum standards specified in the clauses at 52.232-25, Prompt Payment, 52.232-26, Prompt Payment for Fixed-Price Architect-Engineer Contracts, or 52.232-27, Prompt Payment for Construction Contracts (also see 32.905(e)), and other terms and conditions contained in the contract for invoice submission.

* * * * *

7. Section 32.903 is revised to read as follows:

32.903 Policy.

All solicitations and contracts subject to this subpart shall specify payment procedures, payment due dates, and interest penalties for late invoice payment. Invoice payments and contract financing payments will be made by the Government as close as possible to (or earlier as determined by the Agency head to be necessary on a case-by-case basis), but not later than the due dates specified in the contract by incorporation of the clauses at 52.232-25, Prompt Payment, 52.232-26, Prompt Payment for Fixed-Price Architect-Engineer Contracts or 52.232-27, Prompt Payment for Construction Contracts. Payment will be based on receipt of a proper invoice or contract financing request and satisfactory contract performance. Agency procedures shall ensure that, when specifying due dates, full consideration is given to the time reasonably required by Government officials to fulfill their administrative

responsibilities under the contract. Checks will be mailed and electronic funds transfers will be transmitted on or about the same day the payment action is dated. When appropriate, Government contracts should allow the contractor to be paid for partial deliveries that have been accepted by the Government (see 32.102(d)). Discounts for prompt payment offered by the contractor shall be taken only when payments are made within the discount period specified by the contractor. Agencies shall pay an interest penalty, without request from the contractor, for late invoice payments or improperly taken discounts for prompt payment. The interest penalty shall be absorbed within funds available for administration or operation of the program for which the penalty was incurred. The temporary unavailability of funds to make a timely payment does not relieve the obligation to pay interest penalties. For contracts awarded after October 1, 1989, if the interest penalty is not paid within 10 days after it is due and the contractor makes a written demand for payment within 40 days after payment of the principal amount due, agencies shall pay an additional penalty amount, which shall be calculated in accordance with regulations issued by the Office of Management and Budget.

8. Section 32.905 is revised to read as follows:

32.905 Invoice payments.

(a) Except as prescribed in 32.905(b), 32.905(c), and 32.905(d), the due date for making an invoice payment by the designated payment office shall be:

(1) The 30th day after the designated billing office has received a proper invoice from the contractor; or the 30th day after Government acceptance of supplies delivered or services performed by the contractor, whichever is later.

(i) On a final invoice where the payment amount is subject to contract settlement actions, acceptance shall be deemed to have occurred on the effective date of the contract settlement.

(ii) For the sole purpose of computing an interest penalty that might be due the contractor, Government acceptance shall be deemed to have occurred contructively on the 7th day after the contractor has delivered supplies or performed services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or contractor compliance with a contract requirement. In the event that actual acceptance occurs within the constructive acceptance period, the determination of an interest penalty shall be based on the actual date of acceptance. The constructive acceptance requirement does not, however, compel Government officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities. Except in the case of a contract for the procurement of a brand name commercial item for authorized resale (e.g., commissary items), the contracting officer may specify a longer period for constructive acceptance in the solicitation and resulting contract, if required to afford the Government a reasonable opportunity to inspect and test the property furnished or to evaluate the services performed. The contract file shall indicate the justification for extending the constructive acceptance period beyond 7 days.

(iii) If the contract does not require submission of an invoice for payment (e.g., periodic lease payments), the due date will be as specified in the contract.

(2) However, if the designated billing office fails to annotate the invoice with the actual date of receipt of the invoice, the invoice payment due date shall be deemed to be the 30th day after the date the contractor's invoice is dated, provided a proper invoice is received and there is no disagreement over quantity, quality, or contractor compliance with contract requirements.

(b) The due date for making payments on contracts that contain the clause at 52.232-10, Payments Under Fixed-Price Architect-Engineer Contracts, shall be as follows:

(1) The due date for work or services completed by the contractor shall be the later of the following two events:

(i) The 30th day after the designated billing office has received a proper invoice from the contractor.

(ii) The 30th day after Government acceptance of the work or services completed by the contractor. On a final invoice where the payment amount is subject to contract settlement actions (e.g., release of claims), acceptance shall be deemed to have occurred on the effective date of the settlement. For the sole purpose of computing an interest penalty that might be due the contractor, Government acceptance shall be deemed to have occurred constructively on the 7th day after the contractor has completed the work or services in accordance with the terms and conditions of the contract (see also 32.905(b)(4)). In the event that actual acceptance occurs within the constructive acceptance period, the determination of an interest penalty shall be based on the actual date of acceptance.

(2) The due date for progress payments shall be the 30th day after Government approval of contractor estimates of work or services accomplished. For the sole purpose of computing an interest penalty that might be due the contractor, Government approval shall be deemed to have occurred constructively on the 7th day after contractor estimates have been received by the designated billing office (see also 32.905(b)(4)). In the event that actual approval occurs within the constructive approval period, the determination of an interest penalty shall be based on the actual date of approval.

(3) However, if the designated billing office fails to annotate the invoice or payment request with the actual date of receipt, the payment due date shall be the 30th day after the date the contractor's invoice or payment request is dated, provided a proper invoice or payment request is received and there is no disagreement over quantity, quality, or contractor compliance with contract requirements.

(4) The constructive acceptance and constructive approval requirements described in 32.905(b)(1) and (b)(2) are conditioned upon receipt of a proper payment request and no disagreement over quantity, quality, contractor compliance with contract requirements, or the requested progress payment amount. These requirements do not compel Government officials to accept work or services, approve contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities. The contracting officer may specify a longer period for constructive acceptance or constructive approval, if required to afford the Government a reasonable opportunity to inspect and test the property furnished or to evaluate the services performed.

