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1100 L Street NW., Washington, DC
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## FEDERAL HOME LOAN BANK BOARD

### 12 CFR Part 571

[No. 89-2347]

### Applications Processing Guidelines

Date: August 8, 1989.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Final rule; solicitation of comments.

**SUMMARY:** The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), is revising its policy statement, 12 CFR 571.12, which sets forth guidelines concerning the processing of applications filed with the Board and the FSLIC, to make various technical amendments that will streamline and update applications processing, clarify certain procedures, and conform the guidelines to current Board practice, all as more fully described in the preamble to this final rule.

**EFFECTIVE DATE:** August 24, 1989. Comments on the revised policy statement must be received on or before October 23, 1989.

**ADDRESS:** Send comments to Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552. Comments will be available for public inspection at Information Services, Federal Home Loan Bank Board, 801 17th Street NW., Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline L. Lussier, Attorney, (202) 906-6575; V. Gerard Comizio, Director, (202) 906-6411, Corporate and Securities Division, or Julie L. Williams, Deputy General Counsel for Securities and Corporate Structure, (202) 906-6459, Office of General Counsel; Cindy L. Hausch, Financial Analyst, (202) 906-7488; Cheryl A. Martin, Regional Director, (202) 906-7869; Patrick G. Berbakos, Director, (202) 906-6720, Office of District Banks; Stephen D. Johnson, Attorney, (202) 906-6318, Office of Community Investment, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552; Robyn H. Dennis, Financial Analyst, (202) 331-4572; Jerry Kluckman, Director of Compliance Programs, (202) 785-5442, Office of Regulatory Activities, Federal Home Loan Bank System, 801 17th Street NW., Washington, DC 20006.

**SUPPLEMENTARY INFORMATION:** On October 2, 1987, by Resolution No. 87-1038, the Board issued a policy statement that promulgated applications processing guidelines ("Guidelines") (effective October 9, 1987) setting forth maximum time periods for approval of completed applications filed with the Board. *See* 52 FR 39064 (October 20, 1987). The Guidelines are currently set out at 12 CFR 571.12. The Board adopted the Guidelines as a result of section 410 of the Competitive Equality Banking Act of 1987, Public Law No. 100-86, 101 Stat. 552 (August 10, 1987) ("CEBA"), which directed the Board in section 410(a) to promulgate guidelines providing that each completed application filed with the Board or the FSLIC (other than applications submitted under section 408(g) of the National Housing Act, 12 U.S.C. 1730a(g) ("NHA") concerning holding company indebtedness) shall be deemed to be approved as of the end of the period prescribed by such guidelines unless the Board or the FSLIC approves or disapproves the application before the end of the period.[1]

Section 410(d) of CEBA provided that the guidelines required to be promulgated under section 410(a) would take effect on October 9, 1987, *i.e.*, at the end of the 60-day period beginning on August 10, 1987, the date of enactment of CEBA.

While the Guidelines were promulgated in final form, the Board also invited public comment as to how the Board's then current regulations related to regulatory applications review and processing and the newly adopted Guidelines could be further streamlined. In addition, the Board conducted public hearings on November 3 and 4, 1987, on regulations proposed in response to CEBA. The hearing on November 3 covered the Guidelines, which were already effective at the time of the hearing. A number of commenters responded with letters addressing issues covered by the Guidelines and suggested modifications to some of the provisions of the Guidelines.

The Board has carefully studied the issues raised by the commenters. The Board has also studied issues identified as a result of the Board's experience in processing applications under the Guidelines. Accordingly, today the Board is issuing a revised statement of policy on the Guidelines.

The Board notes that the Administrative Procedures Act ("APA"), 5 U.S.C. 553(b)(3)(A), exempts general policy statements and interpretative rules from notice and comment requirements. As permitted by section 553(b)(3)(A) of the APA, the Board has not submitted the revisions to the Guidelines for public comment before adopting this final revised statement of policy. However, the Board also is soliciting comments from interested parties as to how the Board's Guidelines may be further streamlined. Comments should be submitted within 60 days of the effective date of this revised statement of policy.

This preamble will first review the comments received on the Guidelines. An overview of the amendments to the Guidelines is then provided.

### I. Summary of Comments

The Board received a total of 17 comment letters in response to the request for written comments. The Board also heard testimony from eight speakers at the public hearing held on November 3, 1987. Nine of the written commenters were thrift industry trade associations (including six state savings institutions leagues), five were FSLIC-insured institutions, one was a professional society of financial managers, one was a law firm, and one was an organization involved in assisting community groups. Four of the commenters at the hearing were representatives of thrift industry trade associations and four were members of law firms. Three of the thrift industry

[1] Section 410(b) of CEBA amended section 408(g) of the NHA to provide that any completed application submitted for approval under that subsection shall be deemed to be approved 60 days after the filing of such completed application, unless the FSLIC approves or disapproves the application prior to the expiration of that period.

trade associations that had representatives testify at the hearing also submitted comment letters. Generally, the written comments supported the Guidelines, although many comment letters contained suggestions concerning particular aspects of the Guidelines.

The comments primarily addressed two issues: The number and types of applications excluded from the timelines set out in the Guidelines, and the timelines themselves. Commenters also made numerous suggestions to speed the review and the processing of applications and to increase communication between the Board and applicants.

*A. Written Comments*

1. Applications Excluded From Applications Processing Guidelines

The Guidelines exclude certain categories of applications from the stricture of the time deadlines. Eight commenters addressed this issue, three of whom asserted that the Board has no authority to exclude, any category of application from the timelines. The remaining five urged that the Board include more types of applications within the coverage of the timelines.

Even those commenters who did not assert that the Board has no authority to exclude categories of applications from the timelines disagreed with the number of exclusions. They urged that the categories of covered applications be expanded to include as many as possible, no matter how long a time period the Board may assign, for the sake of certainty in business planning. A number of commenters pointed out the need for speed in acting on transactions related to bringing new capital into the industry. One commenter asked that the Board clarify whether "securities-related filings" are covered by the Guidelines.

2. Length of Time Allowed for Review

The Guidelines set out timelines for the Board or the FSLIC to review and act on applications. Ten commenters addressed the issue of the timelines, three suggesting that some or all of the timelines should be shortened. The extension of time for review provided by paragraph (f) of the Guidelines (12 CFR 571.12(f)) for applications involving significant issues of law or policy elicited three comments.

Of the three commenters who urged shorter time frames, one suggested a 60-day overall time limit with a ten-day time limit for debt applications. This commenter pointed out the need to move quickly to take advantage of desirable financing rates and business opportunities. This commenter also suggested that there is no need for the 30-day extension at the discretion of the Board in paragraph (e) (12 CFR 571.12(e)), because the "law or policy" exception in paragraph (f) should subsume any need to extend consideration of an application.

Another commenter suggested that the review process be modeled after that of the Securities and Exchange Commission ("SEC"). This commenter suggested that an applicant be notified within three to five days whether its application would be afforded "no," "limited," or "full" review, and within 30 days whether additional information is required. This additional information would then be reviewed by the staff within two weeks.

The third commenter who addressed the review period for applications said that the time limits are "completely unworkable for an institution trying to move quickly when an opportunity presents itself." This commenter suggested the following time limitations: Ten days to request additional information, and five days after its receipt to request further information, and for any application that can be approved by a Principal Supervisory Agent or designated Supervisory Agent, a total of 30 days to review from the date of initial filing, tolled only for the period the Board is awaiting additional information. All other applications would have a maximum review period of 45 days.

The three commenters who addressed the extension of time available for those applications determined to present a significant issue of law or policy under paragraph (f) of the Guidelines (12 CFR 571.12(f)) asked that there be some time limit placed on those applications, no matter how long, for the sake of predictability in business planning. One commenter suggested a system whereby the applicant would be notified that its application has been determined to raise a significant issue of law or policy with a statement explaining the reasons, and providing for notice every 30 days to the applicant until 90 days have elapsed. At that point the applicant could request a public hearing to resolve the delay.

One commenter expressed concern that there is no provision made in the text of the Guidelines for stopping the automatic approval process when a protest under the Community Reinvestment Act is filed, noting that a footnote to the Preamble of the Guidelines provides that the automatic approval process will be discontinued until the issues relating to the protest are resolved. The commenter urged that this provision be incorporated into the text of the Guidelines so that the Board's policy on protests is clear.[2]

Another commenter expressed fears that the automatic approval feature might allow "highly objectionable" applications to be automatically approved, merely because the Board had not had the time to review the application properly. This commenter did not suggest a remedy to this perceived danger.

3. Suggested Improvements to Applications Processing

A number of commenters suggested ways to improve and streamline the applications review process. Three commenters suggested, that the information required in any application be explicitly spelled out in detailed forms and regulations similar to the SEC's forms and Regulations S–K and S–X. This should reduce the need for, and therefore the delay from, requests for additional information from the Board's staff.

Four commenters urged greater communication between the staff and an applicant; one commenter suggested the creation of an office that would act as a central clearing house to track the status of an application and keep the applicant informed. The other commenters asked for formal written notification of status at each point in the application's review, including affirmative, written notification that an application has been automatically approved by the expiration of the relevant review period. One commenter suggested that the Guidelines should specify standards with respect to when an application is deemed complete.

Three commenters also suqgested that the provision for extending the review period of applications raising significant issues of law or policy under paragraph (f) of the Guidelines (12 CFR 571.12(f)) should be limited by (1) defining "a significant issue of law or policy," (2) establishing a process and timeline for the treatment of an application once it has been determined to involve a significant issue of law or policy, and (3) limiting the number of staff who have the power to delay or suspend an application that involves a significant issue of law or policy.

[2] The Board notes that the protest procedures discussed in the footnote to the Preamble to the original Guidelines are designed to apply to applications subject to the protest procedures set forth in 12 CFR 543.2. There are also different procedures for the processing of other types of protested applications, such as holding company applications under 12 CFR part 574. *See* section II.B.7, below.

*B. Comments of Panelists at Public Hearing on November 3, 1987*

Four commenters expressed general, qualified support, while suggesting substantive and minor revisions. Two commenters addressed particular issues but expressed no overall view of the Guidelines, while one commenter expressed general disagreement. No commenter expressed unqualified support for the Guidelines.

1. Applications Excluded from Applications Processing Guidelines

A number of panelists addressed the exclusions from the Guidelines. Several stated that a time clock system should be applied to all applications submitted to the Board. This would provide applicants with certainty as to the time frame which they should expect. They asserted that CEBA requires the Board to promulgate time limits for processing all applications and does not contain any exceptions. The Guidelines contain numerous exceptions to the time limits. Some of these exceptions were viewed as appropriate, such as litigation or enforcement matters, because these are not in the nature of an application. However, several panelists stated that there was little justification for excepting applications for supervisory acquisitions. One suggested that once the terms of a supervisory transaction are arranged, then the time limits should apply to the processing of the necessary applications. Another panelist suggested that the matters that come before the Board that are not considered "applications" (*e.g.*, requests for legal opinions) should be addressed.

A majority of the panelists expressed concern about the provision permitting an exception from the standard review timetable for applications raising issues of law or policy. One person recommended that fewer persons be permitted to decide whether an application involves a significant issue of law or policy and that the meaning of what is a significant issue of law or policy should be clarified. One panelist suggested that guidelines be added setting forth a time frame to decide significant issues of law or policy, just like routine applications. One panelist suggested that a guideline be added stating that the Board will make a good faith attempt to resolve a significant issue of law or policy within 60 or 90 days after determining that one exists.

2. Length of Time Allowed For Review

A number of panelists urged that the processing time be shortened on certain applications, such as branching applications. Other panelists stated that because the Guidelines provide that the "review" period does not begin until the Board deems an application "complete," the chance for delay before the review process begins is high because the Board has "complete control" over when the limits are triggered. The likelihood of numerous requests for additional information from a number of the staff's reviewers is high. This panelist suggested that an absolute time limit from the date of filing of an application be established, notwithstanding requests for additional information. If the record is insufficient to support action because of a lack of adequate information in the application, the applicant should be advised that unless he requests a suspension of processing and leave to amend to correct the deficiency, the Board will deny the application. If the applicant refuses to request a suspension, the Board cannot act on the application because it is incomplete, and it should then be denied. This would put the decision on extensions in the applicant's hands and establishes absolute deadlines. The commenter claimed that the benefit from this approach is that in cases where the record is "substantially complete," it will not be possible for the staff to delay processing by "immaterial or tardy" requests for additional information.

This panelist also recommended the following: First, the Board should establish a centralized office in charge of coordinating and scheduling the processing of all items submitted, whether or not the Guidelines apply; second, the Board should develop a status tracking system to keep track of all items in the system; and third, the Board should delegate as much as possible to the Supervisory Agents to lighten the burden on the Board's Washington staff.

One panelist recommended that the Guidelines be amended to clarify the following issues:

(a) Priorities: It should be a priority of the Board to encourage bringing new capital into the industry. Applications involving new capitalization or supervisory conversions should be processed quickly;

(b) Materiality: It should be the Board's policy that materiality governs completeness. Under the present system, an application that is immaterially incomplete cannot be acted on. This has been employed in the past to forestall processing; the Guidelines should be amended to prevent that situation; and

(c) The Board's staff should evaluate every application immediately upon its filing and determine whether it is the kind of application the Board wants to encourage. If it is a priority application (*i.e.*, one that will put money into the industry), then it should be processed as quickly as possible.

Many panelists commented about requests for additional information. Commenters generally urged that such requests should not be duplicative of the requests of other reviewing offices; should substantively advance the application process; and should not be overused because this results in an application never being reviewed, because it is never deemed complete.

3. Suggested Improvements to Applications Processing

One panelist recommended that a review of the forms of applications be undertaken. Certain applications could be eliminated; others could be tailored more specifically to what is required for that type of application; and a regulation analogous to SEC Regulation S-K should be implemented. The regulation should include, for example, a uniform description for all financial statements, biographical data, and anti-competitive material. Each application should list the type of information required. This would result in a list of standard application components and would thereby reduce staff requests for additional information.

One person recommended that all applications and approvals be published. This would establish precedent to help other applicants understand what is permitted. This would also lighten the staff's workload because they would not be asked questions which have already been decided.

**II. Discussion of Amendments to the Guidelines**

In the months since the adoption of the Guidelines, the Board has gained significant experience in regulatory applications review and processing under the Guidelines. The Board also has taken action on a number of fronts to improve the efficiency of the agency's application processing procedures. For example, the Board has adopted amendments to its acquisition of control regulations, 12 CFR part 574, designed to streamline the regulatory processing of the wide range of acquisition of control filings made with the Board under part 574 by revising regulatory application processing time periods and procedures consistent with the Guidelines. *See, e.g.*, Acquisition of Control of Insured Institutions; Procedural Requirements, 52 FR 48519 (Dec. 23, 1987) (revising filing procedures and time frames for public notification and sufficiency

determinations for applications, notices and rebuttal filings filed pursuant to 12 CFR part 574); Acquisition of Control of Insured Institutions; Delegations of Authority and Technical Amendments, 53 FR 33104 (Aug. 30, 1988) (expanding the authority of the Principal Supervisory Agents to approve and disapprove certain change of control notices and applications under 12 CFR part 574, and certain other technical amendments to streamline 12 CFR part 574).[3] The Board has also established internal applications processing guidelines. *See* Office of District Banks Applications Procedure Memorandum #014–1, August 1, 1988 ("AP 14–1"). Many of the amendments being adopted today are as a result of the Board's experience in processing applications under the Guidelines.

*A. Completed Applications to Which the Guidelines Apply*

Section 410 of CEBA, by its terms, applies to all completed "applications" under the Board's regulations. Congress did not, however, expressly define the term "application" regarding the nature and type of applications intended to be within the scope of section 410(a). In determining which applications should be governed by the Guidelines, the Board excluded certain matters that it believed do not appear to appropriately fall within the scope or intent of section 410. A number of commenters criticized the exclusions and urged that as many types of applications as possible be covered by the Guidelines. The Board is amending paragraph (a) of the Guidelines (12 CFR 571.12(a)) to delete from the category of applications not covered by the Guidelines those applications involving requests for non-standard supervisory forbearances in connection with mergers or acquisitions under 12 CFR 563.22(e)(1)(i) that do not involve FSLIC assistance. If additional time for review is necessary, there are mechanisms available under the Guidelines to extend the review period. *See 12 CFR 571.12 (e) and (f).*

Second, the Board is amending paragraph (a) of the Guidelines to clarify that under certain circumstances, certain applications that pertain to the Board's litigation and enforcement activities will be covered by the Guidelines. Requests submitted pursuant to special requirements imposed pursuant to cease and desist orders, removal/prohibition orders, supervisory agreements, consent merger agreements, and agreements reached pursuant to the terms of a settlement of litigation are not covered by the Guidelines. Such litigation and enforcement documents often contain provisions that require that the institution in question restrict certain of its activities and/or engage in certain transactions only after obtaining the prior written approval of the Supervisory Agent. Requests to engage in activities that are subject to special limitations or restrictions that are imposed by such documents or that require the prior written approval of the Supervisory Agent, as well as requests for termination or modification of such documents, are not covered by the Guidelines. However, the fact that a regulation involving an application may be mentioned in an enforcement document does not necessarily mean that the Guidelines do not apply to that application. Applications submitted pursuant to a regulatory requirement that an institution obtain the prior written approval of the Board or its delegate before engaging in the proposed activity should be covered by the Guidelines, whether or not the regulation involving the application is mentioned in an enforcement document. Only if the application relates to an activity uniquely covered or restricted by an enforcement document, is the application then excluded from coverage of the Guidelines.

For example, the Board may issue a cease and desist order against an association for violations of the provisions of 12 CFR 563.41, restrictions on real and personal property transactions with affiliated persons, and specifically require that the association not violate § 563.41 in the future. Section 563.41 requires that the prior written approval of the Principal Supervisory Agent must be obtained before an association may enter into any real or personal property transaction specified therein with an affiliate. If, after the entry of the cease and desist order, the association were to file an application for permission to engage in a covered transaction with an affiliate under § 563.41, that application would be subject to the Guidelines because the regulation already requires supervisory approval. If, on the other hand, under the terms of the cease and desist order, the association were required to obtain the special permission of the Supervisory Agent before the association could make commercial loans of any type, then the association's request in that case would not be covered by the Guidelines because there is no independent regulatory requirement for such approval.

This clarification should enhance the prompt and timely processing of regularly required applications that involve institutions that are subject to supervisory or enforcement orders or other documents, where the proposed activity is not specifically constrained by the enforcement document.

Third, the Board is amending paragraph (a) to correct an error in the designation of one of the statutes enumerated in that paragraph. The third sentence of paragraph (a) states that the Guidelines do not apply to, among others, "requests for Corporation assistance or assistance payments in connection with a merger, acquisition or restructuring of an insured institution pursuant to section 406(f)(1)–(4) of the NHA, 12 U.S.C. 1729(f)(1)–(4) * * *". Section 406(f) of the NHA presently contains 6 subparagraphs. It was not the intent of the drafters of the Guidelines to exclude subparagraphs (f)(5), Net Worth Certificates, or (f)(6), Capital Instrument Purchase Program, from the types of FSLIC-assisted transactions that are not covered by the Guidelines. The omission of reference to subparagraphs (f)(5) and (f)(6) appears to have been inadvertent. First, footnote 2 of the Preamble to the Guidelines states explicitly that requests for the purchase of Net Worth Certificates are not covered by the Guidelines, on the ground that 12 CFR part 572 already provides detailed standards, guidelines and timeframes for handling such requests. Second, CEBA added subparagraph (f)(6), the capital instrument purchase program (section 405 of CEBA). Its omission appears to have been unintentional. Accordingly, the phrase in the third sentence is being amended to delete the reference to subparagraphs (f)(1) through (f)(4) of section 406(f) of the NHA, and to refer instead simply to requests for assistance or assistance payments in connection with a merger,

[3] *See also* Acquisition of Securities of Converting and Converted Insured Institutions, 52 FR 42091 (Nov. 3, 1987) (delegating authority to the General Counsel or his designee to approve routine applications filed pursuant to 12 CFR 563b.3(i)(3)); Holding Company Indebtedness, 52 FR 49381 (Dec. 31, 1987) (revising the time frame for the processing of debt applications and delegating authority to the Supervisory Agent to approve or deny most debt applications); Restrictions on Repurchase of Stock of Recently Converted Insured Institutions, 53 FR 2477 (Jan. 28, 1988) (preapproving certain requests for waiver of the regulatory restrictions on repurchases of stock by recently converted insured institutions); Policy Statement on Merger Conversions (Board Res. No. 88–286, Apr. 21, 1988) (restating and clarifying the Board's position on merger-conversions); Charter and Bylaw Amendments; Delegations of Authority, 54 FR 4257 (Jan. 30, 1989) (delegating authority to the Principal Supervisory Agent to grant or deny preliminary approval of most charter amendments and to approve or deny most bylaw amendments); Preapproved Securities Brokerage Service Corporation Activities, 54 FR 14091 (Apr. 7, 1989) (proposed preapproval of certain securities brokerage service corporation activities).

acquisition or restructuring of an institution.

