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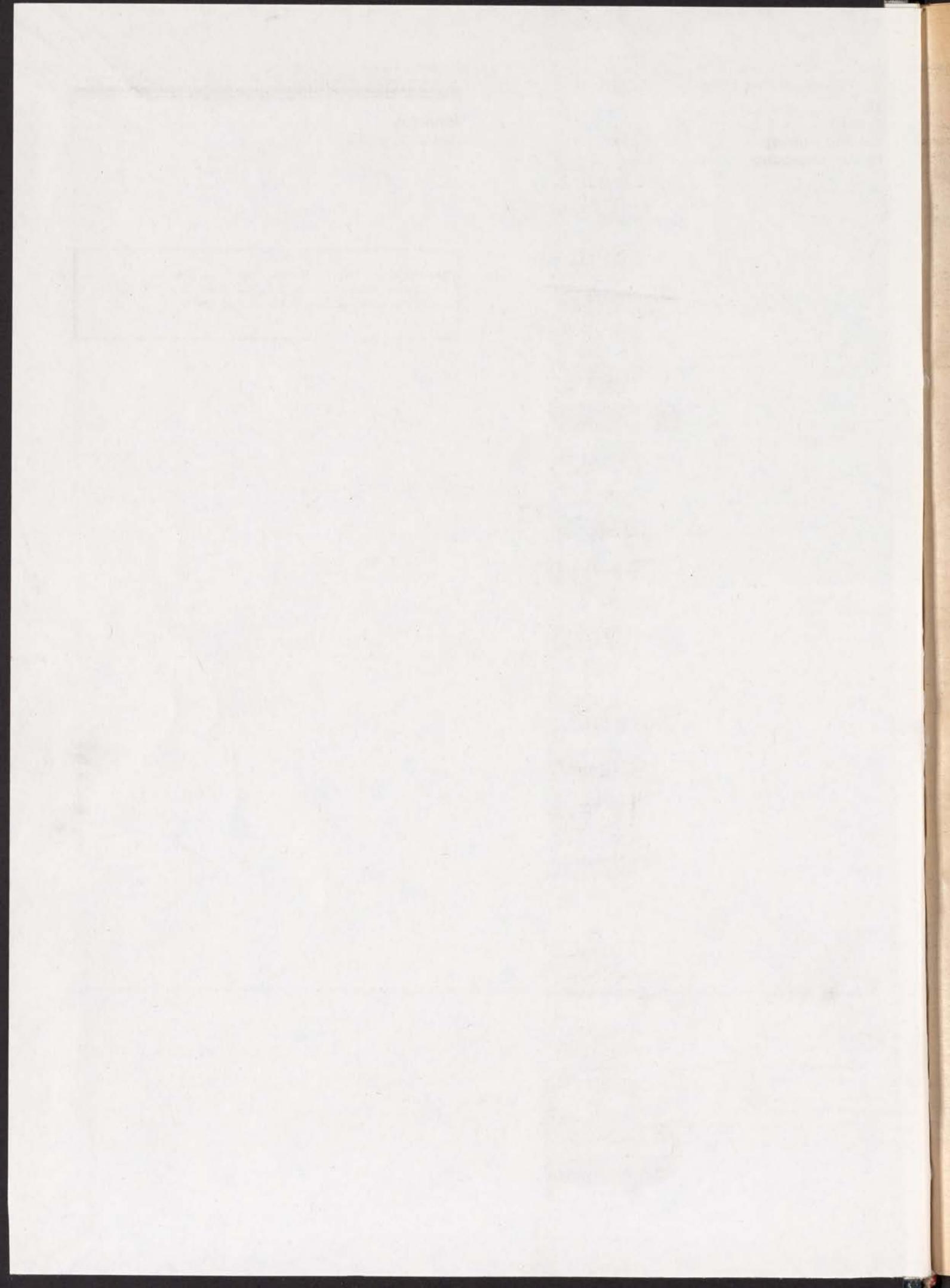
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Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 17

Financing of Commercial Sales of Agricultural Commodities

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Final rule

SUMMARY: This rule amends the regulations at 7 CFR Part 17 applicable to the financing of the sale and export of agricultural commodities pursuant to Title I of the Agricultural Trade Development and Assistance Act of 1954, as amended ("Pub. L. 480"). This rule requires open and competitive contracting in the procurement of ocean transportation by importing countries when the Commodity Credit Corporation is financing the ocean freight under Title I, Pub. L. 480. The rule is designed to (1) keep freight costs of the program as low as possible by ensuring that ocean carriers are given fair opportunity to participate in the carriage of Title I cargoes, and (2) remove any appearance of conflict of interest and favoritism which could be alleged under a system of negotiated freight rates. A proposed rule on this subject was published at 51 FR 32791 on September 16, 1986.

EFFECTIVE DATE: May 25, 1989.

FOR FURTHER INFORMATION CONTACT: Marvin L. Lehrer, Director, Pub. L. 480 Operations Division, Export Credits, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, DC 20250. Telephone: (202) 447-3664.

Rulemaking Requirements

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in accordance with Executive Order 12291 and

Departmental Regulation 1512-1 and has been classified "nonmajor." It has been determined that this rule will not result in an annual effect on the economy of \$100 million or more; will not cause major increase in costs to consumers, individual industries, Federal, State or local government agencies or geographic regions; and will not have an adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the rule involves foreign affairs functions of the United States and, therefore, neither 5 U.S.C. 553 nor any other provision of law requires publication of a notice of proposed rule making with respect to the subject matter of this rule.

Background

Under Title I of Pub. L. 480, the Commodity Credit Corporation ("CCC") is authorized to finance the sale and exportation of agricultural commodities purchased by friendly countries. CCC's policy is, generally, to pay the ocean freight differential ("OFD") on U.S. flag vessels. OFD is the amount determined to represent the additional freight costs incurred as a result of the requirement to use U.S. flag vessels pursuant to cargo preference legislation. In certain circumstances, CCC may also finance, on credit terms, the non-OFD portion of the freight charges for U.S. flag vessel carriage or the freight charges for foreign-flag vessel carriage.

A proposed rule was published on September 16, 1986 at 51 FR 32791. This rule addressed certain issues regarding the procurement of ocean transportation by participants in the Title I, Pub. L. 480 program.

The proposed rule would have amended existing regulations to authorize the Director, Pub. L. 480 Operations Division, Foreign Agricultural Service (the "Director") to approve the terms of invitations for bids (IFB's) issued by participants soliciting offers from vessel owners/operators to carry cargo under the Pub. L. 480 Title I/III program. As part of the approval process, the Director would have had authority to specify, when USDA is financing ocean freight (e.g., primarily with respect to U.S. flag vessels),

whether offers received are to be pursuant to (1) open freight tenders, (i.e., opened publicly and ocean freight contracts made on the basis of such offers without negotiations) or (2) closed freight tenders, (i.e., be opened in private subject to further negotiations).

The proposed rule also provided that, in the case of open freight tenders, no negotiation, clarification or submission of additional information shall be permitted after receipt of the original freight offers unless the Director first determines that such further action is necessary to match the freight offers with the commodity offers, or to respond to unanticipated changes in quantities or locations of the commodities to be purchased. After review of the comments and subsequent experience with cargo preference requirements at the 75 percent level, the final rule differs with respect to the procurement of ocean transportation in that it (1) does not provide for any negotiations after receipt of the original offer and (2) does not provide for closed freight tenders.

The proposed rule also addressed the issue of re-tenders which is further described below.

Summary of Comments on Proposed Rule

Most of the 22 commentors (including 3 responding after the October 16, 1986 deadline for comments) favored the proposed rule, some with modifications. Five requested a 60 day extension to allow additional time for comments. Two were opposed to some or all of the proposal. Significant comments are grouped below by issue.

1. Open Freight Tenders.

Comments received from U.S. flag carrier interests unanimously supported the open tendering system as being the most equitable and competitive. One U.S. flag carrier stated that if all bidders know they only have one chance to submit their best offer, market competitive factors will be in effect and the efficiency of U.S. taxpayers' dollars will be maximized. Another U.S. flag carrier stated that it was very much in favor of the use of "open tenders" since such tenders would be beneficial to all parties concerned in the Pub. L. 480 transactions, owners of vessels would receive a fair and equitable chance to fix vessels, and the government should benefit as a result.

The U.S. Department of Transportation also stated it was in favor of the open tendering system, since that system would contribute to a more competitive attitude among bidders and would, therefore, result in cost reductions to the United States Government as well as equitable treatment of the U.S. flag vessel operators.

One commentator criticized the original proposal because it would result in increasing complexity in making freight offers. The commentator stated that to maximize chances of obtaining a freight award without submitting additional information or further negotiation, U.S. flag owners/operators would submit offers encompassing "every conceivable variation of type of vessel, tonnage size, port of loading, coast of loading, and laydays/canceling dates."

While USDA agrees that the complexity in offers would increase, open tenders would be fair to all parties and remove the appearance of favoritism which some have alleged as possible under a closed tender system. Vessel owners would know that in making offers containing multiple contingencies, read in public, no opportunity could exist for the appearance of unfair post-offer negotiations amongst charterers, their agent, brokers, and vessel owners. Further, this would permit the charterer increased options in matching cargo to vessels, maximize purchases, and achieve cargo preference responsibilities at the lowest cost possible.

In addition, while the ability of both USDA and participant/charterers to process offers was at the time of the proposed rule a concern, the advent of sophisticated computer technology has significantly reduced the time required to evaluate commodity and freight offers to achieve a lowest landed cost determination. In fact, USDA has fully computerized its evaluation for the past year.

Another commentator stated that it is the custom of the trade to have closed freight tenders not open freight tenders. USDA agrees that this is true of most commercial U.S. agricultural export trade and further notes that it is the policy of the Title I program to permit normal commercial practice to the extent compatible with safeguarding the public interest. However, USDA firmly believes that due to the nature of the Title I program where public funds are used to finance freight, either in the form of Ocean Freight Differentials (OFD) or occasionally foreign flag carriage, USDA's role in maintaining the integrity of the program outweighs the concerns

of this commentator. Open freight tenders will remove the environment and possibility for selective negotiations, favoritism, and the appearance of conflict of interest.

Another commentator noted that the procedure for open freight tenders would not permit participants to give a vessel owner/operator a "last refusal" option to reward or encourage good service. It was argued that when this is not possible, ocean carriers have no incentive to treat Pub. L. 480 business with the same goodwill they would in normal commercial practice. One commentator pointed out that this "manifests itself in operational problems that could be easily resolved, but aren't, because suppliers know that regardless of the quality of service . . . they must be awarded on the next business if they are even a penny cheaper . . ." USDA notes that negotiating with a "last refusal" option could permit favoritism and, therefore, lead to higher freight rates than would be otherwise received under an open bidding process. As a result this option is not consistent with USDA's goals in implementing this rule.

Several commentators stated that open freight tenders would lead to higher U.S. flag freight rates as U.S. vessel owners would be able to take advantage of situations where the number of U.S. flag offers of suitable tonnage is extremely limited. Some suggested an alternative under which original freight offers would be opened publicly, but closed negotiations would then be undertaken with responsive low offerors. This approach would be intended to preserve some of the benefits of open tendering (greater transparency of procedures) with the benefits of closed tenders (greater competition and flexibility in negotiating advantageous terms other than price).

USDA does not agree with these commentators as experience does not support this concern. Since the draft of the proposed regulations in 1986, significant increases in competition have been noted in those markets generally thought of to be limited, namely East and West Africa. Also, where there may be some limited competition, negotiation does not reduce freight rates. To support these facts, USDA recently conducted a study of 19 Purchase Authorizations (PAs) for 10 African countries, covering the period 1985-1988. Only 2 of the 19 tenders had freight offers for only 1 U.S. vessel. In both cases negotiation did not yield any reduction in the freight rate. Of the 17 remaining PAs, 82 percent had offers from 3 or more vessels with the greater freight savings observed in those tenders having the most competition—4

or more offers. Therefore, USDA takes the position that negotiations following either so-called open or closed freight tenders do not necessarily lead to lower freight rates than strict adherence to competitive open tenders. Under an open system, all competitors would essentially be offering their best and last rate.

One agricultural commodity processor organization supported open freight tenders with the stipulation that results be announced before commodity offers are taken. This would enable commodity suppliers to take into account known U.S. flag freight costs from various U.S. ports and coastal ranges. This rule will require the opening and reading in public of all U.S. flag freight offers prior to the receipt of commodity offers. There will be no change, however, to the current system of awarding freight and commodity as soon as possible following the receipt of commodity offers.

Some commentators stated that it was not clear whether USDA intended the open tender procedure to apply to non-U.S. flag vessels whose freight costs were being paid in full by participating countries. USDA hereby reiterates that a regulatory requirement for open tenders would apply only with respect to vessels for which USDA is financing some portion of ocean freight, either in the form of OFD payments or, when specifically approved in a Pub. L. 480 Title I agreement, foreign flag carriage.

In order to clarify the issue of deadlines of the receipt of offers USDA will require that IFBs indicate the same deadline for the receipt of offers for U.S. and foreign flag vessels. The proposed rule only required that the deadline for submission of offers for foreign flag vessels could not be later than that for U.S. flag vessels. This change is made for the purpose of removing further any appearance of conflict of interest because foreign freight offers form an integral part of the calculation of OFD.

2. Closed Freight Tenders

Several comments were received regarding the procedures and mechanisms for conducting closed freight tenders. Because closed freight tenders are not an option in this final rule there is no need for comment on these points.

3. Requirement of USDA Approval of Freight Re-tenders

One commentator opposed this proposal on the grounds that participants should be permitted to re-tender whenever they consider it in their interest. USDA notes that approval is already required as a

practical matter before a re-tender may be held. Approval is normally automatic for re-tenders for non-U.S. flag vessels, although USDA may compute OFD based on non-U.S. flag vessel rates offered in the original tender if U.S. flag vessels were fixed on that tender. Approval of re-tenders for U.S. flag vessels may be withheld if USDA believes that the result would be an increase in the U.S. flag rate or a reduced likelihood of meeting cargo preference requirements. The final rule does not differ from the proposed rule in this respect.

This rule also adds certain provisions now appearing as standard language in purchase authorizations. Upon the effective date of this rule, these provisions will be deleted from the purchase authorizations. No public comments were received concerning these provisions and they are adopted without change.

Final Rule

List of Subjects in 7 CFR Part 17

Agricultural commodities, Exports, Maritime carriers.

Accordingly, 7 CFR Part 17, Subpart A is amended as follows:

PART 17—[AMENDED]

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

Authority: Secs. 101–115, Pub. L. 480, 83rd Cong., as amended, 68 Stat. 455 (7 U.S.C. 1701 *et seq.*); E.O. 12220, 45 FR 44245.

§ 17.14 [amended]

2. In § 17.14, paragraphs (b) through (o) are redesignated as (c) through (p), and a new paragraph (b) is added to read as follows:

§ 17.14 Ocean Transportation.

(b) *Contracting procedures*—(1) *Invitations for Bids (IFBs)*. (i) Public freight "Invitations for Bids" are required in the solicitation of freight offers from all U.S. and foreign flag vessels unless otherwise authorized by the Director, Pub. L. 480 Operations Division, Foreign Agricultural Service (FAS) or in the case of cotton shipments, by the Director, Kansas City ASCS Commodity Office (hereinafter referred to as "the Director" as applicable), except that IFBs for foreign flag vessels are not required if the participant requires the use of vessels under its flag or other foreign flag vessels under its control and CCC is not financing any portion of the ocean freight thereon. Vessels considered to be under the control of the participant include vessels under time charters, bare boat charters,

consecutive voyage charters, or other contractual arrangements for the carriage of commodities which provide guaranteed access to vessels. Prior to release to the trade, all freight IFBs must be submitted to the Director for approval. Freight IFBs for both U.S. and non-U.S. flag vessels, except controlled vessels, must be issued by means of the Transportation News Ticker, New York, plus at least one other means of communication, to assure the broadest possible market coverage with adequate notice to interested parties.

(ii) All freight IFBs must:

(A) Specify a closing time for the submission of offers and state that late offers will not be considered;

(B) Provide that offers are required to have a canceling date (last contract layday) no later than the last contract layday specified in the IFB, and that vessels which are offered with a canceling date beyond the laydays specified in the IFB will not be considered, and;

(C) Provide the same deadline for submission of offers from both U.S. flag vessels and non-U.S. flag vessels.

Vessels which are submitted for approval following offers which do not comply with the above IFB requirements will not be approved by the Director.

(2) *Competitive bidding*. When CCC is financing any portion of the freight all offers shall be opened in public in the United States at the time and place specified in the IFB. Offers shall be publicly opened at such time prior to the time for receipt of offers for the sale of commodities as the Director determines appropriate. Only offers which are responsive to the IFB may be considered, and no negotiation, clarification, or submission of additional information shall be permitted.

(3) *Records of offers*. Copies of all offers received must be promptly furnished to the Director, and the Director may require the participant, or its shipping agent, to submit a written certification to the General Sales Manager that all offers received (with the times of receipt designated thereon) were transmitted to the Department. For purposes of this paragraph "time of receipt" shall be the time a hand carried offer, mailed offer, or telegram was received at the designated location for presentation or, if transmitted electronically, the time the offer was received, as supported by evidence satisfactory to the Director.

(4) *Re-tenders*. The Director may permit or require a participant to refuse any and all bids, and in such case a participant may conduct a re-tender with the approval of the Director. The Director shall not approve or require

freight re-tenders unless they will increase the likelihood of meeting U.S. flag cargo preference requirements, will permit the desired quantity to be shipped, will likely result in reduced CCC expenditures, or are otherwise determined to be in the best interests of the program. Any re-tendering will be governed by the same requirements as the original tenders.

Signed at Washington, DC on March 28, 1989.

Melvin E. Sims,

General Sales Manager; Vice President, Commodity Credit Corporation; and Associate Administrator, Foreign Agricultural Service.

[FR Doc. 89-8321 Filed 4-7-89; 8:45 am]

BILLING CODE 3410-10-M

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 44; Doc. No. 6713S]

General Crop Insurance Regulations; Florida Citrus Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1990 and succeeding crop years, by adding a new section, 7 CFR 401.143, Florida Citrus Endorsement. The intended effect of this rule is to provide the regulations containing the provisions of crop insurance protection on Florida citrus as an endorsement to the general crop insurance policy.

EFFECTIVE DATE: April 14, 1989.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as April 1, 1994.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of

\$100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the Federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

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

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

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 28115, June 24, 1983.

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

FCIC herewith adds to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.143, the Florida Citrus Endorsement, effective for the 1990 and succeeding crop years, to provide the provisions for insuring citrus in Florida.

Upon publication of 7b CFR 401.143 as a final rule, the provisions for insuring citrus contained therein will supersede those provisions contained in 7 CFR 410, the Florida Citrus Crop Insurance Regulations, effective with the beginning of the 1990 crop year. The present policy contained in 7 CFR Part 410 will be terminated at the end of the 1989 crop year and later removed and reserved. FCIC will propose to amend the title of 7 CFR Part 410 by separate document so that the provisions therein are effective only through the 1989 crop year.

Minor editorial changes have been made to improve compatibility with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions. In adding the new Florida Citrus Endorsement to 7 CFR Part 401, FCIC makes changes in the provisions for insuring citrus as follows:

1. *Section 1*—Clarify language to allow a new insured to exclude

insurance for Robinson tangerines for the first year.

2. *Section 2*—Add language to specifically state that we do not insure against inability to market fruit as a direct result of quarantine, boycott, or refusal of any entity to accept production unless the fruit has actual physical damage due to an insured cause. This change is standard in most fruit policies.

3. *Section 3*—Add language requiring an annual acreage report, and clarify the acreage reporting date for a new insured. Language previously included in the policy required only a periodic acreage report. The general crop insurance policy requires an annual acreage report. An annual report will insure more accurate reporting of year to year changes in acreage, unit structure, etc.

4. *Section 5*—The premium adjustment table is removed from the policy. Provisions are included to continue premium reduction through the end of the 1991 crop year subject to the conditions outlined in this section. This action implements the instruction by the FCIC Board of Directors to extend the expiration date for good experience discount while this issue is further studied by FCIC.

5. *Section 7*—Unit division provisions are included in the endorsement with language indicating that an additional premium may be required for unit division by noncontiguous land.

6. *Section 9*—Modify language to count as 100% damaged any citrus that is on the ground due to freeze and not picked up and marketed. This change was made because in the case of severe freeze it is inequitable to count the fruit partially damaged when all of the fruit is lost.

Change language to include juice content by type if acceptable production records are not furnished.

7. *Section 12*—Add a definition of "noncontiguous land."

On Monday, January 23, 1989, FCIC published a notice of proposed rulemaking in the *Federal Register* at 53 FR 3044, to provide the provisions of crop insurance protection on Florida citrus as an endorsement to the general crop insurance policy (7 CFR 401.143). The public was given 30 days in which to submit comments, data, and opinions on the proposed rule. One comment was received from the Crop Hail Actuarial Association (CHIAA) on behalf of its affiliates. The comments to the rule and FCIC's responses are set forth below in the same sequence as the sections affected:

Subparagraph 1.b.(2)

CHIAA questions the appropriateness of only insuring trees which have reached the tenth growing season after being set out, or the seventh season if provides for on the actuarial table. CHIAA states that research indicates that trees, through a variety of factors, are productive in the fourth or fifth growing season and produce 100 boxes per acre, and recommends that the criteria used to determine insurability be changed to be the potential to produce 100 boxes per acre, or produced by trees which have reached the fifth growing season. CHIAA suggests that this recommendation would both compliment and maintain continuity between section 1.b.(2) and section 1.c.

FCIC has determined that, although it is possible for citrus trees to produce 100 boxes of fruit per acre at fourth or fifth leaf, it is not our intent to insure such acreage. One hundred boxes per acre is not considered a commercial level of production for most citrus types. The level necessary to sustain a commercial citrus operation is normally 250-300 or more boxes per acre.

Subparagraph 1.c., which raises the potential crop to at least 100 boxes per acre is not included in the policy as a minimum level for insurability. This provision is included to prevent over-insuring small crops. For example, with a potential crop of only 100 boxes per acre and an \$800.00 per acre amount of insurance, a value of \$8.00 is placed on each box of fruit.

Reducing the potential below 100 boxes per acre increases the insurance value of each box of fruit to excessive levels. Since the two provisions are intended for separate purposes, FCIC determines that it is not necessary to coordinate insurable age and minimum crop potential.

Subparagraph 1.b.(3)

CHIAA cites the provision requiring that if the insured elects to exclude Robinson tangerines from insurance coverage, this must be done by April 30. Stating that this is the acreage reporting date and that the sales closing date is August 31, CHIAA asks whether a new insured could not exclude acreage of Robinson tangerines from coverage until the second year of coverage and that this section appears to offer such option to second year insureds while making it unavailable to first year insureds.

FCIC is in agreement with the CHIAA comment and will change paragraph 1.b.(3) to allow a new insured to exclude insurance for Robinson tangerines if they so choose.

Subsection 4

CHIAA cites this subsection as being in conflict with paragraph 9.d. with respect to the requirement to maintain records; this paragraph stating that production history is not required in order to insure citrus, and paragraph 9.d. requiring acceptable records to determine juice content in the quality adjustment process of freeze damaged fruit.

FCIC has determined that subsection 9.d. of the endorsement does not require production records as is stated in the comment. It only provides that an insured may prove a higher juice content if they desire to do so. Since there is no conflict FCIC does not anticipate any change.

Subparagraph 5.b.

CHIAA states that the FCIC Board of Directors has taken action to retain the premium adjustment table and that this provision should be revised to reflect that determination.

The Board of Directors recently took action to continue the good experience discount, for those policyholders who are presently eligible under all policies and endorsements, until the end of the 1991 crop year, pending study of the premium discount practice. The purpose of the Board's action was to provide FCIC an opportunity to further review the good experience discount issue with a view toward making it available to all policyholders on all crops. The Board of Directors has not taken action to retain the premium adjustment table.

Therefore, FCIC has changed the expiration date of the premium discount extension to 1991. The date indicated in the notice of proposed rulemaking was 1994 crop year; however, this change implements the suggestion of the Board to move the expiration date to the end of the 1991 crop year for all policies and endorsements which FCIC reviews this issue.

Subparagraph 9.a.(2)

CHIAA states that, when calculating the claim, the average percent of damage is reduced by 10 percent which may create confusion for the insured and does not permit the insured to collect 100 percent of the liability on a unit. This, states CHIAA, is in contrast to any other kind of crop insurance policy and recommends its removal.

FCIC does not accept the recommendation to delete the 10 percent deductible. Deletion would create an indemnifiable situation each time damage on a unit is one tenth of one percent or greater. This could lead to large numbers of small claims.

Administrative costs would increase well beyond any benefit received by the insureds. For these reasons, FCIC contemplates no change to this provision.

Subparagraph 9.d.(2)

CHIAA proposes that, since this policy is only available in Florida, that the juice content established by the actuarial table be included in the endorsement.

FCIC accepts this recommendation and will include the following language in subparagraph 9.d.(2) of the endorsement herein:

(2) the following juice content if acceptable records are not furnished:

- Type I—44 pounds of juice per 90 pound box
- Type II—47 pounds of juice per 90 pound box
- Type III—38 pounds of juice per 85 pound box
- Type VI—43 pounds of juice per 90 pound box

In addition to the above comments, CHIAA also made a general comment with respect to the dates contained in the endorsement stating that the dates appeared confusing and complicated. As an example, CHIAA cited subparagraph 1.b.(3) which provides for an April 30 date to exclude Robinson tangerines from coverage; paragraph 3.b. providing for an acreage report to be submitted by April 30; paragraph 6.a. providing for coverage to begin on May 1; and, according to the date table, the sales closing date of August 15. CHIAA asked if there was a proposal to change the sales closing date.

FCIC reviewed all the dates in question and has determined that the date by which a new insured must exclude Robinson tangerines should be changed (See recommendation for 1.b.(3) above).

Further, the acreage reporting date for carryover contracts is April 30. Since the sales closing date is August 15, FCIC has decided to add the following language to paragraph 3.b. to clarify the acreage reporting date for a new insured:

b. The date by which you must annually submit the acreage report is April 30 except that for the first crop year the report must be submitted by the later of April 30 or the time you submit an application for insurance.

We do not agree to changing the sales closing date. This would adversely affect insurance companies by reducing the sales period.

Accordingly, with the changes indicated above, FCIC herewith adopts the proposed rule published at 53 FR 3044, as a final rule.

Inasmuch as the date for filing changes is April 15, good cause is shown

for making this rule effective in less than 30 days.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the General Crop Insurance Regulations (7 CFR Part 401); proposed to be effective for the 1990 and succeeding crop years, as follows:

PART 401—[AMENDED]

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

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

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.143, Florida Citrus Endorsement, effective for the 1990 and Succeeding Crop Years, to read as follows:

§ 401.143 Florida Citrus Endorsement.

The provisions of the Florida Citrus Endorsement for the 1990 and subsequent crop years are as follows:

Federal Crop Insurance Corporation—Florida Citrus Endorsement**1. Insured Crop**

a. The crop insured will be any of the following citrus types you elect:

- Type I Early and mid-season oranges;
- Type II Late oranges;
- Type III Grapefruit for which freeze damage will be adjusted on a juice basis for white grapefruit and on a fresh-fruit basis for pink and red grapefruit;
- Type IV Navel oranges, tangelos and tangerines;
- Type V Murcott Honey Oranges (also known as Honey Tangerines) and Temple Oranges;
- Type VI Lemons; or
- Type VII Grapefruit for which freeze damage will be adjusted on a fresh basis for all grapefruit.

If you insure grapefruit, you must insure all of your grapefruit under a single type designation (type III or type VII). "Meyer Lemons" and oranges commonly known as "Sour Oranges" or "Clementines" will not be included in any of the insurable types of citrus.

b. In addition to the citrus not insurable in section 2 of the general crop insurance policy, we do not insure any citrus:

- (1) Which cannot be expected to mature each crop year within the normal maturity period for the type;
- (2) Produced by trees that have not reached the tenth growing season after being set out, unless otherwise provided

in the actuarial table or we agree to insure such citrus in writing;

(3) Of the Robinson tangerine variety, for any crop year in which you have elected to exclude such tangerines from insurance (you must elect this exclusion prior to April 30 preceding the crop year for which the exclusion is to become effective except that for the first crop year, you must elect this exclusion by the later of April 30 or the time you submit the application for insurance);

c. Upon our approval, you may elect to insure or exclude from insurance for any crop year any insurable acreage in any unit which has a potential of less than 100 boxes per acre. If you:

(1) Elect to insure such acreage, we will increase the potential to 100 boxes per acre when determining the amount of loss;

(2) Elect to exclude such acreage, we will disregard the acreage for all purposes related to this contract; or

(3) Do not elect to insure or exclude such acreage:

(a) We will disregard the acreage if the production is less than 100 boxes per acre; or

(b) If the production from such acreage is 100 or more boxes per acre, we will determine the percent of damage on all of the insurable acreage for the unit, but will not allow the percent of damage for the unit to be increased by including such acreage.

d. We may exclude from insurance, or limit the amount of insurance on, any acreage which was not insured the previous crop year.

2. Causes of Loss

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

- (1) Fire;
- (2) Freeze;
- (3) Hail;
- (4) Hurricane; or
- (5) Tornado; unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

b. In addition to the causes of loss not insured against in section 1 of the general crop insurance policy, we will not insure against any loss of production due to:

- (1) Any damage to the blossoms or trees;
- (2) Fire, if weeds and other forms of undergrowth have not been controlled or tree pruning debris has not been removed from the grove;
- (3) Inability to market the fruit as a direct result of quarantine, boycott, or refusal of any entity to accept production unless production has actual

physical damage due to a cause specified in subsection 2.a.

3. Report of Acreage, Share, Type, and Practice (Acreage Report)

a. In addition to the information required in section 3 of the general crop insurance policy you must:

- (1) Report the crop type; and
- (2) Designate separately any acreage that is excluded under section 1 of this endorsement.

b. The date by which you must annually submit the acreage report is April 30 except for the first crop year, the report must be submitted by the later of April 30 or the time you submit the application for insurance.

4. Production Reporting

Production potential for each unit is determined during loss adjustment. Therefore, subsection 4.d. of the general crop insurance policy is not applicable to this endorsement. Production history is not required.

5. Annual Premium

a. The annual premium amount is computed by multiplying the amount of insurance times the premium rate, times the insured acreage, times your share at the time insurance attaches.

b. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1988 crop year under the terms of the experience table contained in the citrus policy for the 1989 crop year, you will continue to receive the benefit of the reduction subject to the following conditions:

- (1) No premium reduction will be retained after the 1991 crop year;
- (2) The premium reduction will not increase because of favorable experience;
- (3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1989 crop year;
- (4) Once the loss ratio exceeds .80, no further premium reduction will apply; and
- (5) Participation must be continuous.

6. Insurance Period

a. The calendar date on which insurance attaches is May 1 for each crop year, except that for the first crop year, if the application is accepted by us after April 20, insurance will attach on the tenth day after the application is received in the service office.

b. The end of the insurance period is the date of the calendar year following the year of normal bloom as follows:

(1) January 31 for tangerines and navel oranges;

(2) April 30 for lemons, tangelos, early and mid-season oranges; and

(3) June 30 for late oranges, grapefruit, Temple and Murcott Honey Oranges.

7. Unit Division

a. Citrus acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided by citrus type.

b. Citrus acreage that would otherwise be one unit as defined in section 17 of the general crop insurance policy and subsection 7.a. above may be divided into more than one unit, if you agree to pay additional premium if required by the actuarial table and if, for each proposed unit:

(1) You maintain written, verifiable records of acreage and harvested production for at least the previous crop year; and

(2) Acreage planted to insured citrus is located in separate, legally identifiable sections, provided:

(a) The boundaries of the sections are clearly identified and the insured acreage is easily determined; and

(b) The trees are planted in such a manner that the planting pattern does not continue into the adjacent section; or

(3) The acreage of insured citrus is located on noncontiguous land. If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

8. Notice of Damage or Loss

In addition to the notices required in the general crop insurance policy and in case of damage or probable loss:

a. You must give us written notice of the date and cause of damage; and

b. If an indemnity is to be claimed on any unit you must give us notice by the calendar date for the end of the insurance period if harvest will not begin by that date.

9. Claim for Indemnity

a. The indemnity will be determined on each unit by:

(1) Computing the average percent of damage to the citrus which (without regard to any percent of damage arrived at through prior inspections) will be the ratio of the number of boxes of citrus considered damaged from an insured cause to the potential rounded to the nearest tenth (.1) of a percent. Citrus will be considered undamaged potential if it is:

(a) Or could be marketed as fresh fruit;

(b) Harvested prior to an inspection by us; or

(c) Harvested within 7 days after a freeze;

(2) Multiplying the result in excess of 10 percent (e.g., 45% - 10% = 35% payable) times the amount of insurance for the unit (the amount of insurance for the unit is determined by multiplying the insured acreage on the unit times the applicable amount of insurance per acre); and

(3) Multiplying this product by your share.

b. Pink and red grapefruit of citrus Type III and citrus of Types IV, V, and VII which are seriously damaged by freeze (as determined by a fresh-fruit cut of a representative sample of fruit in the unit, in accordance with the applicable provisions of the Florida Citrus Code), and are not or could not be marketed as fresh-fruit will be considered damaged to the following extent:

(1) If 15 percent or less of the fruit in a sample shows serious freeze damage, the fruit will be considered undamaged; or

(2) If 16 percent or more of the fruit in a sample shows serious freeze damage, the fruit will be considered 50 percent damaged, except that:

(a) For tangerines of citrus Type IV, damage in excess of 50 percent will be the actual percent of damaged fruit; and

(b) For other applicable varieties, if we determine that the juice loss in the fruit exceeds 50 percent, the amount so determined will be considered the percent of damage.

c. Notwithstanding the provisions of subsection 9.b., as to any pink and red grapefruit of Type III and citrus of Types IV, V, and VII in any unit which is mechanically separated (using the specific gravity "floatation" method) into undamaged and freeze-damaged fruit, the amount of damage will be the actual percent of freeze-damaged fruit not to exceed 50 percent and will not be affected by subsequent fresh-fruit marketing. The 50 percent limitation on freeze-damaged fruit, mechanically separated, will not apply to tangerines of citrus Type IV.

d. Any citrus of Types I, II, and VI and white grapefruit of Type III which is damaged by freeze, but may be processed by canning or processing plants, will be considered as marketable for juice. The percent of damage will be determined by relating the juice content of the damaged fruit as determined by test house analysis to:

(1) The average juice content based on acceptable records, furnished by you, showing the juice content of fruit

produced on the unit for the three previous crop years; or

(2) The following juice content, if acceptable records are not furnished:

Type I—44 pounds of juice per 90 pound box

Type II—47 pounds of juice per 90 pound box

Type III—38 pounds of juice per 85 pound box

Type VI—43 pounds of juice per 90 pound box

e. Any citrus on the ground which is not picked up and marketed will be considered totally lost if the damage was due to an insured cause.

f. Any citrus which is unmarketable either as fresh fruit or for juice because it is immature, unwholesome, decomposed, adulterated, or otherwise unfit for human consumption due to an insured cause will be considered totally lost.

g. Pink and red grapefruit citrus of Type III and citrus of Types IV, V, and VII which are unmarketable as fresh fruit due to serious damage from hail as defined in United States Standards for grades of Florida fruit will be considered totally lost.

10. Cancellation and Termination Dates

The cancellation date is April 30 of the calendar year in which the crop normally blooms. The termination date is April 30 of the calendar year following the year of normal bloom.

11. Contract Changes.

The date by which contract changes will be available in your service office is the April 15 immediately preceding the cancellation date.

12. Meaning of Terms

a. "Box" means a standard field box as prescribed in the Florida Citrus Code.

b. "Crop year" means the period beginning May 1 and extending through June 30 of the following year and will be designated by the calendar year in which the insurance period ends.

c. "Harvest" means the severance of citrus fruit from the tree either by pulling, picking, or severing by mechanical or chemical means or picking up the marketable fruit from the ground.

d. "Noncontiguous land" means any land owned by you and rented by you for cash, a fixed commodity payment or any consideration other than a share in the insured crop, whose boundaries do not touch at any point. Land which is separated by a public or private right-of-way, waterway or irrigation canal will be considered to be touching (contiguous).

e. "Potential" means production:

(1) Which would have been produced had damage not occurred and includes citrus which:

(a) Was picked before damage occurred;

(b) Remained on the tree after damage occurred;

(c) Was lost from an insured cause; and

(d) Was lost from an uninsured cause.

(2) The potential will not include:

(a) Citrus lost before insurance attaches for any crop year;

(b) Citrus lost by normal dropping; or

(c) Any tangerines which normally would not, by the end of the insurance period for tangerines, meet the 210 pack size (2 and 1/16 inch minimum diameter) under United States Standards.

Done in Washington, DC on April 4, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-8463 Filed 4-7-89; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 406

[Docket No. 6556S]

Nursery Crop Insurance Regulations; Correction

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule, correction.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) published a final rule in the Federal Register on January 24, 1989, at 53 FR 3411, to issue the Nursery Crop Insurance Regulations (7 CFR Part 406). In that publication incorrect references to a "replant payment" and "tenant" were made as well as an incorrect reference to the amount of insurance used to determine the amount of loss deductible. This notice is published to correct those errors.

EFFECTIVE DATE: April 10, 1989.

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

SUPPLEMENTARY INFORMATION: In the final rule issuing the Nursery Crop Insurance Regulations (7 CFR Part 406), published in the Federal Register on January 24, 1989, at 53 FR 3411, three errors were noted. The reference to deducting any amount due FCIC from the "replant payment" should be removed because there is no replant payment allowed for the Nursery Crop insurance coverage. The document also

indicated that the definition of the term "annual loss deductible" meant the value computed by subtracting the "maximum amount of liability" from the field market value for the unit. This is a misnomer since the policy is issued on a dollar value basis, therefore, this should have read "amount of insurance." Finally, the definition of the term "tenant" was included. The Nursery Crop insurance program does not include tenants, therefore, this term should be removed. Accordingly, FR Doc. No. 89-1425, appearing at 53 FR 3411 on January 24, 1989, is corrected as follows:

§ 406.7 [Corrected]

1. In § 406.7(d)6.d., appearing at page 3415 in the left column, delete the words "or from any replanting payment." in the second and third line thereof.

2. In § 406.7(d)17.c., appearing at page 3416 in the left column, delete the words "maximum limit of liability" in the second and third line thereof, and substitute the words "amount of insurance" therefore.

3. In § 406.7(d)17.m., appearing at page 3416 in the left column, delete paragraph "m." in its entirety and redesignate paragraph "n." as paragraph "m."

Done in Washington, DC, on April 4, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-8465 Filed 4-7-89; 8:45 am]

BILLING CODE 3410-09-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-155-AD; Amdt. 39-6186]

Airworthiness Directives; Boeing Model 767 Series Airplanes.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which requires a periodic operational check to manually open and close all entry/service doors to verify the integrity of the door counterbalance torsion springs, and replacement, if necessary. This amendment is prompted by reports of several instances of broken graphite composite counterbalance torsion springs which inhibit normal door operation. This condition, if not

corrected, would require extra effort to unlatch the door, and manual assistance to open the door in the emergency mode, or would render the door inoperable should the broken spring jam the counterbalance assembly. A jammed counterbalance assembly would prevent the door from opening when required during an emergency evacuation.

EFFECTIVE DATE: May 9, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Pliny Brestel, Airframe Branch, ANM-120S; telephone (206) 431-1931. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 767 series airplanes, which requires a periodic operational check of each entry/service door to detect a broken counterbalance graphite torsion spring, and replacement of the spring with an airworthy part, if necessary, prior to further flight, was published in the *Federal Register* on November 17, 1988 (53 FR 46469).

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

An operator requested that the proposed compliance period for repetitive inspection be increased from 350 flight hours to 425 flight hours, which would allow the inspection to be accomplished within its normal "B-check" frequency, and result in the work being done at a more suitable maintenance facility. The FAA does not concur with the additional 75 flight hour period because, in light of the safety considerations, the intent was to specify an interval that would allow all operators to perform the inspection within the "A-check."

The manufacturer commented that since the issuance of the NPRM, Revision 1 to Boeing Alert Service Bulletin 767-52A0053, dated December 22, 1988, has been issued and should be identified in the AD. The FAA has reviewed and approved the revision and

has determined that compliance may also be made with Revision 1. The revision does limit the applicability only to airplanes equipped with slide rafts. The final rule has been changed to incorporate this applicability. Since this change reduces the number of affected airplanes, it will not increase the economic burden on any operator or increase the scope of the AD.

The manufacturer also commented that the sentence in the preamble to the NPRM reading, "This is considered interim action until an improved counterbalance torsion spring is developed, at which time the FAA may consider further rulemaking to address it as terminating action for the periodic checks," is too restrictive in its implication that all delivered inner springs will be replaced with improved springs when developed. The manufacturer further stated that the possibility exists that a significant number of delivered (improved) springs may be found to be acceptable for design life without replacement by virtue of one or more factors, including the time period in which the springs were manufactured, the material lot, inspection requirements, assembly and installation procedures, and the number of cycles or hours they have accumulated. Therefore, the manufacturer recommends that the sentence be changed to read, "This is considered interim action, and when final action has been developed the FAA may consider further rulemaking to address it as terminating action for the periodic checks." The FAA did not intend to suggest that it had prejudged the content of future rulemaking. In any such action, the FAA would consider any alternatives which provide an acceptable level of safety.

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, with the changes previously noted.

There are approximately 104 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 50 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 manhour 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 \$2,000 per inspection or \$24,000 per year.

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, Model 767 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 § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

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.

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 767 series airplanes, line position 132, 136, 140, and subsequent, equipped with slide rafts, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure opening of entry/service doors when required for emergency evacuation, accomplish the following:

A. Within 350 flight hours after the effective date of this AD, and at intervals thereafter not to exceed 350 flight hours, perform an operational check on each entry/service door to detect a broken counterbalance graphite torsion spring, and replace with an airworthy part, if necessary, before further flight, in accordance with Boeing Alert Service Bulletin 767-52A0053, dated August 25, 1988, or Revision 1, dated December 22, 1988. After replacement of any counterbalance graphite torsion spring, continue to perform the operational checks at intervals not to exceed 350 flight hours.

B. 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, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

C. 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 Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective May 9, 1989.

Issued in Seattle, Washington, on March 30, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-8351 Filed 4-7-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-31-AD; Amdt. 39-6189]

Airworthiness Directives; McDonnell Douglas Model DC-10-15, -30, -30F and KC-10A (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of McDonnell Douglas Model DC-10-15, -30, -30F and KC-10A (Military) series airplanes by individual telegrams. This AD requires an optically aided visual inspection of the attach structure of the engine forward mount truss assembly on pylons 1 and 3. This action is prompted by a report of fatigue cracks resulting in the failure of both lower legs of the engine forward mount truss assembly. This condition, if not corrected, could result in eventual loss of the wing engine from the aircraft.

DATES: Effective April 24, 1989.

This AD was effective earlier to all recipients of telegraphic AD T89-05-53, dated March 1, 1989.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855

Lakewood Blvd., Long Beach, California 90846 Attention: Director, Publications and Training, C1-L65 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Maurice Cook, Aerospace Engineer, Los Angeles Aircraft Certification Office, Airframe Branch ANM-120L, FAA, Northwest Mountain Region, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5226.

SUPPLEMENTARY INFORMATION: On March 1, 1989, the FAA issued Telegraphic AD T89-05-53, applicable to McDonnell Douglas DC-10-15, -30, -30F and KC-10A (Military) series airplanes, which requires an optically aided visual inspection of the attach structure of the engine forward mount truss assembly on pylons 1 and 3. That action was prompted by a recent report of fatigue cracks resulting in the failure of both lower legs of the engine forward mount truss assembly on a Model DC-10 series airplane. This condition, if not corrected, could result in eventual loss of the wing engine from the airplane.

Since this condition may exist or develop on other airplanes of this same type design, this AD requires that operators conduct an optically aided visual inspection for cracks in the attach structure of the engine forward mount truss assembly on pylons 1 and 3. Any cracks identified during the inspection must be repaired prior to further flight, in a manner approved by the FAA. This is considered to be interim action until final action has been identified, at which time the FAA may consider further rulemaking to address it.

Since a situation existed, and still exists, that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

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.

The Federal Aviation Administration has determined that this regulation is an emergency regulation and is not

considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

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 as follows:

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.

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas DC-10-15, -30, -30F and KC-10A (Military) series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the forward mount truss assembly on pylons 1 and 3, accomplish the following:

A. Prior to accumulation of 12,000 landings or 48,000 hours time-in-service, whichever occurs first, or within 10 days after the effective date of this AD, whichever occurs later, conduct an optically aided visual inspection of the engine forward mount truss assembly on pylons 1 and 3, in accordance with McDonnell Douglas Alert Service Bulletin A54-99, dated February 27, 1989.

B. If cracks are found during the inspections required by paragraph A. above, prior to further flight, repair in a manner approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. 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, FAA, Northwest Mountain Region.

D. 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 Blvd., Long Beach, California 90846 Attention: Director, Publications and Training, C1-L65 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425.

This amendment becomes effective April 24, 1989.

It was effective earlier to all recipients of Telegraphic AD T89-05-53, issued March 1, 1989.

Issued in Seattle, Washington, on March 30, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 89-8350 Filed 4-7-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-ASW-44]

Establishment of Transition Area; Coushatta, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will establish a transition area at Coushatta, LA. The development of a new standard instrument approach procedure (SIAP) to the Red River Airport, utilizing the new Coushatta Nondirectional Radio Beacon (NDB), has made this revision necessary. The intended effect of this revision is to provide adequate controlled airspace for aircraft executing the new NDB SIAP to the Red River Airport. Coincident with this action is the changing of the status of the Red River Airport from visual flight rules (VFR) to instrument flight rules (IFR).

EFFECTIVE DATE: 0901 u.t.c., June 1, 1989.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

On November 21, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing a transition area at Coushatta, LA (53 FR 48930).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E, dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will establish a transition area at Coushatta, LA. The development of a new SIAP to the Red River Airport, utilizing the new Coushatta NDB, has necessitated this revision. The intended effect of this revision is to provide adequate controlled airspace for aircraft executing this new NDB SIAP. Coincident with this action is the changing of the status of the Red River Airport from VFR to IFR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) [Revised Pub. L. 97-449, January 12, 1983]; 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Coushatta, LA [New]

The airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Red River Airport (latitude 31°59'26"N., longitude 93°18'26"W.), and within 3.5 miles each side of the 002° bearing of the Coushatta NDB (latitude 32°04'17"N., longitude 93°18'17"W.), extending from the 6.5-mile radius area to 16.5 miles north of the Red River Airport.

Issued in Fort Worth, TX, on March 21, 1989.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 89-8356 Filed 4-7-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-ASW-42]

Establishment of Transition Area; Robstown, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will establish a transition area at Robstown, TX. The development of a new VOR/DME-A standard instrument approach procedure (SIAP) to the Nueces County Airport, utilizing the Corpus Christi Very High Frequency Omnidirectional Radio Range/Tactical Air Navigation (VORTAC), has made this revision necessary. The intended effect of this revision is to provide adequate controlled airspace for aircraft executing the new VOR/DME-A SIAP to the Nueces County Airport. Coincident with this action is the changing of the status of the airport from visual flight rules (VFR) to instrument flight rules (IFR).

EFFECTIVE DATE: 0901 u.t.c., June 1, 1989.

FOR FURTHER INFORMATION CONTACT:

Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation

Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

On November 21, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing a transition area at Robstown, TX (53 FR 48931).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E, dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will establish a transition area at Robstown, TX. The development of a new VOR/DME-A SIAP to the Nueces County Airport, utilizing the Corpus Christi VORTAC, has necessitated this revision. The intended effect of this revision is to provide adequate controlled airspace for aircraft executing the new VOR/DME-A SIAP to the Nueces County Airport. The new transition area will exclude that portion of airspace which overlies the Corpus Christi, TX, Control Zone and Transition Area. Additionally, the original SIAP was modified slightly in order to reduce the impact it might have on air traffic in and around the Kingsville Naval Air Station Airport. Coincident with this action is the changing of the status of the Nueces County Airport from VFR to IFR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) [Revised Pub. L. 97-449, January 12, 1983]; 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Robstown, TX [New]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Nueces County Airport (latitude 27°46'41" N., longitude 97°41'24" W.), excluding that portion which overlies the Corpus Christi, TX, Control Zone and Transition Area.

Issued in Fort Worth, TX, on March 21, 1989.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 89-8357 Filed 4-7-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-AWP-19]

Alteration of VOR Federal Airway V-208; Arizona

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of Federal Airway V-208 in the vicinity of Page, AZ. Currently, aircraft operating northbound and eastbound on airways over the Grand Canyon area are required to maintain an altitude above 14,500 feet mean sea level (MSL) in order to avoid the flight-free area. This flight restriction creates a need for an airway with a lower minimum en route altitude (MEA) to accommodate aircraft unable to operate at high altitudes. This action aids flight planning.

EFFECTIVE DATE: 0901 U.t.c., June 1, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-

240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On February 9, 1989, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of VOR Federal Airway V-208 located in the vicinity of the Grand Canyon National Park (54 FR 6301). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes which involved changing Grand Canyon and Tuba City radials, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the description of VOR Federal Airway V-208 located in the vicinity of Page, AZ. The current airway structure traversing the Grand Canyon National Park has an MEA above 14,500 feet MSL, which was established in Docket No. 25149, SFAR 50-2, effective September 22, 1988 (53 FR 36946). This altitude restriction prevents a number of aircraft from operating in this area. This action provides an airway with a lower MEA that bypasses the Grand Canyon National Park.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) [Revised Pub. L. 97-449, January 12, 1983]; 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-208 [Amended]

By removing the words "Peach Springs, AZ. From Page, AZ, via" and substituting the words "Peach Springs, AZ; Grand Canyon, AZ; INT Grand Canyon 095° and Tuba City, AZ, 246° radials; Tuba City; Page, AZ;"

Issued in Washington, DC, on April 4, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-8352 Filed 4-7-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-AGL-1]

Alteration of VOR Federal Airways; Ohio and Indiana

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment alters the descriptions of Federal Airways V-275 and V-517, by renumbering the alternate airway segment of V-275, located in the states of Ohio and Indiana. This action is in support of the FAA agreement with the International Civil Aviation Organization (ICAO) to eliminate all alternate route designations from the National Airspace System (NAS).

DATES: Effective 0901 U.T.C., June 1, 1989. Comments must be received on or before May 26, 1989.

ADDRESSES: Send comments on the rule in triplicate to: Director, FAA, Great Lakes Region, Attention: Manager, Air Traffic Division, Docket No. 89-AGL-1, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, weekdays, except

Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:

Jesse B. Bogan, Jr., Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9253.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

This action is in the form of a final rule, which involves amending the descriptions of VOR Federal Airways V-275 and V-517 by renumbering the alternate airway segment of V-275. On September 2, 1988, the FAA, in an agreement with ICAO, proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to change the descriptions of VOR Federal Airways by revoking all alternate route designations from the NAS. This action does not add to, nor revoke from, controlled airspace and for this reason is not preceded by notice and public procedure. Comments are invited on the rule. When the period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to amend the descriptions of VOR Federal Airways V-275 and V-517 by renumbering the alternate airway segment of V-275. This action is in support of the FAA agreement with the ICAO to eliminate all alternate airway designations from the NAS. Section 71.123 of Part 71 of the Federal Aviation

Regulations was republished in Handbook 7400.6E dated January 3, 1989.

I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1)—is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-275 [Amended]

By removing the words "Dayton, including a W alternate from Cincinnati to Dayton via INT Cincinnati 336° and Richmond, IN, 190° radials, and Richmond," and substituting the word "Dayton;"

V-517 [Amended]

By removing the words "to Cincinnati, OH," and substituting the words "Cincinnati, OH; INT Cincinnati 336° and Richmond, IN, 190° radials; Richmond; to Dayton, OH."

Issued in Washington, DC, on April 4, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-8353 Filed 4-7-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-ASW-39]

Establishment of Transition Area: George West, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will establish a transition area at George West, TX. The development of a new VOR/DME-A standard instrument approach procedure (SIAP) to the Live Oak County Airport, utilizing the Three Rivers Very High Frequency Omnidirectional Radio Range/Tactical Air Navigation (VORTAC), has made this revision necessary. The intended effect of this revision is to provide adequate controlled airspace for aircraft executing this new VOR/DME-A SIAP to the Live Oak County Airport. Coincident with this action is the changing of the status of the airport from visual flight rules (VFR) to instrument flight rules (IFR).

EFFECTIVE DATE: 0901 u.t.c., June 1, 1989.

FOR FURTHER INFORMATION CONTACT:

Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0503, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

On November 8, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing a transition area at George West, TX, (53 FR 47222).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 17.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E, dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will

establish a transition area at George West, TX. The development of a new VOR/DME-A SIAP to the Live Oak County Airport, utilizing the Three Rivers VORTAC, has necessitated this revision. The intended effect of this revision is to provide adequate controlled airspace for aircraft executing this new VOR/DME-A SIAP to the Live Oak County Airport. Coincident with this action is the changing of the status of the airport from VFR to IFR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

George West, TX [New]

The airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Live Oak County Airport (latitude 28°22'00"N., longitude 98°07'10"W.), and within 2 miles each side of the 168° radial of the Three Rivers VORTAC (latitude 28°30'18"N., longitude 98°09'03"W.), extending from the 6.5-mile radius area to 9 miles northwest of the Live Oak County Airport.

Issued in Fort Worth, TX, on March 21, 1989.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 89-8354 Filed 4-7-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-ASW-40]

Revision of Transition Area; Laredo, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will revise the transition area at Laredo, TX. The development of a new VOR/DME RWY 17 standard instrument approach procedure (SIAP) to the Rancho Blanco Airport, utilizing the Laredo Very High Frequency Omnidirectional Radio Range/Tactical Air Navigation (VORTAC), has made this revision necessary. The intended effect of this revision is to provide adequate controlled airspace for aircraft executing this new VOR/DME RWY 17 SIAP to the Rancho Blanco Airport. Coincident with this action is the changing of the status of the Rancho Blanco Airport from visual flight rules (VFR) to instrument flight rules (IFR).

EFFECTIVE DATE: 0901 u.t.c., June 1, 1989.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

On November 8, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by revision the transition area located at Laredo, TX (53 FR 47223).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is as the same that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E, dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will revise

the transition area located at Laredo, TX. The development of a new VOR/DME RWY 17 SIAP to the Rancho Blanco Airport, utilizing the Laredo VORTAC, has necessitated this revision. The intended effect of this revision is to provide adequate controlled airspace for aircraft executing the new SIAP. Coincident with this action is the changing of the status of the Rancho Blanco Airport from VFR to IFR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Laredo, TX [Revised]

By inserting after the next to last sentence of the current legal description: "and within an 8.0-mile radius of the Rancho Blanco Airport (latitude 27°18'30"N., longitude 99°28'52"W.). That airspace within Mexico is excluded."

Issued in Fort Worth, TX, on March 21, 1989.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 89-8355 Filed 4-7-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 89-AWP-4]

Designation of Controlling Agency for Restricted Area R-2312 Fort Huachuca, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action designates Libby Army Airfield (AAF) Air Traffic Control Tower (ATCT) as the controlling agency for Restricted Area R-2312 near Fort Huachuca, AZ. This action enhances the efficient use of airspace by enabling joint use of R-2312 when the area is not needed for its designated purpose.

EFFECTIVE DATE: 0901 u.t.c., June 1, 1989.

FOR FURTHER INFORMATION CONTACT:

Paul Gallant, Military Operations Branch (ATO-140), Operations Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9361.

The Rule

This amendment to Part 73 of the Federal Aviation Regulations assigns Libby AAF ATCT as the controlling agency for Restricted Area R-2312 located near Fort Huachuca, AZ. R-2312 was established June 4, 1987 (52 FR 11033) to contain an aerostat radar balloon operated by the United States Customs Service. This amendment makes R-2312 a joint-use restricted area enabling access for use by nonparticipating aircraft when the airspace is not required for its prescribed purpose. Because this action is a minor technical amendment in which the public would not be particularly interested, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Section 73.23 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major

rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

PART 73—SPECIAL USE AIRSPACE

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

Authority. 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.23 [Amended]

2. Section 73.23 is amended as follows:

R-2312 Fort Huachuca, AZ [Amended]

By adding the following controlling agency: Controlling agency, Libby AAF ATCT.

Issued in Washington, DC, on March 31, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-8358 Filed 4-7-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 89-AWP-2]

Change in Using Agencies for Restricted Areas; Nevada

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the using agencies for Restricted Areas R-4802, R-4803N, R-4803S, R-4804, R-4810, R-4812 and R-4813, located in Nevada, to properly reflect the primary user of these areas. This action does not change the current dimensions of, or the activities within, these areas.

EFFECTIVE DATE: 0901 U.t.c., June 1, 1989.

FOR FURTHER INFORMATION CONTACT:

Paul Gallant, Military Operations Branch (ATO-140), Operations Division,

Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9361.

The Rule

This amendment to Part 73 of the Federal Aviation Regulations changes the using agencies for Restricted Areas R-4802, R-4803N, R-4803S, R-4804, R-4810, R-4812 and R-4813, located in Nevada, to reflect the primary using organization for those areas. This is only an administrative change and does not affect the dimensions of, or the daily activities within, the areas; therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Section 73.48 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

PART 73—SPECIAL USE AIRSPACE

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

Authority. 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.48 [Amended]

2. Section 73.48 is amended as follows:

R-4802 Lone Rock, NV [Amended]

By removing the current using agency and substituting the following: Using agency, U.S. Navy, Commanding Officer, Naval Air Station, Fallon, NV.

R-4803N Fallon, NV [Amended]

By removing the current using agency and substituting the following: Using agency, U.S. Navy, Commanding Officer, Naval Air Station, Fallon, NV.

R-4803S Fallon, NV [Amended]

By removing the current using agency and substituting the following: Using agency, U.S. Navy, Commanding Officer, Naval Air Station, Fallon, NV.

R-4804 Twin Peaks, NV [Amended]

By removing the current using agency and substituting the following: Using agency, U.S. Navy, Commanding Officer, Naval Air Station, Fallon, NV.

R-4810 Desert Mountains, NV [Amended]

By removing the current using agency and substituting the following: Using agency, U.S. Navy, Commanding Officer, Naval Air Station, Fallon, NV.

R-4812 Sand Springs, NV [Amended]

By removing the current using agency and substituting the following: Using agency, U.S. Navy, Commanding Officer, Naval Air Station, Fallon, NV.

R-4813 Carson Sink, NV [Amended]

By removing the current using agency and substituting the following: Using agency, U.S. Navy, Commanding Officer, Naval Air Station, Fallon, NV.

Issued in Washington, DC, on March 31, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-8359 Filed 4-7-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR PART 122

[T.D. 89-44]

Designation of New Hanover County Airport, Wilmington, NC, for Private Aircraft Reporting

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by adding New Hanover County Airport, Wilmington, North Carolina, to the list of designated airports to which private aircraft arriving in the U.S. from the southern portion of the Western Hemisphere via

the U.S./Mexican border, or the Atlantic, Pacific or Gulf of Mexico coasts, must report for Customs processing. This amendment is made to help relieve congested air traffic over more southern designated airports, a condition that makes it difficult to effectively conduct Customs private aircraft enforcement programs.

The amendment was originally proposed under 19 CFR Part 6, and comments were solicited from the public on the proposal. In the interval between the publication of the proposal and this document, Customs has deleted Part 6 and redesignated the revised subject matter of that Part as a new Part 122. This action requires redesignation of the proposed amendment under Part 122 rather than Part 6, with no effect on the substance of the subject matter.

EFFECTIVE DATE: March 10, 1989.

FOR FURTHER INFORMATION CONTACT: Glenn Ross, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-5706).

SUPPLEMENTARY INFORMATION:

Background

As part of Customs efforts in its interdiction program to combat the problem of drug smuggling by air, the Customs Regulations were amended in 1975 to add § 6.14 (19 CFR 6.14), providing in part that private aircraft arriving in the U.S. via the U.S./Mexican border must submit advance notice of intended arrival to Customs (T.D. 75-201; 40 FR 33203). The section further provided that private aircraft must land at any one of the listed designated airports near the U.S./Mexican border for the first landing in the U.S. The purpose of the regulation was to provide Customs with increased enforcement efficiency by providing tight control over air traffic arriving from the direction of countries that are major sources of illegal drugs destined for the U.S.

Customs has amended § 6.14 several times since it was initially issued in 1975, as part of a continuing effort to fight the national epidemic of illegal drugs. As part of a general revision of the Customs Regulations by T.D. 88-12, published in the *Federal Register* on March 22, 1988 (53 FR 9285), the air commerce regulations formerly in Part 6, Customs Regulations (19 CFR Part 6), were revised and set forth in Part 122 in a new format. Section 122.24 (a) and (b) is a restatement of § 6.14 (d) and (g), which includes the list of designated airports where private aircraft must land for Customs clearance.

For various reasons, the congested air traffic presently experienced over

southern designated airports makes it difficult to monitor effectively the arrival of private aircraft using that airspace. This amendment would help to alleviate the traffic congestion now plaguing southern designated areas. There is a direct trackable Federal Aviation Administration air corridor from the Caribbean to New Hanover County Airport, which should make it a popular destination point for pilots and at the same time ease the burden on Customs of tracking arrivals from a known drug source area. The designation of New Hanover County Airport as a Customs airport for first landing is a continuation of recent efforts to improve Customs' private aircraft enforcement program.

Analysis of Comments

In announcing the proposed addition of New Hanover County Airport to the list of designated airports, Customs invited members of the public to comment on the proposal. Some seventy comments were received during the comment period. All comments were unanimous in strongly supporting the proposal. After reviewing the comments, Customs has concluded that the addition of New Hanover County Airport, Wilmington, North Carolina, would indeed improve the efficiency of the private aircraft enforcement program and reduce traffic congestion at the already existing airports in the southern designated areas. As a result, the addition, as proposed, should be adopted as a final rule.

Executive Order 12291

This amendment does not constitute a "major rule" as defined by E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act

It is certified that the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable to this amendment because the rule will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of this document was Earl Martin, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 122

Air carriers, Air transportation, Aircraft, Airports.

Amendment to the Regulations

Part 122, Customs Regulations (19 CFR Part 122), is amended as set forth below:

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for Part 122, Customs Regulations (19 CFR Part 122), continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 58b, 66, 1433, 1436, 1459, 1590, 1624, 1644, and 49 U.S.C. App. 1509.

§ 122.24 [Amended]

2. Section 122.24(b), Customs Regulations (19 CFR 122.24(b)), is amended by inserting, in appropriate alphabetical order, "Wilmington, NC" in the column headed "Location", and on the same line, "New Hanover County Airport" in the column headed "Name."

Approved: March 28, 1989.

William von Raab,

Commissioner of Customs.

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 89-8396 Filed 4-7-89; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 573

[Docket No. 87F-0408]

Food Additives Permitted in Feed and Drinking Water of Animals; Selenium

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

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of a 4-month, controlled-release, sodium selenite bolus in beef and dairy cattle as a nutritional selenium supplement. The agency is taking this action in response to a petition filed by Schering Animal Health.

DATES: Effective April 10, 1989; written objections and requests for a hearing by May 10, 1989.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Woodrow M. Knight, Center for Veterinary Medicine (HFV-226), Food and Drug Administration, 5600 Fishers

Lane, Rockville, MD 20857, 301-443-3390.

SUPPLEMENTARY INFORMATION: In a notice published in the *Federal Register* of January 6, 1988 (53 FR 289), FDA announced that Schering Animal Health, Schering Corp., 200 Galloping Hill Road., Kenilworth, NJ 07033, had filed a food additive petition (FAP 2210) proposing that § 573.920 *Selenium* (21 CFR 573.920) be amended to add provisions for the use of a controlled-release bolus providing 3 milligrams of selenium per animal per day in beef and dairy cattle more than 3 months of age or more than 200 pounds of body weight. The regulation currently provides for this level of selenium supplementation in cattle (in addition to other levels for chickens, swine, turkeys, sheep, and ducks) by incorporating selenium into feed supplements and salt-mineral mixtures. In the January 6, 1988, notice of filing of the FAP, FDA invited comments on the environmental assessment (EA) submitted by the petitioner. No comments were received in response to that notice.

In a subsequent notice (54 FR 6029; February 7, 1989), FDA announced the availability for comment of Schering Animal Health's revised EA, which addressed deficiencies FDA noted in the original EA, and of FDA's finding of no significant impact (FONSI). The FONSI and the revised EA were filed with the Environmental Protection Agency for review. The notice was simultaneously filed with State and area-wide clearinghouses. The State clearinghouses of Georgia and Ohio commented that the subject amendment to § 573.920 is consistent with State and local plans, programs, and objectives. No other comments were received in response to the February 7, 1989, notice.

FDA evaluated the data and information in the petition and other relevant material. The agency concludes that § 573.920 should be amended to provide for safe use of selenium as set forth below.

In accordance with § 571.1(h) (21 CFR 571.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Veterinary Medicine (address above) by appointment with the contact person listed above. As provided in 21 CFR 571.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the

action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before May 10, 1989, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on that objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 573

Animal feeds, Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 573 is amended as follows:

PART 573—FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS

1. The authority citation for 21 CFR Part 573 continues to read as follows:

Authority: Sections 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 573.920 is amended by revising paragraph (a) and by adding new paragraph (f) to read as follows:

§ 573.920 Selenium.

(a) The food additive selenium is a nutrient administered in animal feed as sodium selenite or sodium selenate or in a controlled-release sodium selenite bolus, as provided in paragraph (f) of this section.

* * * * *

(f) The additive is orally administered to beef and dairy cattle as an osmotically controlled, constant release bolus containing sodium selenite. Each bolus contains 360 milligrams of selenium as sodium selenite, and delivers 3 milligrams of selenium per day for 120 days. To ensure safe use of the additive:

(1) The osmotically controlled, constant release bolus is for use only in beef and dairy cattle more than 3 months of age or over 200 pounds body weight.

(2) Only one bolus containing 360 milligrams of selenium as sodium selenite is administered orally to each animal in 120 days.

(3) The labeling shall bear the following: "This bolus delivers the maximum daily allowable amount of selenium and shall be the sole source of supplementation. Do not use in areas containing excess selenium. Do not rebolus within 4 months."

Dated: April 4, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-8429 Filed 4-7-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 515

Supplemental List of Specially Designated Nationals (Cuba)

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Notice of additions to the list of Specially Designated Nationals.

SUMMARY: This notice provides the names of firms that have been added to the list of Specially Designated Nationals under the Treasury Department's Cuban Assets Control Regulations (31 CFR Part 515).

EFFECTIVE DATE: March 30, 1989.

ADDRESS: Copies of the list of Specially Designated Nationals are available upon request at the following location: Office of Foreign Assets Control, Department of the Treasury, 1331 G Street NW., Room 300, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Richard J. Hollas, Chief, Enforcement Division, Office of Foreign Assets Control, Tel: (202) 376-0400.

SUPPLEMENTARY INFORMATION: Under the Cuban Assets Control Regulations, persons subject to the jurisdiction of the United States are prohibited from engaging, directly or indirectly, in transactions with any nationals or specially designated nationals of Cuba, or involving any property in which there exists an interest of any national or specially designated national of Cuba, except as authorized by the Treasury Department's Office of Foreign Assets Control by means of a general or specific license.

Section 515.302 of Part 515 defines the term "national," in part, as: (a) A subject or citizen domiciled in a particular country, or (b) any partnership, association, corporation, or other organization owned or controlled by nationals of that country, or that is organized under the laws of, or that has had its principal place of business in that foreign country since the effective date (for Cuba, 12:01 a.m., e.s.t., July 8, 1963), or (c) any person that has directly or indirectly acted for the benefit or on behalf of any designated foreign country. Section 515.305 defines the term "designated national" as Cuba or any national thereof, including any person who is a specially designated national. Section 515.306 defines "specially designated national" as any person who has been designated as such by the Secretary of the Treasury; any person who, on or since the effective date, has either acted for or on behalf of the government of, or authorities exercising control over any designated foreign country; or any partnership, association, corporation or other organization that, on or since the applicable effective date, has been owned or controlled directly or indirectly by such government or authorities, or by any specially designated national. Section 515.201 prohibits any transaction, except as authorized by the Secretary of the Treasury, involving property in which there exists an interest of any national or specially designated national of Cuba. The list of Specially Designated Cuban Nationals is a partial one, since the Department of the Treasury may not be aware of all the persons located outside Cuba that might be acting as agents or front organizations for Cuba, thus qualifying as specially designated nationals of Cuba. Also, names may have been omitted because it seemed unlikely that those persons would engage in transactions with persons subject to the jurisdiction of the United

States. Therefore, persons engaging in transactions with foreign nationals may not rely on the fact that any particular foreign national is not on the list as evidence that it is not a specially designated national. The Treasury Department regards it as incumbent upon all U.S. persons engaging in transactions with foreign nationals to take reasonable steps to ascertain for themselves whether such foreign nationals are specially designated nationals of Cuba, or other designated countries (at present, Cambodia, North Korea, and Vietnam). The list of Specially Designated Nationals was last published on December 10, 1986, in the *Federal Register* (51 FR 44459), and was amended on November 3, 1988 (53 FR 44397) and January 24, 1989 (54 FR 3446).