(c) The due date for making payments on construction contracts shall be as follows:

(1) The due date for making progress payments based on contracting officer approval of the estimated amount and value of work or services performed, including payments for reaching milestones in any project, shall be 14 days after receipt of a proper payment request by the designated billing office. However, if the designated billing office fails to annotate the payment request with the actual date of receipt, the payment due date shall be deemed to be the 14th day after the date the contractor's payment request is dated, provided a proper payment request is received and there is no disagreement

over quantity, quality, or contractor compliance with contract requirements. The contracting officer may specify a longer period in the solicitation and resulting contract if required to afford the Government a reasonable opportunity to adequately inspect the work and to determine the adequacy of the contractor's performance under the contract. The contract file shall indicate the justification for extending the due date beyond 14 days. The contracting officer or his representative shall not approve progress payment requests unless the certification and substantiation of amounts requested are provided as required by the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts.

(2) The due date for payment of any amounts retained by the contracting officer in accordance with the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, shall be as specified in the contract or, if not specified, 30 days after approval by the contracting officer for release to the contractor. This release of retained amounts shall be based on the contracting officer's determination that satisfactory progress has been made.

(3) The due date for final payments based on completion and acceptance of all work (including any retained amounts), and payments for partial deliveries that have been accepted by the Government (e.g., each separate building, public work, or other division of the contract for which the price is stated separately in the contract) shall be as follows:

(i) Either the 30th day after receipt by the designated billing office of a proper invoice from the contractor, or the 30th day after Government acceptance of the work or services completed by the contractor, whichever is later. However, if the designated billing office fails to annotate the invoice with the actual date of receipt, the invoice payment due date shall be deemed to be the 30th day after the date the contractor's invoice is dated, provided a proper invoice is received and there is no disagreement over quantity, quality, or contractor compliance with contract requirements.

(ii) On a final invoice where the payment amount is subject to contract settlement actions (e.g., release of contractor claims), acceptance shall be deemed to have occurred on the effective date of the contract settlement.

(4) For the sole purpose of computing an interest penalty that might be due the contractor for payments described in subdivision (c)(3)(i) of this section, Government acceptance or approval shall be deemed to have occurred constructively on the 7th day after the contractor has completed the work or services in accordance with the terms and conditions of the contract (see also 32.905(c)(5)). In the event that actual acceptance occurs within the constructive acceptance period, the determination of an interest penalty shall be based on the actual date of acceptance.

(5) The constructive acceptance and constructive approval requirements described in subparagraph (c)(4) of this section are conditioned upon receipt of a proper payment request and no disagreement over quantity, quality, contractor compliance with contract requirements, or the requested amount. These requirements do not compel Government officials to accept work or services, approve contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities. The contracting officer may specify a longer period for constructive acceptance or constructive approval in the solicitation and resulting contract, if required to afford the Government a reasonable opportunity to adequately inspect the work and to determine the adequacy of the contractor's performance under the contract.

(d) The payment terms on contracts for meat and meat food products, contracts for perishable agricultural commodities, and contracts for dairy products, edible fats or oils, and food products prepared from edible fats or oils are as follows:

(1) The due date on contractor invoices for meat or meat food products, as defined in section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)), as further defined in Pub. L. 98-181, including any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product, will be as close as possible to, but not later than, the seventh day after product delivery.

(2) The due date on contractor invoices for perishable agricultural commodities, as defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)), will be as close as possible to, but not later than, the tenth day after product delivery, unless another date is specified in the contract.

(3) The due date on contractor invoices for dairy products (as defined in section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils, will be as close as possible to, but not later than, the tenth day after the date on which a proper invoice has been received.

(e) A proper invoice must include the items listed in subparagraphs (e)(1) through (e)(8) of this section. If the invoice does not comply with these requirements, then the contractor must be notified of the defect within 7 days (3 days on contracts for meat and meat food products, and 5 days on contracts for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils) after receipt of the invoice at the designated billing office. The reason that the invoice is not a proper invoice must be specified. If such notice is not timely, then an adjusted due date for the purpose of determining an interest penalty, if any, will be established in accordance with 32.907-1(b):

(1) Name and address of the contractor.

(2) Invoice date.

(3) Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).

(4) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.

(5) Shipping and payment terms (e.g., shipment number and date of shipment, prompt payment discount terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

(6) Name and address of contractor official to whom payment is to be sent (must be the same as that in the contract or on a proper notice of assignment).

(7) Name (where practicable), title, phone number, and mailing address of person to be notified in event of a defective invoice.

(8) Any other information or documentation required by the contract (such as evidence of shipment).

(f) All invoice payments shall be supported by a receiving report or any other Government documentation authorizing payment. The receiving report or other Government documentation should be forwarded to the designated payment office by the 5th working day after Government acceptance or approval, unless other arrangements have been made. This period of time does not extend the due dates prescribed in 32.905. Acceptance should be completed as expeditiously as possible. The receiving report or other Government documentation authorizing payment shall, as a minimum, include the following:

(1) Contract number or other authorization for supplies delivered or services performed.

(2) Description of supplies delivered or services performed.

(3) Quantities of supplies received and accepted, if applicable.

(4) Date supplies delivered or services performed.

(5) Date supplies or services were accepted by the designated Government official (or progress payment request was approved if being made under the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, or the clause at 52.232-10, Payments Under Fixed-Price Architect-Engineer Contracts).

(6) Signature printed name, title, mailing address, and telephone number of the designated Government official responsible for acceptance or approval functions.

(7) If the contract provides for the use of certified invoices in lieu of a separate receiving report, the certified invoice must also contain the information described in subparagraphs (f)(1) through (f)(6) of this section.

(g) When a discount for prompt payment is to be taken, payment will be made as close as possible to, but not later than, the end of the discount period. Payment terms are specified in the clause at 52.232-8, Discounts for Prompt Payment.