Fourth, the Board is amending paragraph (a) to clarify that requests for reconsideration, modification or appeals of final decisions of the Board are not covered by the Guidelines. Where the Board has previously rendered a timely decision on an application, thereby fulfilling its obligation under section 410 of CEBA to expedite applications processing, the Board believes that appeals of such final agency actions are not, in essence, applications and should not be subject to the automatic approval process. However, the Board and its staff will act on such appeals in a timely fashion.

Fifth, the Board is amending the third sentence of paragraph (a) to delete as unnecessary all of the statutory citations to the types of applications and other requests for approval that are excluded from coverage of the Guidelines.

The Board notes that, after considering the public comments urging that the categories of applications covered by the Guidelines be expanded to include as many as possible, it has concluded that no additional categories of applications currently excluded from coverage should now be covered by the Guidelines. In response to those commenters who asserted that the Board does not have the authority to exclude any category of application from coverage, the Board continues to hold the view that it was given the discretion under section 410 of CEBA to determine which applications should be governed by the Guidelines and which do not appropriately fall within the scope of section 410. The predominant nature of the applications and other requests for approval excluded from coverage in paragraph (a) of the Guidelines involve either requests for FSLIC assistance or the resolution of litigation and enforcement issues. The excluded matters do not fall into the category of traditional "applications." The Board believes that maximum flexibility must be retained in these areas and that therefore standardized timetables are not appropriate.

*B. Acceptance of Applications for Processing*

Paragraph (c) of the Guidelines (12 CFR 571.12(c)) states that the review period for the determination whether to approve or deny an application will not commence until an application is deemed complete. The Board is adopting a number of amendments to paragraph (c) based upon its experience in processing applications. The Board believes that the adoption of these amendments will enhance the prompt processing of applications as well as provide additional guidance to potential applicants and their professional advisors.

1. Requests for Additional Information

The Board is amending paragraph (c) of the Guidelines to make it clear that requests for additional information on applications covered by the Guidelines must be in writing. Experience has shown that written requests provide applicants with greater certainty regarding the information the Board's staff needs to complete its review of an application. Also, because a number of offices within the Federal Home Loan Bank System may need to coordinate in order to issue a request for additional information (at least in the context of applications not delegated to the Principal Supervisory Agent), the issuance of oral comments by a particular office may lead to unnecessary confusion. AP 14–1, a memorandum distributed by the Office of District Banks to all Supervisory Agents, whose stated purpose is to clarify the Guidelines and to delineate internal processing procedures to enhance the processing and monitoring of the Guidelines by the Federal Home Loan Bank System, states that any requests for additional information must be in writing. This amendment to the Guidelines is intended to make the Guidelines consistent with current Board policy as expressed in AP 14–1.

2. Requests for Extension

The Board is amending paragraph (c) of the Guidelines to add a provision addressing procedures for requests by applicants for additional time to respond to requests for additional information from the Board's staff. Paragraph (c) states that in the event that any additional information is requested, the applicant must respond fully to the request within 30 days. Failure to respond within such time period may cause the application to be treated as having been withdrawn or may provide grounds for denial of the application. In the staff's experience, applicants occasionally request extensions, but there is currently no uniform method for applicants to request extensions and for staff to respond. Under the new procedure, applicants may request reasonably brief extensions in writing prior to the expiration of the initial 30–day period. The Board's staff may, in its sole discretion, grant limited extensions in writing. As a general matter, the Board's staff will not consider a request for an extension of more than 30 additional calendar days to respond to a request for additional information unless the applicant shows good cause for an extension for longer than 30 calendar days. The Board expects that the Board's staff will respond to such requests promptly.

3. Status of Withdrawn Applications

The Board is amending paragraph (c) of the Guidelines to clarify that in the event an application is deemed withdrawn by the Board or its delegate, any resubmission will constitute a new filing, which will cause all applicable time frames to begin anew, and all applicable procedures are required to be complied with again as if it were a new filing.

4. Material Change in Completed Application

Paragraph (c) provides that, with respect to additional information requests following the initial request, the inquiries must be limited to (1) those matters derived from or prompted by information furnished in response to the previous request, or (2) material information that was not reasonably available from the applicant at the time of the application, was concealed, or pertains to developments subsequent to the initial request. In those situations in which the second type of information is being requested, *after* the application has been deemed complete, the Board or its delegate, at its option, may revoke the completeness determination and deem the application incomplete until the requested information is submitted and, upon receipt of the additional information, deem the application complete and commence the review period of the application again.

The Board wishes to clarify the procedures that will apply when the completeness determination is revoked. In the event the Board or its delegate revokes the completeness determination, deems the application incomplete, and requests additional information, the applicant will have 30 calendar days to respond to the request for additional information. Failure by an applicant to respond fully within 30 calendar days of the date of such request may be deemed to constitute withdrawal of the application or may be treated as grounds for denial of the application or issuance of a notice of disapproval of a notice.

Upon the timely filing of the additional information, the Board or its delegate shall (1) request in writing further additional information to complete the application, (2) deem the application to be complete, or (3) return the application if it is deemed by the Board or its delegate to be materially

deficient and/or, substantially incomplete. The Board or its delegate shall notify the applicant as to whether the application is deemed complete within 15 calendar days after timely filing of the additional information. The new period for review by the Board or its delegate of the application will commence on the date the application is deemed complete. If the Board or its delegate fails to notify the applicant within such 15 day period, the application shall be deemed to be complete as of the expiration of such 15 day period.

The Board is amending paragraph (c) to add to the actions that the Board or its delegate may take upon receipt of such additional information. If the additional information furnished changes the application fundamentally and if the Board consequently lacks sufficient information to reach a decision on the application, then, rather than deeming the application complete and commencing the review period again, the Board or its delegate at that point also has the option, at its discretion, of returning the application to the applicant without further review on the grounds that it has become materially deficient and/or substantially incomplete.

5. Effect of Determination that Application Cannot Be Processed Under Delegated Authority

The Board is amending paragraph (c) of the Guidelines to conform the Guidelines to a provision that currently appears in the Board's Acquisition of Control Regulations, 12 CFR part 574. The Board believes that this provision should apply generally to applications covered by the Guidelines. The Guidelines are being amended to provide that in the case of an application that is not eligible for processing under delegated authority by the Principal Supervisory Agent, actions taken by the Principal Supervisory Agent or its delegate shall not commence any of the periods for review of a completed application. If it is determined that an application is not eligible for processing under delegated authority after the application has been deemed complete, the applicant will be required to refile the application with the proper offices of the Board. If the application is refiled with the proper offices, it will be deemed a new filing under the applicable statute or regulation. The refiling will cause all applicable time frames to begin anew, and applicable procedures must be complied with again.

The purpose of this amendment is to ensure that, in the event an application must be processed in Washington, the Board's Washington staff will have the opportunity to determine whether it has the information and the time it needs to process the application. In such case, all periods for determining sufficiency and for review of a completed application will recommence.

However, with respect to applications that involve the publication of notice of filing, the refiling of the application with the proper offices may not necessarily require the applicant to republish the notice. The Board or its delegate will have the discretion to determine on a case-by-case basis whether to require republication. Such determination will depend on the nature of the refiled application and the timing of the resubmission.

6. Waiver of Required Information

Paragraph (c)(1) requires the Board or its delegate to determine whether the application is complete within 30 days of the filing of a properly submitted application. Paragraph (c)(3) also states that when an applicant requests a waiver of information required to be included in the application, the application will not be deemed complete until a final determination is made on the waiver request. The Board is amending this provision to conform to the practice currently followed with respect to waiver requests on applications governed by the Acquisition of Control Regulations. The new procedure requires that within the initial 30-day period after the filing of an application, or within 15 days after the filing of an addition information by an applicant that includes a request for the waiver of required information, the Board or its delegate must determine whether to (1) grant the waiver request, (2) require additional information regarding the requested waiver, or (3) deny the waiver request. Upon expiration of the 30-day or 15-day period, as the case may be, the waiver request will be automatically granted unless it has been denied or additional information has been specifically requested by such date.[4]

7. Protested Applications

The Board is amending paragraph (c) of the Guidelines to add a new provision dealing with the effect of protests on the processing of applications covered by the Guidelines. Under current Board practice, the filing of a protest suspends the automatic approval time frames specified in the Guidelines, although the application will continue to be processed. See AP-14-1 and Office of District Banks Applications Procedure Memorandum #018-1, June 30, 1989.

A commenter pointed out that the Guidelines are silent on the issue of whether the processing of applications will be suspended when a protest is filed, whereas the Preamble to the Guidelines addresses this issue. See footnote 6, 52 FR 39064, 39066. The Preamble states: "Where a regulation prescribes a procedure for submission of protests on an application following publication of notice of a proposed activity after the application has been deemed complete (*e.g.*, 12 CFR 543.2), the automatic approval process will be discontinued until the issues relating to the protest are resolved. In this situation, the review period will not commence until the Corporation or its delegate informs the applicant that a protest has been deemed to be not 'substantial' or that such issues have been resolved." The Board believes that the omission of this item from the text of the Guidelines was inadvertent, and the revisions to the Guidelines correct this omission.

However, not all applications with respect to which protests may be submitted following publication of notice are affected by this amendment. In accordance with paragraph (a) of the Guidelines, where other Corporation or Board regulations establish specific procedures for the processing of applications or set forth specific time periods for automatic approval of applications unless such applications are disapproved or objections are raised, the provisions of those regulations are controlling with respect to the matters to which they pertain. For example, the regulations set forth in 12 CFR part 574 applicable to holding company applications and change in control notices set forth procedures for the processing of public comments on applications after publication of notice of the filing of such applications. Accordingly, such applications are not covered by the protest procedures of the Guidelines. The filing of a protest on applications submitted pursuant to 12 CFR part 574 will not automatically suspend the automatic approval process.[5]

[4] The new procedure on requests for waivers of information required to be included in an application applies to informational requirements only; it does not apply to requests for waivers of statutes, regulations or related regulatory requirements such as policy statements or guidelines.

[5] It should be noted that 12 CFR part 563e outlines the Board's substantive responsibilities with respect to the consideration of issues under the Community Reinvestment Act ("CRA") in acting on holding company applications. In this regard, the Board

Continued

The revision also comports with the "Statement of the Federal Financial Supervisory Agencies Regarding the Community Reinvestment Act" adopted by the Board on March 21, 1989, in Board Resolution No. 89–1036, because the joint statement was carefully drafted to allow for the differing application processing procedures of the agencies. See 54 FR 13742 (April 5, 1989) for the text of the joint statement.

8. Effect of Pending Investigation

The Board is amending paragraph (c) of the Guidelines to add a new provision providing a mechanism whereby the Board may discontinue the review or automatic approval process pending the completion of an investigation, examination, or administrative proceeding by the Board or other government entity or self-regulatory organization of an applicant or an affiliate of an applicant that pertains to standards the Board must apply or a determination the Board is required to make in connection with its review of the application. In a number of past instances, during the course of processing an application, the Board has learned of the existence of a government investigation of the applicant or an affiliate of the applicant that pertains to the issues presented by the application. The Board should have the flexibility to suspend processing pending the outcome of the investigation.

9. Completeness Determination: Clarification

Although no amendment to paragraph (c) is being made at this time, the Board wishes to clarify an issue on the effect of an application's being deemed complete. In the Board's experience, certain applications can raise issues and concerns that are not resolved to the mutual satisfaction of the Board and the applicant in the course of the determination of the application's sufficiency. Initial and subsequent requests for additional information may raise issues and concerns to which an applicant cannot or will not fully respond. In those limited cases, the Board believes that further requests for additional information raising the same issues and concerns would not be productive. Therefore, under those circumstances, the Board may deem an application complete for purposes of further processing, and the Board's staff will notify the applicant that while the application is being deemed complete, the applicant's responses to the requests for additional information nevertheless did not respond fully to the requests nor address in a satisfactory manner the issues and concerns expressed in the requests for additional information.

Subparagraph (c)(2) of the Guidelines has always provided that failure by an applicant to respond fully to a written request by the Board or its delegate for additional information within 30 calendar days of the date of such request may be deemed to constitute withdrawal of the application or may be treated as grounds for denial of an application or issuance of a notice of disapproval of a notice. Accordingly, an applicant's failure to respond fully to the issues and concerns raised during the sufficiency determination process may be treated as grounds for denial of the application, even though an application has been deemed "complete" for processing purposes.

*C. Board Review Time Frames*

Under paragraph (e) of the Guidelines, the Board or its delegate may extend the review period of a completed application for an additional 30 days, thereby increasing the period within which a determination must be made to either 90 or 120 days. If the Board or its delegate elects to extend the review period in this manner, it must notify the applicant at least 30 days prior to the expiration of the applicable period for review of a completed application.

The Board is reducing the notice period to an applicant from 30 to 20 days prior to the expiration of the applicable period for review of a completed application. In the Board's experience, this will give the Board's staff the additional needed flexibility to determine whether an extension for an additional 30-day period is necessary. The Board believes that the reduction of the required time period for advance notice will not unreasonably hamper an applicant's preparation for consummation of a proposed transaction or commencement of a planned activity. Moreover, reducing the advance notice requirement by ten days may, in certain cases, eliminate the need to invoke the extension procedures set forth in paragraph (f), which remove an application entirely from the automatic approval process of the Guidelines.

*D. Other Comments*

The Board has also undertaken other initiatives designed to streamline and improve further the regulations and procedures governing the various types of applications filed with the Board. These initiatives address certain concerns raised by the commenters. For example, the Board has instituted extensive internal applications tracking procedures, and its Operations Tracking Committee meets regularly to discuss applications. The Board has implemented a National Applications Tracking System to monitor the processing of all applications. AP 14–1 and Federal Home Loan Bank System Regulatory Handbooks delineating applications processing also have been issued. Additionally, many of the Board's application forms have been revised. As indicated above, delegations of authority to the Principal Supervisory Agents have been greatly expanded with appropriate oversight. The Board is currently proceeding with a rulemaking project to implement an Applications File Room for the central filing of most non-delegated applications.

The Board has also considered the public comments on revising the applications processing time frames set out in the Guidelines and revising paragraph (f). The Board has determined not to make any changes in these areas.

**Final Regulatory Flexibility Analysis**

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following regulatory flexibility analysis:

1. *Need for and objectives of the rule.* These elements have been incorporated into the Board's discussion set forth in the **SUPPLEMENTARY INFORMATION** section.

2. *Issues raised by comments and agency assessment and response.* As explained in the **SUPPLEMENTARY INFORMATION** section, the Board is revising the policy statement in final form without prior opportunity for comment, although the Board is soliciting post-promulgation public comment. Accordingly, at this time, there are no issues raised by comments that require Board assessment and response.

3. *Significant alternatives minimizing small-entity impact and agency response.* The applications processing guidelines will have no disproportionate impact on small institutions or other entities. The guidelines do not alter or supersede any pre-existing regulations regarding processing of applications, but rather only establish time periods within which action by the Board is required on completed applications submitted pursuant to Corporation or Board regulations.

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decides all holding company applications involving "substantial" protests (because these constitute significant issues of law or policy) and is required to base its decision on all information available, including, in part, the applicant's CRA assessment record, CRA protests or public comments and any other relevant information.

**List of Subjects in 12 CFR Part 571**

Accounting, Bank deposit insurance, Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby amends part 571, subchapter D, chapter V, title 12, Code of Federal Regulations, as set forth below.

**SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION**

## PART 571—STATEMENTS OF POLICY

1. The authority citation for part 571 continues to read as follows:

**Authority:** Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402, 403, 406, 407, 48 Stat. 1256, 1257, 1259, 1260, as amended (12 U.S.C. 1725, 1726, 1729, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

2. Section 571.12 is revised to read as follows:

**§ 571.12 Applications processing guidelines.**

(a) *General.* Section 410 of Title IV of the Competitive Equality Banking Act of 1987, Pub. L. No. 100–86, 101 Stat. 552, 620, section 410 generally requires that the Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("Corporation") (hereinafter collectively referred to as the Board), "promulgate guidelines which provide that with respect to each type of completed application" filed by any person for approval by the Corporation, the application "shall be deemed to be approved" as of the end of the period prescribed under such guidelines unless the Board approves or disapproves such application before the end of such period [section 410(a)]. To comply with these requirements and to ensure the timely processing of applications and notices throughout the Federal Home Loan Bank System, the Board hereby sets forth guidelines for the processing of completed applications and notices (hereinafter collectively referred to as "applications") filed with the Board or its delegate subsequent to October 9, 1987. This section does not apply to applications for approval of holding company indebtedness; requests for Corporation assistance or assistance payments in connection with a merger, acquisition, or restructuring of an insured institution; requests in connection with Corporation authorizations of emergency thrift acquisitions; or requests submitted in connection with cease-and-desist orders, temporary cease-and-desist orders, removal and/or prohibition orders, temporary suspension orders, supervisory agreements, consent merger agreements, or documents negotiated in settlement of litigation (including requests for termination or modification of, or for approval pursuant to, such orders, agreements, or documents), or similar litigation or enforcement matters. Requests submitted in connection with cease-and-desist orders, removal/prohibition orders, supervisory agreements, consent merger agreements, and other documents negotiated in settlement of litigation ("enforcement documents") are not covered by this section. However, the fact that a regulation involving an application may be mentioned in an enforcement document does not mean that this section does not apply to that application. Requests to engage in activities that are restricted by enforcement documents and requests for termination or modification of such documents are not covered by this section. Applications submitted pursuant to a regulatory requirement that prior Board approval be obtained before engaging in a proposed activity, however, are covered, whether or not mentioned in an enforcement document. If the application or request is unique to the enforcement document, then it is not covered by this section. Requests for reconsideration, modification, or appeal of final agency actions of the Board are not covered by this section. In addition, where other Corporation or Board regulations establish specific procedures for processing of applications or set forth specific time periods for automatic approval of applications unless such applications are disapproved or objections are raised, the provisions of those regulations are controlling with respect to the matters to which they pertain. Where a regulation sets forth a procedure for processing an application but does not contain a time period pursuant to which such application is to be processed, the application will be processed under the procedure established by the regulation, but will be subject to the time periods contained in this policy statement.

(b) *Applications submitted for review.* An application submitted to the Board or its delegate for processing shall be submitted on the designated form of application and shall comply with all applicable regulations and guidelines governing the filing of such application.

(c) *Accepting applications for processing.* (1) Within 30 calendar days of receipt of a properly submitted application for processing, the Board or its delegate shall:

(i) Request in writing additional information to complete the application,

(ii) deem the application to be complete, or

(iii) return the application if it is deemed by the Board or its delegate to be materially deficient and/or substantially incomplete.