Please take notice that section 16 of the Trading with the Enemy Act (the "Act"), as amended, provides in part that whoever willfully violates any provision of the Act or any license, rule or regulation issued thereunder:

"Shall, upon conviction, be fined not more than \$50,000, or, if a natural person, imprisoned for not more than ten years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall be punished by a like fine, imprisonment, or both; and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, concerned in such violation shall be forfeited to the United States."

In addition, persons convicted of an offense under the Act may be fined a greater amount than set forth in the Act, as provided in 18 U.S.C. 3623.

Authority: 50 U.S.C. App. 5(b) and 18 U.S.C. 3623.

Specially Designated Nationals of Cuba

Aguilar, Raul, Director, Banco Nacional de Cuba, Ave. de Concha Espina 8, E-28036 Madrid, Spain

Banco Nacional de Cuba (a.k.a. BNC; National Bank of Cuba)

Dai-Ichi Bldg. 6th Floor, 10-2 Nihombashi, 2-chome, Chuo-ku, Tokyo 103, Japan

Federico Boyd Ave. & 51 St., Panama City, Panama

Ave. de Concha Espina 8, E-28036 Madrid, Spain

Zweierstrasse 35, CH-8022 Zurich, Switzerland

BNC (see Banco Nacional de Cuba)

Caribbean Export Enterprise (see CARIBEX)

CARIBEX (a.k.a. Empresa Cubana de Pescados y Mariscos; Caribbean Export Enterprise)

Downsview, Ontario, Canada

Paris, France

Cologne, Federal Republic of Germany

Milan, Italy

Tokyo, Japan

Madrid, Spain

Moscow, USSR

Caribsugar, S.A.

Panama

Chao, Lazaro R., Executive Director, Havana International Bank, 20 Ironmonger Lane, Lond EC2V 8EY, U.K.

Cruz, Juan M. de la, Director, Banco Nacional de Cuba, Dai-Ichi Bldg. 6th Floor, 10-2 Nihombashi, 2-chome, Chuo-ku, Tokyo 103, Japan

Cubana Airlines (a.k.a. Empresa Cubana de Aviacion)

Grantley Adams Airports, Christ Church, Barbados

Frankfurter Tor 8-A, East Berlin, German Democratic Republic

Corrientes 545 Primer Piso, Buenos Aires, Argentina

32 Main Street, Georgetown, Guyana Norman Manley International Airport, Kingston, Jamaica

Paseo de la Republica 126, Lima, Peru

c/o Anglo-Caribbean Shipping Co. Ltd., Ibx House, The Minories, London EC3N 1 DY, U.K.

Belas Airport, Luanda Angola

Melchor Ocampo 469, 5DF, Mexico City, Mexico

1 Place Ville Marie, Suite 3431, Montreal, Canada

Dobrininskaya No. 7, Sec 5, Moscow, USSR

Calle 29 y Avda Justo Arosemena, Panama City, Panama

24 Rue Du Quatre Septembre, Paris, France

Piarco Airport, Port au Prince, Haiti Parizska 17, Prague, Czechoslovakia

Empresa Cubana de Aviacion (see Cubana Airlines)

Empresa Cubana de Pescados y Mariscos (see CARIBEX)

Havana International Bank, Ltd., 20 Ironmonger Lane, London EC2V 8EY, U.K.

Imperatoria, Julio A., Managing Director, Havana International Bank, 20 Ironmonger Lane, London EC2V 8EY, U.K.

Lebrede, Jose A., Director, Banco Nacional de Cuba, Zweierstrasse 35, CH-8022 Zurich, Switzerland

Lopez, Miguel A., Deputy Chairman, Havana International Bank, 20 Ironmonger Lane, London EC2V 8EY, U.K.

National Bank of Cuba (see Banco Nacional de Cuba)

Pons, Alberto, Executive Representative, Banco Nacional de Cuba, Federico

Boyd Ave. & 51 St., Panama City,
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International Bank, 20 Ironmonger
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Toledo, R.F., Managing Director, Havana
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Vaz, Jose, Managing Director, Havana
International Bank, 20 Ironmonger
Lane, London EC2V 8EY, U.K.

Dated: March 29, 1989.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: April 5, 1989.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 89-8516 Filed 4-6-89; 2:01 pm]

BILLING CODE 4810-25-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 89-2A]

Assessment of Interest Regarding the Cable Compulsory License

AGENCY: Copyright Office, Library of
Congress.

ACTION: Final regulation.

SUMMARY: On May 10, 1988 the
Copyright Office published a Notice of
Inquiry in the *Federal Register*
requesting public comment as to
whether interest should be assessed on
underpaid royalty sums due under the
cable compulsory license of the
Copyright Act. After examining the
comments received and analyzing the
matter, the Copyright Office issues this
final regulation imposing an interest
charge on underpaid royalties. The
regulation shall take practical effect at
the end of the 1989-1 accounting period
and apply only to underpayments
(including zero payments) occurring on
or after July 1, 1989.

EFFECTIVE DATE: July 1, 1989.

FOR FURTHER INFORMATION CONTACT:

Dorothy Schrader, General Counsel,
Copyright Office, Library of Congress,
Department 17, Washington DC, 20540.
Telephone: (202) 707-8380.

SUPPLEMENTARY INFORMATION:

1. Background

On May 10, 1988, the Copyright Office
published in the *Federal Register* a
Notice of Inquiry (NOI) seeking public

comment as to whether or not the Office
should assess interest on underpaid
royalty sums due in the wake of the
District of Columbia Court of Appeals'
decision in *Cablevision Systems
Development Corp. v. Motion Picture
Association of America*, 836 F.2d 599
(D.C. Cir.), cert. denied, — U.S. — (1988).
53 FR 16567 (1988). The NOI posed four
questions: (1) Is a rule retroactively
assessing interest legally permissible; (2)
how should the interest rate, if adopted,
be determined; (3) is it necessary for the
Copyright Office to pay interest on
refunds if it imposes interest on
underpaid royalties; and (4) if interest is
imposed, should it accrue from the last
filing day of the accounting period in
which underpayment occurred, or from
some other date.

Comments received addressing these
questions polarized between those
interests representing cable systems and
those interests representing copyright
owners. Cable systems primarily
attacked the Copyright Office's
authority to adopt an interest rule. They
argued that the Copyright Act and the
legislative history are completely silent
as to the issue of interest on late or
underpaid royalties, and therefore there
is nothing for the Copyright Office to
interpret as part of its rulemaking
power. Case law wherein other
government agencies were allowed to
assess interest is not applicable because
the agencies involved in those cases
have adjudicatory and enforcement
powers which the Copyright Office does
not possess. Furthermore, those cases
did not involve copyright disputes and
involved parties adjudicated to be
wrongdoers. Cable systems are not
wrongdoers, they contended, but instead
the systems legitimately withheld sums
based upon what they believed to be a
good faith interpretation of the term
"gross receipts" appearing in Section
111 of the Copyright Act and backed for
a time by the district court decision in
the *Cablevision* litigation.

Cable systems in their comments also
argued that sections 701, 702 and
111(d)(1) do not provide the requisite
authority for assessing interest.
Regarding sections 701 and 702, it is
noted that the Copyright Office has
never espoused a wide grant of
authority under the Copyright Act and
has in fact confined itself to interpreting
only the express terms of the statute.
There is no language in the Act
concerning interest on unpaid royalties,
and therefore nothing for the Office to
interpret. Assessing interest falls within
the realm of substantive lawmaking,
which is clearly not contemplated by the
Act. While the Office may admittedly
"administer" the compulsory license, as

described and allowed by the Court of
Appeals in *Cablevision*, it cannot
impose terms or conditions on the
compulsory license not provided for in
the statute. Finally, with regard to
Section 111(d)(1), cable systems argued
that the provisions contained therein are
no more than ministerial. They allow the
Register to prescribe forms and
procedures for royalty deposits, but do
not grant authority to control the
amounts of the deposits, a function
which is solely the province of the
Copyright Royalty Tribunal.

Addressing the question of
retroactivity posed by the NOI, cable
systems submitted that if the Copyright
Office does find that it has authority to
impose a rule of interest for the cable
compulsory license, that it impose the
rule prospectively only. It is argued that
a retroactive application of an interest
rule, designed primarily to collect
interest on underpayments made as a
result of the early stages of the
Cablevision litigation, would be unjust,
unfair, and impermissible according to
judicially developed tests for retroactive
application of newly created laws.

Specifically, the cable systems
contend that application of the five
factor test announced in *Retail,
Wholesale and Department Store Union
v. NLRB*, 466 F.2d 380 (D.C. Cir. 1972)
precludes retroactive application of an
interest rule. The test requires a
determination as to whether (1) the
particular case is one of first impression,
(2) the new rule represents an abrupt
departure from well established practice
or merely attempts to fill a void in an
unsettled area of law, (3) the extent to
which the party against whom the new
rule is applied relied on the former rule,
(4) the degree of the burden which a
retroactive rule imposes on a party, and
(5) the statutory interest in applying a
new rule despite the reliance of a party
on the old standard.

Cable systems argue that an interest
rule for the compulsory license is clearly
a case of first impression since the
Copyright Office has never before asked
for interest. Second, assessing interest is
an abrupt departure from previous
Office practice since, once again, the
Office has never before requested that
interest be paid on late or amended
filings under the compulsory license.
Third, cable systems relied on the fact
that the Office did not assess interest,
and imposition of an interest charge on
sums due from previous accounting
periods would take them by complete
surprise. Fourth, retroactive imposition
of interest is a considerable burden
because it results in an immense and
unexpected cost which cable systems

could not have prepared for because the Copyright Office had never before charged interest on underpaid royalties. Finally, the statutory interest in collecting interest payments does not outweigh the burdens thrust upon cable systems due to their justifiable reliance on the Office's prior practice of not charging interest. Cable systems are already obliged to pay copyright owners large sums of money in light of the Court of Appeals decision in *Cablevision*, and therefore copyright owners are being substantially compensated, satisfying significant statutory interests under the compulsory license. With the statutory goals of the compulsory license virtually achieved, the added benefit of an interest charge does not outweigh the significant and substantial hardship that it will cause to cable systems. With these five factors so analyzed and considered, *Retail, Wholesale and Department Store Union v. NLRB* forbids retroactive application of an interest rule.

As to the remaining questions posed by the NOI—those concerning the accrual date, rate, and whether the Office should pay interest on refunds—cable systems offered virtually no commentary. Only the National Cable Television Association commented that if an interest rule is adopted, it should also apply to refunds made by the Office because "equity" requires such payments.

Comments from parties representing copyright owners favored imposition of interest on underpaid royalties and argued that application of an interest rule to prior accounting periods is permissible. Copyright owners had little problem in finding that the Copyright Office has authority to adopt an interest rule for the compulsory license. Although the provisions of the compulsory license are silent as to interest on underpaid royalties, numerous judicial decisions have approved an agency's imposition of interest on overdue sums of money even where the statute creating the monetary obligation is silent as to interest. See, e.g., *City of Chicago v. Department of Labor*, 753 F.2d 606 (7th Cir. 1985); *EEOC v. County of Erie*, 751 F.2d 79 (2d Cir. 1984); *Myron v. Chicoine*, 678 F.2d 727 (7th Cir. 1982); *Mitchell v. Reigel Textile, Inc.*, 259 F.2d 954 (D.C. Cir. 1958); *United States v. Philmac Mfg. Co.*, 192 F.2d 517 (3d Cir. 1951). And in *United States v. United Drill and Tool Corp.*, 182 F.2d 998, 999 (D.C. Cir. 1950), the court held that "statutory obligation[s] in the nature of a debt bear interest even though the statute creating the obligation fails to provide for it."

Copyright owners also argued that it did not matter whether the monetary obligation is due the United States or is only collected by the Government for later disbursement to third parties. Compare, *United States v. Goodman*, 572 F. Supp. 1284 (Ct. of Int'l Trade 1983) (customs duty due the United States) with, *Isis Plumbing and Heating Co.*, 138 NLRB 716 (1962), *rev'd on other grounds sub. nom. NLRB v. Isis Plumbing and Heating Co.*, 322 F.2d 913 (9th Cir. 1963) (employers having obligations to compensate former employees remit monies to the Government for later disbursement to the employees).

Aside from judicial authority, copyright owners focused on the broad grants of administrative authority found within the Copyright Act itself. Citing the Court of Appeals decision in *Cablevision*, they argued that the Register is in essence the superintendent of the cable television copyright field, the "administrative overseer," and therefore the rulemaking power of sections 702 and 111(d)(1) of the Copyright Act extend to the interest issue. Without interest, copyright owners are deprived of money rightfully theirs and are not fully compensated as Congress intended when it created the compulsory license. That Congress intended copyright owners receive interest on the royalty fund is supported by the language of section 111(d)(2) which provides that collected royalties "shall be invested in interest bearing United States securities for later distribution with interest * * *." (emphasis added). Thus, to fulfill the purpose and goal of the Statute, the Copyright Office is obliged to impose an interest rule.

Copyright owners also argued that an application of an interest rule to prior accounting periods would not raise retroactivity concerns. Like cable systems, their arguments are premised on equitable considerations. Applying the five part test of *Resale, Wholesale and Department Store Union v. NLRB* permits retroactive application of interest, and equity virtually requires it, copyright owners contend. Acknowledging that this is a case of first impression, copyright owners criticize the cable systems' position that they justifiably relied upon the Copyright Office's practice of not assessing interest on royalty underpayments.

Specifically, although the Copyright Office has not previously requested interest on late and amended filings, neither has the Office declared that interest on underpaid royalties is not required to obtain the compulsory license. Rather, the Copyright Office has

had no policy or rule regarding interest at all. Thus, under the second and third factors of *Retail, Wholesale*, there has been no departure from a previous rule, nor could there have been justifiable reliance by cable systems. Under the fourth factor, which looks to the degree of burden shouldered by a party against whom a retroactive rule is applied, copyright owners argue that cable systems' claims of unforeseeable financial costs are disingenuous. When cable systems disputed the Copyright Office's interpretation of gross receipts under the compulsory license, they certainly must have realized, or should have realized, that if their position were not vindicated they would have to pay the sums withheld, plus interest to compensate copyright owners for their wrongful withholding. Equitably, what cable systems should have done was to either place their withheld sums in escrow or pay them into the royalty pool for later refund (so as to generate interest on those funds). Instead, cable systems intentionally withheld the sums and benefitted from the use of those monies. Given these considerations and cable systems' opportunity to avoid what they now claim will be substantial financial burdens in paying interest, they cannot be heard to claim that the burden is unexpected and unjust. Finally, the statutory interest in applying an interest rule retroactively outweighs claims of reliance or extreme financial burden. Allowing cable systems to withhold interest would not only be contrary to the statutory plan of full and complete compensation of copyright owners, but would encourage further underpayments in the future.

Copyright owners also directed their comments to the other questions posed by the NOI. On the issue of the time period from which interest should begin to accrue, copyright owners were in unanimous agreement that interest should accrue from the last filing day of the applicable accounting period. On the issue of interest payments for refunds made to cable systems, those few commentators who did address the question stated that the law was not symmetrical when the United States Government is involved and that the Government is not required to pay interest when the statute creating the payment obligation is silent on the issue.

There was some debate amongst copyright owners as to the applicable interest rate that should be adopted. Some commentators advocated adoption of the interest rate for late payments found at section 6621 of the Internal Revenue Code, while others suggested an average of the interest rate

paid on royalty funds deposited in the U.S. Treasury (since royalties are deposited in Treasury accounts as they are received by the Copyright Office and not all at once) based on a weighted capital costing approach. Finally, several commentators recommended adoption of the interest rate applicable to the funds deposited in the Treasury by the Copyright Office immediately following the close of the accounting period.

2. Policy Decision of the Copyright Office

The Copyright Office has carefully examined the comments and reply comments submitted by the interested parties, and has decided to issue an interest regulation for the cable compulsory license. The Office concludes that it does have the authority to adopt an interest regulation but, on the grounds of equitable considerations, and in the absence of a court decision with respect to a specific underpayment, will apply the regulation only prospectively, beginning July 1, 1989, and not to underpayments occurring before that date. Interest will begin to accrue from the first day after the last filing date of the applicable accounting period in which an underpayment is made. The interest rate shall be the rate applicable to the funds invested by the Copyright Office with the U.S. Treasury on the first business day after the last filing date of the relevant accounting period. The Copyright Office will not, however, include interest with refunds made to cable systems pursuant to its regulation on refunds.

As the Copyright Office indicated in the NOI, there exists sufficient authority to support the Office's adoption of an interest rule. Although the Copyright Act is silent on the question of interest in the context of underpayments, the Office believes its general rulemaking authority, when read in the light of the *Cablevision* decision, provides the necessary authority for the Office to consider and adopt an interest rule for the compulsory license. 17 U.S.C. 702 provides that "The Register of Copyrights is authorized to establish regulations not inconsistent with law for the administration of the functions and duties made the responsibility of the Register under this title." It is apparent that the operation of the compulsory license and the collection of royalty funds is part of the functions and duties of the Register. And, as recognized by the Court of Appeals in *Cablevision*, "Congress saw a need for continuing interpretation of section 111 and thereby gave the Copyright Office statutory authority to fill that role." *Cablevision*

Systems Development Corp. v. Motion Picture Association of America, 836 F.2d 599, 610 (D.C. Cir.), cert. denied, _____ U.S. _____ (1988).

The goal of the compulsory license is to guarantee that copyright owners receive full compensation for their works within the statutory scheme of the license, while at the same time allowing public access to the broadcast signals, if the terms of the compulsory license are satisfied. When royalty payments are not made on time in accordance with the terms of the license, the goal of full compensation is frustrated and copyright owners suffer from the present value loss of funds. The Copyright Office therefore concludes that it is consistent with the intention of Congress and the courts to impose a rule requiring interest payments on underpaid royalties pursuant to the cable compulsory license.

The issue which has particularly concerned the Copyright Office is the question of a retroactive application of an interest regulation. Copyright owners made clear in their comments that their immediate and specific concern in seeing an interest rule adopted was to cover underpayments which were made before the Court of Appeals decision in *Cablevision* upheld the validity of the Copyright Office's definition of "gross receipts." After reviewing the comments of both cable systems and copyright owners, the Copyright Office is persuaded that the five part retroactivity test announced in *Retail, Wholesale and Department Store Union v. NLRB*, 468 F.2d 380 (D.C. Cir. 1972) is applicable to this proceeding.

In applying the *Retail Wholesale* test to the present case, the Copyright Office acknowledges that interest assessment on underpaid royalties is a situation of first impression. The Office has never before formally addressed the issue of interest on underpaid royalties, or the issue of interest in any context where the Copyright Office collects or disburses monies. Although the Office has never before addressed interest, it has, in a sense, by default had a policy of not assessing interest on underpaid royalties since there is currently no policy of assessment. Copyright owners argued that this policy of not assessing interest was not really a conscious policy at all, but was merely the result of never having considered the issue. Cable systems, however, argued that the fact the Office never before required or requested interest on underpaid royalties speaks for itself, and to now adopt an interest rule represents an abrupt departure from the Office's

former policy.¹ The Copyright Office agrees that today's ruling does represent a departure from its previous practice, and therefore the Office must assess the impact of such a change upon cable systems making amended and/or late payments.

The final three factors of the *Retail, Wholesale* test examine the extent to which the party against whom the new rule is imposed relied on the former rule, the burden the new rule will cause that party, and whether the statutory interest in imposing the new rule retroactively outweighs the equities of that party's reliance on the old rule. The Copyright Office acknowledges cable systems' claims that they relied on the Office's policy of not assessing interest while *Cablevision* was being litigated, and notes that the circumstances of the litigation produced an added element of reliance. When the district court issued its opinion overturning the Copyright Office's gross receipts regulation, many cable systems adjusted their royalty payments downward in reliance on that decision. Given that the district court decision was the law for a certain period, reliance on that decision (and the subsequent royalty underpayments) was reasonable, although the Office cautioned cable systems repeatedly that it expected the regulation to be reinstated by the Court of Appeals. It is possible, if not probable, that cable systems might have acted differently had they known that, in the event the district court decision was reversed, the Copyright Office would assess interest on their underpayments. The equities are nearly equal, but the Office concludes that imposition of the interest rule to prior accounting periods would be unfair since cable systems relied on the *Cablevision* district court opinion.

The Copyright Office also acknowledges that retroactive assessment of the interest regulation would cause a substantial and unanticipated financial burden. For the above stated reasons, cable systems might have been able to insulate themselves from paying large sums in interest charges (by placing underpaid royalties in interest bearing accounts) had they been aware that the Copyright Office would someday adopt an interest rule and apply it retroactively. Neither can the Office find the statutory interest

¹ Cable systems also may have been misled by the position of the Copyright Royalty Tribunal, which declined to assess interest on payments withheld pending appeal of a ratemaking decision. Although the Tribunal has broad authority in the specific areas of ratemaking and royalty distribution, unlike the Copyright Office, it has no general grant of rulemaking authority.

for assessing interest retroactively to be so great as to outweigh the financial burdens. A prospective application of the interest regulation will serve as notice that cable systems should be prepared to pay interest if and when they underpay the proper cable royalty fee, for whatever reason. The Copyright Office concludes that, while it is a very close question, the equities on balance favor only a prospective application of the interest regulation adopted herein. The interest regulation adopted today shall become effective July 1, 1989, and affects any underpayments made on or after the date including underpayments and zero payments for royalties due for the 1989-1 accounting period.

The Office's decision to apply the regulation only prospectively should not be considered to have any implications for assessment of interest as part of a judgment of liability against a cable system in a court proceeding. Post-judgment assessment of interest is common, and the Office agrees that copyright owners should receive interest on any monies due under the cable compulsory license when they litigate and prevail against noncomplying cable systems.

Moreover, while the Office recognizes that copyright owners may elect not to sue merely for interest lost through past underpayments of cable royalties, if a copyright owner did sue, the Copyright Office would support the owner's right to collect interest based on a court judgement.

Our decision not to assess interest retroactively is related to our administrative authority and the comparative equities of a retroactive application of a rule. On balance, we conclude that our primary concern for fair administration of the cable compulsory license is better served by issuance of an interest regulation, assuring full compensation to copyright owners in the future. Cable system operators will be fully aware of the interest obligation, and this should serve as a disincentive to underpayments in the future.

3. Interest Rate

Regarding the applicable rate of interest that should be prescribed by the Office, the MPAA stated in its comments that the rate should be determined by "examin[ing], mathematically, how cable royalty monies that were deposited timely have in fact grown since their deposit, by virtue of the interest they actually earned under 17 U.S.C. 111(d)(2), and to require that late payments be augmented to the same extent," or "if this calculation should prove unduly

burdensome" adopt the "interest rule for late payments found in the Internal Revenue Code, 26 U.S.C. 6621." Other copyright owner commentators suggested using a weighted capital costing approach to select an average rate of interest paid on royalty funds owner several accounting periods. These approaches, however, are for the most part geared toward developing interest rates for prior accounting periods. Since the Copyright Office will not be assessing interest on underpaid royalties from prior accounting periods, they are not applicable to this proceeding. The Office also does not feel that it should adopt the interest regulation of the Internal Revenue Code because that rule operates as a penalty for parties making late filings. The Copyright Office does not wish to penalize cable systems for late and amended filings, but rather wishes to compensate copyright owners for the present value loss of royalties which should have been deposited on a timely basis. Therefore, to achieve this equitable result, the Office chose a rate which would most closely approximate the interest earned on royalty payments made within the accounting period filing dates.

As part of its standard practice, the Copyright Office makes a deposit or royalty funds recently received with the U.S. Treasury on the first business day after the close of an accounting filing period. The interest rate paid on that deposit is readily obtainable from the U.S. Treasury within a day or so of the deposit. The Office feels that making the Treasury rate applicable to all underpayments which resulted from cable carriage during that accounting period, most closely equals the amount of interest the underpaid royalties would have earned had they been paid in accordance with the accounting period filing deadlines. The one drawback of adopting such an interest rate is that it is not a fixed predetermined rate. However, the Office concludes that this drawback is mitigated by the relative speed and certainly with which the Treasury interest rate is available to the Office and the public. Therefore, the interest rate applicable under the interest regulation adopted herein shall be the interest rate paid by the Treasury on the cable royalty funds deposited by the Copyright Office on the first business day after the close of the filing deadline for the accounting period with respect to which the underpayment occurs.

While the Copyright Office will be requiring interest on underpaid cable royalties, the Office has concluded that it will not pay interest on royalty

refunds made to cable systems. Copyright owner commentators argued that the law on interest is not symmetrical when the United States Government is involved, and cited several cases where interest was not allowed to run on claims against the Government. None of the cable system commentators addressed the issue of interest on refunds.

The Office has concluded that payment of interest on refunds made pursuant to 37 CFR 201.17(j) is administratively impracticable. The Office is reluctant to deduct monies from royalty pools to cover the administrative costs of paying interest on refunds, and it would be presented with difficult and costly procedures for determining the correct rate of interest to be paid. Furthermore, the Office notes that its current refund policy is not required by the compulsory license statute, and therefore it is not obliged now to include an interest charge with those payments. Moreover, since most refunds result from cable system error, the systems can avoid the problem by careful review of statements of account and quality controls before filing the statements. The Office concludes the copyright owners, which already bear the administrative costs of the refund procedure, should not be required to bear the costs of the interest assessment procedures as well.

Finally, the Copyright Office found unanimous agreement among copyright owner commentators regarding when interest on underpayments should begin to accrue. The interest regulation therefore states that interest begins to accrue starting on the first day after the close of the relevant accounting period filing deadline.

4. Implementation of the interest regulation

The interest rule adopted herein becomes effective July 1, 1989, and shall operate prospectively from thereon. Thus, any underpayment or zero payment of royalties pursuant to the cable compulsory license resulting from carriage of copyrighted programming on or after January 1, 1989, shall be subject to an interest assessment.

Cable systems submitting royalty payments in an untimely fashion must include the proper interest charge with their payment. Cable systems must perform their own interest charge calculations and may obtain the proper interest rate for the applicable accounting period(s) by contacting the Licensing Division, United States Copyright Office, 101 Independence Avenue SE., Washington, DC 20540,

Telephone: (202) 707-8150. In cases where interest is not paid or becomes due because of late receipt of a statement of account, the Copyright Office will notify the cable system of the interest obligation. The Office shall not require, nor notify a cable system of an interest charge when the interest due on a particular royalty sum paid by a cable system is less than or equal to five dollars (\$5.00).

Interest calculated in accordance with the Copyright Office's regulation shall be compounded annually. The accrual period for a particular royalty payment being submitted by a cable system in which interest is due shall end on the date appearing on the certified check, cashier's check, or money order submitted, provided that the payment is received by the Copyright Office within five business days of that date. If the payment is not received within five business days, then the accrual period shall end on the date of actual receipt by the Copyright Office.

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 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 201

Cable television, Cable compulsory license.

² The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it 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.

Final Regulation

In consideration of the foregoing, the Copyright Office is amending Part 201 of 37 CFR, Chapter II.

PART 201—[AMENDED]

1. The authority citation for Part 201 continues to read as follows:

Authority: Copyright Act of 1976, Pub. L. 94-553, 90 Stat. 2541 [17 U.S.C. 702].

§ 201.17 [Amended]

2. Section 201.17(i) is amended by inserting the designation "(1)" following the heading "Royalty fee payment" and before "The," and by adding a new paragraph (2) to read as follows:

(i) * * *

(2) Royalty fee payments submitted as a result of late or amended filings shall include interest. Interest shall begin to accrue beginning on the first day after the close of the period for filing statements of account for all underpayments of royalties for the cable compulsory license occurring within that accounting period. The accrual period shall end on the date appearing on the certified check, cashier's check, or money order submitted by a cable system, provided that such payment is received by the Copyright Office within five business days of that date. If the payment is not received by the Copyright Office within five business days of its date, then the accrual period shall end on the date of actual receipt by the Copyright Office.

(i) The interest rate applicable to a specific accounting period shall be determined by reference to the interest rate paid by the United States Treasury on the first deposit of royalty fees made by the Copyright Office with the Treasury after the close of that accounting period. The interest rate paid by the Treasury for a particular accounting period may be obtained by contacting the Licensing Division of the Copyright Office.

(ii) Interest is not required to be paid on any royalty underpayment from a particular accounting period if the sum of that underpayment is less than or equal to five dollars (\$5.00).

Dated: March 23, 1989.

Ralph Oman,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 89-8462 Filed 4-7-89; 8:45 am]

BILLING CODE 1410-08-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3551-4]

Stack Height Negative Declarations; States of Arkansas, New Mexico, and Oklahoma

AGENCY: Environmental Protection Agency.

ACTION: Notice of GEP stack height negative declarations; States of Arkansas, New Mexico, and Oklahoma.

SUMMARY: The stack height demonstration analyses for Arkansas, Oklahoma and New Mexico with one exception as noted below, have been submitted to EPA. This Notice is to announce that these States have satisfied their obligations under section 406 of the Clean Air Act (CAA) to review their SIPs with respect to good engineering practice (GEP) stack height as defined in EPA's revised stack height regulations promulgated on July 8, 1985 (49 FR 44878).

No change in any SIP or applicable emission limit is required. The emission limitations for the sources addressed in this Notice need not be revised because (1) the sources were constructed before December 31, 1970 (grandfathered); or (2) they have stacks less than formula height; or (3) they have emission limitations unaffected by stack height.

Today's Notice does not include a stack height analysis for the Phelps Dodge smelter in Hidalgo County, New Mexico. The State of New Mexico and Phelps Dodge are engaged in a cooperative effort to complete a modeling evaluation for an air quality impact analysis of SO₂ emissions from the Hidalgo Smelter. A notice on the results of that review will be published at a later date.

Today's Notice also does not address the required review of dispersion techniques for existing sources with total allowable SO₂ emissions greater than 5000 tons per year. This portion of the review will be addressed at a later date after the promulgation of rules in response to the court's remand in *NRDC v. Thomas*, 838 F. 2d 1224 (D.C. Cir. 1988).

EFFECTIVE DATE: This action will become effective on June 9, 1989.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Those interested persons wanting to examine these documents should make an appointment with the

appropriate office at least twenty-four hours before visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-AN), 1445 Ross Avenue, Dallas, Texas 75202-2733.

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

Arkansas Department of Pollution Control and Ecology, 8001 National Drive, Little Rock, Arkansas 72219.

New Mexico Environmental Improvement Division, 1190 St. Francis Drive, Harold Runnels Building, Santa Fe, New Mexico 87504-0968.

Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, Oklahoma 73152.

COMMENTS: Submit comments to Mr. Thomas Diggs, Chief (6T-AN), SIP/New Source, Air Programs Branch, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202-2733 on or before May 10, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Winkler, Air Programs Branch, SIP/NSR Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, telephone (214) 655-7214 or (FTS) 255-7214. Reference Docket File Number.

Background

Section 123 of the CAA requires EPA to promulgate rules to assure that the degree of emission limitations required for the control of any air pollutant under an applicable SIP is not affected by stack heights exceeding good engineering practice (GEP) or by any other dispersion technique. 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*, 719 F.2d 436 (D.C. Cir. 1983). 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. While the petition was pending before the Court, the mandate from the U.S. Court of Appeals was stayed.

On July 2, 1984, the Supreme Court denied the petition (104 U.S. 3571), and on July 18, 1984, the Court of Appeals formally issued a mandate implementing its 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 finalized on July 8, 1985 (50 FR 27892). The revisions redefine 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 Pub. L. 95-95, all states were required to (1) review and revise, as necessary, their state implementation plans (SIPs) to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations and (2) review all existing source specific emission limitations to determine whether any of these limitations have been affected by impermissible stack height credits above GEP or any other dispersion techniques. For any limitations so affected, states are required to adopt and submit to EPA as SIP revisions the revised limitations. This notice addresses the second requirement, existing source review.

In October 1985, EPA issued detailed guidance on how to carry out the necessary existing source emission limitation reviews. For the review of emission limitations, states were to prepare inventories of stacks greater than 65m in height and sources with emissions of sulfur dioxide (SO₂) in excess of 5,000 tons per year. (These limits correspond to the de minimis GEP

stack height and the de minimis SO₂ emission exemption from prohibited dispersion techniques.) These sources are then to be subjected to detailed review for conformance with the revised July 8, 1985 regulations (49 FR 44878). State submissions are to contain an evaluation of each stack and source in the inventory.

The States of Arkansas, New Mexico, and Oklahoma have performed the required reviews for GEP stack height and submitted them to EPA. A summary of the results follows.

Summary of the Analyses

A. Arkansas

The State of Arkansas submitted its analyses on September 12, 1986. Additional information was received from Arkansas dated March 14, 1988 and March 24, 1989. Within the State of Arkansas there are 31 stacks with heights greater than the de minimis height of 65 meters. Eleven of these stacks were in existence before December 31, 1970. Twenty stacks were reviewed for GEP formula height. None of the stacks has ever been physically raised. A description of the stacks and a summary of the State's conclusions based on a stack height review analysis for each stack are contained in Table 1.

Seventeen of the 20 stacks, which were reviewed for GEP formula height in accordance with the EPA regulations, were found to have actual stack heights at or below GEP height. Only three stacks were found to have actual stack heights greater than GEP height: (1) Arkansas Power and Light (AP & L) Independence, (2) AP & L White Bluff, and (3) Great Lakes West Plant incinerator. Air quality impact analyses for the National Ambient Air Quality Standards (NAAQS) and/or Prevention of Significant Deterioration (PSD) increments, as applicable, were performed for these three stacks at the GEP stack heights shown in Table 1. The air quality impact analyses were based on EPA's modeling guidelines (EPA-450/2-78-027R). No violations of any EPA standard at GEP stack height were predicted.

TABLE 1.—ARKANSAS

Company	Location	Stack ID	Grandfathered	GEP Stack Height (ft)
Georgia Pacific	Crossett	8R Recovery Furnace		241
		8R Smelt East		241
		8R Smelt West		241
SWEPCO	Gentry	Flint Creek Unit		540
		Recovery Boiler		294
Potlatch Corporation	McGehee	Power Boiler		294
		Smelt Dissolver Vent		265

TABLE 1.—ARKANSAS—Continued

Company	Location	Stack ID	Grandfathered	GEP Stack Height (ft)	
Arkansas Power and Light.....	Newark.....	Independence.....		983	
		Redfield.....		983	
		Helena.....	X		
Agrico Chemical Company.....	Blytheville.....	Urea Plant.....		220	
		Rock Grinding.....	X		
Arcadian Corporation.....	Helena.....	#1 Recovery Boiler (2 Stacks).....	X		
International Paper Company.....	Camden.....	#2 & #3 Recovery Boilers.....	X		
		#1 Recovery Boiler Dissolving Tank Vent.....	X		
Great Lakes West Plant.....	El Dorado.....	Sulfur Plant Incinerator.....		213	
Nekoosa Papers Inc.....	Ashdown.....	#1 Power Boiler.....	X	235	
		#2 Power Boiler.....		295	
		#2 Recovery Boiler.....		295	
		#2 Smelt Dissolving Tank Vent (North).....		295	
		#2 Smelt Dissolving Tank Vent (south).....		325	
		#3 Recovery Boiler.....		325	
		#3 Smelt Dissolving Tank Vent.....		250	
		Bark Boiler.....		250	
		#2 Recovery Boiler.....		250	
		#3 Recovery Boiler.....		250	
International Paper Company.....	Pine Bluff.....	#4 Recovery Boiler.....	X		
		#2 Dissolving Tank.....	X		
		#3 Dissolving Tank.....	X		
		#4 Dissolving Tank.....	X		

Arkansas has revised its new source review regulations to meet current EPA stack height regulations. The date of EPA's approval of the new source stack height SIP revision was February 23, 1989 (See 54 FR 7764)

B. New Mexico

The State of New Mexico submitted its analyses on January 6, 1986.

Additional information was received from New Mexico on the dates of March 3, June 23, June 25, and October 27, 1986. Within the State of New Mexico there are 12 stacks with heights greater than the de minimis height of 65 meters.

Three of these stacks were in existence before December 31, 1970. Seven stacks were reviewed for GEP formula height. None of the stacks has ever been

physically raised. A description of the stacks and a summary of the State's conclusions based on a stack height review analysis for each stack are contained in Table 2. All seven of the stacks, which were reviewed for GEP formula height in accordance with the EPA regulations, were found to have actual stack heights at or below GEP height.

TABLE 2.—NEW MEXICO

Company	Location	Stack ID	Grandfathered	GEP stack height (FT)
Chino Mines.....	Grant County.....	Main Stack.....	X	
		Main Stack.....		
*Phelps Dodge.....	Hidalgo County.....	Lurgi Acid Plant Stack.....		
Arizona Public Service.....	San Juan County.....	Units 1 & 2.....	X	
		Unit 3.....	X	
		Unit 4.....		360
		Unit 5.....		360
Public Service Co. of NM.....	San Juan County.....	Unit 1.....		400
		Unit 2.....		400
		Unit 3.....		400
		Unit 4.....		400
Plains Electric.....	McKinley County.....	Main Boiler.....		450

*To be addressed in a separate notice.

There are two stacks at the Phelps Dodge Hidalgo Smelter. The actual height of the main stack at the Phelps Dodge Hidalgo Smelter exceeds the creditable height calculated using the GEP formula included in EPA's stack height regulations. Under these circumstances, a SIP emission limit evaluation is needed to ensure that applicable EPA air quality standards are not being violated when air quality impact is assessed based on GEP stack height. Due to complex terrain

considerations in the vicinity of the Hidalgo Smelter, a modeling evaluation is being performed. The State of New Mexico and Phelps Dodge are engaged in a cooperative effort to complete a modeling evaluation for an air quality impact analysis of SO₂ emissions from the Hidalgo Smelter. Therefore, New Mexico will be submitting its review for Phelps Dodge at a later date.

New Mexico has revised its new source review regulations to meet current EPA stack height regulations.

The date of EPA's approval was November 2, 1988 (See 53 FR 44191).

C. Oklahoma

The State of Oklahoma submitted its analyses on January 6, 1986. Additional information was received from Oklahoma on August 25, 1988. Within the State of Oklahoma there are 19 stacks with heights greater than the de minimis height of 65 meters. Two of these stacks were in existence before December 31, 1970. Seventeen stacks

were reviewed for GEP formula height. None of the stacks has ever been physically raised. A description of the stacks and a summary of the State's conclusions based on a stack height review analysis for each stack are contained in Table 3.

Fifteen of the 17 stacks, which were reviewed for GEP formula height in accordance with the EPA regulations, were found to have actual stack heights at or below GEP height. Only two stacks were found to have actual stack heights greater than GEP height. Both of these stacks are located at the Fort Howard Paper Company mill at Muskogee, Oklahoma and are designated as (1)

Boiler B-1, Boiler B-2 and (2) Boiler B-3, Boiler B-4.

Air quality impact analyses for the NAAQS and PSD increments, as applicable, were performed for the Fort Howard stacks at the GEP stack heights shown in Table 3. EPA reviewed these modeling analyses during its evaluation of an application for a PSD permit (PSD-OK-404) submitted by Fort Howard to EPA. As a result of EPA's review, it was concluded that Fort Howard would not cause or contribute to a violation of applicable PSD increments and NAAQS, and a PSD permit was issued to Fort Howard by EPA. The modeling techniques used in the demonstration supporting the Fort Howard analyses

were based on modeling guidance in place at the time that the analyses were performed, i.e., the EPA "Guideline on Air Quality Models: (1978)." Since that time, revisions to modeling guidance have been promulgated by EPA at 53 FR 592 (January 6, 1988). Because the modeling analysis was performed with the stacks at GEP stack heights and was underway prior to promulgation of the revised guidance, EPA accepts the analysis. The emission limitations would still not be affected by the stack height under any future modeling analysis. No violations of any EPA standard at GEP stack height were predicted.

TABLE 3.—OKLAHOMA

Company	Location	Stack ID	Grandfathered	GEP stack height (FT)
Western Farmers Electric Co-op	Choctaw County	Unit # 1		500
		Auxiliary boiler		215
Grand River Dam Authority	Mayes County	Unit # 1		505
		Auxiliary boiler		261
Oklahoma Gas & Electric Co	Noble County	Unit # 2		505
		Unit # 1		500
	Muskogee County	Unit # 2		500
		Unit # 4		350
		Unit # 5		350
		Unit # 6		500
Public Service Company	Seminole County	Unit # 3	X	
	Rogers County	Unit # 3/Unit # 4		600
	Tulsa County	Unit # 1		300
Weyerhaeuser Corp.	McCurain County	Unit # 2		300
		Main Stack	X	
Fort Howard Paper Co	Muskogee County	Smelt dissolving tank vent		217
		Wood waste boiler		250
		Boilers 1 & 2		213
		Boilers 3 & 4		213

Oklahoma has proposed a revision to its new source review regulations to meet current EPA stack height regulations. The date of EPA's proposed approval was December 21, 1987 (See 52 FR 48285).

Conclusion

The GEP stack height analyses have been submitted by Arkansas, New Mexico, and Oklahoma and are available for review at the locations listed previously. With the exception of Phelps Dodge, all potentially affected sources in the States of Arkansas, New Mexico, and Oklahoma having stack heights greater than 65 meters have been inventoried and analyzed. EPA's detailed review and approval of the technical support submitted by the States of Arkansas, New Mexico, and Oklahoma is contained in a technical evaluation report which summarizes the State's findings and EPA's review of each inventoried source. The report is available at the EPA Region 6 office in Dallas, Texas.

SIP emission limitations for these sources need not be revised because (1) they were constructed before December 31, 1970; or (2) they have stacks less than formula height; or (3) they have emission limitations unaffected by stack height.

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 date by August 8, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

This notice will have no effect on the National Ambient Air Quality Standards.

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

Date: March 30, 1989.

Robert E. Layton Jr.,
Regional Administrator.
[FR Doc. 89-8179 Filed 4-7-89; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 52

[FRL-3541-5]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Fresno County and Placer County; Air Pollution Control Districts and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice approves revisions to the California State Implementation Plan (SIP). The California Air Resources Board submitted these revisions to EPA on

June 4, 1986 and August 12, 1986, for inclusion in the SIP. These revisions affect the Fresno County and Placer County Air Pollution Control Districts (APCDs), and the South Coast Air Quality Management District (AQMD). These revisions consist of administrative and noncontroversial rules. EPA is approving these revisions because they either strengthen the SIP or retain equivalent emission control requirements. They are consistent with the Clean Air Act, 40 CFR Part 51, and EPA policy.

EFFECTIVE DATE: This action will be effective on June 9, 1989, unless notice is received within 30 days of publication that adverse or critical comments will be submitted.

ADDRESSES: Comments may be sent to: Regional Administrator, Environmental Protection Agency, Region 9, Attn: Air and Toxics Division, State Implementation Plan Section (A-2-3), 215 Fremont Street, San Francisco, CA 94105.

Copies of EPA's Technical Evaluation Reports and the submitted revisions are available for public inspection at the Region 9 office, during normal working hours. The submittals can also be viewed at the California Air Resources Board (ARB) at the appropriate District Office listed below.

California Air Resources Board,
Stationary Source Division, Criteria Pollutants Branch, Industrial Section, 1025 "P" Street, Room 210, Sacramento, CA 95814

Fresno County Air Pollution Control District, 1221 Fulton Mall, Fresno, CA 93775

Placer County Air Pollution Control District, 11484 "B" Avenue, DeWitt Center, Auburn, CA 95603

South Coast Air Quality Management District, 9150 Flair Drive, El Monte, CA 91731

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

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen (A-2-3), State Implementation Plan Section, Air and Toxics Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, 415-974-7635; FTS: 454-7635.

SUPPLEMENTARY INFORMATION:

Background

On June 4, 1986 and August 12, 1986, the ARB officially submitted to EPA a set of revisions to the California SIP. This notice addresses the noncontroversial and administrative rules from these two SIP revision

submittals. The following list identifies the rules addressed by this notice.

Description of Rules

June 4, 1986 Submittal

Fresno County APCD

Rule 102 Definitions

Rule 111 Arrests and Notices to Appear

Rule 609 Episode Action Stage I (Health Advisory Alert)

Rule 613 Stationary Source Curtailment

Rule 613.1 Traffic Abatement Plan

Rule 613.2 Plan Submittal

Rule 613.3 Energy Conservation, Load Reduction, or Load Shedding Plans

Rule 613.4 Source Inspection Plans

Rule 614 Episode Abatement Plan

South Coast AQMD

Rule 209 Transfer and Voiding of Permits

August 12, 1986 Submittal

Placer County APCD

Mountain Counties Air Basin Portion

Rule 101 Title

Rule 201 Coverage

Rule 305 No Burn Days

EPA Evaluation

EPA has evaluated these rule revisions against the Clean Air Act, 40 CFR Part 51, and EPA policy. The EPA is approving these revisions because they are consistent with the previously approved regulations. The revisions are primarily administrative and either strengthen or retain the State Implementation Plan (SIP). The following revisions include minor changes to existing rules which are expected to result in an increased effectiveness and enforceability of those rules. Fresno County APCD Rules 102, and 111; Placer County APCD Rules 101, 201, and 305; and South Coast AQMD Rule 209 will either maintain or strengthen the existing SIP, therefore, EPA is approving them under section 110 of the Clean Air Act.

Fresno County Rules 609, 613, 613.1, 613.2, 613.3, 613.4, and 614 concern air pollution control contingency plans required by 40 CFR 51.152, "Contingency plans", under Subpart H, "Prevention of Air Pollution Emergency Episodes." The Fresno County rules listed above require control measures for stationary sources and traffic abatement plans during emergency episodes. The contingency plans are federally approvable once they are approved by the Air Pollution Control Officer. These rules are generally equivalent to the existing federal requirements and meet, in part, the requirements of § 51.152.

EPA Action

EPA's review of these new and revised rules finds them consistent with the Clean Air Act, 40 CFR Part 51, and EPA policy. Therefore, EPA is taking final action to approve these rules under section 110 of the Clean Air Act.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment action and anticipates no adverse comments. This action will be effective June 9, 1989 unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective June 9, 1989.

Regulatory Process

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

The Office of Management and Budget has exempted these rules 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 June 9, 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, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen oxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

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

Date: March 7, 1989.

Daniel W. McGovern,
Regional Administrator.

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

PART 52—[AMENDED]**Subpart F—California**

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

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

2. Section 52.220 is amended by adding paragraphs (c) (169) and (170) to read as follows:

§ 52.220 Identification of Plan.

(c) * * *

(169) Revised regulations for the following APCD's were submitted on June 4, 1986, by the Governor's designee.

(i) Incorporation by reference.

(A) Fresno County Air Pollution Control District.

(1) Amended rules 102 (definitions B, C, D, F thru N, P, Q, R, S, T, U, W, Y, Z, AA, BB, CC, EE, FF, HH, II, JJ, LL, MM, and NN, only), 111, 609, 613 and 614, adopted October 22, 1985.

(2) New rules 613.1, 613.2, 613.3 and 613.4, adopted October 22, 1985.

(B) South Coast Air Quality Management District.

(1) Amended rule 209, adopted November 1, 1985.

(170) Revised regulations for the following APCD's were submitted on August 12, 1986, by the Governor's designee.

(i) Incorporation by reference.

(A) Placer County Air Pollution Control District.

(1) Amended rules 101, 201, 305 (Mountain Counties portion), adopted May 27, 1986.

[FR Doc. 89-6870 Filed 4-7-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[A-1-FRL-3551-8]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Reasonably Available Control Technology for Stanadyne, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision establishes and requires the use of reasonably available control technology (RACT) to control volatile organic compound (VOC) emissions from Stanadyne, Incorporated in

Windsor, Connecticut. The intended effect of this action is to approve a source-specific RACT determination made by the State in accordance with commitments made in its Ozone Attainment Plan which was previously approved by EPA on March 21, 1984 (49 FR 10542). This action is being taken in accordance with section 110 of the Clean Air Act.

EFFECTIVE DATES: This action will become effective on or before June 9, 1989, unless notice is received on or before May 10, 1989, within 30 days that adverse or critical comments will be submitted.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Room 2313, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Room 2313, Boston, MA 02203; and the Air Compliance Unit, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, CT 06106.

FOR FURTHER INFORMATION CONTACT: David B. Conroy, (617) 565-3252; FTS 835-3252.

SUPPLEMENTARY INFORMATION: On January 11, 1989, the State of Connecticut submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of State Order No. 8018 which the State of Connecticut issued to Stanadyne, Incorporated in Windsor, Connecticut. The provisions of the Connecticut Department of Environmental Protection's (DEP's) State Order define and impose RACT on Stanadyne as required by subsection 22a-174-20(ee), "Reasonably Available Control Technology for Large Sources," of Connecticut's Regulations for the Abatement of Air Pollution.

Under subsection 22a-174-20(ee), the Connecticut DEP determines and imposes RACT on all stationary sources with the potential to emit one hundred tons per year or more of VOC that are not already subject to RACT under Connecticut's regulations developed pursuant to the control techniques guidelines (CTG) documents. EPA approved this regulation on March 21, 1984 (49 FR 10542) as part of Connecticut's 1982 Ozone Attainment Plan. That approval was granted with the agreement that all source-specific RACT determinations made by the DEP

would be submitted to EPA as source-specific SIP revisions.

Summary of RACT Determination

Stanadyne operates 24 degreasing units, 15 rust prevention dip tanks, 5 solvent recovery stills, and various 1/2 gallon cans containing solvent which are used to dip clean small parts at workbenches. The control of solvent metal cleaning operations in Connecticut is covered under subsection 22a-174-20(l), "Metal cleaning," of Connecticut's regulations. Final approval of this regulation was granted by EPA on February 1, 1984 (49 FR 3988). Under subparagraph 22a-174-20(l)(2)(iii) of Connecticut's solvent metal cleaning regulation, however, open top vapor degreasers and conveyorized degreasers that were in operation prior to July 1, 1980, are exempt from meeting the control and operating requirements prescribed in subsection 22a-174-20(l). Some of Stanadyne's conveyorized vapor degreasers and open-top vapor degreasers were in operation prior to July 1, 1980, and thus were exempt from meeting RACT under subsection 22a-174-20(l). These units are now being required to meet RACT pursuant to subsection 22a-174-20(ee).

Stanadyne has converted the solvent used in 18 of its 24 degreasing units to solvents exempted by EPA from the definition of VOC because of their photochemical nonreactivity. As such, the State Order is not requiring any control requirements on these 18 degreasing units. Additionally, Stanadyne has converted 1 unit (the Niagra parts washer, a cold cleaner) to Mineral Seal Oil which has a very low volatility (approximately 0.008 mm Hg at 20 °C). Because of Mineral Seal Oil's extremely low volatility, the State Order is not requiring any control requirements on this degreasing unit.

The remaining 5 degreasing units at Stanadyne (1 conveyorized vapor degreaser, 2 open-top vapor degreasers, 1 ultrasonic vapor degreaser, and 1 cold dip tank) continue to use VOC solvents. As RACT, the Connecticut DEP requires these units to meet the requirements in subsection 22a-174-20(l) of Connecticut's regulations (Connecticut's solvent metal cleaning regulation) as well as other additional requirements contained in the State Order which increase the stringency of the control requirements imposed on these degreasing units.

In addition to its degreasing operations, the company utilizes 15 rust prevention dip tanks in thirteen separate departments to coat interim and finished products prior to the next machining

step or storage. The parts are coated with a blend of Mineral Spirits and a wax in solution. Twelve (12) of these tanks are five to fifteen gallon capacity tanks operated manually. One (1) additional manual tank has a capacity of fifty gallons. The 2 remaining tanks are automatic tanks each capable of holding 280 gallons of solvent/wax blend.

The following operational requirements apply to these 15 tanks. Stanadyne must cover the 12 five to fifteen gallon tanks and the 1 fifty gallon tank whenever they are not in use for longer than five minutes. Stanadyne must cover the 2 automatic tanks at the end of each production period and those tanks must remain covered until the next production period begins. The Connecticut DEP has accepted this RACT determination for these rust prevention dip tanks because of the low volatility of the Mineral Spirits utilized, 5 mm Hg at 100 °F. The company agrees not to convert to the use of a VOC with vapor pressure in excess of 5 mm Hg at 100 °F in any of the rust prevention dip tanks at any time in the future.

In addition, the Company operates 5 solvent recovery stills. Two (2) of the stills are centrally located and are used to recover the exempt solvents from a number of degreasing units. These 2 solvent recovery stills have previously been utilized to recover the VOC Freon TC-7. As of January 1, 1989, the Company has discontinued the use of Freon TC-7, and permanently replaced this solvent with an exempt solvent. Therefore, no operating requirements have been imposed on these stills. The Company agrees that at no time after January 1, 1989, will these solvent recovery stills be utilized to recover a VOC. The remaining 3 solvent recovery stills are located on the three perchloroethylene degreasing units. Stanadyne is required to cease operation of any solvent recovery still whenever the condensate return temperature exceeds 100.4 °F. This is the temperature above which the solvent recovery still is achieving less than the minimum required ninety-five percent solvent recovery rate. The condensate return temperature on each solvent recovery is required to be monitored with an alarm which will be triggered should the condensate return temperature exceed 100.4 °F. Furthermore, Stanadyne is required to store all waste VOC (before being recovered in the solvent recovery stills or before being sent out as a waste product) in closed containers which prevent the evaporation of VOC to the atmosphere.

Additionally, the State Order requires Stanadyne to maintain a recordkeeping system of all additions to each of the 5 degreasing units utilizing VOC and the rust prevention dip tanks. Further, Stanadyne is required to maintain a recordkeeping system of all waste VOC that is generated from the 5 VOC-utilizing degreasing units and the rust prevention dip tanks. With this information, Stanadyne is required to calculate the VOC emissions from its degreasing operations and dip tanks on a quarterly basis.

Stanadyne also uses ½ gallon cans to dip clean small parts at workbenches. The solvents previously used in these cans contained some VOC. Stanadyne has converted the solvent used in these cans to an exempt solvent. The State Order requires that this solvent be used at all times after January 1, 1989.

EPA has reviewed State Order No. 8018 and has determined that the level of control required by this Order represents RACT for Stanadyne.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this Federal Register notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on June 9, 1989.

Final Action

EPA is approving Connecticut State Order No. 8018 as a revision to the Connecticut SIP. The provisions of State Order No. 8018 define and impose RACT on Stanadyne to control VOC emissions as required by subsection 22a-174-20(ee) of Connecticut's regulations.

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

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 Clean Air 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 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

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

March 24, 1989.

Paul G. Keough,

Regional Administrator, Region I.

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

PART 52—[AMENDED]

Subpart H—Connecticut

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

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

2. Section 52.370 is amended by adding paragraph (c)(49) to read as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(49) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on January 11, 1989.

(i) Incorporation by reference.

(A) Letter from the Connecticut Department of Environmental Protection dated January 11, 1989, submitting a revision to the Connecticut State Implementation Plan.

(B) State Order No. 8010 and attached Compliance Timetable for Stanadyne, incorporated in Windsor, Connecticut. State Order No. 8018 was effective on January 3, 1989.

(ii) Additional materials.

(A) Technical Support Document prepared by the Connecticut Department of Environmental Protection providing a complete description of the reasonably available control technology determination imposed on the facility.

[FR Doc. 89-8262 Filed 4-7-89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 423

Rules for Emergency Loans, Temporary Water Sales, and Assistance Under the Disaster Assistance Act of 1988

AGENCY: Bureau of Reclamation, Interior.

ACTION: Interim rule with request for comment.

SUMMARY: These rules provide guidelines on the implementation of the Bureau of Reclamation (Reclamation) portion (Title IV, Subtitle B) of the Disaster Assistance Act (Act) of 1988, approved August 11, 1988. Qualified applicants may obtain loans and assistance to remedy the effects of actual or prospective substantial economic injury resulting from drought conditions in 1987, 1988, and 1989. Areas eligible for assistance must be within the 17 Reclamation States, in an area for which the Governor of the State has declared a drought emergency, and in an area eligible for Federal disaster relief assistance under applicable rules and regulations promulgated by the Department of Agriculture. A Presidential declaration of emergency under regulations promulgated by the Federal Emergency Management Agency is not required. Included in the program are short-term actions to mitigate losses and damages resulting from the drought conditions of 1987, 1988, and 1989. Under the program, funds will be provided for loans to purchase and transport emergency water supplies and support management and conservation activities; water transfers will be facilitated between willing buyers and sellers; and construction, management, and conservation activities will be undertaken by the Secretary of the Interior. Studies to determine augmentation, use, and conservation of water supplies will be performed at Federal reclamation projects and Indian water resource developments.

Activities undertaken by Reclamation are classified as reimbursable (requiring repayment) or non-reimbursable (repayment not required) in accordance with applicable Reclamation law. Actions under this rule are therefore classified reimbursable or non-reimbursable accordingly.

DATES:

Effective Date: April 10, 1989.

Written Comments: Reclamation will accept written comments on this rule

until 5 p.m. mountain time on May 10, 1989.

Public Hearings: Reclamation does not plan to hold public hearings on this rule.

ADDRESSES:

Written Comments: Hand deliver to the Bureau of Reclamation, Project Services Division, Room 690, Building 67, Denver Federal Center, Denver, CO; or mail to the Bureau of Reclamation, Project Operation Services, P.O. Box 25007, Denver, CO 80225-0007.

Public Hearings: Reclamation does not plan to hold public hearings on this rule.

Requests for Public Hearings: Submit orally or in writing to the person and address specified under "FOR FURTHER INFORMATION CONTACT."

FOR FURTHER INFORMATION CONTACT: Tom Phillips, Project Operation Services, Bureau of Reclamation, P.O. Box 25007, Denver, CO 80225-0007; Telephone: (303) 236-1058.

SUPPLEMENTARY INFORMATION:

- I. Background.
- II. Public Commenting Procedures.
- III. Discussion of Rules Adopted.
- IV. Procedural Matters.

I. Background

President Reagan signed the Disaster Assistance Act on August 11, 1988, providing temporary authority to the Secretary of the Interior to facilitate emergency actions for the mitigation of impacts resulting from the drought conditions of 1987, 1988, and 1989. The Act provides authority for appropriations of up to \$25 million for construction, management, and conservation activities and for loans to water users for management, conservation, or the acquisition and transportation of water. The Act requires that the Secretary must expect actions implemented under the Act to mitigate losses, or expected losses, and damages resulting from the drought conditions of 1987, 1988, and 1989.

The Act authorizes several types of disaster relief activities by the Secretary. Section 412(1) authorizes the Secretary to update studies and to undertake construction, management and conservation activities. Section 412(2) authorizes the Secretary to facilitate the transfer of water between willing buyers and willing sellers in the redistribution of supplies. Section 413 of the Act authorizes the Secretary to make available excess water or canal capacity on a temporary basis. Water may also be made available for fish and wildlife purposes under section 413(c). Section 414 provides authority for the Secretary to make loans to water users for

management and conservation activities or for acquiring or transporting water. Authority for each of the activities expires on December 31, 1989.

In order to implement Title IV, Subtitle B of the Act, Reclamation has decided to adopt an interim rule, and simultaneously request comments from the public. An interim rule effective immediately is necessary in order for the Bureau of Reclamation to take action to ameliorate problems resulting from the drought and to immediately provide guidance to those who seek assistance from the Secretary under the Drought Assistance Act.

II. Public Commenting Procedures*Written Comments*

Written comments submitted on the proposed rules should be specific, should be confined to issues pertinent to the proposed rules, and should explain the reason for any recommended change. Where practicable, commenters should submit five copies of their comments (see "ADDRESSES"). Comments received after the close of the comment period (see "DATES") may not be considered or included in the Administrative Record.

Public Hearings

Reclamation does not plan to hold public hearings on this rule.

III. Discussion of Rules Adopted

These rules outline the terms and conditions under which the Secretary will implement Subtitle B of Title IV of the Disaster Assistance Act of 1988.

These rules add a new Part 423 to Title 43 of the Code of Federal Regulations. Because of the emergency created by the drought, these rules are effective immediately, but do make provisions for public comment.

Section 423.1 entitled "General" provides an overview of Part 423.

Section 423.2 describes the information collection requirements.

Section 423.3 defines several terms used throughout the regulations.

Section 423.4 limits the applicability of the Department of the Interior's water related assistance programs to the 17 States served by the Bureau of Reclamation. In order to be eligible for drought relief from the Department of the Interior, an area must have been declared eligible for disaster relief under the rules adopted by the Department of Agriculture. *The Bureau of Reclamation may not provide assistance until funds have been appropriated or otherwise made available.*

Section 423.5 provides an overview of the Bureau of Reclamation's disaster

relief programs. Under guidelines approved by Reclamation's Commissioner, Regional Offices will have primary responsibility for decision-making under the Act. Each Region will establish procedures for evaluating proposals.

Expenditures under section 412(b)(b) will be reviewed by each Regional Director to determine the extent of reimbursability. Reimbursable expenses will be repaid in accordance with existing Bureau of Reclamation practices.

Section 423.6 provides procedures for facilitating transfers between willing buyers and sellers of water. Reclamation's Regional Directors will compile a list of willing sellers and interested buyers in the region and will consult with State and local water agencies in the prioritization of water transfers. Interested buyers and sellers of water should contact the appropriate Regional Director to be included on the appropriate list.

Section 423.7 provides procedures for the Secretary to make available, by contract, water or canal capacity at existing Federal Reclamation projects to water users and others on a temporary basis. This water or conveyance capacity will be made available based on need as determined by the Secretary. Applications can be sent to the appropriate regional office of the Bureau of Reclamation. Information requested in the application includes data related to water or conveyance needs and uses, financial information, and other relevant supporting data or justification.

Section 423.8 provides procedures for the emergency loan program. Under the emergency loan program, a contracting entity will be eligible to obtain a loan to improve the water supply situation through activities which (1) Provide new or different water management strategies; (2) produce water conservation plans or water conservation techniques; and/or (3) permit the purchase of a water supply and the means to transport that water supply. The loan may also cover increased energy pumping costs to provide a water supply. Construction activities are not permitted under the emergency loan program. The contracting entity should make application to the appropriate Regional Director. A contract for repayment of the loan will be required, and loans will be for a minimum of 5 years and not more than 10 years. Requests will be handled on a first-come first-served basis. All activities under the emergency loan program shall be completed not later than December 31, 1989.

Section 423.9 provides procedures for providing water to mitigate past losses to fish and wildlife resources and help prevent future losses that occur as a result of drought conditions.

Water may be made available to State, Federal, local or private entities based upon identification of the resource to be protected or mitigated, the magnitude of such protection or mitigation, the level and extent of coordination with State and local officials, the source and quantities of the water proposed to be used, justification of the reasonableness of the proposed action, and any other relevant information deemed necessary by Reclamation concerning the proposed action.

The Act specifically authorizes the Secretary to (a) make available, at the current contract rate, unallocated carryover storage in the New Melones Unit, Central Valley Project, California, to the Oakdale and South San Joaquin Irrigation Districts and (b) install a temperature control curtain as a demonstration project at Shasta Dam, Central Valley Project, California, at a cost not to exceed \$5,500,000. The demonstration project is to determine the effectiveness of the action in controlling water release temperatures for the purpose of protecting and enhancing the anadromous fisheries in the Sacramento River and San Francisco/Sacramento-San Joaquin Delta and Estuary. The cost of this demonstration project is to be reimbursed by Central Valley Project water and power users.

IV. Procedural Matters

Federal Paperwork Reduction Act

The information collection requirements contained in § 423.6, 423.7, 423.8, and 423.9 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1006-0010.

Public reporting burden is estimated to average 3 hours per response, including the time for reviewing instructions, gathering and maintaining data, and responding to the questions in this rule. Direct comments regarding the burden estimate or any other aspect to Ms. Carolyn G. Hips, Branch of Publications and Records Management, Bureau of Reclamation, P.O. Box 25007, Denver, Colorado 80225; and the Office of Management and Budget, Paperwork Reduction Project 1006-0010, Washington, DC 20503.

Executive Order 12291

The Department of the Interior (DOI) has determined that the rules do not

constitute a major rule under Executive Order 12291; therefore a Regulatory Impact Analysis is not required and has not been prepared.

Regulatory Flexibility Act

The DOI has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* that the interim final rule will not have a significant economic impact on a substantial number of small entities.

National Environmental Policy Act

The Department has examined these regulations and the actions contemplated to be taken thereunder. These regulations have been determined to fall within the categorical exclusions of the Departmental Manual, Part 516, Chapter 2.3 and Appendix 9. Each action taken under these regulations will be reviewed in accordance with the Departmental Manual to determine whether it also falls within the categorical exclusion.

Authorship

The primary author of this rule is Tom Phillips, Division of Program Services, Bureau of Reclamation, P.O. Box 25007, Denver Federal Center, Denver, CO 80225.

List of Subjects in 43 CFR Part 423

Irrigation, Reclamation, Reporting and recordkeeping requirements.

Dated: March 3, 1989.

Doyle G. Frederick,

Acting Assistant Secretary—Water and Science.

Part 423 is added to 43 CFR Chapter I to read as follows:

PART 423—EMERGENCY DROUGHT ACT POLICIES, PROCEDURES, AND AUTHORIZATIONS

Sec.

- 423.1 General.
- 423.2 Information collection.
- 423.3 Definitions.
- 423.4 Initiation of the program.
- 423.5 Reclamation programs.
- 423.6 Transfers of water between willing buyers and willing sellers.
- 423.7 Availability of water and the use of project conveyance facilities on a temporary basis.
- 423.8 Emergency loan program.
- 423.9 Fish and wildlife mitigation.

Authority: 43 U.S.C. 502 Note.

§ 423.1 General.

Part 423 prescribes the policies, procedures, and authority of the Bureau of Reclamation to mitigate losses and damages resulting from the drought conditions in 1987, 1988, and 1989 by:

(a) Performing studies and submitting reports to the President and Congress;

(b) Undertaking construction, management, and conservation activities;

(c) Assisting willing buyers in their purchase of available water supplies from willing sellers;

(d) Making water or canal capacity at existing Federal reclamation projects available to water users and others on a temporary basis; and

(e) Making loans to water users for undertaking management, conservation, activities, the acquisition and transportation of water, or the added cost of pumping water due to the drought conditions of 1987, 1988, 1989.

§ 423.2 Information collection.

(a) The information collection requirements contained in §§ 423.6, 423.7, 423.8, and 423.9 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1006-0010. The information listed in the following sections is being collected for the reasons stated: Section 423.6 is being collected to assist willing sellers and buyers in the redistribution of water supplies to minimize losses and damages resulting from the drought, and will be used to facilitate such exchanges; § 423.7 is being collected to identify the potential users, uses of the Federal water or facilities, and financial feasibility of the applicants, and will be used to develop individual temporary contracts; § 423.8 is being collected to identify the potential borrowers, uses of the loan, and relevant financial data, and will be used to develop individual loan repayment contracts; § 423.9 is being collected to identify the potential resources to be protected or mitigated, and the need for the water, and will be used to evaluate the potential to prevent or mitigate damages to fish and wildlife resources caused by the drought. Response to this request is required to obtain a benefit in accordance with section 411 of Pub. L. 100-387.

(b) Public reporting burden is estimated to average 3 hours per response, including the time for reviewing instructions, gathering and maintaining data, and responding to the questions in the rule. Refer questions or inquiries regarding the burden estimate or any other aspect of this requirement to Ms. Carolyn G. Hipps, Branch of Publications and Records Management, Bureau of Reclamation, P.O. Box 25007, Denver, Colorado 80225, and the Office of Management and Budget, Paperwork Reduction Project 1006-0010, Washington, DC 20503.

§ 423.3 Definitions.

(a) *Contracting Entity*—An organization or individual determined by the Commissioner of Reclamation to be an acceptable contractor.

(b) *Commissioner*—The Commissioner of the Bureau of Reclamation.

(c) *Regional Director*—The director of one of the five geographical divisions of the Bureau of Reclamation.