(h) The designated billing office shall immediately annotate each invoice with the actual date it receives the invoice.

(i) The designated payment office shall annotate each invoice and receiving report with the date a proper invoice was received by the designated payment office.

9. Section 32.907-1 is amended by revising paragraphs (a)(4), (b), (c), (d), and by adding paragraph (g) to read as follows:

32.907-1 Late invoice payment.

(a) * * *

(4) The designated payment office paid the contractor after the due date.

(b) The interest penalty computation shall not include (1) the time taken by the Government to notify the contractor of a defective invoice, unless it exceeds the periods prescribed in 32.905(e), or (2) the time taken by the contractor to correct the invoice. If the designated billing office failed to notify the contractor of a defective invoice within the periods prescribed in 32.905(e), then the due date on the corrected invoice will be adjusted by subtracting the number of days taken beyond the prescribed notification of defects period from the payment due date. Any interest penalty owed the contractor will be based on this adjusted due date.

(c) An interest penalty shall be paid automatically by the designated payment office, without request from the contractor, if a discount for prompt payment is taken improperly. The interest penalty shall be calculated on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the contractor is paid.

(d) The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority (e.g., tariffs). The rate in effect on the day after the due date shall remain fixed during the period for which an interest penalty is calculated. This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the **Federal Register** semiannually on or about January 1 and July 1. The interest penalty will accrue daily on the invoice payment amount approved by the Government and be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice payment amount and be subject to interest penalties if not paid in the succeeding 30-day period. The interest penalty amount, interest rate and the period for which the interest penalty was computed, will be separately stated by the designated payment office on the check, in accompanying remittance advice, or, in the case of wire transfers, by an appropriate electronic data message accompanying the wire transfer. Adjustments will be made by the designated payment office for errors in calculating interest penalties, if requested by the contractor.

* * * * *

(g) For contracts awarded on or after October 1, 1989, a penalty amount (calculated in accordance with regulations issued by the Office of Management and Budget) shall be paid, in addition to the interest penalty amount, if the contractor—

(1) Is owed an interest penalty;

(2) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and

(3) Makes a written demand that the agency pay such a penalty not later than 40 days after the date the invoice amount is paid.

10. Section 32.908 is revised to read as follows:

32.908 Contract clauses.

(a) If the solicitation or contract contains the clause at 52.232-10, Payments Under Fixed-Price Architect-Engineer Contracts, the contracting officer shall insert the clause at 52.232-26, Prompt Payment for Fixed-Price Architect-Engineer Contracts.

(b) The contracting officer shall insert the clause at 52.232-27, Prompt Payment for Construction Contracts, in all solicitations and contracts for construction (see Part 36).

(c) The contracting officer shall insert the clause at 52.232-25, Prompt Payment, in all other solicitations and contracts (including small purchases as defined in Subpart 13.1), except as indicated in 32.901.

(d) If payment may be made by electronic funds transfer, the contracting officer shall insert the clause at 52.232-28, Electronic Funds Transfer Payment Methods, in solicitations and contracts.

11. Section 32.909 is amended by adding a fourth sentence to read as follows:

32.909 Contractor inquiries.

* * * Small business concerns may obtain additional assistance related to payment issues, late payment interest penalties, and information on the Prompt Payment Act, by contacting the Agency's local representative from the Office of Small and Disadvantaged Business Utilization.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

12. Section 36.102 is amended by revising the definition "Architect-Engineer Services" to read as follows:

36.102 Definitions.

"Architect-Engineer Services" means—

(a) Professional services of an architectural or engineering nature, as defined by State law, if applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide such services;

(b) Other professional services associated with research, planning, development, design, construction, alteration, or repair of real property that the contracting officer determines are of an architectural or engineering nature; and

(c) Other professional services of an architectural or engineering nature (including surveying and mapping, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and

maintenance manuals and other related services) that the contracting officer determines should logically or justifiably be performed by members of the architectural and engineering professions (and individuals in their employ).

(d) Other incidental services (including studies, investigations, tests, evaluations, consultations, comprehensive planning, program management, and conceptual design) that the Contracting Officer determines should logically or justifiably be performed by members of the architectural and engineering professions (and individuals in their employ) in conjunction with professional architect-engineer services acquired by Pub. L. 92-582 procedures.

* * * * *

13. Section 36.601 is amended by redesignating paragraph (b) as (c) and by adding a new paragraph (b) to read as follows:

36.601 Policy.

* * * * *

(b) The Government shall publicly announce all requirements for surveying and mapping services that are associated with research, planning, development, design, construction, alteration, or repair of real property and negotiate contracts for these services based on the demonstrated competence and qualifications of prospective contractors to perform the services required at fair and reasonable prices. (See 40 U.S.C. 541, et seq.) Sources for surveying and mapping contracts shall be selected in accordance with the procedures in this subpart, rather than the solicitation or source selection procedures prescribed in Parts 14 and 15 of this regulation. Compliance with the procedures in this subpart will constitute a competitive procedure in the acquisition of surveying and mapping services (see 6.102(d)(1)).

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

14. Section 52.232-5 is amended by removing in the title of the clause the date "(AUG 1987)" and inserting in its place the date "(APR 1989)"; by revising the second sentence in paragraph (b) of the clause; by redesignating in the clause paragraphs (c), (d), (e), (f), (g), as (e), (f), (g), (h), and (i), and removing in the second sentence of the new paragraph (g) the reference "paragraph (c)" and inserting in its place "paragraph (e)"; and by adding new paragraphs (c) and (d) to read as follows:

52.232-5 Payments under Fixed-Price Construction Contracts.

* * * * *

(b) * * * The Contractor shall furnish a breakdown of the total contract price showing the amount included therein for each principal category of the work, which shall substantiate the payment amount requested in order to provide a basis for determining progress payments, in such detail as requested by the Contracting Officer. * * *

* * * * *

(c) Along with each request for progress payments, the contractor shall furnish the following certification, or payment shall not be made:

I hereby certify, to the best of my knowledge and belief, that—

(1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

(2) Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements and the requirements of chapter 39 of Title 31, United States Code; and

(3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract.