Failure by the Board or its delegate to act as described in paragraph (c)(1) (i), (ii), or (iii) of this section within 30 calendar days of receipt of an application for processing shall result in the filed application's being deemed complete, thereby commencing the period for review. If an application includes a request for a waiver of an application requirement that certain information be supplied, the waiver request shall be deemed granted, unless within 30 calendar days of receipt of a properly submitted application for processing, the Board or its delegate requests in writing additional information about the waiver request, or denies the waiver request in writing.

(2) Failure by an applicant to respond fully to a written request by the Board or its delegate for additional information within 30 calendar days of the date of such request may be deemed to constitute withdrawal of the application or may be treated as grounds for denial of the application or issuance of a notice of disapproval. If an application is deemed withdrawn, the application may be resubmitted for processing, but it will be deemed a new filing under the applicable statute or regulation.

(3) An applicant may request in writing a brief extension of the 30-day period for responding to a request for additional information described in paragraph (c)(2) of this section prior to the expiration of the 30-day time period. The Board or its delegate, at its option, may grant an applicant a limited extension of time in writing. Failure by an applicant to respond fully to a written request for additional information by the expiration of the extended period permitted by the Board or its delegate may be deemed to constitute withdrawal of the application or may be treated as grounds for denial of the application or issuance of a notice of disapproval of a notice.

(4) The period for review by the Board or its delegate of an application will commence on the date that the application is deemed complete. The Board or its delegate shall notify an applicant in writing as to whether the application is deemed complete within 15 calendar days after timely filing of any additional information furnished in response to any initial or subsequent request by the Board or its delegate for

additional information. If the Board or its delegate fails to notify an applicant within such time, the application shall be deemed to be complete as of the expiration of such 15-day period. If additional information furnished in response to a written request by the Board or its delegate for additional information includes a request for a waiver of an application requirement that certain information be supplied, the waiver request shall be deemed granted, unless within 15 calendar days after the timely filing of such additional information the Board or its delegate (i) requests in writing additional information about the waiver request, or (ii) denies the waiver request in writing.

(5) After additional information has been requested and supplied, the Board or its delegate may request additional information only with respect to matters derived from or prompted by information already furnished, or information of a material nature that was not reasonably available from the applicant at the time of the application, was concealed, or pertains to developments subsequent to the time of the Board's initial request for additional information. With regard to information of a material nature that was not reasonably available from the applicant, was concealed at the time an application was deemed to be complete, or pertains to developments subsequent to the time an application was deemed to be complete, the Board or its delegate may request in writing such additional information as it considers necessary and, at its option, may deem the application not to be complete until such additional information is furnished. Upon receipt of such additional information, the Board or its delegate shall:

(i) Request in writing further additional information to complete the application,

(ii) deem the application to be complete and commence a new review period of the completed application, or

(iii) deem the application to be materially deficient and/or substantially incomplete and return it to the applicant.

In the case of an application that is not eligible for decision under delegated authority by the Principal Supervisory Agent, actions taken by the Principal Supervisory Agent or its delegate shall not commence any of the periods for review of a completed application described in paragraph (d) of this section.

(6) Where a regulation prescribes a procedure for submission of protests to an application and a protest is filed, the automatic approval timeframes specified herein shall be temporarily suspended until a record sufficient to support a determination on the protest is developed.

(7) The Board or its delegate, at its option, may deem an application materially deficient and/or substantially incomplete in the event that the applicant or an affiliate of the applicant is or becomes subject to an investigation, examination, or administrative proceeding by a federal or state or municipal court, department, agency or commission or other governmental entity, or a self-regulatory trade or professional organization that is pertinent to the standards applicable to the Board's evaluation of the application or relates to a determination the Board or its delegate is required to make in connection with the application under the applicable statute or regulation.

(d) *Failure by the Board to approve or deny an application or to disapprove a notice.* (1) If, upon expiration of the applicable period for review of any complete application to which this policy statement applies, or any extension of such period, the Board or its delegate has failed to approve or deny such application (or, in the case of a notice, to disapprove such notice), the application shall be deemed to be approved or, in the case of a notice, not disapproved by the Board or its delegate. For purposes of the previous sentence, the applicable period for review shall be (i) 60 calendar days for an application that is eligible for action by a Principal Supervisory Agent or a Supervisory Agent or for any application or notice submitted pursuant to part 574 of the Corporation's regulations, or (ii) 90 calendar days for any other application.

(2) In the event that more than one application is being submitted in connection with a proposed transaction or other action, the applicable period for review of all such applications shall be the review period for the application having the longest period for review.

(e) *Extension of time for review.* The applicable period for review of an application deemed to be complete may be extended by the Board or its delegate for 30 days beyond the time period for review set forth in paragraph (d) of this section. The Board or its delegate shall notify an applicant at least 20 days prior to the expiration of the applicable period for review of a complete application that such review period is being extended for 30 days and shall state the general reasons therefor.

(f) *Extension of time for Board review of applications raising significant issues of law or policy.* In those situations in which an application presents a significant issue of law or policy, the applicable period for review of such application also may be extended by any member of the Board or its General Counsel, Executive Director, Executive Director for Policy, or the Executive Director of the Office of Regulatory Activities of the Federal Home Loan Bank System beyond the time period for review set forth in paragraph (d) of this section or any extension thereof pursuant to paragraph (e) of this section until such time as the Board acts upon the application. In such cases, written notice shall be provided to an applicant not later than the expiration of the time period set forth in paragraph (d) of this section or any extension thereof pursuant to paragraph (e) of this section that the period for review is being extended in accordance with this paragraph (f), which notice shall also state the general reason(s) therefor.

By the Federal Home Loan Bank Board.

**John F. Ghizzoni,**

*Assistant Secretary.*

[FR Doc. 89-19824 Filed 8-23-89; 8:45 am]

BILLING CODE 6720-01-M

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

### 15 CFR Parts 776 and 779

**[Docket No. 90759-9159]**

### Digital Computers: Revisions to Section 776.10

**AGENCY:** Bureau of Export Administration, U.S. Department of Commerce.

**ACTION:** Final rule.

**SUMMARY:** Section 776.10(a) of the Export Administration Regulations (EAR) contains general requirements concerning support documents for applications to export or reexport digital computers to destinations in Country Groups Q, W, and Y, Afghanistan and the People's Republic of China (PRC). This final rule revises § 776.10(a)(1) by removing the more detailed instructions for completing and filing Form BXA-6031P. Form BXA-6031P has been revised to include these instructions. Placing the instructions on Form BXA-6301P will make them more accessible to applicants, thereby reducing the chance that applicants will fail to notice them.

Paragraph (c)(1) of Advisory Note 12 to ECCN 1565A contains a specific list of items that, under CoCom requirements, must be addressed in an end-user or importer certification.

Paragraph (a)(2) of § 776.10 also contains the list of such items. The list of such items in paragraph (a)(2) is being deleted and replaced by a reference directing the reader to paragraph (c)(1) of Advisory Note 12 to ECCN 1565A. This amendment will direct exporters to the current source of the CoCom requirements.

Paragraph (c)(4) of Advisory Note 12 to ECCN 1565A describes the CoCom visitation rquirements applicable to equipment whose technical parameters exceed those described in paragraph (c)(3) of the Advisory Note. Paragraph (a)(3) of § 776.10 also describes the visitation requirements. The visitation requirements in paragraph (a)(3) are being deleted and replaced by a reference directing the reader to paragraphs (c)(3) and (c)(4) of Advisory Note 12 to ECCN 1565A.

Section 776.12(e)(5) is revised, consistent with § 776.10(a)(1), to require a Form BXA–6031P for Afghanistan—as well as Country Groups Q, W, and Y, and the People's Republic of China—when submitting a parts and components request for the export of a foreign-made computer system.

**EFFECTIVE DATE:** This rule is effective November 22, 1989.

**FOR FURTHER INFORMATION CONTACT:** Willard Fisher, Regulations Branch, Bureau of Export Administration, Telephone: (202) 377–3856.

**SUPPLEMENTARY INFORMATION:**

**Rulemaking Requirements**

1. This rule complies with Executive Order 12291 and Executive Order 12661.

2. This rule contains a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and has been submitted to the Office of Management and Budget for review. Public reporting for this collection of information is estimated to average one hour and 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If applicable, the signed statement required as a special documentation will require an additional five minutes and visitation reports will require five minutes each. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Security and Management Support, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503—Attn: Paperwork Reduction Project (0694–0013).

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

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

**List of Subjects in 15 CFR Parts 776 and 779**

Computer technology, Exports, Reporting and recordkeeping requirements, Science and technology.

Accordingly, parts 776 and 779 of the Export Administration Regulations are amended as follows:

1. The authority citation for 15 CFR part 776 continues to read as follows:

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

2. The authority citation for 15 CFR part 779 continues to read as follows:

**Authority:** Public Law 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Public Law 97–145 of December 29, 1981, by Public Law 99–64 of July 12, 1985, and by Public Law 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Public Law 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Public Law 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

**PART 776—[AMENDED]**

3. Section 776.10 is amended by revising paragraph (a) and by removing Note 1 and Note 2 that follow paragraph (a)(3)(iii)(B), as follows:

**§ 776.10 Electronic computers and related equipment**

* * * * *

(a) Digital computers.

(1) General requirements. Applications to export or reexport "digital computers" or equipment containing digital computers to destinations in Country Groups Q, W, and Y, Afghanistan and the People's Republic of China or to upgrade existing "digital computer" installations in those areas, must be accompanied by Form BXA–6031P, Digital Computer System Parameters. Two or more forms may be submitted if needed to describe all equipment on complex systems. Specification sheets should be furnished to corroborate the data supplied on Form BXA–6031P and calculations used to arrive at values should also be furnished, as appropriate. Observe the precise definitions in Advisory Notes 9, 12, and 16 to ECCN 1565A before making calculations.

(2) Special documentation requirements. Applications to export or reexport computers that are described in Advisory Note 12 to ECCN 1565A, or that exceed any of the limits specified in Advisory Note 12, must be accompanied by a signed statement from a responsible representative of the end-user or importing agency that describes the proposed end-use and includes the certifications contained in paragraph (c)(1) of Advisory Note 12 to ECCN 1565A.

(3) Visitation requirements. Quarterly visits and periodic reports on computer systems described by Advisory Note 12 to ECCN 1565A will be required if the parameters of the equipment to be exported exceed the limits contained in paragraph (c)(3) of Advisory Note 12.

The visitation and reporting requirements are described in paragraph (c)(4) of Advisory Note 12.

* * * * *

4. Section 776.12 is amended by revising paragraph (e)(5) to read as follows:

**§ 776.12 Parts, components, and materials in foreign-made products**

* * * * *

(e) How to request approval.

* * * * *

(5) Supporting documentation. The supporting documentation otherwise required for a license application need not be submitted with a parts and components request, except that Form BXA–6031P should be furnished when a computer system is being exported to Country Group Q, W, or Y, Afghanistan or the People's Republic of China.

* * * * *

**PART 779—[AMENDED]**

**§ 779.8 [Amended]**

5. In § 779.8(b)(3)(i)(D), the phrase "Form ITA–6031P" is revised to read "Form BXA–6031P".

Dated: August 18, 1989.

**James M. LeMunyon,**

*Deputy Assistant Secretary for Export Administration.*

[FR Doc. 89–19963 Filed 8–23–89; 8:45 am]

BILLING CODE 3510-DT-M

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**15 CFR Parts 776, 779 and 799**

**[Docket No. 90360–9060]**

## Butadiene Polymers; Transfer of Export Controls From 1801A to 1746A on the Commodity Control List

**AGENCY:** Bureau of Export Administration, Commerce.

**ACTION:** Final rule.

**SUMMARY:** On September 14, 1988, the Bureau of Export Administration published in the **Federal Register** (53 FR 35459) a final rule amending various entries on the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls. Those amendments resulted from a review of strategic controls maintained by the U.S. and certain allied countries through the Coordinating Committee (COCOM).

Among the amendments to the CCL in the September 14 rule was the transfer of certain butadiene polymers from Export Control Commodity Number (ECCN) 1801A to 1746A. These butadiene polymers remained subject to controls, including those related to non-proliferation of nuclear weapons delivery systems.

However, regulatory language related to nuclear weapons delivery controls was inadvertently omitted from the regulatory text. This rule corrects § 776.18, Supplement 4 to part 779, and the *Reason for Control, Special Licenses Available,* and *Technical Data* paragraphs of ECCN 1746A to properly reflect the transfer of these butadiene polymers to that entry.

With the concurrence of the Department of Defense, the Department of Commerce has determined that these amendments to the CCL are necessary to protect U.S. national security interests.

**DATES:** This rule is effective August 24, 1989.

**FOR FURTHER INFORMATION CONTACT:** Jim Seevaratnam, Capital Goods Technology Center, Bureau of Export Administration, Telephone: (202) 377–5695.

**SUPPLEMENTARY INFORMATION:**

**Rulemaking Requirements**

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This rule will have no effect on the paperwork burden on the public. This collection has been approved by the Office of Management and Budget under control number 0694–0005.

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

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. Section 13(a) of the Export Administration Act of 1979 (EAA), as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Accordingly, it is being issued in final form. However, comments from the public are always welcome. Comments should be submitted to Willard H. Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

**List of Subjects in 15 CFR Parts 776, 779 and 799**

Computer technology, Exports, Reporting and recordkeeping requirements, Science and technology.

Accordingly, the Export Administration Regulations (15 CFR Parts 700–799) are amended as follows:

1. The authority citation for part 776 continues to read as follows:

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

**§ 776.18 [Amended]**

2. The introductory text of § 776.18 is amended by removing the number "1801" and inserting in its place the number "1746".

3. The authority citations for parts 779 and 799 continue to read as follows:

**Authority:** Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 99–64 of July 12, 1985, and by Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

**Supplement No. 4 to Part 799 [Amended]**

4. In Supplement No. 4 to part 779, the last entry of paragraph (4) is amended by removing the number "1801A" and inserting in its place the number "1746A".

**Supplement No. 1 to § 799.1 [Amended]**

5. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 1746A is amended by revising the *Reason for Control, Special Licenses Available* and *Technical Data* paragraphs to read as follows:

**1746A Polymeric substances and manufactures thereof, as described in this entry.**

* * * * *

*Reason for Control:* National security; foreign policy. Foreign policy controls apply, for crime control purposes, to police-model helmets and, for nuclear weapons delivery purposes (§ 776.18), to propellants and constituents as follows: polymeric substances, specifically, carboxyl-terminated polybutadiene (CTPB) and hydroxyl-terminated polybutadiene (HTPB).

*Special Licenses Available:* None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 776.18(c)). See Part 773 for special licenses available for other commodities controlled by ECCN 1746A.

*Special Foreign Policy Controls:* * * *

**Technical Data:** Export of technical data related to police-model helmets containing 50% or more aromatic polyamide fiber by value require a validated license to all destinations except Australia, Japan, New Zealand, and members of NATO. Exports of technical data related to butadiene polymers require a validated license to all destinations except Canada (see § 779.4(d)(20)).

* * * * *

Dated: August 18, 1989.

**James M. LeMunyon,**

*Deputy Assistant Secretary for Export Administration.*

[FR Doc. 89-19962 Filed 8-23-89; 8:45 am]

BILLING CODE 3510-DT-M

## 15 CFR Part 799

**[Docket No. 90885-9185]**

## Revisions to the Commodity Control List

**AGENCY:** Bureau of Export Administration, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Export Administration maintains the Commodity Control List (CCL), which includes those items subject to Department of Commerce export controls. This rule amends two Export Control Commodity Numbers (ECCNs) on the CCL.

A note is added at the end of ECCN 2410A to indicate that this entry controls parachutes designed for use in dropping personnel only and that parachutes specially designed for other military purposes are licensed by the U.S. Department of State. This change is made as a clarification only and neither expands nor limits the provisions of the Export Administration Regulations. It will assist exporters in determining whether a particular parachute system is subject to control by the Department of Commerce or the Department of State.

Section 6(k) of the Export Administration Act of 1979 (EAA), as amended, requires that items designated as "crime control and detection instruments and equipment" be exported only under a validated license, except to specified countries. ECCN 5597B is amended to designate electronic monitoring restraint devices as items included among "crime control and detection instruments and equipment" and, therefore, subject to U.S. foreign policy controls for human rights purposes under section 6(k) of the EAA. This change reflects recent technological developments in the crime control field and is made with the concurrence of the U.S. Department of State.

**EFFECTIVE DATE:** This rule is effective August 24, 1989.

**FOR FURTHER INFORMATION CONTACT:** Willard Fisher, Regulations Branch, Bureau of Export Administration, Telephone: (202) 377-3856.

**SUPPLEMENTARY INFORMATION:**

### Rulemaking Requirements

1. This rule complies with Executive Order 12291 and Executive Order 12661.

2. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under Control Number 0694-0005.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. Section 13(a) of the Export Administration Act of 1979, as amended (EAA) (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule imposes a foreign policy control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

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

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

### List of Subjects in 15 CFR Part 799

Exports, Reporting and recordkeeping requirements.

Accordingly, part 799 of the Export Administration Regulations (15 CFR parts 730-799) is amended as follows:

## PART 799—[AMENDED]

1. The authority citation for 15 CFR part 799 continues to read as follows:

**Authority:** Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, by Pub. L. 99-64 of July 12, 1985, and by Pub. L. 100-418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

### Supplement No. 1 to § 799.1 [Amended]

2. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), ECCN 2410A is amended by adding a note at the end of the entry to read as follows:

2410A Equipment specially designed for military purposes.

* * * * *

**Note:** This entry controls parachute systems designed for use in dropping personnel only. Parachute systems designed for use in dropping military equipment, braking military aircraft, slowing spacecraft descent, or retarding weapons delivery are licensed by the U.S. Department of State. See the U.S. Munitions List, Category VIII, Supp. No. 2 to part 770.

3. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 5597B is amended by revising the heading, as follows:

5597B Polygraphs (except biomedical recorders designed for use in medical facilities for monitoring biological and neurophysical responses); fingerprint analyzers, cameras and equipment, n.e.s.; automated fingerprint and identification retrieval systems, n.e.s.; psychological stress analysis equipment; electronic monitoring restraint devices; and specially designed parts and accessories, n.e.s.

* * * * *

Dated: August 18, 1989.

**James M. LeMunyon,**

*Deputy Assistant Secretary for Export Administration.*

[FR Doc. 89-19961 Filed 8-23-89; 8:45 am]

BILLING CODE 3510-DT-M

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 270

**[Rel. No. IC-17097; File No. S7-15-88]**

**RIN 3235-AA14**

## Offers of Exchange Involving Registered Open-End Investment Companies

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is announcing the adoption of a rule (11a-3) that permits a mutual fund or its principal underwriter to make certain exchange offers to the fund's shareholders or to shareholders of another fund in the same group of funds. Absent the rule, such entities would be prohibited from making exchange offers without Commission approval. The rule eliminates the need to obtain those approvals.

**EFFECTIVE DATE:** October 23, 1989.

Any holder of an order under section 11 of the Investment Company Act of 1940 that was granted without the specific condition that the exchange offer would comply with rule 11a-3, if and when adopted, shall have one year from the effective date of rule 11a-3 to bring its fees and sales loads into conformity with the requirements of the rule or to obtain an individual Commission order approving the offer. However, fees and sales loads permitted with respect to shares purchased while the existing exchange offer remains in effect may continue to be imposed until such shares are redeemed.

**FOR FURTHER INFORMATION CONTACT:** Brian P. Kindelan, Special Counsel, (202) 272-2048, or Wendy B. Finck, Staff Attorney (202) 272-3045, Mail Stop 5-2, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The Securities and Exchange Commission is adopting rule 11a-3 under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) (the "Act"), which will permit a registered open-end company (other than an insurance company separate account) (a "fund") or its principal underwriter to make certain exchange offers to the fund's shareholders or to shareholders of another fund in the same group of funds.