(d) *Drought*—Water shortage drought conditions in the 17 Reclamation States during 1987, 1988, or 1989 in areas eligible for disaster assistance under these rules.

(e) *Reclamation*—Bureau of Reclamation.

(f) *Secretary or Contracting Officer*—The Secretary of the United States Department of the Interior, or the duly authorized representative.

(g) *Solicitor*—Field or Regional Solicitor of the Department of the Interior.

(h) *The Act*—The Disaster Assistance Act of 1988, Pub. L. 100-387, 102 Stat. 924, August 11, 1988.

§ 423.4 Initiation of the program.

(a) Reclamation may initiate the drought relief activities described herein in the 17 Reclamation States only after:

(1) An area has been declared, by the Governor of the State, to be in a state of drought emergency; and

(2) The area has been declared eligible for Federal disaster relief under applicable rules and regulations promulgated by the Department of Agriculture.

(b) Reclamation shall not expend funds pursuant to the Act until such funds are appropriated or reprogrammed.

§ 423.5 Reclamation programs.

(a) *Authority and purpose.* The Act authorizes the Secretary to undertake construction, manage water supplies, and facilitate conservation activities which mitigate, or are expected to mitigate, losses and damages resulting from the drought. The purpose of such activities is to augment, utilize, or conserve water supplies in areas which have been declared eligible pursuant to § 423.4(a).

(b) *Proposals.* (1) Each Regional Office of Reclamation will identify eligible mitigation actions for drought areas under its jurisdiction.

(2) Federal, state, and local entities may prepare proposals for drought mitigation actions for drought areas. Proposals will be submitted to the regional office having jurisdiction for the affected area.

(c) *Evaluation and Selection.* Each Regional Director will establish a method for processing and evaluating all proposals considered under this rule and will select proposed actions for implementation.

(d) *Reimbursement.* Funds expended pursuant to section 412(1)(b) of the Act shall be reimbursable or nonreimbursable in accordance with similar activities under current Reclamation law and policy.

(e) *Termination.* Activities under this rule will terminate on or be completed by December 31, 1989.

§ 423.6 Transfers of water between willing buyers and willing sellers.

(a) The Secretary is authorized, under section 412(2) of the Act, to assist willing sellers and willing buyers in the redistribution of water supplies to minimize losses and damages resulting from the drought. To facilitate such a water exchange program, Reclamation Regional Directors will compile and maintain a list of buyers and sellers.

(b) Interested buyers and sellers are encouraged to submit the following information to the appropriate Regional Director, as presented in § 423.7(b)(1).

(1) *Sellers:* (i) The amount of water available for sale, proposed sale price, timing of its availability, and source of supply.

(ii) Legal information relating to seller's right to the water, and the normal purpose or use of the supply.

(2) *Buyers:* (i) Amount and timing of water requested.

(ii) Proposed purchase price.

(iii) Expected use of the water supply.

(iv) Location of use.

(c) Each Regional Director will review the proposals submitted by the willing sellers and buyers to match potential exchanges. Where available supplies equal or exceed requests from buyers and no other apparent conflicts exist, buyers and sellers will be brought together to negotiate an exchange agreement, consistent with State law.

(d) If requests from buyers exceed the water available from willing sellers, priorities will be established. In those instances where State law establishes priorities, such priorities will be followed in allocating the water. Where State law is silent in setting priorities, the Regional Director will consult with State and local water resources agencies to establish allocation priorities.

§ 423.7 Availability of water and the use of project conveyance facilities on a temporary basis.

(a) *General Authority.* Under general authority pursuant to the Act, the

Secretary may contract to make water or conveyance capacity available, on a temporary basis, to mitigate losses and damages from the drought, provided such contracts are consistent with existing contracts, State law, and interstate compacts governing the use of such water.

(b) *Application Process.* The procedure for application for water or conveyance capacity pursuant to section 413 of the Act is as follows:

(1) The contracting entity shall submit an application to the appropriate Regional Director of the Bureau of Reclamation (address shown below).

Regional Director, Pacific Northwest Region, Bureau of Reclamation, Federal Building, U.S. Court House, Box 043, 550 West Fort Street, Boise, ID 83724

Regional Director, Upper Colorado Region, Bureau of Reclamation, PO Box 11568, Salt Lake City, UT 84147

Regional Director, Mid-Pacific Region, Bureau of Reclamation, Federal Office Building, 2800 Cottage Way, Sacramento, CA 95825

Regional Director, Great Plains Region, Bureau of Reclamation, PO Box 36900, Billings, MT 59107-6900

Regional Director, Lower Colorado Region, Bureau of Reclamation, PO Box 427, Boulder City, NV 89005

(2) The application for a water supply or conveyance capacity will be reviewed on a first-come-first-served basis and approval will be based on need as determined and in accordance with priorities established by the Secretary. The application shall include the following information:

(i) Identification of contracting entity with name, address, telephone number, and title of the appropriate officials.

(ii) Identification of water conservation plans, quantities of water involved, perennial crops or crops for foundation livestock uses, and other relevant data on water uses and expected results.

(iii) Relevant financial data, records, or statements, which demonstrate or support that payment for the water or conveyance capacity is financially feasible.

(c) *Contracts.* Contracts for the temporary use of water and conveyance capacity pursuant to this Act shall be consistent with subsection 9(c)(2) or 9(e) of the Reclamation Project Act of 1939 (53 Stat. 1187) unless the Act authorizes provisions different from those in subsection 9(c)(2) or 9(e). Any contract executed under this paragraph shall provide that:

(1) Water supply or conveyance contracts executed pursuant to this Act shall terminate no later than December 31, 1989.

(2) Land currently irrigated by nonproject water supplies may receive supplies made available pursuant to this Act.

(3) Lands not now subject to reclamation law that receive temporary water supplies pursuant to this Act shall not become subject to the ownership limitations of Federal reclamation law because of such temporary water supplies.

(4) Lands that are subject to the ownership limitations of Reclamation law shall not be exempted from those limitations because of the delivery of such temporary water supplies.

(5) The price for the use of such water shall be at least sufficient to recover all Federal operation and maintenance costs, and a proportionate share of capital costs. In addition, the price of water used shall be full cost in the following cases:

(i) Where water is delivered to a landholding of 960 acres of class I lands or the equivalent belonging to a qualified recipient (as defined by 43 U.S.C. 390 bb), the water shall be full cost for those acres in excess of 960.

(ii) Where water is delivered to a landholding of 320 acres of class I lands or the equivalent belonging to a limited recipient (as defined by 43 U.S.C. 390 bb), the water shall be full cost for those acres in excess of 320.

(6) Contracting entities shall be responsible for identifying all individuals who will use agricultural water obtained pursuant to section 413 of the Act and the extent of their respective landholdings for the purpose of determining the rate to be charged for such water.

(7) The Secretary shall include such other terms and conditions as deemed appropriate.

§ 423.8 Emergency loan program.

(a) *Purpose.* Any contracting entity located in a designated drought area may be eligible to obtain loans for the purposes of improving water management, instituting water conservation activities, and acquiring and transporting water. Loans may also be obtained to finance drought-induced increases in pumping costs.

(b) *Application Process.* The procedure for application for drought assistance loans is as follows: The applicant shall submit an application to the appropriate Regional Director of the

Bureau of Reclamation, as presented in § 423.7(b)(1). The application for a loan shall include appropriate information as follows:

(1) Identification of contracting entity with name, address, telephone number, and title of the appropriate official.

(2) A description of the expected use of the loan funds, including, if applicable, water conservation plans, quantities of water involved, perennial crops or crops for foundation livestock uses that have been affected by the drought, water purchase and sales price criteria, and other relevant data on water uses and expected results.

(3) Relevant financial data, records, or statements, which demonstrate or support the need for financial assistance and demonstrate that repayment of the loan is financially feasible.

(4) A statement or resolution setting forth a commitment to repay the loan covered by the application.

(5) Evidence of compliance with applicable state water and entitlement laws.

(6) Other drought related financial assistance that may have been applied for or received.

(c) *Loans.*

(1) Federal financial assistance for the purposes defined in § 423.8(a) will be handled through loans with the contracting entity which must be repaid over a period of not less than 5 years, but no more than 10 years beginning not later than the first year following the next year of adequate water supply, as determined by the Secretary. Loans for non-agricultural purposes shall be repaid with interest at the rate determined pursuant to the Water Supply Act of 1958. Loans for agricultural purposes shall be interest free.

(2) Contracts for repayment of any loan will be developed separately from any existing repayment or water service contract between the United States and a contracting entity. The contract will include the terms and conditions for repayment specified above and will be approved by the appropriate Regional Director in behalf of the Secretary following review and certification of the contract's legal sufficiency by the Solicitor. Section 203(a) of the Reclamation Reform Act of 1982 (Pub. L. 97-293; 43 U.S.C. 390CC) shall not apply to any contract for such a loan.

(3) Activities undertaken by contracting entities pursuant to these rules shall be completed not later than December 31, 1989.

(4) Terms and Conditions for Disbursement of Funds.

(i) Emergency loan requests will be reviewed on a first-come-first-served basis and disbursement will be made based on need as determined by the Secretary.

(ii) The contracting entity must be deemed eligible by the United States.

(iii) The Secretary may disburse the estimated loan amount upon execution of a repayment contract, in accordance with the terms and conditions set forth in these rules.

(iv) Interest, where applicable, shall accrue beginning with the first disbursement of funds.

(v) Except as provided herein, standard Reclamation contract terms and conditions will apply.

§ 423.9 Fish and wildlife mitigation.

(a) The Secretary may make water from a Reclamation project, purchased or otherwise acquired, available to prevent or mitigate damage to fish and wildlife resources caused by the drought in areas designated eligible pursuant to § 423.3.

(b) The application for water pursuant to this section shall include appropriate information as follows:

(1) Identification of the appropriate State, Federal, local or private entity representing the fish and wildlife resources, including name, address, telephone number, and title of the contact official.

(2) Identification of the resource to be protected or mitigated, the magnitude of such protection or mitigation, the level and extent of coordination with State and local officials, the source of the water proposed to be used, quantities of water involved, justification of the reasonableness of the proposed action, and any other relevant information deemed necessary by Reclamation to make a decision concerning the proposed action.

(c) The applicant shall notify Reclamation of the water needs of fish and wildlife in areas capable of service from Reclamation facilities. The need for water must be attributable to the drought.

(d) When Reclamation incurs cost or forgoes revenues in excess of the funds available pursuant to the Act in order to provide water for fish and wildlife protection or mitigation, the applicant will be responsible for identifying the source of necessary funding to implement section 413(c) of the Act.

[FR Doc. 89-8449 Filed 4-7-89; 8:45 am]

BILLING CODE 4310-09-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-255; RM-6211]

Radio Broadcasting Services; Lexington, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 245A to Lexington, Michigan, as that community's first FM broadcast service, in response to a petition filed by D.J. Fox. There is a site restriction 3.9 kilometers north of the community at coordinates 43-18-00 and 82-32-30. Concurrence of the Canadian government has been obtained for the allotment of Channel 245A as a specially negotiated short spaced allotment in accordance with the U.S.-Canadian Working Agreement. With this action, this proceeding is terminated.

DATES: Effective May 15, 1989. The window period for filing applications will open on May 16, 1989, and close on June 16, 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. 88-255, adopted March 7, 1989, and released March 30, 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) 857-3600, 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 Michigan is amended by adding Lexington, Channel 245A.

Federal Communications Commission.

Karl Kensinger,

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

[FR Doc. 89-8407 Filed 4-7-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-260; RM-6161, RM-6293 & RM-6513]

Radio Broadcasting Services; Harbor Springs and Mio, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: A Notice was issued in response to two separate conflicting petitions. David C. Schaberg proposed the substitution of Channel 281C2 for Channel 280A at Mio, Michigan, and modification of its construction permit to specify the C2 channel. Running Rhodes, Inc., requested the substitution of Channel 280C2 for Channel 280A at Harbor Springs, Michigan, and modification of its construction permit for Channel 280A to specify Channel 280C2. Running Rhodes filed a counterproposal proposing the substitution of Channel 230C2 for Channel 280A at Mio, Michigan, to eliminate the conflict and allow both communities an opportunity for a first wide coverage area facility.

This document substitutes Channel 280C2 for Channel 280A at Harbor Springs, Michigan, and modifies Running Rhodes' construction permit for Channel 280A (BPH850613MB) to specify Channel 280C2. The coordinates for Channel 280C2 are 45-29-02 and 84-54-00. We shall also substitute Channel 230C2 for Channel 280A at Mio, Michigan, and modify the construction permit for Channel 280A (BPH851216ML) to specify Channel 230C2. The coordinates for Channel 230C2 are 44-33-00 and 84-24-00. Canadian concurrence has been obtained for the allotment of the above channels. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 15, 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. 88-260, adopted March 7, 1989, and released

March 30, 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 Section 73.202(b), the Table of FM Allotments is amended under Michigan by removing Channel 280A and adding Channel 280C2 at Harbor Springs, and by removing Channel 280A and adding Channel 230C2 at Mio.

Federal Communications Commission.

Karl Kensinger,

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

[FR Doc. 89-8400 Filed 4-7-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-11; RM-6047]

Radio Broadcasting Services; Monticello, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 271C2 for Channel 271A at Monticello, Mississippi, in response to a petition filed by Clinco, Inc. Channel 271A was allotted to Monticello, Mississippi, in MM Docket 84-231, *First Report and Order*, 49 FR 3514, January 25, 1985, and was No. 61 in the sequential order of the random selection in which new FM allotments were made in that proceeding. Public Notice of the window filing period was given on March 25, 1988, indicating the possibility of an upgrade at Monticello. Two applications are currently on file at the Commission for Channel 271A. We will not open another window for the Class C2 channel as public notice was given for the channel upgrade at Monticello. The applicants for Channel 271A will be afforded cut-off protection and required to amend their applications to specify

the higher class channel. The coordinates for Channel 271C2 at Monticello are 31-36-48 and 90-10-10. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 19, 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. 88-11, adopted March 7, 1989, and released April 4, 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 is amended under Mississippi, by removing Channel 271A and adding Channel 271C2 at Monticello.

Federal Communications Commission.

Karl Kensinger,

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

[FR Doc. 89-8406 Filed 4-7-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-448; RM-6404]

Radio Broadcasting Services; Mountain View, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 245C2 for Channel 244A at Mountain View, Missouri, in response to a petition filed by James M. Hunt. In accordance with Section 1.420(g) of the Commission's Rules, we have also modified the permit for Station KXOZ(FM), Mountain View, to specify operation on Channel 245C2 in lieu of Channel 244A, at the petitioner's specified site. The coordinates for

Channel 245C2 are 36-59-29 and 91-47-41. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 19, 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. 88-448, adopted March 7, 1989, and released April 4, 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, D.C. 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 Missouri is amended by removing Channel 244A and adding Channel 245C2 at Mountain View.

Federal Communications Commission.

Karl Kensinger,

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

[FR Doc. 89-8405 Filed 4-7-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-158; RM-6203; RM-6410]

Radio Broadcasting Services; Lenoir and Blowing Rock, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Foothills Broadcasting of Lenoir, allots Channel 277A to Lenoir, North Carolina, as the community's first local FM service. Channel 277A can be allotted to Lenoir in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.9 kilometers (4.3 miles) northwest to avoid a short-spacing to Station WSOC-FM, Channel 279C, Charlotte, North Carolina, and to the

construction permit of Station WRLX, Channel 275C1, Hickory, North Carolina. The coordinates for this allotment are North Latitude 35-58-38 and West Longitude 81-33-57. The Commission also denies the counterproposal of Swamp Fox Communications, Inc. seeking the allotment of Channel 277A to Blowing Rock, North Carolina. With this action, this proceeding is terminated.

DATES: Effective May 15, 1989. The window period for filing applications will open on May 16, 1989, and close on June 16, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-158, adopted March 7, 1989, and released March 30, 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 contractor, 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 FM Table of Allotments for North Carolina is amended by adding the following entry: Lenoir, Channel 277A.

Federal Communications Commission.

Karl Kensinger,

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

[FR Doc. 89-8401 Filed 4-7-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-412; RM-6369]

Radio Broadcasting Services; Shelbyville and Ramsey, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 286B1 for Channel 285A at

Shelbyville, Illinois, at the request of Kin Do Communications, Inc., and modifies the license for Station WSHY-FM to specify operation on the higher powered channel. Channel 286B1 can be allotted to Shelbyville in compliance with the Commission's minimum distance separation requirements and can be used at Station WSHY's present transmitter site. The coordinates for this allotment at Shelbyville are 39-24-05 and 88-49-00. In addition, the Commission substitutes Channel 227A for unused Channel 287A at Ramsey, Illinois. The coordinates for Channel 227A at Ramsey are 39-08-06 and 89-06-02. 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. 88-412, 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 under Illinois is amended by deleting Channel 285A and adding Channel 286B1 at Shelbyville, and by deleting Channel 287A and adding Channel 227A at Ramsey.

Karl A. Kensinger,

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

[FR Doc. 89-8409 Filed 4-7-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Part 208

Department of Defense Federal Acquisition Regulation Supplement; Miscellaneous Amendments (DAC #86-16); Correction

AGENCY: Department of Defense (DoD).

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule issuing changes to the DoD FAR Supplement with respect to Small Purchase Thresholds which was published in the Federal Register on September 29, 1988 (53 FR 38243). This action is necessary to correct amendatory language.

FOR FURTHER INFORMATION CONTACT:

Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697-7266.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Accordingly, the Department of Defense is correcting 48 CFR Part 208 as follows:

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

On page 38246, the heading preceding paragraph 5 and paragraph 5 are corrected to change the citation "208.002-70" to read: "208.070" in both places.

[FR Doc. 89-8410 Filed 4-7-89; 8:45 am]

BILLING CODE 3810-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 532, 552, and 553

[Acquisition Cir. AC-89-1]

General Services Administration Acquisition Regulation; Implementation of Prompt Payment Act Amendments of 1988

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Temporary rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), Chapter 5 (APD 2800.12), is temporarily amended to revise section 532.111 by deleting subparagraph (a)(1) and eliminating the subparagraph designation for subparagraph (a)(2); to revise section 532.905 by amending the regulatory language to conform to the Federal Acquisition Regulation (FAR) as amended by FAC 84-45; to add section

532.905-70 to prescribe the GSA Form 2419, Certification of Progress Payments Under Fixed Price Contracts; to add section 532.905-71 to provide instructions for making final payments; to revise section 532.908 by amending the regulatory language to conform to the FAR; to delete subpart 532.70 as unnecessary in light of revised FAR coverage; to revise section 552.232-8 by amending the provision to provide for calculating the discount period from the date of the invoice; to revise section 552.232-70 by amending the text of the clause to modify the title and number of the FAR clause; to revise section 552.232-71 by amending the clause to indicate that all days referred to in the clause are calendar days, unless otherwise specified and to delete the portion of the clause regarding electronic fund transfers; to add section 552.232-73 to provide a Electronic Transfer Payment clause for leases of real property; to remove sections 552.232-75 and 552-232-76; and to revise section 553.370-2419 to illustrate the revised GSA Form 2419. The intended effect is to implement the Prompt Payment Act Amendments of 1988 and to provide uniform procedures for contracting under the regulatory system.

DATES: Effective Date: April 1, 1989.
Expiration Date: March 31 1990.

FOR FURTHER INFORMATION CONTACT: Mr. John Joyner, Office of GSA Acquisition Policy and Regulations (VP), (202) 566-1224.

SUPPLEMENTARY INFORMATION:

Background: This rule was not published in the Federal Register for public comment because it provides internal procedures for GSA contracting activities and implements certain requirements of the Federal Acquisition Regulation (FAR), as amended by FAC 84-45, which have previously undergone the public comment process. This rule will not result in a significant additional cost or administrative impact on contractors or offerors.

Impact: The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. This rule simply temporarily amends the GSAR as necessary to conform to the FAR as amended by FAC 84-45. Therefore, no regulatory flexibility analysis has been prepared. The information collection requirement on the GSA Form 2419, Certification of Progress Payments Under Fixed-Price Construction Contracts, is merely a reflection of the information collection requirement in FAR 52.232-5, Payment

Under Fixed-Price Construction Contracts, which has been approved by OMB under the Paperwork Reduction Act and assigned Control Number 9000-0102.

List of Subjects 48 CFR Parts 532, 552, and 553

Government procurement.

1. The authority citation for 48 CFR Parts 532, 552 and 553 continues to read as follows:

Authority: 49 U.S.C. 486(c).

2. 48 CFR Part 532, 552 and 553 are amended by the following Acquisition Circular:

**General Services Administration
Acquisition Regulation Acquisition
Circular (AC-89-1)**

April 4, 1989.

To: All GSA Contracting Activities.
Subject: Prompt Payment Act Amendments of 1988.

1. **Purpose.** This Acquisition Circular temporarily amends the General Services Administration Acquisition Regulation (GSAR), Chapter 5 (APD 2800.12), to implement and supplement the Federal Acquisition Regulation (FAR) as amended by FAC 84-45.

2. **Background.** The Federal Acquisition Regulation was amended by FAC 84-45 to implement the Prompt Payment Act Amendments of 1988 (Pub. L. 100-496). FAC 84-45 contains policy and procedures for the incorporation of the significant changes required by the statute. This Acquisition Circular amends the GSAR as necessary to conform to the FAR as amended by FAR 84-45.

3. **Effective date.** All contracts awarded, contracts renewed, and options exercised after March 31, 1989, must include the applicable payment provisions and clauses prescribed by the circular.

4. **Expiration date.** This circular expires March 31, 1990, unless canceled earlier.

5. **Reference to regulation.** Sections 532.111, 532.905, 532.905-70, 532.905-71, 532.908, 532.70, 552.232-8, 552.232-70, 552.232-71, 552.232-73, 552.232-75 and 552.232-76 of the GSAR.

6. **Explanation of Changes.** a. Section 532.111 is revised to amend paragraph (a) to delete subparagraph (1) in its entirety and delete the paragraph designation for subparagraph (2) but retain the text.

b. Section 532.905 is revised to read as follows:

532.905 Invoice payments.

(a) Before exercising the authority to modify the date for constructive

acceptance in subdivision (a)(6)(i) of the clause at FAR 52.232-25, Prompt Payment, or subdivision (a)(5)(i)(A) of the clause at FAR 52.232-26, Prompt Payment for Fixed-Price Architect-Engineer Contracts, the contracting officer shall prepare a written justification explanation why a longer period is necessary. The time specified must be determined on a case-by-case basis and the justification must be approved by the contracting director. A contracting office must not specify a constructive acceptance period that exceed 30 days. The time specified in subdivision (a)(5)(i)(B) of the clause at FAR 52.232-26 for construction approval of progress payments must not exceed 7 days.

(b) The time specified for payment of progress payments in subdivision (a)(1)(i)(A) of the clause at FAR 52.232-27, Prompt Payment for Construction Contracts, must be determined by the contracting officer on a case-by-case basis. Periods longer than 14 days must be justified in writing and approved by the contracting director. Under no circumstances may more than 30 days be specified. The time specified in subdivision (a) (4)(i) of FAR clause 52.232-27, for constructive acceptance or approval will be determined by the contracting officer on a case-by-case basis but may not exceed 7 days unless a longer period is justified, in writing, and approved by the contracting director. Under no circumstances may more than 30 days be specified.

c. Section 532.905-70 is added to read as follows:

532.905-70 Certification of payment to subcontractors and suppliers.

When a contract includes the clause at FAR 52.232-5, Payments Under Fixed-Price Construction Contracts, no progress payments will be processed until the contractor submits a certification of payment to subcontractors and suppliers. The GSA Form 2419, Certification of Progress Payments Under Fixed-Price Construction Contracts, may be used for certification.

d. Section 532.905-71 is added to read as follows:

532.905-71 Final payment.

(a) The final payment on construction or building service contracts must not be processed until the contractor submits a properly executed GSA Form 1142, Release of Claims. If, after repeated attempts, the contracting officer is unable to obtain a release of claims from the contractor, final payment may

be processed with the approval of appropriate legal counsel.

(b) The amount of final payment must include, as appropriate, any deductions to cover liquidated damages for late completion, liquidated damages for labor violations, amounts withheld for improper payment of labor wages, and the amount of unilateral change orders covering defects and omissions.

e. Section 532.908 is revised to read as follows:

532.908 Contract clause.

(a) The contracting officer shall insert the clause at 552.232-70, Payments by Electronic Funds Transfer, in solicitations and contracts that include the FAR clause 52.232-28, when payments may be made by GSA and other agencies (e.g., multiple award schedule contracts).

(b) The contracting officer shall insert the clause at 552.232-71, Prompt Payment, in solicitations and contracts for the acquisition of leasehold interests in real property. The contracting officer may modify the date for constructive acceptance in subdivision (b)(2) of the basic clause to specify a period longer than 7 calendar days (but not to exceed 30 days) if necessary due to the nature of the services to be received, inspected or accepted by the Government. A written justification for specifying the longer period must be prepared and approved by the contracting director. The contracting officer shall use Alternate I instead of the basic clause if the lease contract does not contain provisions for ordering alterations or overtime utility services.

(c) The contracting officer shall insert the clause at 552.232-73, Electronic Funds Transfer Payment, in solicitations and contracts for acquisitions of leasehold interests in real property if payment may be made by electronic funds transfer.

Subpart 532.70—[Removed]

f. Subpart 532.70 is removed.

g. Section 552.232-8 is revised to read as follows:

552.232-8 Discounts for prompt payments.

As prescribed in 532.111(a), insert the following clause:

Discounts for Prompt Payment (Apr 1989) (Deviation FAR 52.232-8)

(a) Discounts for early payment (hereinafter referred to as "discounts" or "the discount") will be considered in evaluating the relationship of the offeror's concessions to the Government vis-a-vis the offeror's concessions to its commercial customers, but only to the extent indicated in this clause.

(b) Discounts will not be considered to determine the low offeror in the situation described in the "Offers on Identical Products" provision of this solicitation.

(c) Uneconomical discounts will not be considered as meeting the criteria for award established by the Government. In this connection, a discount will be considered uneconomical if the annualized rate of return for earning the discount is lower than the "value of funds" rate established by the Department of the Treasury and published quarterly in the Federal Register. The "value of funds" rate applied will be the rate in effect on the date specified for the receipt of offers.

(d) Agencies required to use the resultant schedule will not apply the discount in determining the lowest delivered price pursuant to the FPMR, 41 CFR 101-26.408, if the agency determines that payment will probably not be made within the discount period offered. The same is true if the discount is considered uneconomical at the time of placement of the order.

(e) Discounts for early payment may be offered either in the original offer or on individual invoices submitted under the resulting contract. Discounts offered will be taken by the Government if payment is made within the discount period specified.

(f) Discounts that are included in offers become a part of the resulting contracts and are binding on the contractor for all orders placed under the contract. Discounts offered only on individual invoices will be binding on the Contractor only for the particular invoice on which the discount is offered.

(g) 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.

(End of Clause)

h. 552.232-70 is revised to read as follows:

552.232-70 Payments by Electronic Funds Transfer.

As prescribed in 532.908(a), insert the following clause:

Payments by electronic funds transfer (APR 1989)

The submission of a designation of financial institution for receipt of electronic funds transfer payments in the "Electronic Funds Transfer Payment Methods" clause (FAR 52.232-28) shall be as follows: The Contractor shall submit its designation of a financial institution for receipt of electronic funds transfer payments with each invoice requesting payment of \$25,000 or more (exclusive of any discount for prompt payment). The information for electronic funds transfer is not required by the Department of Defense, the United States Postal Service, or the Tennessee Valley Authority. Information required for electronic funds transfer payments shall be furnished to the Veterans Administration in accordance with instructions provided by that agency.

Other agencies and departments thereof may waive the requirement for designation of a financial institution for receipt of electronic funds transfer payments and for submission of information required to make such payments by including a notice on delivery orders or otherwise notifying the Contractor. (End of Clause)

i. Section 552.232-71 is revised to read as follows:

552.232-71 Prompt payment.

As prescribed in 532.908(b), insert the following clause:

Prompt Payment (APR 1989)

The Government will make 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. All days referred to in this clause are calendar days, unless otherwise specified.

(a) *Payment due date*—(1) *Rental payments.* Rent shall be paid monthly in arrears and will be due on the first workday of each month, and only as provided for by the lease.

(i) When the date for commencement of rent falls on the 15th day of the month or earlier, the initial monthly rental payment under this contract shall become due on the first workday of the month following the month in which the commencement of the rent is effective.

(ii) When the date for commencement of rent falls after the 15th day of the month, the initial monthly rental payment under this contract shall become due on the first workday of the second month following the month in which the commencement of the rent is effective.

(2) *Other payments.* The due date for making payments other than rent 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 service. 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 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) *Invoice and inspection requirements for payments other than rent.* (1) The Contractor shall prepare and submit an invoice to the designated billing office after completion of the work. A proper invoice shall include the following items:

- (i) Name and address of the Contractor.
- (ii) Invoice date.
- (iii) Lease number.
- (iv) Government's order number or other authorization.
- (v) Description, price, and quantity of work or services delivered.
- (vi) Name and address of Contractor official to whom payment is to be sent (must

be the same as that in the remittance address in the lease or the order.)

(vii) Name (where practicable), title, phone number, and mailing address of person to be notified in the event of a defective invoice.

(2) The Government will inspect and determine the acceptability of the work performed or services delivered within 7 days after the receipt of a proper invoice or notification of completion of the work or services unless a different period is specified at the time the order is placed. If actual acceptance occurs later, for the purpose of determining the payment due date and calculation of interest, acceptance will be deemed to occur on the last day of the 7-day inspection period. If the work or service is rejected for failure to conform to the technical requirements of the contract, the 7 days will be counted beginning with receipt of a new invoice or notification. In either case, the Contractor is not entitled to any payment or interest unless actual acceptance by the Government occurs.

(c) *Interest penalty.* (1) An interest penalty shall be paid automatically by the Government, without request from the Contractor, if payment is not made by the due date.

(2) 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. 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 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.

(3) 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.

(4) 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.

(End of Clause)

Alternate I (APR 1989)

If Alternate I is used, subparagraph (a)(1) of the basic clause should be designated as paragraph (a) and subparagraph (a)(2) and paragraph (b) should be deleted. Paragraph (c) of the basic clause should be redesignated (b).

j. Section 552.232-73 is added as follows:

552.232-73 Electronic Funds Transfer Payment.

As prescribed in 532.908(c), insert the following clause:

Electronic Transfer Payment (Apr 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. Not later than 14 days after receipt of a notice of award or request from the Contracting Officer or other Government official, the Contractor shall provide information necessary for check payment and/or designate a financial institution for receipt of electronic funds transfer payments. The Contractor shall submit this information to the Contracting Officer or other Government official, as directed.

(a) For payment by check, the Contractor shall provide the full name (where practicable), title, phone number, and complete mailing address of the responsible official(s) to whom check payments are to be sent (must be the same as the remittance address in the lease or the order.)

(b) For payment through FEDLINE, the Contractor shall provide the following information:

(1) Name, address, and telegraphic abbreviation of the financial institution receiving payment (must be the same as the remittance address in the lease or the order).

(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.

(c) For payment through 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.

(d) 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.

(e) The document furnishing the information required by this paragraph 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.

(f) Contractor failure to properly designate a financial institution or to provide appropriate payee bank account information may delay payments of amount otherwise properly due.

(End of Clause)

552.232-75 and 552.232.76 [Removed]

k. Sections 552.232-75 and 552.232-76 are removed.

553.370-2419 [Amended]

l. Section 553.370-2419 is revised to illustrate the revised GSA Form 2419, Certification of Progress Payments Under Fixed Price Construction Contracts.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

BILLING CODE 6820-63-M

**CERTIFICATION OF PROGRESS PAYMENTS
UNDER FIXED-PRICE CONSTRUCTION CONTRACTS**

1. PROJECT NAME	2. CONTRACT NUMBER GS-
3. PROJECT LOCATION	4. CONTRACT DATE
5. NAME AND ADDRESS OF CONTRACTING OFFICER <i>(Number, street, city, State and ZIP Code)</i>	<p align="center">INSTRUCTIONS</p> <p>Type or print all entries on this form except Item 7.</p> <p>Please sign and return the original, keep a copy for your records.</p>

6. CERTIFICATION

In accordance with the clause at FAR 52.232-5, Payments Under Fixed-Price Construction Contracts, 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 payment 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.

7. CERTIFIED BY <i>(Signature)</i>	8. DATE
9. TYPE OR PRINT NAME AND TITLE OF CERTIFYING OFFICER	
10. NAME AND ADDRESS OF CONTRACTOR <i>(Number, street, city, State and ZIP Code)</i>	

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 204**

[Docket No. 80625-8183]

Atlantic Billfishes**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.**ACTION:** Final rule; effectiveness and enforcement of a collection-of-information requirement and notice of OMB control number.

SUMMARY: NOAA announces approval by the Office of Management and Budget (OMB) of the collection-of-information requirement applicable to commercial seafood dealers and processors who possess billfish. This rule establishes an effective date for the collection-of-information requirement, informs the public of its enforcement, and publishes the applicable OMB control number.

EFFECTIVE DATE: April 5, 1989.

FOR FURTHER INFORMATION CONTACT: Rodney C. Dalton, (813) 893-3722, or the Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

SUPPLEMENTARY INFORMATION: A final rule to implement the Fishery Management Plan for Atlantic Billfishes was published September 28, 1988 (53 FR 37765) as 50 CFR Part 644. Section 644.24(b) specifies that, with a limited

exception (billfish landed in a Pacific State and remaining in the State of landing), a billfish possessed by a seafood dealer or processor will be presumed to have been harvested from its management unit unless it is accompanied by specific documentation showing that it was harvested from outside the management unit. (A billfish from its management unit, as defined by 50 CFR 644.2 may not be purchased, bartered, traded, or sold in any State.) The documentation must include the information specified at 50 CFR Part 246 for marking containers or packages of fish that are imported or transported in interstate commerce, the name and home port of the vessel harvesting the billfish, the port and date of offloading from the vessel harvesting the billfish, and a statement signed by the dealer attesting that each billfish was harvested from an area other than its management unit. Other than the marking requirement information, this information may be recorded on a form available from the Director, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702, or on any other form which provides the required information. Section 644.7(g) prohibits the possession of a billfish by a commercial seafood dealer or processor without the required documentation.

The documentation requirement of § 644.24(b) constitutes a collection-of-information requirement subject to the Paperwork Reduction Act (PRA). However, pursuant to the PRA, the collection-of-information requirement could not be enforced before OMB

approval of the requirement. By notice of January 10, 1989 (54 FR 821), NOAA announced delayed enforcement of §§ 644.7(g) and 644.24(b), pending OMB approval.

OMB approved the collection-of-information requirement on March 9, 1989, under control number 0648-0216. Accordingly, §§ 644.7(g) and 644.24(b) are effective and henceforth will be enforced.

List of Subject in 50 CFR Part 204

Reporting and recordkeeping requirements.

Dated: April 5, 1989.

James E. Douglas, Jr.,
Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Part 204 is amended as follows:

PART 204—OMB CONTROL NUMBERS FOR NOAA INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 204 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520 (1982).

§ 204.1 [Amended]

2. In § 204.1(b), the table is amended by adding in the left hand column, in numerical order, "§ 644.24(b)" and adding in the right hand column, in a corresponding position, "-0216".

[FR Doc. 89-8413 Filed 4-5-89; 1:49 pm]

BILLING CODE 3510-22-M

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 403

[Amdt. 1; Docket No. 6619S]

Peach (Fresh) Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Peach (Fresh) Crop Insurance Regulations (7 CFR Part 403), effective for the 1990 and succeeding crop years, to provide that the premium reduction gained by insureds through good insuring experience will extend beyond the present 1990 crop year expiration. The intended effect of this rule is to allow a continuation of good experience discount for all present policyholders who are eligible for a premium reduction while FCIC reviews the entire good experience discount issue for all policyholders.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than May 10, 1989, to be sure of consideration.

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

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review data established for these regulations is established as February 1, 1994.

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

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

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

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

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

Under the provisions of the Peach (Fresh) Crop Insurance Regulations (7 CFR Part 403), an insured may be eligible for a premium reduction in excess of 5 percent based on that individual's insuring experience through the 1984 crop year under the terms and conditions contained in their peach crop insurance policy for 1985. The insured will continue to receive the benefit of such reduction subject to several conditions, one of which being that no premium reduction will be retained after the 1990 crop year.

The FCIC Board of Directors has suggested that the present premium reduction be continued and directed that a study be made of the entire premium reduction for good experience issue as it might apply to all policyholders.

Accordingly, FCIC herein proposes to amend the Peach (Fresh) Crop Insurance Regulations (7 CFR Part 403) to allow a continuation of the good experience discount provision so that no premium reduction will be retained after the 1991 crop year.

FCIC is soliciting public comment for 30 days after publication of the rule in the Federal Register.

All written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 403

Crop insurance, Peaches.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the Peach (Fresh) Crop Insurance Regulations (7 CFR Part 403), proposed to be effective for the 1990 and succeeding crop years, in the following instances:

PART 403—[AMENDED]

1. The authority citation for 7 CFR Part 403 continues to read as follows:

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

2. Paragraph 7(d) of the Peach (Fresh) Crop Insurance Regulations (7 CFR 403.7) is amended in subparagraph 5.c.(1) to read as follows:

§ 403.7 The application and policy.

(d) * * *

5. Annual Premium.

c. * * *

(1) No premium reduction will be retained after the 1991 crop year;

Done in Washington, DC on April 3, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-8464 Filed 4-7-89; 8:45 am]

BILLING CODE 3410-08-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-210-AD]

Airworthiness Directives; Lockheed Aeronautical Systems Company Model L-1011-385-1, L-1011-385-1-14, L-1011-385-1-15, and L-1011-385-3 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to certain Lockheed Aeronautical Systems Company Model L-1011-385 series airplanes, which currently requires deactivation of the AC electric motor-driven hydraulic pumps. That action was prompted by a report of smoke and fire damage resulting from a failed AC electric motor-driven hydraulic pump electrical connector, in combination with leaking hydraulic fluid from the failed electrical components. This action would permit the installation of a newly-designed AC Hydraulic Pump Magnetic Circuit Breaker Panel (MCBP), which would remove restrictions on the use of the two hydraulic pumps imposed by the existing AD.

DATES: Comments must be received no later than May 30, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-210-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Lockheed Aeronautical Systems Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Order Administration, Dept. 65-33, Unit 20, Plant A-1. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT:

Mr. Elvin K. Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM-132L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5344.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-210-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

On May 3, 1988, FAA issued AD 88-07-51, Amendment 39-5923 (53 FR 17017; May 13, 1988), to require deactivation of the AC electric motor-driven hydraulic pumps on certain Lockheed Model L-1011-385 series airplanes. That action was prompted by a report that, during a walk-around inspection of a Lockheed Model L-1011-385 series airplane, smoke was observed in the left main landing gear wheel well and hydraulic fluid was leaking from the hydraulic service center. A visual inspection of the hydraulic service center revealed that the "C" system AC electric motor-driven hydraulic pump (Lockheed Control No. 671548-111, Vickers Part No. 428153) electrical connector shell was severely overheated and a hole was burned through the aircraft wiring connector shell and the pump half of the connector. This condition, if not corrected, could result in fire damage to the airplane on the ground or in flight.

Since issuance of that AD, the FAA has reviewed and approved Lockheed TriStar L-1011 Service Bulletin 093-29-088, Revision 1, dated March 7, 1989, which describes a modification to the two AC Hydraulic Pump Systems, which, if accomplished, will permit

removal of the restrictions on the use of the pumps imposed by the existing AD. There are two magnetic circuit breakers installed on the MCBP, one for the B3 and one for the C3 hydraulic systems. The magnetic circuit breaker monitors the current in the neutral line of the associated AC hydraulic pump motor. In the event of an open electrical phase external or internal to the motor, or an electrical short circuit in the motor windings to ground, an increase of current in the neutral line will be detected by the associated magnetic circuit breaker causing it to open in milliseconds. An auxiliary switch integral to the magnetic circuit breaker will also open simultaneously. This will command the respective Remote Controlled Circuit Breaker (RCCB), to open, thereby removing three-phase power to the affected AC hydraulic pump motor. The magnetic circuit breakers can be reset at the MCBP.

An AD is proposed which would revise AD 88-07-51 to permit the installation of an AC Hydraulic Pump Magnetic Circuit Breaker Panel (MCBP) in the Mid-Electrical Service Center (MESC) and associated wiring, in accordance with the service bulletin previously described, thereby removing the restrictions on use of the pumps.

There are approximately 241 Model L-1011-385-1, L-1011-385-1-14, L-1011-385-1-15, and L-1011-385-3 series airplanes in the worldwide fleet. It is estimated that 116 airplanes of U.S. registry would be affected by this AD. It would take approximately 20 manhours to accomplish the optional terminating action, at a labor cost of \$40 per hour. The associated parts would be provided by the manufacturer at no cost to operators. Based on these figures, the total cost impact of this AD on those U.S. operators who accomplish the optional terminating action is estimated to be \$1,160 per airplane.

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

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation 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 proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Lockheed Model L-1011-385 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 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 revising AD 88-07-51, Amendment 39-5923 (53 FR 17017; May 13, 1988), as follows:

Lockheed Aeronautical Systems Company:
Applies to Model L-1011-385-1, L-1011-385-1-14, L-1011-385-1-15, and L-1011-385-3 series airplanes, as listed in Lockheed TriStar L-1011 Service Bulletin 093-29-A088, dated April 14, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent a fire from a failed AC Electrical Motor-Driven Hydraulic Pump electrical connector, in combination with leaking hydraulic fluid from the failed electrical components, accomplish the following:

A. Within 100 flight hours after June 3, 1988 (which is the effective date of Amendment 39-5923), accomplish the following:

1. On the Flight Engineer/Second Officer's (FE/SO) overhead CB panel CB2, open and collar circuit breakers L12 "AC Pump B3" and L22 "AC Pump C3", using PACO plastic ring P/N S-4933959-503, or equivalent.

2. As a verification that power has been removed from affected pumps, on the FE/SO hydraulic system control panel, cycle the AC pumps switch lights and verify that the "ON" legends do not illuminate.

B. Accomplishment of the requirements of paragraph A., above, in accordance with Lockheed TriStar L-1011 Alert Service Bulletin 093-29-A088, dated April 14, 1988, is considered an acceptable means of compliance with this AD.

C. Installation of an AC Hydraulic Pump Magnetic Circuit Breaker Panel (MBCBP) in the Mid-Electrical Service Center (MESC) and

associated aircraft wiring in accordance with Lockheed TriStar L-1011 Service Bulletin 093-29-088, Revision 1, dated March 7, 1989, constitutes terminating action for the requirements of paragraph A., above. The hydraulic pumps may then be reactivated by removing the circuit breaker collars installed in accordance with the requirements of paragraph A.1., above, and closing the circuit breakers.

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, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Lockheed Aeronautical Systems Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Order Administration, Department 65-33, Unit 20, Plant A-1. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Seattle, Washington, on March 30, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-8360 Filed 4-7-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 162 and 171

Proposed Customs Regulations Amendments Concerning Seizure of Property for Possession of Controlled Substances

AGENCY: U.S. Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to provide certain expedited procedures when property is seized due to violations involving the possession of personal use quantities of controlled substances. The proposed procedures comply with the requirements of the Anti-Drug Abuse Act of 1988. The proposed regulations set forth procedures allowing an owner or interested party whose property was seized due to a violation involving

possession of a personal use quantity of a controlled substance to have the property returned promptly if he can establish his innocence. The proposed regulations also would require, when a violation involving the possession of personal use quantities of a controlled substance is committed on a commercial fishing industry vessel that is proceeding to or from a fishing area or intermediate port of call or is actively engaged in fishing operations, that a summons to appear be issued in lieu of seizure of the vessel. These proposed regulations have been prepared in conjunction with the Attorney General and the Secretary of Transportation; proposed regulations from these Departments on this subject area also appear in today's **Federal Register**. (April 10, 1989).

DATE: Comments must be received on or before May 10, 1989.

ADDRESS: Written comments (preferably in triplicate) may be submitted to and inspected at the Regulations and Disclosure Law Branch, Customs Headquarters, Room 2119, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Harriett D. Blank, Regulatory Procedures and Penalties Division (202) 566-8317.

SUPPLEMENTARY INFORMATION:

Background

Prior to the enactment of the Anti-Drug Abuse Act of 1988 (Pub. L. 100-690, Title VI) (the Act), an owner whose property was seized by Customs for civil forfeiture pursuant to section 596 of the Tariff Act of 1930 (19 U.S.C. 1595a(a)), section 511(a) of the Controlled Substances Act (21 U.S.C. 881(a)), or section 2 of the Act of August 9, 1939 (53 Stat. 1291; 49 U.S.C. App. 782) could raise rights or defenses to forfeiture of the property in a petition requesting return of the property pursuant to Part 171, Customs Regulations (19 CFR Part 171), but there was no time limit in which Customs would have to make a decision on the petition.

Section 6079 of the Act was passed specifically to minimize the adverse impact caused by prolonged detention of property seized for violations involving the possession of personal use quantities of a controlled substance. Pursuant to section 6079, such property shall be promptly returned where an owner can establish: (1) A valid, good faith interest in the property; (2) that he did not know of or consent to the violation; and (3) that he had at no time any knowledge or reason to believe that the property was being or would be used in violation of law; or that if he at any

time had, or should have had knowledge that the property would be used in a violation, that he did what reasonably could be expected to prevent the violation. The statute requires the Attorney General and the Secretary of the Treasury to prescribe regulations allowing for the expedited administrative procedures.

Section 6079 also requires that at the time a conveyance is seized for a violation involving the possession of personal use quantities of a controlled substance, the officer making the seizure shall furnish a written notice specifying the expedited procedures to any person in possession of the conveyance. At the earliest practicable opportunity after determining ownership of the seized conveyance, a written notice is to be provided to the owner and other interested parties, including lienholders, of the legal and factual basis of the seizure.

Finally, section 6079 provides that the Attorney General, Secretary of the Treasury and the Secretary of Transportation shall provide joint regulations providing for issuance of a summons to appear in lieu of seizure of a commercial fishing industry vessel for violations involving the possession of personal use quantities of a controlled substance. These regulations are to apply when the violation is committed on a commercial fishing industry vessel that is proceeding to or from a fishing area or intermediate port of call or is actually engaged in fishing operations. Existing authority to arrest an individual for drug-related offenses or to release that individual into the custody of the vessel's master is not affected by this statute. The jurisdiction of the district court for any forfeiture incurred shall not be affected by the use of a summons rather than a seizure.

Procedures Formulated With Justice and Transportation Departments

Since the President signed the Act, representatives of the Department of Justice on behalf of the Attorney General, the U.S. Coast Guard on behalf of the Secretary of Transportation and the U.S. Customs Service on behalf of the Secretary of the Treasury have been in consultation as directed by section 6079 of the Anti-Drug Abuse Act. The proposed regulations set forth below are to be read in conjunction with proposed regulations from the Department of Justice and the Department of Transportation that also appear in today's Federal Register. (April 10, 1989).

Proposed Changes

Amendments to the Customs Regulations to implement section 6079

are proposed to be set forth in a new Subpart F of Part 171, Customs Regulations (19 CFR Part 171, Subpart F). Other minor changes are proposed to the regulations in Parts 171 and 162.

The proposed regulations are intended to supplement existing law and procedures relative to the forfeiture of property. Existing legal and equitable rights and remedies of those with an interest in property seized for forfeiture are not affected by these proposed regulations.

The proposed regulations relate only to seizures of property due to violations of law involving personal use quantities of controlled substances. The proposed regulations define personal use quantities in § 171.51(b)(6). This definition is intended to distinguish between those quantities small in amount which are generally considered to be possessed for personal consumption and not for distribution and larger quantities generally considered to be subject to distribution.

Pursuant to section 6079 of Pub. L. 100-690, the proposed regulations provide two alternatives: (1) Upon receipt of a petition, Customs will attempt to make a final administrative determination regarding the disposition of property seized for particular statutory violations involving the possession of personal use quantities of a controlled substance within 21 days of the seizure. (2) If such a determination is not made within 21 days, Customs shall determine, within 20 days after receiving a timely submitted petition for expedited procedures, whether a petitioner established his right to have the property returned or whether Customs should proceed with the administrative forfeiture action. These alternatives are set forth in proposed § 171.53.

A petitioner must establish three elements: (1) That he has a valid, good faith interest in the seized property; (2) that he reasonably attempted to ascertain the use of the property in a normal and customary manner; and (3) that he either did not know or consent to the illegal use of the property or, if he knew or should have known of the illegal use, he did what reasonably could be expected to prevent the violation. This is set forth in proposed § 171.52(c).

In order to receive expedited processing, a petition must be received by Customs within 20 days from the date that Customs mails the notice of seizure (or in the case of a commercial fishing industry vessel for which a summons to appear is issued, 20 days from the date when the vessel is required to report) and shall include a complete description of the property,

including identification numbers and the date and place of the violation and seizure; a description of the petitioner's interest in the property supported by the documentation, bills of sale, contract, mortgages or other satisfactory documentary evidence; and a statement of the facts and circumstances relied upon by the petitioner to justify expedited return of the seized property supported by satisfactory evidence. This is set forth in proposed § 171.52(d) and (e).

Pursuant to proposed § 171.55, written notice of these procedures will be provided to the possessor of the seized property at the time of seizure. In addition, notice to all interested parties having a legal interest in the property shall be made at the earliest practicable opportunity after determining ownership of the seized property.

The proposed regulations also provide in § 171.52(b) that if a violation involving the possession of personal use quantities of a controlled substance is committed on a commercial fishing industry vessel proceeding to or from a fishing area or intermediate port of call or actually engaged in fishing operations, the commercial fishing industry vessel shall not be seized. Instead, a summons to appear will be issued. The vessel will be required to report on the date, and to the port, specified in the summons. Commercial fishing industry vessel is defined in proposed § 171.51(b)(2). When a commercial fishing industry vessel reports as required, an appropriate Customs officer will, depending on the facts and circumstances, either issue another summons to appear at a time deemed appropriate, execute a constructive seizure agreement pursuant to 19 U.S.C. 1605, or take physical custody of the vessel.

Also set forth in the proposed regulations is a provision allowing a monetary amount equal to the value of the seized property to be substituted for the seized property (substitute res provision). Proposed § 171.54, Customs Regulations, states that an owner or interested party may pay to Customs an amount equal to the appraised value of seized property and have the seized property released, unless the property is evidence of a violation of law or has design or other characteristics that particularly suit it for use in illegal activities.

Comments

Before adopting the proposal, consideration will be given to any written comments (preferably in triplicate) timely submitted to Customs.

Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11, Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, Room 2119, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

Regulatory Flexibility Act

It is certified that the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), are not applicable to these amendments, because the rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Drafting Information

The principal author of the document was Harold M. Singer, Regulations and Disclosure Law Branch, U.S. Customs Service, however, personnel from other offices participated in its development.

List of Subjects in 19 CFR Parts 162 and 171

Administrative practice and procedure, Law Enforcement, Penalties, Seizures and forfeitures.

Proposed Amendments

It is proposed to amend Parts 162 and 171, Customs Regulations (19 CFR Parts 162 and 171), as set forth below:

PART 162—RECORDKEEPING, INSPECTION, SEARCH AND SEIZURE

1. The general authority citation for Part 162, Customs Regulations, and the specific authority citation for § 162.22, Customs Regulations would be revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624

Section 162.22 also issued under 18 U.S.C. 546; 19 U.S.C. 1459, 1460, 1594, 1595a, 1701, 1703-1708

2. It is proposed to revise § 162.22(b), Customs Regulations, to read as follows:

§ 162.22 Seizure of conveyances.

(b) *Facilitating importation contrary to law.* Except as provided in § 171.52(b), every vessel, vehicle, animal, aircraft, or other thing, which is being or has been

used in, or to aid or facilitate, the importation, bringing in, unloading, landing, removal, concealing, harboring or subsequent transportation of any article which is being, or has been introduced or attempted to be introduced into the United States contrary to law, shall be seized and held subject to forfeiture. Any person who directs, assists financially or otherwise, or is in any way concerned in any such unlawful activity shall be liable to a penalty equal to the value of the article or articles involved.

3. It is proposed to amend § 162.31(a), Customs Regulations, by adding a sentence at the end of the paragraph to read as follows:

§ 162.31 Notice of fine, penalty, or forfeiture incurred.

(a) *Notice* * * * For violations involving the possession of personal use quantities of a controlled substance, also see § 171.55.

2. It is proposed to amend the contents of Part 171 by adding the contents of Subpart F to read as follows:

PART 171—FINES, PENALTIES, AND FORFEITURES

Subpart F—Expedited petitioning procedures.

Sec.
171.51 Application and definitions.
171.52 Petition for expedited procedures in an administrative forfeiture proceeding.
171.53 Ruling on petition for expedited procedures.
171.54 Substitute res in an administrative forfeiture action.
171.55 Notice provisions.

1. The general authority citation for Part 171, Customs Regulations would be revised and a specific citation added for Subpart F to read as follows:

Authority: 19 U.S.C. 66, 1592, 1618, 1624.

d. Subpart F also issued under 19 U.S.C. 1595a, 1605, 1614, Pub. L. 100-690.

3. It is proposed to revise § 171.12(b), Customs Regulations, to read as follows:

§ 171.12 Filing of petition.

(b) *When filed.* If a petitioner seeks expedited relief under Subpart F of this part, a petition must be filed within the time frame stated in § 171.32(d). Otherwise, unless additional time has been authorized as provided in § 171.15,

petitions for relief shall be filed within 30 days from the date of the mailing of the notice of fine, penalty, or forfeiture incurred.

4. It is proposed to amend Part 171, Customs Regulations, by adding a new Subpart F consisting of §§ 171.55, to read as follows:

Subpart F—Expedited Petitioning Procedures

§ 171.51 Application and definitions.

(a) *Application.* The following definitions, regulations, and criteria are designed to establish and implement procedures required by section 6079 of the Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, Title VI (102 Stat. 4181). They are intended to supplement existing law and procedures relative to the forfeiture of property under the identified statutory authority. The provisions of these regulations do not affect the existing legal and equitable rights and remedies of those with an interest in property seized for forfeiture, nor do these provisions relieve interested parties from their existing obligations and responsibilities in pursuing their interests through such courses of action. These regulations are intended to reflect the intent of Congress to minimize the adverse impact occasioned by the prolonged detention of property subject to forfeiture due to violations of law involving possession of personal use quantities of controlled substances. The definition of personal use quantities of controlled substance as contained herein is intended to distinguish between those quantities small in amount which are generally considered to be possessed for personal consumption and not for distribution, and those larger quantities generally considered to be subject to distribution.

(b) *Definitions.* As used in this subpart, the following terms shall have the meanings specified:

(1) *Appraised value.* "Appraised value" has the meaning given in section § 162.43(a) of this chapter.

(2) *Commercial fishing industry vessel.* "Commercial fishing industry vessel" means a vessel that:

(i) Commercially engages in the catching, taking, or harvesting of fish or an activity that can reasonably be expected to result in the catching, taking, or harvesting of fish;

(ii) Commercially prepares fish or fish products other than by gutting, decapitating, gilling, skinning, shucking, icing, freezing, or brine chilling; or

(iii) Commercially supplies, stores, refrigerates, or transports fish, fish

products, or materials directly related to fishing or the preparation of fish to or from a fishing, fish processing, or fish tender vessel or fish processing facility.

(3) *Controlled substance.* "Controlled substance" has the meaning given in 21 U.S.C. 802.

(4) *Normal and customary manner.* "Normal and customary manner" means that inquiry suggested by particular facts and circumstances which would customarily be undertaken by a reasonably prudent individual in a like or similar situation. Actual knowledge of such facts and circumstances is unnecessary, and implied, imputed, or constructive knowledge is sufficient. An established norm, standard, or custom is persuasive but not conclusive or controlling in determining whether a petitioner acted in a normal and customary manner to ascertain how property would be used by another legally in possession of the property.

(5) *Owner or interested party.* "Owner or interested party" means one having a legal and possessory interest in the property seized for forfeiture or one who was in legal possession of the property at the time of seizure and is entitled to legal possession at the time of granting the petition for expedited procedure. This includes a lienholder, to the extent of his interest in the property, whose claim is in writing (except for a maritime lien which need not be in writing), unless the collateral is in the possession of the secured party. The agreement securing such a lien must create or provide for a security interest in the collateral, describe the collateral and be signed by the debtor. Even though one day hold primary and direct title to the property seized, this may not constitute a sufficient actual beneficial interest in the property to support a petition if the facts indicate that another person had dominion and control over the property.

(6) *Personal use quantities.* "Personal use quantities" means possession of controlled substances in circumstances where there is no evidence of intent to distribute, or to facilitate the manufacturing, compounding, processing, delivering, importing or exporting of any controlled substance. A quantity of a controlled substance is presumed to be for personal use if the amounts possessed do not exceed the quantities set forth in paragraph (b)(6)(i) of this section if there is no evidence of illicit drug trafficking or distribution such as, but not limited to the factors set forth in paragraph (b)(6)(ii) of this section. The possession of a narcotic, a depressant, a stimulant, a hallucinogen or a cannabis-controlled substances will be considered in excess of personal use quantities if the dosage unit amount

possessed provides the same or greater equivalent efficacy as described in paragraph (b)(6)(i) of this section.

(i) *Quantities presumed to be for personal use unless evidence of illicit drug trafficking or distribution exists.*
(A) One gram of a mixture of substance containing a detectable amount of heroin;

(B) One gram of a mixture of substance containing a detectable amount of—

(1) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivations of ecgonine or their salts have been removed;

(2) Cocaine, its salts, optional and geometric isomers, and salts of isomers;

(3) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or
(4) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in paragraphs (b)(6)(i)(B) (1) through (3) of this section;

(C) $\frac{1}{10}$ th gram of a mixture of substances described in clause (B) which contains cocaine base;

(D) $\frac{1}{10}$ th gram of a mixture of substance containing a detectable amount of phencyclidine (PCP);

(E) 500 micrograms of a mixture of substance containing a detectable amount of lysergic acid diethylamide (LSD);

(F) One ounce of a mixture of substance containing a detectable amount of marijuana; or

(G) One gram of methamphetamine, its salts, isomers, and salts of its isomers, or one gram of a mixture of substances containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.

(ii) *Evidence of possession for other than personal use.* Quantities shall not be considered to be for personal use if sweepings are present or there is other evidence of possession for other than personal use such as:

(A) Evidence such as drug scales, drug distribution paraphernalia, drug records, drug packaging material, method of drug packaging, drug "cutting" agents and other equipment, that indicates an intent to process, package or distribute a controlled substance;

(B) Information from reliable sources indicating possession of a controlled substance with intent to distribute;

(C) The arrest and/or conviction record of the person or persons in actual or constructive possession of the controlled substance for offenses under Federal, State or local law that indicates an intent to distribute a controlled substance;

(D) The controlled substance is related to large amounts of cash or any amount of prerecorded government funds;

(E) The controlled substance is possessed under circumstances that indicate such a controlled substance is a sample intended for distribution in anticipation of a transaction involving large quantities, or is part of a larger delivery; or

(F) Statements by the possessor, or otherwise attributable to the possessor, including statements of conspirators, that indicate possession with intent to describe.

(7) *Property.* "Property" means property subject to forfeiture under 21 U.S.C. 881(a) (4), (6) and (7); 19 U.S.C. 1595a, and 49 U.S.C. App. 782.

(8) *Seizing agency.* "Seizing agency" means the Federal agency which has seized the property or adopted the seizure of another agency, and has the responsibility for administratively forfeiting the property.

(9) *Sworn to.* "Sworn to" refers to the oath as provided by 28 U.S.C. 1746 or as notarized in accordance with state law.

§ 171.52 Petition for expedited procedures in an administrative forfeiture proceeding.

(a) *Procedures for violations involving possession of controlled substance in personal use quantities.* The usual procedures for petitions for relief when property is seized are set forth in Subpart B of this part. However, where property is seized for administrative forfeiture pursuant to 21 U.S.C. 881(a)(4), (6) or (7), 19 U.S.C. 1595a and/or 49 U.S.C. App. 782 due to violations involving controlled substances in personal use quantities, a petition may be filed pursuant to paragraphs (c) and (d) of this section to seek expedited procedures for release of the property. A petition filed pursuant to this subpart shall also serve as a petition for relief filed under Subpart B of this part. The petition may be filed by an owner or interested party.

(b) *Commercial fishing industry vessels.* Where a commercial fishing industry vessel proceeding to or from a fishing area or intermediate port of call or actually engaged in fishing operations is subject to seizure for administrative forfeiture for a violation of law involving controlled substances in personal use quantities, a summons to appear shall be issued in lieu of a physical seizure. The vessel shall report to the port designated in the summons no later than the date specified in the summons. When a commercial fishing industry vessel reports, the appropriate Customs

officer shall, depending on the facts and circumstances, either issue another summons to appear at a time deemed appropriate, execute a constructive seizure agreement pursuant to 19 U.S.C. 1605, or take physical custody of the vessel. When a summons to appear has been issued, the seizing agency may be authorized to institute administrative forfeiture as if the vessel had been physically seized. When a summons to appear has been issued, the owner or interested party may file a petition for expedited procedures pursuant to paragraph (a) of this section; the provisions of paragraph (a) of this section and other provisions in this subpart relating to a petition for expedited release shall apply as if the vessel had been physically seized.

(c) *Elements to be established in petition.* The petition for expedited procedures shall establish that:

(1) The Petitioner has a valid, good faith interest in the seized property as owner or otherwise;

(2) The Petitioner reasonably attempted to ascertain the use of the property in a normal and customary manner; and

(3) The Petitioner did not know or consent to the illegal use of the property or, in the event that the petitioner knew or should have known of the illegal use, the petitioner did what reasonably could be expected to prevent the violation.

(d) *Manner of filing.* A petition for expedited procedures must be filed in a timely manner to be considered by Customs. To be filed in a timely manner, the petition must be received by Customs within 20 days from the date the notice of seizure was mailed, or in the case of a commercial fishing industry vessel for which a summons to appear is issued, 20 days from the original date when the vessel is required to report. The petition must be sworn to by the petitioner and signed by the petitioner or his attorney at law. If the petitioner is a corporation, the petition may be sworn to by an officer or responsible supervisory employee thereof and signed by that individual or an attorney at law representing the corporation. Both the envelope and the request must be clearly marked "PETITION FOR EXPEDITED PROCEDURES." The petition shall be addressed to the U.S. Customs Service and filed in triplicate with the district director for the district in which the property was seized, or for commercial fishing industry vessels, with the district director having jurisdiction over the port to which the vessel was required to report.

(e) *Contents of petition.* The petition shall include the following:

(1) A complete description of the property, including identification numbers, if any, and the date and place of the violation and seizure.

(2) A description of the petitioner's interest in the property, supported by the documentation, bills of sale, contracts, mortgages, or other satisfactory documentary evidence; and

(3) A statement of the facts and circumstances relied upon by the petitioner to justify expedited return of the seized property, supported by satisfactory evidence.

§ 171.53 Ruling on petition for expedited procedures.

(a) *Final administrative determination.* Upon receipt of a petition filed pursuant to § 171.52, Customs shall determine first whether a final administrative determination of the case can be made within 21 days of the seizure. If such a final administrative determination is made within 21 days, no further action need be taken under this subpart.

(b) *Determination within 20 days.* If no such final administrative determination is made within 21 days of the seizure, Customs shall within 20 days after the receipt of the petition make a determination as follows:

(1) If Customs determines that the factors listed in § 171.52(c) have been established, it shall terminate the administrative proceedings and release the property from seizure, or in the case of a commercial fishing industry vessel for which a summons has been issued, but not yet answered, dismiss the summons. The property shall not be returned if it is evidence of a violation of law.

(2) If Customs determines that the factors listed in § 171.52(c) have not been established, it shall proceed with the administrative forfeiture.

§ 171.54 Substitute res in an administrative forfeiture action.

(a) *Substitute res.* Where property is seized for administrative forfeiture for a violation involving controlled substances in personal use quantities, the owner or interested party may offer to post an amount equal to the appraised value of the property (the res) to obtain release of the property. If the offer is accepted, the payment may be in the form of cash, irrevocable letter of credit, or a traveler's check or money order made payable to U.S. Customs. Upon payment, the property will be released to the owner or interested party. If the property is evidence of a violation of law or has other characteristics that particularly suit it for use in illegal activities, the owner or

interested party is not eligible for this procedure.

(b) *Forfeiture of res.* If a substitute res is posted and it is determined that the property should be administratively forfeited, the res will be forfeited in lieu of the property.

§ 171.55 Notice provisions.

(a) *Special notice provision.* At the time of seizure of property defined in § 171.51, written notice must be provided to the possessor of the property regarding applicable statutes and Federal regulations including the procedures established for the filing of a petition for expedited procedures as set forth in section 6079 of the Anti-drug Abuse Act of 1988 and implementing regulations.

(b) *Notice provision.* The notice as required by section 1607 of Title 19, United States Code and applicable regulations shall be made at the earliest practicable opportunity after determining ownership of, or interest in, the seized property and shall include a statement of the applicable law under which the property is seized and a statement of the circumstances of the seizure sufficiently precise to enable an owner or interest party to identify the date, place and use or acquisition which makes the property subject to forfeiture.

William von Raab,
Commissioner of Customs.

Approved: April 4, 1989.
Salvatore R. Martoche,
Assistant Secretary of the Treasury.
[FR Doc. 89-8296 Filed 4-7-89; 8:45 am]
BILLING CODE 9111-46-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

21 CFR Part 1316

[Order No. 1336-89]

**Anti-Drug Abuse Act of 1988;
Expedited Forfeiture Procedures for
Certain Property**

AGENCY: Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 6079 of the Anti-Drug Abuse Act of 1988 (Pub. L. 100-690) requires the Attorney General and the Secretary of the Treasury to prescribe regulations for expedited administrative procedures for seizures under section 511(a) (4), (6), and (7) of the Controlled Substances Act (21 U.S.C. 881(a) (4), (6), and (7)); section 596 of the Tariff Act of 1930 (19 U.S.C. 1595a(a)); and section 2 of the Act of August 9, 1939 (53 Stat.

1291; 49 U.S.C. App. 782) for violations involving the possession of personal use quantities of a controlled substance. Section 6079 further requires that the Attorney General, the Secretary of the Treasury, and the Secretary of Transportation prescribe joint regulations providing for issuance of a summons to appear in lieu of seizure of a commercial fishing industry vessel, as defined in section 2101 (11a), (11b), and (11c) of Title 46, United States Code, for violations involving the possession of personal use quantities of a controlled substance. These regulations would apply when a violation is committed on a commercial fishing industry vessel that is proceeding to or from a fishing area or intermediate port of call or is actively engaged in fishing operations.

The Department of Justice, on behalf of the Attorney General, has consulted with the U.S. Customs Service, acting on behalf of the Secretary of the Treasury, and the U.S. Coast Guard, acting on behalf of the Secretary of Transportation, in formulating consistent and compatible regulations to carry out section 6079. Proposed Customs Service and Coast Guard regulations for expedited administrative procedures for seizures, including provisions for the issuance of a summons in lieu of seizure, are published separately in today's *Federal Register*.

Section 6080 of the Anti-Drug Abuse Act of 1988 requires the Attorney General to prescribe regulations providing for: (1) The expedited release, in certain cases, of conveyances seized for drug-related offenses during the pendency of civil judicial forfeiture proceedings against the conveyance; (2) the expedited filing of complaints against conveyances seized for drug-related offenses; and (3) the release, except in certain specified circumstances, of any such conveyance to any owner who provides security in the form of a bond in an amount equal to the value of the conveyance.

The Department of Justice, on behalf of the Attorney General and in consultation with the United States Customs Service and United States Coast Guard, has formulated proposed regulations to carry out the requirements of section 6080.

DATE: Comments must be received by May 10, 1989.

ADDRESS: Comments should be sent to Director, Asset Forfeiture Office, U.S. Department of Justice, Central Station, P.O. Box 27322, Washington, DC 20038.

FOR FURTHER INFORMATION CONTACT: Michael Payne at (202) 786-4950. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: As required by the Regulatory Flexibility Act, it is hereby certified that the proposed rule will not have a substantial economic impact on small business entities. 5 U.S.C. 605(B). It is not a major rule within the meaning of Executive Order No. 12291 of February 17, 1981..

List of Subjects in 21 CFR Part 1316

Administrative functions, Practices and procedures.