_____

(Name)

_____

(Title)

_____

(Date)

(d) If the Contractor, after making a certified request for progress payments, discovers that a portion or all of such request constitutes a payment for performance by the Contractor that fails to conform to the specifications, terms, and conditions of this contract (hereinafter referred to as the "unearned amount"), the Contractor shall—

(1) Notify the Contracting Officer of such performance deficiency; and

(2) Be obligated to pay the Government an amount (computed by the Contracting Officer in the manner provided in 31 U.S.C. 3903(c)(1)) equal to interest on the unearned amount from the date of receipt of the unearned amount until—

(i) The date the Contractor notifies the Contracting Officer that the performance deficiency has been corrected; or

(ii) The date the Contractor reduces the amount of any subsequent certified request for progress payments by an amount equal to the unearned amount.

* * * * *

(g) In making these progress payments, the Government shall, upon request, reimburse the Contractor for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after the Contractor has furnished evidence of full payment to the surety. The retainage provisions in paragraph (e) of this clause shall not apply to that portion of progress payments attributable to bond premiums.

* * * * *

15. Section 52.232-8 is amended by removing in the title of the clause the date "(JUL 1985)" and inserting in its place "(APR 1989)"; and by revising paragraph (b) of the clause to read as follows:

52.232-8 Discounts for prompt payment.

* * * * *

(b) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the date on which an electronic funds transfer was made.

* * * * *

16. Section 52.232-25 is amended by revising the introductory text of the section, the introductory text of paragraph (a) of the section and of the clause; by removing in the title of the clause the date "(FEB 1988)" and inserting in its place "(APR 1989)"; by revising paragraphs (a)(2), (a)(2)(ii), (a)(3), (a)(3)(i), and (a)(3)(iii), the fourth sentence in paragraph (a)(4), the introductory text of paragraph (a)(5), and the first sentence of paragraph (a)(6); by revising in the fifth sentence in paragraph (a)(6) the words "paragraph (a)(4)" to read "subparagraph (a)(4); by revising paragraphs (a)(6)(i), (a)(6)(ii)(A), (a)(6)(iii), (a)(6)(iv), and (a)(7); by adding paragraphs (a)(8) and (c); and by removing Alternate I and Alternate II of the clause to read as follows:

52.232-25 Prompt payment.

As prescribed in 32.908(c), insert the following clause:

(a) As authorized in 32.905(a)(1)(ii), the Contracting Officer may modify the date in subdivision (a)(6)(i) of this clause to specify a period longer than 7 days for constructive acceptance, if required to afford the Government a reasonable opportunity to inspect and test the property furnished or evaluate the services performed, except in the case of a contract for the procurement of a brand-name commercial item for authorized resale.

* * * * *

Notwithstanding any other payment clause in this contract, the Government will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or an electronic funds transfer is made. Definitions of pertinent terms are set forth in 32.902. All days referred to in this clause are calendar days, unless otherwise specified. The term "foreign vendor" means an incorporated concern not incorporated in the United States, or an unincorporated

concern having its principal place of business outside the United States.

(a) * * *

* * * * *

(2) Except as indicated in subparagraph (a)(3) and paragraph (c) of this clause, the due date for making invoice payments by the designated payment office shall be the later of the following two events:

* * * * *

(ii) The 30th day after Government acceptance of supplies delivered or services performed by the Contractor. On a final invoice where the payment amount is subject to contract settlement actions, acceptance shall be deemed to have occurred on the effective date of the contract settlement. However, if the designated billing office fails to annotate the invoice with the actual date of receipt, the invoice payment due date shall be deemed to be the 30th day after the date the Contractor's invoice is dated, provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(3) The due date on contracts for meat and meat food products, contracts for perishable agricultural commodities, contracts for dairy products, edible fats or oils, and food products prepared from edible fats or oils, and contracts not requiring submission of an invoice shall be as follows:

(i) The due date for meat and meat food products, as defined in section 2(a) (3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182 (3)) and further defined in Pub. L. 98–181 to include any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product, will be as close as possible to, but not later than, the 7th day after product delivery.

* * * * *

(iii) The due date for dairy products, as defined in section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils, will be as close as possible to, but not later than, the 10th day after the date on which a proper invoice has been received.

* * * * *

(4) * * * If the invoice does not comply with these requirements, then the contractor will be notified of the defect within 7 days after receipt of the invoice at the designated billing office (3 days for meat and meat food products and 5 days for perishable agricultural commodities, edible fats or oils, and food products prepared from edible fats or oils. * * *

* * * * *

(5) An interest penalty shall be paid automatically by the Government, without request from the contractor, if payment is not made by the due date and the conditions listed in subdivisions (a) (5) (i) through (a) (5) (iii) of this clause are met, if applicable. An interest penalty shall not be paid on contracts awarded to foreign vendors outside the United States for work performed outside the United States.

* * * * *

(6) The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other government authority. * * *

(i) For the sole purpose of computing an interest penalty that might be due the contractor, Government acceptance shall be deemed to have occurred constructively on the 7th day (unless otherwise specified in this contract) after the contractor delivered the supplies or performed the services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or contractor compliance with a contract provision. In the event that actual acceptance occurs within the constructive acceptance period, the determination of an interest penalty shall be based on the actual date of acceptance. The constructive acceptance requirement does not, however, compel Government officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

* * * * *

(ii) * * *

(A) The period taken to notify the contractor of defects in invoices submitted to the Government, but this may not exceed 7 days (3 days for meat and meat food products and 5 days for perishable agricultural commodities, dairy products, edible fat or oils, and food products prepared from edible fats or oils).