### Executive Summary

In December 1986, the Commission issued a release ("proposing release") on proposed rule 11a-3 under the Act, which would have permitted a registered open-end management investment company ("fund") or its principal underwriter (sometimes referred to collectively as the "offering company") to make certain exchange offers to the fund's shareholders or to shareholders of another fund in the same family of funds.[1] In response to the comments received and developments occurring after issuance of the proposing release, the Commission issued a release (the "revised proposing release") on a revised proposal (the "revised proposed rule") in July 1988.[2] The Commission received 16 letters of comment in response to the revised proposing release. The rule, as adopted, has been modified in some respects to address commenters' concerns, and has been reorganized.

The final rule permits, notwithstanding the provisions of section 11(a) of the Act (15 U.S.C. 80a-11(a)), a fund or its principal underwriter to make certain exchange offers to the fund's shareholders or to shareholders of another fund in the same group of funds. As in the revised proposal, the rule permits the offering company to charge a shareholder a sales load on the acquired security, a redemption fee, an administrative fee, or any combination of the foregoing, provided certain conditions are met. Several conditions are unchanged from the conditions that were proposed in the revised proposed rule:

(1) Sales loads charged with respect to the security acquired in the exchange (the "acquired security") are limited to a percentage rate no greater than the excess of the sales load rate applicable to that security in the absence of an exchange over the sum of the rates of all sales loads previously paid on the security relinquished in the exchange and on any predecessor of such security (the "sales load differential");[3]

(2) No deferred sales load may be imposed on the security relinquished in the exchange (together with any predecessor of such security, the "exchanged security") at the time of an exchange;

(3) Any redemption fee charged with respect to the exchanged security must be paid to the fund, must apply uniformly to all shareholders of the specified class, and may not exceed the redemption fee charged in the absence of an exchange;

(4) The prospectus of the offering company must disclose the amount of any administrative fees charged in connection with an exchange and, if the fund reserves the right to terminate or change the terms of the offer, disclose that the offer is subject to termination or its terms are subject to change;

(5) Any advertising that mentions the existence of the exchange offer must disclose the existence of any administrative fee or redemption fee that would be imposed at the time of an exchange. In addition, if the offering company reserves the right to terminate the offer or change its terms, any advertising or sales literature that mentions the offer must disclose that the offer is subject to termination or its terms are subject to change; and

(6) Shareholders are to be given prominent notice 60 days prior to the effective date of any termination or material amendment of the terms of an exchange offer.

Several proposed conditions in the revised proposed rule have been changed:

(1) An offering company that previously made an exchange offer pursuant to an order under section 11(a) of the Act that was not conditioned specifically upon complying with rule 11a-3, if and when adopted, shall have one year after the effective date of the rule to bring its fees and sales loads into compliance with the rule. However, an

[1] See Investment Company Act Rel. No. 15494 (Dec. 23, 1986) (51 FR 47260, Dec. 31, 1986).

[2] See Investment Company Act Rel. No. 16504 (July 29, 1988) (53 FR 30299, Aug. 11, 1988).

[3] The rule does not, however, address charging installment-type deferred sales loads in connection with exchange offers. Proposed rule 6c-10, if adopted, would permit funds to charge installment-type deferred sales loads under certain conditions. See Investment Company Act Rel. No. 16619 (Nov. 2, 1988) (53 FR 45275, Nov. 9, 1988). Until the Commission takes further action on proposed rule 6c-10, it will consider applications under section 11(a) for exchange offers involving funds with installment-type deferred sales loads on a case-by-case basis.

offering company may continue to apply the terms of an existing order related to fees or sales loads to shares purchased prior to the time that the fund's offer comes into conformity with the rule (and to shares acquired through reinvestment of dividends or capital gains distributions based on such shares) until such shares are redeemed. The revised proposed rule contained no grandfathering provision;

(2) An offering company may rely on the rule to amend the terms of an exchange offer if its prospectus disclosed, for a period of at least two years prior to the effective date of the amendment, that the terms of the offer were subject to change. The revised proposed rule would have required the fund's prospectus to have made such disclosure at all times during which the prior offer had been outstanding;

(3) In calculating any deferred sales load when the acquired security ultimately is redeemed, the time period during which the acquired security was held need not be considered (*i.e.*, may be "tolled") if (i) the deferred sales load is solely that which was owed on the exchanged security at the time of the exchange, (ii) no sales load differential or deferred sales load was or will be collected on the acquired security, and (iii) the amount of the load is reduced by the amount of any fees collected with respect to the acquired security under a plan adopted pursuant to rule 12b–1 under the Act (17 CFR 270.12b–1) (a "12b–1 plan").[4] The revised proposed rule would not have permitted tolling if the acquired security was subject to a 12b–1 plan. The rule also permits tolling of the time the *exchanged security* was held if the exchanged security was not subject to any sales load, and if any deferred sales load with respect to the acquired security is reduced by the amount of any fees previously collected under a 12b–1 plan with respect to the exchanged security. In addition, the rule permits holding periods for deferred sales loads to be computed as of the end of the month in which any security was purchased or redeemed;

(4) The rule prohibits the sum of the rates of all sales loads imposed prior to and at the time the acquired security is redeemed from exceeding the maximum sales load rate that would be applicable in the absence of an exchange to the security (exchanged or acquired) with the highest such rate;

(5) Any sales literature that mentions the existence of an exchange offer must disclose the existence of any administrative fee or redemption fee that would be imposed at the time of an exchange. The revised proposed rule would have required any sales literature to disclose the amount, as well as the existence, of such fees;

(6) No notice need be given to shareholders prior to changing materially the terms of an exchange offer if, under extraordinary market conditions, redemption of the security that otherwise would be exchanged is suspended under the rules and regulations under the Act, or the sale of the security that otherwise would be acquired is delayed or suspended;

(7) Funds with investment advisers or principal underwriters that are "affiliated persons" of each other as defined in section 2(a)(3) of the Act (15 U.S.C. 80a–2(a)(3)) are included within the definition of "group of investment companies." The rule thus broadens the scope of funds that come within the definition of "group of investment companies";

(8) The definition of "administrative fee" specifies that the fee be reasonably intended to cover costs incurred in "processing exchanges of the type for which the fee is charged"; and

(9) The definition of "redemption fee" specifies that the fee must be for expenses "directly related to the redemption of fund shares." Also, any scheduled variation of a redemption fee must be reasonably related to the costs to the fund of processing the type of redemptions for which the fee is charged. The revised proposed rule did not have the "reasonable relation" requirement.

The Commission is continuing to consider whether to adopt proposed rule 11c–1, which would permit unit investment trusts ("UITs") and their sponsors to make certain exchange offers without prior Commission approval, provided certain conditions are met. As proposed, rule 11c–1 would limit sales loads upon exchanges of units of UITs to the differential between any sales load charged with respect to the acquired unit in the absence of an exchange over any sales load previously paid on the exchanged unit.[5] The Commission is continuing to consider commenters' claims that the proposed rule would not permit adequate compensation for a sponsor that maintains a secondary market for units of a UIT and would present problems in tracking investments for the purpose of determining sales loads previously paid over a series of exchanges.[6] Until the Commission takes further action on proposed rule 11c–1, it will continue to consider exchange offers involving UITs on a case-by-case basis through the application process.

The Commission also is giving further consideration to whether to propose amendments to rule 11a–2 (17 CFR 270.11a–2), which permits, under certain conditions, offers of exchange by registered insurance company separate accounts.[7] The Commission requested public comment on whether, upon adoption of rule 11a–3, rule 11a–2 should be amended to make insurance company separate accounts subject to the same requirements in the exchange offer area as mutual funds.[8] Until the Commission determines whether to propose any amendments to rule 11a–2, a separate account or its principal underwriter may continue to make exchange offers the terms of which meet the requirements set forth in rule 11a–2.

## Background

Section 11(a) of the Act prohibits a fund or its principal underwriter from making an offer to exchange shares of the fund for other shares of that fund or of another fund on any basis other than the relative net asset values of the securities to be exchanged, unless the terms of the offer have been submitted to and approved by the Commission or the terms are in accordance with any rules that the Commission may have prescribed.[9] Since 1940, the Commission has issued numerous orders under section 11 permitting offers of exchange at other than relative net asset value.[10] The original proposal of rule 11a–3, in essence, would have codified those orders.[11] The six comment letters

[4] The Commission recognizes that only funds that can account for 12b–1 fees on an individual shareholder basis will be able to rely on this provision. The Commission understands that some funds are considering developing ways to account for 12b–1 fees on an individual shareholder basis. Funds that cannot account for 12b–1 fees paid on an individual shareholder basis would be unable to avail themselves of this provision of the rule. Also, funds with "defensive" 12b–1 plans under which no fees are charged could rely on this provision of the rule. See *infra* note 34 and accompanying text.

[5] See revised proposing release at nn.65–66 and accompanying text.

[6] See revised proposing release at nn.67–71 and accompanying text.

[7] See revised proposing release at n.11 and accompanying text. See also Investment Company Act Rel. No. 13407 (July 28, 1983) (48 FR 36243, Aug. 10, 1983) (adopting release for rule 11a–2).

[8] See revised proposing release at n.11 and accompanying text.nl

[9] The legislative history of section 11 is fully discussed in the proposing and revised proposing releases. See *supra* notes 1–2.

[10] See proposing release at nn. 9–20 and accompanying text.

[11] See *generally* the proposing release.

received generally supported the proposal, but argued that certain provisions should be modified or eliminated.

In response to those comments and developments occurring after issuance of the proposal, the Commission issued revised proposed rule 11a–3. As in the initial proposal, revised proposed rule 11a–3 would have permitted the imposition of an administrative fee and a sales load on the acquired security. For purposes of calculating any sales load on the acquired security, both proposals would have required that an exchanging shareholder receive credit for any sales load previously paid on the exchanged security and, in the case of an acquired security subject to a contingent deferred sales load, for the length of time the shareholder held the exchanged security. Both proposals also would have required disclosure of any administrative fee in the prospectus of the offering company and in certain sales literature and advertising.

The revised proposed rule contained several changes from the initial proposal. First, the revised proposed rule stated that an offering company that had previously made an exchange offer could not rely on the rule to change the terms of such prior offer unless that company's prospectus had disclosed, at all times the offer was outstanding, that the offer was subject to termination and that its terms were subject to change, unless the only effect of the change was to reduce or eliminate a charge payable at the time of the exchange. Second, the revised proposed rule would have defined the term "administrative fee." Third, the revised proposed rule would have permitted the imposition of certain redemption fees on the exchanged security at the time of an exchange. Fourth, the revised proposed rule would have required sales literature and advertising to disclose the intention to impose a redemption fee. Fifth, the revised proposed rule would have prohibited expressly the imposition of a deferred sales load on the exchanged security at the time of an exchange. Such a prohibition was merely implicit in the original proposal. Sixth, the revised proposed rule would have expanded and relabelled the "family of funds" concept contained in the original proposal. Seventh, the revised proposed rule would have required any offering company that reserved the right to change the terms of or terminate its exchange offer to disclose in its prospectus and in certain advertising and sales literature that the offer may be terminated and that its terms are subject to change. Finally, the revised version would have required that shareholders be given 60 days notice of any material amendment to the terms of an exchange offer, unless the only effect of the amendment was to reduce or eliminate a charge payable at the time of the exchange. These provisions are discussed in more detail below.

The Commission received 14 letters of comment in response to revised proposed rule 11a–3.[12] In general, the commenters supported the Commission's efforts to codify existing orders and relieve funds and the Commission from the expense and burden of filing and reviewing otherwise routine applications for orders under section 11. The commenters opined, however, that the revised proposed rule would go beyond the codification of section 11 orders previously granted, and impose new requirements of questionable value. The commenters specifically opposed several provisions of revised proposed rule 11a–3 that they asserted would impose additional restrictions on exchange offers. The rule, as adopted, has been modified in some respects to address the commenters' concerns.

**Discussion**

This section discusses provisions in rule 11a–3 that reflect changes from the revised proposed rule, as well as provisions that have been left unchanged.

*1. Effect of the Rule on Prior Orders*

As stated in the revised proposing release, rule 11a–3 is prospective in effect, is intended to set forth for the entire fund industry the Commission's standards for approval of exchange offers at other than relative net asset value,[13] and supersedes all outstanding Commission orders that approved exchange offers at other than relative net asset value.[14] Each holder of an order under section 11(a) of the Act that was not conditioned specifically upon compliance with rule 11a–3, if and when adopted, shall have one year from the rule's effective date to conform its fees and sales loads to the requirements set forth in the rule or to obtain individually an order approving its exchange offer. However, paragraph (d) permits an offering company that previously made an offer of exchange pursuant to an order to continue to apply any fees or sales loads permitted by the order to shares purchased before the earlier of (i) one year after the effective date of the rule, or (ii) when the offer has been brought into compliance with the rule, until redemption of the shares. The rule permits shares acquired through reinvestment of dividends or capital gains distributions to be treated in the same manner, with respect to fees or sales loads, as the shares on which the dividend was paid or the distribution made. Thus, for example, a fund with an order permitting a deferred sales load to be assessed at the time of an exchange may continue to assess that charge on shares purchased prior to the time that the fund's exchange offer otherwise comes into conformity with the rule. The remaining requirements of the rule (*i.e.*, requirements other than those related to fees and sales loads), such as the requirements related to disclosure and notice to shareholders, will apply to all shares upon the effective date of the rule.

Many commenters objected to the Commission's determination to supersede, through the rulemaking process, orders previously issued under section 11(a) of the Act. Some commenters questioned the Commission's legal authority to supersede orders previously granted without affording individual hearings to holders of the orders. One commenter opined that section 40(a) of the Act (15 U.S.C. 80a–39(a)), which provides that orders of the Commission shall be issued only after appropriate notice and opportunity for hearing, sets forth requirements applicable also to amending or rescinding orders under section 38(a) of the Act (15 U.S.C. 80a–37(a)).[15] Another commenter stated that, although it did not contest the Commission's regulatory power to amend existing orders by means of rule amendments with notice and comment periods, revised proposed rule 11a–3, if adopted, should have no effect on continuing exchange offer arrangements in reliance on those orders. The commenter argued that there had been no demonstration of any unfairness to shareholders such as would warrant costly changes to the structure of arrangements for exchanges under existing orders. Several commenters

[12] In addition, the Commission received two letters that commented only on proposed rule 11c–1.

[13] The rule applies only to exchanges among registered open-end investment companies other than insurance company separate accounts. Thus, orders under section 11 involving separate accounts, UITs, or face-amount certificate companies are not superseded by the rule and remain effective.

[14] Orders under section 11 issued since rule 11a–3 was initially proposed have been conditioned specifically on compliance with the rule if and when adopted. *See* revised proposing release at n. 14.

[15] Section 38(a) provides that the Commission shall have the authority to make, issue, amend, and rescind such rules and regulations and such orders as are necessary or appropriate to the exercise of the powers conferred elsewhere in the Act.

suggested that superseding prior orders would cause funds to terminate exchange programs that would be unable to comply with the conditions of the rule.

Proceeding by general rulemaking, with public notice in the Federal Register and the consideration of all comments received on the revised proposed rule prior to the adoption of the rule, meets the requirements of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and due process requirements.[16] This procedure is the most efficient use of the Commission's resources in developing standards regarding exchange of fund securities that protect the reasonable expectations of both fund investors and offering companies, and are consistent with the purposes and policies of the Act.

Holders of orders under section 11(a) of the Act have had reasonable notice that the orders will be superseded by rule 11a–3.[17] Orders issued since the proposing release was issued have been conditioned specifically on compliance with rule 11a–3, if and when adopted.[18] In addition, the revised proposing release provided public notice that, when adopted, rule 11a–3 would supersede all prior orders that approved exchange offers at other than relative net asset value, and that holders of such prior orders should avail themselves of the comment process on the revised proposed rule, if they should so desire.[19]

To respond to those commenters who argued that revocation of existing orders would work hardship on existing arrangements, the rule will permit holders of the prior orders that were not conditioned specifically on compliance with rule 11a–3, if and when adopted, one year to bring their fees and sales loads into conformity with the requirements of the rule. Additionally, the rule permits a company that previously made an offer of exchange pursuant to an order under section 11(a) to continue to apply fees or sales loads permitted by the order to shares purchased prior to the time the exchange offer is otherwise brought into compliance with the rule. Such "grandfathering" ends as such shares are redeemed.

Affording holders of prior orders, except orders conditioned specifically upon compliance with rule 11a–3, if and when adopted, with a one year period to bring their fees and sales loads into conformity with the requirements of the rule, or to obtain a new order, strikes a balance between the Commission's interest in setting forth fair standards for the entire fund industry for approval of certain offers of exchange and the appropriateness of affording an adequate transition period. The one year transition provision should be sufficient to permit offering companies with existing orders to amend the terms of their offers without undue disruption of their exchange systems, or to obtain a new order based on individual circumstances. Holders of orders under section 11(a) that were granted after rule 11a–3 was proposed, and that were conditioned specifically upon compliance with rule 11a–3, if and when adopted, already should be in substantial compliance with the rule and, in any event, have agreed to come into compliance with the rule upon its effective date.

Permitting offering companies that previously made exchange offers pursuant to orders under section 11(a) to charge the fees or sales loads permitted by the orders on shares purchased before the exchange offer otherwise conforms to the rule, provides additional accommodation to those companies, without being unfair to affected investors. In light of the Commission's desire to minimize disruption of the exchange offer systems presently operating under orders, it appears appropriate to "grandfather" the fees and sales loads assessed on shares purchased while the orders remain in effect. However, the remaining provisions of rule 11a–3, including those relating to disclosure and notice to shareholders, will apply to all shares upon the effective date of the rule, including shares purchased before that date.

Finally, where individual circumstances warrant, offering companies may request Commission approval of exchange offers that differ from these uniform standards. Any such company will be entitled to request a hearing on such application as provided in the Act and the rules and regulations thereunder.[20]

*2. Funds That May Rely on the Rule*

Paragraph (e) of the rule prohibits an offering company that has previously made an offer of exchange from relying on the rule to amend the offer unless its prospectus had disclosed for at least the two year period prior to the amendment of the offer (or, if the fund is less than two years old, at all times the offer has been outstanding) that the terms of the offer were subject to change. The revised proposed rule would have required the offering company's prospectus to have made this disclosure at all times that the offer was outstanding. In the revised proposing release, the Commission requested comment on whether rule 11a–3 should state that if prospectus disclosure had been made for a particular number of years, then the fund could rely on the rule to amend an exchange offer.[21]

Many commenters objected to the condition of the revised proposed rule requiring prospectus disclosure at all times the offer had been outstanding. One commenter said that the effect of such a retroactive disclosure requirement would be to increase rather than decrease the number of applications filed under section 11(a). Another commenter stated that the concept of conditioning use of the rule on prior prospectus disclosure, perhaps decades earlier, was unprecedented and would result in another variation in exchange program standards among funds. Other commenters stated that it seemed implicit that an exchange program could be amended with or without disclosure, or that such amendments should be within the

[16] Agencies with the statutory authority to conduct rulemaking generally have discretion to issue a new rule either through rulemaking procedures or on a case-by-case basis. *See* B. Mezines, J. Stein and J. Gruff, 3 Administrative Law § 14.01, at 14–12 (1988). *See also SEC.* v. *Chenery Corp.*, 332 U.S. 194 (1947), in which the Court concluded that it was within the agency's discretion to decide to proceed by rulemaking or by adjudication, 322 U.S. at 202–203; and *NLRB* v. *Bell Aerospace Co., Div. of Textron, Inc.*, 416 U.S. 267 (1974), in which the Court stated that "the choice between rulemaking and adjudication lies in the first instance within the [National Labor Relations] Board's discretion." 416 U.S. at 294. Moreover, agencies may formulate rules and regulations for general prospective application that modify the rights of holders of certificates or licenses previously issued by the agency, without affording each affected person a hearing. *See Air Line Pilots Ass'n* v. *Quesada*, 276 F.2d 892 (2d Cir. 1960), *cert. denied*, 366 U.S. 962 (1961). *See generally* K. Davis, 3 Administrative Law Treaties § 14:5, at 24–28 (1980).