By virtue of the authority vested in me by law, including 28 U.S.C. 509, 510 and sections 6079 and 6080 of the Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, 102 Stat. 4181, Title 21 of the Code of Federal Regulations is amended as follows:

PART 1316—[AMENDED]

1. The authority citation for Part 1316 is revised to read as follows:

Authority: 21 U.S.C. 822, 871, 872, 880, 881, 883, 958, 965; 19 U.S.C. 1606, 1607, 1608, 1610, 1613, 1618; 28 U.S.C. 509, 510; Pub. L. 100-690, sec. 6079, 6080.

All other authority citations are removed.

2. Part 1316 is amended by adding a new subpart F to read as follows:

Subpart F—Expedited Forfeiture Proceedings for Certain Property

Sec.

- 1316.90 Purpose and scope.
- 1316.91 Definitions.
- 1316.92 Petition for expedited release in an administrative forfeiture action.
- 1316.93 Ruling on petition for expedited release in an administrative forfeiture.
- 1316.94 Posting of substitute res in an administrative forfeiture action.
- 1316.95 Petition for expedited release of a conveyance in a judicial forfeiture action.
- 1316.96 Ruling on petition for expedited release of a conveyance in a judicial forfeiture action.
- 1316.97 Initiating judicial forfeiture proceeding against a conveyance within 60 days of the filing of a claim and cost bond.
- 1316.98 Substitute res bond in a judicial forfeiture action against a conveyance.
- 1316.99 Notice provisions.

Subpart F—Expedited Forfeiture Proceedings for Certain Property

§ 1316.90 Purpose and scope.

(a) The following definitions, regulations, and criteria are designed to establish and implement procedures required by sections 6079 and 6080 of the Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690 (102 Stat 4181). They are intended to supplement existing law and procedures relative to the forfeiture of

property under the identified statutory authority. The provisions of these regulations do not affect the existing legal and equitable rights and remedies of those with an interest in property seized for forfeiture, nor do these provisions relieve interested parties from their existing obligations and responsibilities in pursuing their interests through such courses of action. These regulations are intended to reflect the intent of Congress to minimize the adverse impact on those entitled to legal or equitable relief occasioned by the prolonged detention of property subject to forfeiture due to violations of law involving personal use quantities of controlled substances, and conveyances seized for drug-related offenses. The definition of personal use quantities of a controlled substance as contained herein is intended to distinguish between those quantities small in amount which are generally considered to be possessed for personal consumption and not for further distribution, and those larger quantities generally considered to be subject to further distribution.

(b) In this regard, for violations involving the possession of personal use quantities of a controlled substance, section 6079(b)(2) requires either that administrative forfeiture be completed within 21 days of the seizure of the property, or alternatively, that procedures are established that provide a means by which an individual entitled to relief may initiate an expedited administrative review of the legal and factual basis of the seizure for forfeiture. Should an individual request relief pursuant to these regulations and be entitled to the return of the seized property, such property shall be returned immediately following that determination, and the administrative forfeiture process shall cease. Should the individual not be entitled to the return of the seized property, however, the administrative forfeiture of that property shall proceed. The owner may, in any event, obtain release of property pending the administrative forfeiture by submitting to the agency making the determination, property sufficient to preserve the government's vested interest for purposes of the administrative forfeiture.

(c) Section 6080 requires a similar expedited review by the Attorney General or his representative in those instances where a conveyance is being forfeited in a civil judicial proceeding following its seizure for a drug-related offense.

§ 1316.91 Definitions.

As used in this subpart, the following terms shall have the meanings specified:

(a) The term "Appraised Value" means the estimated domestic price at the time of seizure at which such or similar property is freely offered for sale.

(b) The term "Commercial Fishing Industry Vessel" means a vessel that:

(1) Commercially engages in the catching, taking, or harvesting of fish or an activity that can reasonably be expected to result in the catching, taking, or harvesting of fish;

(2) Commercially prepares fish or fish products other than by gutting, decapitating, gilling, skinning, shucking, icing, freezing, or brine chilling; or

(3) Commercially supplies, stores, refrigerates, or transports fish, fish products, or materials directly related to fishing or the preparation of fish to or from a fishing, fish processing, or fish tender vessel or fish processing facility.

(c) The term "Controlled Substance" has the meaning given in section 802 of Title 21, United States Code (U.S.C.).

(d) The term "Drug-related Offense" means any proscribed offense which involves the possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or transfer any substance the possession of which is prohibited by Title 21, U.S.C.

(e) The term "Immediately" means within 20 days of the filing of a petition for expedited release by an owner.

(f) The term "Interested Party" means one who was in legal possession of the property at the time of seizure and is entitled to legal possession at the time of the granting of the petition for expedited release. This includes a lienholder (to the extent of his interest in the property) whose claim is in writing (except for a maritime lien which need not be in writing), unless the collateral is in the possession of the secured party. The agreement securing such lien must create or provide for a security interest in the collateral, describe the collateral, and be signed by the debtor.

(g) The term "Legal and Factual Basis of the Seizure" means a statement of the applicable law under which the property is seized, and a statement of the circumstances of the seizure sufficiently precise to enable an owner or other interested party to identify the date, place, and use or acquisition which makes the property subject to forfeiture.

(h) The term "Normal and Customary Manner" means that inquiry suggested by particular facts and circumstances which would customarily be undertaken by a reasonably prudent individual in a

like or similar situation. Actual knowledge of such facts and circumstances is unnecessary, and implied, imputed, or constructive knowledge is sufficient. An established norm, standard, or custom is persuasive but not conclusive or controlling in determining whether an owner acted in a normal and customary manner to ascertain how property would be used by another legally in possession of the property. The failure to act in a normal and customary manner as defined herein will result in the denial of a petition for expedited release of the property and is intended to have the desirable effect of inducing owners of the property to exercise greater care in transferring possession of their property.

(i) The term "Owner" means one having a legal and possessory interest in the property seized for forfeiture. Even though one may hold primary and direct title to the property seized, such person may not have sufficient actual beneficial interest in the property to support a petition as owner if the facts indicate that another person had dominion and control over the property.

(j) The term "Personal Use Quantities" means possession of controlled substances in circumstances where there is no other evidence of an intent to distribute, or to facilitate the manufacturing, compounding, processing, delivering, importing or exporting of any controlled substance. Evidence of personal use quantities shall not include sweepings or other evidence of possession of quantities of a controlled substance for other than personal use.

(1) Such other evidence shall include:

(i) Evidence, such as drug scales, drug distribution paraphernalia, drug records, drug packaging material, method of drug packaging, drug "cutting" agents and other equipment, that indicates an intent to process, package or distribute a controlled substance;

(ii) Information from reliable sources indicating possession of a controlled substance with intent to distribute;

(iii) The arrest and/or conviction record of the person or persons in actual or constructive possession of the controlled substance for offenses under Federal, State or local law that indicates an intent to distribute a controlled substance;

(iv) The controlled substance is related to large amounts of cash or any amount of prerecorded government funds;

(v) The controlled substance is possessed under circumstances that indicate such a controlled substance is a sample intended for distribution in anticipation of a transaction involving

large quantities, or is part of a larger delivery; or

(vi) Statements by the possessor, or otherwise attributable to the possessor, including statements of conspirators, that indicate possession with intent to distribute.

(2) Possession of a controlled substance shall be presumed to be for personal use when there are no indicia of illicit drug trafficking or distribution such as, but not limited to, the factors listed above and the amounts do not exceed the following quantities:

(i) One gram of a mixture or substance containing a detectable amount of heroin;

(ii) One gram of a mixture or substance containing a detectable amount of —

(A) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivations of ecgonine or their salts have been removed;

(B) Cocaine, its salts, optical and geometric isomers, and salts of isomers;

(C) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(D) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in paragraphs (j)(2)(ii) (A) through (C) of this section;

(iii) $\frac{1}{10}$ gram of a mixture or substance described in paragraph (j)(2)(ii) of this section which contains cocaine base;

(iv) $\frac{1}{100}$ gram of mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 500 micrograms of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) One ounce of a mixture or substance containing a detectable amount of marijuana;

(vii) One gram of methamphetamine, its salts, isomers, and salts of its isomers, or one gram of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.

(3) The possession of a narcotic, a depressant, a stimulant, a hallucinogen or cannabis-controlled substance will be considered in excess of personal use quantities if the dosage unit amount possessed provides the same or greater equivalent efficacy as described in paragraph (j)(2) of this section.

(k) The term "Property" means property subject to forfeiture under Title 21, U.S.C., sections 881(a)(4), (6), and (7); Title 19, U.S.C., Section 1595a, and; Title 49, U.S.C. App., Section 782.

(l) The term "Seizing Agency" means the Federal agency which has seized the property or adopted the seizure of another agency, and has the responsibility for administratively forfeiting the property.

(m) The term "Statutory Rights or Defenses to the Forfeiture" means all legal and equitable rights and remedies available to a claimant of property seized for forfeiture.

(n) The term "Sworn to" as used in paragraphs 1316.95(c) refers to the oath as provided by Title 28, U.S.C., Section 1746.

§ 1316.92 Petition for expedited release in an administrative forfeiture action.

(a) Where property is seized for administrative forfeiture involving controlled substances in personal use quantities the owner may petition the seizing agency for expedited release of the property.

(b) Where property described in paragraph (a) of this section is a commercial fishing industry vessel proceeding to or from a fishing area or intermediate port of call or actually engaged in fishing operations, which would be subject to seizure for administrative forfeiture for a violation of law involving controlled substances in personal use quantities, a summons to appear shall be issued in lieu of a physical seizure. The vessel shall report to the port designated in the summons. The seizing agency shall be authorized to effect administrative forfeiture as if the vessel had been physically seized. Upon answering the summons to appear on or prior to the last reporting date specified in the summons, the owner of the vessel may file a petition for expedited release pursuant to paragraph (a) of this section and the provisions of paragraph (a) of this section and other provisions in this subpart pertaining to a petition for expedited release shall apply as if the vessel had been physically seized.

(c) The owner filing the petition for expedited release shall establish the following:

(1) The owner has a valid, good faith interest in the seized property as owner or otherwise;

(2) The owner has statutory rights or defenses, that would show to a substantial probability that the owner would prevail on the issue of forfeiture;

(3) The owner reasonably attempted to ascertain the use of the property in a normal and customary manner; and

(4) The owner did not know or consent to the illegal use of the property, or in the event that the owner knew or should have known of the illegal use, the

owner did what reasonably could be expected to prevent the violation.

(d) A petition for expedited release must be filed in a timely manner to be considered by the seizing agency. In order to be filed in a timely manner, the petition must be received by the appropriate seizing agency within 20 days from the date of the first publication of the notice of seizure. The petition must be executed and sworn to by the owner and both the envelope and the request must be clearly marked "PETITION FOR EXPEDITED RELEASE." Such petition shall be filed in triplicate with the Special Agent in Charge of the DEA or FBI field office in the judicial district in which the property was seized, depending upon which agency seized the property. The petition shall be addressed to the Director of the FBI or to the Administrator of the DEA, depending upon which agency seized the property.

(e) The petition shall include the following:

(1) A complete description of the property, including identification numbers, if any, and the date and place of seizure;

(2) The petitioner's interest in the property, which shall be supported by title documentation, bills of sale, contracts, mortgages, or other satisfactory documentary evidence; and

(3) A statement of the facts and circumstances, to be established by satisfactory proof, relied upon by the petitioner to justify expedited release of the seized property.

§ 1316.93 Ruling on petition for expedited release in an administrative forfeiture

(a) Upon receipt of a petition for expedited release filed pursuant to § 1316.92(a), the seizing agency shall determine first whether a final administrative determination of the case, without regard to the provisions of this subpart, can be made within 21 days of the seizure. If such a final administrative determination is made within 21 days, no further action need be taken under this subpart.

(b) If no such final administrative determination is made within 21 days of the seizure, the following procedure shall apply. The seizing agency shall, within 20 days after the receipt of the petition for expedited release, determine whether the petition filed by the owner has established the factors listed in § 1316.92(c), and:

(1) If the seizing agency determines that those factors have been established, it shall terminate the administrative proceedings and return the property to the owner (or in the case of a commercial fishing vessel for which

a summons has been issued shall dismiss the summons), except where it is evidence of a violation of law; or

(2) If the seizing agency determines that those factors have not been established, the agency shall proceed with the administrative forfeiture.

§ 1316.94 Posting of substitute res in an administrative forfeiture action

(a) Where property is seized for administrative forfeiture involving controlled substances in personal use quantities, the owner may obtain release of the property by posting a substitute res with the seizing agency. The property will be released to the owner upon the payment of an amount equal to the appraised value of the property if it is not evidence of a violation of law or has design or other characteristics that particularly suit it for use in illegal activities. This payment must be in the form of a traveler's check or a money order made payable to the seizing agency.

(b) If a substitute res is posted and the property is administratively forfeited, the seizing agency will forfeit the substitute res in lieu of the property.

§ 1316.95 Petition for expedited release of a conveyance in a judicial forfeiture action

(a) Where a conveyance has been seized and is being forfeited in a judicial proceeding for a drug-related offense, the owner may petition the United States Attorney for an expedited release of the conveyance.

(b) The owner filing the petition for expedited release shall establish the following:

(1) The owner has a valid, good faith interest in the seized conveyance as owner or otherwise;

(2) The owner has statutory rights or defenses that would show to a substantial probability that the owner would prevail on the issue of forfeiture;

(3) The owner reasonably attempted to ascertain the use of the conveyance in a normal and customary manner; and

(4) The owner did not know or consent to the illegal use of the conveyance; or in the event that the owner knew or should have known of the illegal use, the owner did what reasonably could be expected to prevent the violation.

(c) A petition for expedited release must be filed in a timely manner in order to be considered by the United States Attorney. To be considered as filed in a timely manner, the petition must be received by the appropriate United States Attorney within 20 days from the date of the first publication of the notice of the action and arrest of the property.

or within 30 days after filing of the claim, whichever occurs later. The petition must be executed and sworn to be the owner, and both the envelope and the request must be clearly marked "PETITION FOR EXPEDITED RELEASE." Such petition shall be filed in triplicate and addressed to and filed with the United States Attorney prosecuting the conveyance for forfeiture with a copy to the seizing agency.

(d) The petition shall include the following:

(1) A complete description of the conveyance, including the identification number, and the date and place of seizure;

(2) The petitioner's interest in the conveyance, which shall be supported by bills of sale, contracts, mortgages, or other satisfactory documentary evidence; and,

(3) The facts and circumstances, to be established by satisfactory proof, relied upon by the petitioner to justify expedited release of the seized conveyance.

§ 1316.96 Ruling on petition for expedited release of a conveyance in a judicial forfeiture action.

(a) Upon receipt of a petition for expedited release filed pursuant to § 1316.95, the United States Attorney shall rule on the petition within 20 days of receipt. A petition shall be deemed filed on the date it is received by the United States Attorney.

(b) If the United States Attorney does not rule on the petition for expedited release within 20 days after the date on which it is filed, the conveyance shall be returned to the owner or interested party pending further forfeiture proceedings, except where it is evidence of a violation of law. Release of conveyance under provisions of this paragraph shall not affect the forfeiture action with respect to that conveyance.

(c) Upon a favorable ruling on the petition for expedited release, the United States Attorney shall, where necessary, move to terminate the judicial proceedings against the conveyance and immediately direct the return of the conveyance except where it is evidence of a violation of law.

(d) If, within 20 days, the United States Attorney denies the petition for expedited release or advises the petitioner that there is not enough available information to make a decision on the petition, the Government shall retain possession of the conveyance until the owner provides a substitute res bond pursuant to § 1316.98 or the forfeiture is finalized.

§ 1316.97 Initiating judicial forfeiture proceeding against a conveyance within 60 days of the filing of a claim and cost bond.

(a) The United States Attorney shall file a complaint for forfeiture of the conveyance within 60 days of the filing of the claim and cost bond.

(b) Upon the failure of the United States Attorney to file a complaint for forfeiture of a conveyance within 60 days unless the court extends the 60-day period following a showing of good cause, or unless the owner and the United States Attorney agree to such an extension, the court shall order the return of the conveyance and the return of any bond.

§ 1316.98 Substitute res bond in a judicial forfeiture action against a conveyance.

(a) Where a conveyance is being forfeited in a judicial proceeding for a drug-related offense, the owner may obtain release of the property by filing a substitute res bond with the seizing agency. The conveyance will be released to the owner upon the payment of a bond in the amount of the appraised value of the conveyance if it is not evidence of a violation of law or has design or other characteristics that particularly suit it for use in illegal activities. This bond must be in the form of a traveler's check or a money order made payable to the Department of Justice or to the United States Customs Service depending on which agency seized the conveyance.

(b) If a substitute res bond is filed and the conveyance is judicially forfeited, the court will forfeit the bond in lieu of the property.

§ 1316.19 Notice provisions.

(a) *Special notice provision.* At the time of seizure of property defined in § 1316.91 and conveyances seized pursuant to § 1316.95, written notice must be provided to the possessor of the property regarding applicable statutes and Federal regulations including the procedures established for the filing of a petition for expedited release, posting of a substitute res, and petition for substitute res bond as set forth in sections 6079 and 6080 of the Anti-Drug Abuse Act of 1988 and implementing regulations.

(b) *Standard notice provision.* The standard notice to the owner as required by Title 19, U.S.C., section 1607 and applicable regulations, shall be made at the earliest practicable opportunity after determining ownership of the seized conveyance and shall include the legal and factual basis of the seizure.

Dated: April 4, 1989.

Dick Thornburgh,
Attorney General.

[FR Doc. 89-8312 Filed 4-7-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 1

[CGD 89-003]

RIN 2115

Summons in Lieu of Seizure of Commercial Fishing Industry Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This proposal would provide for issuance of a summons to appear in lieu of seizure of a commercial fishing industry vessel for violations involving the possession of personal use quantities of a controlled substance. The Anti-Drug Abuse Amendments Act of 1988 requires the Attorney General, the Secretary of the Treasury, and the Secretary of Transportation to issue such regulations. These regulations would require, when a violation involving the possession of personal use quantities of a controlled substance is committed on a commercial fishing industry vessel that is proceeding to or from a fishing area or intermediate port of call or is actively engaged in fishing operations, that a summons to appear be issued in lieu of seizure of the vessel.

DATES: Comments must be received on or before May 10, 1989.

ADDRESSES: Written comments should be submitted to the Executive Secretary, Marine Safety Council (G-LRA-2/36) (CGD 89-003), U.S. Coast Guard, Washington, DC 20593-0001. Comments may be delivered to and will be available for inspection or copying at the Marine Safety Council (G-LRA-2), Room 3600, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, (202) 267-1477, between 8 a.m. and 3 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Commander Gerald A. Gallion, Office of the Chief Counsel, (202) 267-1534.

SUPPLEMENTARY INFORMATION: Section 6079 of the Anti-Drug Abuse Amendments Act of 1988 (Pub. L. 100-690) requires the Attorney General and the Secretary of the Treasury to prescribe regulations for expedited administrative procedures for seizures under section 511 (a), (4), (6), and (7) of

the Controlled Substances Act (21 U.S.C. 881(a) (4), (6), and (7)); section 596 of the Tariff Act of 1930 (19 U.S.C. 1595a(a)); and section 2 of the Act of August 9, 1939 (53 Stat. 1291; 49 U.S.C. App. 782) for violations involving the possession of personal use quantities of a controlled substance. Section 6079 further requires that the Attorney General, the Secretary of the Treasury, and the Secretary of Transportation prescribe joint regulations providing for issuance of a summons to appear in lieu of seizure of a commercial fishing industry vessel, as defined in section 2101 (11a), (11b), and (11c) of title 46, United States Code, for violations involving the possession of personal use quantities of a controlled substance. These regulations would apply when a violation is committed on a commercial fishing industry vessel that is proceeding to or from a fishing area or intermediate port of call or is actively engaged in fishing operations. Section 6079 further provides that these regulations shall not interfere with existing authority to arrest an individual for drug-related offenses or to release that individual into the custody of the master.

The Coast Guard exercises broad authority under 14 U.S.C. 89 on the high seas and waters over which the United States has jurisdiction to prevent, detect and suppress violations of the laws of the United States. That authority includes searches, seizures, and arrests for violations of the laws cited in section 6079 of the Anti-Drug Abuse Amendments Act of 1988. Coast Guard law enforcement action, then, may include the seizure of a commercial fishing industry vessel for a violation involving the possession of personal use quantities of a controlled substance.

The Coast Guard, on behalf of the Secretary of Transportation, has consulted with the U.S. Customs Service, acting on behalf of the Secretary of the Treasury, and the Department of Justice, acting on behalf of the Attorney General, in formulating consistent and compatible regulations to carry out section 6079. Proposed Customs Service and Department of Justice regulations for expedited administrative procedures for seizures, including provisions for the issuance of a summons in lieu of seizure, are published separately in this *Federal Register* issue.

These proposed regulations would apply to commercial fishing industry vessels, as defined in section 2101 (11a), (11b), and (11c) of title 46, United States Code. Those definitions address fishing vessels, fish processing vessels, and fish tender vessels, all of which are

commercially engaged in activities related to the catching, processing, transporting, or storing of fish. Sport fishermen would not be affected by the provisions of the proposal.

The proposal would provide, when a commercial fishing industry vessel is subject to seizure for a violation involving the possession of a personal use quantity of a controlled substance, that the Coast Guard would issue a summons to appear in lieu of seizing the vessel, if that vessel is proceeding to or from a fishing area or intermediate port of call or is actively engaged in fishing operations. What constitutes a "personal use quantity" for determining whether or not a summons should be issued is defined in 19 CFR Part 171, as proposed in the Customs Service rulemaking referenced above. That definition and a parallel one in the Department of Justice proposal govern all regulations developed to implement section 6079 of the Anti-Drug Abuse Amendments Act of 1988. In that the Coast Guard, after escorting a seized vessel into U.S. waters, routinely transfers custody of the vessel to the Customs Service for appropriate disposition, including forfeiture to the United States, the summons to be issued in lieu of seizure will be that prescribed in Customs regulations, Subpart F of 19 CFR Part 171.

This proposed rule is considered to be non-major under Executive Order 12291 and non-significant under the DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact of this rule has been found to be so minimal that further evaluation is unnecessary.

Drafting Information

The principal person involved in the drafting of this proposed rule is Commander Gerald A. Gallion, Office of the Chief Counsel.

The proposed rule affects the owners of commercial fishing industry vessels. In that the rule would provide for issuance of a summons in lieu of seizing such a vessel engaged in fishing or in transit to or from a fishing area, it bestows a financial benefit on the owner of a vessel subject to seizure because of a violation of law involving a personal use quantity of a controlled substance. Rather than seizing the vessel as it currently has the authority to do, and thus depriving its owner of the income associated with its voyage, the Coast Guard would, under this proposal, issue a summons to appear. Accordingly, the Coast Guard certifies that the proposed rule would not have a significant

economic impact on a substantial number of small entities.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 1

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Penalties.

For the reasons set forth in the preamble, the Coast Guard proposes to amend Part 1 of Title 33 of the Code of Federal Regulations as follows:

PART 1—GENERAL PROVISIONS

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

Authority: 14 U.S.C. 633; 49 U.S.C. 322; Sec. 6079(d), Pub. L. 100-690, 102 Stat. 4181; 49 CFR 1.45(b), 1.46; section 1.01-70 also issued under the authority of E.O. 12316, 46 FR 42237.

2. Section 1.07-100 is added to read as follows:

§ 1.07-100 Summons in lieu of seizure of commercial fishing industry vessels.

(a) As used in this section, the following terms have the meanings specified:

(1) "Commercial fishing industry vessel" means a fishing vessel, a fish processing vessel, or a fish tender vessel as defined in 46 U.S.C. 2101 (11a), (11b), or (11c), respectively.

(2) "Personal use quantity" means a quantity of a controlled substance as specified in 19 CFR 171.51.

(b) When a commercial fishing industry vessel is subject to seizure for a violation of 21 U.S.C. 881(a)(4), (6), or (7); of 19 U.S.C. 1595a(a); or of 49 U.S.C. 782 and the violation involves the possession of a personal use quantity of a controlled substance, the vessel shall be issued a summons to appear as prescribed in 19 CFR 171.52(b) in lieu of seizure, provided that the vessel is:

(1) Proceeding to or from a fishing area or intermediate port of call; or

(2) Actively engaged in fishing operations.

Dated: April 4, 1989.

Captain Gary F. Crosby,

Chief, Office of Operations, Acting.

[FR Doc. 89-8289 Filed 4-7-89; 8:45 am]

BILLING CODE 4910-14-M

**FEDERAL COMMUNICATIONS
COMMISSION**
47 CFR Part 73

[MM Docket No. 89-75, RM-6556; RM-6629]

Radio Broadcasting Services; Casa Grande, Claypool and Kearny, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two petitions for rule making seeking modification of facilities in the state of Arizona, as follows: (1) *Casa Grande, AZ*—seeks to substitute Channel 288C2 for Channel 288A, and to modify the facilities of Station KBBT(FM). (2) *Kearny, AZ*—seeks to substitute Channel 287C2 for Channel 286A and to modify the facilities of Station KCDX(FM). Additionally, Channel 291A is proposed as a substitute for Channel 288A at Claypool, AZ to accommodate the proposals. (See Supplementary Information, *infra*.)

DATES: Comments must be filed on or before May 26, 1989, and reply comments on or before June 12, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: VideoTrips, Inc., Attn: Arthur N. Bendix, 2810 Southern Dr., Gillette, WY 82716 (Petitioner—Casa Grande, AZ), and Daniel F. Van Horn, Esq., Arent, Fox, Kintner, Plotkin & Kahn), 1050 Connecticut Avenue NW., Wash., DC 20036-5339 (Counsel—Desert West Air Ranchers Corporation).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-75, adopted March 7, 1989, and released April 4, 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.

The two mutually-exclusive petitions were filed by (1) VideoTrips Corporation ("VTC"), assignee of Station KBBT(FM), Channel 288A, Casa Grande, AZ, requesting the substitution of Channel

288C2 for Channel 288A and modification of the license to specify operation on Channel 288C2, as that community's first wide coverage area FM service. This proposal can be accommodated at a transmitter site 17.7 kilometers west of Casa Grande at reference coordinates 32-53-21 and 111-56-15. (2) Desert West Air Ranchers Corporation ("Desert"), permittee of Station KCDX(FM), Channel 286A, Kearny, AZ, requests the substitution of Channel 287C2 for Channel 286A and modification of its permit accordingly. This proposal can be accommodated at the petitioner's suggested site 42.5 kilometers southeast of Kearny at reference coordinates 32-49-18 and 110-33-04. Additionally, Channel 291 is proposed as a substitute for Channel 288A at Claypool, AZ at either applicant's proposed site (*i.e.*, 33-21-51 and 110-45-25 (File No. 880613MH) and 33-24-23 and 110-48-18 (File No. 880711MQ)) to accommodate the proposals.

In the event VTC objects to the site restriction imposed on its proposal at Casa Grande, or, due to the unavailability of alternate sites, opts to use its suggested site 1.5 kilometers east at reference coordinates 32-53-00 and 111-40-00, the proposals would become mutually exclusive since both could not be accommodated in conformity with the minimum distance separation requirements of § 73.207(b) of the Commission's Rules. Thus a comparative analysis would be required.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.
Federal Communications Commission.
Karl Kensinger,
Chief, Allocations Branch, Policy and Rules
Division, Mass Media Bureau.
[FR Doc. 89-8397 Filed 4-7-89; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-76, RM-6633]

**Television Broadcasting Services;
Thief River Falls, MN**

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Thief River Falls Technical Institute, proposing the allotment of UHF Television Channel *30 to Thief River Falls, Minnesota, and reservation of the channel for noncommercial educational use. The coordinates for Channel *30 are 48-07-06 and 96-10-24. This allotment is not affected by the Commission's freeze on the filing of construction permit applications for vacant allotments in the vicinity of certain metropolitan areas. Canadian concurrence will be sought for this allotment.

DATES: Comments must be filed on or before May 26, 1989, and reply comments on or before June 12, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Leonard S. Joyce, Richard J. Grossi, Blair, Joyce & Silva, 1825 K Street NW, Washington, DC 20006.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-76, adopted March 7, 1989, and released April 4, 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing

permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Karl Kensinger,

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

[FR Doc. 89-8398 Filed 04-07-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 76

[MM Docket No. 78-35; FCC 89-40]

Definition of a Cable Television System

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The FCC invites comment concerning the proper scope and application of the cable system definition contained in section 522(6) of the Communications Act of 1934, as amended, 47 U.S.C. 522(6), and whether, and in what manner, the FCC should amend its rules or existing interpretations of its rules to properly reflect the statutory definition. This Notice is prompted by two federal district court decisions which raise questions concerning this definitional issue. The cases are *City of Fargo v. Prime Time Entertainment, Inc.*, No. A3-87-47 slip op. (D.N.D. Mar. 28, 1988); and *Pacific & Southern Co., Inc. v. Satellite Broadcast Networks, Inc.*, 694 F. Supp. 1565 (N.D.Ga. 1988).

DATES: Comments must be submitted on or before May 2, 1989, and reply comments on or before June 1, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Barrett L. Brick, Cable Television Branch, Mass Media Bureau, (202) 632-7480

SUPPLEMENTARY INFORMATION:

Adopted: February 1, 1989. Released: March 3, 1989. By the Commission:

1. On October 30, 1984, the Cable Communications Policy Act of 1984 (Cable Act) ¹ was signed into law,

establishing a national policy concerning cable communications "that clarifies the current system of local, state and Federal regulation of cable television." ² In order to implement provisions of the Act, we adopted certain amendments to Parts 1, 63, and 76 of the Commission's Rules. *Cable Communications Act Rules*, 58 RR 2d 1 (1985), modified, 104 FCC 2d 386 (1986), *aff'd in part and rev'd in part sub nom. ACLU v. FCC*, 823 F.2d 1554 (D.C. Cir. 1987), cert. denied, 108 S. Ct. 1220 (1988). The implementation of one of our conforming rule amendments has given rise to certain questions, which lead us to issue this Notice of Proposed Rulemaking.

2. The Cable Act defines a cable system as "a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community * * *." 47 U.S.C. Section 522(6). That same section also excludes from the definition of a cable system "a facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities uses any public right-of-way * * *." 47 U.S.C. Section 522(6)(B). In adopting our implementing rules, we adopted the Act's definition and exclusions, including the one noted above, as a conforming rule change. *Cable Communications Act Rules*, supra. See also 47 CFR 76.5(a). In doing so, we stated that "[w]ith regard to the exclusion of facilities serving multiple unit dwellings, we will include as cable systems only such facilities that use public rights-of-way." *Cable Communications Act Rules*, 58 RR 2d at 11. On reconsideration, we further stated that "[w]hen multiple unit dwellings are involved, the distinction between a cable system and other forms of video distribution systems is now the crossing of the public rights-of-way, not the ownership, control or management." *Cable Communications Act Rules (Reconsideration)*, 104 FCC 2d at 396-397. Recent decisions by two federal district courts, however, have raised significant questions concerning both the Commission's construction of the multiple unit dwelling exception to the cable definition and the application and scope of the basic definition itself. ³

3. Specifically, in *City of Fargo v. Prime Time Entertainment, Inc.*, No. A3-87-47 slip op. (D.N.D. Mar. 28, 1988), the district court found that the delivery by infrared transmissions of video programming to multiple unit dwellings that were not commonly owned, controlled or managed rendered the facilities involved a cable television system within the meaning of section 522(6) of the Communications Act of 1934, as amended. Because cable systems are required by the Act to obtain a franchise from local authorities and the service provider in this case, Prime Time Entertainment, Inc. (Prime), had not done so, the court concluded that Prime's operations were impermissible. Accordingly, the court enjoined Prime from providing service over its existing facilities until the requisite franchise was obtained. In its decision, the court specifically addressed the applicability to Prime of the multiple unit dwelling exception to the cable definition. It found the exception to be unavailing in the circumstances of the case before it because the units served by Prime were not commonly owned, controlled or managed. ⁴ In reaching this determination, the court expressly rejected the Commission's interpretation of the section 522(6)(B) exception, noted above. The court concluded that the Commission's disregard of the common ownership, control or management aspect of the exception and its exclusive reliance on the crossing of a public right-of-way as dispositive of the exception's applicability was erroneous "because it contravenes unambiguous Congressional intent." ⁵

U.S. 463, 468-69 and n.5 (1984), the potential adverse effect of disparate opinions of the district courts on fundamental definitional questions such as those at issue in these cases is significant. Indeed, it was for this reason that the Commission expressly requested referral on primary jurisdiction grounds in *City of Fargo v. Prime Time Entertainment, Inc.*, No. A3-87-47 slip op. (D.N.D. Mar. 28, 1988), discussed below. The district court, however, denied our request. Accordingly, to avoid these potential adverse effects and to provide certainty and uniformity in this area, we believe this rulemaking proceeding is advisable.

⁴ As a result, the court did not reach the question of whether the interconnection of multiple unit dwellings by infrared transmissions constituted a crossing of a public right-of-way. We note, however, that the Mass Media Bureau, in informal opinions issued pursuant to delegated authority, has expressed the view that the linkage of two SMATV systems by infrared transmissions does not constitute a crossing of a public right-of-way. See *Channel One, Inc.* (letter dated February 25, 1986) and Letter to Mark J. Tauber and Deborah C. Costlow (dated December 19, 1985).

⁵ *City of Fargo v. Prime Time Entertainment, Inc.*, slip op. at 9.

¹ Pub. L. No. 98-549, Section 1 *et seq.*, 98 Stat. 2779 (1984) (codified principally at 47 U.S.C. Sections 521-839). The Cable Act amends the Communications Act of 1934, as amended, 47 U.S.C. Section 151, by adding, *inter alia*, a new Title VI.

² H.R. Rep. No. 98-934, 98th Cong., 2d Sess. 19 (1984).

³ While the decisions of the district courts do not settle questions of national communications policy, See *FCC v. ITT World Communications, Inc.*, 466

4. Two basic aspects of the *Fargo* decision invite particular attention. First, the court's rejection of our construction of the multiple unit dwelling exception suggests a clear need to revisit this area. After a preliminary review, we are inclined to concur in the court's view that the exception is not available unless the multiple unit dwellings served by a video programming delivery system are commonly owned, controlled or managed and there is no crossing of a public right-of-way involved. Commenters are welcome to propose alternative constructions of the statutory exception, but in doing so they should carefully document their supporting arguments. Comments are also sought specifically with respect to the question of what constitutes a crossing of a public right-of-way, including but not limited to the use of infrared technology.

5. Second, the possible implication in the *Fargo* court's decision that Prime's wireless, infrared transmission system might satisfy the basic statutory definition of a cable system as a "set of closed transmission paths and associated signal generation, reception and control equipment *** designed to provide cable service" has potentially troubling implications. We are especially concerned that the potential inclusion within the cable definition of a nontraditional delivery system such as infrared extends the definition in a manner that may be inappropriate and inconsistent with congressional intent. This could presage other possibly inapt extensions of the definition that would require the treatment of additional wireless video delivery systems as cable systems as well. Indeed, in a very recent decision, another federal district court apparently concluded that the interception of local television broadcast signals and their national retransmission via space satellite to individual home satellite-receive facilities constituted a cable television system within the meaning of the Communications Act. *Pacific & Southern Co., Inc. v. Satellite Broadcast Networks, Inc.*, 694 F. Supp. 1565 (N.D.Ga. 1988).⁶ For purposes of the

⁶ The court reached this determination in the context of finding that, under the provisions of the Copyright Act of 1976, 17 U.S.C. Section 101, *et seq.*, Satellite Broadcasting Networks, Inc. (SBN), was not entitled to a compulsory license to distribute the broadcast signals it was delivering to homes by satellite. The court detailed two rationales for its finding. First, the court concluded that SBN was ineligible for a compulsory license because only cable systems were entitled to the license and SBN's facilities did not meet the definition of a cable system in the Copyright Act. Second, the court noted that, under the Copyright Act, a compulsory license is only available with respect to signals the

cable system definition, the service provided by Satellite Broadcast Networks, Inc. (SBN), in that case is difficult to distinguish from the service proposed to be provided by Direct Broadcast Satellite (DBS) systems. DBS, like other analogous services, including the Multipoint Distribution Service (MDS) and the Multichannel Multipoint Distribution Service (MMDS), is designed to deliver video programming to multiple subscribers in a community. Yet, it seems clear that Congress did not intend in adopting the Cable Act to include these alternate delivery systems within the statutory definition of a cable system. Several considerations prompt our view in this regard.

6. First, nowhere in the Cable Act or in its legislative history is there an affirmative statement that Congress meant to define a cable system so broadly as to incorporate such services as MDS, MMDS, DBS or Satellite Master Antenna Television (SMATV). This omission is significant since such a broad definition of a cable system represents a dramatic departure from longstanding and consistent Commission practice in regulating cable television service.⁷ Ordinarily, such a radical change would be expected to prompt specific congressional comment, particularly since Congress was plainly aware of the discrete nature of the alternative video services involved when it adopted the statutory definition and appeared to anticipate their being subject to a different form of regulation than cable.⁸ Second, the statutory

carriage of which is permissible under the rules of the FCC. The court found that SBN's service did not meet this criterion because SBN did constitute a cable system under the definition in the Communications Act and it had not obtained certain service authorizations required of cable systems.

⁷ Until 1977, the Commission expressly defined a cable system as a facility that delivered service by "wire or cable," thereby limiting the definition to traditional cable systems and excluding wireless technologies. See *Cable Television Report and Order and Reconsideration*, 36 FCC 2d 1, 74 (1972) (former Section 76.5(a) of the rules adopted therein). In 1977, the Commission revised the definition by substituting the term "a set of transmission paths" for "wire or cable." In doing so, however, the Commission specifically noted its intent that the new definition "not be interpreted to include such non-cable television broadcast station services as Multipoint Distribution Systems ***." *First Report and Order* in Docket No. 20561, 63 FCC 2d 956, 966 (1977). This definition remained in effect, without relevant change, until adoption of the Cable Act in 1984.

⁸ For example, in reviewing recent developments in the home video industry, the Report of the House Committee on Energy and Commerce accompanying H.R. 4103 (the House version of the Cable Act) noted that "[n]ew forms of competition to cable were initiated or began to show promise of emerging during this period. These include the SMATV industry, multi-channel MDS, Direct Broadcast Satellite (DBS), subscription television,

scheme adopted in the Cable Act is, in many fundamental respects, entirely inappropriate for such alternative services as MDS and DBS. Local franchising requirements, for example, are completely incompatible with the national service characteristics of a DBS system.⁹ Finally, we believe the language of the definition itself—particularly the requirement that a cable system consist of a "set of closed transmission paths"—contemplates excluding delivery systems that exclusively or primarily utilize "radiating" technology to deliver service to end users.

7. In view of the foregoing analysis, we seek comment concerning the proper scope and application of the cable system definition contained in section 522(6) of the Act and whether, and in what manner, we should amend our rules or existing interpretations of our rules to properly reflect the statutory definition. We are particularly concerned that delivery systems apparently not intended to be included within the definition—such as SMATV, DBS, MDS, MMDS and leased uses of Instructional Television Fixed Service (ITFS) channels—not fall within the ambit of any interpretation or definition we may eventually adopt. In this connection, we specifically request that commenters address whether existing language in the definition—for example, the requirement that a cable system be comprised of a "set of closed transmission paths"—adequately distinguishes traditional cable systems from alternative video delivery services.

and the explosion in home video cassette recorders." H.R. Rep. No. 934, 96th Cong., 2d Sess. (1984) at 22. Indeed, the House Report directly reflects Congressional awareness of the regulatory distinctiveness of cable in expressing its concern for competitive balance among the different video delivery systems. In this connection, the House Report stated: "[I]n adopting this legislation, the Committee is concerned that Federal law not provide the cable industry with an unfair competitive advantage in the delivery of video programming. National communications policy has promoted the growth and development of alternative delivery systems for these services, such as DBS, SMATV and subscription television. The public interest is served by this competition, and it should continue.

⁹ We also note that the dual, federal-local jurisdictional approach to regulating cable television service—a central component of the statutory scheme—is largely premised on the fact that cable systems necessarily involve extensive physical facilities and substantial construction and use of public rights of way in the communities they serve. Yet, these distinctive traits are absent in the alternative delivery systems.

Id. at 22-23.

Regulatory Flexibility Act Initial Analysis

8. *Reason for action.* This action is taken to implement certain provisions of the Cable Communications Policy Act of 1984.

9. *Legal basis.* Authority for action as proposed for this rulemaking is contained in section 4(i) and section 303 of the Communications Act of 1934, as amended.

10. *Description, potential impact and number of small entities affected.* The Commission seeks comment in this proceeding on two basic issues related to the definition of a cable television system in the Communications Act. First, noting the decision in *City of Fargo v. Prime Time Entertainment, Inc.*, No. A3-87-47 (D.N.D. Mar. 28, 1988), in which the district court found the Commission's broad construction of the multiple unit dwelling exception to the cable definition to be erroneous, the Commission invites comment on the appropriate interpretation of the exception. In this regard, the Commission expressed its preliminary concurrence in the court's opinion. Under the court's view of the exception, a facility otherwise qualified as a cable system under the basic definition would be excluded from the definition only if it both (a) exclusively serves multiple unit dwellings under common ownership, management or control and (b) the facility does not cross any public right-of-way. If this view is ultimately adopted by the Commission, some small entities might be considered cable television systems that were previously deemed exempt. This reclassification could result in substantial burdens for the affected entities, including a requirement that a franchise be obtained and adherence to Commission rules and statutory requirements for cable systems. Second, the Commission notes its concern that the *Fargo* decision could be read to imply that a video delivery system that used primarily a technology other than wire or cable in providing its services could nonetheless be a cable system under the Communications Act. The Commission questions whether such a broad interpretation of the definition—and that of a second district court which found the direct-to-home delivery of broadcast signals via satellite to constitute a cable system—are consistent with the statutory language in the Act and congressional intent underlying that language. Accordingly, the Commission invites comment on the appropriate scope and application of the basic cable definition. Adoption of the broad view of the definition could result in certain entities

not now deemed to be cable systems, including DBS, MDS, MMDS and SMATV systems, being considered cable systems. As already noted in connection with the scope of the exception to the definition, this would result in the application of various regulatory and statutory requirements to these systems, and the imposition of corresponding burdens, which have not been heretofore applied.

11. *Recording, record keeping and other compliance requirements:* None.

12. *Federal rules which overlap, duplicate or conflict with this rule:* None.

13. *Any significant alternatives minimizing impact on small entities and consistent with stated objectives by the Act:* None.

Paperwork Reduction Act Implications

14. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose no new or modified requirements or burdens upon the public.

Procedural Matters

15. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period. See Generally § 1.1206(a). The Sunshine Agenda period is the period of time which commences with the release of a public notice that a matter has been placed on the Sunshine Agenda and terminates when the Commission (1) releases the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. Section 1.1202(f). During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by the Commission or staff for the clarification or adduction of evidence or the resolution of issues in the proceeding. Section 1.1203.

16. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) if written, is not served on the parties to the proceeding, or (2) if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. Section 1.1202(b). Any person who submits a written *ex parte* presentation must provide on the same day it is submitted a copy of same to the

Commission's Secretary for inclusion in the public record. Any person who makes an oral *ex parte* presentation that presents data or arguments not already reflected in that person's previously filed written comments, memoranda, or filings in the proceeding must provide on the day of the oral presentation a written memorandum to the Secretary (with a copy to the Commissioner or staff member involved) which summarizes the data and arguments. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. Section 1.1206.

17. Pursuant to procedures set out in § 1.415 of the Commission's Rules, interested parties may file comments on or before May 2, 1989, and reply comments on or before June 1, 1989. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

18. As required by section 603 of the Regulatory Flexibility Act, the FCC has prepared an initial regulatory flexibility analysis (IRFA) of the expected impact of these proposed policies and rules on small entities. The IRFA is set forth above. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Notice*, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of the *Notice*, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 50 U.S.C. Section 601 *et seq.* (1981)).

19. In accordance with the provision of § 1.419 of the Commission's Rules and Regulations, an original and 5 copies of all comments, replies, or other documents filed in this proceeding shall be furnished to the Commission. Participants filing the required copies who also wish each Commissioner to have a personal copy of the comments

may file an additional 6 copies. Members of the general public who wish to express their interest by participating informally in the rulemaking proceeding may do so by submitting one copy of the comments, without regard to form, provided only that the Docket Number is specified in the heading. Responses will be available for public inspection during regular business hours in the Commission Dockets Reference Room (Room 239) at its headquarters in Washington, DC (1919 M Street NW.).

20. For further information concerning this proceeding, contact Barrett L. Brick, Cable Television Branch, Mass Media Bureau (202) 632-7480.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-8399 Filed 4-7-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NOAA issues this notice that the North Pacific Fishery Management Council has submitted Amendment 12a to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Area for Secretarial review and is requesting comments from the public. Copies of the amendment may be obtained from the address below.

DATE: Comments on the plan amendment should be submitted on or before May 22, 1989.

ADDRESS: All comments should be sent to Steve Pennoyer, Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, Alaska 99802.

Copies of the amendment and the environmental assessment, regulatory impact review, and initial regulatory flexibility analysis are available upon request from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: Jay J.C. Ginter (National Marine Fisheries Service, Alaska Region), 907-586-7230.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) requires that each regional fishery management council submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce (Secretary) for review and approval or disapproval. This Act also requires that the Secretary, upon receiving the plan or amendment, must immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider the public comments in determining whether to approve this amendment.

If approved, Amendment 12a will establish a bycatch control procedure to limit the incidental take of *C. bairdi* Tanner Crab, red king crab, and halibut in the Bering Sea and Aleutian Islands trawl fisheries.

Regulations proposed by the North Pacific Fishery Management Council and based on this amendment are scheduled to be published within 15 days (16 U.S.C. 1801 *et seq.*).

List of Subjects

50 CFR Part 611

Fisheries, Foreign fishing.

50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Dated: April 5, 1989.

Alan Dean Parsons,
Acting Director of Office, Fisheries
Conservation and Management, National
Marine Fisheries Service.

[FR Doc. 89-8452 Filed 4-5-89; 4:28 pm]

BILLING CODE 3510-22-M

50 CFR Part 642

[Docket No. 90493-9093]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

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

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to implement Amendment 3 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP) and to remove inconsistencies

that have developed in implementing Amendment 2. This proposed rule would (1) prohibit the use of purse seines for the Atlantic migratory group of king mackerel, a prohibition already in effect for the Gulf of Mexico migratory group of king mackerel and Atlantic and Gulf migratory groups of Spanish mackerel, (2) prohibit the use of drift gill nets for all coastal migratory pelagic species, (3) prohibit the use of run-around gill nets for the Atlantic migratory group of king mackerel, (4) state more clearly the scope of each management measure, (5) clearly differentiate between commercial and recreational fisheries, (6) make minor changes that are necessary to reflect the previous implementation of Amendment 2 to the FMP, and (7) clarify or correct minor ambiguities, inconsistencies, and errors in the regulations. The intended effects of this proposed rule are to prevent the adverse impacts on the users of traditional hook and line gear of early closures of the commercial fisheries, such closures being the likely result of allowing the use of purse seines, run-around gill nets, and drift gill nets in the commercial fisheries; and to clarify the regulations.

DATE: Written comments must be received on or before May 22, 1989.

ADDRESS: Comments may be sent to, and copies of the draft Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis may be obtained from, Mark F. Godcharles, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813-893-3722.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the FMP, prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its implementing regulations at 50 CFR Part 642, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Recent reduction of the total allowable catch (TAC) of Atlantic migratory group king mackerel has increased the risk of early closure of the commercial fishery. Early closures cause adverse economic impacts on traditional hook and line commercial fishermen. Amendment 3 proposes to ameliorate this potential problem by prohibiting the use of newly introduced net gears that are highly efficient and capable of

capturing a substantial portion of the reduced commercial allocation quickly. Prohibition of purse seines, run-around gill nets, and drift gill nets from the commercial fishery for Atlantic migratory group king mackerel would reduce the potential for early closure and, thus, would protect users of traditional hook and line gear. Further, to reduce bycatch and waste, Amendment 3 would prohibit the use of drift gill nets in all fisheries for coastal migratory pelagic species.

Draft Amendment 3 was prepared and distributed to interested parties in September and October, 1988. Public hearings were held in 10 cities from Key West, FL to Manteo, NC in October 1988. After considering comments received at the public hearings and Council meetings, written public comments, and comments from their Scientific and Statistical Committees and Advisory Panels, the Councils made their final selection of preferred options at the November/December 1988 joint meeting. The issues, their impacts, and the rationale for the Council's preferred options are summarized below. A more complete analysis appears in Amendment 3, the availability of which was announced in the *Federal Register* (54 FR 11252, March 17, 1989).

Background

According to the 1988 mackerel stock assessment, the status of Atlantic migratory group king mackerel is as follows: (1) Spawning stock biomass remained relatively constant through 1984, after which a decrease may have occurred; (2) fishing mortality rates appear to be at or slightly above rates of full exploitation; (3) catches were high and variable from 1980 to 1985, but catches in 1986 and 1987 declined; and (4) four of five data sets of catch per unit effort indicates declines in abundance. These results led the Councils to conclude that the Atlantic migratory group of king mackerel is overfished.

Based on the 1988 assessment, the Councils reduced TAC for the 1988/89 fishing season from 9.68 million pounds to 7.0 million pounds (28 percent reduction). This reduction was based on the Councils' concern for the apparent declining stock and their decision to be conservative rather than risk continued overfishing. The resulting commercial allocation was reduced from 3.59 to 2.6 million pounds. This allocation was reached in November 1988 and would normally have resulted in early closure of the commercial fishery. Early closures of this sort negatively impact traditional hook and line commercial participants. If purse seines, drift gill nets, and run-around gill nets continue to be allowed

in the Atlantic migratory group king mackerel fishery, early closures are expected to occur each year.

The Councils are also concerned about the waste and bycatch that occur in the drift gill net fishery.

Issue 1. Purse Seines in the Atlantic Migratory Group King Mackerel Fishery

Current regulations prohibit the use of purse seines for Gulf group king mackerel and Atlantic and Gulf groups of Spanish mackerel because they are overfished and the existing commercial allocations are fully utilized by historical commercial gear types. For these species/migratory groups, the users of historical gear have had seasonal closures. Commercial allocations for the Atlantic migratory group of king mackerel had not been filled in the past, though the harvest was approaching TAC. During the 1988/89 fishing season, however, the commercial allocation was reached and the fishery was to be closed on November 23, 1988, but remained open until February 23, 1989, by court order. In addition, the Councils are concerned that there may be a shift of purse seine effort onto the Atlantic migratory group as fishermen are restricted from fishing other groups of mackerel.

The Councils considered three options: Option 1 (status quo)—continue a separate allowance (currently 400,000 pounds) for purse seines on the Atlantic migratory group of king mackerel; Option 2—not specify a separate allowance for purse seines but allow them to continue to fish under the commercial allocation; and Option 3—prohibit the use of purse seines on the Atlantic migratory group of king mackerel.

The Councils selected Option 3 because:

1. The Atlantic migratory group of king mackerel is currently overfished.

2. Allowing a new user group into an overfished fishery when historic users are forced to reduce catches is imprudent and unfair. When stocks recover and traditional commercial fishermen do not take the allocation, this issue will be reconsidered.

3. The use of purse seines in the fishery for Atlantic migratory group king mackerel is of recent origin and limited in number. There is no record of a purse seine fishery on Atlantic migratory group king mackerel before April 1988 in the Ft. Pierce, FL area. Purse seine and run-around gill nets together caught approximately 340,000 pounds of king mackerel.

4. Allocating the resource to the users of traditional fishing gears benefits the greatest number of fishermen.

5. Prohibiting the use of purse seines for mackerel is consistent with the management regimes in all adjacent State waters.

6. The marginal value of a fish allocated to the traditional commercial fishery is higher than that of a fish allocated to the purse seine fishery. Ex-vessel price information for 1987 southeast Florida landings indicates that hook and line-caught king mackerel usually were valued at \$0.20 more per pound than net-caught king mackerel.

The number of purse seine vessels that participated in the Atlantic migratory group king mackerel fishery for the first time in April 1988 was very small. The number of vessels was so small that purse seine catches had to be combined with run-around gill net catches for presentation to avoid disclosure of confidential data. Using the combined purse seine and run-around gill net catches in 1988, the prohibition would impact the affected fishermen by preventing the harvest of approximately 340,000 pounds of king mackerel.

Issue 2. Drift Gill Nets in the Coastal Migratory Pelagics Fishery

Currently, no Federal regulations specifically address this newly developed fishery. Drift entanglement nets were first tried in 1980, initially fishing the Ft. Pierce, FL area, with little success because of shark damage to catch and gear.

By 1987 and 1988, 13 boats were using drift gill nets with catches in 1987 of 800,000 pounds of Atlantic migratory group king mackerel. Preliminary catch figures for 1988 are 808,000 pounds with final figures expected to be higher. Nets are made of #9 nylon webbing, have 5 inch stretched mesh, are about 50 feet deep, and range from 1,200 to 5,000 yards long, with most full-time boats using at least 3,000 yards. During an observer program on vessels using this gear, no marine mammals or birds were observed tangled in the nets on any trip. Porpoises and sea turtles were observed in the vicinity of the nets on haulback and numerous trips. One leatherneck turtle was observed in the net at haulback by a fisherman; however, by the time the observer reached the stern, the turtle freed itself and swam away. Reports from the observer study indicate that little tunny made up 23 percent of the total catch and 67 percent of the discarded bycatch, by number; barracuda comprised 4 percent of the total catch and 11 percent of the discarded bycatch; and other species comprised less than 1.2 percent and 3.6 percent, respectively. There were 22

sailfish caught on observed trips for an average of 0.58 per trip. If this is expanded for the total number of drift gill net trips in 1987, the total sailfish bycatch would be 419 per year. Approximately 14 percent of the total bycatch is landed and sold.

The Councils considered eight options for regulating drift gill nets ranging from no action to a total prohibition. The Councils chose to prohibit the use of drift gill net gear in directed fisheries for all coastal migratory pelagic resources in the South Atlantic and Gulf of Mexico and to prohibit the retention of these species in other drift gill net fisheries. The Councils are concerned that they cannot adequately protect overfished king and Spanish mackerel resources if these fish are allowed to be taken as a bycatch in drift gill net fisheries for other coastal pelagic species. Currently, there is no directed drift gill net fishing for cobia, cero, little tunny, dolphin, or bluefish. Because drift gill nets are an indiscriminate gear, they cannot exclusively fish for any of these coastal pelagic species without taking a bycatch of king and Spanish mackerel. The shark drift net fishery is the only fishery of which the Councils are aware that will be impacted by this prohibition on retention of all coastal migratory pelagic resources. The Councils do not have sufficient information about this fishery to evaluate the level of impact.

In this proposed rule, a drift gill net is defined by the length of its float line and, in the alternative, by how it is used. Length was chosen as a determinant because of its relative ease of discernment ashore. The length of 1,000 yards was selected because the vast majority of drift gill nets exceed that length. The use determinant will be employed only for gill nets that are 1,000 yards or less in length. Drift gill nets are not, *per se*, prohibited—only their use to fish for coastal migratory pelagic fish or the possession of such fish aboard a vessel with a drift gill net aboard.

Impacts on Commercial Hook and Line Fisheries.

Based on drift gill net catches in 1987, a prohibition on use of drift gill nets would potentially make an additional 765,226 pounds of king mackerel available for harvest by the traditional commercial hook and line fisheries. How this additional catch would be distributed geographically is unknown, but in all probability the catches in the area of Ft. Pierce and southward would increase due to increased local availability. Also, highly valued recreational species taken incidentally to the mackerel drift gill net fishery would become available to the

recreational fishery. The addition of 765,226 pounds of king mackerel, if caught entirely by the commercial hook and line fishery, would produce revenues of \$1,078,969.

Impacts on the Drift Gill Net Fishery

Data for 1987 and preliminary data for 1988 indicate that 13 vessels and between 39 and 52 fishermen were engaged in the drift gill net fishery for Atlantic migratory group king mackerel. These vessels and fishermen also fish (1) in the run-around gill net fishery for Gulf migratory group king mackerel and Gulf and Atlantic migratory groups of Spanish mackerel and (2) in the shark drift gill net fishery. Periodically they also fish with smaller gill net boats (outboards) in the Indian River and outside the inlets. As of September 1987 there were approximately 38,000 yards of drift gill nets in the fishery worth between \$194,000 and \$232,800 when new. Prohibiting this gear for coastal migratory pelagic species would result in foregone catches of king mackerel of 765,226 pounds, based on drift gill net catches in 1987. The revenue produced by this catch is estimated at \$925,923. The range of losses to the individual drift gill net vessels would be from 3,968 to 122,987 pounds with revenues from \$4,801 to \$148,814. In addition, loss from other species that are landed and sold would total approximately 65,755 pounds with estimated revenue of \$65,755 for the fishery as a whole. Loss in value of gill nets is unknown because of uncertainties as to age and the amount that would not be convertible to other fisheries.

The Councils selected the option of total prohibition of drift gill nets because:

1. It most appropriately meets the objectives of the FMP, is least burdensome, and has the greatest likelihood of correcting the problem of early closure of the commercial fishery, which adversely affects traditional hook and line fishermen.

2. When the quantified and non-quantified benefits are combined, a net benefit to society results.

3. It is in agreement with Florida's regulations, thereby easing enforcement.

Issue 3. Run-around Gill Nets in the Atlantic Migratory Group King Mackerel Fishery

The Councils considered two options: Option 1 (status quo)—continue to allow the use of run-around gill nets on Atlantic migratory group king mackerel; and Option 2—prohibit the use of run-around gill nets to take Atlantic migratory group king mackerel.

Run-around gill nets have been used sporadically to harvest Atlantic migratory group king mackerel. The only recent catches were taken during April 1988. The Councils reviewed available information and chose to prohibit run-around gill nets for taking Atlantic migratory group king mackerel because of the overfished status of this group and because allowing the use of run-around gill nets will likely result in early closure of the commercial fishery, which would adversely impact traditional hook and line commercial participants. Further, run-around gill net gear is not considered a traditional gear in the Atlantic migratory group king mackerel fishery. This prohibition is not being applied to Atlantic or Gulf migratory group Spanish mackerel or Gulf migratory group king mackerel because run-around gill nets are considered traditional gear in those fisheries.

The number of run-around gill net vessels that participated in the Atlantic migratory group king mackerel fishery for the first time in April 1988 was very small. The number of vessels was so small that run-around gill net catches had to get combined with purse seine catches for presentation to avoid disclosure of confidential data. Using the combined run-around gill net and purse seine catches, the prohibition would impact the affected fishermen by preventing the harvest of approximately 340,000 pounds of king mackerel.

In addition to the above issues, Amendment 3 also does the following:

1. Adds an objective to the FMP to minimize waste and bycatch in the fishery. Waste includes both discarded catch and economic waste due to product quality problems.

2. Adds to the FMP the most recent information available to the Councils concerning habitat.

3. Adds to the FMP an evaluation of the FMP's effects on vessel safety.

Additional Changes

In addition to the regulatory changes associated with Amendment 3, NOAA proposes changes necessary to reflect fully the previous implementation of Amendment 2 and otherwise to correct and clarify the regulations.

The purpose and scope (§ 642.1) would be modified to express the scope of the regulations in the broadest terms consistent with the FMP. This approach avoids the possibility of misleading fishermen, dealers, processors as to the scope of the regulations in this part.

To clarify what constitutes the commercial and recreational fisheries, the definition for "Commercial fisherman" would be removed and new

definitions for "Commercial fishery" and "Recreational fishery" would be added. The definition for *Charter vessel* would be revised to clarify that (1) a charter vessel holding either a king or Spanish mackerel commercial permit is subject to the criteria specified for establishing when the vessel is under charter and (2) the number of persons aboard is not the sole criterion for determining when a vessel is under charter. Other minor changes to some of the definitions are proposed for clarity and consistency.

The introductory texts for the reporting requirements (§ 642.5 (a), (b), and (c)) would be revised to state more succinctly the geographical extent of fishing for which reports may be required. In § 642.5(b), reference is added to the section requiring permits for charter vessels to add emphasis to that requirement. Other changes to these sections and to § 642.5(e) are proposed for clarity.

The vessel identification requirements relating to the official number (§ 642.6(a)) would be restated for clarity and brevity.

Section 642.7(j) would be modified to correct the references in that paragraph.

The prohibition of fishing for, retaining, or having in possession aboard a permitted vessel king mackerel after a closure (§ 642.7(k)) would be clarified to include in the exceptions reference to the limited incidental catch of king mackerel in the Spanish mackerel gill net fishery (§ 642.24(c)). Such incidental catch of king mackerel is not excepted from the prohibition on sale (§ 642.7(l)).

Prohibited activities relating to king or Spanish mackerel under a recreational allocation after reduction of a bag limit to zero (§ 642.7(r)) would be restated to parallel prohibited activities specified for king or Spanish mackerel harvested on possessed in excess of a bag limit (§ 642.7(n)).

The allocations and quotas section (§ 642.21) would be revised to clarify that both king and Spanish mackerel are counted against a commercial allocation when they are first sold.

To express more clearly the contents of the closures section (§ 642.22), the heading for the section would be revised by adding reference to bag limit reductions. Section 642.22(b) would be revised to describe the geographical extent of a bag limit reduction in language parallel to the description in the preceding paragraph of the geographical extent of a commercial closure and to clarify that a bag limit reduction applies to the EEZ.

The catch allowance for undersized Spanish Mackerel (§ 642.23(a)(2)) would

be revised to clarify that the allowance applies only to the commercial fishery.

To enforce the minimum size limits, the head and fins of Spanish mackerel and cobia must be intact. The present wording of the requirement for head and fins to be intact precludes enforcement of the requirement when a vessel is boarded at sea. Accordingly, § 642.23(c) would be revised to require head and fins to be intact on any Spanish mackerel or cobia possessed in the EEZ and, when taken from the EEZ, through landing.

The language regarding gill nets (§ 642.24(a)) would be revised to clarify that the specified mesh sizes are the minimum allowable sizes.

The purse seine catch allowance (§ 642.24(d)) would be revised to clarify the allowance is for incidental catch and the amount of such catch is restated for clarity.

NOAA proposes other minor, technical changes to remove redundant language and conform to current usage.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended by Pub. L. 99-659, requires the Secretary of Commerce (Secretary) to publish regulations proposed by a Council within 15 days of receipt of an FMP amendment and regulations. At this time, the Secretary has not determined that Amendment 3, which this proposed rule would implement, is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making the determination, will take into account the data, views, and comments received during the comment period.

The Under Secretary for Oceans and Atmosphere, NOAA, determined that this proposed rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291. This proposed rule, if adopted, is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Councils prepared a regulatory impact review which concludes that this rule will have the economic effects discussed above in the analysis of the management measures of Amendment 3. A copy of the review may be obtained at the address listed above.

This proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. It is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

The Council prepared an initial regulatory flexibility analysis as part of the regulatory impact review which concludes that this proposed rule, if adopted, would have significant effects on small entities. Thirteen vessels (small entities) would be prohibited from using drift gill nets to take any coastal migratory pelagic fish. Operators of these vessels would have limited opportunities to use this gear in other fisheries. Income based on use of this gear would be lost. In addition, a small but unknown number of vessels (small entities) would be prohibited from using purse seines and run-around gill nets to take Atlantic group king mackerel. These gears have been used in other fisheries but were first actively used in the Atlantic group king mackerel fishery during the 1987/88 fishing year. Operators of vessels with purse seines and run-around gill nets have alternate fisheries in which to use this gear. You may obtain a copy of this analysis from the Council at the address listed above.

The Councils determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of North Carolina, South Carolina, Florida, Alabama, Mississippi, and Louisiana. Georgia and Texas do not have approved coastal zone management programs. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

The Councils prepared an environmental assessment (EA) that discusses the impact on the environment as a result of this rule. A copy of the EA may be obtained at the address listed above and Comments on it are requested.

This proposed rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing.

Dated: April 5, 1989.

James E. Douglas, Jr.,
Deputy Assistant Administrator For Fisheries
National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 642 is proposed to be amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for Part 642 continues to read as follows:

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

2. In § 642.1, paragraph (b) is revised to read as follows:

§ 642.1 Purpose and scope.

(b) This part governs conservation and management of coastal migratory pelagic fish off the Atlantic coastal States south of the Virginia/North Carolina border, and off the Gulf of Mexico coastal States.

3. In § 642.2, the definition for *Commercial fisherman* is removed; in the definition for *Charter vessel crew*, the word "captain" is revised to read "operator"; in the definition for *Regional Director*, the semicolon after the ZIP code is removed and a comma is added in its place; in the definition for *Species*, the words "refers to" are removed and the word "means" is added in their place; the definition for *Charter vessel* is revised; and new definitions for *Commercial fishery*, *Drift gill net*, *Gill net*, *Recreational fishery*, and *Run-around gill net* are added in alphabetical order to read as follows:

§ 642.2 Definitions.

Charter vessel (includes a headboat) means a vessel whose operator is licensed by the U.S. Coast Guard to carry paying passengers and whose passengers fish for a fee. A charter vessel with a permit to fish on a commercial allocation for king or Spanish mackerel is under charter when it carries a passenger who fishes for a fee, or when there are more than three persons aboard including operator and crew.

Commercial fishery means the harvesting of king or Spanish mackerel by a person fishing under the annual vessel permit specified in § 642.4(a)(1).

Drift gill net means a gill net having a float line that is more than 1,000 yards in length; or any gill net having a float line that is 1,000 yards or less in length, other than a run-around gill net, that, when

used, drifts in the water, that is, is not anchored at both ends, whether or not it is attached to a vessel.

Gill net means a wall of netting, suspended vertically in the water by floats along the top and weights along the bottom, that entangles the head, gills, or other body parts of fish that attempt to pass through the meshes.

Recreational fishery means the harvesting of king of Spanish mackerel by a person fishing under a bag limit.

Run-around gill net means a gill net with a float line 1,000 yards or less in length that, when used, encloses an area of water.

4. In § 642.4, in paragraph (a)(1), the word "which" before "fishes" is revised to read "that" and the phrase "in the EEZ" is added after the word "mackerel"; in paragraph (a)(3) the word "which" before fishes is revised to read "that" and the phrase "in the EEZ" is added after the word "fish"; in paragraphs (b) (3) and (c), the words "or his designee" after "Regional Director" are removed; and in paragraph (a)(2), the second sentence is revised to read as follows:

§ 642.4 Permits and fees.

(2) * * * A charter vessel in the EEZ must adhere to the applicable bag limit while under charter.

5. In § 642.5, in paragraph (a)(2), a comma is added after the word "fish" and the words "as defined" are removed; and paragraphs (a) introductory text, (b) introductory text, (c) introductory text, and (e) are revised to read as follows:

§ 642.5 Recordkeeping and reporting.

(a) *Commercial vessel owners and operators.* An owner or operator of a fishing vessel that fishes for or lands coastal migratory pelagic fish for sale, trade, or barter in or from the EEZ or adjoining State waters, or whose vessel possesses a permit issued under § 642.4(a)(1), and who is selected to report, must provide the following information regarding any fishing trip to the Science and Research Director:

(b) *Charter vessel owners and operators.* An owner or operator of a charter vessel that fishes for or lands coastal migratory pelagic fish in or from the EEZ or adjoining State waters, or whose vessel possesses a permit issued under § 642.4(a)(3), and who is selected

to report, must maintain a daily fishing record on forms provided by the Science and Research Director. These forms must be submitted to the Science and Research Director weekly and must provide the following information:

(c) *Dealers and processors.* A person who receives coastal migratory pelagic fish, or parts thereof, by way of purchase, barter, trade, or sale from a fishing vessel or person that fishes for or lands such fish, or parts thereof, in or from the EEZ or adjoining State waters, and who is selected to report, must provide the following information to the Science and Research Director at monthly intervals, or more frequently if requested, and on forms provided by the Science and Research Director:

(e) *Availability of fish for inspection.* An owner or operator of a commercial, charter, or recreational vessel or a dealer or processor shall make any coastal migratory pelagic fish, or parts thereof, available, upon request, for inspection by the Science and Research Director for the collection of additional information or by an authorized officer.

6. In § 642.6, paragraph (a) is revised to read as follows:

§ 642.6 Vessel identification.

(a) *Official number.* A vessel engaged in fishing for king or Spanish mackerel under a commercial allocation and the permit specified in § 642.4(a)(1) must display its official number—

(1) On the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from an enforcement vessel or aircraft;

(2) In block arabic numerals in contrasting color to the background;

(3) At least 18 inches in height for fishing vessels over 65 feet in length and at least 10 inches in height for all other vessels; and

(4) Permanently affixed to or painted on the vessel.