* * * * *

(iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233–1, Disputes, or for more than 1 year. Interest penalties of less than $1.00 need not be paid.

(iv) Interest penalties are not required on payment delays due to disagreement between the Government and Contractor over the payment amount or other issues involving contract compliance or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233–1, Disputes.

(7) An interest penalty shall also be paid automatically by the designated payment office, without request from the contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated as described in subparagraph (a) (6) of this clause on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the contractor is paid.

(8) If this contract was awarded on or after October 1, 1989, a penalty amount, calculated in accordance with regulations issued by the Office of Management and Budget, shall be paid in addition to the interest penalty amount if the contractor—

(i) Is owed an interest penalty;

(ii) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and

(iii) Makes a written demand, not later than 40 days after the date the invoice amount is paid, that the agency pay such a penalty.

* * * * *

(c) If this contract contains the clause at 5.213–1, Fast Payment Procedure, payments will be made within 15 days after the date of receipt of the invoice.

(End of clause)

17. Section 52.232–26 is added to read as follows:

52.232–26 Prompt payment for fixed-price architect-engineer contracts.

As prescribed in 32.908(a), insert the following clause:

(a) As authorized in 32.905(b)(4), the Contracting Officer may modify the date in subdivision (a)(5)(i) of this clause to specify a period longer than 7 days for constructive acceptance or constructive approval, if required to afford the Government a practicable opportunity to inspect and test the property furnished or evaluate the services performed.

(b) If applicable, as authorized in 32.906(a) and only as allowed under agency policies and procedures, the Contracting Officer may insert in paragraph (b) of this clause a period shorter than 30 days (but not less than 7 days) for making contract financing payments.

Prompt Payment for Fixed-Price Architect-Engineer Contracts (APR 1989)

Notwithstanding any other payment terms in this contract, the Government will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or an electronic funds transfer is made. Definitions of pertinent terms are set forth in 32.902. All days referred to in this clause are calendar days, unless otherwise specified. The term "foreign vendor" means an incorporated concern not incorporated in the United States, or an unincorporated concern having its principal place of business outside the United States.

(a) *Invoice Payments.* (1) For purposes of this clause, "invoice payment" means a Government disbursement of monies to a Contractor under a contract or other authorization for work or services accepted by the Government, payments for partial deliveries that have been accepted by the Government, and progress payments based on contracting officer approval of the estimated amount and value of work or services performed.

(2) the due date for making invoice payments shall be as described in this subparagraph (a)(2).

(i) The due date for work or services completed by the Contractor shall be the later of the following two events:

(A) The 30th day after the designated billing office has received a proper invoice from the Contractor.

(B) The 30th day after Government acceptance of the work or services completed by the Contractor. On a final invoice where

the payment amount is subject to contract settlement actions (e.g., release of claims), acceptance shall be deemed to have occurred on the effective date of the contract settlement.

(ii) The due date for progress payments shall be the 30th day after Government approval of Contractor estimates of work or services accomplished.

(iii) However, if the designated billing office fails to annotate the invoice or payment request with the actual date of receipt, the payment due date shall be deemed to be the 30th day after the date the Contractor's invoice or payment request is dated, provided a proper invoice or payment request is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(3) An invoice is the Contractor's bill or written request for payment under the contract for work or services performed under the contract. An invoice shall be prepared and submitted to the designated billing office. A proper invoice must include the items listed in subdivisions (a)(3)(i) through (a)(3)(viii) of this clause. If the invoice does not comply with these requirements, then the Contractor will be notified of the defect within 7 days after receipt of the invoice at the designated billing office. Untimely notification will be taken into account in the computation of any interest penalty owed the Contractor in the manner described in subparagraph (a)(5) of this clause:

(i) Name and address of the Contractor.

(ii) Invoice date.

(iii) Contract number or other authorization for work or services performed (including other number and contract line item number.)

(iv) Description of work or services performed.

(v) Delivery and payment terms (e.g., prompt payment discount terms).

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to be notified in event of a defective invoice.

(viii) Any other information or documentation required by the contract.

(4) An interest penalty shall be paid automatically by the designated payment office, without request from the Contractor, if payment is not made by the due date and the conditions listed in subdivisions (a)(4)(i) through (a)(4)(iii) of this clause are met, if applicable. An interest penalty shall not be paid on contracts awarded to foreign vendors outside the United States for work performed outside the United States.

(i) A proper invoice was received by the designated billing office.

(ii) A receiving report or other Government documentation authorizing payment was processed and there was no disagreement over quantity, quality, Contractor compliance with any contract term or condition, or requested progress payment amount

(iii) In the case of a final invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(5) The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day prescribed by other governmental authority. This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the **Federal Register** semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice payment amount approved by the Government and be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice payment amount and be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective invoice within the periods prescribed in subparagraph (a)(3) of this clause, then the due date on the corrected invoice will be adjusted by subtracting the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties, if requested by the Contractor.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance or approval shall be deemed to have occurred constructively as shown in subdivisions (a)(5)(i) (A) and (B) of this clause. In the event that actual acceptance or approval occurs within the constructive acceptance or approval period, the determination of an interest penalty shall be based on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, Contractor compliance with a contract provision, or requested progress payment amounts. These requirements also do not compel Government officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(A) For work or services completed by the Contractor, Government acceptance shall be deemed to have occurred constructively on the 7th day after the Contractor has completed the work or services in accordance with the terms and conditions of the contract.

(B) For progress payments, Government approval shall be deemed to have occurred on the 7th day after Contractor estimates have been received by the designated billing office.

(ii) The following periods of time will not be included in the determination of an interest penalty:

(A) The period taken to notify the Contractor of defects in invoices submitted to the Government, but this may not exceed 7 days.