[17] *See* revised proposing release at nn. 12–14 and accompanying text. Although publication in the Federal Register satisfies the obligation to notify all interested persons, the Division of Investment Management also sent to all holders of prior orders individual letters to remind them of their opportunity to participate in the comment process. Those letters were accompanied by copies of the revised proposing release.

[18] *See* revised proposing release at n.14.

[19] *See* revised proposing release at text accompanying n.14

[20] *See, e.g.*, section 40(a) of the Act, which provides that orders of the Commission shall be issued only after appropriate notice and opportunity for hearing; and rule 0–5(c) under the Act [17 CFR 270.0–5(c)], which provides that the Commission will order a hearing on a matter if it appears that a hearing is necessary or appropriate in the public interest or for the protection of investors, upon the request of any interested person or upon its own motion.

[21] *See* revised proposing release at nn.15–18 and accompanying text.

prerogative of a fund's board of directors.

One commenter opined that the requirement for explicit disclosure prior to allowing any changes in an exchange policy elevated the fund's prospectus into a binding contract between a fund and each investor who purchased shares in reliance on the prospectus. This commenter stated that this creation of contractual obligations would inequitably disadvantage some funds on a retroactive basis and impose burdensome recordkeeping requirements on funds to match the date of an investor's purchase of shares with the terms of the exchange privilege as described in the prospectus on the date of purchase.

Another commenter suggested permitting a fund to modify its exchange offer if the fund reserved the right to make changes in its prospectus for, at most, one year before such modification, and having such a provision take effect one year after the rule is adopted in order to provide an orderly transition.

In considering the comments received, the Commission is persuaded that requiring prospectus disclosure at all times the exchange offer was outstanding prior to permitting amendment of the terms of an exchange offer in reliance on the rule would be unnecessarily restrictive. The purpose of the proposed requirement was to protect the interests of investors who purchased a fund in reliance on certain terms of its exchange privilege. Having no requirement for prospectus disclosure that the offer was subject to change might permit funds that had promoted the sales of fund shares based in part on the existence of a specific exchange privilege to use the rule, for example, to impose charges so as to restrict the use of that privilege. The Commission recognizes that this provision will permit a fund, after a two year period of prospectus disclosure, to rely on the rule to impose new charges on exchanges by existing shareholders, who may have already paid a front-end sales load with the expectation of a liberal and inexpensive exchange privilege, or who may be subject to a deferred sales load or an exit fee to liquidate their investment. Such shareholders will lose whatever sales load or exit fee they paid or will have to pay. However, the two year requirement adopted in the final rule gives reasonable comfort that shareholders in the fund at the time the rule is relied on to change an existing exchange offer have received adequate notice of the possibility of such a change.[22]

*3. Calculating the Sales Load Differential*

Paragraph (b)(4) of the rule requires that, in calculating any sales load with respect to the acquired security, the rate of the sales load must be limited to a percentage no greater than the excess, if any, of the rate of the sales load applicable to that security in the absence of an exchange over the sum of the rates of all sales loads previously paid on the exchanged security and its predecessors.[23] Paragraph (b)(9)(i) of the rule requires that, in calculating the sales load charged with respect to a security acquired in an exchange, if a securityholder exchanges less than all of his securities, the security upon which the highest sales load rate was previously paid be deemed exchanged first. Paragraph (b)(9)(ii) requires that, if the exchanged security was acquired through reinvestment of dividends or capital gains distributions, the security be deemed to have been sold with a sales load rate equal to the sales load rate previously paid on the security on which the dividend was paid or the distribution made. In the revised proposing release, the Commission requested specific comment on whether the final rule should require that any share acquired through reinvestment of dividends or capital gains distributions not be subject to any sales load upon an exchange, noting that the revised proposed rule would not preclude a waiver of sales load on those shares.[24]

The rule, as adopted, also includes a new provision, paragraph (b)(4)(ii), that limits the sum of the rates of all sales loads that may be imposed prior to and at the time the acquired security is redeemed, including any sales load paid or to be paid with respect to the exchanged security, to the maximum sales load rate applicable to the security (exchanged or acquired) with the highest such rate in the absence of an exchange. This provision is particularly important if there has been more than one exchange and if a deferred sales load is imposed at the time the acquired security is ultimately redeemed.[25]

One commenter agreed that if a shareholder exchanges less than all of his or her securities, the security upon which the highest load rate was previously paid should be deemed exchanged first. It also agreed that if an exchanged security was acquired through reinvestment of dividends or capital gains distributions, such security should be deemed to have been sold with a sales load equal to that paid on the underlying security, in order to save tracking problems. It suggested, however, that the decision on treatment of reinvested shares should be left to the fund, subject to appropriate disclosure. Another commenter disagreed, stating that it saw no reason to exclude shares acquired through reinvestment of dividends from any sales load upon any exchange, since such shares had not previously been subject to a load.

After considering the comments received, the Commission has decided not to change these provisions. By limiting the sales load permitted to be charged on the acquired security to the differential of the rate of the sales load charged on the acquired security in the absence of an exchange over the sum of the rates previously paid on the exchanged security, the rule diminishes the incentive to induce exchanges for the purpose of generating additional sales loads. The sales load differential provisions also seek to assure that investors who purchase a no-load or a low load fund pay, upon exchanging into a load fund in the same group of investment companies, sales charges equivalent to those paid by the acquired fund's other shareholders.[26] The

[22] Funds that amend the terms of an existing exchange offer in compliance with the two-year disclosure requirement and the other conditions of rule 11a–3 will be deemed to be in compliance with section 11(a) of the Act. The Commission expresses no opinion, however, as to whether any such disclosure is sufficient to relieve a fund from any potential liability under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) (the "Securities Act"), the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (the "Exchange Act"), or any applicable state law. Furthermore, the Commission expresses no opinion as to whether, depending on the circumstances, a shareholder may have a contractual right to an existing exchange offer on its present terms. Such issues may arise whenever a fund decides to amend an existing exchange offer, whether by imposing a new fee or by otherwise restricting the use of an exchange privilege. In such situations, in order to minimize potential problems with respect to future purchasers, a fund that intends to amend an existing exchange offer should sticker its prospectus or amend its registration statement so that prospective purchasers of the fund's shares are given appropriate notice of the fund's intent.

[23] *See Appendix*, Example No. 1.

[24] *See* revised proposing release at n. 23.

[25] This limitation is intended to discourage offering companies or their agents from inducing exchanges to generate higher sales loads than would be payable in the absence of an exchange. See Appendix, Example No. 10.

[26] Paragraph (b)(4) contains a minor modification to clarify that the differential sales load is limited to the excess of the rate charged with respect to the acquired security in the absence of an exchange over the sum of the rates previously charged on the exchanged security. See *Appendix*, Example No. 1.

Commission also remains unpersuaded that shares acquired through reinvestment of dividends or other distributions should be subject to a full sales load upon an exchange, rather than being limited to the sales load differential.

*4. Deferred Sales Load at Time of Exchange*

Paragraph (b)(3) of rule 11a–3 prohibits the imposition of a deferred sales load on the exchanged security at the time of an exchange.[27] The revised proposing release stated that permitting a deferred sales load to be imposed at the time of an exchange could raise problems of the type with which section 11 of the Act is concerned.[28] In this regard, inducing an exchange would, among other things, permit a fund's underwriter to accelerate payment of a sales load with no corresponding benefit to the shareholder.

One commenter asserted that prohibiting the imposition of a deferred sales load at the time of an exchange for the purpose of preventing switching does not recognize how fund salesmen are compensated. According to the commenter, salesmen are paid upfront commissions for sales from monies advanced in anticipation of recovery of the principal underwriter's expenses through receipt of 12b–1 fees and deferred sales loads. The commenter concluded that, therefore, exchanges do not generate any additional compensation to salesmen.

Other commenters asserted that permitting deferred sales loads to be charged at the time of an exchange would not lead to the abuse that section 11 was intended to prevent, but would relieve funds that charge deferred sales loads of the administrative and recordkeeping burdens of imposing the deferred loads upon the ultimate redemption of the acquired shares, or the financial burden of waiving the deferred load on the exchanged security. Yet another commenter asserted that switching was no more likely to occur to collect a deferred sales load than to earn a sales load on an acquired fund.

Another commenter stated that the prohibition on charging deferred sales loads at the time of an exchange was unnecessary to protect shareholders. The commenter stated that a fund could achieve the same result by having a policy of prohibiting exchanges for the purpose of generating additional commissions and by having a compliance department that monitors account executives to prevent violations of that policy.

One commenter stated that prohibiting the imposition of a deferred sales charge at the time of an exchange failed to recognize the time value of money because a deferred sales load collected years later upon the ultimate redemption of shares of the acquired fund fails to compensate adequately a distributor for its initial expenses and the costs of financing such expenses. This commenter suggested that the decision of whether to postpone the collection of a deferred sales load or to impose its payment at the time of an exchange should be left to the business judgment of a fund's directors in consultation with its distributor.

The Commission has decided to retain the prohibition on the imposition of a deferred sales charge on the exchanged security at the time of an exchange. As adopted, the rule is consistent with the policy of the Act to minimize incentives for switching investors to generate additional sales charges. Even if a particular salesman does not receive a portion of the sales load at the time of an exchange, a deferred sales load at that time often would still inure to the benefit of others, such as the principal underwriter, who may be in a position to encourage switching. As one commenter noted, receiving even the same dollar amount of sales load sooner rather than later may be a benefit because of the time value of money.

*5. Tolling and Deferred Sales Loads*

Paragraph (b)(5) of rule 11a–3 requires that any deferred sales load charged at the time the acquired security is redeemed be calculated as if the holder of the acquired security had held that security from the time he or she became a holder of the exchanged security.[29] There are two exceptions to this requirement when time periods need not be included in the calculations of the holding period:

(1) The time during which the acquired security was held need not be included in the calculation if there were no sales loads imposed with respect to the acquired security and if the amount of any deferred sales load with respect to the exchanged security is reduced by the amount of any fees collected on the acquired security under a 12b–1 plan,[30] and

(2) The time during which the exchanged security was held need not be included in the calculation if there were no sales loads imposed with respect to the exchanged security and if the amount of any deferred sales load with respect to the acquired security is reduced by the amount of any fees collected on the exchanged security under a 12b–1 plan.

The revised proposed rule would have prohibited tolling of the time during which the acquired shares were held if the acquired shares were subject to a 12b–1 plan.[31] This prohibition recognized that contingent deferred sales loads ("CDSLs") are reduced over time to reflect amounts paid through a 12b–1 plan.[32] The Commission's position of that time was that, if a shareholder were making any payments for distribution through a 12b–1 plan, those payments should be reflected in a commensurate reduction of the CDSL owed, but that tolling would prevent a shareholder from receiving credit for the 12b–1 payments made while holding the acquired shares.[33]

One commenter suggested that tolling should not be prohibited whenever the acquired security is subject to a 12b–1 plan, but that the rule should distinguish between 12b–1 plans that are "spread-load," "supplemental," or purely "defensive."[34] The commenter opined that the rule should permit tolling whenever the acquired fund has no sales load or no spread-load 12b–1 plan. According to the commenter, supplemental and defensive 12b–1 plans are not for the purpose of reimbursing distributors for costs of distribution and therefore should not prevent tolling upon an exchange.

Another commenter stated that a total prohibition on tolling if the acquired fund had any 12b–1 plan is unduly restrictive and suggested that tolling be permitted where the acquired fund has a 12b–1 plan with annual payments of no more than 25 basis points.

The Commission has revised the tolling provision of the rule in response to the comments received. The final rule

[27] As noted earlier, rule 11a–3 does not cover installment-type deferred sales loads. See *supra* note 3.

[28] See revised proposing release at nn. 24–32 and accompanying text.

[29] See Appendix, Example Nos. 2–4.

[30] See *supra* note 4. See also Appendix, Example No. 6.

[31] See revised proposing release at n.33 and accompanying text.

[32] *Id.* at n.36.

[33] *Id.*

[34] According to the commenter: (i) Under a "spread-load" 12b–1 plan, payments are substituted for all or part of a traditional sales load; (ii) under a "supplemental" 12b–1 plan, payments of less than 50 basis points per year are used as an additional source for financing advertising and similar activities; and (iii) under a "defensive" 12b–1 plan, no fees are charged. Instead, a defensive plan simply authorizes, without requiring, the fund advisor to use some unspecified portion of the advisory fee to pay for distribution.

permits tolling of the time the acquired shares are held if a credit is given to the investor for any 12b–1 fees paid with respect to the acquired shares, provided the acquired shares are not subject to any sales load.[35] This requirement is intended to give shareholders credit in calculating CDSLs for any payments actually made under a 12b–1 plan. Such credit should be given, regardless of the type of 12b–1 plan involved.

On a related matter, the revised proposed rule did not provide for tolling of the time the exchanged shares were held in calculating the amount of a deferred sales load with respect to the acquired shares. The final rule does permit such tolling, if the exchanged shares were not subject to any sales load and if a credit is given for any 12b–1 fees previously paid under a 12b–1 plan with respect to the exchanged shares. This provision simply is analogous to permitting tolling with respect to the time the acquired shares were held under equivalent circumstances.

Paragraph (b)(5)(iii) of the rule also permits all holding periods to be computed as of the end of the calendar month in which a security was purchased or redeemed. This provision was added in response to two commenters who stated that some funds presently compute holding periods with reference to such dates, and that doing so was simpler and more efficient for the funds with no adverse effect on shareholders.

*6. Redemption and Administrative Fees*

Paragraph (b)(1) of the rule permits a fund to charge an administrative fee, as defined in paragraph (a)(2) of the rule, or any scheduled variation thereof, provided the administrative fee is applied uniformly to all shareholders of the specified class. Paragraph (b)(2) of the rule permits a fund to charge a redemption fee, as defined in paragraph (a)(7) of the rule, or scheduled variation thereof, provided the fee is applied uniformly to all shareholders of the specified class and the fee does not exceed the redemption fee applicable to a redemption of the exchanged security if it were redeemed rather than exchanged. Unlike the revised proposal, the final rule's definition of "redemption fee" specifies that any scheduled variation thereof must be reasonably related to the costs to the fund of processing the type of redemptions for which the fee is charged.

One commenter supported the revised proposed rule's division of exchange related charges into administrative fees, redemption fees, and deferred sales loads, stating that this division would give directors flexibility to use economic forces to moderate shareholder behavior and provide compensation to the fund or administrative service provider. This commenter requested that the final rule state more clearly that a fund could charge a redemption fee upon an exchange in addition to a deferred sales load or an administrative fee, and further suggested that the final rule should allow a redemption fee to be imposed after a certain number of exchanges or on exchanges effected within a specified time period after purchase. The commenter also requested clarification that a "nominal" administrative fee, based on a 1980 no-action position of the Division of Investment Management (the "Division") that permitted a $5.00 administrative fee,[36] would result in an inflation-adjusted fee of approximately $7.70 as of June 1988. Two commenters also suggested a clarification that "actual costs" permitted in connection with administrative fees would include all relevant costs of implementing an exchange system, including costs reasonably related to employment of personnel to deal with and monitor cash volatility issues and the development of computer systems to track exchanges.[37]

The language of the revised proposed rule that has been adopted in the final rule already states clearly, in paragraph (b), that funds may charge any combination of fees permitted in connection with an exchange that meet the conditions set forth in the rule. With respect to the suggestion that the rule permit funds to impose a redemption fee after a certain number of exchanges or on exchanges effected within a specified time period after purchase, the rule would permit such fee if the fund could establish that: (i) As required by paragraph (b)(2), such a variation was reasonably related to the costs to the fund of processing the type of redemptions for which the fee is charged; (ii) as required by paragraph (b)(2)(i), the variation is applied uniformly to all shareholders of the class specified; and (iii) as required by paragraph (b)(2)(ii), the fee does not exceed the redemption fee applicable to a redemption in the absence of an exchange.[38]

With respect to the suggestion that the rule specify a specific amount that would constitute a "nominal fee" as of a particular date, the Commission has decided that the definition in paragraph (a)(8) would provide more flexibility and is preferable to the Commission setting such a rate for the industry. Moreover, as the rate of inflation changes, the inflation-adjusted amount of a "nominal" fee necessarily will change also.

Finally, the Commission rejects the suggestion that the rule permit administrative fees to be used to cover additional costs related to establishing an exchange offer, such as overhead expenses of the funds. Any fees assessed in connection with exchanges must be reasonable, with the fund maintaining records of any determination of costs as required by paragraph (a)(2) of the rule, or "nominal" as defined by paragraph

[35] The final rule does not permit tolling where the acquired shares are subject to a sales load because the incentive for switching would be greater in such circumstances. See Appendix, Example No. 7.

[36] *See* Chase Fund of Boston (pub. avail. July 28, 1980).

[37] Paragraph (a)(2) of rule 11a–3 requires an administrative fee to be either nominal or reasonably intended to cover the costs incurred in processing exchanges of the type for which the fee is charged. Similarly, paragraph (a)(7) requires a redemption fee to be reasonably intended to compensate the fund for expenses directly related to the redemption of fund shares. Thus, administrative fees encompassed by the rule could cover such costs as transfer agent fees incurred in effecting exchanges, costs of mailing confirmation statements to investors who make exchanges, and other transaction costs involved in processing exchanges, such as telephone charges and the cost of personnel assigned to process exchange requests made by telephone or in writing. Redemption fees under the rule could cover the types of costs borne by the fund in any redemption of shares, whether or not related to exchanges. Appropriate costs could include brokerage commissions charged to the fund in connection with any liquidation of portfolio securities necessitated by the redemption portion of the exchange, as well as any processing or other transaction costs incident to the redemption and not covered by any administrative fee charged.

The inclusion of costs, other than those directly related to processing exchanges, in fees imposed in connection with exchanges will continue to be considered by the Commission, or by the Division by delegated authority, on a case-by-case basis through applications and interpretive or no-action letters. In this regard, an application under section 11(a) has been filed seeking approval to charge an administrative fee and a redemption fee on exchanges to cover costs related to the modification and maintenance of systems to monitor cash flow volatility and exchange levels; employment of additional portfolio managers, trading department personnel, tax managers, and legal advisers to deal with the problems of high portfolio turnover; and maintenance of a specially trained group of employees to deal with active traders and to enforce exchange limitations. The Commission will consider the appropriateness of including these costs in fees charged in connection with exchanges in the context of the pending application.

[38] For example, the rule will permit a fund to have a policy of permitting a shareholder to make five exchanges per year without the imposition of a redemption fee, but impose a 1% fee on each additional exchange, if such redemption fee were reasonably related to the costs to the fund of processing that type of redemption, and if the redemption fee applicable to a redemption in the absence of an exchange were at least 1%.

(a)(8). Any other expansion of the authority of funds to impose fees in connection with exchanges could permit the recovery of costs only remotely related to an exchange offer and would raise issues of the type that section 11 of the Act was intended to prevent.

*7. Disclosure and Advertising*

Paragraphs (a)(8) and (a)(9) of the revised proposed rule, concerning sales literature and advertising, respectively, have been combined into paragraph (b)(7) of the final rule. The rule requires all advertising and sales lliterature that mentions an exchange offer also to disclose the existence of any administrative fee or redemption fee that would be imposed at the time of an exchange. In addition, if the offering company reserves the right to terminate or change the terms of the exchange offer, the advertising and sales literature must disclose that the offer is subject to termination or its terms are subject to change. The revised proposed rule also had required any sales literature that mentioned the exchange offer to disclose the amount of any administrative charges. Paragraph (b)(6) of the rules requires the prospectus of an offering company to disclose the amount of any administrative or redemption fee imposed in connection with an exchange and, if the company reserves the right to terminate the offer or change its terms, that the offer is subject to termination or change.