7. In § 642.7, in paragraph (k), a comma is added after the phrase "under a commercial allocation" and the reference and word "§ 642.24(c) and" are added between the word "in" and the reference "§ 642.28(c)(2)"; in paragraph (m), a comma is added after the phrase "under a commercial allocation"; in paragraph (n), after the reference to "§ 642.28", the comma and the phrase "except as provided for under § 642.21 (a) and (c)" are removed; in paragraph (v), the word "which" is revised to read "that"; paragraph (e), (g), (j), (q), and (r)

are revised; and new paragraphs (x) and (y) are added to read as follows:

§ 642.7 Prohibitions.

(e) Fish in the EEZ for king or Spanish mackerel from either the Gulf or Atlantic migratory group using a purse seine, as specified in § 642.24(b).

(g) Falsify or fail to report information, as specified in §§ 642.4 and 642.5.

(j) Purchase, sell, barter, trade, or accept in trade king or Spanish mackerel harvested in the EEZ from specific migratory group or zone for the remainder of the appropriate fishing year, specified in § 642.20, after the allocation or quote for that migratory group or zone, as specified in § 642.21 (a) or (c), has been reached and closure has been invoked, as specified in § 642.22(a). (This prohibition does not apply to trade in king or Spanish mackerel harvested, landed, and bartered, traded, or sold prior to the closure and held in cold storage by dealers and processors.)

(q) Possess or land Spanish mackerel or cobia without the head and fins intact, as specified in § 642.23(c).

(r) Land, consume at sea, sell or possess, in or from the EEZ, king or Spanish mackerel harvested under a recreational allocation set forth in § 642.21 (b) or (d) after the bag limit for that recreational allocation has been reduced to zero under § 642.22(b).

(x) Fish with a drift gill net for coastal migratory pelagic fish or possess any such fish aboard a vessel with a drift gill net aboard, as specified in § 642.24(a)(3).

(y) Fish with a run-around gill net for king mackerel from the Atlantic migratory group or possess any such fish aboard a vessel with a run-around gill net aboard, as specified in § 642.24(a)(4).

8. In § 642.21, in paragraph (a)(2), the last sentence is removed, and a new paragraph (c)(3) is added to read as follows:

§ 642.21 Allocations and quotas.

(c) * * *

(3) A fish is counted against the commercial allocation when it is first sold.

9. In § 642.22, the heading, the second sentence of paragraph (a), and paragraph (b) are revised to read as follows:

§ 642.22 Closures and bag limit reductions.

(a) * * * The notice of closure for an allocation or quota specified under § 642.21 (a) or (c) will also provide that the purchase, barter, trade, and sale of king or Spanish mackerel taken in the EEZ from the closed area after the closure is prohibited for the remainder of that fishing year. * * *

(b) The Secretary, after consulting with the Councils and by publication of a notice in the *Federal Register*, will reduce to zero the bag limit for the king or Spanish mackerel recreational fishery in the EEZ for a particular migratory group when the allocation under § 642.21 (b) or (d) for that migratory group has been reached or is projected to be reached and when that group is overfished. After such reduction, a king or Spanish mackerel caught in the EEZ from that group must be returned immediately to the sea and possession of king or Spanish mackerel of that group in or from the EEZ on board a vessel in the recreational fishery is prohibited.

10. In § 642.23, in paragraph (a)(1), the word "or" between the words "recreational" and "commercial" is revised to read "and"; in paragraph (a)(2), the phrase "in the commercial fishery" is added between the words "allowed" and "equal"; and paragraph (c) is revised to read as follows:

§ 642.23 Size restrictions.

(c) *Head and fins intact.* A Spanish mackerel or cobia possessed in the EEZ must have its head and fins intact and a Spanish mackerel or cobia taken from the EEZ must have its head and fins intact through landing.

11. In § 642.24, in the first sentence of paragraphs (a) (1) and (2) the word "allowable" is added after the word "minimum" and the phrase "in the EEZ"

is added after the word "fish"; new paragraphs (a) (3) and (4) are added; and paragraphs (b) and (d) are revised to read as follows:

§ 642.24 Vessel, gear, equipment limitations.

(a) * * *
(3) *Drift gill nets.* The use of a drift gill net to fish in the EEZ for coastal migratory pelagic fish is prohibited. A vessel in the EEZ or having fished in the EEZ with a drift gill net aboard may not possess any coastal migratory pelagic fish.

(4) *Run-around gill nets.* The use of a run-around gill net to fish in the EEZ for king mackerel from the Atlantic migratory group is prohibited. A vessel in the EEZ or having fished in the EEZ within the range of king mackerel from the Atlantic migratory group with a run-around gill net aboard may not possess any king mackerel.

(b) *Purse seines.* Except as provided in paragraph (d) of this section, the use of a purse seine to fish in the EEZ for king or Spanish mackerel is prohibited.

(d) *Purse seine incidental catch allowance.* A vessel with a purse seine aboard will not be considered as fishing for king mackerel or Spanish mackerel in violation of the prohibition of purse seines under paragraph (b) of this section, provided the catch of king mackerel does not exceed one percent or the catch of Spanish mackerel does not exceed ten percent of the catch of all fish aboard the vessel. Incidental catch shall be calculated by both number and weight of fish. Neither calculation may exceed the allowable percentage. Incidentally caught king or Spanish mackerel are counted toward the allocations and quotas provided for under § 642.21 (a) or (c) and are subject to the prohibition of sale under § 642.22(a).

§ 642.28 [Amended]

12. In § 642.28, in paragraph (a) introductory text, the word "incidental" is added between the words "seine" and "catch".

[FR Doc. 89-8450 Filed 4-5-89; 4:42 pm]

BILLING CODE 3510-22-M

Notices

Federal Register

Vol. 54, No. 67

Monday, April 10, 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

Forest Service

Project Evaluation For the Leola-Sullivan Area in the Colville National Forest, Washington

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Forest Service will prepare an environmental impact statement (EIS) for site specific project work in the Leola-Sullivan area on the Sullivan Lake Ranger District, Pend Oreille County, Washington. This EIS will tier to the Colville Forest Plan (December 1988) which provides the overall guidance (Goals, Objectives, Standards and Guidelines, and Management Area direction) in achieving the desired future condition for the Leola-Sullivan area. The agency invites written comment and suggestions on the management of this area and the scope of this analysis. In addition, the agency gives notice of the full environmental analysis and decision making process that will occur on this project area so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the management of this project area should be received by April 30, 1989. The Draft EIS should be available by June, 1989.

ADDRESS: Submit written comments and suggestions concerning the management of Leola-Sullivan area to Edward L. Schultz, Forest Supervisor, 695 South Main, Colville, Washington 99114, or Andrew Mason, District Ranger, Route HC2, Metaline Falls, Washington 99153.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed project work and EIS should be directed to Albert Skoglund, Supervisory Forester, Route HC2, Metaline Falls, Washington 99153 (telephone: (509) 446-2681).

SUPPLEMENTARY INFORMATION: The Colville Forest Plan provides the overall guidance for management activities in the potentially affected Leola-Sullivan area through its Goals, Objectives, Standards and Guidelines, Management Area direction, and monitoring requirements.

The majority of the potentially affected area is in Caribou Habitat (Mgt. Area 2) with lesser amounts of area in High Use Recreation (Mgt. Area 3A) and Timber Production (Mgt. Area 7).

The decision to be made is what, if any, site specific projects should be undertaken. Projects could include recreation trails and other facilities, wildlife and fish habitat improvements, timber harvest, road construction and reconstruction, or other work such as site preparation, tree planting, and thinning. This decision will be made from a range of alternatives presented in an EIS. A no-action alternative will be included. The selected alternative will identify the site specific projects to be included. The period of this action will extend over a period of about 5-7 years. This proposal will follow the Management Area Direction and Standards and Guidelines set forth in the Colville National Forest Land and Resource Management Plan.

Because of the controversial nature of timber harvest and road building activities in this area, other Federal, State, and local agencies, potential timber purchasers and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. This process will include:

1. Determination of potential cooperating agencies and assignment of responsibilities.
2. Identification of the issues to be addressed.
3. Identification of issues to be analyzed in depth.
4. Elimination of insignificant issues, issues covered by previous environmental review, and issues not within the scope of this decision.

The Fish and Wildlife Service, Department of Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat occurring as a result of this action.

Scoping for this project will begin in March 1989. Notification of scoping will

include public notices and individual communications. The scoping and analysis is expected to take about three months. The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by June 1989. At that time EPA will publish a notice of availability to the draft EIS in the Federal Register.

The comment period on the draft EIS will be 45 days from the date the EPA's notice of availability appears in the Federal Register. It is very important that those interested in the management of the Leola-Sullivan area participate at that time. To be the most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act of 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS. *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the draft EIS, comments will be analyzed and considered by the Forest Service in preparing the final EIS. In the final, the Forest Service is required to respond to comments received (40 CFR 1503.4). The Final EIS is scheduled to be completed by September 1989. The responsible official will consider the comments, responses, and consequences discussed in the EIS, applicable laws, regulations, and policies in making a decision regarding the management of the project area. The responsible official will document the decision and reasons for the Record of Decision. That decision will be subject to review under 36 CFR 217.

Date: March 31, 1989.

Edward L. Schultz,

Forest Supervisor.

[FR Doc. 89-8380 Filed 4-7-89; 8:45 am]

BILLING CODE 3410-11-M

Threemile Timber Sale; Medicine Bow National Forest, Albany County, WY; Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement for a proposed timber sale and associated road construction within the Threemile area of the Laramie Ranger District, Medicine Bow National Forest, Albany County, Wyoming. The agency invites written comments and suggestions on the proposed project. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Scoping has been completed on the analysis and the draft environmental impact statement is being prepared, so no additional comments are necessary prior to the availability of the draft environmental impact statement.

ADDRESSES: submit written suggestions concerning the analysis and comments on the draft EIS to Ron Wilcox, District Ranger, Laramie Ranger District, 605 Skyline Drive, Laramie, WY 82070.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental impact statement to Gary Rorvig, District Engineer, 605 Skyline Drive, Laramie, WY 82070, phone 307-745-8941 or FTS 328-0221.

SUPPLEMENTARY INFORMATION: The Medicine Bow Land and Resource Management Plan was completed in November 1985. The Threemile timber sale is a practice (project) identified in Appendix A to implement the Plan. An Interdisciplinary (ID) Team has conducted scoping, developed a set of alternatives and done environmental analysis on the proposed timber sale and alternatives. Based on their scoping and environmental analysis, the ID Team has developed alternatives to the proposed Threemile timber sale and recommended an environmental impact statement (EIS) be prepared to carry out the purpose of the National

Environmental Policy Act (NEPA) at 40 CFR 1500.1.

The proposed action would include a commercial sawtimber sale and associated road construction as listed in Appendix A and Appendix C of the Land and Resource Management Plan. Collector roads from the north and south would be constructed or reconstructed with a "break" in between to prevent a loop-road situation. Right-of-way would be acquired across private and BLM land from the north. Posts and poles (roundwood) would be offered for sale separate from the sawtimber. The vegetation treatment from both the sawtimber and roundwood sales would be distributed over the threemile area to work toward the Land and Resource Management Plan's desired age class distribution. Roads constructed or reconstructed in the north portion of the project area would be modified to revert to a semi-primitive standard after being used for sawtimber and roundwood hauling.

Alternatives would include access from the south only, timber sales in part of the area only, vegetation treatments for wildlife habitat improvement using methods other than timber sales, and no action.

The draft environmental impact statement (EIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by July 1989. At that time EPA will publish a notice of availability of the DEIS in the Federal Register.

The comment period on the draft environmental impact statement will be 45 days from the date of the Environmental Protection Agency's notice of availability appears in the Federal Register. It is very important that those interested in the Threemile timber sale participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of the draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' positions and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental

impact statement. *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final EIS is scheduled to be completed by November 1989. In the final EIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to review under 36 CFR 217.

Date: March 29, 1989.

Gerald G. Heath,

Forest Supervisor.

[FR Doc. 89-8375 Filed 4-7-89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

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: National Institute of Technology and Standards (NIST).

Title: Standard Reference Data User Survey.

Form Number: Agency—NIST-1249; OMB—N/A.

Type of Request: New Collection.

Burden: 1,500 respondents; 500 reporting hours. Average hours per response is 20 minutes.

Needs and Uses: NIST's office of Standard Reference Data is responsible for creating and disseminating standard reference data on physical, chemical, and engineering properties. Because technology has changed the character of the use and usefulness of these data, NIST wants to determine user satisfaction with the products it produces. From the survey results, decisions concerning packaging, distribution, promoting, pricing, ect., of the products will be made.

Affected Public: Individuals (scientists), businesses or other for-profit institutions, nonprofit institutions, small businesses or organizations.

Frequency: One-time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Robert Veeder, 395-3785.

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 Robert Veeder, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: April 4, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-8444 Filed 3-7-89; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

[A-337-001]

Sodium Nitrate From Chile; Final Results of Changed Circumstances Administrative Review and Revocation of Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, DOC.

ACTION: Notice of final results of changed circumstances administrative review and revocation of antidumping duty order.

SUMMARY: On January 19, 1989, the Department of Commerce published the preliminary results of its changed circumstances administrative review and tentative determination to revoke the antidumping duty order on sodium nitrate from Chile. The review covers the one known manufacturer/exporter of this merchandise and the period March 1, 1987 through February 29, 1988.

We gave interested parties an opportunity to comment on our preliminary results. We received no comments. The final results of review are unchanged from those presented in the preliminary results.

EFFECTIVE DATE: April 10, 1989.

FOR FURTHER INFORMATION CONTACT: J. David Dirstine or Phyllis Derrick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923.

SUPPLEMENTARY INFORMATION:

Background

On January 19, 1989, the Department of Commerce ("the Department") published in the *Federal Register* (54 FR 2196) the preliminary results of its changed circumstances administrative review and tentative determination to revoke the antidumping duty order on sodium nitrate from Chile (48 FR 12580, March 25, 1983). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by this review are shipments of industrial grade sodium nitrate (98 percent or more pure). During the review period, such merchandise was classifiable under item number 480.2500 of the *Tariff Schedules of the United States Annotated*. This merchandise is currently classifiable under item number 3102.50.00 of the *Harmonized Tariff Schedule*.

The review covers one exporter of this merchandise to the United States, Sociedad Quimica y Minera de Chile, S.A. ("SQM"), and the period March 1, 1987 through February 29, 1988.

Final Results of Review and Revocation of the Antidumping Duty Order

We invited interested parties to comment on the preliminary results of the review and tentative determination to revoke the antidumping duty order. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results of review.

For the reasons set forth in the preliminary results of changed circumstances administrative review and tentative determination to revoke the antidumping duty order, we are satisfied that there is no likelihood of resumption of sales at less than fair value by Sociedad Quimica y Minera de Chile. Accordingly, we revoke the antidumping duty order on sodium nitrate from Chile. This revocation applies to all unliquidated entries of this merchandise manufactured and exported to the United States by Sociedad Quimica y Minera de Chile and entered, or withdrawn from warehouse, for consumption on or after March 1, 1987.

The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered or withdrawn from warehouse, for consumption on or after March 1, 1987, without regard to antidumping duties and to refund any

estimated antidumping duties collected with respect to those entries.

This changed circumstances administrative review, revocation of the antidumping duty order, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Date: March 31, 1989.

Timothy N. Bergan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-8442 Filed 4-7-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-804, C-122-805]

Alignment and Postponement of Final Countervailing Duty and Antidumping Duty Determinations and Postponement of Antidumping Duty and Countervailing Duty Public Hearings; New Steel Rail, Except Light Rail, From Canada

AGENCY: International Trade Administration, Import Administration, DOC.

ACTION: Notice.

SUMMARY: Based upon the request of the petitioner in these investigations, we are extending the deadline date for the final determination of the countervailing duty investigation to correspond to the date of the final determination in the antidumping duty investigation of the same product, pursuant to section 705(a)(1) of the Tariff Act of 1930 (the Act), as amended (19 U.S.C. 1671d(a)(1)). In addition, this notice informs the public that we have received a request from the respondent in the antidumping duty investigation to postpone the final determination, as permitted by section 735(a)(2)(A) of the Act (19 U.S.C. 1673d(a)(2)(A)).

Based upon this request, we are postponing our final determinations as to whether sales of new steel rail, except light rail, from Canada have occurred at less than fair value, and whether producers or exporters of the same product have received subsidies within the meaning of the countervailing duty law, until not later than July 26, 1989. We are also postponing our public hearing in the antidumping duty investigation until June 28, 1989 and in the countervailing duty investigation until July 11, 1989.

EFFECTIVE DATE: April 10, 1989.

FOR FURTHER INFORMATION CONTACT: Kate Johnson (AD) (202-377-5050), Louis Apple (AD) (202-377-1769) or Roy A.

Malmrose (CVD) (202-377-5414), Offices of Antidumping and Countervailing Duty Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On March 2, 1989, we published a preliminary affirmative countervailing duty determination pertaining to new steel rail, except light rail (steel rail), from Canada (54 FR 8784). The notice stated that, if the investigation proceeded normally, we would make our final countervailing duty determination by May 9, 1989.

On March 13, 1989, we published a preliminary affirmative antidumping duty determination pertaining to steel rail from Canada (54 FR 10393). The notice stated that, if the investigation proceeded normally, we would make our final antidumping duty determination by May 22, 1989.

On March 13, 1989, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1671d(a)(1)), petitioner requested an extension of the deadline date for the final countervailing duty determination to correspond to the date of the final antidumping duty determination of the same product.

In addition, on March 16, 1989, in accordance with section 735(a)(2)(A) of the Act, respondent requested a postponement of the final antidumping duty determination until not later than July 26, 1989, the 135th day after publication of our preliminary determination. This respondent accounts for a significant proportion of exports of the subject merchandise. Pursuant to § 353.44(b) of the Commerce Regulations, if an exporter accounting for a significant proportion of exports of the subject merchandise under investigation requests a postponement of the final determination, absent compelling reasons to the contrary, we grant the request. Accordingly, we are postponing the date of the final antidumping and countervailing duty determinations until not later than July 26, 1989.

With respect to the countervailing duty investigation, in accordance with section 705 of the Act, and article 5, paragraph 3, of the Subsidies Code, the Department will direct the U.S. Customs Service to terminate the suspension of liquidation to the countervailing duty investigation on July 1, 1989, which is 120 days from the date of publication of the preliminary determination in the countervailing duty investigation. No cash deposits or bonds for potential countervailing duties will be required

for merchandise which enters on or after July 1, 1989. The suspension of liquidation will not be resumed unless and until the Department publishes a countervailing duty order. We will also direct the U.S. Customs Service to hold any entries suspended between March 2, 1989, through June 30, 1989 until the conclusion of these investigations.

Public Comment

In accordance with § 355.38 of our countervailing duty regulations published in the Federal Register on December 27, 1988 (53 FR 52306) (to be codified at 19 CFR 355.38), we will hold a public hearing to afford interested parties an opportunity to comment on the preliminary determination in the countervailing duty investigation at 10:00 a.m. on July 11, 1989, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. We note that this hearing was originally scheduled for April 21, 1989.

In accordance with § 353.38 of our antidumping regulations published in the Federal Register on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.38), we will hold a public hearing to afford interested parties an opportunity to comment on the preliminary determination in the antidumping duty investigation at 9:30 a.m. on June 28, 1989, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. We note that this hearing was originally scheduled for April 20, 1989.

Ten copies of the business proprietary version and five copies of the public version of case briefs must be submitted to the Assistant Secretary by June 19, 1989, for the hearing in the antidumping investigation and by June 30, 1989, for the hearing in the countervailing duty investigation. Ten copies of the business proprietary version and five copies of the public version of rebuttal briefs must be submitted to the Assistant Secretary by June 26, 1989 for the hearing in the antidumping investigation and by July 5, 1989 for the hearing in the countervailing duty investigation.

An interested party may make an affirmative presentation at the public hearings only on arguments included in that party's case brief, and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Written arguments should be submitted in the antidumping duty investigation in accordance with § 353.38 of the Commerce Department's regulations published in the Federal Register on March 28, 1989 (54 FR 12742) to be codified at 19 CFR 353.38, and in the countervailing duty investigation in

accordance with § 355.38 of the Commerce Department's regulations published in the Federal Register on December 27, 1989 (53 FR 52306) (to be codified at 19 CFR 355.38), and will be considered only if received within the time limits specified in this notice.

The U.S. International Trade Commission is being advised of this postponement, in accordance with section 735(d) and 705(d) of the Act. This notice is published pursuant to section 735(d) and 705(d) of the Act.

April 4, 1989.

Timothy N. Bergan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-8441 Filed 4-7-89; 8:45am]

BILLING CODE 3510-DS-M

Short-Supply Review on Certain Wire Rod; Request for Comments

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products and Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products, with respect to certain AISI E52100 spheroidized annealed wire rod suitable for cold heading into balls.

DATE: Comments must be submitted on or before April 20, 1989.

ADDRESS: Send all comments to Nicholas C. Tolero, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products and Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products provide that if the U.S. determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular

product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product or products.

We have received a short-supply request for certain AISI E52100 spheroidized annealed wire rod, in diameters ranging from 0.551 to 0.630 inch, in coils, that is suitable for cold heading into balls.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than April 20, 1989. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce at the above address.

Timothy N. Bergan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-8440 Filed 4-7-89; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

[FR Docket No. 90377-9077]

Announcement of Opportunities for Funding Research in the National Estuarine Reserve Research System for Fiscal Year 1990

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice.

SUMMARY: In accordance with Department of Commerce Administrative Order (DAO) 203-26, this notice solicits proposals for Federal funding under section 315 (e)(1)(B) of the Coastal Zone Management Act of 1972 (CZMA) for research in the National Estuarine Reserve Research System (NERRS) during Fiscal Year 1990. This notice sets forth what information must be submitted, funding priorities, and selection criteria. All proposals received in response to this announcement must follow the guidelines provided in this announcement, address the topics

discussed in this announcement, and be postmarked no later than May 7, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Uravitch, Chief, Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1825 Connecticut Avenue, NW., Suite 714, Washington, DC 20235; ATTN: FY90 NERRS Research; 202/673-5126.

SUPPLEMENTARY INFORMATION:

I. Authority and Background

Section 315 of the CZMA, U.S.C. 1461, establishes the National Estuarine Reserve Research System (formerly known as the National Estuarine Sanctuary Program). Subsection 315 (e)(1)(B) authorizes the Marine and Estuarine Management Division (MEMD) of the Office of Ocean and Coastal Resource Management (OCRM), National Oceanic and Atmospheric Administration (NOAA), to make grants to any coastal state or public or private person for purposes of supporting research and monitoring within the NERRS.

II. Information on Established National Estuarine Research Reserves

The National Estuarine Reserve Research System (NERRS) consists of carefully selected estuarine areas of the United States which are designated, preserved, and managed for research and educational purposes. The reserves are chosen to reflect regional differences to include a variety of types in accordance with the classification scheme of the national program as presented in 15 CFR Part 921 (49 FR 125:26502-26520).

The uniqueness of each NERRS site lies in their suitability for supporting a wide range of beneficial uses of ecological, economic, recreational, and aesthetic value which are dependent upon maintenance of a healthy ecosystem. Each site provides critical habitat for wide range of ecologically and commercially important species of fish, shellfish, birds, and aquatic and terrestrial wildlife. However, these varied activities occurring both within and outside the reserves have caused varying levels of impacts that threaten the health and survival of natural resources. On the national level, these impacts have been classified into five major environmental problem areas: toxic contamination, eutrophication, pathogen contamination, habitat loss and alteration, and changes in living resources.

Each reserve has been designed to be large enough and protected well enough to ensure its effectiveness as a

conservation unit and as a site for long-term research. Since all of the reserves are part of a national system, they collectively provide a unique opportunity to address research questions and estuarine management issues of national significance.

Eighteen national estuarine research reserves have been established:

- Weeks Bay, Alabama
- Elkhorn Slough, California
- Tijuana River, California
- Apalachicola, Florida
- Rookery Bay, Florida
- Sapelo Island, Georgia
- Waimanu Valley, Hawaii
- Wells, Maine
- Monie Bay (Chesapeake Bay), Maryland
- Waquoit Bay, Massachusetts
- Great Bay, New Hampshire
- Hudson River, New York
- North Carolina System, North Carolina
- Old Woman Creek, Ohio
- South Slough, Oregon
- Jobos Bay, Puerto Rico
- Narragansett Bay, Rhode Island
- Padilla Bay, Washington

These reserves are depicted in Figure 1; on-site reserve contacts and addresses are provided in Appendix I.

III. Availability of Funds

Funds are available on a competitive basis on any state or university, or qualified public or private individual to conduct research within national estuarine research reserves.

Level funding for FY 90 research projects is expected. The approximate range of Federal funding per successful project has been between \$10,000 and \$40,000. For Fiscal Year 1990, a cap of \$50,000 per project (Federal funding) has been established. Proposals submitted may not exceed this amount; those exceeding this established maximum will be returned to the proposer. Federal funds requested must be matched on an equal basis by cash or the value of goods and services directly benefitting the project in accordance with 15 CFR Part 24, "Grants and Cooperative Agreements with State and Local Governments" (see also OMB Circular A-102—"Uniform Administrative Requirements for Grants-In-Aid to State and Local Governments"), A-87, "Principles for Determining Costs Applicable to Grants and Contracts with State, Local and Federally Recognized Indian Tribal Governments", and A-110, "Grants and Agreements with Institutions of Higher Education, Hospital, and Other Nonprofit Organizations." It is anticipated that projects receiving funding under this announcement will begin in the spring of 1990. Research funds are normally

awarded through a research grant. Applicants not familiar with the requirements of a research grant or who need additional information on application requirements are encouraged to contact the applicable reserve manager or MEMD. After final ranking and selection of proposals by MEMD, a Standard Form 424 must be submitted to MEMD by the Principal Investigator(s) for formal processing of the grant.

IV. Purpose and Priorities

Research funds are primarily awarded to support management-related research that will enhance scientific understanding of reserve environments, provide information needed by reserve managers and coastal zone decisionmakers, and improve public awareness of estuaries as estuarine management issues. Research projects may be oriented to specific reserves; however, projects that would benefit more than one reserve in the national system are encouraged.

Research proposals submitted in response to this announcement must address coastal management issues identified as having regional or national significance, relate those issues to the National Research Priorities described in this announcement, and indicate the appropriate reserve. Research projects are normally funded for one year. Further funding, for up to three years, may be considered if the applicant wishes to submit proposals for each succeeding year and clearly demonstrates the benefits of the research to the reserve and the NERRS. Although priority funding consideration will be given to proposals that address the broad categories listed below, all topics will not be relevant to all reserves in the NERRS. The research topic and the reserve must be carefully chosen to ensure that the resource management issues of primary concern to the reserve and the NERRS are addressed. It is thus very important that all prospective proposers contact the appropriate reserve manager before submitting a proposal responding to this announcement.

A. National Research Priorities

Although large data sets exist for many of the fundamental processes of estuaries, there are significant gaps in the information needed to understand the complex functions of most estuaries. To address this issue, some of the Nation's most capable estuarine researchers gathered in 1984 for the first in a series of national estuarine symposia. Based on the most current developments in scientific protocol, the

researchers recommended research directions to enhance our understanding of estuarine processes and functions. This assessment of problematic needs resulted in five categories of research directions: water management, sediment management, nutrients and other chemical inputs, coupling of primary and secondary productivity, and fishery habitat requirements. These research topics have been identified as being a priority to all coastal areas of the United States, including Alaska, Hawaii, the Great Lakes States, Puerto Rico, Guam, and American Samoa.

1. Water Management

Armstrong (1984) defines water management as using "whatever means possible to provide water for beneficial uses." The uses and users of water are many and varied, leading to one of the most important problems currently facing the Nation: allocation of freshwater resources. The increase in the consumptive use of water by municipal, commercial, industrial, agricultural, and recreational activities competes strongly with the availability of water to bays and estuaries. Changing land use practices near estuaries and their upstream tributaries affect the quantity, quality, and timing of freshwater inflow. Since estuaries, by definition, involve the inflow and mixing of fresh and salt water, these variances may cause significant changes to estuarine productivity. Thus, the relationship between freshwater inflow and estuarine productivity poses a prime research question (Copeland, 1984). However, determining these inflows also depends on our ability to understand how they govern the salinity regime, provide nutrients, couple primary and secondary productivity, and sustain habitats (Armstrong, 1984). Thus, to answer questions regarding water management, i.e., the allocation of freshwater to estuaries, the following topics are considered to be priority research issues:

(a) Determining the basis to establish the amounts of inflows needed to estuaries and the reliability of freshwater inflow estimates;

(b) Establishing the functional relationship between nutrient inflows to the estuary with freshwater inflows and primary and/or secondary productivity;

(c) Determining the quantitative relationship between freshwater inflow and fisheries production in specific estuaries and regional groups of estuaries;

(d) Delineating the factors that control the response and recovery of estuarine biological systems to large changes in water input;

(e) Establishing the role of coastal upwelling in determining estuarine productivity; and

(f) Preparing nutrient budgets on estuarine systems to clearly elucidate the roles of freshwater inflows, marshes, benthic systems, coastal waters, precipitation, and other sources, and to delineate the importance of each source in providing nutrients and recycling them.

2. Sediment Management

Schubel (1984) states, "Sediment, particularly fine-grained sediment, has had and continues to have, significant impacts on estuarine productivity." Estuarine productivity is basically affected by the amount and quality of the sediments entering the estuary (Copeland, 1984). However, these processes are immensely affected by human activities in the watersheds of estuaries. In addition, long time periods (up to decades and centuries) are required for the movement of sediments into estuaries from drainage basins of major rivers. Though the sediments may originate from external, internal, or marginal sources, external sediments along rivers are most influenced by human activities. However, the effective management of estuarine sediment problems are limited to two ends of the sedimentation process—at the source and at the sink (Schubel, 1984). Thus, the effective management of sediments may depend upon: (1) Reducing sediment inputs through drainage basins through proper soil conservation practices; (2) reducing contaminant input through proper source control; and (3) developing and implementing management strategies for sediment deposited in the estuary. On the other hand, estuary size as well as estuarine processes are varied. Fine sediments may not always be the most pressing problem in smaller estuaries, such as those found along the West Coast. Sand deposits along coastal sand bars and accumulation of materials from the watershed significantly affect many of these smaller systems (Zedler and Magdych, 1984). In addition, sediment input may not necessarily be harmful to any given estuary as sediment delivery plays an important role in the biological productivity of estuaries (Peterson, 1984).

The major impediment to research in this area is the impractical and infeasible nature of critical experiments on the relationship between ecosystems and major changes in their environment. For instance, it is impractical and infeasible to manipulate tidal flushing, flooding, and large-scale additions or

removal of substrates and maintain a control system for comparison. Thus, most of the work conducted to date has been "before-and-after" studies of major events (Copeland, 1984).

It is therefore apparent that rational biological criteria must be used to assess the relative merits of alternative sediment management schemes. However, information gaps must be filled before the criteria can be developed. Priority research topics include:

(a) Detailed studies of sediment dynamics to include the effects of sedimentation on flushing and sedimentation rates, accumulation rates and changes in sediment composition between points of entry and accumulation, the joint impacts of reduced freshwater inflow and sediment delivery, the impacts of sediment delivery rates, and shallow water sedimentation processes;

(b) The testing and development of biological models that predict the impacts of sedimentation;

(c) Characterization of the processes that control absorption and desorption of contaminants and other dissolved substances;

(d) Assessing the impacts of sedimentation on benthic and mobile fauna;

(e) Determining the relationship of sediment to habitat types;

(f) Identifying the optimal balance between the long-term negative impacts and estuarine filling and the short-term positive stimulation of estuarine productivity; and

(g) Examining the resilience and recovery rates of ecosystems after large-scale sedimentation events.

3. Nutrients and Other Chemical Inputs

With most of the human population of the United States living around estuaries and other coastal areas, estuaries are experiencing increasing nutrient problems. It has been projected that by 1990, 75 percent of the United States' population will live within 50 miles of our Nation's coasts, including those of the Great Lakes (Nixon, 1984). There has also been an exponential increase in the use of inorganic fertilizers during the last 100 years, contributing to increased nutrient loads. Coupling this with the conversion of wetlands to urban and agricultural use overloads the estuary's ability to act as a nutrient sink and increases nutrient levels. As a result, scientists have assumed that the amounts of organic and inorganic nitrogen and phosphorus carried by streams and rivers into estuaries have also increased markedly. However, as Nixon (1984) points out, the "lack of

adequate long-term data makes it difficult to know if this is true or to make a quantitative assessment of the increase loading over time . . ." It is also noted that nutrients will continue to be a major human-related input to estuaries and coastal waters because of the great costs involved in removing inputs, recycling, and production is not well understood.

Little is known about how marine ecosystems respond to nutrient additions because most knowledge of the effects of nutrient additions to the marine ecosystem is based on laboratory studies of algal cultures or on short-term experiments involving nutrient additions to plankton communities (Copeland, 1984). However, another concern relates to the effects of chemical inputs into estuaries and coastal areas. Estimates suggest that 70,000 synthetic chemicals are currently in commercial use, with 1000 new ones synthesized annually (Malins, et al., 1984). Eventually, many of these chemicals enter estuaries and other environments, thereby altering those ecosystems. However, the effects of these inputs on the estuarine environment, from the benthic environment to fish and water quality, are not well understood, although evidence indicates that urban-associated estuaries may contain thousands of anthropogenic chemicals that may cause serious, pollutant-related pathological conditions (Malins, et al., 1984). Also, there is little known about the interactions of fertilizers and pesticides in agriculture.

The estuarine-like areas of the Great Lakes are also an important link to the fisheries, as they serve as nursery areas for numerous commercially important species and their prey. They also serve as a trap for many pollutants that could adversely impact the Lakes' ecosystems. All five of the Great Lakes are among the fifteen largest lakes in the world and possess approximately 95 percent of the surface freshwater in the United States, making the allocation of freshwater and the enhancement of water quality as issues of special importance to this area of the United States.

In other words, environmental managers presently base their management strategies on mostly provisional data. It is thus important to develop "focused and integrated multidisciplinary research programs * * *" (Nixon, 1984). In addressing management issues related to nutrients and chemical inputs, priority research may focus on:

(a) Testing the responses of estuarine ecosystems to combinations of nutrient inputs and recycling by developing

ecosystem-level experiments involving microcosms, mesocosms, and field manipulations;

(b) Examining the fate of synthetic chemicals in estuaries through the chemical analysis of sediments; the performance of tissue-chemical, gross pathological and histological analyses; evaluation of community structures; conducting controlled laboratory and *in situ* field studies to identify chemicals responsible for field-observed and other toxic effects and determine their relationships; and developing research protocols to understand the long-term effects of exotic materials on estuarine ecosystems.

4. Coupling of Primary and Secondary Productivity

Estuarine ecosystems are characterized by high levels of primary and secondary production (Teal, 1962; Marinucci, 1982; Odum, 1984), although their theoretical relationship to each other is generally unknown. While there is a theoretical relationship between the two, the documentation and relative importance and ecological efficiencies of the pathways remains unresolved (Odum, 1984). Thus, broadly defined, this coupling includes nearly all food web interactions (Peters and Lewis, 1984).

Food chains in estuarine ecosystems are quantitatively and qualitatively connected. However, a clear understanding of the relationship between the quantity of biomass at one producer level and the quantity and quality of biomass at the next level is lacking. The concept of trophic structures in estuarine ecosystems is more of a food web than a food chain. In addition, the food web trophic structure found in estuaries is generally abbreviated compared to the longer food chains of the ocean and open waters of the Great Lakes. Understanding the fundamental aspects of this issue is difficult because of the likelihood that a change in one trophic level impacts other portions of the ecosystem by altering the directions or size of energy flow from one component to another.

The lack of documentation on the importance and ecological efficiencies of individual pathways leads to a fundamental management question revolving around the protection or improvement of secondary production by managing primary production (Copeland, 1984). With this concept in mind, many of the most important questions relating to estuarine productivity may revolve around the comparative importance of vascular plant detritus and algae to estuarine

trophic structures (Odum, 1984). Related topics are the degree to which coastal fisheries organisms utilize detritus as an energy source and the impact of removing large tracts of detritus-producing areas such as swamps, marshes, and seagrass beds.

Thus, the most important research need in this area is the development of a quantitative relationship between primary and secondary production in estuaries. This requires a multidisciplinary approach to delineate the various food chains and relationships that exist in estuarine ecosystems. Thus, to address the information needs of estuarine managers and scientists, priority research topics should examine:

- (a) The comparative trophic importance of vascular plant versus plankton organic matter;
- (b) The degree to which coastal fishery organisms utilize detritus as an energy source; and
- (c) The impact of removing large tracts of detritus-producing salt marshes and seagrass beds.

These may be accomplished through:

- (1) The use of multiple isotopes and other techniques to indirectly identify sources of organic carbon for primary consumers in estuaries;
- (2) Studies to determine the chemical composition and nutritional status of detritus complexes of different age and particle size;
- (3) Laboratory feeding experiments to detail the utilization of vascular plant detritus by consumers;
- (4) Growth and ecological efficiency studies in large tanks or small ponds to investigate consumer diets;
- (5) Controlled field experiments in ponds to determine the feasibility of detritus aquaculture;
- (6) Well-planned "before and after" investigations on the local impact of marsh, mangrove, or seagrass removal on fisheries; and
- (7) Field investigations and laboratory experiments to investigate the potential and realized importance of hypothetical reduced-sulfur food webs.

5. Estuarine Fishery Habitat Requirements

Many studies have documented the value of estuaries as nursery areas for many commercially and recreationally important fish and shellfish species (e.g., McHugh, 1967; Tyler, 1971; Bayly, 1975; Pollard, 1981; Deegan and Day, 1984). However, some estuaries support larger fish populations than others. Three major reasons often proposed for estuarine habitat utilization by fish are: (1) Food availability; (2) protection from predators; (3) a benign abiotic

environment (Joseph, 1973). But understanding the role of estuarine habitat and quantitative differences in fisheries production is difficult. Current evidence points to the importance of shallow inshore estuarine areas to fisheries production (Deegan and Day, 1984). In addition, marshes, seagrass beds, and nearshore shallow areas are particularly important fish habitat areas. Yet, major questions related to the specifics of the relationships between habitat and fish production are largely unanswered.

In order to formulate effective management programs, the most important questions revolve around the relationship between estuarine fish production and the quantity and quality of nursery areas in terms of food availability and subsequent growth mortality. A clear understanding of this would be useful for evaluation, design, and mitigation of activities affecting estuaries. To answer the question of why some estuaries are more productive than others, estuarine scientists need to address questions regarding habitat selection, species migration, species residence time, food quality and quantity, and the effects of environmental variations on survival, growth, and fish and shellfish movement. Some specific research topics that need to be addressed include:

- (a) Delineation of the characteristics of a good nursery;
- (b) Fishery yield per acre of salt marsh and species-specific relationships;
- (c) Relationships and mechanisms between fish catch and river discharge, wetland/water ratios, and primary production;
- (d) The roles of various sources of primary production and the variance of these sources between estuaries;
- (e) The effects of differing primary production sources on fish production;
- (f) The relative contribution of different habitat to total stock;
- (g) Flow requirements for critical life stages;
- (h) Hydrodynamic influences on distribution, abundance, and survival of fishery species;
- (i) Contaminant impacts on estuarine fields; and
- (j) Food as a limiting factor to estuarine fish populations.

B. Guidelines for Proposal Preparation

Applicants for MEMD research funds must follow the guidelines presented herein when preparing proposals for research in national estuarine research reserves. Business managers and grants administrators should also refer to 15

CFR Part 24, "Grants and Cooperative Agreements with State and Local Governments" (see also OMB Circular A-102—"Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments") and OMB Circulars A-87, "Principles for Determining Costs Applicable to Grants and Contracts with State, Local and Federally Recognized Indian Tribal Governments", and A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations." Proposals not following these guidelines will be returned to the proposer. All proposers must submit an original and two (2) copies of their proposals to MEMD. Recipients/applicants who have an outstanding accounts receivable with the U.S. Department of Commerce will not receive an award until the debt is paid or arrangements satisfactory to the Department are made to pay the debt.

1. Proposal Content

a. *Cover Sheet.* The applicant must use a cover sheet similar that shown in Appendix II. The title and abstract of the proposed research project should be brief, informative, and in language that can be understood by the general public.

Specification of a proposed starting date does not ensure receiving an award by that date. Therefore, work on a project should not begin before the effective date on the official notification of the award from MEMD.

A proposal must be signed and dated by the organizational official authorized to contractually obligate the submitting organization. The principal investigator is also signatory.

b. *Table of Contents, Lists of Figures and Tables.* These should list the major contents of the proposal and the appropriate page numbers.

c. *Project Summary.* A 2-3 page project summary must be included. The summary should state the research objectives, scientific methods to be used, the significance of the project to a particular reserve and to the National Estuarine Reserve Research System and the national research priorities, and the amount of funds requested. The summary should include enough information to facilitate an initial review and screening of the project by NOAA. The summary should also be suitable for use in the public press.

d. *Project Description.* The main body of the proposal should be concise, detailed, and include the following components:

(1) *Introduction.* This section should introduce the reviewer to the national estuarine research reserve environment.

the research setting, the relevant coastal management issue(s), the relevant national research priority, the research problem, and the need for the work. This section should include a brief historical narrative leading up to the proposed research, and describe the research problem in the context of significant previous work in the area and in relation to management issues discussed in the reserve management plan or in the research solicitation. Include a brief description of current literature and cite appropriate published and unpublished documents.

(2) *Hypotheses*. Based on review and analysis of existing literature and consultations with reserve personnel and scientists knowledge of the subject research, hypotheses should be stated which can be tested experimentally or through observational research in the reserve.

(3) *Objectives*. This section should discuss the overall project objectives, the specific research objectives, and the relationship of research project objectives to site-specific and national estuarine research reserve program objectives.

(4) *Methods*. This section should state the method(s) to be used to test the hypotheses and accomplish the specific research objectives including a systematic discussion of what, when, where, and how the data are to be collected, analyzed, and reported on. Field and laboratory methods should be statistically valid and repeatable. Methods should be well documented and described in sufficient detail to enable other scientists to evaluate their appropriateness and their possible impact on the environment. Justify the methods chosen and compare them with other methods employed for similar work.

Methods should allow the testing of the hypotheses, but also provide baseline data that may be used in answering related ecological and management questions concerning the sanctuary environment. Measurements should be simple and reliable enough to allow comparison with those made at different sites and times by different investigators. If the project is to be long-term (e.g., a monitoring program), the methods selected must be stable enough that it is unlikely they will change drastically over the next 5-10 years. The methods must have proven their utility and sensitivity as indicators for natural or human-induced change. Newly devised or unproven methods should be field-tested to evaluate their soundness and likely success before applying for MEMD research funds.

Analytical methods and statistical tests applied to the data should be documented, thus providing a rationale for choosing one set of methods over other alternatives. Quality control measures also should be documented (e.g., statistical confidence levels, standards of reference, performance requirements, internal evaluation criteria). Indicate by way of discussion how data are to be synthesized, interpreted and integrated into final work products, and how and where the data are to be catalogued and stored for ready retrieval at later dates.

A map clearly showing the study location and any other features of interest *must be included*. Use a U.S. Geological Survey topographic map, or an equivalent, in constructing the location map for the proposal. Consultation with reserve personnel to identify existing maps is strongly recommended.

(5) *Project Significance*. In this section, discuss how the proposed research effort will enhance or contribute to improving the state of knowledge of the estuary and assist reserve management decisionmaking, i.e., why is the proposed research important and how can the results be used to manage estuarine resources? This section must also discuss, in detail, the relation of the proposed research to the research priorities stated in the research announcement. In addition, the applicant must also provide a clear discussion of how the proposed research addresses state and national estuarine and coastal resource management issues. If research findings may be applicable to other sites in the National Estuarine Reserve Research System, this should be given special mention. If the research is to be conducted at more than one reserve, the applicant must provide copies of correspondence with the appropriate reserve managers indicating consultation with the managers and their support for the proposed project.

(6) *Milestone Schedule*. A milestone schedule is required in the proposal. This schedule should show, opposite tasks required to accomplish project objectives, the anticipated dates for completing field work and data collection, data analysis, progress reports, the draft report, the final report, and other related activities.

(7) *Personnel and Project Management*. Give a complete description of how the project will be managed, including the name and expertise of the principal investigator and the name(s), expertise, and task assignments of team members. Evidence of ability to perform should be

supported by reference to similar efforts performed. Resumes listing qualifications related to professional and technical personnel should be provided. In an appendix, list each investigator's publications during the past five (5) years. The proposal should discuss and explain any portion of work expected to be subcontracted and identify probable sources.

(8) *References*. Provide complete references for current literature, research, and other appropriate published and unpublished documents cited in the text of the proposal.

(9) *Budget*. The applicant may request funds under any of the categories listed below as long as the costs are reasonable and necessary to perform research and are determined to be in accordance with the previously mentioned 15 CFR Part 24 and OMB Circulars A-102, A-87, and A-110. The amount of Federal funds requested must be matched on at least an equal basis by cash or the value of goods and services, except land, directly benefitting the research project. General guidelines for the non-Federal share are contained in 15 CFR Part 24 and OMB Circular A-102.

The budget should contain itemized costs with appropriate narratives justifying proposed expenditures. Budget categories may be broken down as follows, clearly showing both Federal and non-Federal shares:

- Salaries and Wages*. Salaries and wages of the principal investigator and other members of the project team constitute direct costs in proportion to the effort devoted to the project. The number of full-time person months or days and the rate of pay (hourly, monthly, or annually) should be indicated. Salaries requested must be consistent with the institution's regular practices. The submitting organization may request that salary data remain confidential information.
- Fringe Benefits*. Fringe benefits (i.e., social security, insurance, retirement) may be treated as direct costs as long as this is consistent with the institution's regular practices.
- Equipment*. While not the primary purpose of these funds, research funds may be approved for the purchase of major equipment only if the following conditions are met: (a) a lease vs. purchase analysis has been conducted and the findings determine that purchase is the most economical method of procurement; (b) there is a demonstrated need for the equipment to support reserve-sponsored research after the termination of the research award under which the equipment

was purchased; and there are adequate facilities and provisions for housing, storing, protecting, and maintaining the equipment on location at the reserve after the termination of the research award.

Discuss each of these points along with the purpose of the equipment and a justification for its use. Provide a list of equipment to be purchased, leased, or rented by model number and manufacturer, where known. Equipment acquired costing \$300 or more with a life expectancy of 2 years or more becomes the property of the Marine and Estuarine Management Division at the termination of the contract.

—*Travel*. Travel costs are reimbursable only to the extent provided by Government Travel Regulations. The type, extent, and estimated cost of travel should be explained and justified in relation to the proposed research. Travel expense is limited to round trip travel to field research locations and should not exceed 40 percent of total direct costs. Funds may be requested for transportation and subsistence, and for consultants' travel. Travel to conferences will not be approved.

—*Other Direct Costs*. Other anticipated costs should be itemized under the following categories: (a) *Materials and Supplies*. The budget should indicate in general terms the types of expendable materials and supplies required and their estimated costs; (b) *Research Vessel or Aircraft Rental*. Include purpose, unit cost, duration of use, and justification; (c) *Laboratory Space Rental*. Funds may be requested for use of laboratory space at research establishments away from the granted institution while conducting studies specifically related to the proposed effort; (d) *Telecommunication Services and Reproduction Costs*. Include expenses associated with telephone calls, telex, xeroxing, reprint charges, film duplication, etc.; (f) *Consultant Services and Subcontracts*. Consultant services should be disclosed and justified in the proposal. Furnish information on consultant's expertise, primary organizational affiliation, daily compensation rate, and number of days of service. Travel should be listed under the travel budget; (g) *Computer Services*. The cost of computer services may be requested and must be justified, including data analyses and storage, word processing for report preparation and computer-based retrieval of scientific and technical information.

—*Indirect Costs*. Include fees and overhead costs based on the approved Federal formula.

(10) *Requests for Reserve Support Services*. On-site reserve personnel sometimes can provide limited logistical support for research projects in the form of manpower, equipment, supplies, etc. Any request for reserve support services should be approved by the reserve manager prior to proposal submission and included as part of the proposal package in the form of written correspondence.

(11) *Coordination with Other Research in Progress or Proposed*. MEMD encourages collaboration and cost-sharing with other investigators, regardless of their funding sources, to enhance scientific capabilities and avoid unnecessary duplication of effort. Proposals should include a description of how the proposed effort will be coordinated with other research projects that are in progress or proposed, if applicable.

(12) *Other Sources of Financial Support*. List all current or pending research to which the principal investigator or other key personnel have committed their time during the period of the proposed work, regardless of the source of support. Indicate the level of effort or percentage of time devoted to these projects.

In addition to the required non-federal match, MEMD encourages investigators to seek other sources of financial support to supplement Federal funds. If the proposal submitted to MEMD is being submitted to other possible sponsors, list them and describe the extent of support being sought. Disclosure of this information will not jeopardize chances for Federal funding.

(13) *Permits*. The applicant must apply for any applicable state or Federal permits. Attach a copy of the permit application and supporting documentation to the proposal as an appendix. MEMD will not release funding until it receives written notification of all required permits.

2. Submission of Proposals

Proposals for research funds under section 315(e)(1)(B) Research System are solicited annually for award the following fiscal year. Proposal due dates and other pertinent information are contained in the announcement of research opportunities. A list of the appropriate reserve and MEMD contact persons is attached to the research announcement. All proposals sent to MEMD must include a cover letter that cites and references the **Federal Register** notice in which the announcement appeared. Proposers must submit an

original and two (2) copies of each proposal they submit.

3. Proposal Review and Evaluation

Proposals received by MEMD are acknowledged, forwarded to the appropriate reserve manager, and sent out for national peer review. All proposals are reviewed by the appropriate MEMD personnel including project managers, research coordinator, Chief, reserve managers and their research advisory committees, and by usually 3–10 other individuals who are acknowledged experts in the particular field represented by the proposal. Proposers are invited to suggest the names of at least 3 individuals who, in their opinion, are especially well qualified to evaluate the proposal objectively. When a grant is awarded, verbatim copies of the reviews, excluding the names of reviewers, are mailed, upon request, to the Principal Investigator/Project Director.

In order to provide for the fair and equitable selection of the most meritorious research projects for support, MEMD has established criteria for their review and evaluation. These criteria are intended to be applied to all research proposals in a balanced and judicious manner. The criteria used in the peer review process to aid MEMD in its final selection of research projects are listed below, together with the elements that constitute each criterion and the relative weight (in parenthesis):

a. *Scientific Merit* (3.0). This is used to determine whether the objectives of the proposal or of the observations is important to the field and to assess the likelihood that research will improve the scientific understanding of estuarine processes within the reserve as well as in other similar estuaries.

b. *Importance to Reserve Management and to Regional Coastal Management Issues* (2.0). This is used to determine its importance to management of the reserve (does it address management issues relevant to the site and the region?) and its suitability for addressing coastal management issues of regional and/or national importance.

c. *Relevance to National Research Priorities* (2.0). This criterion is used to assess the relationship between the objectives of the proposed project and the National Research Priorities established by NOAA (see Section IV.A National Research Priorities).

d. *Technical Approach* (3.0). This is used to assess the technical feasibility of the proposed project the reasonableness of the hypotheses, the degree to which the proposed timeline is

realistic, the appropriateness and scientific validity of the proposed analytical methods, and the degree to which the proposal demonstrates an understanding of the reserve environment and management needs, the current state of knowledge in the particular field of research interest, and the total research requirements.

e. *Qualifications of P.I. and Key Personnel* (2.0). This criterion relates to the experience and past performance of the principal investigator and key personnel, their familiarity with the geographic area of the proposed project, and their publication record.

f. *Institutional Support and Capabilities* (1.0). This relates to the extent of institutional support for and commitment to the proposed research and what facilities, equipment, and other resources are available to the principal investigator and key personnel for use in accomplishing the proposed work. Because of the 50 percent matching requirement, this is an especially important consideration.

g. *Budget* (1.0). This criterion is used to determine whether the budget is realistic and reasonable for accomplishing the proposed tasks.

4. Reporting Requirements

Awards for research are usually made during the second quarter of the fiscal year. Quarterly performance reports, a draft technical report, and a final technical report are required as conditions of the award.

Performance reports should contain a summary of all work performed during the preceding quarter and show the overall progress against the milestone schedule in the approved proposal. A statement of the milestone reached, data compiled, and analyses completed is included. In addition, a summary of any significant technical, manpower, schedule, or cost problems encountered during the preceding quarter, an assessment of their probable impact on the project's approved milestone schedule, and a statement of any corrective action taken or proposed is also required. Also required is a summary of major work activities scheduled for the next quarter and any questions or problems regarding the applicant's work that requires discussion with or resolution by MEMD.

The draft and final technical reports are required to be prepared following MEMD's "Guidelines for Preparing Technical Reports on Research in National Estuarine Research Reserves" which is appended to the award, but is also available upon request.

5. Further Information

For further information on research opportunities under the National Estuarine Reserve Research System, contact the on-site personnel listed in this text or the Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management, 1825 Connecticut Avenue, NW., Suite 714, Washington, DC 20235 (202) 673-5126.

C. General Requirements

Grants for Federal financial assistance are subject to certain general requirements, such as compliance with the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and other laws and regulations prohibiting discrimination; patent and copyright requirements; cost sharing; the use of U.S. flag carriers for international travel; and the use of foreign currency as appropriate to accomplish the objectives of a project.

The requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs," are applicable to the award of grants under this notice. However, the requirements of the Executive Order apply to individuals only if a state or local government is the provider of the Non-Federal funds.

Applicants are also subject to the requirements of 15 CFR Part 26, "Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)."

D. Adherence to Original Objectives

The Principal Investigator should feel free to pursue important leads that may arise during the conduct of the project. MEMD support will not be jeopardized if the Principal Investigator discontinues or materially modifies the originally planned line of inquiry in favor of one that appears to have more promise. MEMD must, however, give prior written approval when a modification would result in a major deviation from the original objective(s) or project scope, including activities specifically excluded from support when the award was made.

E. Adherence to Original Budget Estimates

The grant award includes or refers to a budget that lists the items for which funds are provided. All budget transfers are subject to the provisions of 15 CFR Part 24 and OMB Circular A-110, as appropriate. While the Principal Investigator has reasonable flexibility to alter direction of the project when changes seem advantageous, the grantee

organization must consider the effect of any budget reallocations on the indirect cost portions of the budget, and must observe the conditions prescribed by the award. Any change in the budget that will affect the match portion of the award must be approved in writing by MEMD. When any budget change requires MEMD approval, two copies of the request, signed by the Principal Investigator and by the grantee organization's authorized official, should be sent to the assigned MEMD Contracting Officer's Technical Representative. The request should clearly state which budget items are to be changed and by what amounts and should explain the reasons for the change.

F. Changes in Personnel

Written MEMD approval is required for any permanent change in Principal Investigator(s) or project director(s) or for any temporary change in excess of three (3) months, such as an investigator taking sabbatical leave. Further, MEMD must be informed when it appears that a Principal Investigator will devote substantially more or less effort to the work than anticipated in the approval proposal. Written prior approval is also required for any change in senior personnel specifically named in the proposal and for the addition of senior personnel not named in the proposal.

G. Transfer of Principal Investigator

When a Principal Investigator plans to leave an institution during the course of an award, the institution has the prerogative to nominate a substitute PI or request that the award be terminated and closed out. Substitute PIs are subject to written MEMD approval. In those cases where a particular PI's participation is integral to a given project and the PI's original and new institution agree, MEMD will request a transfer of the grant and the assignment of remaining unobligated funds to the PI's new institution.

H. Subcontracts

Subcontracts that become necessary after a grant has been made must be submitted to MEMD for approval. The proposed performance statement and budget, a statement indicated the basis for selection of the contractor, and a justification of the proposed arrangement must be provided.

I. Suspension or Termination of Grants

MEMD grants may be suspended or terminated in accordance with the procedures contained in the General Grant Conditions. Grants may also be

terminated by mutual agreement. Termination by mutual agreement shall not affect any commitment or grant funds that, in the judgment of MEMD and the grantee, had become firm before the effective date of the termination.

J. Proposals As Public Record

A proposal that results in a MEMD grant becomes part of the record of the transaction and will be available to the public, upon written request, except as described below. Information or material that MEMD and the grantee mutually agree to be of privileged nature will be held in confidence to the extent permitted by the freedom of Information Act and other relevant laws. Without assuming any liability for inadvertent disclosure, MEMD will seek to limit dissemination of such information to its personnel and, when necessary for evaluation of the proposal, to outside reviewers. Accordingly, any privileged information should be in a separate, accompanying statement bearing a legend such as: "The following is (proprietary) (specify) information that (name of proposing organization) requests not to be released to persons outside the Government, except for purposes of evaluation." Appropriate labeling in the proposal aids identification of what under law may be specifically withheld from disclosure.

A proposal that does not result in a MEMD grant will be retained by MEMD but will be released to the public only with the consent of the proposer or to the extent required by the law. Portions of proposals resulting in awards that contain descriptions of inventions in which either the Government or the grantee owns or may own a right, title, or interest (including a nonexclusive license) will not normally be made available to the public until after reasonable time has been allowed for filing patent application. It is the policy of MEMD to notify the grantee of receipt of requests for copies of funded proposals so that the grantee may advise MEMD of such inventions described in the proposal.

K. Inventions and Copyrightable Materials

Each MEMD grant in support of research may be subject to a patent rights clause. Normally, grantees may elect to retain principal rights to their employees' inventions, subject to the conditions set forth in the U.S. Department of Commerce's final rule published on March 18, 1987 entitled "Rights to Inventions made by Nonprofit Organizations and Small Business Firms (37 CFR Part 401). Each MEMD grant

may be subject to several conditions affecting copyrightable material (reports, publications, software, etc.) produced in the performance of work under the grant. Normally, grantees may own or permit others to own most rights to such material, with the Government receiving the right to use the material for Government purposes.

MEMD encourages dissemination, especially through publication in refereed journals and similar media of research performed under its grants. MEMD may arrange for the publication of outstanding MEMD-funded research projects in its NOAA Technical Memorandum Series and disseminate through the National Technical Information Service (NTIS) of the U.S. Department of Commerce.

Date: April 4, 1989

Thomas J. Maginnis,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[Federal Domestic Assistance Catalog Number 11.420, National Estuarine Reserve Research System]

[FR Docket Number 90377-9077]

Appendix I. NERRS On-Site Management Personnel

Alabama

Weeks Bay National Estuarine Research Reserve, Walter Stevenson, Jr., Resource Development Section, Dept. of Economic and Community Affairs, 3465 Norman Bridge Road, P.O. Box 2939, Montgomery, AL 36105, (205) 284-8735

California

Elkhorn Slough National Estuarine Research Reserve, Mark Silberstein, Program Coordinator, P.O. Box 267, Moss Landing, CA 95039, (408) 728-0804
Kenneth Moore, Manager, 1454 Elkhorn Road, Watsonville, CA 95076, (408) 728-0560
Tijuana River National Estuarine Research Reserve, Paul Jorgenson, Manager, 3990 Old Town Avenue, Suite 300 C, San Diego, CA 92110, (619) 237-6766

Florida

Apalachicola River National Estuarine Research Reserve, Woodward Miley II, Manager, 261 7th Street, Apalachicola, FL 32320, (904) 653-8063
Rookery Bay National Estuarine Research Reserve, Kris Thoemke, Manager, 10 Shell Island Road, Naples, FL 33942, (813) 775-8845

Georgia

Sapelo Island National Estuarine Research Reserve, Noel Holcomb, Reserve Coordinator, Dept. of Natural Resources, P.O. Box 19, Sapelo Island, GA 31327, (912) 458-2251

Hawaii

Waimanu Stream National Estuarine Research Reserve, Robert Lee, Dept. of

Planning and Economic Development, P.O. Box 2359, Honolulu, Hawaii 96804, (808) 548-3047

Maine

Wells National Estuarine Research Reserve, James List, P.O. Box 1559, Wells, ME 04090, (207) 646-4521

Maryland

Chesapeake Bay National Estuarine Research Reserve, R. Randall Schneider, Manager, Dept. of Natural Resources, Tawes State Office Building, Annapolis, MD 21401, (301) 269-3782

Massachusetts

Waquoit Bay National Estuarine Research Reserve, Ilo Howard, Manager, Division of Forests and Parks, Dept. of Environmental Management, P.O. Box 66, South Carver, MA 02366, (617) 866-2580

New Hampshire

Great Bay National Estuarine Research Reserve, Joanne Casullo, New Hampshire Office of State Planning, 2½ Beacon St., Second Floor, Concord, NH 03301, (603) 271-1752

New York

Hudson River National Estuarine Research Reserve, Betsy Blair, Manager, Dept. of Environmental Conservation, 21 South Putt Corners Road, New Platz, NY 12561, (914) 255-5453

North Carolina

North Carolina System National Estuarine Research Reserve, Manager, Office of Coastal Management, P.O. Box 27687, Raleigh, NC 27611, (919) 733-2293

Ohio

Old Woman Creek National Estuarine Research Reserve, Eugene Wright, Manager, David Klarer, Research Coordinator, 2514 Cleveland Road, East, Huron, OH 44839

Oregon

South Slough National Estuarine Research Reserve, Michael Graybill, Manager, P.O. Box 5417, Charleston, OR 97420, (503) 888-5558

Puerto Rico

Anselmo DuPortu, Manager, Jobos Bay National Estuarine Research Reserve, Dept. of Natural Resources, P.O. Box 5867, San Juan, PR 00906, (809) 864-0105

Rhode Island

Narragansett Bay National Estuarine Research Reserve, Roger Greene, Manager, Dept. of Environmental Management, 9 Hayes Street, Providence, RI 02908, (401) 277-2632

Washington

Padilla Bay National Estuarine Research Reserve, Terry Stevens, Manager, 1043 Bayview-Edison Road, Mt. Vernon, WA 98273, (206) 428-1558

BILLING CODE 3510-08-M

Appendix II

Cover Sheet for Research Proposals to the Marine and Estuarine Management Division

Date of Announcement: _____ Proposal Closing Date: _____

Proposed Starting Date: _____ Project Duration: _____

Research Reserve for Proposed Activity: _____

Title of Research Project: _____

Name and Address of Organization to Which Award is To Be Made

Name, Address & Telephone of Principal Investigator

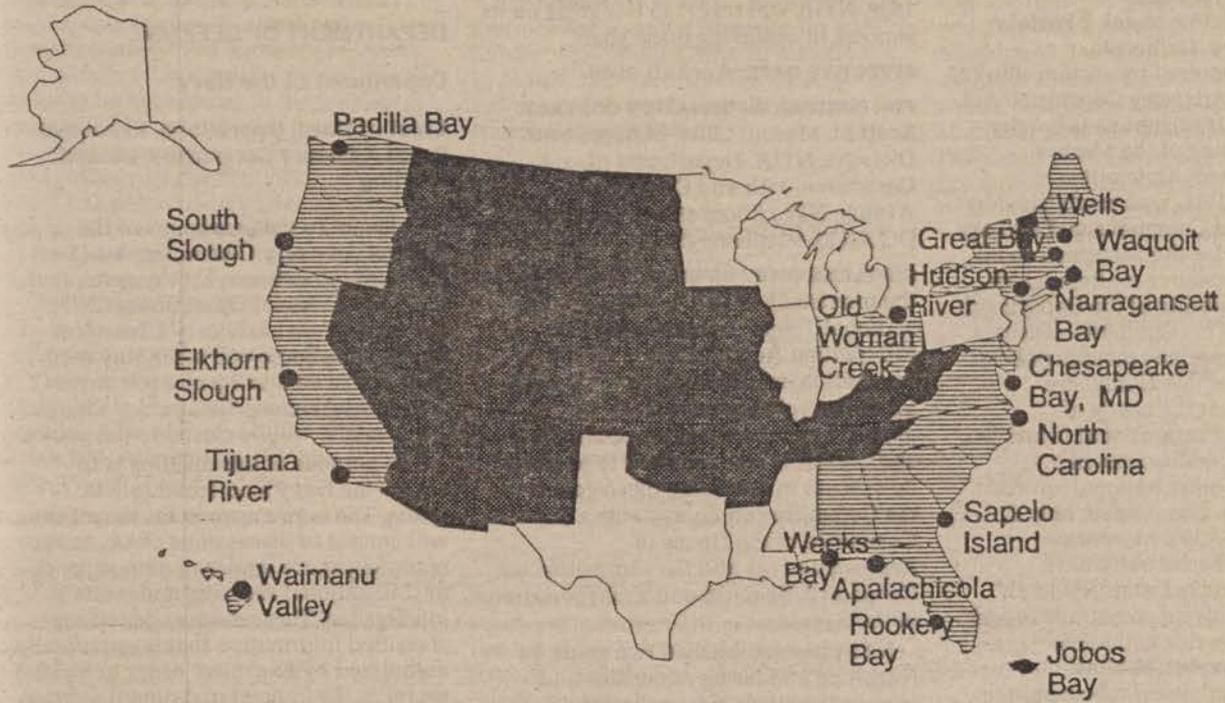
Name, Address & Telephone Number of Additional Investigator

Name, Address & Telephone Number of Additional Investigator

Requested Amount (Federal): _____ Match (Non-Federal): _____

Abstract (250 Words on a Separate Sheet)

Figure 1 The National Estuarine Reserve Research System



Marine Fisheries Advisory Committee; Public Meeting

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

Time and Date: Meeting will convene at 9:00 a.m., May 9, 1989, and adjourn at 4:00 p.m., May 10, 1989.

Place: Doubletree Hotel, 2 Portola Plaza, Monterey, California.

Status: As required by section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), notice is hereby given of a meeting of the Marine Fisheries Advisory Committee (MAFAC). MAFAC was established by the Secretary of Commerce on February 17, 1971, to advise the Secretary on all living marine resource matters which are the responsibility of the Department of Commerce. This Committee ensures that the living marine resource policies and programs of this Nation are adequate to meet the needs of commercial and recreational fishermen, environmental, state, consumer, academic, and other national interests.

Matters to Be Considered: May 9, 1989, 9:00 a.m.-5:30 p.m., marine recreational fisheries activities/subcommittee report, state/Federal/council activities/subcommittee report, commercial fisheries activities/subcommittee report, habitat conservation activities/subcommittee report.

May 10, 1989, 8:30 a.m.-4:00 p.m., consumer affairs subcommittee report, ad hoc group report on seafood wholesomeness, habitat conservation and seafood safety, and presentation and tour of the NOAA Center for Ocean Analysis and Prediction.

FOR FURTHER INFORMATION CONTACT: Ann Smith, Executive Secretary, Marine Fisheries Advisory Committee, Constituent Affairs Staff-Fisheries, Office of Legislative Affairs, NOAA, 1335 East-West Highway, Silver Spring, MD 20910. Telephone: (301) 427-2259.

Date: April 5, 1989.

James E. Douglas, Jr.,
Deputy Assistant Administrator for Fisheries.
[FR Doc. 89-8461 Filed 4-7-89; 8:45 am]

BILLING CODE 3510-22-M

National Telecommunications and Information Administration

[Docket No. 81252-8252]

Administration Recruitment and Hiring Goals for Minority Members and Women

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice.

SUMMARY: This notice establishes NTIA's semiannual goals for the recruitment and hiring of minority members and women to the Administration's staff during fiscal year 1989. NTIA will report to Congress on its success in achieving these goals.

EFFECTIVE DATE: April 10, 1989.

FOR FURTHER INFORMATION CONTACT: Scott M. Mason, Chief, Management Division, NTIA, Department of Commerce, 14th and Constitution Avenue NW., Room 4890, Washington, DC 20230; telephone 202/377-1800.

SUPPLEMENTARY INFORMATION: Under the provisions of Pub. L. 100-584, the National Telecommunications and Information Administration (NTIA) is required to establish semiannual goals for the recruitment and hiring of minority members and women to its staff. NTIA is also required to report on its success in achieving these goals to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

NTIA has established two goals for recruiting and hiring minorities and women based on its own and the Department of Commerce's Multi-Year Affirmative Employment Program Plan for Minorities and Women.

One NTIA goal is to solicit more applications from minorities and women. NTIA will participate with the Department in their plan to: (1) Develop a list of recruitment sources for minorities and women, (2) identify responsive sources currently used within the Department, and (3) develop a method for sharing resources for on-campus recruiting.

Another NTIA goal is to attempt to locate minorities for scientific positions. NTIA will participate with the Department in their plan to: (1) Promote Commerce interaction with public schools which have high minority enrollments (Adpot-A-School program), (2) increase the number of cooperative education coordinate recruitment efforts for entry-level minority science graduates, and (3) promote joint projects with the National Science Foundation.