(B) The period between the defects notice and resubmission of the corrected invoice by the Contractor

(iii) Interest penalties will not continue to accrue after the filing of a claims for such penalties under the clause at 52.233–1, Disputes, or for more than 1 years. Interest penalties of less than $1.00 need not be paid.

(iv) Interest penalties are not required on payment delays due to disagreement between the Government and Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable will be resolved in accordance with the clause at 52.233–1, Disputes.

(6) An interest penalty shall also be paid automatically by the designated payment office, without request from the Contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid.

(7) If this contract was awarded on or after October 1, 1989, a penalty amount, calculated in accordance with regulations issued by the Office of Management and Budget, shall be paid in addition to the interest penalty amount if the Contractor—

(i) Is owed an interest penalty;

(ii) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and

(iii) Makes a written demand, not later than 40 days after the date the invoice amount is paid, that the agency pay such a penalty.

(b) *Contract Financing Payments.* (1) For purposes of this clause, if applicable, "contract financing payment," means a Government disbursement of monies to a Contractor under a contract clause or other authorization prior to acceptance of supplies or services by the Government, other than progress payments based on estimates of amount and value of work performed. Contract financing payments include advance payments.

(2) If this contract provides for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the (insert day as prescribed by Agency head; if not prescribed, insert 30th day) day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified. For advance payments, loan, or other arrangements that do not involve recurrent submissions of contract financing request, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer. Contract financing payments shall not be assessed an interest penalty for payment delays

(End of clause)

18. Section 52.232-27 is added to read as follows:

52.232-27 Prompt payment for construction contracts.

As prescribed in 32.908(b), insert the following clause:

(a) As authorized in 32.905(c)(1), the Contracting Officer may modify the date in subdivision (a)(1)(i)(A) of the clause to specify a period longer than 14 days if required to afford the Government a reasonable opportunity to adequately inspect the work and to determine the adequacy of the Contractor's performance under the contract.

(b) As authorized in 32.905(c)(5), the Contracting Officer may modify the date in subdivision (a)(4)(i) of the clause to specify a period longer than 7 days for constructive acceptance or constructive approval if required to afford the Government a reasonable opportunity to inspect and test the property furnished or evaluate the services performed.

(c) If applicable, as authorized in 32.906(a) and only as allowed under agency policies and procedures, the Contracting Officer may insert in paragraph (b) of the clause a period shorter than 30 days (but not less than 7 days) for making contract financing payments.

Prompt Payment for Construction Contracts (Apr 1989)

Notwithstanding any other payment terms in this contract, the Government will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or an electronic funds transfer is made. Definitions of pertinent terms are set forth in 32.902. All days referred to in this clause are calendar days, unless otherwise specified. The term "foreign vendor" means an incorporated concern not incorporated in the United States or an unincorporated concern having its principal place of business outside the United States.

(a) *Invoice Payments.* (1) For purposes of this clause, there are several types of invoice payments which may occur under this contract, as follows:

(i) Progress payments, if provided for elsewhere in this contract, based on Contracting Officer approval of the estimated amount and value of work or services performed, including payments for reaching milestones in any project:

(A) The due date for making such payments shall be 14 days after receipt of the payment request by the designated billing office. However, if the designated billing office fails to annotate the payment request with the actual date of receipt, the payment due date shall be deemed to be the 14th day after the date the Contractor's payment request is dated, provided a proper payment request is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(B) The due date for payment of any amounts retained by the Contracting Officer in accordance with the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, shall be as specified in the contract or, if not specified, 30 days after approval for release to the Contractor by the Contracting Officer.

(ii) Final payments based on completion and acceptance of all work and presentation of release of all claims against the Government arising by virtue of the contract, and payments for partial deliveries that have been accepted by the Government (e.g., each separate building, public work, or other division of the contract for which the price is stated separately in the contract):

(A) The due date for making such payments shall be either the 30th day after receipt by the designated billing office of a proper invoice from the Contractor, or the 30th day after Government acceptance of the work or services completed by the Contractor, whichever is later. However, if the designated billing office fails to annotate the invoice with the date of actual receipt, the invoice payment due date shall be deemed to be the 30th day after the date the Contractor's invoice is dated, provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(B) On a final invoice where the payment amount is subject to contract settlement actions (e.g., release of claims), acceptance shall be deemed to have occurred on the effective date of the contract settlement.

(2) An invoice is the Contractor's bill or written request for payment under the contract for work or services performed under the contract. An invoice shall be prepared and submitted to the designated billing office. A proper invoice must include the items listed in subdivisions (a)(2)(i) through (a)(2)(ix) of this clause. If the invoice does not comply with these requirements, the Contractor will be notified of the defect within 7 days after receipt of the invoice at the designated billing office. Untimely notification will be taken into account in the computation of any interest penalty owed the Contractor in the manner described in subparagraph (a)(4) of this clause:

(i) Name and address of the Contractor.

(ii) Invoice date.

(iii) Contract number of other authorization for work or services performed (including order number and contract line item number).

(iv) Description of work or services performed.

(v) Delivery and payment terms (e.g., prompt payment discount terms).

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to be notified in event of a defective invoice.

(viii) For payments described in subdivision (a)(1)(i) of this clause, substantiation of the amounts requested and certification in accordance with the requirements of the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts.

(ix) Any other information or documentation required by the contract.

(3) An interest penalty shall be paid automatically by the designated payment office, without request from the Contractor, if payment is not made by the due date and the conditions listed in subdivisions (a)(3)(i) through (a)(3)(iii) of this clause are met, if applicable. An interest penalty shall not be paid on contracts awarded to foreign vendors outside the United States for work performed outside the United States.

(i) A proper invoice was received by the designated billing office.

(ii) A receiving report or other Government documentation authorizing payment was processed and there was no disagreement over quantity, quality, Contractor compliance with any contract term or condition, or requested progress payment amount.