The rule was modified to require only that the existence of an administrative fee or redemption fee be disclosed in sales literature, rather than also requiring the amount to be disclosed, in response to many comments objecting to the revised proposed rule.[39] Most commenters asserted that the amount of the fees are disclosed in the offering company's prospectus, which is required to be provided in all investors. The modification also was made because there may be space constraints in sales literature and advertising. Although many commenters also objected to the requirement that any advertising or sales literature that mentions the existence of the exchange offer disclose an offering company's reservation of the right to terminate or change the terms of the offer, the Commission has not modified this requirement. If an offering company believes that the exchange offer is a significant enough selling point that it mentions the offer in sales literature or advertising, then it should state that the offer may be terminated or the terms changed, if the company reserves the right to do so.[40]

*8. Minimum Holding Periods*

Paragraph (c) of the final rule permits an offering company to require an exchanging shareholder to have held the exchanged security for a minimum period of time either if no sales load is imposed on the acquired security or if the sales load imposed is less than the sales load differential.

Only one commenter addressed this provision, opining that the decision to establish a minimum holding period should be left to the business judgement of the offering company. The Commission agrees and has not modified this provision.

*9. Amending the Terms of Exchange Offers*

Paragraph (b)(8) of the final rule requires an offering company to provide any holder of the security subject to an exchange offer with notice at least 60 days prior to terminating or amending materially the terms of the offer, unless the only material effect of the amendment is to reduce or eliminate an administrative fee, sales load, or redemption fee payable at the time of an exchange. During the 60 day notice period, shareholders would be entitled to make exchanges under the terms of the exchange offer prior to its amendment.

Many commenters objected to the notice requirement because it would lock in for 60 days decisions of directors determining that the best interests of the fund and its shareholders would require changes in the exchange offer. However, the Commission has decided to maintain the 60 day notice requirement in the final rule because the requirement is a reasonable accommodation both to investors who purchased a fund at least in part in reliance on the terms of the existing exhange offer and to the interests of the remaining shareholders. The Commission recognizes, however, that even 60 days notice will not necessarily help shareholders who have paid a front-end sales load, or who will incur a deferred sales load or a redemption fee to exit a fund.

The final rule includes two exceptions to the notice requirement permitted under extraordinary circumstances. The first exception is if there is a suspension of the redemption of the security that otherwise would be exchanged, under section 22(e) of the Act (15 U.S.C. 80a–22(e)) and the rules thereunder.[41] The other exception is if the offering company temporarily delays or ceases the sale of the security that otherwise would be acquired, because the offering company is unable to invest amounts effectively in accordance with applicable investment objectives, policies and restrictions.

The provision regarding extraordinary conditions was added in recognition that a fund should be permitted some flexibility to respond to changing market conditions to prevent the necessity of selling portfolio securities when the fund has suspended redemptions of its shares pursuant to section 22(e). Also, this provision recognizes that an offering company temporarily may delay or cease to sell shares of the fund to be acquired because trading in the fund's portfolio securities is affected by extreme market conditions.[42]

Finally, in response to the comments, the Commission is not adopting the suggestion in the revised proposing release that, during the 60 day period, shareholders be permitted to redeem out of the fund without the imposition of any CDSL or redemption fee that would otherwise be imposed and receive a refund of any front-end sales load previously paid.[43] The commenters objected to the suggestion that CDSLs or redemption fees might be waived, or front-end sales loads refunded, stating that such a requirement would make changes in an exchange privilege too costly, may artificially stimulate redemptions necessitating portfolio liquidations under unfavorable conditions, and would prevent a

[39] The amount of any administrative fee or redemption fee, however, must be disclosed in the prospectus.

[40] Additionally, a fund salesman who describes a fund's exchange privilege when recommending that an investor purchase a fund has an obligation to tell the investor any material facts about the exchange offer. That obligation extends to material facts about the nature and level of charges imposed upon an exchange and, if applicable, the fund's right to alter the terms of the exchange privilege. See rule 10b–5(b) under the Exchange Act (17 CFR 240.10b–5(b)). See also supra note 22.

[41] Section 22(e) permits a fund to suspend the right of redemption of its redeemable securities for more than seven days only during periods when the New York Stock Exchange (the "NYSE") is closed (other than customary week-end and holiday closings); when trading on the NYSE is restricted; when an emergency exists as a result of which (i) disposal by the company of securities owned by it is not reasonably practicable, or (ii) it is not reasonably practicable for the fund fairly to determine the value of its net assets; or when the Commission, by order, may permit such suspension for the protection of the company's security holders.

[42] Several orders under section 11(a) issued after the revised proposed rule was published have included a condition similar to the one included in paragraph (b)(8)(ii) of the rule. *See, e.g.*, Pacific Horizon California Tax-Exempt Bond Portfolio, Inc., Investment Cmpany Act Rel. Nos. 16653 (Nov. 23, 1988) (53 FR 48361, Nov. 30, 1988) (notice of application) and 16698 (Dec. 20, 1988) (order); and Hutton Municipal Series Inc., Investment Company Act Rel. Nos. 16561 (Sept. 12, 1988) (53 FR 36518, Sept. 20, 1988) (notice of application) and 16586 (Oct. 6, 1988) (order).

[43] *See* revised proposing release at nn.63–64 and accompanying text.

distributor from recovering commissions and other costs already incurred in connection with the sale of fund shares.

*10. Scope of "Group of Investment Companies"*

Paragraph (a)(5) of the rule has been modified from the revised proposed rule to define "group of investment companies" to include funds whose investment advisers or principal underwriters are affiliated persons of each other as defines in section 2(a)(3) of the Act. The revised proposed rule would have included in the definition of "group of investment companies" only funds with common advisers or underwiters, or whose advisers and underwriters were under common control. This modification was made in response to a specific suggestion by a commenter. As stated in the revised proposing release, the purpose of the introduction of the term "group of investment companies" was to broaden the scope of funds eligible to rely on the rule and to avoid confusion with the term "family of investment companies" used elsewhere in the rules and regulations under the Act.[44] The commenter's suggestion was consistent with those purposes and, accordingly, has been incorporated into the final rule.

**Cost/Benefit of Action**

Rule 11a–3 will not impose any significant additional burdens on funds and may reduce the costs that they would incur by eliminating the need to file many applications. Funds, advisers or principal underwriters may incur some costs in complying with the disclosure and notice provisions of the rule. The costs related to the notice requirement may be minimized by including the notice on a separate document with one of the mailings to shareholders that funds make to comply with the federal securities laws and the rules thereunder, or for other purposes. The rule also will require offering companies that impose administrative fees on exchanges based on a cost standard to maintain records with respect to the actual costs incurred in connection with exchanges. Offering companies will save the time and expense of filing applications for approval of exhange offers that meet the requirement set forth in the rule. The Commission will benefit from the rule because its staff will have to review fewer applications requesting orders in this area.

[44] *See* revised proposing release at n.54–56 and acrompanying text.

**Regulatory Flexibility Act Analysis**

A summary of the Initial Regulatory Flexibility Analysis, which was prepared in accordance with 5 U.S.C. 603, was published in Investment Company Act Rel. No. 16504. No comments were received on this analysis. The Commission has prepared a Final Regulatory Flexibility Analysis, a copy of which may be obtained by contacting Wendy B. Finck, Esq., Mail Stop 5–2, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

**List of Subjects in 17 CFR Part 270**

Investment companies, Reporting and recordkeeping requirements, Securities.

**Text of Rule**

Part 270 of chapter II of title 17 of the Code of Federal Regulations is amended as shown.

## PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for part 270 continues to read as follows:

Authority: Secs. 38, 40, 54 Stat. 841, 842; 15 U.S.C. 80a–37, 80a–39; The Investment Company Act of 1940, as amended, 15 U.S.C. 80a–1 *et seq.*; unless otherwise noted. * * * Section 270.11a–3 is also issued under Secs. 6(c) [15 U.S.C. 80a–6(c)] and 11(a) [15 U.S.C. 80a–11(a)].

2. By adding § 270.11a–3 to read as follows:

**§ 270.11a–3 Offers of exchange by open-end investment companies other than separate accounts.**

(a) For purposes of this rule:

(1) "Acquired security" means the security held by a securityholder after completing an exchange pursuant to an exchange offer;

(2) "Administrative fee" means any fee, other than a sales load, deferred sales load or redemption fee, that is

(i) Reasonably intended to cover the costs incurred in processing exchanges of the type for which the fee is charged, *Provided that:* the offering company will maintain and preserve records of any determination of the costs incurred in connection with exchanges for a period of not less than six years, the first two years in an easily accessible place. The records preserved under this provision shall be subject to inspection by the Commission in accordance with section 31(b) of the Act (15 U.S.C. 80a–30(b)) as if such records were records required to be maintained under rules adopted under section 31(a) of the Act (15 U.S.C. 80a–30a)); or

(ii) A nominal fee as defined in paragraph (a)(8) of this section;

(3) "Deferred sales load" means any amount properly chargeable to sales or promotional activities that is or may be deducted upon redemption of all or a portion of a securityholder's interest in an open-end investment company;

(4) "Exchanged security" means

(i) The security actually exchanged pursuant to an exchange offer, and

(ii) Any security previously exchanged for such security or for any of its predecessors;

(5) "Group of investment companies" means any two or more registered open-end investment companies that hold themselves out to investors as related companies for purposes of investment and investor services, and

(i) That have a common investment adviser or principal underwriter, or

(ii) The investment adviser or principal underwriter of one of the companies is an affiliated person as defined in section 2(a)(3) of the Act (15 U.S.C. 80a–2(a)(3)) of the investment adviser or principal underwriter of each of the other companies;

(6) "Offering company" means a registered open-end investment company (other than a registered separate account) or any principal underwriter thereof that makes an offer (an "exchange offer") to the holder of a security of that company, or of another open-end investment company within the same group of investment companies as the offering company, to exchange that security for a security of the offering company;

(7) "Redemption fee" means any fee (other than a sales load, deferred sales load or administrative fee) that is paid to the fund and is reasonably intended to compensate the fund for expenses directly related to the redemption of fund shares; and

(8) "Nominal fee" means a slight or *de minimis* fee.

(b) Nothwithstanding section 11(a) of the Act (15 U.S.C. 80a–11(a)), and except as provided in paragraphs (d) and (e) of this section, in connection with an exchange offer an offering company may cause a securityholder to be charged a sales load on the acquired security, a redemption fee, an administrative fee, or any combination of the foregoing, *Provided that*:

(1) Any administrative fee or scheduled variation thereof is applied uniformly to all securityholders of the class specified;

(2) Any redemption fee charged with respect to the exchanged security or any scheduled variation thereof

(i) Is applied uniformly to all securityholders of the class specified, and

(ii) Does not exceed the redemption fee applicable to a redemption of the exchanged security in the absence of an exchange.

Any scheduled variation of a redemption fee must be reasonably related to the costs to the fund of processing the type of redemptions for which the fee is charged;

(3) No deferred sales load is imposed on the exchanged security at the time of an exchange;

(4) Any sales load charged with respect to the acquired security is a percentage that is no greater than the excess, if any, of the rate of the sales load applicable to that security in the absence of an exchange over the sum of the rates of all sales loads previously paid on the exchanged security, *Provided that*:

(i) The percentage rate of any sales load charged when the acquired security is redeemed, that is solely the result of a deferred sales load imposed on the exchanged security, may be no greater than the excess, if any, of the applicable rate of such sales load, calculated in accordance with paragraph (b)(5) of this section, over the sum of the rates of all sales loads previously paid on the acquired security, and

(ii) In no event may the sum of the rates of all sales loads imposed prior to and at the time the acquired security is redeemed, including any sales load paid or to be paid with respect to the exchanged security, exceed the maximum sales load rate, calculated in accordance with paragraph (b)(5) of this section, that would be applicable in the absence of an exchange to the security (exchanged or acquired) with the highest such rate;

(5) Any deferred sales load charged at the time the acquired security is redeemed is calculated as if the holder of the acquired security had held that security from the date on which he became the holder of the exchanged security, *Provided that*:

(i) The time period during which the acquired security is held need not be included when the amount of the deferred sales load is calculated, if the deferred sales load is

(A) reduced by the amount of any fees collected on the acquired security under the terms of any plan of distribution adopted in accordance with rule 12b–1 under the Act (17 CFR 270.12b–1) (a "12b–1 plan"), and

(B) Solely the result of a sales load imposed on the exchanged security, and no other sales loads, including deferred sales loads, are imposed with respect to the acquired security,

(ii) The time period during which the exchanged security is held need not be included when the amount of the deferred sales load on the acquired security is calculated, if

(A) The deferred sales load is reduced by the amount of any fees previously collected on the exchanged security under the terms of any 12b–1 plan, and

(B) The exchanged security was not subject to any sales load, and

(iii) The holding periods in this subsection may be computed as of the end of the calendar month in which a security was purchased or redeemed;

(6) The prospectus of the offering company discloses

(i) The amount of any administrative or redemption fee imposed on an exchange transaction for its securities, as well as the amount of any administrative or redemption fee imposed on its securityholders to acquire the securities of other investment companies in an exchange transaction, and

(ii) If the offering company reserves the right to change the terms of or terminate an exchange offer, that the exchange offer is subject to termination and its terms are subject to change;

(7) Any sales literature or advertising that mentions the existence of the exchange offer also discloses

(i) The existence of any administrative fee or redemption fee that would be imposed at the time of an exchange; and

(ii) If the offering company reserves the right to change the terms of or terminate the exchange offer, that the exchange offer is subject to termination and its terms are subject to change;

(8) Whenever an exchange offer is to be terminated or its terms are to be amended materially, any holder of a security subject to that offer shall be given prominent notice of the impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment, *Provided that:*

(i) No such notice need be given if the only material effect of an amendment is to reduce or eliminate an administrative fee, sales load or redemption fee payable at the time of an exchange, and

(ii) No notice need be given if, under extraordinary circumstances, either

(A) There is a suspension of the redemption of the exchanged security under section 22(e) of the Act [15 U.S.C. 80a–22(e)] and the rules and regulations thereunder, or

(B) The offering company temporarily delays or ceases the sale of the acquired security because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies and restrictions; and

(9) In calculating any sales load charged with respect to the acquired security:

(i) If a securityholder exchanges less than all of his securities, the security upon which the highest sales load rate was previously paid is deemed exchanged first; and

(ii) If the exchanged security was acquired through reinvestment of dividends or capital gains distributions, that security is deemed to have been sold with a sales load rate equal to the sales load rate previously paid on the security on which the dividend was paid or distribution made.

(c) If either no sales load is imposed on the acquired security or the sales load imposed is less than the maximum allowed by paragraph (b)(4) of this section, the offering company may require the exchanging securityholder to have held the exchanged security for a minimum period of time previously established by the offering company and applied uniformly to all securityholders of the class specified.

(d) Any offering company that has previously made an offer of exchange may continue to impose fees or sales loads permitted by an order under section 11(a) of the Act upon shares purchased before the earlier of (1) One year after the effective date of this section, or (2) When the offer has been brought into compliance with the terms of this section, and upon shares acquired through reinvestment of dividends or capital gains distributions based on such shares, until such shares are redeemed.

(e) Any offering company that has previously made an offer of exchange cannot rely on this section to amend such prior offer unless

(1) The offering company's prospectus disclosed, during at least the two year period prior to the amendment of the offer (or, if the fund is less than two years old, at all times the offer has been outstanding) that the terms of the offer were subject to change, or

(2) The only effect of such change is to reduce or eliminate an administrative fee, sales load or redemption fee payable at the time of an exchange.

By the Commission.
Dated: August 3, 1989.

Jonathan G. Katz,
*Secretary.*

Value of a $10,000 initial investment, assuming (i) a 0% annual return and (ii) redemption at the end of each time period:

**Appendix—Illustrations of Sales Load Provisions of Rule 11a–3**

| | 1 yr. | 2 yrs. | 3 yrs. | 4 yrs. | 5 yrs. |
|---|---|---|---|---|---|
| FUND A: | | | | | |
| 6 percent front-end sales load | 9,400 | 9,400 | 9,400 | 9,400 | 9,400 |
| FUND B: | | | | | |
| 5 percent CDSL (assume rate declines 1 percent/yr) and no 12b–1 fee | 9,500 | 9,600 | 9,700 | 9,800 | 9,900 |
| FUND C: | | | | | |
| 3 percent front-end sales load | 9,700 | 9,700 | 9,700 | 9,700 | 9,700 |
| FUND D: | | | | | |
| 5 percent CDSL (assume rate declines 1 percent/yr) and 1 percent 12b–1 fee/yr | 9,405 | 9,409 | 9,412 | 9,414 | 9,415 |
| FUND E: | | | | | |
| No sales load and no 12b–1 fee | 10,000 | 10,000 | 10,000 | 10,000 | 10,000 |
| FUND F: | | | | | |
| 1 percent front-end sales load and 2 percent deferred sales load | 9,702 | 9,702 | 9,702 | 9,702 | 9,702 |
| FUND G: | | | | | |
| 2 percent front-end sales load | 9,800 | 9,800 | 9,800 | 9,800 | 9,800 |
| FUND H: | | | | | |
| No sales load and 1 percent 12b–1 fee/yr | 9,900 | 9,801 | 9,703 | 9,606 | 9,510 |

Note: This appendix will not appear in the Code of Federal Regulations.

1. *Sales load differential.*

Assume a shareholder holds shares of FUND C for 2 years. At that time, the shareholder exchanges from FUND C to FUND A and then redeems out of FUND A at the end of the third year. FUND C has a 3% front-end sales load, so the investment in FUND C is worth $9,700. At the time of the exchange into FUND A, FUND A is limited to charging the 3% excess of its 6% front-end sales load over the 3% sales load already paid to FUND C (the "sales load differential"). See paragraph (b)(4). The investment in FUND A is worth $9,409 ($9,700 − 291 (3% of 9,700)). At the time of the redemption, the investment is worth $9,409.

2. *Deferred sales load of acquired security exceeding sales load of exchanged security.*

Assume a shareholder holds shares of FUND C for 1 year. At that time, the shareholder exchanges from FUND C to FUND B, and then redeems out of FUND B at the end of the second year. At the time of the exchange into FUND B, the investment is worth $9,700. At the time of the redemption, FUND B is required to calculate its CDSL as if the shareholder had held FUND B from the date on which he became the holder of FUND C. See paragraph (b)(5). At the end of the second year (1 year in FUND C and 1 year in FUND B), FUND B otherwise would be entitled to charge a CDSL rate of 4%. (FUND B's CDSL is 5% if a shareholder redeems during the first year, and the rate subsequently declines 1% per year.) However, paragraph (b)(4) limits the sales load of an acquired security to a percentage no greater than the excess, if any, of the acquired security's sales load in the absence of an exchange over the sum of the rates previously paid on the exchanged security. In this example, the sales load rate of FUND B is limited to 1% (the excess of 4% over the 3% rate previously paid to FUND C). Upon redemption, the investment is worth $9,603 ($9,700 − 97 (1% of 9,700)).

3. *Deferred sales load of acquired security not exceeding sales load of exchanged security.*

Assume a shareholder holds shares of FUND A for 2 years. At that time, the shareholder exchanges from FUND A to FUND B, and then redeems out of FUND B at the end of the third year. At the time of the exchange, the investment is worth $9,400. At the time of the redemption, FUND B is required by paragraph (b)(5) to calculate its CDSL as if the shareholder had held FUND B from the date on which he became the holder of FUND A. At the end of the third year (2 years in FUND A and 1 year in FUND B), FUND B otherwise would be entitled to a CDSL rate of 3%. However, paragraph (b)(4) limits the deferred sales load to the excess, if any, of the rate of the sales load of the acquired security in the absence of an exchange over the rate previously paid on the exchanged security. In this example, there is no excess due to FUND B over the 6% previously paid to FUND A. Therefore, no CDSL may be charged. Upon redemption, the investment is worth $9,400.