NTIA will submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives by July 15, 1989, in accordance with the requirements of Pub. L. 100-584.

Date: March 29, 1989.

Alfred C. Sikes,
Administrator.

[FR Doc. 89-8345 Filed 4-7-89; 8:45 am]

BILLING CODE 3510-60-M

DEPARTMENT OF DEFENSE

Department of the Navy

Chief of Naval Operations, Executive Panel 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 Chief of Naval Operations (CNO) Executive Panel Advisory Committee Space Task Force will meet May 9-10, 1989 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to assess the Navy's potential role in space. The entire agenda for the meeting will consist of discussions of key issues regarding space exploration in support of U.S. national security, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. 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 Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Dated: April 5, 1989.

Sandra M. Kay

Department of the Navy Alternate Federal Register Liaison Officer.

[FR Doc. 89-8424 Filed 4-7-89; 8:45 am]

BILLING CODE 3810-AE-M

Chief of Naval Operations; Executive Panel 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 Chief of Naval Operations (CNO) Executive Panel Advisory Committee Navy Strategy Formation Task Force will meet May 4-5, 1989 from 9 a.m. to 5

p.m. in Monterey, California. All sessions will be closed to the public.

The purpose of this meeting is to discuss the Formation of Navy Strategy. The entire agenda for the meeting will consist of discussions of key issues regarding formation of Navy Strategy in support of U.S. national security and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. 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 Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Date: April 5, 1989.

Sandra M. Kay

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89-8425 Filed 4-7-89; 8:45 am]

BILLING CODE 3810-AE-M

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 will meet on May 4-5, 1988. The meeting will be held at the Naval Submarine Base, Kings Bay, Georgia. The meeting will commence at 8:00 a.m. and terminate at 5:00 p.m. on May 4; and commence at 8:00 a.m. and terminate at 4:00 p.m. on May 5, 1989. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings and demonstrations for the committee members on submarine operations and training. The agenda will include briefings and discussions related to submarine maintenance, logistic support, refit activity, refresher training and sea trial operations. These briefings, discussions and demonstrations 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 are in fact properly classified pursuant to such Executive Order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the

meeting. Accordingly, the Secretary of the Navy had 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) 696-4870.

Dated: April 5, 1989.

Sandra M. Kay

Department of the Navy Alternate Federal Register Liaison Officer.

[FR Doc. 89-8426 Filed 4-7-89; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award Grant to University of Columbia

AGENCY: Department of Energy.

ACTION: Acceptance of an unsolicited application for grant award.

SUMMARY: The Department of Energy, Bartlesville Project Office announces that pursuant to 10 CFR 600.14, it intends to award a grant based on an unsolicited application submitted by Columbia University. The application is entitled "Interactions of Structurally Modified Surfactants with Reservoir Minerals: Calorimetric, Spectroscopic and Electrokinetic Studies."

Scope: The research activity addressed in this effort proposes to increase our understanding of the role of the surfactant flooding processes as they relate to the loss of surfactants on reservoir minerals and the relation of the structure of the surfactant to the amount of the adsorption.

Studies on surfactant adsorption have shown the process to be highly complex and depend on a number of factors such as pH, ionic strength, temperature, surfactant structure and purity and rock mineralogy. The adsorption characteristics of ethoxylated sulfonates have been investigated to some extent. However, there has been no systematic work on the adsorption behavior of the xylene sulfonates. The subject proposal attacks this issue directly, and is therefore considered unique.

The multi-level approach to study these interactions in detail will be necessary to make surfactant flooding a viable process. The loss of surfactant flooding by adsorption onto reservoir minerals is a major cause of poor economics of surfactant flooding.

The U.S. Department of Energy (DOE) recognizes the need and opportunity to develop and apply new concepts to improve oil recovery from known oil fields. The DOE is particularly interested in developing new Enhanced Oil Recovery processes which focus on light oil recovery from those fields which are on the verge of being abandoned. Extreme dependence on non-U.S. sources for oil is inevitable unless significant action is taken to stabilize reserves. Chemical Flooding, Enhanced Oil Recovery processes are not now viable mainly due to high adsorption loss of the surfactants.

The term of the grant will be for a 12 month period at an estimated value of \$100,000.00.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921-165, Pittsburgh, PA 15326, Attn: Cynthia Y. Mitchell, Telephone: (412) 892-4862.

Gregory J. Kawalkin,

Acting Director, Acquisition and Assistance Division, Pittsburgh Energy Technology Center.

[FR Doc. 89-8453 Filed 4-7-89; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award (Grant); National Laser User's Facility; University of Rochester

AGENCY: Department of Energy (DOE).

ACTION: Grant solicitation announcement for laser fusion research application.

SUMMARY: Department of Energy (DOE) San Francisco Operations Office (SAN) announces that it plans to conduct a technically competitive solicitation for basic research experiments in high-energy density studies at the National Laser User's Facility (NLUF) located at the University of Rochester/Laboratory for Laser Energetics (UR/LLE). Universities or other higher education institutions, private sector not-for-profit or for-profit organizations, or other entities are invited to submit grant applications. The total amount of funding expected to be available for the FY90 cycle of this program is \$600,000, and multiple awards are anticipated.

Grant Solicitation Number: DE-PS03-89SF18189

The actual work to be accomplished will be determined by the experiments that are selected for award. Proposed experiments will be evaluated and ranked through scientific peer review

against predetermined, published and available criteria. Final selection for awards will be made by the DOE from among the top ranked applications. It is anticipated that multiple grants will be awarded within the available funding.

The unique resources of the NLUF are available to scientists for state-of-the-art experiments primarily in the area of inertial fusion and related plasma physics. Other areas such as spectroscopy of high ionized atoms, laboratory astrophysics, fundamental physics, materials science, and biology and chemistry will be considered on a second priority basis.

The LLE was established in 1970 to investigate the interaction of high power lasers with matter. It is the home of OMEGA, a 2.5 trillion watt, 24-beam laser system (at 0.35 um) and the Glass Development Laser (GDL) a 250 billion watt, single-beam prototype for OMEGA (at 0.35um). The NLUF offers the capability for laser matter interaction experiments or for using short (100 picosecond) pulses of laser light, X-rays, or neutron for probing the structure of matter. More technical information about the facilities and potential collaboration at the NLUF can be obtained from: Dr. James Knauer, Manager, National Laser User's Facility, University of Rochester/LLE, 250 East River Road, Rochester, NY 14623, Telephone No.: (716) 275-2074.

The solicitation document contains all the information relative to this acquisition for prospective applicants. Interested parties can obtain copies of the solicitation document by a written request to: Earl Schalin, U.S. Department of Energy, San Francisco Operations Office, 1333 Broadway, Oakland, CA 94612.

Earl Schalin,

Acting Branch Chief MO/DP/ER Branch,
Contracts Management Division.

[FR Doc. 89-8454 Filed 4-7-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER89-292-000 et al.]

Florida Power & Light Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Florida Power & Light Company

[Docket No. ER89-292-000]

April 3, 1989.

Take notice that Florida Power & Light Company (FPL), on March 27, 1989,

tendered for filing as an initial rate schedule a Short Term Agreement to Provide Power and Energy By Florida Power & Light Company To City of Tallahassee, Florida, and Cost Support Schedules C, D, F and G (together with Cost Support F Supplements) which support the rates for sales under the Short Term Agreement.

The new rate schedule provides for the sale of power and energy from FPL to the City of Tallahassee, for a specified term commencing on April 1, 1989 and remains in effect until the later of: (1) April 30, 1989 or (2) the time when Hopkins Unit No. 2 is returned to service. FPL respectfully requests that the proposed Short Term Agreement and Cost Support Schedules, C, D, F and G (together with Cost Support Schedule F Supplements) to be made effective on April 1, 1989. According to FPL, a copy of this filing was served upon City of Tallahassee, and The Florida Public Service Commission.

Comment date: April 17, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Pacific Gas and Electric Company

[Docket No. ER89-291-000]

April 3, 1989.

Take notice that on March 27, 1989 Pacific Gas and Electric Company (PG&E) tendered for filing an initial rate schedule for the provision of transmission service to the Sonoma County Water Agency (Sonoma) for delivery of power from the Western Area Power Administration.

Western has allocated 1.5 megawatts of power to Sonoma. PG&E has agreed to accept the power at Western's Tracy Switchyard and to deliver it to Sonoma at PG&E's Wohler Pumping Plant, adjusted for losses and transformed to distribution voltage. In addition to transmission and distribution serve, PG&E shall provide metering service for Western.

PG&E has requested waivers of the notice period requirements to allow an effective date of May 1, 1989. If that date cannot be granted, PG&E has requested the rate schedule to be made effective on the earliest possible subsequent date, such that service shall commence on the first day of the month following the effective date.

Copies of this filing were served upon Western, Sonoma, and the Public Utilities Commission of the State of California.

Comment date: April 17, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Southern California Edison Company

[Docket No. ER89-287-000]

April 3, 1989.

Take notice that on March 22, 1989, Southern California Edison Company (Edison) tendered for filing the Edison-Anaheim CDWR Firm Transmission Service Agreement, the Edison-Banning CDWR Firm Transmission Service Agreement, and the Edison-Riverside CDWR Firm Transmission Service Agreement (Agreements) which have been executed by Edison and the Cities (Cities) of Anaheim, California (Anaheim), Banning, California (Banning), and Riverside, California (Riverside).

Under the Agreements, Edison agrees to make firm transmission service available to Anaheim, Banning, and Riverside until midnight, October 31, 1988, from Vincent Substation to the Cities' Point of Delivery per the Firm Transmission Service Agreements. These Firm Transmission Service Agreements are resource-specific. Service is provided only for the energy and capacity delivered to Edison's interconnection with CDWR at Vincent Substation per the terms of the Power Sale Agreements, and may not be used by the Cities for any other purpose. The maximum capacity to be transmitted for the Cities will be as follows:

City	May-Oct.
Anaheim.....	30 MW
Banning.....	5 MW
Riverside.....	20 MW

Copies of this filing were served upon the Public Utilities Commission of the State of California and the Cities of Anaheim, Banning, and Riverside, California.

Comment date: April 17, 1989, in accordance with Standard Paragraph E at the end of this document.

4. New York State Electric & Gas Corporation

[Docket No. ER89-288-000]

April 3, 1989.

Take notice that New York State Electric & Gas Corporation (NYSEG) on March 23, 1989, an agreement for the borderline sale of energy by NYSEG to Connecticut Light & Power Company (CL&P). The agreement was made for the convenience of CL&P whose facilities are not readily available to provide service to the customers served by this interconnection.

NYSEG requests that the 60-day filing requirement be waived and that July 8,

1986 be allowed as the effective date of the filing.

NYSEG has filed a copy of this filing with CL&P and with the Public Service Commission of the State of New York.

Comment date: April 13, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Arkansas Power & Light Company

[Docket No. ER89-159-001]

April 3, 1989.

Take notice that on March 17 and March 21, 1989, Arkansas Power & Light Company (AP&L) tendered for filing its revised 1988 Rate Formula Agreement between AP&L and the Cities of Conway, West Memphis, and Osceola, Arkansas.

Comment date: April 17, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Robbins Resource Recovery Company

[Docket No. ER89-289-000]

April 3, 1989.

Take notice that on March 23, 1989, Robbins Resource Recovery Company (RRRC) tendered for filing a proposed initial rate schedule applicable to sales at wholesale of electric energy and capacity to Commonwealth Edison Company (Commonwealth Edison) from a nonhazardous municipal solid waste refuse-derived fuel waste-to-energy facility to be located in Village of Robbins, Illinois (the Facility). This initial rate schedule is an Electric Service Contract between RRRC and Commonwealth Edison (the Agreement) and has been designated RRRC Rate Schedule No. 1.

RRRC has given notice that the Facility will be a refuse-derived fuel (RDF) waste-to-energy small power production facility with a net electric power production capacity of 41 megawatts. The Facility will be a qualifying facility (QF) under sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA) and an application for certification as a qualifying small power production facility was filed on February 23, 1989, in FERC Docket No. QF89-156-000. While the Commission has not yet acted on the application for QF certification, once certified as a QF the Facility, RRRC states that the Facility will be exempt from regulation under the Public Utility Holding Company Act from certain state laws and regulations, but will remain subject to the Commission's jurisdiction under the Federal Power Act.

RRRC requests waiver of the Commission's rule requiring that rate schedules be filed not less than sixty

(60) days nor more than one hundred-twenty (120) days prior to the date on which service is to commence under an initial rate schedule. This requirement is intended to prevent the use of stale data in developing the test period for cost-of-service based rates. Section 35.3 of the Commission's regulations allows the Commission to waive the notice period in appropriate circumstances. Since the rates are formula rates based on the buyer's costs, and do not involve RRRC's costs for a particular test period, this requirement is not applicable.

RRRC also seeks waiver of the Commission's regulations regarding cost-of-service documentation. The Commission has recognized, in other cases,¹ that the cost-of-service data requirements contained in § 35.12(b)(5) of its regulations are irrelevant insofar as they would require a small power producer to substantiate its cost-of-service. RRRC requests this waiver on the grounds that this information is not relevant because rates are based on the buyer's costs, and are not dependent upon the seller's costs.

RRRC seeks waiver of the Commission's regulations regarding the Uniform System of Accounts prescribed for public utilities and licensees subject to the provisions of the Federal Power Act specified by 18 CFR Parts 101 and 104. Since rates are initially based upon the buyer's costs, this information and the need for uniformity in the seller's accounting systems are unnecessary. Moreover, this requirement imposes a substantial hardship and an undue burden upon RRRC as it requires more detailed accounting than RRRC would otherwise undertake.

RRRC seeks waiver of the Commission's regulations regarding certain accounts and reports required by 18 CFR Parts 41, 50, and 141. RRRC seeks this waiver on the basis that such information and reports are irrelevant because the rates under the contract are not to be determined by RRRC's costs. Therefore, it is not necessary to protect the public in general by requiring strict compliance with these sections.

RRRC also petitions the Commission to waive Commission rules that the Commission has previously determined not to be necessarily applicable to qualifying facilities such as the RRRC Facility. These include regulations regarding accounting practices, reporting requirements, annual charges, dispositions of property and consolidations, securities issuances and assumptions of liability and the holding of interlocking directorate positions as

they may apply to a RFD waste-to-energy facility.

Comment date: April 17, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Tampa Electric Company

[Docket No. ER89-290-000]

April 3, 1989.

Take notice that on March 24, 1989, Tampa Electric Company (Tampa Electric) tendered for filing Service Schedule J providing for negotiated interchange service between Tampa Electric and the City of Tallahassee, Florida (Tallahassee). Tampa Electric states that Service Schedule J is submitted for inclusion as a supplement under the existing agreement for interchange service between Tampa Electric and Tallahassee, designated as Tampa Electric Rate Schedule FERC No. 20.

Tampa Electric also tendered for filing, as a supplement to the Service Schedule J, a letter of Commitment providing for the sale by Tampa Electric to Tallahassee of up to 50 megawatts of capacity and energy.

Tampa Electric proposes an effective date of March 23, 1989 for the Service Schedule J and Letter of Commitment, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Tallahassee and the Florida Public Service Commission.

Comment date: April 17, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. Central Vermont Public Service

[Docket Nos. ER88-456-000 and ER88-629-000]

April 3, 1989.

Take notice that on March 17, 1989 a Settlement Agreement was filed by Central Vermont Public Service Corporation (the Company). This agreement is among the Company, its system power customers (the Villages of Johnson, Hyde Park, Lyndonville and Ludlow, Vermont), and the Vermont Department of Public Service. The Settlement Agreement resolves all issues concerning the Company's filings in these two dockets, which were consolidated for hearing.

Comment date: April 17, 1989, in accordance with Standard Paragraph E at the end of this notice.

9. Idaho Power Company

[Docket No. ER89-295-000]

April 3, 1989.

Take notice that on March 27, 1989, Idaho Power Company tendered for

¹ See *Wheelabrator Frye, Inc.*, Docket Nos. EL82-7-000 and EL82-12-000, 19 FERC ¶ 61,266 (1982).

filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1978, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes Original Volume No. 1) during November and December of 1988, along with cost justification for the rate charged. This filing includes the following supplements:

- Utah Power & Light Company—
Supplement No. 80
- Sierra Pacific Power Company—
Supplement No. 80
- Portland General Electric Company—
Supplement No. 62
- Washington Water Power Company—
Supplement No. 60
- Pacific Gas & Electric Company—
Supplement No. 35

Comment date: April 17, 1989, in accordance with Standard Paragraph E at the end of this notice.

10. Kansas Power and Light Company

[Docket No. ER89-294-000]

April 3, 1989.

Take notice that on March 27, 1989, Kansas Power and Light Company tendered for filing a proposed change in its Federal Energy Regulatory Commission Electric Services Tariff No. 123.

Schedule H—Participation Power Service provides for the purchase of Participation Power by Midwest Energy, Inc. for the period June 1, 1989, through September 30, 1989.

Copies of the filing were served upon Midwest Energy, Inc., and the Kansas Corporation Commission.

Comment date: April 17, 1989, in accordance with Standard Paragraph E at the end of this notice.

11. Louisville Gas and Electric Company

[Docket No. ER89-293-000]

April 3, 1989.

Take notice that Louisville Gas and Electric Company (Louisville) on March 27, 1989 (tendered for filing the initial Interconnection Agreement between Louisville and Indiana Municipal Power Agency (IMPA) dated February 7, 1989.

The purpose of this filing is to provide the parties with a coordinated, interconnected operation that provides for the sale, purchase and interchange of electric power and energy.

Copies of the filing were served on IMPA and the Public Service Commission of Kentucky.

The Interconnection Agreement provides for service schedules that are designated:

- I. Service Schedule A—Emergency Energy
- II. Service Schedule B—Interchange Energy
- III. Service Schedule C—Short Term Power

- IV. Service Schedule D—Seasonal Power
- V. Service Schedule E—Limited Power
- VI. Service Schedule F—Diversity Power

Comment date: April 17, 1989, in accordance with Standard Paragraph E at the end of this notice.

12. Public Service of New Hampshire

[Docket No. ER89-296-000]

April 3, 1989.

Take notice that March 23, 1989, Public Service Company of New Hampshire (PSNH) filed seven service agreements for service under its FERC Electric Tariff, Original Volume No. 2. The service agreements are requested to become effective on the dates shown below:

Companies	Proposed effective date
Connecticut Municipal Electric Coop.....	6/8/83
Hingham Municipal Light Plant.....	4/15/82
Massachusetts Municipal Wholesale Electric Co.....	5/1/82
New England Power Company.....	11/10/83
Taunton Municipal Lighting Plant.....	4/23/82
Town of Hull Light Plant.....	4/15/82
Westfield Gas and Electric Light Department.....	4/15/82

The above service agreements were inadvertently not filed. They are proposed to be terminated under the Company's pending filing in Docket No. ER89-207-000.

PSNH is no longer providing service under several service agreements and needs to terminate those agreements. The agreements are with Allied Power and Light Company, Burlington Electric Light Department, Citizens Utilities Company, Enosburg Falls Water and Light Department, Lyndonville Electric Department, Morrisville Water and Light Department, Northfield Electric Department, Orleans Electric Department, Readsboro Electric Light Department, Rochester Electric Light and Power Company, Village of Swanton, Washington Electric Cooperative, Inc. and Vermont Electric Power Company. PSNH requests that these service agreements be terminated on May 22, 1989.

Comment date: April 17, 1989, in accordance with Standard Paragraph E at the end of this notice.

13. Alamito Company

[Docket No. ER89-303-000]

April 4, 1989.

Take notice that on March 30, 1989, Alamito Company (Alamito) tendered for filing an executed 1989 Power Sales Agreement between Alamito Company and San Diego Gas & Electric Company (San Diego). The Contract provides for

the sale to San Diego of 100 MW of capacity and energy in the month of June 1989, if requested, and 244 MW of capacity and energy at stated prices for the remaining term of the Agreement, i.e., through December 1989. Power sales are contingent on the availability of the San Juan Unit No. 3.

Alamito requests that the submittal become effective sixty days after filing, but no later than June 1, 1989.

Comment date: April 19, 1989, in accordance with Standard Paragraph E at the end of this notice.

14. Arizona Public Service Company

[Docket No. ER89-302-000]

April 4, 1989.

Take notice that on March 30, 1989, Arizona Public Service Company (APS or Company) tendered for filing a Seasonal Energy Agreement between APS and Nevada Power Company (NPC) executed March 8, 1989.

The tendered Seasonal Energy Agreement provides for the sale of 30 MW per hour of energy, on an interruptible basis, by APS to NPC. Sale of energy may be interrupted by APS on two hours notice, except in the case of an emergency condition on either of the Parties' systems when interruption may occur with no such notice. Additionally, NPC may interrupt purchases from APS, during off-peak periods, when NPC can purchase energy from other sources at a price 3 mills per kWh below APS' price or when purchases hereunder would result in NPC's curtailment of its ownership share of the output from coal fired generation. The Seasonal Energy Agreement provides for sales to commence on May 16, 1989 and to terminate on May 14, 1991. No new system facilities or modifications to existing facilities are required to provide service hereunder.

APS, with the concurrence of NPC, has requested waiver of the Commission's Notice Requirements, 18 CFR 35.11, to allow service to start on May 16, 1989 as agreed between the Parties.

Comment date: April 19, 1989, in accordance with Standard Paragraph E at the end of this document.

15. Duke Power Company

[Docket No. ER89-110-000]

April 4, 1989

Take notice that on March 22, 1989, Duke Power Company filed a letter containing information in response to a request by the FERC Staff for additional information in this docket. The information submitted concerned Duke's projections of 1989 costs and other data

which serve as the basis for the transmission rates Duke charges the Southeast Power Administration.

Comment date: April 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

16. Detroit Edison Company

[Docket No. ER89-251-000]

April 4, 1989.

Take notice that the Detroit Edison Company (Detroit) on March 24, 1989, tendered for filing an amendment to Supplement No. 4 to Detroit Edison's Rate Schedule No. 23.

Detroit Edison states that Supplement No. 4 revises the present agreement for interconnection services between its electrical system and the City of Wyandotte by providing for an additional 120 kV service point. Detroit Edison states that no rates or charges for service are increased by Supplement No. 4 but rates and charges for Emergency Power and Energy, Short Term Power and Energy and Displacement Power and Energy are restated in independent supplier-purchaser format. Detroit Edison further states that it has agreed not to file any changes in the rates applicable to Wyandotte until after December 31, 1990. Detroit Edison requests that the supplement be permitted to become effective as of December 3, 1988.

Comment date: April 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

17. Northeast Utilities Service Company

[Docket No. ER89-223-000]

April 4, 1989.

Take notice that on March 20, 1989, Northeast Utilities Service Company (NU) tendered for filing a Certificate of Concurrence of the rate schedule filing between NU and United Illuminating Company.

Comment date: April 18, 1989, in accordance with Standard Paragraph E at the end of this document.

18. Union Electric Company

[Docket No. ER84-560-011]

April 4, 1989

Take notice that on February 27, 1989, Union Electric Company (Union) tendered for filing its compliance refund report in accordance with the Commission approved settlement between the City of Hannibal, Missouri and Union dated December 20, 1988.

Comment date: April 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

19. Union Electric Company

[Docket No. ER84-560-010]

April 4, 1989.

Take notice that on February 27, 1989, Union Electric Company (Union) tendered for filing its compliance refund report in accordance with the Commission approved settlement between the City of Kirkwood, Missouri and Union dated December 20, 1988.

Comment date: April 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

20. Montaup Electric Company

[Docket No. ER84-301-000]

April 4, 1989.

Take notice that on March 29, 1989, Montaup Electric Company, Montaup and the Town of Middleborough, Massachusetts (Middleborough) filed a letter agreement. In the letter agreement Montaup sought Middleborough's consent to discontinue annual filings except for any changes in return on equity, which would continue to be filed according to Commission policy. Middleborough gave its consent. Under the terms of the letter agreement it would become effective as of 1988. Thus, under the letter agreement no annual filing will be required in 1988 or later years to implement changes based on costs in the preceding calendar year.

The changes in billings under the formula will continue to track the terms of the formula and will be subject to the Commission's jurisdiction in audits to determine whether past charges are in accordance with the terms of the formula. The company respectfully urges the Commission to accept the letter agreement as reasonable and necessary in the circumstances.

The Company requests waiver of the notice requirement in order to permit the letter agreement to become effective on January 1, 1988.

Comment date: April 19, 1989, in accordance with Standard Paragraph E at the end of this notice.

21. Northern States Power Company

[Docket Nos. ER88-343-000 and EL88-17-000]

April 4, 1989.

Take notice that on March 20, 1989, Northern States Power Company tendered for filing its compliance refund report in accordance with the Commission's order issued February 16, 1989.

Comment date: April 17, 1989, in accordance with Standard Paragraph E at the end of this notice.

22. Pacific Gas and Electric Company

[Docket No. ER89-307-000]

April 4, 1989.

Take notice that on March 30, 1989, Pacific Gas and Electric Company (PG&E) tendered for filing, as a change in rate schedule, an agreement between PG&E and City of Santa Clara (Agreement) regarding rate treatment for Diablo Canyon Nuclear Power Plant, Units 1 and 2. Also included in the filing are rate schedule amendments to Appendix A to the Interconnection Agreement (Rate Schedule FERC No. 85) as a result of the Agreement.

The City of Santa Clara and PG&E previously entered into an agreement entitled Agreement Between City of Santa Clara, California and Pacific Gas and Electric Company regarding Diablo Nuclear Power Plant, Unit Nos. 1 and 2 (Diablo Agreement), dated April 15, 1988, which established a mechanism and methodology for calculation and allocation of Diablo costs to Santa Clara on a basis consistent with that which the Parties anticipated the Public Utilities Commission of the State of California (CPUC) might adopt. The Diablo Agreement provides that if the CPUC authorized another or additional method of cost recovery for Diablo, the Parties would negotiate a mechanism and methodology to implement the method of cost recovery for Diablo in a manner concurrent and consistent with that approved and adopted by the CPUC. The Diablo Agreement was accepted for filing by the Commission as Supplement 122 to Rate schedule FERC No. 85 in FERC Docket No. ER88-301-000 issued May 27, 1988.

On December 1988, the CPUC issued Decision No. 88-12-083 which approved a settlement reached by parties to the CPUC's Diablo ratemaking proceeding (1988 Settlement). The 1988 Settlement provides a performance-based pricing mechanism and methodology for PG&E's recovery of costs related to the construction, ownership and operation of Diablo. This Agreement implements the Diablo Agreement and establishes a rate treatment for Diablo which is consistent with the 1988 Settlement. Also included in this filing are amendments to Appendix A. Specifically, Parts II, III and V (Supplements 107, 119 and 121 respectively to Rate Schedule FERC No. 85) of Appendix A are amended to be consistent with the Diablo Agreement, the Agreement filed here and the 1988 Settlement.

Copies of this filing were served upon the City of Santa Clara and the Public

Utilities Commission of the State of California.

Comment date: April 19, 1989, in accordance with Standard Paragraph E at the end of this notice.

23. Cogentrix of Petersburg, Inc.

[Docket No. QF89-185-000]

April 4, 1989.

On March 13, 1989, Cogentrix of Petersburg, Inc. (Applicant), of 9405 Arrowpoint Boulevard, Charlotte, North Carolina 28217, amended its application, filed on March 6, 1989, 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 Dinwiddie County, Virginia. The facility will consist of four steam generators and two extraction/condensing steam turbine generators. Thermal energy recovered from the facility will be used in the production of liquid carbon dioxide by Cotwotrix, Inc. The net electric power production capacity of the facility will be approximately 112,150 KW. The primary source of energy will be coal. The facility is scheduled to begin operation on or about March 1, 1991.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-8443 Filed 4-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-6342-018 et al]

Conoco Inc. et al.; Applications for Termination or Amendment of Certificates¹

April 5, 1989.

Take notice that each of the

¹ This notice does not provide for consolidation for hearing of the several matters covered herein.

Applicants listed herein has filed an application pursuant to Section 7 of the Natural Gas Act for authorization to terminate or amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before April 19, 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 an 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 Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-6342-018, D, Feb. 23, 1989.....	Conoco Inc., P.O. Box 2197, Houston, TX 77252.	El Paso Natural Gas Co., Monument Area, Lea County, NM.	Assigned 1-1-89 to Charles W. Kemp.
G-6342-019, D, Feb. 23, 1989.....	Conoco Inc.....	El Paso Natural Gas Co., Monument Area, Lea County, NM.	Assigned 12-1-88 to Charles N. Evans and Jerry W. Guy.
G-7536-000, D, Jan. 27, 1989.....	BHP Petroleum (Americas) Inc., 5847 SanFelipe, Suite 3600, Houston, TX 77057.	Questar Pipeline Co., Jack Draw Unit (Sec. 3 & 10, T11N, R97W), Moffat County, CO.	Assigned 11-1-88 to Prudential-Bache Energy Income Production Partnership VP-20, et al.
G-10509-000, D, Jan. 27, 1989.....	BHP Petroleum Co. Inc., 5847 San Felipe, Suite 3600, Houston, TX 77057.	Arkla Energy Resources, a division of Arkla, Inc., North Ruston Field, Lincoln Parish, LA.	Assigned 11-1-88 to Prudential-Bache Energy Income Production Partnership VP-20, et al.
G-11600-000, D, Jan. 27, 1989.....	BHP Petroleum Co. Inc.....	Colorado Interstate Gas Co., Mocane Field, Beaver County, OK.	Assigned 11-1-88 to Prudential-Bache Energy Income Production Partnership VP-20, et al.
G-17113-003, D, Mar. 6, 1989.....	Texaco Producing Inc., P.O. Box 52332, Houston, TX 77052.	Williams Natural Gas Co., Guymon, N.E. Field, Texas County, OK.	Assigned 6-1-88 to Phillips Petroleum Co.
G-17260-000, D, Feb. 22, 1989.....	BHP Petroleum Co. Inc.....	ANR Pipeline Co., Mocane-Laverne Field, Beaver, County, OK.	Assigned 11-1-88 to Prudential-Bache Energy Income Production Partnership VP-20, et al.
G-17969-000, D, Jan. 27, 1989.....do.....	El Paso Natural Gas Co., Basin Dakota Field, San Juan County, NM.	Assigned 11-1-88 to Prudential-Bache Energy Income Production Partnership VP-20, et al.
CI62-347-001, D, Feb. 22, 1989.....do.....	El Paso Natural Gas Co., Marble Wash Area, Montezuma County, CO.	Assigned 11-1-88 to Prudential-Bache Energy Income Production Partnership VP-20, et al.
CI65-525-001, D, Feb. 27, 1989.....do.....	Natural Gas Pipeline Co. of America, Indian Basin Field, Eddy County, NM.	Assigned 11-1-88 to Prudential-Bache Energy Income Production Partnership VP-20, et al.

Docket No. and date filed	Applicant	Purchaser and location	Description
CI65-525-002, D, Feb. 22, 1989	do	Natural Gas Pipeline Co. of America, Indian Basin Field, Eddy County, NM.	Assigned 11-1-88 to Prudential-Bache Energy Income Production Partnership VP-20, et al.
CI65-1330-000, D, Feb. 3, 1989	Texaco Producing Inc	Northwest Pipeline Corp., Horse Point Unit, Grand County, UT.	Assigned 5-1-87 to Ampcolex Inc.
CI66-176-003, D, Dec. 14, 1989	do	Arkla Energy Resources, a division of Arkla, Inc., Latimer and Haskell Counties, OK.	Assigned 12-1-87 to William S. Price.
CI67-286-001, D, Jan. 27, 1989	BHP Petroleum Co. Inc	Arkla Energy Resources, a division of Arkla, Inc., Quinton Field, Pittsburg County, OK.	Assigned 11-1-88 to Prudential-Bache Energy Income Production Partnership VP-20, et al.
CI67-367-000, D, Jan. 27, 1989	do	Panhandle Eastern Pipe Line Company, Waynoka Field, Woods County, OK.	Assigned 11-1-88 to Prudential-Bache Energy Income Production Partnership VP-20, et al.
CI70-932-001, D, Jan. 27, 1989	do	ANR Pipeline Company, East Campbell Field, Major County, OK.	Assigned 11-1-88 to Prudential-Bache Energy Income Production Partnership VP-20, et al.
CI72-798-000, D, Jan. 27, 1989	BHP Petroleum (Americas) Inc	El Paso Natural Gas Co., Blanco Mesa Verde Field, San Juan County, NM.	Assigned 11-1-88 to Prudential-Bache Energy Income Production Partnership VP-20, et al.
CI72-862-002, D, Jan. 27, 1989	do	El Paso Natural Gas Co., Basin-Dakota Field, San Juan County, NM.	Assigned 11-1-88 to Prudential-Bache Energy Income Production Partnership VP-20, et al.
CI73-296-001, D, Jan. 27, 1989	BHP Petroleum Co. Inc	Transwestern Pipeline Co., Feldman Field, Hemphill County, TX.	Assigned 11-1-88 to Prudential-Bache Energy Income Production Partnership VP-20, et al.
CI89-241-000 (G-11218), D, Jan. 18, 1989.	Perry R. Bass, First City Bank Tower, 201 Main Street, Fort Worth, TX 76102.	Florida Gas Transmission Co., N. Withers Field, Wharton County, TX.	Assigned 12-31-88 to RKH Investments, Inc.
CI89-245-000 (CI66-1148), D, Jan. 17, 1989.	Anadarko Petroleum Corp., P.O. Box 1330, Houston, TX 77251-1330.	Williams Natural Gas Co., Woodward and Woods Counties, OK.	Assigned 4-1-71 and 9-5-86 to Redgate Petroleum Inc. and Don D. Montgomery, respectively.
CI89-251-000 (CI65-1166), D, Jan. 23, 1989.	Chevron U.S.A. Inc., P.O. Box 3725, Houston, TX 77253-3725.	Northern Natural Gas Co. Division of Enron Corp., Hansford Field, Hansford County, TX.	Assigned 1-1-89 to OTC Petroleum Corp.
CI89-253-000 (CI82-14), D, Jan. 23, 1989.	Texaco Producing Inc	Texas Gas Transmission Corp., Sligo Field, Bossier Parish, LA.	Assigned 8-1-88 to Goodrich Oil Co.
CI89-254-000 (CI82-255), D, Jan. 23, 1989.	do	Texas Gas Transmission Corp., Sligo Field, Bossier Parish, LA.	Assigned 8-1-88 to Goodrich Oil Co.
CI89-255-000 (CI82-12), D, Jan. 23, 1989.	do	Texas Gas Transmission Corp., Sligo Field, Bossier Parish, LA.	Assigned 8-1-88 to Goodrich Oil Co.
CI89-260-000 (CI63-1431), D, Jan. 23, 1989.	Chevron U.S.A. Inc	Northern Natural Gas Co., Division of Enron Corp., Hansford Field, Hansford County, TX.	Assigned 1-1-89 to OTC Petroleum Corp.
CI89-281-000 (G-11580), D, Feb. 1, 1989.	Sohio Petroleum Co., 5151 San Felipe, P.O. Box 4587, Houston, TX 77210.	Northern Natural Gas Co., Division of Enron Corp., Eumont Field, Lea County, NM.	Assigned 10-1-88 to John H. Hendrix Corp.
CI89-299-000 (CI82-426), D, Feb. 13, 1989.	Texaco Producing Inc	Colorado Interstate Gas Co., Airport Area (Frontier) Field, Sweetwater County, WY.	Assigned 10-1-88 to Amoco Production Co.
CI89-306-000 (G-5613), D, Feb. 16, 1989.	Union Pacific Resources Co., P.O. Box 7, Fort Worth, TX 76101-0007.	Northern Natural Gas Co., Division of Enron Corp., Guymon-Hugoton Field, Texas County, OK.	Assigned 10-1-88 to Oxy USA, Inc.
CI89-315-000 (CI73-296), D, Feb. 22, 1989.	BHP Petroleum Co. Inc	Transwestern Pipeline Co., Feldman Field, Hemphill County, TX.	Assigned 11-1-88 to Prudential-Bache Energy Income Production Partnership VP-20, et al.
CI89-316-000 (G-3810), D, Feb. 16, 1989.	Sun Exploration and Production Co., Four NorthPark East, 5656 Blackwell, P.O. Box 2880, Dallas, TX 75221-28802.	El Paso Natural Gas Co., S. Fullerton Field, Andrews County, TX.	Assigned 10-1-88 to Exxon Corp.
CI89-324-000 (CI68-893), D, Feb. 27, 1989.	BHP Petroleum Co	Transwestern Pipeline Co., Worsham-Bayer Field, Reeves County, TX.	Assigned 6-1-87 to Bledsoe Petro Corp.
CI89-325-000 (CI75-639), D, Feb. 27, 1989.	do	Transwestern Pipeline Co., Nash Draw Field, Eddy County, NM.	Assigned 6-1-87 to Bledsoe Petro Corp.
CI89-326-000 (CI76-580), D, Feb. 27, 1989.	do	Transwestern Pipeline Co., Nash Draw Field, Eddy County, NM.	Assigned 6-1-87 to Bledsoe Petro Corp.
CI89-327-000 (CI77-218), D, Feb. 27, 1989.	do	Transwestern Pipeline Co., Nash Draw Field, Eddy County, NM.	Assigned 6-1-87 to Bledsoe Petro Corp.
CI89-328-000 (CI77-524), D, Feb. 27, 1989.	do	Transwestern Pipeline Co., Burton Flat Field, Eddy County, NM.	Assigned 6-1-87 to Bledsoe Petro Corp.
CI89-329-000 (CI77-632), D, Feb. 27, 1989.	do	El Paso Natural Gas Co., Avalon Field, Eddy County, NM.	Assigned 6-1-87 to Bledsoe Petro Corp.
CI89-337-000 (CI60-511), D, Mar. 6, 1989.	ARCO Oil and Gas Co., Division of Atlantic Richfield Co., P.O. Box 2819, Dallas, TX 75221.	Northern Natural Gas Co., Division of Enron Corp., Apple Gas Unit, Beaver County, OK.	Assigned 1-1-87 to Hondo Oil & Gas Co.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 89-8432 Filed 4-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI70-496-005, et al.]

Conoco Inc. et al.; Applications for Certificates, Abandonment of Service and Amendment of Certificates ¹

Take notice that each of the Applicants listed herein has filed an application pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce, to abandon service or to amend certificates

¹ This notice does not provide for consolidation for hearing of the several matters covered herein.

as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before April 19, 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 Applicants to appear or to be represented at the hearing.

Lois D. Cashell,
Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Description
CI170-496-005, E, Mar. 6, 1989....	Conoco Inc., P.O. Box 2197, Houston, TX 77252.	Transwestern Pipeline Co., Bell Lake Unit No. 2, Lea County, NM.	Acreage acquired 8-1-88 from Mobil Producing Texas & New Mexico Inc.
CI89-334-000 (CI76-200), B, Mar. 6, 1989.	ARCO Oil and Gas Co., Division of Atlantic Richfield Co., P.O. Box 2819, Dallas, TX 75221.	Northern Natural Gas Co., Division of Enron Corp., Carrie Killebrew Field, Roberts County, TX.	Acreage has been non-productive since December 1983. Remaining acreage assigned 1-1-87 to Hondo Oil & Gas Co.
CI89-336-000 (CI77-480), B Mar. 6, 1989.	ARCO Oil and Gas Co., Division of Atlantic Richfield Co.	Northern Natural Gas Co., Division of Enron Corp., Carrie Killebrew Field, Roberts County, TX.	Shallow rights assigned 2-27-87 to Hondo Oil & Gas Co.; no future plans for development of retained deeper rights.
CI89-340-000 (G-10546), E, Mar. 9, 1989.	Cabot Petroleum Corp., P.O. Box 4544, Houston, TX 77210-4544.	Colorado Interstate Gas Co., Mocane Field, Beaver County, OK.	Acreage acquired 12-1-87 from Tenneco Oil Co.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 89-8433 Filed 4-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-4361-000, et al.]

BP Exploration Inc.; Notice of Application

April 5, 1989.

Take notice that on March 15, 1989, BP Exploration Inc. (BP), of P.O. Box 4587, Houston, Texas 77210, filed an application pursuant to Section 7 of the Natural Gas Act and Parts 154 and 157 of the Federal Energy Regulatory Commission's (Commission) regulations thereunder to amend the certificates of public convenience and necessity currently held by Sohio Petroleum Company (Sohio) to reflect BP Exploration Inc. as the holder thereof. BP also requests that the Commission redesignate Sohio's rate schedules listed in the Appendix hereto as those of BP and amend all other pending applications or proceedings pertaining to Sohio to reflect BP as the party to such proceedings, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

BP states that effective January 31,

1989, by Certificate of Amendment of Certificate of Incorporation dated January 20, 1989, Sohio Petroleum Company, a/k/a Standard Oil Production Company, changed its name to BP Exploration Inc.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 24, 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 BP to appear or to be represented at the hearing.

Lois D. Cashell,
Secretary.

Appendix

Sohio Petroleum Co., FERC Gas Rate Schedule No.	Certificate Docket No.	Purchaser
3	G-4361	Tennessee Gas Pipeline Co. Do.
4	G-4360	Do.
11	G-4582	Texas Eastern Transmission Corp.
14	G-4602	Texas Gas Transmission Corp.
20	G-5214	Tennessee Gas Pipeline Co.
24	G-5668	Texas Gas Transmission Corp.
26	G-5928	Transcontinental Gas Pipe Line Corp.
28	G-9491	Texas Eastern Transmission Corp.
36	G-12719	Colorado Interstate Gas Co.
38	G-13334	Panhandle Eastern Pipe Line Co.
45	G-17012	El Paso Natural Gas Co.
47	G-17791	ANR Pipeline Co.
49	G-11450	Florida Gas Transmission Co.
51	G-19421	Northern Natural Gas Co.
54	CI60-489	Southern Natural Gas Co.
56	CI61-780	Oxy Cities Service NGL.
59	CI61-1662	Natural Gas Pipeline Co. of America.
60	CI62-337	Transcontinental Gas Pipe Line Corp.
63	G-11580	Northern Natural Gas Co.
64	G-18957	El Paso Natural Gas Co.
73	CI61-1523	Do.
76	CI63-441	Northern Natural Gas Co.
88	CI64-213	Natural Gas Pipeline Co. of America.

Sohio Petroleum Co., FERC Gas Rate Schedule No.	Certificate Docket No.	Purchaser
89	CI64-342	Mountain Fuel Supply Company
91	CI62-600	El Paso Natural Gas Co.
95	CI62-813	Do.
97	CI62-883	Do.
100	CI62-535	Do.
102	CI65-684	ANR Pipeline Co.
103	CI65-104	Panhandle Eastern Pipe Line Co.
107	CI65-175	Northern Natural Gas Co.
108	CI65-319	Do.
117	CI65-1050	Lone Star Gas Co.
118	CI63-125	Northern Natural Gas Co.
123	CI66-41	Transcontinental Gas Pipe Line Corp.
124	CI66-193	Do.
125	CI65-1153	Tennessee Gas Pipeline Co.
128	CI67-159	Northern Natural Gas Co.
129	CI67-199	Do.
132	CI68-226	Transcontinental Gas Pipe Line Corp.
133	G-3784	Do.
135	G-3784	United Gas Pipe Line Co.
137	G-17906	Apeache Gas Corp.
138	CI61-618	Natural Gas Pipeline Co. of America.
139	CI69-119	Northern Natural Gas Co.
151	CI70-750	Transcontinental Gas Pipe Line Corp.
152	CI69-766	K N Energy, Inc.
153	CI69-849	Colorado Interstate Gas Co.
154	CI71-93	Panhandle Eastern Pipe Line Co.
155	CI71-287	Ringwood Gathering Co.
156	CI71-441	Panhandle Eastern Pipe Line Co.
162	CI75-524	Colorado Interstate Gas Co.
163	CI75-844	Northern Natural Gas Co.
165	CI76-8	El Paso Natural Gas Co.
167	CI77-175	Do.
168	CI71-460	Northern Natural Gas Company
170	CI78-565	ANR Pipeline Co.
171	CI78-612	El Paso Natural Gas Co.
172	CI79-9	Williams Gas Supply.
173	CI80-245	Panhandle Eastern Pipe Line Co.
175	CI84-396	Texas Eastern Transmission Corp.
176	CI85-45	Tennessee Gas Pipeline Co.

[FR Doc. 89-8431 Filed 4-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86-22-004]

Fina Oil and Chemical Co., Petrofina Delaware, Incorporated, and TOC-Gulf Coast, Inc.; Application for Extension and Amendment of a Blanket Limited-Term Abandonment and Blanket Limited-Term Certificate With Pregranted Abandonment

April 5, 1989.

Take notice that on March 21, 1989, Fina Oil and Chemical Company, Petrofina Delaware, Incorporated and TOC-Gulf Coast, Inc. (Fina) of 8350 N. Central Expressway, #1866, Dallas, Texas 75206, filed an application pursuant to Section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for (1) amendment of its blanket certificate with pregranted abandonment issued in Docket No. CI82-22-003 to include previously

uncommitted gas, (2) amendment of its authorization to cover TOC-Gulf Coast, Inc., and (3) extension of its 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.

By order issued March 31, 1988, in Docket No. CI85-685-003, *et al.*, the Commission extended Fina's blanket limited-term abandonment and blanket limited-term certificate with pregranted abandonment for a term expiring March 31, 1989. Fina now seeks to amend such authorization to include previously uncommitted gas, to cover TOC-Gulf Coast, Inc. and to extend such authorization for a three-year term.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 24, 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 Fina to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 89-8434 Filed 4-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-5-5-000]

Midwestern Gas Transmission Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

April 4, 1989

Take notice that on March 30, 1989, Midwestern Gas Transmission Company (Midwestern) filed Thirty-Eighth Revised Sheet No. 6 to Original Volume No. 1 of its FERC Gas Tariff, to be effective May 1, 1989.

Midwestern states that the current Purchased Gas Cost Rate Adjustments reflected on Thirty-Eighth Revised Sheet No. 6 consist of a (.5136) cents per dekatherm adjustment applicable to the gas component of Midwestern's sales rates, and a \$1.38 per dekatherm adjustment applicable to the Demand D-1 component.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers on its Northern System and affected stated regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before April 11, 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; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-8437 Filed 4-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI87-754-001, CI79-211-001 and CI79-212-002]

Mobil Producing Texas & New Mexico Inc.; Amendment to Application

April 5, 1989

Take notice that on March 13, 1989, Mobil Producing Texas & New Mexico Inc. (MPTM) of 12450 Greenspoint Drive, Houston, Texas 77060, filed an application pursuant to Section 7 of the Natural Gas Act and Part 157 of the Federal Energy Regulatory Commission's (Commission) regulations thereunder to amend its application previously filed in Docket No. CI87-754-000 to include three additional wells in its request for retroactive certificate and abandonment and to request partial abandonment authorization for the three additional wells. The amendment to the application is on file with the Commission and open for public inspection.

In Docket No. CI87-754-000, MPTM requests retroactive certificate authorization for sales made to ANR Pipeline Company (ANR) from three wells located in High Island Block A-596, Offshore Texas, between May 1984 and May 1986 and retroactive abandonment authorization effective as of the date sales ceased. In Docket No. CI87-754-001, MPTM now requests such

authorization for three additional wells. In addition, MPTM requests temporary abandonment authorization for the sales of gas from the three additional wells to Natural Gas Pipeline Company of America (NGPL) and Transcontinental Gas Pipe Line Corporation (Transco). Sales to NGPL and Transco from these three wells are covered under MPTM's certificates in Docket Nos. CI79-211 and CI79-212 and under MPTM's related Rate Schedule Nos. 154 and 155.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 24, 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 MPTM to appear or to be represented at the hearing.

Lois D. Cashell,
Secretary.

[FR Doc. 89-8435 Filed 4-7-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. GP89-37-000]

Lester Pollack; Petition for Declaratory Order

April 4, 1989

Take notice that on March 30, 1989, Lester Pollack (Petitioner) filed a petition for declaratory order pursuant to Rule 207 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, 18 CFR 385.207, requesting that the Commission determine and declare that Section 12 of the Natural Gas Act (NGA) does not bar him from holding a seat on the board of directors of Transco Energy Company (Transco) and also receiving a share of any fees paid by Transco or its subsidiaries or affiliates to Lazard Freres & Company (Lazard) for investment banking services, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Petitioner states that Transco is not a natural gas company within the meaning

of Section 2(6) of the NGA, but wholly and partially owns subsidiaries which are natural gas companies within the meaning of Section 2(6) of the NGA. In addition, it is indicated that Transco recently agreed to purchase, through a wholly-owned subsidiary, all of the outstanding common stock of Texas Gas Transmission Corporation (Texas Gas), TXG Gas Marketing Company (Gas Marketing), and TXG Engineering Inc. (Engineering) from CSX Corporation and CSX Energy Corporation (the acquisition). It is alleged that Texas Gas, Gas Marketing and Engineering are presently natural gas companies, and the acquisition is not expected to change their jurisdictional status. Petitioner anticipates that after consummation of the acquisition, the acquired companies would be indirect subsidiaries of Transco and would continue to be operate as separate corporate entities.

Petitioner states that Transco intends to finance the acquisition in part through the issuance of a new series of convertible preferred stock to a strategic equity investment fund organized and directed by Corporate Advisors, L.P. (Corporate Advisors), of which Petitioner is Chairman. It is stated that pursuant to the stock purchase agreement for the preferred stock, Corporate Advisors will be entitled to designate two persons for election to Transco's board of directors at the next annual meeting of Transco shareholders and at each annual meeting thereafter so long as the fund holds 5 percent or more of the voting power of Transco. Petitioner also states that the stock purchase agreement does not grant any rights to nominate designees to the boards of directors of any of Transco's subsidiaries.

Petitioner alleges that Corporate Advisors intend to designate Petitioner, a general partner of Lazard, as one of its nominees for election to the Transco board. Petitioner states that as a general partner of Lazard, Petitioner would be entitled to share in income produced from investment banking fees which might be paid by Transco or any of Transco's subsidiaries or affiliates to Lazard in future transactions. Petitioner has applied for a declaratory order that he may lawfully, within the meaning of Section 12, participate in any investment banking fees paid to Lazard by Transco or by any of its subsidiaries or affiliates.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before April 25, 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 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.

Lois D. Cashell,
Secretary.

[FR Doc. 89-8436 Filed 4-7-89; 8:45 am]
BILLING CODE 6717-01-M

Office of Fossil Energy

[ERA Docket No. 88-72-NG]

Order Granting B.C. Gas, Inc., Authorization To Import Natural Gas From and Export Natural Gas to Canada

AGENCY: Department of Energy.

ACTION: Notice of order granting authorization to import natural gas from and export natural gas to Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting B.C. Gas Inc. (B.C. Gas) authorization to import natural gas from and export natural gas to Canada. The order issued in ERA Docket No. 88-72-NG authorizes B.C. Gas from May 1, 1989, through April 30, 1996, to import each year up to 2,164,122 Mcf of Canadian gas for storage in the United States and to export during the winter heating season up to 60,115 Mcf per day of storage gas for consumption in Canada.

A copy of this order is available in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on March 31, 1989.

J. Allen Wampler,

Assistant Secretary Fossil Energy.

[FR Doc. 89-8455 Filed 4-7-89; 8:45 am]
BILLING CODE 6450-01-M

[ERA Docket No. 88-39-NG]

Midland Cogeneration Venture Limited Partnership; Order Granting Short-Term Authorization To Import Natural Gas; Conditional Order Granting Long-Term Import Authorization**AGENCY:** Department of Energy.**ACTION:** Notice of short-term authorization to import natural gas and of conditional long-term import authorization.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order authorizing Midland Cogeneration Venture Limited Partnership (Midland) to import up to 51,500 Mcf per day of Canadian natural gas on an interruptible basis beginning in 1989, and ending in 1990 on the date of initial firm deliveries. The interruptible deliveries of gas would be used for testing a new cogeneration facility to be constructed in Midland County, Michigan. The order also conditionally authorized Midland to import up to 55,000 Mcf per day of natural gas on a firm basis over a 15-year term beginning on the date of initial firm deliveries to fuel the new cogeneration facility after construction has been completed.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 31, 1989.
J. Allen Wampler,
Assistant Secretary Fossil Energy.
[FR Doc. 89-8456 Filed 4-7-89; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. PP-82]

Temporary Amendment of Presidential Permit PP-82; the Joint Owners of the Highgate Project**AGENCY:** Department of Energy.**ACTION:** Notice of temporary amendment of Presidential Permit PP-82 issued to the Joint Owners of the Highgate Project.

SUMMARY: The Assistant Secretary for Fossil Energy announces the issuance of a temporary amendment of Presidential Permit PP-82 previously issued to the Joint Owners of the Highgate Project. This amendment authorizes an increase from 200 megawatts (MW) to 225 MW in the

authorized level of electric power which may be imported from Hydro-Quebec over the 120-kilovolt (kV) transmission project.

FOR FURTHER INFORMATION CONTACT:

Anthony J. Como, Office of Fossil Energy (FE-52), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-5935.
Lise Courtney M. Howe, Office of General Counsel (GC-41), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2900.

SUPPLEMENTARY INFORMATION: On January 3, 1989, the Vermont Electric Power Company (VELCO), on behalf of the Joint Owners of the Highgate Project and the Policy Planning Committee of the New England Power Pool (NEPOOL), filed a request with the Office of Fossil Energy for authorization to operate the Highgate Project at import levels of up to 225 MW during winter peak load periods. The Highgate Project consists of a 7-mile long, 120-kV transmission line and a back-to-back ac/dc/ac (alternating current; direct current) converter terminal. In May 1984, Presidential Permit PP-82 was issued to the Joint Owners authorizing the construction of these facilities and the operation of the converter terminal at import levels of up to 200 MW.

In ist request, VELCO stated that "NEPOOL is in dire need of capacity to meet system peak demands for the current winter period, and all available means of satisfying the demand are being explored." VELCO further stated that it is preparing the studies to document that the operation of the subject facilities at the 225-MW level would not impair the reliability of the U.S. electric power supply system. VELCO also stated that when these studies are completed an application to amend permanently PP-82 will be submitted to the Office of Fossil Energy.

On January 23, 1989, the Office of Fossil Energy also received a letter from Mr. Phillip C. Otness, Executive Director of NEPOOL. Mr. Otness further supported VELCO's request to operate the Highgate converter at 225 MW. He indicated that, after considering peak exposure, scheduled maintenance, and unplanned outages, NEPOOL could have capacity deficiencies as high as 1750 MW during certain weeks of 1989. A 25-MW increase in the import level at the Highgate converter would be one of numerous means used to reduce this capacity deficiency.

On March 10, 1989, the Assistant Secretary for Fossil Energy concurred in a staff analysis which demonstrated that the temporary amendment of

Presidential Permit PP-82 would not impair the reliability of the U.S. electric power supply system. Accordingly, the Joint Owners of the Highgate Project have been authorized to operate those facilities at import levels not to exceed 225 MW for the lesser of six months from March 10, 1989, or until Presidential Permit PP-82 is formally and permanently amended.

Issued in Washington, DC, March 31, 1989.
J. Allen Wampler,
Assistant Secretary Fossil Energy.
[FR Doc. 89-8457 Filed 4-7-89; 8:45 am]
BILLING CODE 6450-01-M

Southwestern Power Administration**Federal Hydroelectric Power; New Customer Selection Policy****AGENCY:** Southwestern Power Administration, DOE.**ACTION:** Adoption of a policy for the selection of new customers to receive Federal hydroelectric power and energy.

SUMMARY: In 1980, the Southwestern Power Administration (SWPA) adopted a Final Power Allocation which allocated existing and known future Federal hydroelectric peaking capacity to preference customers in the SWPA marketing area. That Power Allocation was published in the *Federal Register* (45 FR 19032) dated March 24, 1980. By letter dated January 24, 1984, President Reagan set forth a course of action for Federal agencies to negotiate reasonable non-Federal funding prior to the start of construction for new Federal hydroelectric power projects (new Federal projects). The 1980 SWPA Power Allocation does not address the allocation of new power from construction of new Federal projects with funds advanced by non-Federal entities. As a result of these changing conditions, SWPA believed a policy was needed to address the allocation of new power that may become available for marketing from existing and new, Federally and non-Federally funded, hydroelectric power projects. SWPA published the Power Allocation Policy (Policy) in the *Federal Register* August 12, 1987, (52 FR 29881).

Section I, Paragraph 3 of the Policy announced "New customers shall be selected in accordance with SWPA's New Customer Selection Policy." The Policy provided ten percent of any power available for allocation, other than power to a non-Federal project sponsor, would be allocated to new customers. SWPA has received many formal and informal requests for

allocations of power and energy from the SWPA hydroelectric power system. Therefore, in accordance with the above, SWPA has developed a New Customer Selection Policy. The New Customer Selection Policy should not be confused with the selection procedure and criteria for non-Federal entities (sponsors willing to provide funding prior to the start of construction for new Federal hydroelectric power projects).

DATE: The policy for selection of new customers is hereby adopted, effective April 10, 1989.

ADDRESS: Questions may be mailed to: Francis R. Gajan, Director of Power Marketing, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101.

FOR FURTHER INFORMATION CONTACT: Francis R. Gajan, Director of Power Marketing (918) 581-7529.

SUPPLEMENTARY INFORMATION: The New Customer Selection Policy addresses the criteria and procedures SWPA will use in selecting new customers when Federal hydroelectric power is available for allocation. This policy is a separate procedure from the selection of a non-Federal sponsor to participate financially in the development of a Federal hydroelectric power project. An entity applying to be a new customer of SWPA could also be a non-Federal sponsor for a project. Allocations will be made to new customers and non-Federal sponsors according to the SWPA Power Allocation Policy in effect at the time of the allocation.

SWPA published a Notice of Intent to Develop Policy for New Customer Selection in the Federal Register of February Register of February 10, 1987 (52 FR 4186). In the notice SWPA requested that interested parties provide comments and suggestions to SWPA by March 12, 1987, concerning the formulation of the policy. The comments and suggestions received were considered in the development of a proposed policy. A proposed policy was published in the Federal Register (53 FR 27387) dated July 20, 1988. Nine letters were received during the comment period for the proposed policy. Many of the comments pertain to SWPA's Power Allocation Policy and were addressed during the public review period for that policy. Summaries of the comments received on the proposed New Customer Selection Policy and SWPA's responses follow.

1. Comment—We suggest that it would be necessary to update the information provided by each applicant regarding the applicant's ability to use and receive that allocation at the time

that the new allocation is being considered in order to determine if the applicant continues to qualify for an allocation of hydroelectric power under the Customer Selection Policy in effect.

SWPA Response—SWPA agrees. Before an allocation is made, each applicant will be required to supplement its original application and demonstrate that it qualifies for an allocation of hydroelectric power under the Customer Selection Policy then in effect.

2. Comment—We suggest that consideration also be given to the ability of SWPA to "wheel" the allocated hydroelectric power and energy in the most efficient and business-like manner given existing transmission systems available to SWPA.

SWPA Response—SWPA does not believe "wheeling" should be part of the selection criteria. It is the responsibility of the applicant to show its ability to receive the power. If it is not economical for the applicant to receive the power, the applicant in most cases would not enter into a power sales agreement.

3. Comment—We suggest that priority be given to proposed new customers who are geographically located in the vicinity of the source of the hydroelectric energy to be allocated. While it may be argued that geographical considerations are not consistent with the "widespread use" policy under the relevant section of the Flood Control Act of 1944, it is also true that to the extent that the new hydroelectric power to be allocated comes from a non-federally funded project, compliance with the 1944 act is not necessarily required by law.

SWPA Response—SWPA does not agree. Although new hydroelectric power projects may be funded with non-Federal funds, SWPA must operate the program in accordance with the terms of section 5 of the Flood Control Act of 1944, as amended. Accordingly, SWPA must comply with the "widespread use" section of the law.

4. Comment—We are opposed to SWPA basing the amount of power and energy set aside for new customers in states without pending applications on the "fair share" allocation approach. States without pending applications for new customers on file with SWPA should not be considered for new customer allocations at all. If prospective customers for SWPA hydroelectric power fail to apply for power, there is no reason to set aside any amount of power and energy to be allocated to that state.

SWPA Response—The amount of power to be allocated to new customers is 10 percent of the amount of power available for allocation, other than

power being allocated to a non-Federal sponsor of a project. SWPA believes each State should receive a distribution of power for new customers. If there are no applicants from a State, SWPA believes the distribution for new customers in that State should be allocated to new customers in the State that is most deficient in its fair share allocation.

5. Comment—We concur with the previously received comment that existing power allocation should remain in effect and existing power sales contract should be satisfied before new preference customers are given an allocation.

SWPA Response—The 1980 power allocations were made using known existing and future resources, and those allocations will remain in effect according to the 1980 Final Power Allocations. Power sale contracts related to the 1980 power allocations will be satisfied when the existing and future resources referred to therein are available. Any new allocations and related power sales agreements will be made in accordance with the allocation policy in effect at the time power becomes available for allocation.

6. Comment—We do not concur with the "first requested, first served" concept as the basis for new customer selection. An alternative would be to request application every time an allocation is to be made. Each applicant should be considered for a pro rata share of capacity. Also, it does not appear proper that letters of application submitted 5, 10, or 20 years earlier should remain valid for projects conceived and constructed in more current times without resubmittal of an application.

SWPA Response—While the suggestion that application be made each time an allocation is available has merit, SWPA believes that the "first requested-first served" procedure for new customer selection is the best procedure under the circumstances. Administratively, this procedure avoids the duplication of effort required by refile. In addition, a workable chronological list has been developed which can serve as a basis for the selection procedure. Since 1966, prospective customers have requested an allocation of federal hydroelectric power from SWPA. Because SWPA has not had additional hydroelectric power to allocate to all of them, SWPA has developed a list of these potential new customers. Although no system will be entirely unbiased, SWPA believes that the use of this chronological list will involve the minimum amount of

problems for customer selection. SWPA believes that, for the sake of consistency, the allocation of any new power to new customers should be made proportionately but on the same basis established under the Power Allocation Policy published August 12, 1987 (52 FR 29881). The ratio used in that Policy is the new customer's peak load to its state's peak load times the amount of power to be allocated to new customers in that state.

**Southwestern Power Administration
New Customer Selection Policy**

The Administrator shall select new customers (applicants) based on the following criteria:

1. Priority will be given on a first requested-first served basis to applicants within each state that currently have letters of application on file with Southwestern Power Administration (SWPA) by date of letter. Following is a list of such applicants by State and date of application:

State	Applicant	Date
Arkansas	North Little Rock	08-01-78
	Ark Val Elec Co-op (Ozark)	09-14-79
	Benton	06-30-80
	West Memphis	06-29-82
	Dardanelle	08-06-85
	Little Rock Air Force Base	09-18-85
	Big Lake National Wildlife Refuge—U.S. Fish and Wildlife Service	08-18-87
	Greers Ferry National Wildlife Refuge—U.S. Fish and Wildlife Service	08-18-87
	Mammoth Spring National Fish Hatchery—U.S. Fish and Wildlife Service	08-18-87
	Norfolk National Fish Hatchery—U.S. Fish and Wildlife Service	08-18-87
Kansas	Wapanocca National Wildlife Refuge—U.S. Fish and Wildlife Service	08-18-87
	Kiowa	06-30-82
	Elinwood	02-13-84
	Hoisington	02-13-84
	Pratt	02-14-84
	Larned	02-15-84
	Doniphan Elec Co-op (Troy)	02-17-84
Johnson	02-28-84	
McPherson	07-26-84	
McConnell AFB	02-28-86	

State	Applicant	Date
Louisiana	Barksdale AFB	02-18-86
	England AFB	02-18-86
	Natchitoches National Fish Hatchery—U.S. Fish and Wildlife Service	08-18-87
	Sabine National Wildlife Refuge—U.S. Fish and Wildlife Service	08-18-87
Missouri	Harrisonville	10-07-66
	Gallatin	12-10-69
	Liberal	08-21-70
	Mansfield	01-20-72
	Pattonsburg	06-11-72
	Pleasant Hill	03-11-75
	Independence	09-22-75
	Columbia	05-05-76
	Vandalia	06-07-77
	Trenton	07-14-77
	Osceola	03-14-79
	Crane	No Date
	Hannibal Board of Public Works	08-19-85
	Owensville	10-21-85
	Citizens Electric Corporation	04-22-87
	El Dorado Springs	06-01-87
	Rolla	06-05-87
Fredericktown	06-05-87	
Jackson	07-28-87	
Southeast Missouri Regional Port Authority	07-19-88	
Oklahoma	Mannford	11-19-68
	Marlow	08-08-69
	Anadarko	08-12-70
	Bramen	02-24-71
	Ponca City	06-28-74
	Stillwater	07-25-74
	Pond Creek	09-19-74
	Kaw City	05-05-75
	KAMO Electric Co-op	09-11-78
	NE Ok Elec Co/op	04-24-79
	Chickasaw Tribal Utility Authority	10-22-86
Edmond	11-14-86	
Fairview	09-29-87	
Oklahoma Municipal Power Authority	04-12-88	
Texas	Kirbyville	05-18-78
	Caldwell	07-12-78
	Lubbock	03-05-82
	Sam Rayburn Municipal Power Agency	07-02-85
	Whitesboro	01-25-88
	Hunt-Collin Electric Co-op	02-26-88

2. Thirty days after adoption of a New Customer Selection Policy (May 10, 1989), new applicants' names will be placed below the names on the above list by state in order of date and time of receipt of applications by SWPA. If applications have the same date and time of receipt and are received from applications located in the same State, the order of priority of such applications will be determined by lot.

3. Before an allocation is made, each applicant (including applicants listed in 1.) must submit to SWPA information sufficient to demonstrate that the applicant is, or will be, entitled to preferential consideration as defined by Section 5 of the Flood Control Act of 1944, as amended. Applications shall also include specific information regarding the applicant's ability to receive and use that allocation through designated transmission paths.

4. If there are no pending applications on file for potential new customers from a particular State, the amount of power and energy set aside for new customers in that State shall be allocated to new customers in the State most deficient in its fair share for allocation to new customers where applications are pending.

5. If and when there are no pending applications for new customers on file with SWPA, the Administrator shall allocate the power and energy set aside for new customers to existing customers in accordance with the Power Allocation Policy then in effect.

6. Only written applications (see attached application guidelines) received and date stamped by SWPA will be considered during an allocation. All written applications for a power allocation shall be mailed to the Administrator, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101, or hand delivered to the Administrator's office in Tulsa, Oklahoma.

J.M. Shafer,
Administrator, Southwestern Power Administration.

New Customer Application Guidelines
Name and Address
Utility Description

- The new customer applicant should provide the date and place of incorporation, if applicable, and specify corporate or municipal affiliations, if any.

Service Area
Distribution and Transmission Facilities

- The applicant should attach, or at least reference, its lease agreements, if any.

Current Electrical Resources
Current Electrical Peak Load

[FR Doc. 89-8458 Filed 4-7-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

(FRL-3552-8)

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202-382-2740).

DATE: Comments must be submitted on or before May 10, 1989.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: Estimate of Municipal Wastewater Treatment Facility Requirements for the Needs Survey (EPA ICR # 0318.03); OMB # 2040-0050. This is an existing collection.

Abstract: Construction cost estimates and related technical data are collected by EPA from publicly owned treatment facilities. The information is included in the Biennial Need Survey Report to Congress as required by the Clean Water Act.

Burden Statement: The estimated public reporting burden for this collection of information is 200 hours per respondent, per year. This estimate includes collecting, reviewing and updating data, submitting proper documentation, justifying certain need categories, and addressing questions about population anomalies.

Respondents: States.

Estimated No. of Respondents: 59.

Estimated Total Annual Burden on Respondents: 11,800 hours.

Send comments regarding the burden estimate, or any other aspect of these information collections, including suggestions for reducing the burden to: Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street SW., Washington, DC 20460 and Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20503. (Telephone (202) 395-3084).

OMB Responses To Agency PRA Clearance Requests

EPA ICR # 1088.04; NSPS for Industrial-Commercial-Institutional Steam Generating Units (PM, NO_x, SO₂; was disapproved 3/13/89.

EPA ICR # 1493; Optional Information Collection Requirements for Wood Preserving and Surface Protection Facilities; was disapproved 3/10/89.

EPA ICR # 1367.02; Gasoline Volatility Enforcement; was approved 3/13/89; OMB # 2060-0178; expires 3/31/92.

Date: March 31, 1989.