(iii) In the case of a final invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(4) The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority. This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the **Federal Register** semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice payment amount approved by the Government and be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice payment amount and be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective invoice within the periods prescribed in subparagraph (a)(2) of this clause, then the due date on the corrected invoice will be adjusted by subtracting the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties, if requested by the Contractor.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor for payments described in subdivision (a)(1)(ii) of this clause, Government acceptance or approval shall be deemed to have occurred constructively on the 7th day after the Contractor has completed the work or services in accordance with the terms and conditions of the contract. In the event that actual acceptance or approval occurs within the constructive acceptance or approval period, the determination of an interest penalty shall be based on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. These requirements also do not compel Government

officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The following periods of time will not be included in the determination of an interest penalty:

(A) The period taken to notify the Contractor of defects in invoices submitted to the Government, but this may not exceed 7 days.

(B) The period between the defects notice and resubmission of the corrected invoice by the Contractor.

(iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233-1, Disputes, or for more than 1 year. Interest penalties of less than $1.00 need not be paid.

(iv) Interest penalties are not required on payment delays due to disagreement between the Government and Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233-1, Disputes.

(5) An interest penalty shall also be paid automatically by the designated payment office, without request from the Contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid.

(6) If this contract was awarded on or after October 1, 1989, a penalty amount, calculated in accordance with regulations issued by the Office of Management and Budget, shall be paid in addition to the interest penalty amount if the Contractor—

(i) Is owed an interest penalty;

(ii) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and

(iii) Makes a written demand, not later than 40 days after the date the invoice amount is paid, that the agency pay such a penalty.

(b) *Contract Financing Payments.* (1) For purposes of this clause, if applicable, "contract financing payments" means a Government disbursement of monies to a Contractor under a contract clause or other authorization prior to acceptance of supplies or services by the Government, other than progress payments based on estimates of amount and value of work performed. Contract financing payments include advance payments and interim payments under cost-type contracts.

(2) If this contract provides for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the (insert day as prescribed by Agency head; if not prescribed, insert 30th day) day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified. For advance payments, loans, or other arrangements that do not involve recurrent submissions of contract financing requests, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer. Contract financing payments shall not be assessed an interest penalty for payment dalays.

(c) The Contractor shall include in each subcontract for property or services (including a material supplier) for the purpose of performing this contract the following:

(1) A payment clause which obligates the Contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days from receipt of payment out of such amounts as are paid to the Contractor under the contract.

(2) An interest penalty clause obligates the Contractor to pay to the subcontractor an interest penalty for each payment not more in accordance with the payment clause—

(i) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

(ii) Computed at the rate of interest established by the Secretary of the Treasury, and published in the **Federal Register**, for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligations to pay an interest penalty.

(3) A clause requiring each subcontractor to include a payment clause and an interest penalty clause conforming to the standards set forth in subparagraphs (c)(1) and (c)(2) of this clause in each of its subcontracts, and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

(d) The clauses required by paragraph (c) of this clause shall not be constructed to impair the right of Contractor or a subcontractor at any tier to negotiate, and to include in their subcontract, provisions which—

(1) Permit the Contractor of a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

(2) Permit the Contractor or subcontractor to make determination that part or all of the subcontractor's request for payment may be withheld in accordance with the subcontract agreement; and

(3) Permit such withholding without incurring any obligation to pay a late payment penalty if—

(i) A notice conforming to the standards of paragraph (g) of this clause has been previously furnished to the subcontractor, and

(ii) A copy of any notice issued by a Contractor pursuant to subdivision (d)(3)(i) of this clause has been furnished to the Contracting Officer.

(e) If a Contractor, after making a request for payment to the Government but before making a payment to a subcontractor for the subcontractor's performance covered by the payment request, discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the Contractor shall—

(1) Furnish to the subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;

(2) Furnish to the Contracting Officer, as soon as practicable, a copy of the notice furnished to the subcontractor pursuant to subparagraph (e)(1) of this clause;

(3) Reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under subparagraph (e)(1) of this clause;

(4) Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency, and—

(i) Make such payment within—

(A) Seven days after correction of the identified subcontract performance deficiency (unless the funds therefor must be recovered from the Government because of a reduction under subdivision (e)(5)(i)) of this clause; or

(B) Seven days after the Contractor recovers such funds from the Government; or

(ii) Incur an obligation to pay a late payment interest penalty computed at the rate of interest established by the Secretary of the Treasury, and published in the **Federal Register**, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty;

(5) Notify the Contracting Officer upon—

(i) Reduction of the amount of any subsequent certified application for payment; or

(ii) Payment to the subcontractor of any withheld amounts of a progress payment, specifying—

(A) The amounts withheld under subparagraph (e)(1) of this clause; and

(B) The dates that such withholding began and ended; and

(6) Be obligated to pay to the Government an amount equal to interest on the withheld payments (computed in the manner provided in 31 U.S.C. 3903(c)(1)), from the 8th day after receipt of the withheld amounts from the Government until—

(i) The day the identified subcontractor performance deficiency is corrected; or

(ii) The date that any subsequent payment is reduced under subdivision (e)(5)(i) of this clause.

(f)(1) If a Contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor (hereafter referred to as a

"second-tier subcontractor") a written notice in accordance with section 2 of the Act of August 24, 1935 (40 U.S.C. 270b, Miller Act), asserting a deficiency in such first-tier subcontractor's performance under the contract for which the Contractor may be utlimately liable, and the Contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, then the Contractor may, without incurring an obligation to pay an interest penalty under subparagraph (e)(6) of this clause—

(i) Furnish to the first-tier subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon making such determination; and

(ii) Withhold from the first-tier subcontractor's next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under subdivision (f)(1)(i) of this clause.