4. *Deferred sales load of exchanged security.*

Assume a shareholder holds shares of FUND B for 1 year. At that time, the shareholder exchanges from FUND B to FUND G, and then redeems out of FUND G at the end of the second year. Paragraph (b)(3) prohibits FUND B from charging a deferred sales load at the time of the exchange, but FUND G may charge its 2% front-end sales load, so the investment in FUND G is worth $9,800 at the time of the exchange. At the time of the redemption from FUND G, FUND B is entitled to impose its CDSL, but subject to two conditions: (1) paragraph (b)(5) requires a deferred sales load charged at the time the acquired security is redeemed to be calculated as if the shareholder had held the shares from the date on which he became the holder of the exchanged security; and (2) paragraph (b)(4)(i) limits the rate of the sales load charged when the acquired security is redeemed that is solely the result of a deferred sales load imposed on the exchanged security to the excess, if any, of the applicable rate over the rate previously paid on the acquired security. In this example, the CDSL rate otherwise due to FUND B (4% based upon a holding period of 2 years in FUNDS B and G) exceeds the rate already paid to FUND G (2%) by 2%, so FUND B may charge 2% of the 4% CDSL to which it otherwise would be entitled. Upon redemption, the investment is worth $9,604 ($9,800 − $196 (2% of $9,800)).

5. *Tolling.*

Assume a shareholder holds shares of FUND B for 2 years. At that time, the shareholder exchanges from FUND B to FUND E, and then redeems out of FUND E at the end of the sixth year. Paragraph (b)(3) prohibits FUND B from charging any deferred sales load at the time of the exchange, and FUND E does not have any sales load, so the investment is worth $10,000 in Fund E. Upon redemption from FUND E, FUND B is entitled to impose its CDSL. Paragraph (b)(5) would require FUND B to calculate its CDSL as if the shareholder had held the shares 6 years (2 years in FUND B and 4 years in FUND E). However, paragraph (b)(5)(i)(B) permits "tolling" of the time the shareholder held shares in FUND E because no sales loads were imposed with respect to FUND E. Therefore, FUND B may

calculate its CDSL at the time of the redemption from FUND E based upon a holding period of 2 years, which would result in a CDSL of 4%. Upon redemption, the investment is worth $9,600 ($10,000−400 (4% of 10,000)).

6. *Tolling with credit for 12b–1 fees.*

Assume a shareholder holds shares of FUND B for 2 years. At that time, the shareholder exchanges from FUND B to FUND H, and then redeems out of FUND H at the end of the fifth year. At the time of the exchange into FUND H, the investment is worth $10,000 because FUND B is prohibited from charging its CDSL at the time of the exchange by paragraph (b)(3). FUND H charges a 1% 12b–1 fee per year, so the investment in FUND H is worth $9,900 after being invested in FUND H for 1 year ($10,000−100 (1% of 10,000)); $9,801 after 2 years ($9,900−99 (1% of 9,900)); and $9,703 after 3 years ($9,801−98 (1% of $9,801)). At the time of the ultimate redemption out of FUND H, FUND B is entitled to charge its CDSL. Paragraph (b)(5)(i)(A) permits FUND B to "toll" the time the shareholder held shares in FUND H, provided the deferred sales load is reduced by the amount of any fees collected on FUND H under a 12b–1 plan. Therefore, based on a holding period of 2 years, FUND B is permitted to charge a CDSL of 4% ($388 (4% of $9,703)), reduced by $297 ($100+99+98). Upon redemption, the investment is worth $9,612 ($9,703−91 (388−297)).

7. *Tolling not permitted if acquired security subject to a sales load.*

Assume a shareholder holds shares of FUND B for 2 years. At that time, the shareholder exchanges from FUND B to FUND A, and then redeems out of FUND A at the end of the fourth year. At the time of the exchange, no CDSL may be charged with respect to FUND B, but FUND A may charge its 6% front-end load, so the investment in FUND A is worth $9,400. Upon redemption, no tolling is permitted of the time the acquired security was held because the acquired security was subject to a sales load. See paragraph (b)(5)(i)(B). The CDSL to which FUND B otherwise would be entitled cannot be charged because a deferred sales load is limited to the excess, if any, of the applicable rate (2% based upon a holding period of 4 years) over the sum of the rates of all sales loads previously paid on the acquired security (6%). *See* paragraph (B)(4)(i). In this example, 2% does not exceed 6%, so no CDSL may be charged. Upon redemption, the investment is worth $9,400.

8. *Exchanges from fund with both CDSL and 12b–1 fee to funds with front-end sales loads.*

Assume a shareholder holds shares of FUND D for 2 years. At that time, the shareholder exchanges from FUND D into FUND C. At the end of the fourth year, the shareholder exchanges from FUND C into FUND A, then redeems out of FUND A at the end of the fifth year. FUND D charges a 1% 12b–1 fee per year, so the investment is worth $9,900 at the end of the first year. At the end of the second year, another 1% 12b–1 fee per year has been deducted, so the investment is worth $9,801 ($9,900−99 (1% of 9,900)). Paragraph (b)(3) prohibits FUND D from charging a CDSL at the time of exchange into FUND C, but FUND C may collect its 3% front-end sales load, so the investment in FUND C is worth $9,507 ($9,801−294 (3% of 9,801)). When the investment in FUND C is exchanged into FUND A, FUND A may charge a 3% front-end sales load (the differential between 6% otherwise charged by FUND A and the 3% paid already to FUND C). *See* paragraph (b)(4). The investment is then worth $9,222 ($9,507−285 (3% of 9,507)). Upon the ultimate redemption from FUND A, FUND D otherwise would be entitled to charge a 1% CDSL (based upon a holding period of 5 years in FUNDS D, C and A, with no tolling permitted). However, front-end sales load rates (3% to FUND C and 3% to FUND A), no CDSL may be charged because there is no excess due. Upon redemption, the investment is worth $9,222.

9. *Maximum sales loads.*

Assume a shareholder holds shares of FUND F for 2 years. At that time, the shareholder exchanges from FUND F to FUND G, and then redeems at the end of the fourth year. At the time of the exchange, the investment in FUND F is worth $9,900. Upon exchange into FUND G, the shareholder pays a 1% sales load (the differential between the 2% payable to FUND G and the 1% already paid to FUND F). The investment in FUND G is thus worth $9,801 ($9,900−99 (the 1% load paid to FUND G)). At the time of redemption, FUND F otherwise would be entitled to a 2% deferred sales load, but may charge only 1% of that load (because the rate of a deferred sales load with respect to an exchanged security that is charged at the time the acquired security is redeemed is limited to the excess of the applicable rate of such sales load over the sum of the rates of all sales loads previously paid on the acquired security). See paragraph (b)(4)(i). Upon redemption, the investment is worth $9,703 ($9,801−98 (1% of 9,801)).

10. *Maximum sales loads.*

Assume a shareholder holds shares of FUND F for 2 years. At that time, the shareholder exchanges from FUND F to FUND G. At the end of the fourth year, the shareholder exchanges from FUND G to FUND E, and then redeems out of FUND E at the end of the fifth year. The investment in FUND F is worth $9,900 because FUND F charges a 1% front-end sales load. At the time of the exchange from FUND F to FUND G, FUND G is permitted to charge 1% of its 2% front-end sales load (the sales load differential). See paragraph (b)(4). The investment in FUND G is worth $9,801 ($9,900−99 (1% of 9,900)). At the time of the exchange into FUND E, FUND E charges no sales load so the investment is still worth $9,801 in FUND E. At the time of the redemption from FUND E, FUND F otherwise would be entitled to its 2% deferred sales load, but may charge only 1% of that load. FUND F is limited to charging 1% of its deferred sales load because the sum of the rates of all sales loads may not exceed the maximum sales load rate that would be applicable in the absence of an exchange to the security (exchanged or acquired) with the highest such rate. See paragraph (b)(4)(ii). In this example, the highest rate of FUNDS F, G, and E, in the absence of an exchange, is 3% for FUND F (1% front-end plus 2% deferred). Since the shareholder has already paid a sum of 2% (1% to FUND F plus 1% to FUND G), FUND F is limited to charging an additional 1% upon redemption from FUND E. Upon redemption, the investment is worth $9,703 ($9,801−98 (1% of 9,801)).

[FR Doc. 89–20011 Filed 8–23–89; 8:45 am]
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## DEPARTMENT OF EDUCATION

### 34 CFR Parts 668 and 682

**RIN 1840–AB21**

### Student Assistance General Provisions and Guaranteed Student Loan and PLUS Programs

**AGENCY:** Department of Education.

**ACTION:** Final regulations.

**SUMMARY:** The Secretary amends 34 CFR parts 668 and 682 to add Office of Management and Budget (OMB) control numbers to certain sections of the regulations. These sections contain information collection requirements approved by OMB. The Secretary takes this action to inform the public that these requirements have been approved.

**EFFECTIVE DATE:** These regulations are effective August 24, 1989.

**FOR FURTHER INFORMATION CONTACT:** Pamela A. Moran, Chief, Policy Section,

Division of Policy and Program Development, U.S. Department of Education, 400 Maryland Avenue SW., (Room 4310 ROB-3, Washington, DC 20202. Telephone: (202) 732-4242.

**SUPPLEMENTARY INFORMATION:** On June 5, 1989, final regulations were published for 34 CFR parts 668 and 682 (54 FR 24114-24127). The effective date of certain sections of these regulations was delayed until information collection requirements contained in those sections were approved by OMB under the Paperwork Reduction Act of 1980, as amended. OMB has approved the information collection requirements, and these sections of the regulations are now effective.

**Waiver of Proposed Rulemaking**

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b(2)(A)) and the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the publication of OMB control numbers is purely technical and does not establish substantive policy. Therefore, the Secretary has determined, under 5 U.S.C. 553(b)(B), that proposed rulemaking is unnecessary and contrary to the public interest and that a delayed effective date is not required under 5 U.S.C. 553(b)(3).

**List of Subjects**

*34 CFR Part 668*

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

*34 CFR Part 682*

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and Recordkeeping requirements, Student aid, Vocational education.

(Catalog of Federal Domestic Assistance Number: 84.032, Guaranteed Student Loan and PLUS Programs)

Dated: August 22, 1989.

**Lauro F. Cavazos,**

*Secretary of Education.*

The Secretary amends parts 668 and 682 of title 34 of the Code of Federal Regulations as follows:

## PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

**§§ 668.15, 668.23, 668.44, and 668.90 [Amended]**

2. Sections 668.15, 668.23, 668.44 and 668.90 are amended by adding "(Approved by the Office of Management and Budget under control number 1840-0537)" following each section.

## PART 682—GUARANTEED STUDENT LOAN AND PLUS PROGRAMS

3. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087-2, unless otherwise noted.

**§§ 682.604, 682.606, and 682.610 [Amended]**

4. Sections 682.604, 682.606, and 682.610 are amended by adding "(Approved by the Office of Management and Budget under control number 1840-0538)" following each section.

[FR Doc. 89-20114 Filed 8-23-89; 8:45 am]

BILLING CODE 4000-01-M

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 259**

**[FRL-3633-9]**

### Standards for the Tracking and Management of Medical Waste

**AGENCY:** Environmental Protection Agency.

**ACTION:** Amendment to final rule.

**SUMMARY:** The purpose of this rule is to specify the States in which the medical waste demonstration program, published in the **Federal Register** on March 24, 1989 (54 FR 12326), will be effective. The medical waste regulations apply to certain medical wastes generated in states participating in the program ("Covered States"). On June 6, 1989, the Environmental Protection Agency (EPA) published in the **Federal Register** (54 FR 24310) a notice identifying the Covered States. Since the publication of that notice, the Agency has received petitions from two States that elected to participate in the demonstration program; these States have asked EPA to reconsider their participation. The Governor of Louisiana and the Mayor of the District of Columbia have requested removal from the program. EPA is removing Louisiana and the District of Columbia from the list of Covered States. The following States remain Covered States: Connecticut, New Jersey, New York, Rhode Island, and the Commonwealth of Puerto Rico.

**EFFECTIVE DATE:** These amendments are effective August 24, 1989.

**ADDRESSES:** The public docket for this Notice (Docket No. F-89-MTPF-FFFFF) is located at Room M2427, RCRA Docket (OS-305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. EPA's RCRA Docket is open from 9:00 a.m. to 4:00 p.m., Monday to Friday, excluding Federal holidays. To review docket materials, the public must make an appointment by calling (202) 475-9327. A maximum of 100 pages may be copied from any regulatory docket at no cost. Additional copies cost $0.15 per page.

**FOR FURTHER INFORMATION CONTACT:** For general information, contact the RCRA/Superfund Hotline toll free at (800) 424-9346 (in Washington, DC, call (202) 382-3000). For information on specific aspects of today's Notice, contact Paul Mushovic, Office of Solid Waste (OS-332), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:**

**I. Authority**

This Notice is issued under the authority of sections 2002, 11001, 11002, 11003, 11004, 11010, and 11011 of the Solid Waste Disposal Act of 1970 as amended by the Medical Waste Tracking Act of 1988, 42 U.S.C. 6992 *et seq.*

**II. Background**

Recent incidents of medical waste mismanagement resulted in enactment of a two-year demonstration program for tracking medical waste from the point of its generation to its point of disposal. The Medical Waste Tracking Act (MWTA) of 1988, 42 U.S.C. 6992 *et seq.*, requires this demonstration program to be established in a limited number of States. Congress chose this option in order to regulate medical waste on a small scale.

EPA published in the **Federal Register** on June 6, 1989 (54 FR 24310) the list of States participating in the demonstration program. The "Covered States" included Connecticut, New York, and New Jersey, which under the Act were required to participate or to have a State program that is at least as stringent as the Federal program. The

requirements promulgated in the **Federal Register** on March 24, 1989 (54 FR 12326), which established the medical waste tracking demonstration program, were effective on June 24, 1989 for certain medical wastes generated in these States.

In the June 6 Notice, the Agency explained that each of the Great Lakes States (Illinois, Indiana, Michigan, Minnesota, Ohio, Pennsylvania, and Wisconsin) identified in the MWTA had elected to opt out of the medical waste demonstration tracking program. As required under the MWTA, the Governors of these States notified the EPA Administrator of their intent to opt out.

Pursuant to section 11001 of the MWTA, the March 24, 1989 **Federal Register** notice provided the States not identified in the Act an opportunity to participate in the demonstration program. The Governor of any State electing to participate was required to submit a letter petitioning the EPA Administrator to allow the State to participate. The Governors of the States of Louisiana and Rhode Island, the Mayor of the District of Columbia, and the Governor of the Commonwealth of Puerto Rico petitioned the Administrator to be included in the demonstration program. These petitions were accepted, and the June 6 Notice identified Louisiana, Rhode Island, the District of Columbia, and Puerto Rico as Covered States in addition to the States of Connecticut, New Jersey, and New York. The requirements of the demonstration program contained in the March 24 **Federal Register** notice were effective on July 24, 1989 for certain medical wastes generated in Louisiana, Rhode Island, the District of Columbia, and Puerto Rico.

### III. States Electing To Opt Out of the Demonstration Program

Since publishing the Notice identifying the States participating in the demonstration program in the June 6, 1989 **Federal Register**, EPA has received a letter from the Governor of Louisiana requesting that Louisiana be removed from the list of Covered States, and a letter from the Mayor of the District of Columbia, requesting that the District of Columbia be removed from the program. Copies of the letters from Louisiana and the District of Columbia, petitioning in and withdrawing from the program, are available in the public docket for this Notice.

EPA received a letter from the Mayor of the District of Columbia dated July 13, 1989 requesting that the District of Columbia be allowed to withdraw its petition to participate in the medical waste demonstration program, because the District would not be able to implement the program fully until well into the second year of the demonstration.

EPA also received a letter from the Governor of Louisiana dated July 26, 1989 requesting that Louisiana be allowed to withdraw its petition for inclusion in the medical waste demonstration program. In the Governor's April 20, 1989 letter to the Administrator petitioning that the State be included in the program, the Governor made Louisiana's participation contingent upon EPA's implementation of the medical waste rules until the State had promulgated its own regulations. Recent State legislation places restrictions on Louisiana's development of medical waste regulations, and on Louisiana's participation in the Federal demonstration program. Thus Louisiana's active participation in the program could not commence until well into the demonstration program period, if then. Given these circumstances, the Governor requested that Louisiana be removed from the program.

EPA has accepted the withdrawal of petitions from the District of Columbia and Louisiana for participation in the medical waste demonstration program. EPA believes that strong State commitment to the program is a necessary prerequisite for an effective program, and that the interests of the demonstration program are not served by implementing the regulations without State participation. Congress intended that State participation, with the exceptions of Connecticut, New York, and New Jersey, be voluntary. The District of Columbia's and Louisiana's requests for removal are based on significant concerns about the effective implementation of the program given the circumstances both jurisdictions currently face. Furthermore, EPA does not believe an effective program can be established in DC and Louisiana without strong support from those States. Therefore, it is in the interest of the demonstration program to remove those States. Effective August 24, 1989, medical waste generated in the District of Columbia and Louisiana is no longer subject to the requirements of the tracking program promulgated March 24, 1989.

### IV. Regulatory Impact

Under Executive Order 12291, EPA must determine whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. The Administrator determined in the interim final rule that the Medical Waste Demonstration Tracking Program had a total estimated cost of less than $100 million per year. This estimated cost was based on expected costs for management practices and assumed that the ten States identified in the Medical Waste Tracking Act would participate in the program.

The program costs for management practices are expected to remain under $100 million due to the number of States expected to participate. After removal of the two States that opted in but petitioned for removal, only five States will remain in the program. Given that the estimated annual compliance cost for ten States was $55.5 million, the Agency does not believe that the cost for the five participating States would exceed the $100 million major rule threshold. Therefore, no Regulatory Impact analysis is required.

### List of Subjects in Part 259

Medical waste, Labeling, Packaging and Containers, Reporting and Recordkeeping requirements.

Dated: August 16, 1989.

**Robert L. Duprey,**

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

## PART 259—STANDARDS FOR THE TRACKING AND MANAGEMENT OF MEDICAL WASTE

1. The authority citation for part 259 continues to read as follows:

**Authority:** 42 U.S.C. 6912, 6992, *et. seq.*

2. Section 259.10 is amended by revising the definition for "Covered States" in paragraph (b) to read as follows:

**§ 259.10 Definitions.**

* * * * *

(b) * * *

"Covered States" means those States that are participating in the demonstration medical waste tracking program and includes: Connecticut, New Jersey, New York, Rhode Island, and Puerto Rico. Any other State is a Non-Covered State.

* * * * *

### Subpart C—Covered States

3. Section 259.20 is revised to read as follows:

**§ 259.20 States included in the demonstration program.**

(a) The regulations of this part apply to regulated medical waste that is generated in any Covered State.

(b) For the purposes of this part, Covered States are the States of

Connecticut, New Jersey, New York, Rhode Island, and Puerto Rico.

[FR Doc. 89-19732 Filed 8-23-89; 8:45 am]
BILLING CODE 6560-50-M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### 49 CFR Part 1

**[OST Docket No. 1; Amdt. 1-230]**

### Organization and Delegation of Powers and Duties

**AGENCY:** U.S. Coast Guard, Office of the Secretary, Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** The Secretary of Transportation has delegated authority to the Commandant, United States Coast Guard, to accept voluntary services for a museum or a family support program operated by the Coast Guard and to provide for reimbursement of incidental expenses incurred by persons providing voluntary services as an ombudsman or for a family service center program. The *Code of Federal Regulations* does not reflect this delegation, and therefore a change is necessary.

**EFFECTIVE DATE:** August 17, 1989.

**FOR FURTHER INFORMATION CONTACT:** Samuel E. Whitehorn, Office of the General Counsel, C-50, (202) 366-9307, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:** Secretary Skinner has delegated to the Commandant, United States Coast Guard, authority under 10 U.S.C. 1588 to accept from any person voluntary services to be provided for a museum or a family support program operated by the Coast Guard; to determine which expenses are eligible for reimbursement; and to provide from non-appropriated funds for reimbursement of incidental expenses which are incurred by a person providing voluntary services as an ombudsman or for a family service center program.