Odelia Funke,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 89-8421 Filed 4-7-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

J.P. Morgan & Co. Incorporated New York, NY; Proposal to Engage in Placement As Agent of All Types of Securities

J.P. Morgan & Co. Incorporated, New York, New York, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.23(a)), of the Board's Regulation Y (12 CFR 225.23(a)), for permission for its subsidiary J.P. Morgan Securities Inc., New York, New York (JPMS"), to engage in the placement, as agent for issuers, of all types of securities.

JPMS is currently authorized to underwrite and deal in, to a limited extent, certain securities. See *J.P. Morgan & Co. Incorporated, The Chase Manhattan Corporation, Bankers Trust New York Corporation, Citicorp and Security Pacific Corporation*, 75 Federal Reserve Bulletin 192 (1989) ("*J.P. Morgan et al.*"); *J.P. Morgan and Co. Incorporated*, 73 Federal Reserve Bulletin 875 (1987); *Citicorp, J.P. Morgan and Co. Incorporated and Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 473 (1987); and 12 CFR 225.25(b)(16). In addition, JPMS has received authorization to provide securities brokerage and investment advisory services on a combined basis to institutional customers. *J.P. Morgan and Co. Incorporated*, 73 Federal Reserve Bulletin 810 (1987).

J.P. Morgan has applied to engage in the placement, as agent for issuers, of all types of securities within the limitations established by the Board in *J.P. Morgan et al.*, except that: (i) The proposal would involve the placement of all types of securities, including equities; and (ii) the revenues from the proposed

placement activities would be not be subject to the five percent gross revenue limitation established in prior orders which limits JPMS's underwriting and dealing activities.

The Board has not previously determined that the proposed activities are permissible under section 4(c)(8) of the Bank Holding Company Act. Section 4(c)(8) of the Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto."

J.P. Morgan contends that the proposed activities are closely related to banking because banks, including its bank subsidiary, Morgan Guaranty Trust Company of New York, are currently active participants in the private placement market. Under this proposal, J.P. Morgan would transfer the placement activities currently conducted in its bank subsidiary to JPMS.

In determining whether an activity is a proper incident to banking, the Board must consider whether the proposal may "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." J.P. Morgan maintains that permitting bank holding companies to engage in the proposed activities would result in greater convenience to customers and increased efficiency in the provision of J.P. Morgan's placement services.

J.P. Morgan contends that the proposed activities would not result in adverse effects since the proposal would result in the shifting the placement activities out of the bank to a nonbank subsidiary. J.P. Morgan states that JPMS is registered with the Securities and Exchange Commission and is a member of the National Association of Securities Dealers and the New York Stock Exchange and hence is subject to the full range of state and federal securities laws including financial reporting, antifraud and financial responsibility rules applicable to a broker-dealer. Moreover, J.P. Morgan notes that the framework of prudential limitations required by the Board's prior orders reinforce the separation between JPMS and its banking affiliates and would subject the proposed activities to restrictions that otherwise would not be

required if such activities continue to be performed in the bank.

J.P. Morgan contends that the proposed activities do not raise an issue under section 20 of the Glass-Steagall Act (12 U.S.C. 377), relying on *Securities Industry Ass'n v. Board of Governors*, 807 F.2d 1052 (D.C. Cir. 1986), cert. denied, 107 S.Ct 3228 (1987). Section 20 of the Glass-Steagall Act prohibits the affiliation of a member bank, such as Morgan Guaranty Trust Company of New York, with a firm that is "engaged principally" in the "underwriting, public sale or distribution" of securities.

Any request for a hearing on this application must comply with § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Any comments or requests for hearings should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than May 4, 1989.

Board of Governors of the Federal Reserve System, April 4, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-8364 Filed 4-7-89; 8:45 am]

BILLING CODE 6210-01-M

NCNB Corp., Charlotte, NC; Proposal to Underwrite and Deal in Certain Securities to a Limited Extent

NCNB Corporation, Charlotte, North Carolina ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act ("BHC Act") (12 U.S.C. 1843(c)(8)) and § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), for permission to engage *de novo* through NCNB Capital Markets, Inc., Charlotte, North Carolina ("Company"), in underwriting and dealing in, to a limited degree, commercial paper, municipal revenue bonds (including "public ownership" industrial development bonds), 1-4 family mortgage-related securities and consumer-receivable-related securities ("ineligible securities"). These securities are eligible for purchase by banks for their own account but not eligible for banks to underwrite and deal in.

In addition, Applicant has applied to engage in underwriting and dealing in bank-eligible securities pursuant to § 225.25(b)(16) of the Board's Regulation Y (12 CFR 225.25(b)(16)). Company would conduct the proposed activities on a nationwide basis.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." Applicant has applied to underwrite and deal in ineligible securities as set forth in the Board's Orders approving those activities for a number of bank holding companies. See, e.g., *Citicorp, J.P. Morgan & Co. Incorporated and Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 473 (1987); and *Chemical New York Corporation, The Chase Manhattan Corporation, Bankers Trust New York Corporation, Citicorp, Manufacturers Hanover Corporation and Security Pacific Corporation*, 73 Federal Reserve Bulletin 731 (1987).

Applicant contends that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377). Applicant states that, consistent with section 20, it would not be "engaged principally" in such activities on the basis of the restriction on the amount of the proposed activity relative to the total business conducted by the underwriting subsidiary previously approved by the Board.

Any request for a hearing on this application must comply with § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Richmond.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than May 5, 1989.

Board of Governors of the Federal Reserve System, April 4, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-8365 Filed 4-7-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84F-0317]

McCormick & Co., Inc.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the

withdrawal, without prejudice to a future filing, of a petition (FAP 4M3816) proposing that the food additive regulations be amended to provide for the safe use of a source of gamma radiation to control insect and microbial contamination in certain dried spices and dried vegetable seasonings at doses not to exceed 30 kiloGray (kGy) (3 megarads [Mrad]).

FOR FURTHER INFORMATION CONTACT:

Clyde A. Takeguchi, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: In the Federal Register of October 9, 1984 (49 FR 39615), FDA published a notice that it had filed a petition (FAP 4M3816) from McCormick & Co., Inc., 11350 McCormick Rd., Hunt Valley, MD 21031-1066, that proposed to amend the food additive regulations to provide for the safe use of a Cobalt 60 or Cesium 137 source of gamma radiation to control insect and microbial infestation in certain dried spices and dried vegetable seasonings by increasing the maximum permitted dose from 1 to 3 Mrad.

In the Federal Register of May 17, 1985 (50 FR 20624), FDA published an amendment to the notice of filing to revise the list of permitted spices and seasonings. This amendment was based on a citizen petition (83P-0386/CP), filed by McCormick & Co., Inc., on November 14, 1983, that was withdrawn and resubmitted as an amendment to the referenced petition.

In the Federal Register of April 18, 1986 (51 FR 13376), FDA, based on a 1984 proposal, amended the food additive regulations to permit the use of sources of radiation to treat certain foods, including various aromatic vegetable substances at doses not to exceed 30 kGy. In the Federal Register of December 30, 1988 (53 FR 53176), FDA clarified the wording of that regulation.

McCormick & Co., Inc., now believes that the intent of its food additive petition has been met by the agency's action discussed above, and has withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: March 29, 1989.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-8368 Filed 4-7-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89E-0085]

Determination of Regulatory Review Period for Purposes of Patent Extension; Hismanal®**AGENCY:** Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Hismanal® (astemizole) and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESS: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nancy E. Pirt, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the

length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Hismanal® (astemizole). Hismanal® is indicated for the relief of symptoms associated with seasonal allergic rhinitis and chronic idiopathic urticaria. Hismanal® is not indicated for short courses of therapy. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Hismanal® (U.S. Patent No. 4,219,559) from Janssen Pharmaceutica N.V. and requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated March 20, 1989, advised the Patent and Trademark Office that the human drug product had undergone a regulatory review period. The letter also stated that the active ingredient, astemizole, represented the first permitted commercial marketing or use. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Hismanal® is 2,983 days. Of this time, 1,579 days occurred during the testing phase of the regulatory review period, while 1,404 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* October 31, 1980. FDA has verified the applicant's claim that the date the investigational new drug application (IND) became effective was October 31, 1980.
2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* February 25, 1985. FDA has verified the applicant's claim that the date the new drug application (NDA) for Hismanal® (NDA 19-402) was initially submitted to FDA was on February 25, 1985.
3. *The date the application was approved:* December 29, 1988. FDA has verified the applicant's claim that NDA 19-402 was approved on December 29, 1988.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension,

the applicant seeks 730 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before *June 9, 1989*, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before *October 10, 1989*, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 3, 1989.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 89-8367 Filed 4-7-89; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration**Acquired Immune Deficiency Syndrome; Drug Reimbursement Program**

AGENCY: Health Resources and Services Administration, PHS, HHS.

ACTION: Notice of Availability of Funds.

SUMMARY: Under the authority of Pub. L. 100-471, an additional \$5,000,000 has been made available to States to cover the cost of Zidovudine (AZT), and certain other drugs that have been determined to prolong the lives of persons with Acquired Immune Deficiency Syndrome (AIDS). The \$5,000,000 was generated through a reprogramming of funds from other AIDS activities within the Department of Health and Human Services. The reprogramming was a special act by the Congress and the Administration to provide additional funding for those States that reported a shortfall from their previous drug treatment Federal Allotment. In addition, another \$75,490 was made available to these States through a redistribution of funds from

States that reported a surplus of funds previously allotted. On March 31, 1989 the total allocation of \$5,075,490 was made available through September 30, 1989 to the following 26 States:

State	
California	Alabama
Massachusetts	Mississippi
Texas	Indiana
Illinois	Oklahoma
Georgia	Idaho
Ohio	Florida
Tennessee	Vermont
Oregon	Kentucky
Colorado	Maine
Kansas	Alaska
South Carolina	North Dakota
Utah	Rhode Island
Wisconsin	Arizona

The money is to be made available by the States for low-income individuals not covered by the State Medicaid program or another third-party payor, or whose State Medicaid program does not provide this drug coverage.

If a State covered AZT and other life-prolonging drugs under the State Medicaid program as of September 15, 1988, and subsequent to that date, the State's Medicaid policy is changed to discontinue such coverage, the Federal Government reserves the right to withdraw the funds allocated to the State as part of this program.

These funds are to be used only for drug procurement and not for Federal or State administrative expenses associated with the program.

States participating in the grants for treatment drugs for AIDS must agree in writing to comply with the following provisions:

- Define low-income for the purposes of this program.
- Provision may be made for copayment by patients.
- Use the grant to assist in financing AZT and other life-prolonging drugs for low-income individuals not covered under the State Medicaid program or another third-party payor, or to individuals covered by the Medicaid program if the State Medicaid program does not provide this drug coverage.
- Give priority to qualified individuals who meet the low-income definition and who received AZT under the treatment investigational new drug program.
- Maintain the confidentiality of patients who apply for eligibility under this program.
- Provide, on request, a report on the status of the funds.
- Ensure that funds are only used for the payment for AZT and other life-prolonging drugs for AIDS patients. Funds may not be used to cover administrative costs associated with

this program, but may be used to cover the costs of reasonable dispensing fees.

- Comply with the nondiscrimination requirements of the Civil Right Act of 1964, section 504 of the Rehabilitation Act of 1973 dealing with handicapped individuals, and pertinent DHHS regulations governing discrimination based on age or sex.

Individuals interested in the grants for treatment drugs for AIDS, regardless of whether their State is on the above list, should contact the appropriate office in their State, and may obtain information on their State contact by calling Mr. Richard Schulman, Project Officer, at 301 443-6745.

Executive Order 12372

The AIDS Drug Reimbursement Program has been determined to be a program which is not subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs.

The Catalog of Federal Domestic Assistance number is 13.146.

Dated: April 4, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89-8377 Filed 4-7-89; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

National Advisory Council on Health Care Technology Assessment; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory Council scheduled to meet during the month of May 1989:

Name: National Advisory Council on Health Care Technology Assessment.

Date and Time: May 9-10, 1989—9:00 a.m. to 4:00 p.m.

Place: Washington Plaza Hotel, The National Hall, Massachusetts and Vermont Avenues, Northwest, Washington, D.C.

Closed May 10, 11:30 a.m. to 12:00 Noon. Open for remainder of the meeting.

Purpose: The Council is charged to provide advice to the Secretary and to the Director of the National Center for Health Services Research and Health Care Technology Assessment (NCHSR) with respect to the performance of health care technology assessment functions prescribed by Section 305 of the Public Health Service Act, as amended.

Agenda: The agenda will include the election of a chairman for the Council. There will also be a discussion of

potential future Council activities. In addition, there will be a discussion of the Medicare Coverage recommendations. In closed session from 11:30 a.m. to 12:00 Noon, the Council will review technology assessment grant applications submitted to the NCHSR.

Anyone wishing to obtain a Roster of Members, Minutes of Meetings, or other relevant information should contact Mrs. Diana Dodd; National Center for Health Services Research and Health Care Technology Assessment, Room 18A20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone (301) 443-3091.

Agenda items are subject to change as priorities dictate.

Dated: April 3, 1989.

J. Michael Fitzmaurice,

Director, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 89-8430 Filed 4-7-89; 8:45 am]

BILLING CODE 4160-17-M

The Health Omnibus Programs Extension of 1988; Delegation of Authority

Authority Delegated and to Whom. Notice is hereby given that pursuant to the delegation of authority of January 27, 1989, from the Secretary of Health and Human Services to the Assistant Secretary for Health, for Subtitle E of Title II, "Programs with Respect to Acquired Immune Deficiency Syndrome," of Pub. L. 100-607, Health Omnibus Programs Extension of 1988 (42 U.S.C. 300ee note), as amended hereafter, excluding the authority to promulgate regulations, to submit reports to the Congress, to establish advisory committees or national commissions, and to appoint members to such committees or commissions, I have delegated to the Director, Office of Minority Health, the authority under section 251, "Requirement of Study with Respect to Minority Health and Acquired Immune Deficiency Syndrome," (42 U.S.C. 300ee-1 note) of Title II, Pub. L. 100-607, as amended hereafter.

Redelegation and Restrictions. This authority may be redelegated.

Effective Date. This delegation of authority became effective on March 29, 1989.

Dated: March 29, 1989.

Ralph R. Reed,

Acting Assistant Secretary for Health.

[FR Doc. 89-8369 Filed 4-7-89; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF INTERIOR**Bureau of Land Management****Realty Action; Modification; Colorado**

AGENCY: Bureau of Land Management, Interior.

ACTION: Modification of notice.

SUMMARY: the legal description for the public lands classified for Recreation and Public Purposes (R & PP) in the notice published on November 19, 1987 (52 FR 44494) has been changed due to a resurvey as follows:

T.3S., R.74W., 6th P.M., Colorado
Section 27, Lot 64
Section 34, Lots 37 and 39
Containing 13.89 acres

Clear Creek County has filed application for these lands (C-48665). The lands will continue to be segregated from all appropriations, including mineral entry, except for applications under the R & PP Act, until publication of notice of termination or issuance of patent.

Donnie R. Sparks,
District Manager.

[FR Doc. 89-8376 Filed 4-7-89; 8:45 am]

BILLING CODE 4310-J9-M

INTERNATIONAL TRADE COMMISSION

[332-272]

Certain Unmanufactured Cigarette Leaf Tobacco: Probable Economic Effect of Removal From Eligibility for Duty-Free Treatment Under GSP

AGENCY: International Trade Commission.

ACTION: Institution of investigation.

SUMMARY: Following receipt on March 22, 1989, of a request from the U.S. Trade Representative (USTR) under authority delegated by the President, the Commission instituted investigation No. 332-272 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). The USRT requested that the Commission provide advice as to the probable economic effect on the United States industries producing like or directly competitive articles and on consumers of the removal of cigarette leaf tobacco provided for in the Harmonized Tariff Schedule of the United States (HTS) subheading 2401.20.40 from eligibility for duty-free treatment under the U.S. Generalized System of Preferences.

EFFECTIVE DATE: April 3, 1989.

FOR FURTHER INFORMATION CONTACT: For further information, please contact

Mr. William Lipovsky of the Commission's Office of Industries at 202-252-1331. For information on legal aspects of the investigation contact Mr. William Gearhart of the Commission's Office of the General Counsel at 202-523-0487.

Public Hearing: No public hearing is scheduled for this investigation.

Written Submission: Interested persons are invited to submit written statements concerning the investigation; such statements should be received by the close of business on April 26, 1989. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 252-1810.

By order of the Commission.

Issued: April 5, 1989.

Kenneth R. Mason,
Secretary.

[FR Doc. 89-8491 Filed 4-7-89; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION**Forms Under Review by Office of Management and Budget**

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Ray Houser (202) 275-6723. Comments regarding this information collection should be addressed to Ray Houser, Interstate Commerce Commission, Room 1319, 12th and Constitution Ave., NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3228

NEOB, Washington, DC 20503, (202) 395-7340.

Type of Clearance: Extension
Bureau/Office: Office of Compliance and Consumer Assistance

Title of Form: Application by motor or water carrier for temporary authority under Section 10928 of the I.C. Act.

OMB Form No.: 3120-0038

Agency Form No.: OCCA-95

Frequency: On occasion

Respondents: Motor or water carriers

No. of Respondents: 6,500

Total Burden Hrs.: 13,000 (average 2 hrs. per response)

Brief Description of the need and proposed use: ICC is authorized to grant temporary authority to motor carriers to meet immediate service needs of places or areas which are without carriers capable of meeting that need. Information from carriers seeking to perform the service is required to determine existence of statutory criteria prior to making such grants.

Noreta R. McGee,

Secretary.

[FR Doc. 89-8402 Filed 4-7-89; 8:45 am]

BILLING CODE 7035-01-M

[Section 5a Application No. 9]

National Bus Traffic Association, Inc.; Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Notice and opportunity for comment.

SUMMARY: The National Bus Traffic Association, Inc. (NBTA) has proposed minor amendments to its ratemaking agreement and bylaws approved under 49 U.S.C. 10706(b).

DATES: Comments from interested persons are due May 10, 1989. At that time, the bureau shall also submit conforming amendment(s) as required above. Replies are due 15 days thereafter. If no timely filed adverse comments are received, the sought relief will automatically become effective at the close of the comment period provided the required conforming amendment is satisfactory. If opposition comments are filed, the comments and any reply will be considered, and the Commission will issue a final decision.

ADDRESS: An original and 10 copies, if possible, of comments referring to Section 5a Application No. 9 should be sent to: Office of Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. A copy of any comments filed with the

Commission must also be served on applicant's representatives.

FOR FURTHER INFORMATION CONTACT: Jane Udovic (202) 275-7982 or Richard Felder (202) 275-7691. (TDD for hearing impaired: (202) 275-1721.)

SUPPLEMENTARY INFORMATION: One amendment proposed by NBTA would revise Article II, sections 1 and 3 of the agreement to authorize NBTA's Committee on Division of Interline Revenue to discuss matters pertaining to the division of interline revenues between carriers, and to make recommendations to the General Rate Committee, the only group currently authorized to discuss such rate and tariff matters. Currently the Committee on Division of Interline Revenue functions under Article VIII, section 3 of NBTA's bylaws¹ and has no authority to discuss or consider rate matters. NBTA proposes to make that committee an "Organizational Unit" under Article II of its agreement and to authorize it to deal with interline revenue matters within the jurisdiction of the General Rate Committee, whose activities have already been approved by the Commission.

Another amendment would reduce the size of the board of directors from 37 to 31. This change is designed to reflect the acquisition by Greyhound Lines, Inc. of Trailways Lines, Inc. Absent this change, Greyhound would control 24 of the 37 seats. With the change, Greyhound will have 15 seats out of 31; the independent bus lines will have 15; and the rate bureau president will have 1. Other amendments related to the board of directors would revise the current regional representation requirement (which designates the number of directors from each defined area) to provide simply that directors be geographically representative, and would add flexibility to the process of nominating persons to the board.

The bureau also proposes various minor changes in the bylaws dealing with: admission, suspension, and termination of membership; apportionment of general expenses and computation of revenue used to determine such charges; and authorizing membership votes by mail rather than in general membership meetings on changes to the articles of association or bylaws.

The Commission proposes to approve the proposed amendments, subject to the condition that the agreement be modified to set forth (or

refer to) the standards that apply to the operations of the proposed Committee on Division of Interline Revenue. That is, all statutory and administrative limitations on collective activity now applicable to General Rate Committee division activity must be specifically adopted for the new committee.

Copies of NBTA's approved agreement and the amendments are available for public inspection and copying at the Public Docket Room (Room 1227) of the Commission in Washington, DC, and from NBTA's representatives: Lawrence W. Harlow, 506 South Wabash Avenue, Chicago, IL 60605, and Fritz R. Kahn, William C. Evans, Suite 700, 901 Fifteenth Street, NW., Washington, DC 20005.

Authority: 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: April 3, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-8304 Filed 4-7-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-314X]

Chicago Central and Pacific Railroad Co.; Abandonment Exemption—In DuPage County, IL

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon approximately 1.4-miles of line including milepost 22.2 at Villa Park, and milepost 23.1 at Addison in DuPage County, IL.

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 May 10, 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 20, 1989.³ Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by May 1, 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: John H. Doeringer, 20180 Governors Highway, Olympia Fields, IL 60461.

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 14, 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 conditions will be imposed, where appropriate, in a subsequent decision.

Decided: March 31, 1989.

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 184 (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.

¹ This section authorizes the president or board of directors of NBTA to create committees other than those standing committees enumerated in Article VIII, Section 2 of the bylaws.

By the Commission, Jane F. Mackall,
Director, Office of Proceedings,
Noreta R. McGee,
Secretary.

[FR Doc. 89-8234 Filed 4-7-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290 (Sub-No. 52)]

**Southern Railway Co.—
Abandonment—Between Newton and
Lincolnton in Catawba and Lincoln
Counties, NC; Findings**

The Commission has found that the public convenience and necessity permit Southern Railway Company to abandon its 14.6-mile line of railroad between milepost HG-77.0 south of Newton and milepost HG-62.4 at Lincolnton, in Catawba and Lincoln Counties, NC.

A certificate will be issued authorizing abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served on the applicant no later than 10 days from the publication of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: March 31, 1989.

By the Commission, Chairman
Gradison, Vice Chairman Simmons,
Commissioners Andre, Lamboley, and
Phillips.

Noreta R. McGee,
Secretary.

[FR Doc. 89-8403 Filed 4-7-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collections Under Review

April 4, 1989.

The Office of Management and Budget (OMB) has been sent the following proposals for the collection of information for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published.

Entries are grouped into submission categories. Each entry contains the following information: (1) The Title of the form or collection; (2) the agency form number, if any, and the applicable component of the Department sponsoring the collection; (3) how often the form must be filled out or the information is collected; (4) who will be asked or required to respond, as well as a brief abstract; (5) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond; (6) an estimate of the total public burden (in hours) associated with the collection; (7) an indication as to whether Section 3504(h) of Public Law 96-511 applies. Comments and/or suggestions regarding the item(s) contained in this notice, especially those regarding the estimated response time, should be directed to the OMB reviewer, Mr. Edward H. Clarke, on (202) 395-7340 and to the Department of Justice's Clearance Officer, Mr. Larry E. Miesse, on (202) 633-4312. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should so notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Larry E. Miesse, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

New Collection

- (1) Application for Employment Authorization.
- (2) I-765, Immigration and Naturalization Service.
- (3) On occasion.
- (4) Individuals or households. This information will be used by the INS to determine eligibility for employment authorization under 8 CFR 274a.12(a) or (c). The issuance of employment authorization documentation will also be based upon information provided in this information collection.
- (5) 1,000,000 respondents at 1.0 hours per response.
- (6) 1,000,000 estimated annual burden hours.
- (7) Not applicable under 3504(h).

Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or in the Method of Collection

- (1) Petition to Employ Intracompany Transferee.

(2) I-129L, Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households, businesses or other for-profit. This form is to be used by an employee to apply for an L-1 visa (labor) nonimmigrant classification for a foreign employee to come temporarily to the United States as an intracompany transferee to continue employment with the same employer, or with a parent branch, subsidiary or affiliate of that organization.

(5) 15,000 respondents at 1.05 hours per response.

(6) 15,000 estimated annual public burden hours.

(7) Not applicable under 3504(h).

(1) Department of Justice Blanket Clearance.

(2) No form number. Justice Management Division.

(3) On occasion.

(4) Businesses or other for-profit, non-profit institutions, small businesses or organizations.

(5) 1,500 respondents at 20.0 hours each.

(6) 30,000 estimated annual public burdens hours.

(7) Not applicable under 3504(h).

Larry E. Miesse,

Department Clearance Officer, Department of Justice.

[FR Doc. 89-8370 Filed 4-7-89; 8:45 am]

BILLING CODE 4410-10-M

Lodging of Consent Decree Pursuant to Clean Air Act

In accordance with Department Policy, 28 CFR 50.7, 38 Fed. Reg. 19029, notice is hereby given that a proposed Consent Decree in *United States v. Connecticut Housing Authority, et al.*, Civil Action B-85-552 (WWE), was lodged with the District of Connecticut on March 23, 1989. The proposed Consent Decree provides for defendants Bridgeport Wrecking Co. ("BWC") and Thomas Capozziello not to engage in any demolition operations at which asbestos materials are present; for all defendants (BWC, Capozziello and State of Connecticut, Connecticut Housing Authority and Schnabel Associates) to ensure that they adequately train personnel and comply with the asbestos 112 of the CAA; and for payment of a civil penalty for alleged past violations of the Clean Air Act, 42 U.S.C. 7412, 7413, and the asbestos NESHAP, 40 CFR Part 61.

The Department of Justice will receive for a period of 30 days from the date of publication of this notice, written

comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States v. Connecticut Housing Authority, et al.*, D.J. Ref. No. 90-5-2-1-866.

The proposed Consent Decree may be examined at the office of the United States Attorney, District of Connecticut, 141 Church Street, New Haven, Connecticut, 06508; at the Region I office of the United States Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massachusetts, 02203 and at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, at the above address. In requesting a copy, please enclose a check in the amount of \$2.10, payable to the Treasurer of the United States, to cover the costs of reproduction.

Donald A Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-8371 Filed 4-7-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Refuse Act

In accordance with departmental policy, 28 CFR 50.7, notice is hereby given that on March 22, 1989, a proposed consent decree in *United States of America v. Consolidated Iron & Metal Company, et al.*, 86 Civ. 2714 (JES) (S.D.N.Y.), was lodged with the United States District Court for the Southern District of New York. The proposed consent decree resolves a complaint filed by the United States on April 3, 1986, under the Refuse Act, 33 U.S.C. 403 *et seq.*, against Consolidated Iron & Metal Company and four related defendants. The complaint sought injunctive relief relating to the sinking of a barge and other unpermitted discharges of refuse into the Hudson River that allegedly occurred in connection with the operation of defendants' automobile parts and wrecking and smelting facility in Newburgh, New York.

The proposed consent decree requires the defendants to complete the ongoing removal of the debris they placed in the Hudson River, to establish and maintain a buffer zone between defendants' operations and the River, and to maintain future compliance with the Refuse Act.

The Department of Justice will receive comments on the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Consolidated Iron & Metal Company*, D.J. Ref. 90-5-1-1-2653.

The proposed consent decree may be examined at the offices of the United States Attorney, One St. Andrew's Plaza, New York, NY 10007, and at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, NY 10278. A copy of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. Copies of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Donald A. Carr,

Acting Assistant Attorney General, Land & Natural Resources Division.

[FR Doc. 89-8372 Filed 4-7-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on March 17, 1989, a proposed Consent Decree in *United States v. County of White Pine, Nevada and Kennecott Corporation*, Civil No. CV-N-88-51-BRT (D. Nev.), was lodged with the United States District Court for the District of Nevada. The Complaint sought civil penalties and injunctive relief against the County of White Pine, Nevada, and Kennecott Corporation pursuant to sections 112 (c) and (e), and 113 of the Clean Air Act (the "Act"), 42 U.S.C. 7412 (c) and (e), and 42 U.S.C. 7413, respectively, and the notification, removal, and disposal requirements of the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for asbestos, 40 CFR Part 61, Subpart M. The defendants' violations included failing to notify the EPA in writing prior

to scheduled demolition of a facility containing friable asbestos material, failing to remove friable asbestos material from a facility prior to demolition, failing to adequately wet asbestos material during and after removal in order to prevent its emission into the environment, and failing to properly dispose of asbestos material in an EPA approved disposal facility.

The proposed Consent Decree imposes a civil penalty on the County of White Pine, Nevada, in the amount of \$7,500.00 and a permanent injunction against future violations of the Clean Air Act or the asbestos NESHAP. Kennecott Corporation will pay a civil penalty in the amount of \$38,500.00 and is also permanently enjoined from violation of the Act or the asbestos NESHAP.

The decree also requires defendants, together, to select at least two County employees who will participate in an asbestos education and training program, approved by EPA, which will provide training in asbestos identification, asbestos removal techniques, and worker safety. This training program will be paid for by Kennecott Corporation.

The United States Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, United States Department of Justice, Post Office Box 7611, Washington, DC 20044. Comments should refer to *United States v. County of White Pine, Nevada and Kennecott Corporation*, D.J. Ref. No. 90-5-2-1-1168.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of Nevada, 300 Booth Street, Reno, Nevada, or at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1732(R), Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20044. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, at the address provided above.

When you request a copy of the Consent Decree by mail, please enclose a check made payable to the "Treasurer of the United States" in the amount of

\$1.10 (for the cost of reproduction, 10 cents per page).

Donald A. Carr,
Acting Assistant Attorney General, Land and Natural Resources Division, United States Department of Justice.

[FR Doc. 89-8373 Filed 4-7-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission

they are interested in. Each entry may contain the follow information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New Collection

Employment Standards Administration
Application for Approval of a Representative's Fee in a Black Lung Claim Proceeding Conducted by the U.S. Department of Labor

CM-972

As needed

Business or other for-profit; small businesses or organizations 1,200 responses; 840 total hours; .70 hours per response; 1 form A Black Lung Claimant may arrange to have an attorney represent his/her interests during the claims process. The purpose of the form CM-972 is to collect pertinent information to determine if the services rendered and the amounts charged can be paid under the Black Lung Benefits Act.

Revision

Employment and Training Administration
Senior Community Service Employment Program; Program Reporting and Grant Package

1205-0040; ETA 5140, 5163, 8705; SF 269, 424

Quarterly, Annually

State or local governments; Federal agencies or employees; Non-profit institutions

Form	Affected public	Respondents	Frequency	Average time per response
ETA 5140.....	State or local governments; Federal agencies or employees; Non-profit institutions.	67	4	8 hrs.
ETA 8705.....	do.....	67	1	12 hrs.
ETA 5163 and application pkg.....	do.....	67	1	35 hrs.
Posting.....	do.....	67	1	3 min.

Note.—5,493 total hours.

The four forms included in this package are needed to manage the Senior Community Service Employment Program. These documents are the principal sources of programs plans, performance data and resource

allocation. They form the basis for the award of funds, Federal oversight and reports to the Congress.

Extension

Employment Standards Administration

Miner's Claim for Benefits Under the Black Lung Benefits Act; Employment History; Miner Reimbursement Form
1215-0052; CM-911; CM-911a; CM-915

Form	Affected public	Respondents	Frequency	Average time per response
CM-911.....	Individuals or households.....	7,000	On occasion.....	45 min.
CM-911a.....	do.....	8,000	do.....	40 min.
CM-915.....	do.....	39,500	do.....	10 min.

Note.—17,166 total hours.

CM-911 is the standard application form, filed by the miner, for benefits under the Black Lung Benefits Act. CM-911a lists the coal miner's work history, and is completed by all applicants, miners and survivors. CM-915 is used by the miner or survivor for requesting reimbursement of medical expenses incurred.

Extension

Employment Standards Administration
Notice of Issuance of Insurance Policy
1215-0059; CM-921
Annually

Businesses or other for-profit

5,000 respondents; 833 total hours; 10 minutes per response; 1 form. The CM-921 provides insurance carriers with the means to supply DCMWC with

information which shows that a responsible coal mine operator is insured pursuant to the requirements set forth by the Black Lung Benefits Reform Act of 1977.

Extension

Occupational Safety and Health
Administration
Hazardous Waste Operations and
Emergency Response; Interim Final
Rule

1218.0139

On Occasion

Business or other for-profit, Small
Business or organizations

51,926 respondents; 2,407,679 burden
hours; 4.6 average hours per response;
0 form

The Hazardous Waste Operations and Emergency Response standard contains collection of information requirements pertaining to the preparation of a written safety and health plan, site characterization and analysis, site control, training, medical surveillance, emergency controls, work practices, PPE, monitoring, informational programs, handling drums and containers, decontamination, emergency response planning, and emergency response drills. These collections are used by employees, physicians, employers and the Government to protect employees engaged in hazardous waste operations and emergency response.

	Proposed Total Burden Hours	Estimated Average Burden Hours Per Task
(A) Preparation of Written Safety and Health Program:		
(1) & (2) Organizational Structure and Comprehensive Workplan	916	0.5
(3) Site-Specific Safety and Health Plan	3,664	4
(B) Site Characterization and Analysis:		
(1)(a) Survey for IDLH and Skin Absorption Hazards	7,328	8
(b) Emergency Response Surveys	6,750	0.5
(2) Information Gathering	7,328	8
(3) Initial Monitoring for Radiation and IDLH Conditions	916	1
(4) Dissemination of Hazard Information to Employees	3,604	0.25
(5) Ongoing Site Monitoring:		
(a) CERCLA-RCRA	476,320	520
(b) Emergency Responses	216,000	16
(C) Site Control	3,664	4
(D) Medical Surveillance:		
(1) Medical Exams	165,400	2
(2) Medical Recordkeeping	20,675	0.25
(E) Engineering Controls, Work Practices and PPE:		
(1) Documentation of Encapsulating Suit Tests	12	0.033
(2) Creation of the PPE Program	916	1
(F) Monitoring	201,520	220
(G) Informational Programs	7,328	8
(H) Handling Drum Containers	76	0.083
(I) Spill Containment Program	3,664	4
(J) Decontamination	3,664	4
(K) Emergency Response Plan	3,664	4
(L) Development and Delivery of the Training Program:		
(1) Development	10,386	2
(2) Delivery:		
CERCLA	31,296	40 & 8
RCRA	8,448	24 & 8
Emergency Response	1,224,240	24
Total	2,407,679	

Extension

Respiratory Protection Standard
1218-0099; OSHA 274

On Occasion

Businesses or other for-profit; Small
businesses or organizations 160,507
respondents; 1,181,764 burden hours;
14 minutes per response; 0 forms
This standard requires employers to

collect information to ensure that
employees who must wear respiratory
protection devices are properly
protected and issued the type of
respirator appropriate to the hazard.

Standard Operating Procedures &
Emergency Situations 395,489
Inspection Records 785,842

Labelling Requirements 433
Total 1,181,764

Signed at Washington, DC this 4th day of
April 1989.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 89-8361 Filed 4-7-89; 8:45 am]

BILLING CODE 4510-26-M

Mine Safety and Health Administration

[Docket No. M-89-17-C]

Arch of Kentucky, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Arch of Kentucky, Inc., P.O. Box 787, Lynch, Kentucky 40355 has filed a petition to modify the application of 30 CFR 75.500 (permissible electric equipment) to its Highsplit No. 1 Mine (I.D. No. 15-15711), its Highsplit No. 2 Mine (I.D. No. 15-16084), its Owl No. 1 Mine (I.D. No. 15-16011), its Owl No. 2 Mine (I.D. No. 15-16248), its 37 Mine (I.D. No. 15-04670), and its 33 Mine (I.D. No. 15-02007) all located in Harlan County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that all electric face equipment which is taken into or used in by the last crosscut of any coal mine be permissible.

2. Petitioner proposes to use a non-permissible vibration analyzer data collector (IRD Model 890) as a predictive tool in a preventative maintenance program, and a non-permissible infrared thermal data viewer (Hughes Model 686) to detect faulty electrical connections in or in by the last open crosscut. As an alternate method, petitioner states that—

(a) Prior to taking such equipment into or in by the last open crosscut of any entry or room, a test for methane would be made at each location where the equipment would be used by a qualified person;

(b) Subsequent tests for methane would be performed immediately before and during the operation of such equipment. Tests for methane would be made at intervals not to exceed five minutes;

(c) If at any time the air contains 1.0% or more of methane, adjustments would be made at once in the ventilation so that the air contains less than 1.0% methane. While such adjustments are underway, and until the desired results have been achieved, power to such equipment would be cut off;

(d) If at any time the air contains 1.5% or more of methane, all persons and equipment would be withdrawn from the affected area of the mine, until the air in such working place contains less than 1.0% methane;

(e) During and after the operation of such equipment, a diligent search would be made for the presence of fire; and

(f) Rock dust or a suitable fire extinguisher would be immediately

available while such equipment is in use.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 10, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: March 31, 1989.

[FR Doc. 89-8362 Filed 4-7-89; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL SCIENCE FOUNDATION**Meeting of Advisory Panel for the Biophysics Program**

The National Science Foundation announces the following meeting:

Name: Advisory Panel for the Biophysics Program.

Date and Time: May 1 & 2, 1989, from 8:00 a.m. to 6:00 p.m. each day.

Place: National Science Foundation, 1800 G Street NW., Room 1242, Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Arthur Kowalsky, Program Director, Biophysics Program, Room 325. Phone: (202) 357-7777.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research.

Agenda: To review and evaluate research proposals as part of the selection process for award.

Reason for Closing: The proposals being reviewed include information of a proprietary confidential nature, including technical information; financial; data, such as salaries and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C.

552 b (c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

April 5, 1989

[FR Doc. 89-8384 Filed 4-7-89; 8:45 am]

BILLING CODE 7555-01-M

Meeting of Advisory Panel for Cell Biology

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Cell Biology

Date and Time: Wednesday, Thursday, and Friday, April 26, 27, and 28, 1989, from 9:00 AM to 5:00 PM.

Place: Room 1243, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. George M. Langford, Program Director, Cell Biology Program, Room 321. Telephone: 202-357-7474.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(b), Government in the Sunshine Act.

Purpose of Panel: To provide advice and recommendations concerning support for research in Cell Biology Program.

M. Rebecca Winkler,

Committee Management Officer.

April 5, 1989.

[FR Doc. 89-8385 Filed 4-7-89; 8:45 am]

BILLING CODE 7555-01-M

Meeting of Advisory Committee for Computer and Computation Research

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463 as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Computer and Computation Research.

Date and Time:

May 4, 1989—9:00 a.m. to 5:00 p.m.

May 5, 1989—8:30 a.m. to 3:00 p.m.

Place: Room 540, National Science Foundation, 1800 G Street, NW., Washington, DC 20550

Type of Meeting: All Open—

May 4 Open—9:00 a.m. to 5:00 p.m.

May 5 Open—8:30 a.m. to 3:00 p.m.

Contact Person: Peter Freeman, Division Director, Division of Computer and Computation Research, Room 304, National Science Foundation, 1800 G Street, NW., Washington, DC 20550. Telephone: (202) 357-9747 email: Anyone planning to attend this meeting should notify Dr. Freeman no later than May 1, 1989.

Summary Minutes: May be obtained from the contact person at the above address.

Purpose of Committee: To provide advice and recommendations concerning support of Computer Research.

Agenda

Thursday, May 4, 1989

9-10: CCR Progress and Plans—Peter Freeman.

10-12: Software Subcommittee report, discussion, and recommendations—Greg Andrews.

1-5: Panel on the Future of Computer Science as a discipline—John Hopcroft.

Friday, May 5, 1989

8:30-9:30: Symbolic Computation Subcommittee report, discussion, and recommendations—Rao Kosaraju.

9:30-12: Committee Discussion—John Hopcroft.

1:30-2:30: Discussion of Committee recommendations—Bill Wulf, AD/CISE.

3:00 Adjourn.

M. Rebecca Winkler,

Committee Management Officer.

April 5, 1989.

[FR Doc. 89-8386 Filed 4-7-89; 8:45 am]

BILLING CODE 7555-01-M

Meeting of Advisory Panel for Decision, Risk, and Management Science Program

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Decision, Risk, and Management Science Program

Date/Time: May 5-6, 1989—8:30 a.m. to 5:00 p.m.

Place: Galiano Island, Von 1 PO, B.C., Vancouver, Canada.

Type of Meeting: Closed.

Contact Person: Dr. Howard Kunreuther, Program Director, (202) 357-7569 or

Dr. Robin Gregory, Associate Program Director, (202) 357-7417 for Decision, Risk, and Management Science, Room 336, National Science Foundation, Washington, DC 20550

Summary Minutes: May be obtained from the Contact Person at the above address

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research in the Decision, Risk, and Management Science Program

Agenda: To review and evaluate research proposals as part of the selection process for awards

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemption (4) and (6) of 5 U.S.C. 522b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

April 5, 1989.

[FR Doc. 89-8387 filed 4-7-89; 8:45 am]

BILLING CODE 7555-01-M

Meeting of DOE/NSF Nuclear Science Advisory Committee

The National Science Foundation announces the following meeting:

Name: DOE/NSF Nuclear Science Advisory Committee

Date and Time:

April 29, 1989 from 1:00 p.m. to 6:00 p.m.

April 30, 1989 from 9:30 a.m. to 4:00 p.m.

Place: Hyatt Regency Hotel, 300 Light St., Baltimore, Maryland

Type of Meeting: Open

Contact Person: Karl A. Erb, Program Director for Nuclear Physics, National Science Foundation, Washington, DC 20550, (202) 357-7993.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To advise the National Science Foundation and the Department of Energy on scientific priorities within the field of basic nuclear science research.

Agenda

Saturday, April 29, Chesapeake Room A/B

—Discussion of Long Range Planning Activities

Sunday, April 30, Frederick Room

—Response to Charge Concerning KAON Initiative

—Response to Charge Concerning Instrumentation

—Response to Charge Concerning Detector Proposals

—Continued Discussion of Long Range Planning Activities

—Other Business

M. Rebecca Winkler,

Committee Management Officer.

April 5, 1989.

[FR Doc. 89-8393 Filed 4-7-89; 8:45 am]

BILLING CODE 7555-01-M

Meeting of Advisory Panel for Genetics Program

The National Science Foundation announces the following meeting.

Name: Advisory Panel for Genetics.

Date and Time: Monday, Tuesday, and Wednesday May 1, 2, and 3, 1989 8:30 to 5:00 p.m.

Place: The National Science Foundation, 1800 G Street, NW., Room 1243.

Type of Meeting: Closed.

Contact Person: DeLill Nasser, Program Director, Genetics, Room 325], Telephone: (202) 357-0112.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. The matters are within exemptions (4) and (6) of proposals U.S.C. 522b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

April 5, 1989.

[FR Doc. 89-8388 Filed 4-7-89; 8:45 am]

BILLING CODE 7555-01-M

Meeting of Advisory Panel for History and Philosophy of Science

The National Science Foundation announces the following meeting:

Name: Advisory Panel for History and Philosophy of Science.

Date/Time:

April 28, 1989, 9:00 a.m. to 5:00 p.m.

April 29, 1989, 9:00 a.m. to 4:00 p.m.

Place: The Holiday Inn, Golden Gateway, 1500 Van Ness Avenue, San Francisco, CA 94109.

Type of Meeting: Closed.

Contact: Ronald J. Overmann, Program Director, Studies in Science, Technology & Society, National Science Foundation, Washington, DC 20550, Telephone (202) 357-9894, Room 312.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Advisory: To provide advice and recommendations concerning research in the Studies in Science, Technology & Society Program.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. The matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), Government in the Sunshine Act.

M. Rebecca Winkler,
Committee Management Officer.
April 5, 1989.

[FR Doc. 89-8389 Filed 4-7-89; 8:45 am]
BILLING CODE 7555-01-M

Meeting of Advisory Panel for Human Cognition and Perception

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Human Cognition and Perception

Date and Time: May 8-10, 1989, 9:00 a.m.-5:00 p.m.

Place: National Science Foundation, 1800 G. Street, NW., Room 536, Washington, DC.

Type of Meeting: Part Open—

Closed 5/8—9:00 a.m. to 5:00 p.m.

Closed 5/9—9:00 a.m. to 10:00 a.m.

Open 5/9—10:00 a.m. to 12 Noon

Closed 5/10—1:00 p.m. to 5:00 p.m.

Closed 5/10—9:00 a.m. to 5:00 p.m.

Contact Person: Dr. Joseph L. Young, Program Director, Human Cognition and Perception, Room 320, National Science Foundation, Washington, DC 20050, Telephone (202) 357-9898.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning support for research in human cognition and perception.

Agenda:

Open—General discussion of the research trends in human cognition and perception.

Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being discussed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,
Committee Management Officer.
April 5, 1989.

[FR Doc. 89-8390 Filed 4-7-89; 8:45 am]
BILLING CODE 7555-01-M

Meeting of Advisory Panel for Linguistics

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Linguistics
Date and Time: May 4-6, 1989, 9:00 a.m. to 5:00 p.m. each day.

Place: National Science Foundation, 1800 G. Street, NW., Room 523, Washington, DC. 20550.

Type of Meeting: Part Open—

Closed 5/4—9:00 a.m. to 5:00 p.m.

Open 5/5—9:00 a.m. to 12:00 noon.

Closed 5/5—12:00 noon to 5:00 p.m.

Closed 5/6—9:00 a.m. to 5:00 p.m.

Contact Person: Dr. Paul G. Chapin, Program Director for Linguistics, Room 320, National Science Foundation, Washington, DC 20550; (202) 357-7696.

Summary Minutes: May be obtained from Contact Person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in linguistics.

Agenda:

Open—General discussion of the current status and future plans of the Linguistics Program.

Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and

personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,
Committee Management Officer.
April 5, 1989.

[FR Doc. 89-8391 Filed 4-7-89; 8:45 am]
BILLING CODE 7555-01-M

Meeting of Advisory Panel for Metabolic Biology

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Metabolic Biology.

Date and Time: April 27 & 28, 1989; 9 a.m.—5 p.m.

Place: National Science Foundation, 1800 G. Street, NW., Washington, DC, Room 643.

Type of Meeting: Part Open—

Closed 4/27—9 a.m. to 5 p.m.

Open 4/28—9 a.m. to 10 a.m.

Closed 4/28—11 a.m. to 5 p.m.

Contact Person: Dr. James N. Siedow, Program Director, Cellular Biochemistry Program, Room 321, National Science Foundation, Washington, DC 20550, Telephone (202) 357-7987.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning support for research in cellular biochemistry.

Agenda:

Open—General discussion of the current status and future plans of the Cellular Biochemistry Program.

Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,
Committee Management Officer.
April 5, 1989.

[FR Doc. 89-8392 Filed 4-7-89; 8:45 am]
BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes Renewal

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: This notice is to announce the renewal of the Advisory Committee on the Medical Uses of Isotopes for a period of one year.

SUPPLEMENTARY INFORMATION: The purpose of the Advisory Committee on the Medical Uses of Isotopes is to provide advice to the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission (NRC), with respect to the development of standards and criteria for regulating and licensing uses of radionuclides in human subjects. The Committee also provides advice and consultation, for individual applications, on user qualifications and the human use of radiation sources. Members of this Committee have demonstrated professional qualifications and expertise in scientific and technical disciplines including diagnostic and therapeutic radiology, pathology, internal medicine, nuclear medicine, nuclear cardiology, and medical physics.

FOR FURTHER INFORMATION CONTACT: Francis St. Mary, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492-0611.

Dated: April 4, 1989.

John C. Hoyle,
Federal Advisory Committee Management Officer.

[FR Doc. 89-8428 Filed 4-7-89; 8:45 am]

BILLING CODE 7590-01-M

Southern California Edison Co., et al., San Onofre Nuclear Generating Station, Unit 2; Environmental Assessment and Finding of No Significant Impact

[Docket No. 50-361]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-10 issued to Southern California Edison Company, San Diego Gas and Electric Company, the City of Riverside, California and the City of Anaheim, California (the licensees), for operation of San Onofre Nuclear Generating Station, Unit 2, located in San Diego County, California.

Environmental Assessment

Identification of Proposed Action

The proposed change would revise Technical Specifications 3/4.4.8.1, "Reactor Coolant System, Pressure/Temperature Limits;" 3.4.1.4.1, "Cold Shutdown—Loops Filled;" 3.4.1.3, "Hot Shutdown;" 3.4.8.3.1, "Overpressure Protection System, RCS Temperature less than equal to 235°F;" and 3.4.8.3.2, "Overpressure Protection System, RCS Temperature greater than 235°F." The change would revise the Reactor Coolant System Pressure/Temperature (P/T) limit curves, Low Temperature Overpressure Protection (LTOP) temperatures, and associated bases to be effective up to 8 effective full power years (EFPY) of operation.

The Need for the Proposed Action

The proposed amendments are required to allow operation of the unit beyond 4 EFPY, up to 8 EFPY.

Environmental Impacts of the Proposed Action

The proposed action would not involve a significant change in the probability or consequences of any accident previously evaluated, nor does it involve a new or different kind of accident. Consequently, any radiological releases resulting from an accident would not be significantly greater than previously determined. The proposed amendment does not otherwise affect routine radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment. The Commission also concludes that the proposed action will not result in a significant increase in individual or cumulative occupational radiation exposure.

With regard to nonradiological impacts, the proposed amendment does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the *Federal Register* on February 24, 1989 (54 FR 8039). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Because the Commission has concluded that there are no significant

environmental impacts associated with the proposed action, there is no need to examine alternatives to the proposed action.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to operation of San Onofre Nuclear Generating Station, Unit 2 and 3, dated April 1981 and its Errata dated June 1981.

Agencies and Persons Consulted

The NRC staff has reviewed the licensees' request that supports the proposed amendment. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated November 7, 1988 and the supplementary information provided by letters dated December 29, 1988 and February 23, 1989 which are available for public inspection at the Commission's Public Document Room 2120 L Street NW., Washington, DC 20555, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 5th day of April 1989.

For the Nuclear Regulatory Commission,
Harry Rood,

Acting Director, Project Directorate V,
Division of Reactor Projects—III, IV, V and
Special Projects, Office of Nuclear Reactor
Regulation.

[FR Doc. 89-8381 Filed 4-7-89; 8:45 am]

BILLING CODE 7590-01-M

Virginia Electric and Power Co.; Consideration of Issuance of Amendments To Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity For Hearing

[Docket Nos. 50-280 and 50-281]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-32 and DPR-37 issued to Virginia Electric and Power Company (the licensee) for

operation of the Surry Power Station, Units 1 and 2 located in Surry County, Virginia.

The proposed Technical Specifications (TSP) changes will revise Sections 3.7 and 3.14, and Tables 3.7-2, 3.7-4, 4.1-1 and 4.1-2A by imposing additional operating restrictions. The proposed changes would: (1) Raise the minimum circulating and service water intake canal level from 18 feet to 23 feet, (2) increase the requirement from two to three emergency service water pumps to be operable with two units at power, with provisions for limited duration maintenance outages, and (3) provide operability and surveillance requirements for a new safety-related canal level actuation system which trips both units and closes non-essential Circulating and Service Water valves should the canal level fall below 23'-6".

By letter dated October 19, 1988, and during an October 26, 1988 meeting, the licensee identified several items which required appropriate corrective actions. Based on further studies, the licensee, by submittal dated March 27, 1989, concluded that the proposed TS revisions, together with other physical plant modifications and procedural changes, are required to ensure consistency between the operating requirements and the reconstituted plant design basis in the area of intake canal inventory management and component cooling heat exchanger operability. The plant modifications included (1) installation of new vacuum breakers to prevent reverse siphoning at the higher canal level, (2) installation of a vacuum breaker valve in the discharge tunnel to break prime and thus conserve canal inventory, and (3) the installation of flow instrumentation in the service water piping to the component cooling water heat exchanger to allow throttling during accident conditions.

New periodic tests will be performed to verify the operability of the safety-related canal level actuation system and the component cooling water heat exchangers, and to verify the circulating and service water valve leakage flow rates. Moreover, changes have been made to the emergency operating procedures to require operator actions, during accident conditions, to confirm: (a) The closure of certain valves in the circulating and service water systems to limit canal inventory depletion during accident conditions, (2) the emergency service water pumps are started when required, (3) the discharge tunnel vacuum breakers are opened, (4) the service water supply to the component cooling water heat exchangers (CCHX)

is throttled, and (5) the Residual Heat Removal System is placed in service.

Before issuance of the proposed license amendments, 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 request for amendment involves no significant hazards considerations. Under the Commission's regulation in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments 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 has determined and the NRC staff agrees that the proposed amendments do not constitute a significant hazards consideration in that the proposed amendments will not:

1. Involve a significant increase in the probability of occurrence or consequences of an accident or malfunction of equipment which is important to safety and which has been previously evaluated in the [Updated Final Safety Analysis Report (UFSAR)].

These Technical Specification changes are accompanied by changes to the physical plant which will include new vacuum breakers to prevent reverse siphoning at the new, higher canal level, addition of a safety-related canal low level actuation system, repowering the Circulating Water valves to assure isolation in the event of an Emergency Diesel Generator failure, installation of manual vacuum breaker valves on the Discharge Tunnel to break prime and hence conserve inventory, and installation of Component Cooling heat exchanger Service Water flow instrumentation to allow throttling during a Design Basis Accident.

Changes to the Emergency Operating procedures have also been developed which will require operator actions to verify specific Circulating and Service Water valves are closed to limit canal inventory depletion during accident conditions, the Emergency Service Water pumps are started when required, the discharge tunnel vacuum breakers are opened, the CCHX's are throttled and the Residual Heat Removal System is placed in service. New Periodic Tests will ensure the operability of the safety-related canal level actuation system, verify Component Cooling Water heat exchanger operability, and verify Circulating and Service Water valve leakage flow rates.

Changes to the Technical Specifications will raise canal level to provide more working inventory, require additional Emergency Service Water pumping capacity during a Design Basis Accident and impose surveillance requirements on the new canal low level actuation system.

A review has been made of the containment analysis, Main Steamline Break, large break LOCA analysis and other UFSAR Chapter 14 accidents. These changes do not affect the probability of any accident. The effect of the changes will be to improve the reliability of and to ensure Emergency Service Water supply under abnormal and accident conditions. The current UFSAR accident analysis results and conclusions, therefore, are not affected by the proposed changes.

2. Create the possibility of a new or different type of accident from those previously evaluated in the safety analysis report.

The enhancements to the reliability and performance of the Service Water supply system have no impact on the range of initiating events previously assessed. These proposed changes address and will eliminate or reduce the probability of several of the potential safety system failure modes identified in the Service Water design basis review.

3. Involve a significant reduction in a margin of safety.

Although operational requirements and plant systems have been modified to conform to the reconstituted design basis and assumptions, the Service Water system function is maintained, thereby ensuring the present safety analysis remains bounding. Specifically, increasing the canal inventory, requiring additional Emergency Service Water pumping capacity, addressing Component Cooling Water heat exchanger Service Water flow, providing time for operators to isolate specific Circulating and Service Water valves and limiting leakage flows ensures that the system function to provide adequate Service Water is being maintained. Since the system function is being maintained, the results of the UFSAR accident analyses remain bounding, and therefore, the safety margins are not impacted.

Therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no 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 this 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 are discussed below.

By May 10, 1989, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose 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. Request 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 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 amendments 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 considerations. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment 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 a final determination is that the amendments involve significant hazards considerations, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendments 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 amendments before the expiration of the 30-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 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 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 Herbert N. Berkow: (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 Michael W. Maupin, Esq., Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213, 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 March 27, 1989, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Local Public Document Room located at The Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Rockville, Maryland, this 3rd day of April 1989.

For the Nuclear Regulatory Commission.

Bart C. Buckley,

Senior Project Manager, Project Directorate II-2, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-8382 Filed 4-7-89; 8:45 am]

BILLING CODE 7590-01-M

**Wolf Creek Nuclear Operating Corp.;
Withdrawal of Application for
Amendment to Facility Operating
License**

[Docket No. 50-482]

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Wolf Creek Nuclear Operating Corporation (the licensee) to withdraw its November 7, 1986 application for proposed amendment to Facility Operating License No. NPF-42 for the Wolf Creek Generating Station, Unit No. 1, located in Burlington, Kansas.

The proposed amendment would have revised the technical specifications which would have permitted operation in Mode 3 with certain emergency core cooling system injection valves closed for an unlimited length of time with no restrictions on reactor coolant system pressure.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the *Federal Register* on November 25, 1986 (51 FR 42665). However, by letter dated March 22, 1989, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated November 7, 1986, and the licensee's letter dated March 22, 1989, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the local public documents rooms for the Wolf Creek Generating Station located at Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas.

Dated at Rockville, Maryland this 3rd day of April 1989.

For the Nuclear Regulatory Commission,
Douglas V. Pickett,

*Project Manager, Project Directorate—IV,
Division of Reactor Projects—III, IV, V and
Special Projects, Office of Nuclear Reactor
Regulation.*

[FR Doc. 89-8383 Filed 4-7-89; 8:45 am]

BILLING CODE 7590-01-M

**SECURITIES AND EXCHANGE
COMMISSION**

[Rel. No. 34-26689; File Nos. 4-218 and S7-433]

**Joint Industry Plan; Order Approving
Amendments to the Consolidated
Quotation Plan and Consolidated
Transaction Plan Fee Schedules**

I. Introduction

On December 23, 1988, the participants in the Consolidated Tape Association ("CTA") and Consolidated Quotation System ("CQS") submitted amendments¹ to the Plan governing the operation of the consolidated quotation reporting system ("CQ Plan") and the Plan governing the operation of the consolidated transaction reporting plan ("CTA Plan"). The amendments were noticed in Release No. 34-26509 on February 1, 1989, and the Commission received one comment in response thereto.

**II. Description of the Amendment and
Plan Participants' Rationale**

The purpose of the Amendments is to revise Schedule A-3 of Exhibit D to the CTA Plan and Schedule A-3 of Exhibit F to the CQ Plan to increase the Network B² non-member last sale and bid/ask interrogation unit subscriber fees by one dollar each.

The participants stated that Network B is increasing its non-member last sale and bid/ask subscriber fees to ensure that Network B participants are able to meet the increasing costs of administering the dissemination of Network B equity market data. They believe that the increase in the non-member fees will more accurately reflect the higher costs of approving billing and collecting monies owed Network B by

¹ The amendments to the Plans were submitted pursuant to Rule 11Aa-3 under the Securities Exchange Act of 1934 ("Act"). Rule 11Aa3-2(c)(4) empowers the Commission to summarily put into effect on a temporary basis a Plan amendment "if the Commission finds that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act." The Plan amendments were also submitted to Rule 11Aa3-1 under the Act.

² "Network B" refers to the consolidated data stream representing transaction and quotation data on eligible securities that are listed on the American Stock Exchange ("Amex") or that are traded on regional exchanges but substantially meet the Amex listing standards.

non-member subscribers.³ The participants believe that the amendments fulfill the National Market System objectives of dissemination of trading data on terms which are unreasonably discriminatory and thus are consistent with Section 11A of the Securities Exchange Act of 1934.

III. Comments

As noted above, the Commission received one comment letter from the Information Industry Association ("IIA"). The IIA made no substantive comments with respect to the amendments.⁴

IV. Discussion

Rule 11Aa3-2(c)(2) under the Act requires that the Commission approve an amendment to an effective national market system plan if it finds that the amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove the impediments to and perfect the mechanism of, a national market system, or otherwise in furtherance of the purposes of the Act. Section 11A(a)(1)(c)(iii) of the Act states that "[i]t is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure * * * the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities." As a general matter, these standards require that fees charged under the CTA and CQ plans be fair and reasonable. The Commission believes the amendments meet these standards.

The Network B non-member last sale and bid/ask interrogation unit subscriber fees are existing fees collected on behalf of all Plan participants for access to, or use of, facilities contemplated by the CTA and

³ According to the participants, the current number and growth rate of non-member subscribers greatly exceeds that of member subscribers. Because higher administrative costs are attributable to the increase in non-member subscribers, the participants believe that it is appropriate for non-members to bear an increase in subscriber fees to meet these higher costs.

⁴ The IIA's only comment concerned the Commission's decision to make the Amendment summarily effective. The association was concerned about the lack of opportunity to comment on the fee change before it was put into effect. In addition, the IIA requested that the Commission routinely extend the statutorily mandated comment period. IIA stated that a 21-day comment period does not afford trade associations, such as the IIA, sufficient time to review regulatory proposals or develop policy positions.

CQ Plans. The participants sought to amend these existing fees and to have the amendments put into effect summarily upon publication on a temporary basis not to exceed 120 days, pursuant to Rule 11Aa3-2(c)(4) under the Act. The Commission granted such temporary effectiveness and then solicited comments to determine whether to grant permanent effectiveness.

The current number of non-member subscribers, as well as the growth rate of this group of subscribers, far exceeds that of member subscribers. The Commission believes that if higher administrative costs are associated with increased utilization by non-member subscribers, it is appropriate that these subscribers incur an increase in fees to cover these costs.

The Commission believes that the increases in the Network B non-member last sale and bid/ask subscriber fees are a legitimate attempt to enable the participants to meet their increased costs of administering the dissemination of Network B equity market data. Moreover, the Commission finds that the increase of one dollar for each fee for non-member subscribers is not unreasonably discriminatory and therefore complies with section 11A(c)(1) of the Act. Thus, the Commission finds that making these fee increases a permanent part of the CTA and CQS Network B fee structures is fair and reasonable, and is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism, a national market system, or otherwise in furtherance of the purposes of the Act.

V. Conclusion

For the reasons discussed above, the Commission finds the amendments to the CTA and CQS Network B fee schedules to be consistent with the Act, particularly Section 11A(a)(1) and Rules 11Aa3-1 and 11Aa3-2.

It is therefore ordered, pursuant to section 11A of the Act, that the amendments to the CTA and CQ Plans be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 3, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-8394 Filed 4-7-89; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

April 5, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Arkla, Inc.
\$3 Cum. Conv. Exch. A Pfd., \$.10 Par Value (File No. 7-4469).

Avon Products
\$2 Equity Redemption cum. Pfd., \$1 Par Value (File No. 7-4470).

Cameron Iron Works
\$3.50 Cum. Conv. Exch. Pfd., \$.10 Par Value (File No. 7-4471).

Diamond Shamrock R&M
\$2 Cum. Conv. Exch. Pfd., \$.01 Par Value (File No. 7-4472).

Metro Mobil CTS
Class A common Stock, \$.10 Par Value (File No. 7-4473).

First Capital Holdings
\$2.0625 Cum. Conv. Pfd., \$1.00 \$.25 Par Value (File No. 7-4474).

Corona Corporation
Class A Common Stock, No Par Value (File No. 7-4475).

Kemper Strategic Municipal Income Trust
Common shares of Beneficial Interest, \$1.00 Par Value (File No. 7-4476).

Unicorp American Corporation
Common Stock, \$.01 Par Value (File No. 7-4477).

Valero Energy
\$2.0625 Cum. Conv. Pfd., \$1.00 Par Value (File No. 7-4478).

Citizens & Southern Corp.
Common Stock, \$2.50 Par Value (File No. 7-4479).

Westpac Banking Corporation
American Depository shares, \$1 Par Value (File No. 7-4480).

Global Marine Inc.
Common Stock, \$.01 Par Value (File No. 7-4481).

Global Marine Inc.
Warrants expiring 3/6/96, No Par Value (File No. 7-4482).

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 26, 1989, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC

20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-8446 Filed 4-7-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26688; File No. SR-MSTC-88-8]

Self-Regulatory Organizations; Midwest Securities Trust Company; Order Approving a Proposed Rule Change on a Temporary Basis

On December 2, 1988, pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), the Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission ("Commission"), a proposed rule change to enhance MSTC's File Transmission Service ("FTS") by allowing Depository Delivery Instructions ("DDIs")¹ to be transmitted through FTs. Subsequently on January 3, 1989, MSTC amended its proposed rule change (SR-MSTC-88-8) to provide for Commission review pursuant to Section 19(b)(2) of the Act. The Commission published a notice and temporary approval order to solicit comment on the proposed rule change and allow MSTC to provide this service on a pilot basis.² This order extends the temporary approval until June 30, 1989.

The proposed rule change is designed to provide FTS users with a new method of submitting DDIs to MSTC. Before the pilot program began, participants submitting DDIs to MSTC entered those instructions manually into their MSTC terminals or delivered hard copy or computer tapes to MSTC. The pilot program has allowed participants to transmit DDIs directly from their computers to MSTC's computer. The Commission has obtained valuable information concerning the operation of this service during the pilot program and is extending the pilot program in order

¹ The DDI service allows firms to transmit instructions to deliver securities to other MSTC participants and non-MSTC participants.

² See Securities Exchange Act Release No. 26418 (January 4, 1989), 54 FR 1040.

to further evaluate the security features MSTC has established to safeguard this system and evaluate the risks it poses to MSTC's other systems.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-MSTC-88-8), be, and hereby is, approved on a temporary basis until June 30, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: April 3, 1989.

[FR Doc. 89-8448 Filed 4-7-89; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

April 4, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

PHM Corporation

Common Stock, \$0.01 Par Value (File No. 7-4456).

Sun Exploration & Production Co.

Common Stock, \$1.00 Par Value (File No. 7-4457).

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 25, 1989, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-8445 Filed 4-7-89; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

April 4, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

High Income Advantage Trust

Common Stock, \$0.01 Par Value (File No. 7-4458).

High Income Advantage Trust II

Common Stock, \$0.01 Par Value (File No. 7-4459).

Ransburg Corporation

Common Stock, \$0.15 Par Value (File No. 7-4460).

TRC Companies, Inc.

Common Stock, \$0.10 Par Value (File No. 7-4461).

Washington National Corporation

Common Stock, \$5 Par Value (File No. 7-4462).

Whitehall Corporation

Common Stock, \$0.10 Par Value (File No. 7-4463).

Zenith National Insurance Corp.

Common Stock, \$1 Par Value (File No. 7-4464).

PacifiCorp

Common Stock, \$3.25 Par Value (File No. 7-4465).

Royal Dutch Petroleum Company

Shares of 5 Netherlands Guilders (File No. 7-4466).

Eastern Utilities Associates

Common Stock, \$5 Par Value (File No. 7-4467).

MDU Resources Group, Inc.

Common Stock, \$5 Par Value (File No. 7-4468).

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to comment on or before April 25, 1989, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC

20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-8447 Filed 4-7-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[CM-8/1276]

Study Group 10 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 10 and Joint Study Groups 10-11 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on April 14, 1989, in the FCC Suite, Second Floor (Room 257), 2000 L Street, NW., Washington, DC. The meeting will be held from 10:00 a.m. to 3:00 p.m. with a lunch break. This announcement does not meet the 15-day notice requirement, due to unavoidable administrative delays in processing the information.

Study Group 10 deals with sound broadcasting and the Joint Groups with program recording and the use of satellites for broadcasting. The purpose of the meeting is to prepare positions and contributions to be recommended for the United States to take at the Final Study Group 10 Meeting scheduled for October 1989.

Members of the general public may attend and participate in the meeting, subject to available seating and the instructions of the Chairman. Requests for further information should be directed to the Chairman: Mr. John W. Reiser, Federal Communications Commission, Washington, DC 20554; telephone (202) 254-3394; telefax (202) 653-5402.

Dated: March 31, 1989.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 89-8414 Filed 4-7-89; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/1277]

Study Group 1 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 1 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on April 27, 1989 in Room 4630 of the Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC. The meeting will begin at 9:30 a.m.

Study Group 1 deals with the efficient use of the radio frequency spectrum, and in particular, with problems related to frequency sharing; principles for classifying emissions; and the measurement of emission characteristics and spectrum occupancy. The purpose of the meeting is to prepare contributions and positions to be recommended for the United States to take at the Final Study Group 1 Meeting scheduled for the Fall of 1989.

Members of the general public may attend the meeting and join in the discussions subject to the Chairman's instructions. Requests for further information should be directed to Dr. William Utlaut, Institute for Telecommunications Sciences/NTIA, Boulder, Colorado 80303-3328; telephone (303) 497-5218; telefax (303) 497-5993.

Dated: March 31, 1989.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 89-8415 Filed 4-7-89; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended March 31, 1989

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

[Docket No. 46215]

Date Filed: March 29, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 26, 1989.

Description: Application of Delta Air Lines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a new or amended certificate of public convenience and necessity to permit Delta to provide nonstop air transportation between Honolulu, Hawaii and Tokyo, Japan.

[Docket No. 46217]

Date Filed: March 30, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 27, 1989.

Description: Application of Taino Air Lines, S.A., pursuant to section 402 of the Act and Subpart Q of the Regulations, applies for a foreign air carrier permit, authorizing it to engage in nonscheduled, including charter, foreign air transportation of property and mail between points in the Dominican Republic and Miami, Florida; San Juan, Puerto Rico; and New York, New York, via certain optional intermediate points and areas, with all flights to the United States originating or terminating in the Dominican Republic.