(2) As soon as practicable, but not later than 7 days after receipt of satisfactory written notification that the identified subcontract performance deficiency has been corrected, the Contractor shall pay the amount withheld under subdivision (f)(1)(ii) of this clause to such first-tier subcontractor, or shall incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate of interest established by the Secretary of the Treasury, and published in the **Federal Register**, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(g) A written notice of any withholding shall be issued to a subcontractor (with a copy to the Contracting Officer of any such notice issued by the Contractor), specifying—

(1) The amount to be withheld;

(2) The specific causes for the withholding under the terms of the subcontract; and

(3) The remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.

(h) The Contractor may not request payment from the Government of any amount withheld or retained in accordance with paragraph (d) of this clause until such time as the Contractor has determined and certified to the Contracting Officer that the subcontractor is entitled to the payment of such amount.

(i) A dispute between the Contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to paragraph (c) of this clause does not constitute a dispute to which the United States is a party. The United States may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

(j) Except as provided in paragraph (i) of this clause, this clause shall not limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor or deficient subcontract performance or nonperformance by a subcontractor.

(k) The Contractor's obligation to pay an interest penalty to a subcontractor pursuant to the clauses included in a subcontract under paragraph (c) of this clause shall not be construed to be an obligation of the United States for such interest penalty. A cost reimbursement claim may not include any amount for reimbursement of such interest penalty.

(End of clause)

19. Section 52.232–28 is added to read as follows:

52.232–28 Electronic funds transfer payment methods.

As prescribed in 32.908(d), insert the following clause:

Electronic Funds Transfer Payment Methods (April 1989)

Payments under this contract will be made by the Government either by check or electronic funds transfer (through the Treasury Fedline Payment System (FEDLINE) or the Automated Clearing House (ACH), at the option of the Government. After award, but no later than 14 days before an invoice or contract financing request is submitted, the Contractor shall designate a financial institution for receipt of electronic funds transfer payments, and shall submit this designation to the Contracting Officer or other Government official, as directed.

(a) For payment through FEDLINE, the Contractor shall provide the following information:

(1) Name, address, and telegraphic abbreviation of the financial institution receiving payment.

(2) The American Bankers Association 9-digit identifying number for wire transfers of the financing institution receiving payment if the institution has access to the Federal Reserve Communications System.

(3) Payee's account number at the financial institution where funds are to be transferred.

(4) If the financial institution does not have access to the Federal Reserve Communications System, name, address, and telegraphic abbreviation of the correspondent financial institution through which the financial institution receiving payment obtains wire transfer activity. Provide the telegraphic abbreviation and American Bankers Association identifying number for the correspondent institution.

(b) For payment thorugh ACH, the Contractor shall provide the following information:

(1) Routing transit number of the financial institution receiving payment (same as American Bankers Association identifying number used for FEDLINE).

(2) Number of account to which funds are to be deposited.

(3) Type of depositor account ("C" for checking, "S" for savings).

(4) If the Contractor is a new enrollee to the ACH system, a "Payment Information Form," SF 3881, must be completed before payment can be processed.

(c) In the event the Contractor, during the performance of this contract, elects to designate a different financial institution for the receipt of any payment made using electronic funds transfer procedures, notification of such change and the required information specified above must be received by the appropriate Government official 30 days prior to the date such change is to become effective.

(d) The documents furnishing the information required in this clause must be dated and contain the signature, title, and telephone number of the Contractor official authorized to provide it, as well as the Contractor's name and contract number.

(e) Contractor failure to properly designate a financial institution or to provide appropriate payee bank account information may delay payments of amounts otherwise properly due.

(End of clause)

[FR Doc. 89–7614 Filed 3–30–89; 8:45 am]

BILLING CODE 6820–JC–M

federal register

Friday
March 31, 1989

Part VI

Department of Transportation

Federal Aviation Administration

Exemption Petitions; Air Wisconsin, Inc.; Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 25851; Summary Notice No. PE-89-15]

Summary of Petition for Exemption Received From Air Wisconsin, Inc.

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Notice of petition for exemption.

SUMMARY: Pursuant to the FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of a petition by Air Wisconsin, Inc. for an exemption from the Federal Aviation Regulations in order to operate aircraft having 64 seats or less in commuter slots allocated at O'Hare International Airport (O'Hare). The purpose of this notice is to improve the public's awareness of this aspect of the FAA's regulatory activities. Neither the publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments received on this petition must identify the petition docket number involved and be received on or before April 21, 1989.

ADDRESSES: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket [AGC-10]. Docket No. 25724, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: David L. Bennett, Office of the Chief Counsel, AGC-230, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, (202) 267-3491.

SUPPLEMENTARY INFORMATION: The Petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket [AGC-10], Room 915, FAA Headquarters Building [FOB-10A], Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, (202) 267-3132.

Petitioner has requested an exemption from § 93.123(c)(2) of the Federal Aviation Regulations (14 CFR Part 93, Subpart K) which provides that the number of operations allocated to "scheduled commuters," as defined in §§ 93.123(a) and 93.124, refers to the number of operations conducted by air carriers with aircraft having a certificated maximum passenger seating capacity of less than 56 or, if used for cargo service in air transportation, with aircraft having a maximum payload capacity of less than 18,000 pounds. In response to increasing passenger demand in small and medium-size communities, petitioner has entered into an agreement with British Aerospace to purchase nine ATP turboprop aircraft with a seating capacity of 64 passengers. In order to operate these aircraft in commuter slots, petitioner requests an exemption from § 93.123(c)(2) of the Federal Aviation Regulations to authorize the operation of aircraft having 64 seats or less in commuter slots at O'Hare. In order to institute service with the ATP aircraft in the fall, petitioner requests expedited action on this petition.

Issued in Washington, DC on March 28, 1989.

Donald P. Byrne,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

[FR Doc. 89-7711 Filed 3-30-89; 8:45 am]

BILLING CODE 4910-13-M

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