[Docket No. 46211]

Date Filed: March 27, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 10, 1989.

Description: Conforming Application of ABX Air, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations, applies for an amended certificate of public convenience and necessity for Route 377, so as to authorize Airborne to provide foreign air transportation of property and mail between a point or points in the United States, on the one hand, and a point or points in Canada, on the other hand.

[Docket No. 46224]

Date Filed: March 31, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 28, 1989.

Description: Application of Regal Air Limited (RAL), pursuant to section 402 of the Act and Subpart Q of the Regulations applies for a foreign air carrier permit to operate all cargo charter and all-cargo nonscheduled air services; between the co-terminal points of St. Kitts, Nevis, Antigua, Barbuda, Belize, Dominica, St. Lucia, St. Vincent, Montserrat, Anguilla, and British Virgin Islands; the intermediate points of St. Maarten, Barbados, Dominican

Republic, Grenada, Guadalupe, Haiti, Martinique; and the co-terminal points of Miami/Ft. Lauderdale, San Juan, Puerto Rico, the U.S. Virgin Islands and Houston.

[Docket No. 45448]

Date Filed: March 27, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 24, 1989.

Description: Amendment No. 2 to the Application of American Airlines, Inc. amending paragraph 4 of its initial application. American requests the following additional authority: A.2 San Jose-Guaymas, Loreto, La Paz, San Jose del Cabo, Mazatlan, Puerto Vallarta, Guadalajara, Manzanillo, Mexico City/Toluca, Zihuatanejo, Acapulco, Haululco.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 89-8349 Filed 4-7-89; 8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

Order To Show Cause; Austria Exemption Proceeding

AGENCY: Office of the Secretary, DOT.

ACTION: Order 89-4-3, statement of tentative findings and conclusions and order to show cause, *U.S.-Austria Exemption Proceeding*, Docket 46232.

SUMMARY: By Order 89-4-3, the Department proposes to designate Pan American World Airways, Inc. and Trans World Airlines, Inc., pursuant to the United States-Austria Air Transport Agreement, to operate scheduled combination service between New York and Vienna through March 31, 1991. The Department proposes to designate (a) Pan American to serve the New York-Vienna market on a nonstop basis and on a one-stop basis via Hamburg and beyond to Budapest with local traffic rights and via Budapest without local traffic rights, and (b) TWA to serve the New York-Vienna market on a one-stop basis via Frankfurt with local traffic rights. The Department proposes, as an interim measure, to designate TWA to operate New York-Vienna service via Zurich until such time as the carrier obtains the requisite takeoff/landing slots to operate via Frankfurt. Since the Agreement precludes U.S.-Austria service by two U.S. carriers via the same intermediate point, the Department is tentatively denying the application of American Airlines, Inc. for exemption authority to serve the Chicago-Vienna market via Frankfurt.

DATES: Comments on, or objections to, the Department's tentative findings and conclusions are due April 14, 1989. Answers are due not later than April 21, 1989.

ADDRESS: Comments and objections should be filed in Docket 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 persons listed in ordering paragraph 7 of Order 89-4-3.

Dated: April 4, 1989.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-8348 Filed 4-7-89; 8:45 am]

BILLING CODE 4910-82-M

[Docket 45850]

Wrangell Air Service; Reporting Violations Enforcement Proceeding; Hearing

Notice is hereby given that a hearing in the above-titled proceeding is assigned to be held on April 24, 1989, at 10 a.m. (local time), in Room 5332, Department of Transportation, 400 7th Street, SW., Washington, DC, before the undersigned Chief Administrative Law Judge.

William A. Kane, Jr.,

Chief Administrative Law Judge.

[FR Doc. 89-8347 Filed 4-7-89; 8:45 am]

BILLING CODE 4910-82-M

Maritime Administration

Approval of Request for Removal, Without Disapproval from Roster of Approved Trustees; Wells Fargo Bank

Notice is hereby given that Wells Fargo Bank, San Francisco, California, has requested removal, without disapproval, from the Roster of Approved Trustees. In its request for removal, Wells Fargo Bank stated that the Bank has divested its corporate trust business and has resigned from all bond issues for which it served as trustee.

Therefore, pursuant to Pub. L. 89-346 and 46 CFR 221.21-221.30, Wells Fargo Bank, San Francisco, California, is removed from the Roster of Approved Trustees.

This notice shall become effective on date of publication.

Dated: April 5, 1989.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 89-8438 Filed 4-7-89; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 9-89]

Treasury Notes, Series N-1993

Washington, March 30, 1989.

The Secretary announced on March 29, 1989, that the interest rate on the notes designated Series N-1993, described in Department Circular—Public Debt Series—No. 9-89 dated March 23, 1989, will be 9% percent. Interest on the notes will be payable at the rate of 9% percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89-8459 Filed 4-7-89 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 8-89]

Treasury Notes, Series X-1991

Washington, March 29, 1989.

The Secretary announced on March 28, 1989, that the interest rate on the notes designated Series X-1991, described in Department Circular—Public Debt Series—No. 8-89 dated March 23, 1989, will be 9% percent. Interest on the notes will be payable at the rate of 9% percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89-8460 Filed 4-7-89; 8:45 am]

BILLING CODE 4810-40-M

Customs Service

Announcement of Public Forum; Super Carrier Initiative Agreement

AGENCY: U.S. Customs Service, Treasury.

ACTION: Notice of public forum. Super Carrier Initiative Agreement.

SUMMARY: This notice is to advise that a public forum will be held to announce the new Super Carrier Initiative Agreement for Air and Sea Carriers.

FOR FURTHER INFORMATION CONTACT: Lewellyn Robison, Office of Public Affairs, (202-566-5286)

SUPPLEMENTARY INFORMATION: Legitimate air and sea carriers and

cargos have been utilized by the criminal element to smuggle illegal drugs and contraband into the United States and other drug user countries.

Under 19 U.S.C. 1584(b) penalties are authorized for unmanifested narcotic and controlled drugs and marijuana found on vessels, vehicles, and aircraft, unless the master or person in charge could not have known by the exercise of the "highest degree of care and diligence" of the presence of such merchandise. The Anti-Drug Abuse Act of 1986 extended the highest-degree-of-care-and-diligence standard to apply in connection with seizures and forfeitures of aircraft and other common carriers resulting from unmanifested narcotic drugs or marijuana to 19 U.S.C. 1594.

In order to avoid penalties and/or forfeiture of conveyances, the common carrier must prove that neither he nor any offices knew, or by the exercise of the highest degree of care and diligence could have known, that controlled substances were on board.

The Super Carrier Initiative Program was developed to meet the needs of high-risk carriers that have made significant efforts to prevent smuggling aboard their conveyances but have continued to experience difficulties resulting in mounting penalties and seizures of their conveyances.

By signing the Super Carrier Initiative Agreement with the U.S. Customs Service, high-risk carriers agree to impose strict security standards at foreign and domestic terminals, facilities and on their vessels to reduce their vulnerability to smuggling.

In return, the U.S. Customs Service will provide enhanced security and awareness training to key carrier personnel to identify and prevent smuggling attempts aboard their carriers. Foreign and domestic sites surveys, post-analysis seizure teams and search techniques will be provided to signatories of the agreement. Should illegal drugs continue to be found on commercial carriers, the degree of compliance with the terms of the agreement will be considered as a mitigating factor in any decision to penalize a carrier or seize a conveyance.

Procedures for acceptance and certification into the Super Carrier Initiative Program will be the primary issues discussed at this forum. Members of the transportation industry are invited to attend, but attendees are requested to call the Office of Public Affairs at 202-566-5286 by April 24, 1989. Attendees must give their names, company affiliation and telephone number. The forum will be held in

Washington, DC on Monday, May 1, 1989, from 1000-1200 at the Departmental Auditorium on Constitution Avenue, between 13th and 14th Streets, NW.

Dated April 5, 1989.
Charles R. Winwood,
*Acting Assistant Commissioner, Office of
Inspection and Control.*
[FR Doc. 89-8532 Filed 4-7-89; 11:20 am]
BILLING CODE 4920-02-M

DEPARTMENT OF VETERANS AFFAIRS

Conversion of Select Federal Supply Schedule Items From a Multiple Award Schedule to a Single Award Schedule

AGENCY: Department of Veterans
Affairs.

ACTION: Notice.

SUMMARY: Notice is hereby given that
the Department of Veterans Affairs

(VA) is proposing to convert select items currently under Federal Supply Schedule Group 65, Part 1, from a Multiple Award Schedule (MAS) to a Single Award Schedule (SAS). The items proposed for this conversion are mainly over-the-counter pharmaceutical products.

DATES: Written comments must be received on or before May 10, 1989, and should include consideration of potential impact on small business concerns. Comments will be available for public inspection until May 22, 1989.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this change 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 the Veterans Services Unit, Room 132 at the above address, between the hours of 8:00 and

4:30 p.m., Monday through Friday (except holidays), until May 22, 1989.

FOR FURTHER INFORMATION CONTACT:
Gerri Boehm, Pharmaceutical Products
Division (904E), VA Marketing Center,
Department of Veterans Affairs (312)
216-2533.

SUPPLEMENTARY INFORMATION: This proposed action is published in accordance with General Services Administration Handbook, Supply Operations, Chapter 38 (FSS P2901.2A), and Federal Acquisition Regulation (FAR) 38.2. The single award schedule is the preferred method of contracting due to the characteristics of over-the-counter pharmaceutical products. Technology is relatively stable and adequate supplier competition is available against the common standard.

Dated: March 30, 1989.
Edward J. Derwinski,
Secretary.
[FR Doc. 89-8439 Filed 4-7-89; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 54, No. 67

Monday, April 10, 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 FCC To Hold Open Commission Meeting, Wednesday, April 12, 1989 April 5, 1989.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, April 12, 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

- Private Radio—1—Title:** Request of American Mobile Data Communications, Inc. (AMDC) for Waiver and other relief to enable the construction of a nationwide Two-Way Mobile Data Communications Network. **Summary:** The Commission will consider AMDC's request for waivers of the Rules and other relief to permit construction of a nationwide two-way mobile data communications network using frequencies in the 900 MHz band allocated to the Specialized Mobile Radio Service.
- Common Carrier—1—Title:** Inquiry into the Existence of Unlawful Discrimination by Satellite Carriers Against Distributors in the Provision of Superstation and Network Station Programming. **Summary:** In accordance with the Satellite Home Viewer Copyright Act of 1988, the Commission will consider adopting a Notice of Inquiry seeking comments on whether and the extent to which discrimination exists against distributors in the distribution of superstation and network station programming by satellite carriers.
- Common Carrier—2—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.
- Mass Media—1—Title:** In the matter of imposing syndicated exclusivity requirements on satellite delivery of television broadcast signals to home satellite earth station receivers. **Summary:** In accordance with the Satellite Home Viewers Copyright Act of 1988, the Commission will consider initiating a proceeding to examine the feasibility of imposing syndex regulations on the delivery of syndicated programming to home satellite dish owners.
- Mass Media—2—Title:** Amendment of Part 73 of the Commission's Rules to adopt a new emission limitation and to eliminate restrictions on interference to the protected daytime contours of AM stations. **Summary:** The Commission will consider

rule changes affecting the technical quality of the AM broadcast service.

This meeting may be continued on 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.

Issued: April 5, 1989.
Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 89-8542 Filed 4-6-89; 3:29 pm]
BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:07 p.m. on Tuesday, April 4, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider matters relating to: (1) The possible closing of certain insured banks, and (2) an assistance transaction involving certain failed banks.

In calling the meeting, the Board determined, on motion of Director Robert L. Clarke (Comptroller of the Currency), seconded by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: April 5, 1989.
Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.
[FR Doc. 89-8474 Filed 4-6-89; 10:37 am]
BILLING CODE 6714-01-M

FEDERAL ENERGY REGULATORY COMMISSION

April 5, 1989.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-49), 5 U.S.C. 552B:

TIME AND PLACE: April 12, 1989, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note.—Item listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary; Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

**Consent Power Agenda, 894th Meeting—
April 12, 1989, Regular Meeting (10:00 a.m.)**

- CAP-1.**
Project No. 3512-010, UAH—Braendly Hydro Associates
- CAP-2.**
Project No. 6032-002, Niagara Mohawk Power Corporation and Fourth Branch Associates
Project No. 9706-002, Mechanicville Corporation
- CAP-3.**
Project No. 2144-008, City of Seattle
- CAP-4.**
Project No. 2337-001, Pacific Power and Light Company
- CAP-5.**
Project No. 9673-004, West Virginia Hyrdo Inc.
- CAP-6.**
Project No. 2600-017, Bangor-Pacific Hydro Associates
- CAP-7.**
Docket No. QF87-345-001, City of Burlington, Vermont Electric Department and Winooski One Partnership
- CAP-8.**
Project No. 2756-010, City of Burlington Vermont Electric Department
Project No. 3101-003, City of Winooski
Project No. 9413-003, Winooski One Partnership
- CAP-9.**
Project No. 4412-007, Thornton Lake Resource Company
- CAP-10.**
Project No. 5074-009, Baker Power Company
- CAP-11.**
Project No. 4312-003, Watersong Resources
- CAP-12.**

- Project No. 2727-004, Bangor Hydro-Electric Company
CAP-13.
Project No. 3195-026, Sayles Hyrdo Associates
CAP-14.
Project No. 4376-003, High Country Resources
CAP-15.
Project No. 10160-000, Public Utility District No. 1 of Mason County, Washington, and Public Utility District No. 3 of Mason County, Washington
CAP-16.
Docket Nos. ER89-171-001 and ER88-619-000, Gulf States Utilities Company
CAP-17.
Docket No. ER89-237-000, New York State Electric & Gas Corporation
CAP-18.
Docket Nos. ER87-001 and ER87-97-002, Pacific Gas and Electric Company
CAP-19.
Docket No. ER88-123-000, Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company and Toledo Edison Company
CAP-20.
Docket No. QF88-72-001, Walker Resources, Inc.
CAP-21.
Docket No. QF88-434-001, Calderon Energy Company
CAP-22.
Docket No. EL88-38-000, Minnesota Power & Light Company
CAP-23.
Docket No. EL88-40-000, Gulf States Utilities Company
- Consent Miscellaneous Agenda**
CAM-1.
Omitted
CAM-2.
Docket No. SA88-13-001, Valero Interstate Transmission Company
- Consent Gas Agenda**
CAG-1.
Docket Nos. RP87-86-005, RP86-11-002, RP85-11-019, RP89-110-000 and RP89-111-000, K N Energy, Inc.
CAG-2.
Docket No. RP89-106-000, Northern Border Pipeline Company
CAG-3.
Docket Nos. RP89-105-000 and RP89-105-001, Arkla Energy Resources
CAG-4.
Docket No. RP88-228-009, Tennessee Gas Pipeline Company, a Division of Tenneco, Inc.
CAG-5.
Omitted
CAG-6.
Omitted
CAG-7.
Docket Nos. RP88-209-018 and RP88-209-020, Natural Gas Pipeline Company of America
CAG-8.
Omitted
CAG-9.
Omitted
CAG-10.
Docket No. TA89-1-2-002, East Tennessee Natural Gas Company
CAG-11.
Docket No. TA89-1-18-002, Texas Gas Transmission Corporation
CAG-12.
Docket No. TA89-1-9-000, Tennessee Gas Pipeline Company
CAG-13.
Docket No. TA89-1-41-000, Pauite Pipeline Company
CAG-14.
Docket Nos. RP87-71-003 and RP88-182-003, Gas Research Institute
CAG-15.
Docket No. TA89-1-28-005, Panhandle Eastern Pipe Line Company
CAG-16.
Docket No. RP89-61-002, Kentucky West Virginia Gas Company
CAG-17.
Docket No. RP88-47-020, Northwest Pipeline Corporation
CAG-18.
Docket No. RP85-177-060, Texas Eastern Transmission Corporation
CAG-19.
Docket Nos. RP88-27-012 and RP88-264-004, United Gas Pipe Line Company
Docket Nos. CP87-524-003 and CP87-524-004, Texas Gas Transmission Corporation
CAG-20.
Docket No. RP86-116-014, Panhandle Eastern Pipe Line Company
CAG-21.
Docket Nos. TA89-1-1-000 and TA89-1-1-001, Alabama-Tennessee Natural Gas Company
CAG-22.
Docket No. RP89-29-002, Tennessee Gas Pipeline Company
CAG-23.
Docket No. RP88-228-010, Tennessee Gas Pipeline Company
CAG-24.
Docket No. RP87-14-005, Algonquin Gas Transmission Company
CAG-25.
Docket No. RP88-259-008, Northern Natural Gas Company, Division of Enron Corp.
CAG-26.
Docket No. RP88-228-011, Tennessee Gas Pipeline Company
CAG-27.
Docket No. RP87-7-034, Transcontinental Gas Pipe Line Corporation
CAG-28.
Docket No. RP89-44-000, Florida Gas Transmission Company
CAG-29.
Docket No. TA88-2-23-000, Eastern Shore Natural Gas Company
CAG-30.
Docket Nos. RP88-45-000 and RP88-46-000, Arkla Energy Resources
CAG-31.
Docket No. RP86-41-000, Algonquin Gas Transmission Company
CAG-32.
Omitted
CAG-33.
Docket No. OR88-1-000, Cook Inlet Pipe Line Company
CAG-34.
Docket No. OR89-4-000, KK Appliance Company v. Mid-America Pipeline Company
CAG-35.
Docket No. ST88-4223-000, Transco-Louisiana Intrastate Pipeline Company
CAG-36.
Docket No. ST89-923-000, Cabot Pipeline Corporation
CAG-37.
Docket Nos. ST89-916-000, ST89-917-000, ST89-958-000, and ST89-481-000, Phillips Natural Gas Company
CAG-38.
Docket No. ST89-918-000, Dfelhi Gas Pipeline Corporation
CAG-39.
Docket No. ST83-429-005, BP Gas Transmission Company
CAG-40.
Docket No. CI61-945-001, Pennzoil Products Company (Successor-in-interest to Pennzoil Company)
CAG-41.
Docket No. CI89-191-000, Shell Gas Pipeline Company
CAG-42.
Docket No. CP88-266-004, Midwestern Gas Transmission Company
CAG-43.
Docket No. CP89-255-001, Transcontinental Gas Pipe Line Corporation
CAG-44.
Docket No. RP88-13-003, James River II, Inc. v. Northwest Pipeline Corporation
Docket No. CP88-111-003, Northwest Pipeline Corporation
Docket No. CP87-328-004, Northwest Pipeline Corporation
CAG-45.
Omitted
CAG-46.
Docket No. CP88-332-001, El Paso Natural Gas Company
CAG-47.
Docket No. CP87-43-001, Arkla Energy Resources, a Division of Arkla, Inc.
CAG-48.
Docket No. CP89-1055-000, Southern Natural Gas Company
CAG-49.
Docket Nos. CP89-690-000 and CP89-691-000, Northern Natural Gas Company, Division of Enron Corp.
CAG-50.
Docket No. CP89-449-000, ANR Pipeline Company
CAG-51.
Docket No. CP88-860-000, Williams Natural Gas Company
Docket No. CP89-248-000, Williams Natural Gas Company
CAG-52.
Docket No. CP88-113-000, Arkla Energy Resources, a Division of Arkla, Inc.
CAG-53.
Docket Nos. CP88-438-000 and CP88-438-001, Algonquin Gas Transmission Company
CAG-54.
Docket No. CP86-506-000, Texas Eastern Transmission Corporation
CAG-55.
Docket No. CP88-420-000, Texas Gas Transmission Corporation

CAG-56.
Docket No. CP88-436-000, Williston Basin
Interstate Pipeline Company

CAG-57.
Docket No. CP89-610-000, Texas Gas
Transmission Corporation

CAG-58.
Docket No. CP87-408-000, Owens-Corning
Fiberglas Corp. v. Transcontinental Gas
Pipe Line Corporation

I. Licensed Project Matters

P-1.
Reserved

II. Electric Rate Matters

ER-1.
EC88-5-000, Southern California Edison
Company and San Diego Gas & Electric

Company. Request for approval of
proposed merger.

Miscellaneous Agenda

M-1.
RM87-33-000, Hydroelectric Relicensing
Regulations Under the Federal Power
Act. Final Rule.

I. Pipeline Rate Matters

RP-1.
Omitted.

RP-2.
Docket Nos. RP88-185-000 and CP88-434-
000, El Paso Natural Gas Company.
Order concerning market-based gas
inventory charge.

II. Producer Matters

CI-1.
Reserved

III. Pipeline Certificate Matters

CP-1.
Docket Nos. CP89-1-000 and CP89-2-000,
Mojave Pipeline Company. Order
concerning applications (1) for optional
certificate to construct pipeline facilities
and (2) to provide open-access
transportation service.

Lois D. Cashell,

Secretary.

[FR Doc. 89-8494 Filed 4-6-89; 11:21 am]

BILLING CODE 6717-01-M

Federal Register

Monday
April 10, 1989

Part II

Environmental Protection Agency

**Lead Contamination in School Drinking
Water Supplies; Guidance Document and
Testing Protocol; Notice of Availability
and Request for Comments**

ENVIRONMENTAL PROTECTION AGENCY

[WH-FRL-3552-6]

Guidance Document and Testing Protocol To Assist Schools in Determining the Source and Degree of Lead Contamination in School Drinking Water Supplies and Remediating Such Contamination

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice of availability with request for comments.

SUMMARY: This notice is issued pursuant to the Lead Contamination Control Act of 1988 (LCCA), Pub. L. 100-572, enacted on October 31, 1988, which amends the Safe Drinking Water Act (Pub. L. 99-339). The LCCA added section 1464, which requires the Environmental Protection Agency (EPA) to publish and distribute to the States a guidance document and testing protocol to assist schools in determining the source and level of lead contamination in school drinking water. This notice announces the availability of this guidance document and testing protocol, entitled "Lead in School Drinking Water," explains how to obtain copies, and requests comments for use in future updates.

DATES: Written comments should be submitted on or before June 9, 1989.

ADDRESSES: Send written comments to Lead Docket, Office of Drinking Water (WH-550), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Peter Lassoovsky, Office of Drinking Water (WH-550E), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-8499. Information also may be obtained from the EPA Safe Drinking Water Hotline. Callers within the United States (except Washington, DC and Alaska), Puerto Rico, and the Virgin Islands may reach the Safe Drinking Water Hotline at (800) 426-4791; callers in the Washington, DC area and Alaska may reach the Hotline at (202) 382-5533. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 8:30 a.m. to 4:00 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION:

I. Background

A. Purpose and Summary

On October 31, 1988, the Lead Contamination Control Act of 1988 was enacted. This legislation provides for programs to help reduce exposure to

lead-contaminated drinking water, especially for children. Its major provisions include a mandate for the Consumer Product Safety Commission (CPSC) to order the repair, replacement, or recall and refund of drinking water coolers that EPA has identified as containing lead-lined water tanks; a ban on the manufacture or sale in interstate commerce of drinking water coolers that are not lead free; Federal and State programs to help schools evaluate and respond to lead contamination in drinking water, including State and Federal technical, and possibly financial, assistance; and (if appropriations are available) expansion of lead screening programs for children to be administered by the Centers for Disease Control. Under the LCCA, the term "lead free" means, with respect to a drinking water cooler, that each part or component of the cooler which may come in contact with drinking water contains not more than 8 percent lead, except that no drinking water cooler which contains any solder, flux, or storage tank interior surface which may come in contact with drinking water shall be considered lead free if the solder, flux, or storage tank interior surface contains more than 0.2 percent lead.

To assist States and schools in evaluating and responding to lead contamination of school drinking water, the LCCA requires EPA to develop and distribute to the States a guidance document and testing protocol. The LCCA specifies that the guidance document and testing protocol must contain: (1) Guidelines for sample preservation; (2) guidance to assist States, schools, and the general public in ascertaining the source and degree of lead contamination in school drinking water supplies and in remediating such contamination; and (3) a testing protocol for the identification of drinking water coolers which contribute to lead contamination in drinking water. The LCCA also requires that States disseminate the guidance document and testing protocol to local education agencies, private non-profit elementary and secondary schools, and day care centers.

B. Sources of Lead in Drinking Water

There are a number of important sources of human exposure to lead in the environment. Such sources include automobile exhaust, leaded paint, drinking water, and others. Lead gets into drinking water in two ways: from the source water or by corrosion of lead-containing parts in the distribution/plumbing system. Most sources of drinking water have no lead or very low

levels of lead (under 5 parts per billion). However, lead occurs naturally in the ground and in some cases can get into well water. In addition, lead can enter surface waters through direct or indirect discharges from industrial or municipal wastewater treatment plants, through deposition from the combustion of leaded gasoline or smelting of ores, or when lead in air settles onto water or city streets and eventually (via rainwater) flows into storm sewers. Public water suppliers can remove lead due to these sources using existing treatment plant technology.

It is more likely that lead found in a school (or other building) water supply is due to corrosion of lead service lines connecting the water main to the building or lead pipes, solder, flux, fixtures, or other lead-containing parts of the plumbing system which distributes drinking water within the building. Experts regard the corrosion of lead solder as a major cause of lead contamination of drinking water today.

Corrosion, a reaction between the water and the transport pipes, solder, flux, fixtures, or other plumbing components, is more pronounced when the water is "soft" (lathers soap easily) and/or is acidic (has a low pH). The corrosivity of water can usually be controlled effectively by the public water supplier. However, any water can corrode lead, and thus result in high levels of lead in the water. The extent of lead contamination is affected by a number of other factors including: the amount of lead contained in the plumbing; the faucets or apparatus dispensing the water; the contact time of the water with the materials containing lead; whether or not the electrical systems are grounded to the water pipes; and the age and quality of the plumbing system. The Safe Drinking Water Act Amendments of 1986, Pub. L. 99-339, banned the use of lead pipes, solders, and flux and authorized EPA to withhold 5% of drinking water program grant funds to States that fail to implement the ban. EPA has issued guidance to its regional offices for implementation of this provision.

It is important to note that lead contamination may not occur uniformly throughout a school or other building. Large variations in lead concentrations may be found among individual outlets in a building where the sources of contamination differ because of differences in flow rates, sitting time, and/or building materials. For instance, where the source of the contamination is at the beginning of the distribution system, as with lead service connections to the water main, high lead levels in the

drinking water may be widespread throughout the building. On the other hand, high lead levels may only be found in sections of the distribution system where the water is infrequently used or where recent repair or installation of plumbing used lead solder.

C. Lead in Drinking Water Coolers

Investigation by EPA's Office of Drinking Water revealed that water coolers can be a significant source of lead in drinking water. In 1988, a report to Congress by the U.S. Public Health Service, entitled "The Nature and Extent of Lead Poisoning in Children in the United States," warned that some drinking water coolers may contain lead solder and/or lead-lined water tanks that release lead into the water they distribute. This warning was based upon an EPA analysis of water coolers at a U.S. Navy facility and data supplied to the report's authors by EPA's Office of Drinking Water. These data indicated that water from some coolers can have lead levels up to 400 times EPA's existing lead standard of 50 parts per billion. The source of the lead problem was lead solder and, in some cases, lead-lined water tanks used inside the water coolers.

In an effort to determine which water coolers have potential contamination problems and which do not, the U.S. House of Representatives Subcommittee on Health and the Environment, of the Committee on Energy and Commerce, in a letter dated December 11, 1987, surveyed the major manufacturers of drinking water coolers and requested information on the use of lead in their coolers.

In response, three major manufacturers' indicated that lead had been used in at least some models of their drinking water coolers. The manufacturers' submissions indicated that close to 1,000,000 water coolers contained lead solder. Although the industry has existed since before the 1920's, only very limited information was provided concerning water coolers manufactured prior to the 1960's; hence, the actual number of coolers containing lead may be much greater. Based upon limited test results using EPA's guidance document and testing protocol, EPA believes that the most serious water cooler problems are associated with coolers that have water tanks with interior surfaces of lead-containing materials.

As required by the LCCA, EPA is today also publishing for public comment, elsewhere in the *Federal Register*, a proposed list of drinking water coolers by manufacturer and

model number which are not lead free, including separate identification of those determined by EPA to contain lead-lined water tanks. However, given the fact that limited information is available on specifications and manufacturing practices regarding the use of lead and lead-containing materials in drinking water coolers, especially for units manufactured before the 1960's, EPA urges owners of drinking water coolers not to rely exclusively on the proposed list in the companion notice. Since lead in drinking water can derive from a number of sources and levels depend on a number of factors, EPA strongly recommends that drinking water from coolers be tested using the guidance document and testing protocol discussed in this notice to determine if lead is present and, if so, at what level. If lead is found to be present, additional analysis should be performed to determine whether the source of lead is from the water cooler, the plumbing, or both.

II. Guidance Document and Testing Protocol

As can be seen from the above discussion, lead in drinking water can be a complex problem. The guidance document and testing protocol EPA has developed, entitled "Lead in School Drinking Water," is designed to assist State and school officials by providing:

- (1) General information on the significance of lead in school drinking water;
- (2) Information on how to detect the presence of lead in school drinking water and how to pinpoint the source;
- (3) Advice on the steps that can be taken to reduce or eliminate lead in school drinking water; and
- (4) Information necessary to train local personnel in sampling and remedial programs.

This manual also provides guidance to help State and school officials in responding to local concerns about school drinking water and in preparing informational materials (such as bulletins and handouts) for the community. Although this manual is directed towards schools and educational agencies, it has broader applicability and EPA encourages its use for other buildings larger than single family dwellings as well.

To give readers an idea of what information the guidance document and testing protocol contains, the table of contents of "Lead in School Drinking Water" is reprinted below.

Statement of Purpose
Why Lead is a Problem for Children
Lead in School Drinking Water: A Special Concern

The Safe Drinking Water Act
How Lead Gets Into Your Water
When to Expect Lead Contamination
Developing a Plumbing Profile of Your School
What Your Answers Mean
Getting Your School's Water Tested
When the Results Come In
Interim Steps You Can Take
Flushing
Permanent Solutions
Sampling Protocol—Introduction
Sampling: A Two-Step Process
General Sampling Procedures
How to Begin Sampling Service Connections
Initial Screening Samples
Follow-Up Samples
Sampling Interior Plumbing
Glossary
Charts and Diagrams

EPA welcomes any comments on the guidance document and testing protocol. The Agency is particularly interested in learning of individual school's experiences using it and suggestions for improving it. EPA will use this information to update the guidance document and testing protocol as necessary.

III. Obtaining Copies of the EPA Guidance Document and Testing Protocol

EPA believes that this document will be a useful and important aid to State agency officials, school officials, building owners, and others in measuring lead levels in drinking water, determining its source, pinpointing particular trouble spots in the distribution system, remedying the problem, and informing the affected public. EPA urges school officials to secure a copy by writing to the appropriate State agency. State agencies designated responsibility for implementation of the Lead Contamination Control Act by Governors, to date, are listed below. State agencies designated after publication of this notice will be included in any future notice of availability of any revised or updated documents. In addition, copies can be obtained by writing to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Request "Lead in School Drinking Water," GPO Stock Number 055-000-00281-9. Each copy costs \$3.25. Send a check or money order. Do not send cash.

IV. List of State Agencies Designated as of February 28, 1989

Alabama Department of Environmental Management, 1751 Cong. W.L. Dickerson Dr., Montgomery, Alabama 36130
Dennis Kelso, Commissioner, Department of Environmental Conservation, P.O. Box O, Juneau, Alaska 99811

- Jon Dahl, Manager, Drinking Water Compliance Unit, Arizona Department of Environmental Quality, 2005 North Central Avenue, Phoenix, Arizona 85004
- Joycelyn Elders, Director, Arkansas Department of Health, 4815 West Markham, Little Rock, Arkansas 72205-3867
- Gerald R. Iwan, Chief, Water Supplies Section, Department of Health Services, 150 Washington Street, Hartford, Connecticut 06106-4474
- Dr. Charles Mahan or Mr. Howard Rhodes, Department of Environmental Regulation, Twin Tower Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399
- Clint Mudgett, Chief, Division of Engineering and Sanitation, Illinois Department of Public Health, 535 West Jefferson Street, Springfield, Illinois 62761
- Mary Ellis, Director, Iowa Department of Public Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0075
- Stanley Grant, Secretary, Kansas Department of Health and Environment, Landon State Office Building, Topeka, Kansas 66612-1290
- John T. Smither, Director, Division of Water, Department of Environmental Protection, 18 Reilly Road, Fort Boone Plaza, Frankfort, Kentucky 40601
- Rollin Ives, Commissioner, Maine Department of Human Services, State House, Augusta, Maine 04333
- Susan Guyaux, Center for Special Toxics, Lead Poisoning Prevention Program, Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224
- Tom Arizumi, Manager, Drinking Water Program, Hawaii Department of Health, 645 Halekauwila Street, Honolulu, Hawaii 96813
- Joseph Brown, Director, Bureau of Environmental Health, Mississippi Department of Health, P.O. Box 1700, Jackson, Mississippi 39205
- Jack Daniel, Director, Division of Environmental Health and House Surveillance, Nebraska Department of Health, P.O. Box 95007, 301 Centennial Mall South, Lincoln, Nebraska 68509
- Dr. Ronald Levine, State Health Director, P.O. Box 2091, Raleigh, North Carolina 27602
- Francis Schwindt, Director, Division of Water Supply and Pollution Control, 1200 Missouri Avenue, Bismarck, North Dakota 58502
- James R. Boydston, Manager, Drinking Water Program, Oregon Health Division, P.O. Box 231, Portland, Oregon 97207
- Frederick A. Marrocco, Chief, Division of Water Supplies, Department of Environmental Resources, P.O. Box 2063, Harrisburg, Pennsylvania 17120
- Tom Klaseus, P.E., Section of Water Supply and Engineering, Minnesota Department of Health, P.O. Box 9441, Minneapolis, Minnesota 55440
- Bureau of Drinking Water and Sanitation, Utah Department of Health, P.O. Box 16690, Salt Lake City, Utah 84116-0690
- Dr. C.M.G. Buttery, State Health Commissioner, Virginia Department of Health, 109 Governor Street, Richmond, Virginia 23219
- Carroll D. Besabny, Secretary, Department of Natural Resources, P.O. Box 7921, 101 South Webster Street, Madison, Wisconsin 53701
- Fred Castro, Administrator, Guam Environmental Protection Agency, P.O. Box 2999, Agana, Guam 96910
- Dr. Enrigger Mendez, Secretary, Department of Health, Call Box 70187, San Juan, Puerto Rico 00936
- F. Russell Mechem II, Chief, Division of Environmental Quality, Commonwealth of the Northern Mariana Islands, P.O. Box 1304, Saipan, MP 96950
- Pearce Klazer, Chief, Division of Water Quality, Rhode Island Department of Health, 75 Davis Street, Providence, Rhode Island 02908

Date: March 30, 1989.

William A. Whittington,
Acting Assistant Administrator for Water.

[FR Doc. 89-8423 Filed 4-7-89, 8:45 am]

BILLING CODE 6560-50-M

Federal Register

Monday
April 10, 1989

Part III

Environmental Protection Agency

**Drinking Water Coolers That Are Not
Lead Free; Proposed List and Request
for Comments**

ENVIRONMENTAL PROTECTION AGENCY

[WH-FRL-3552-7]

Drinking Water Coolers That Are Not Lead Free

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed list of drinking water coolers that are not lead free and request for comments.

SUMMARY: This notice is issued pursuant to the Lead Contamination Control Act of 1988 (LCCA), Pub. L. 100-572, enacted on October 31, 1988, which amends the Safe Drinking Water Act. The LCCA added section 1463, which requires that the Environmental Protection Agency (EPA), after notice and opportunity for public comment, publish a list of drinking water coolers, by brand and model, which are not lead free. The list must separately identify each brand and model of drinking water cooler which has a lead-lined water tank. In carrying out this provision, EPA is to use the best information available to the Agency. EPA is to revise and republish this list from time to time, as may be appropriate, as new information or analysis becomes available regarding lead contamination in drinking water coolers.

DATES: Written comments should be submitted on or before May 25, 1989.

ADDRESSES: Send written comments to Lead Docket, Office of Drinking Water (WH-550), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A copy of supporting documents is available for review at EPA in the Drinking Water Docket, Room EB-15, 401 M Street SW., Washington, DC 20460. To make an appointment for access to the docket, call (202) 382-3027 between 8:30 a.m. and 4:30 p.m. Eastern Time.

FOR FURTHER INFORMATION CONTACT: Peter Lassovszky, Office of Drinking Water (WH-550E), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-8499. Information also may be obtained from the EPA Safe Drinking Water Hotline. Callers within the United States (except Washington, DC, and Alaska), Puerto Rico, and the Virgin Islands may reach the Safe Drinking Water Hotline at (800) 426-4791; callers in the Washington, DC, area and Alaska may reach the Hotline at (202) 382-5533. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 8:30 a.m. to 4:00 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION:

I. Background

A. Purpose and Summary

On October 31, 1988, the Lead Contamination Control Act of 1988 was enacted. This legislation provides for programs to help reduce exposure to lead-contaminated drinking water, especially for children. Its major provisions include a mandate for the Consumer Product Safety Commission (CPSC) to order the repair, replacement, or recall and refund of drinking water coolers that EPA has identified as containing lead-lined water tanks; a ban on the manufacture or sale in interstate commerce of drinking water coolers that are not lead free; Federal and State programs to help schools evaluate and respond to lead contamination in drinking water, including State and Federal technical and possibly financial assistance; and (if appropriations are available) the expansion of lead screening programs for children to be administered by the Centers for Disease Control. Under the LCCA, the term "lead free" means, with respect to a drinking water cooler, that each part or component of the cooler which may come in contact with drinking water contains not more than 8 percent lead, except that no drinking water cooler which contains any solder, flux, or storage tank interior surface which may come in contact with drinking water shall be considered lead free if the solder, flux, or storage tank interior surface contains more than 0.2 percent lead.

The LCCA further provides that, for the purposes of the Consumer Product Safety Act, all drinking water coolers identified by EPA on the list published under section 1463 as having a lead-lined tank shall be considered to be "imminently hazardous consumer products" within the meaning of section 12 of that Act (15 U.S.C. 20961). The CPSC, after notice and opportunity for comment, including a public hearing, is required to issue an order requiring the manufacturers and importers of such coolers to repair, replace, or recall and provide a refund for such coolers within one year after the enactment of the LCCA. In addition, the LCCA requires that by August 1, 1989,

each State shall establish a program * * * to assist local educational agencies in testing for and remedying lead contamination in drinking water from coolers and from other sources of lead contamination at schools under the jurisdiction of such agencies * * *. [This] program shall include measures for the reduction or elimination of lead contamination from those water coolers which are not lead free and which are located in schools. Such measures shall be

adequate to ensure that * * * [by February 1, 1990] * * * all such water coolers in schools under the jurisdiction of [local educational agencies] are repaired, replaced, permanently removed, or rendered inoperable unless the cooler is tested and found (within the limits of testing accuracy) not to contribute lead to drinking water. SDWA section 1464(d).

Under the LCCA, the term "local educational agency" means any local educational agency as defined in section 198 of the Elementary and Secondary Education Act of 1965; the owner of any private, nonprofit elementary or secondary school building; and the governing authority of any school operating under the defense dependent's education system provided for under the Defense Dependent's Education Act of 1978. The term "school" means any elementary school or secondary school as defined in section 198 of the Elementary and Secondary Education Act of 1965 and any kindergarten or day care facility.

B. Sources of Lead in Drinking Water

There are a number of important sources of human exposure to lead in the environment. Such sources include automobile exhaust, lead paint, drinking water and others. The sources of lead in drinking water are mainly lead-containing pipes and plumbing system components and lead-containing solder and flux used in drinking water distribution lines and home plumbing. These sources can release lead into the water supply, especially in areas with particularly corrosive water and where lead solder is less than five years old. The Safe Drinking Water Amendments of 1986, Pub. L. 99-339, banned the use of lead pipes, solders, and flux and authorized EPA to withhold 5% of drinking water program grant funds to States that fail to implement the ban. EPA has issued guidance to its regional offices for implementation of this provision.

C. Lead in Drinking Water Coolers

Investigation by EPA's Office of Drinking Water revealed that water coolers can be a significant source of lead in drinking water. In 1988, a report to Congress by the U.S. Public Health Service, entitled "The Nature and Extent of Lead Poisoning in Children in the United States," warned that some drinking water coolers may contain lead solder and/or lead-lined water tanks that release lead into the water they distribute. This warning was based upon an EPA analysis of water coolers at a U.S. Navy facility and data supplied to the report's authors by EPA's Office of Drinking Water. There data indicated

that water from some coolers can have lead levels up to 400 times EPA's existing lead standard of 50 parts per billion. The source of the lead problem was lead solder and, in some cases, lead-lined water tanks used inside the water coolers.

In an effort to determine which water coolers have potential contamination problems and which do not, the U.S. House of Representatives Subcommittee on Health and the Environment of the Committee on Energy and Commerce in a letter dated December 11, 1987, surveyed the major manufacturers of drinking water coolers and requested information on the use of lead in their coolers.

In response, three major manufacturers, the Halsey Taylor Company, EBCO Manufacturing Corporation, and Sunroc Corporation, indicated that lead had been used in at least some models of their drinking water coolers. The manufacturers' submissions indicated that close to 1,000,000 water coolers contained lead solder. Although the industry has existed since before the 1920's, only very limited information was provided concerning water coolers manufactured prior to the 1960's; hence, the actual number of coolers containing lead may be much greater. Based on limited test results using EPA's guidance document and testing protocol (see related notice published elsewhere in today's **Federal Register**), EPA believes that the most serious cooler contamination problems are associated with water coolers that have water reservoir tanks lined with lead-containing materials.

EPA has tested a limited number of water coolers from various manufacturers by cutting them open to determine whether they contain lead-lined tanks. EPA has found at least one unit of each of the model numbers identified on the list in section III of this **Federal Register** notice to contain a lead-lined tank. Specifically, EPA's Water Engineering Research Laboratory (WERL) in Cincinnati, Ohio, examined twenty-two water coolers provided them by the U.S. Navy. The WERL determined that the linings of nine of these water tanks contained lead. Each of the nine coolers with lead-lined tanks was manufactured by Halsey Taylor, but two of the units had no model or serial number identification tags. Two additional drinking water coolers submitted by the Portland, Maine, School District were examined by EPA and found to contain lead-lined water tanks. They were also manufactured by Halsey Taylor. The EPA is unable to determine how many other coolers

within each model number contain a lead-lined tank. The model numbers and corresponding serial numbers of the tanks found to contain a lead lining are as follows: Halsey Taylor WM8A: 838269; WT8A: 66 421303; WT8A: 66 421268; GC10ACR: 65 361559; GC10A: 69 598593; GC10A: 142378; GC10A: 113383; GC5A: 142646; RWM13A: 834774.

II. List of Drinking Water Coolers That Are Not Lead Free

Information submitted in response to the Subcommittee letter of December 11, 1987 is summarized below.

Halsey Taylor Company

The Halsey Taylor Company reported use of lead solder in numerous models of water coolers manufactured between 1978 and the last weeks of 1987. The model numbers are: WMA-1; SWA-1; S3/5/10 C&D; S300/500/1000D; SCWT/SCWT-A; DC/DHC-1; HWC7/HWC7-D; BFC-4F/7F/4FS/7FS; 5656 FTN*; 5800 FTN*; 8880 FTN*.

EBCO Manufacturing Company

The EBCO Manufacturing Company (whose products are also marketed under the names "Oasis", "Kelvinator", and "Aquarius" and were also marketed by Westinghouse Corp.) identified four categories of drinking water coolers which are not lead free, as defined by the LCCA.

The first category consists of all pressure bubbler water coolers with shipment dates from 1962 through 1977. These units contain one 50-50 tin-lead solder joint on the bubbler valve. Model numbers are not available for products in this category.

The second category consists of pressure bubbler coolers produced from 1978 through 1981. These units each had one 50-50 tin-lead solder joint. The model numbers are:

CP3	DP13A-50	DP15M
CP10-50	PX-10	DP5S
DP20-50	DP7MH	DP13SM
DP13A	DP14M	EP5F
WFE10	DP15MW	WEEC07
DP7M	DP7SM	WEFC08
DP13M-60	DP10F	WEFC13-OX
CP5M	WEEC05	WEKC03
DP14S	WEFC03	WELC13
DP5F	WEFC20	WELH08
WEEC03	WEFH08	WEFH08
WEEH03	WELC08	WETC05
WEFC15	WELH07	CP5
WEFH03	WEFH03	13PL
WELC07	WERC13	DP8A
WELC16	WEEC10-OX	DP10X
WW07T	CP3H	DP15W
WERC07	13P	DPM8H
WEEC03-OX	DP3RH	DP16M
CP3-50	DP14A-50/60	DP7S
7P	DP12N	DP7WM
DP3R	DPM8	EP10F

* With cusp connection.

WEEC10	DP20	WEEC13
WEFC10	DP8AH	WEFC13
WEFC20-OX	C10E	WEKC05-OX
WEKC05	DP5M	WELC05
WELC14	DP13M	WELC15
WEMC07	CP3M	WEMC13
WEPC05	DP13S	WERC05
WETC10	DP7WMD	WEWC07
CP10	WTC10	

The third category consists of bottled water coolers with shipment dates from 1962 through 1977 with model numbers CBI(H) and DB1R(H). These units may have one 50-50 tin-lead solder joint.

The fourth category consists of bottled water coolers produced between 1978 and 1981 with model numbers DB2 and DB1R(H). These coolers contain one 50-50 tin-lead solder joint.

Sunroc Corporation

The Sunroc Corporation reported the use of lead solder as a secondary seal on the connecting lines in a limited number of bottled water coolers manufactured between 1979 and 1983. Model numbers reported include USB-1, USB-3, T6Size 3, BC, and BCH.

III. List of Drinking Water Coolers With Lead-Lined Tanks

The following is a list of model numbers of the drinking water coolers having lead-lined water tanks that have been identified to date.

MODEL NUMBERS OF THE WATER COOLERS FOUND AS OF MARCH 1989 WITH LEAD-LINED TANKS

Brand	Model Numbers
Halsey Taylor.....	WM 8A.
Halsey Taylor.....	WT 8A.
Halsey Taylor.....	GC 10ACR.
Halsey Taylor.....	GC 10A.
Halsey Taylor.....	GC 5A.
Halsey Taylor.....	RWM 13A.

IV. EPA's Plans for Updating the Lists; Guidance on Use of the Lists

CPSC sent requests, dated November 14 and 20, 1988, to its field offices to conduct additional investigations of lead in drinking water coolers. Information from this inquiry has recently been made available to EPA but has not yet been evaluated. Should this or other efforts identify additional drinking water coolers that are not lead free, EPA will revise and update the list as necessary.

EPA invites comment on the accuracy and completeness of the above lists. Anyone aware of drinking from water coolers that are not lead free which are not included on the above lists may submit this information to EPA. Such information should include the name of

the manufacturer, brand name, model number, and serial number, identification or a brief description of the lead-containing component, its location in the water transport pathway, and its percent lead content. In addition, so that EPA may verify the information received, commenters are requested to include their name, address, and source of information relied upon to support their findings.

While the presence of lead in drinking water can demonstrate the presence of lead in a water cooler, the public is reminded that under the LCCA, the term "lead free" is based upon the lead content of the component part itself rather than upon an analysis of the lead content of the drinking water in contact with the component. Additionally, as stated previously, before the CPSC may issue an order requiring repair, replacement, or recall and refund of drinking water coolers with lead-lined tanks, it must provide an opportunity for comment and public hearing. Because commenters' claims may be challenged by manufacturers, importers, or others, commenters may be required to provide persuasive evidence regarding the tank lining and should be prepared to do so

until such time as the recall, repair, or replacement of the cooler ordered by CPSC has been completed.

Given the limited information available to EPA on lead-containing drinking water coolers, owners are urged not to rely exclusively upon the above lists. EPA recommends that the drinking water from individual coolers (as well as other outlets) be tested to determine if lead is present in a particular cooler and, if so, at what level. If lead is found to be present, additional analysis should be performed to determine whether the source of lead is from the water cooler, the plumbing, or both.

Four factors contribute to high lead levels in drinking water dispensed by coolers: (1) The presence of lead-lined water tank and lead-containing components; (2) the presence of corrosive waters (e.g., waters having low pH or alkalinity); (3) prolonged contact time between the water and materials of construction containing lead which can occur as a result of infrequent use of the water cooler; and (4) age (i.e. water from new coolers containing lead materials or new plumbing connections containing lead

solder tends to have higher lead levels). In addition, any existing problems may be exacerbated if a building's electrical system is grounded to the plumbing system.

EPA has prepared a guidance document and testing protocol which explains how to test individual drinking water coolers to determine the extent of lead contamination from water coolers (see related notice elsewhere in today's *Federal Register*). Although directed towards schools and other educational institutions, this manual, "Lead in School Drinking Water," should prove useful for other buildings as well. EPA urges that water taps, in addition to those connected to coolers, be tested for lead where such taps may be contaminated by lead and supply water for drinking or cooking. EPA's guidance document gives advice on how to develop cost-effective monitoring and remedial programs for all such taps and coolers.

Date: March 30, 1989.

William A. Whittington,

Acting Assistant Administrator for Water.

[FR Doc. 89-8422 Filed 4-7-89; 8:45 am]

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federal register

Monday
April 10, 1989

Part IV

Environmental Protection Agency

40 CFR Part 704

**Comprehensive Assessment Information
Rule; Notice of Temporary Administrative
Relief; Final Rule**

**ENVIRONMENTAL PROTECTION
AGENCY**
40 CFR Part 704

[OPTS-82013E; FRL-3552-5]

**Comprehensive Assessment
Information Rule; Notice of Temporary
Administrative Relief**
AGENCY: Environmental Protection
Agency (EPA).

ACTION: Final rule; notice of temporary
administrative relief.

SUMMARY: On December 22, 1988, EPA issued a final rule under section 8(a) of the Toxic Substances Control Act (TSCA) to establish a standard approach to gathering information on the manufacture, importation, and processing of chemical substances and mixtures. This model rule, titled the Comprehensive Assessment Information Rule (CAIR), included specific reporting requirements for 19 substances, in addition to model general provisions applicable to all substances. EPA also adopted a standard reporting form for all CAIR reporting. The CAIR general provisions, as well as the reporting requirements for the 19 substances, became effective on February 6, 1989. On January 24, 1989, EPA received a petition from the Synthetic Organic Chemical Manufacturers Association (SOCMA) asking EPA to reconsider four aspects of the CAIR, and to stay the application of certain provisions of the CAIR until such reconsideration is completed. EPA has decided to reconsider some of the provisions of the CAIR as requested by SOCMA, but not others. EPA has also decided to grant temporary administrative relief to persons who believe that compliance with each of the provisions under § 704.208(a) will result, directly or indirectly, in the disclosure of a trade secret concerning the substance. EPA is not granting administrative relief for any other provisions of the CAIR. Reporting is still required as provided in the final rule, as extended in a document published in the *Federal Register* of February 15, 1989 (54 FR 6918), for those provisions not affected by the Agency's grant of administrative relief.

EFFECTIVE DATE: April 10, 1989.

FOR FURTHER INFORMATION CONTACT:
Michael M. Stahl, Director, TSCA
Assistance Office (TS-799), Office of
Toxic Substances, Environmental
Protection Agency, Rm. EB-44, 401 M
Street SW., Washington, DC 20460,

 Telephone: (202) 554-1404 TDD: (202)
554-0551.

SUPPLEMENTARY INFORMATION:
I. Discussion of Issues

EPA issued the CAIR (40 Part 704) in the *Federal Register* of December 22, 1988 (53 FR 51698), under section 8(a) of TSCA. On January 24, 1989, EPA received a petition from the Synthetic Organic Chemical Manufacturers Association (SOCMA) asking EPA to reconsider four aspects of the CAIR, and to stay the application of these provisions of the CAIR until such reconsideration is completed. SOCMA's requests and EPA's response to each are discussed in this Unit.

A. Relief From § 704.208

Section 704.208(a) requires manufacturers, importers, and processors of certain CAIR listed substances, designated in § 704.225 with an "X/P", who distribute the substances under a trade name to comply with one of the following three options:

(1) Submit to EPA a list of trade names so EPA can publish them in a *Federal Register* notice in order to notify all processors of these trade name products of their CAIR reporting obligations.

(2) Report on behalf of each processor customer.

(3) Notify each processor customer of their CAIR reporting obligations.

EPA included this requirement to ensure that, where EPA deemed it appropriate, processors of trade name products would be notified of their CAIR reporting obligations, or that their suppliers would report for them, thus providing a more complete data base for assessment purposes. This requirement applies to 13 of the 19 substances currently covered by the CAIR.

SOCMA believes that this provision will result in disclosure, directly or indirectly, of trade secrets concerning the identities of substances in certain trade name products, and asks EPA to reconsider the provision and stay its applicability until EPA has reconsidered it.

In promulgating the CAIR, EPA believed that, by providing three options in § 704.208(a), companies would always have one option that would protect their trade secrets concerning the substances. SOCMA has argued that, for some, if not all, of the 13 substances currently subject to this provision in the CAIR, the pattern of reporting requirements is unique. Thus any information provided to processor customers, through direct notification by the suppliers, through EPA publication of trade names, or through suppliers obtaining information

to report on behalf of their customers, would result in those customers and possibly others being able to determine which of the 13 specific CAIR substances is contained in a trade name product. If that information is truly a trade secret, there might be harm to the supplier. SOCMA does not indicate in its petition that any of its members actually have a trade secret that would be disclosed through the application of § 704.208(a) to the 13 substances.

Because SOCMA has identified an unintended consequence of the structure of the final CAIR and the application of § 704.208(a) to only 13 substances, EPA has decided to grant temporary administrative relief from § 704.208(a) insofar as it applies to the potential disclosures of trade secrets involving the 13 substances, and to reconsider § 704.208(a) as it would apply to future CAIR substances. Accordingly, EPA will reconsider § 704.208(a) when it proposes to add any further substances to the CAIR to which § 704.208(a) would apply.

EPA does not believe that SOCMA sufficiently demonstrated that § 704.208(a) should be stayed in its entirety. However, EPA does not intend that compliance with the CAIR result in the inadvertent disclosure of trade secrets. Therefore, EPA has decided to be cautious in its approach and grant temporary administrative relief to persons who are unable to report for their customers, and who believe that compliance with each of the other options identified in § 704.208(a) will result, directly or indirectly, in the disclosure of a trade secret concerning the substance. Reporting is still required as provided in the final rule, as extended in a document published in the *Federal Register* of February 15, 1989 (54 FR 6918), for those provisions not affected by the Agency's grant of temporary administrative relief.

As described in Unit II below, relief is available only until the Agency has reconsidered § 704.208(a). EPA will reconsider § 704.208(a) when it proposes to add any further substances to the CAIR to which § 704.208(a) would apply.

B. Confidentiality of Chemical Identity

The first sentence of Section C of Appendix II of the CAIR Reporting Form (EPA Form 7710-52) states "[s]pecific substance identity can be claimed as confidential only if that substance identity is confidential for purposes of the TSCA Chemical Substance Inventory." This provision in the CAIR is consistent with and parallels a provision in the Inventory Update Rule, 40 CFR 710.38(b). EPA does not believe that the specific chemical identity, as

opposed to the other information in a CAIR form, is confidential business information when the substance identity is not confidential in the Inventory of Chemical Substances maintained under section 8(b) of TSCA.

SOCMA believes that this provision is erroneous and violates section 14(a) of TSCA, and asks that EPA stay the applicability of this provision until EPA has reconsidered it. SOCMA has raised the general argument that, in certain limited instances, the mere fact that a substance is currently being manufactured by someone might be a trade secret. However, SOCMA has not indicated that such a "secret" exists as to any of the 19 substances currently subject to the CAIR. EPA included this provision in the proposed CAIR (proposed § 704.219(i)) and received no comments on it. Thus SOCMA is raising this issue for the first time in its petition. The same provision is in the Inventory Update Rule, which covers many more substances, and was not challenged in that rule. Accordingly, EPA does not see any reason to reconsider this provision or to stay its applicability to the 19 substances currently subject to the CAIR.

C. Low Volume Reporting Cutoff

EPA defined "small manufacturer" and "small processor" in 40 CFR 704.5 and 704.203, respectively, to implement the small manufacturer and processor exemption provided for in section 8(a) of TSCA. Under the CAIR, small manufacturers (including importers) and processors are exempt from all reporting requirements if their total annual sales, when combined with those of any parent company, are less than \$4 million. They are also exempt if their total annual sales, when combined with those of any parent company, are less than \$40 million, but greater than or equal to \$4 million, except when they manufacture or process a CAIR listed substance in a volume in excess of 100,000 pounds at any individual site owned or controlled by them, in which case they must report on that substance at that site. EPA did not provide any other volume exemption for reporting under the CAIR.

SOCMA believes that EPA should also have a low volume cutoff of 10,000 pounds for manufacturers, importers, and processors who are not small manufacturers or small processors, and asks that EPA reconsider whether to provide such a cutoff and stay the applicability of the CAIR to such persons until EPA has reconsidered it.

For the 19 substances currently subject to CAIR reporting, EPA's economic analysis found very little

impact of having no low volume cutoff, and a relatively low burden for reporting. SOCMA, in its petition, has not shown that the burden for reporting by producers and processors of these 19 substances is anything other than low. Thus, EPA is not staying reporting for these 19 substances by persons producing or processing less than 10,000 pounds of the substances. However, EPA will consider this issue again at the time it proposes to add any further substances to the CAIR.

D. De Minimis Exclusion for Mixtures

The CAIR requires reporting with respect to listed substances whether they are in pure form or in mixtures with other substances. SOCMA believes that EPA should adopt a *de minimis* cutoff for CAIR substances in mixtures similar to that in the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard (HCS), 29 CFR 1910.1200, and EPA's reporting rule under section 313 of the Superfund Amendments and Reauthorization Act (SARA), 40 CFR 372.38(a). Both rules provide that regulatory requirements do not apply when the substance in question is present in a mixture at below 1 percent, or 0.1 percent in the case of a carcinogen.

During the CAIR rulemaking, no commenters suggested adoption of the OSHA HCS or section 313 *de minimis* provisions, and EPA did not identify this as an option on its own. In addition, for the 13 substances for which processor reporting is required, SOCMA has not presented any specific arguments that processors are likely to be processing these substances in mixtures at less than 1 percent, or that there will be an extra burden from their reporting in such cases. Thus EPA will not stay CAIR reporting for persons processing the 13 substances in mixtures at less than 1 percent, or 0.1 percent in the case of a carcinogen. However, EPA will consider this issue again at the time it proposes to add any further substances to the CAIR for which processor reporting would be required.

II. Grant of Administrative Relief from § 704.208

EPA is granting temporary administrative relief from § 704.208(a) for the 13 substances identified in § 704.225(a) with the designation "X/P" as follows:

Each person who manufactured, imported, or processed a substance designated "X/P" in § 704.225(a) must still comply with § 704.208(a) unless that person believes that he is unable to report for his customer(s) under § 704.208(a)(2), and compliance with the

options identified in § 704.208(a) (1) and (3) would result, directly or indirectly, in the disclosure of a protected trade secret concerning the substance. In that case, the person need not comply with the provisions in § 704.208(a), provided the person notifies EPA in writing that the person believes that he is unable to report for his customer(s) under § 704.208(a)(2), and that complying with the options identified in § 704.208(a) (1) and (3) would result, directly or indirectly, in the disclosure of a protected trade secret concerning the substance. If a person can report for his customer(s), or if complying with one of the other options would not result in the disclosure of a trade secret, the person must still comply with § 704.208(a). Any person who provides or has provided the specific identity of a CAIR substance in a trade name product to its customers through a material safety data sheet for that product under the OSHA HCS, or through some other mechanism, is not eligible for this relief for that substance and trade name product.

EPA is requiring notification to EPA to ensure that the Agency is aware of who is taking advantage of the relief granted. The notification to EPA must include the identity of the person distributing the substance, the chemical name and CAS Number of the substance as listed in § 704.225(a), and the trade name(s) under which the substance is distributed. In addition, the notification must include a certified statement that the person believes that he is unable to report for his customer(s) under § 704.208(a)(2), and that complying with the options identified in § 704.208(a) (1) and (3) would result, directly or indirectly, in the disclosure of a protected trade secret concerning the substance. The notification must be postmarked no later than May 10, 1989.

EPA will not publish the trade names received in such notifications. The person submitting such a notification may assert a claim of business confidentiality for information in the notification in accordance with the procedures in 40 CFR Part 2, Subpart B, if the person asserts that the notice contains business information that is entitled to confidential treatment under TSCA section 14(a). Any trade names submitted to EPA by a person under § 704.208(a)(1) prior to the date on which the person became aware of this grant of temporary relief, must be identified in the notification if the person believes that EPA's publication of them would disclose a trade secret concerning the substance. EPA will exclude such trade names from the CAIR technical

amendment adding non-trade secret trade names to the CAIR.

This relief is available only until the Agency has reconsidered § 704.208(a). EPA will reconsider § 704.208(a) when it proposes to add further substances to the CAIR to which § 704.208(a) would apply. EPA believes that the relief granted will avoid any unintended disclosure of trade secrets as a result of the application of § 704.208(a) to the 13

substances while ensuring that full reporting for the CAIR continues.

III. Rulemaking Record

Copies of SOCMA's petition and the letter EPA sent responding to the petition are available to the public in the TSCA Public Docket Office from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, under docket control number OPTS-82013E. The TSCA Public Docket Office is located at

EPA Headquarters, Room NE-G004, 401 M St., SW., Washington, DC 20460.

List of Subjects in 40 CFR Part 704

Chemicals, Environmental protection, Hazardous materials, Reporting and recordkeeping requirements.

Dated: March 29, 1989.

William K. Reilly,
Administrator.

[FR Doc. 89-8374 Filed 4-7-89; 8:45 am]

BILLING CODE 6560-50-M

federal register

**Monday
April 10, 1989**

Part V

The President

**Proclamation 5949—Cancer Control
Month, 1989**

**Proclamation 5950—National Consumers
Week, 1989**

Erstsigar Lærøer

Erstsigar Lærøer
1898-1988

Part V

The President

Proclamation 3649—Cancer Control
Month, 1959

Proclamation 3650—National Commemorative
Week, 1959

Presidential Documents

Title 3—

Proclamation 5949 of April 6, 1989

The President

Cancer Control Month, 1989

By the President of the United States of America

A Proclamation

Over the past several decades, extensive scientific research has contributed to dramatic victories in the fight against cancer. Today, more Americans are being cured of cancer than ever before, but we still face a major challenge: to use all we have learned about cancer prevention, detection, and treatment to save even more lives.

To attain our national goal of cutting in half the cancer death rate by the year 2000, we must first curb tobacco use among all segments of society. Recent gains are evident on many fronts: Public awareness of the dangers of cigarette smoking continues to increase, and smoking prevalence rates among adults are at their lowest levels in 30 years. Most States have enacted laws restricting smoking in public places. Nevertheless, more than 50 million Americans still smoke or use smokeless tobacco. Efforts to deter young people from smoking should continue, and more can be done to help current smokers quit for good.

We now know that certain foods, notably fruits, vegetables, and whole-grain breads and cereals, may help prevent a variety of cancers. While most people believe diet and nutrition influence one's chances of developing cancer, on a typical day four out of every ten Americans eat no fruit at all, and only one in five eats some form of high-fiber cereal, whole-grain bread, or dried peas or beans. We must teach people how to select and prepare healthy foods and convince them that a well-balanced diet can be affordable, appetizing, and convenient. And consumers should continue to request that healthy foods be made available where they shop and dine.

When cancer does develop, early detection of the disease vastly improves the chance of cure. A wide array of effective early detection techniques now exist, ranging from simple self-examination to sophisticated laboratory tests. Yet only 40 percent of women report ever having had a mammogram to detect breast cancer, and less than 30 percent of men and women have ever had an exam to detect colorectal cancer. These findings underscore the importance of encouraging the public to seek cancer tests before symptoms appear and persuading physicians to follow the latest early cancer detection guidelines. Cooperation between health professionals and patients can add an important dimension in the battle against cancer.

Finally, the knowledge gained from laboratory research and clinical trials can be an important source of information about cancer and how to control the disease. New treatments can cure many thousands of cancer patients. All sectors of the medical community are challenged to cooperate in transferring biomedical research results to patients' bedsides, a capability offered by the National Cancer Institute's PDQ (Physician Data Query) cancer treatment database and other information systems. State-of-the-art cancer therapies must become part of the usual care provided by community hospitals, where the vast majority of cancer patients go for treatment.

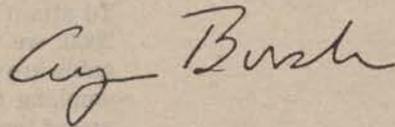
Whether through prevention, early detection, or treatment, the great promise of cancer control lies in a simple concept: teamwork. By pooling its resources, energies, and creativity, America can make significant progress in improving

the chances of surviving cancer and reducing the threat to the general population.

In 1938, the Congress of the United States passed a joint resolution (52 Stat. 148, 36 U.S.C. 150) requesting the President to issue an annual proclamation declaring April to be Cancer Control Month.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the month of April 1989 as Cancer Control Month. I invite the Governors of the fifty States and the Commonwealth of Puerto Rico, and the appropriate officials of all other areas under the American flag, to issue similar proclamations. I also ask health care professionals, the communications and food industries, community groups, and individual citizens to unite during the month to reaffirm publicly our Nation's continuing commitment to controlling cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this Sixth day of April, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.



[FR Doc. 89-8622

Filed 4-7-89; 12:05 pm]

Billing code 3195-01-M

Presidential Documents

Proclamation 5950 of April 6, 1989

National Consumers Week, 1989

By the President of the United States of America

A Proclamation

Consumers throughout the Nation are reaping the benefits of the longest peacetime economic expansion in America's history. This economic growth has produced record employment and an all-time high in real personal income. American consumers now have new choices and new economic power—power enhanced by the freedom to purchase and produce in an open, competitive marketplace.

The theme for National Consumers Week, 1989, "Consumers Open Markets," focuses attention on the ability of consumers to shape the markets of the world and encourage improvements in those that fail to meet consumer needs. When consumers make informed buying decisions, they compel consumer-oriented responses. Because America is not isolated from the world but rather leads other nations in the commitment to free-market ideas, the collective choices of individual American consumers echo around the globe.

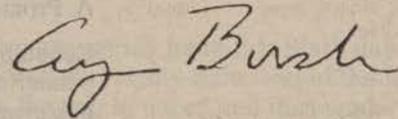
On a grand scale, consumerism is nations creating policies that are responsive to consumer perspectives. Consumerism is corporations that make safety their first concern and develop quality products and services. Consumerism is governments using tax dollars wisely, responsively, and ethically. It is also charities that inspire us to support worthy causes with our financial resources.

On a more personal level, consumerism is a parent putting safe, nutritious food on the table. It is families knowing how to spend and save wisely so they have enough money left over to pursue a dream or enjoy a special pastime. Indeed, the marketplace skills of individual consumers play an important role in ensuring that every American citizen enjoys his or her share in our Nation's prosperity.

The basic skills individuals need as consumers are equally vital to being productive citizens. A high school graduate who cannot balance a checkbook, read a food label, decipher the directions for taking prescription drugs, or assemble a product from written instructions has neither the basic skills to function in the marketplace nor those to compete for a job in our information-oriented work force. Teaching these skills is often viewed solely as the responsibility of our Nation's educators; however, I believe it is one we must all share. Thus, I urge Americans from business, government, and the private sector to join with educators in expanded community partnerships to assure that our Nation's educational endeavors prepare young people for the reality of the marketplace, as well as the workplace.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week beginning April 23, 1989, as National Consumers Week. I urge businesses, educators, community organizations, the media, government, and consumer leaders to conduct activities to emphasize the important role consumers play in keeping our markets open, competitive, and fair. Furthermore, I call upon them to highlight the importance of education in helping citizens to become responsible consumers.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of April, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.



[FR Doc. 89-8623

Filed 4-7-89; 12:06 pm]

Billing code 3195-01-M

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is \$620.00 domestic, \$155.00 additional for foreign mailing.

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¹ Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

² No amendments to this volume were promulgated during the period Jan. 1, 1988 to Dec. 31, 1988. The CFR volume issued January 1, 1988, should be retained.

³ No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1988. The CFR volume issued January 1, 1987, should be retained.

⁴ No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1988. The CFR volume issued as of Apr. 1, 1980, should be retained.

⁵ The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

⁶ No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

⁷ The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