The *Code of Federal Regulations* does not reflect this delegation and therefore a change is necessary.

Since this amendment relates to Departmental management, procedures and practice, notice and comment on it are unnecessary and it may be made effective in fewer than thirty days after publication in the **Federal Register**. Since the authority was initially delegated by the Secretary on August 17, 1989, the delegation is effective immediately.

In accordance with the Secretary's authority, the following change is made.

**List of Subjects in 49 CFR Part 1**

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, part 1 of title 49, Code of Federal Regulations, is amended to read as follows:

## PART 1—AMENDED

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

Authority: 49 U.S.C. 322.

2. Section 1.46 is amended by adding a new paragraph (rr) to read as follows:

**§ 1.46 Delegations to Commandant of the Coast Guard.**

* * * * *

(rr) Exercise the authority of the Secretary contained in 10 U.S.C. 1588 to accept voluntary services for a museum or a family support program operated by the Coast Guard; to determine which expenses are eligible for reimbursement; and to provide reimbursement from non-appropriated funds of incidental expenses incurred by persons providing voluntary services as an ombudsman or for a family service center program.

Issued on: August 17, 1989

**Samuel K. Skinner,**

*Secretary of Transportation.*

[FR Doc. 89-19837 Filed 8-23-89; 8:45 am]
BILLING CODE 4910-62-M

# Proposed Rules

Federal Register
Vol. 54, No. 163
Thursday, August 24, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 989

[FV-89-052PR]

### Raisins Produced From Grapes Grown in California; Revision of the Maturity Dockage System for Certain Seedless Raisins

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule revises the maturity dockage system for natural (sun-dried) seedless, golden seedless, dipped seedless, oleate and related seedless, Monukka, and other seedless raisins. Currently, handlers may acquire any lot of these raisins which contain 35.0 percent to 49.9 percent, by weight, well-matured or reasonably well-matured raisins under a maturity dockage system. This action would reduce by 50 percent the dockage factors applied to such lots. This proposed revision was recommended by the Raisin Administrative Committee (RAC), the agency responsible for local administration of the order. The purpose of the proposed revision is to provide a more accurate determination of the creditable weight of lots of raisins which are delivered to handlers by producers.

**DATES:** Comments must be received by September 8, 1989.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection in the Office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the **Federal Register.**

**FOR FURTHER INFORMATION CONTACT:** Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2524–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 475–3861.

**SUPPLEMENTARY INFORMATION:**

This proposed rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation No. 1512–1 and has been determined to be a "nonmajor" rule under criteria contained therein.

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

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

There are approximately 23 handlers who are subject to regulation under the raisin marketing order and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. A majority of raisin producers and a minority of raisin handlers may be classified as small entities.

This proposed rule invites comments on a revision of one section of the administrative rules and regulations of the raisin marketing order. This action was recommended by the RAC at its April 20, 1989, meeting.

The marketing order provides that handlers may receive natural condition raisins which exceed the tolerance established for maturity (i.e., at least 50 percent of the raisins must be well-matured or reasonably well-matured) under the maturity dockage system. This system applies a weight reduction to individual lots of raisins which contain from 35.0 percent through 49.9 percent, by weight, well-matured or reasonably well-matured raisins. The weight reduction approximates the weight of raisins needed to be removed in order for the lot to meet minimum grade requirements.

The dockage system is used for the following varietal types: natural (sun-dried) seedless raisins, golden seedless raisins, dipped seedless raisins, oleate and related seedless raisins, Monukkas, and other seedless raisins.

The creditable weight of each lot of raisins acquired by handlers under the maturity dockage system is obtained by multiplying the applicable net weight of the lot of raisins by the applicable dockage factors in the dockage table under 989.213. Handlers acquire and producers are paid according to the creditable weight of raisins delivered to handlers. Lots of raisins containing 50.0 percent or more raisins which are well-matured or reasonably well-matured have met what the industry calls the "B or better" maturity standard. These raisins are accepted by handlers as standard raisins.

In addition to meeting the requirement that 50 percent or more of the raisins are well-matured or reasonably well-matured, lots of raisins must meet other requirements in order to be considered standard. Natural (sun-dried) seedless raisins, for example, must have been prepared from sound, wholesome, matured grapes that have been properly dried and cured. They must be fairly free from damage by sugaring, mechanical injury, sunburn, or other similar injury. They must have the normal characteristic color, flavor, and odor of properly prepared raisins for that varietal type. They must contain no more than five percent, by weight, of underdeveloped raisins. They must be fairly free from shattered or loose end berries and be uniformly cured. These are most, but not all, of the requirements.

Handlers may also acquire raisin lots which contain fewer that 50.0 percent, by weight, well-matured or reasonably well matured raisins. However, raisin lots containing 49.9 percent or less, by weight, raisins which are well-matured or reasonably well-matured are subject to a dockage factor. These factors reduce the weight of raisin lots by an amount approximating the weight of the raisins needed to be removed in order to meet minimum grade requirements. The producers' payments are reduced accordingly. Raisin lots below the 35.0 percent level are considered off-grade and require reconditioning. Producers incur the reconditioning costs necessary to bring such lots within acceptable requirements.

Currently, the weight of the raisin lots containing between 45.0 percent and 49.9 percent well-matured or reasonably well-matured raisins is reduced by 0.1 percent for each 0.1 percent of well-matured or reasonably well-matured raisins the lot contains below 50.0 percent down to 45.0 percent. The weight of lots containing between 40.0 percent and 44.9 percent well-matured or reasonably well-matured raisins is reduced an additional 0.2 percent for each 0.1 percent the lot is below 45.0 percent down to 40.0 percent. The weight of raisin lots containing between 35.0 percent and 39.9 percent raisins which are well-matured or reasonably well-matured is reduced an additional 0.3 percent for each 0.1 percent the lot is below 40.0 percent down to 35.0 percent.

A majority of the RAC believes that the current dockage factors are too stringent and that applying them results in a creditable fruit weight which understates the maturity of lots of raisins in the three maturity levels mentioned above (45.0 to 49.9 percent, 40.0 to 44.9 percent, and 35.0 to 39.9 percent well-matured or reasonably well-matured). Therefore, the RAC has recommended revisions in the maturity dockage system in order to provide creditable fruit weights which better represent the maturity of the raisins.

The RAC has recommended that the dockage factors be reduced by 50 percent for each of the three maturity levels. Lots of the previously named varietal types containing between 45.0 percent to 49.9 percent well-matured or reasonably well-matured raisins would be docked 0.05 percent (i.e., the weight would be reduced by 0.05 percent) for each 0.1 percent the lot is below 50.0 percent down to 45.0 percent. Producers delivering raisins in the 40.0 percent to 44.9 percent well-matured or reasonably well-matured range would receive an additional 0.1 percent weight reduction for each 0.1 percent the raisins were below 45 percent down to 40.0 percent. Producers delivering raisins in the 35.0 percent to 39.9 percent range would receive an additional 0.15 percent weight reduction for each 0.1 percent the raisins were below 40.0 percent down to 35.0 percent. Lots containing 34.9 percent or less raisins which are well-matured or reasonably well-matured would continue to be considered off-grade and require reconditioning before they could be acquired by handlers.

The maturity dockage system was implemented to deduct from the delivered weight an amount approximating the amount of raisins which would need to be removed by handlers during reconditioning to bring the lot of raisins to the 50 percent well-matured or reasonably well-matured level. This proposed action is needed to provide creditable fruit weights which are more representative of the maturity of the raisins. Reducing the dockage factors as proposed would increase producer returns because the weight of raisin lots, from the 35 percent to 50 percent well-matured or reasonably well matured levels, would not be reduced as much as the rules currently provide. Since producers' payments are based on the creditable weight of the raisins, producers would be credited with delivering more raisins. This would increase producer payments and the increases would be paid by handlers. In addition, this action may reduce producers' expenses because it may reduce the cost of reconditioning a lot of raisins to bring it to the 50.0 percent level.

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

Interested persons are invited to submit their views and comments on this proposal. A 15-day comment period is considered appropriate because the changes, if implemented, should be in effect for as much of the new crop year, which begins on August 1, as possible.

**List of Subjects in 7 CFR Part 989**

California, Grapes, Marketing Agreements and Orders, Raisins.

For the reasons set forth in the preamble, 7 CFR part 989 is proposed to be amended as follows:

## PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 is proposed to be revised as follows:

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

### Subpart—Administrative Rules and Regulations

2. Paragraphs (b), (c), and (d) of § 989.213 are revised to read as follows:

**§ 989.213 Maturity dockage.**

* * * * *

(b) Maturity dockage table applicable to lots of natural (sun-dried) seedless, golden seedless, dipped seedless, oleate and related seedless, Monukka, and other seedless raisins which contain 45.0 percent through 49.9 percent well-matured or reasonably well-matured raisins:

| Percent well-matured or reasonably well-matured | Dockage factor |
|---|---|
| 50.0 or more | [1] |
| 49.9 | .9995 |
| 49.8 | .9990 |
| 49.7 | .9985 |
| 49.6 | .9980 |
| 49.5 | .9975 |

[1] No dockage.

Note: Percentages less than the last percentage shown in the table, down to 45.0 percent, shall be expressed in the same increments as the foregoing, and the dockage for each such increment shall be .0005 less than the dockage factor for the preceding increment.

(c) Maturity dockage table applicable to lots of natural (sun-dried) seedless, golden seedless, dipped seedless, oleate and related seedless, Monukka, and other seedless raisins which contain 40.0 percent through 44.9 percent well-matured or reasonably well-matured raisins:

| Percent well-matured or reasonably well-matured | Dockage factor |
|---|---|
| 44.9 | .974 |
| 44.8 | .973 |
| 44.7 | .972 |
| 44.6 | .971 |
| 44.5 | .970 |
| 44.4 | .969 |

Note: Percentages less than the last percentage shown in the table, down to 40.0 percent, shall be expressed in the same increments as the foregoing, and the dockage factor for each such increment shall be .001 less than the dockage factor for the preceding increment.

(d) Maturity dockage table applicable to lots of natural (sun-dried) seedless, golden seedless, dipped seedless, oleate and related seedless, Monukka, and other seedless raisins which contain 35.0 percent through 39.9 percent well-matured or reasonably well-matured raisins:

| Percent well-matured or reasonably well-matured | Dockage factor |
|---|---|
| 39.9 | .9235 |
| 39.8 | .9220 |
| 39.7 | .9205 |
| 39.6 | .9190 |
| 39.5 | .9175 |
| 39.4 | .9160 |

Note: Percentages less than the last percentage shown in the table shall be expressed in the same increments as the foregoing, and the dockage factor for each such increment be .0015 less than the dockage factor for the preceding increment. No dockage shall apply to lots of raisins containing 34.9 percent or less of well-matured or reasonably well-matured raisins.

Dated: August 18, 1989.

**William J. Doyle,**

*Acting Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 89-19907 Filed 8-23-89; 8:45am]

BILLING CODE 3410-02-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 89-NM-133-AD]**

### Airworthiness Directives; Boeing Model 727 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, which would require high frequency eddy current (HFEC) inspection of certain fuselage skin lap joints for cracks, and repair, if necessary. This proposal is prompted by reports of cracking along the upper fastener row of certain longitudinal lap joints that incorporate a cold metal bonding process. This condition, if not corrected, could result in rapid decompression of the airplane.

**DATES:** Comments must be received no later than October 16, 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. 89-NM-133-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. 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, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stanton R. Wood, Airframe Branch, ANM-120S; telephone (206) 431-1924. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** 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.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. 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.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-133-AD." The post card will be date/time stamped and returned to the commenter.

#### Discussion

The FAA issued AD 89-15-06, Amendment 39-6262 (54 FR 29530; July 13, 1989), to require inspection, using non-destructive inspection procedures, for small fatigue cracks in the fuselage skin lap joints, located at stringer (S) 4 and S-10 on certain Boeing Model 727 series airplanes. Additionally, the AD requires visual inspection of all lap joints for corrosion, delamination, and cracking. That AD was prompted by reports of cracking along the upper fastener row of certain longitudinal lap joints that incorporate a cold metal bonding process. This condition, if not corrected could result in rapid decompression of the airplane.

Since issuance of that AD the FAA has determined that it is prudent to ascertain if multiple small cracks are beginning to appear at the remaining lap splices in these airplanes. The FAA is concerned because such cracks in these lap joints could jeopardize the fail-safe capability of the fuselage after experiencing discrete source damage. These small cracks result from repeated pressurization cycles on the fuselage skin lap joint after a delamination of the lap joint bond. The lap joint bond delamination problem is limited to the first 849 Boeing Model 727 airplanes, on which a cold bonding technique was employed in these joints.

The FAA has reviewed and approved Boeing Service Bulletin 727-53-0072, Revision 5, dated June 1, 1989, which describes the inspection for cracking, repair, and modification of the fuselage skin longitudinal lap joints.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require a one-time inspection of lap joints S-14, S-19, S-20, and S-26, at locations where the outer skin is less than .056 inch thick, in accordance with the service bulletin previously described. Operators would be required to submit reports of their findings, upon which the FAA would evaluate the "health" of the fleet. Future rulemaking action may be considered, based upon the results of the inspection results.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

There are approximately 813 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 623 airplanes of U.S. registry would be affected by this AD, that it would take approximately 20 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $498,400.

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 the reasons discussed above, I certify that this proposed regulation (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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR 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.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Applies to Model 727 series airplanes, listed in Boeing Service Bulletin 727-53-0072, Revision 5, dated June 1, 1989, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent rapid decompression of the airplane, accomplish the following:

A. Within the next 2,500 landings or 18 months after the effective date of this AD, whichever occurs first, unless previously accomplished within the last 18 months, perform a high frequency eddy current (HFEC) inspection for cracks of the fuselage skin at lap joints, S-14, S-19, S-20, and S-26 at locations where the upper skin is less than .056 inch thick, from body station (BS) 259 to BS 1183, in accordance with paragraph A. of part I of the Accomplishment Instructions of Boeing Service Bulletin 727-53-0072, Revision 5, dated June 1, 1989. If any cracks are detected, repair prior to further flight, in accordance with part III of the Accomplishment Instructions of the service bulletin.

B. To conduct the inspections required by this AD:

1. Remove the paint, using an approved chemical stripper; or

2. Ensure that the fastener head is clearly visible.

C. Airplanes with affected lap splices modified in accordance with figure 4 or part IV of the Accomplishment Instructions of Boeing Service Bulletin 727-53-0072, Revision 5, dated June 1, 1989, are not subject to the requirements of this AD.

D. Within 10 days after the completion of the inspection for cracks required by this AD, report a complete description of the location and size of all cracks found, along with aircraft line number and the number of flight cycles, to the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. 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.

F. 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, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 15, 1989.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 89-19942 Filed 8-23-89; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 89-NM-149-AD]**

## Airworthiness Directives; Boeing Model 727 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt a new airworthiness directive (AD), applicable to Boeing Model 727 series airplanes, which would require the addition of a cotter pin to the landing gear control selector valve actuator arm. This proposal is prompted by one report of an all wheels-up landing, due to a nut missing from the landing gear control selector valve actuator arm installation. This condition, if not corrected, could result in additional wheels-up landings.

**DATES:** Comments must be received no later than October 16, 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. 89-NM-149-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. 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, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kathi N. Ishimaru, Airframe Branch, ANM-120S; telephone (206) 431-1525. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** 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.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. 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.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-149-AD." The post card will be date/time stamped and returned to the commenter.

**Discussion:**

One operator has reported the occurrence of an all wheels-up landing on a Boeing Model 727 series airplane. Investigation revealed that the landing gear control selector valve actuator arm had disconnected from the splined shaft on the drum assembly, and the self-locking nut which secures the arm to the shaft was missing. Replacement of the existing nut with a self-locking castellated nut and cotter pin will provide additional assurance that the arm will not disconnect from the shaft. Loss of the nut could result in additional all wheels-up landings.

The FAA has reviewed and approved Boeing Service Bulletin 727-32-0372, dated May 11, 1989, which describes modification of the valve actuator arm and the splined shaft to allow the installation of a castellated nut and cotter pin.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require installation of a castellated nut and cotter pin at the connection between the valve actuator arm and the splined shaft, in accordance with the service bulletin previously described.

There are approximately 1,710 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 1,143 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1.5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Parts cost is negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $68,580.

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 the reasons discussed above, I certify that this proposed regulation (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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations 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. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Applies to all Model 727 series airplanes certificated in any category. Compliance required within the next 3,000 landings after the effective date of this AD, unless previously accomplished.

To prevent nose and main landing gear failure to extend properly due to a disconnect of the landing gear control selector valve actuator arm, accomplish the following:

A. Modify the selector valve actuator arm and splined shaft, in accordance with figure 1. of Boeing Service Bulletin 727-32-0372, dated May 11, 1989.

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, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 15, 1989.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate Aircraft Certification Service.*

[FR Doc. 89-19943 Filed 8-23-89; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 39**

**[Docket No. 89-NM-107-AD]**

## Airworthiness Directives; Boeing Model 747 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 Boeing Model 747 series airplanes, which currently requires frequent inspections of the forward end of the Model 747 flap tracks for cracks emanating from fail-safe bar fastener holes until these holes are verified to be corrosion free. This condition, if not corrected, could lead to separation of the flap from the airplane and partial loss of controllability of the airplane. This action would require modification of the fail-safe bar fastener holes to remove corrosion, would tighten certain inspection requirements, and would impose a limitation on the use of flaps to 25 degrees or less.

**DATES:** Comments must be received no later than October 16, 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. 89-NM-107-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. 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, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office,

FAA, Northwest Mountain Region, 9010 East Marginel Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard H. Yarges, ANM-120S; telephone (206) 431-1925. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** 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.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. 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.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-107-AD." The post card will be date/time stamped and returned to the commenter.

**Discussion**

On February 14, 1989, the FAA issued AD 89-05-04, Amendment 39-6148 (54 FR 7759; February 23, 1989), to require frequent inspections of the forward end of the Model 747 flap tracks for cracks emanating from fail-safe bar fastener holes, until these holes are verified to be corrosion-free. That action was prompted by fractures of trailing edge flap tracks in service. This condition, if not corrected, could lead to separation of the flap from the airplane and partial loss of controllability of the airplane.

The crack growth rates for the cracks in the area of concern is extremely high, necessitating very frequent inspections. Because of the urgency of the required inspections, AD 89-05-04 was issued immediately without a public comment period. The FAA has determined that additional, longer term actions are also required to reduce the probability of another in-service incident.

The FAA has reviewed and approved Boeing Alert Service Bulletin 74757A2229, Revision 8, dated January 31, 1989, which describes a modification procedure for the first four fail-safe bar fastener holes on each side of the flap track. This procedure describes removal of corrosion and corrosion pitting which has been the precursor to cracking found in service and will, thereby, reduce the probability of cracking.

Since this condition is likely to exist or develop on other airplanes of this same type design, this proposal would revise AD 89-05-04 to require modification of the flap tracks in accordance with the service bulletin previously described.

It is the FAA's objective to ensure this modification is accomplished fleet-wide at the earliest practical date. The FAA recognizes that the modification is difficult and that special tooling must be created to accomplish it properly. The manufacturer has created some tool kits, but it is the FAA's understanding that still more are required. Considering this information, the proposed compliance time of six months is based on the FAA's current best estimate as to how quickly the fleet modification can be accomplished.

In addition, since the cracking incidents that have occurred in service have been associated with the frequent use of the maximum flap setting, the proposed AD would impose a limitation on the use of landing flaps to 25 degrees or less, until more durable flap tracks of a later design are installed. The FAA specifically invites alternate proposals to the imposition of such a restriction, that would achieve an equivalent effect.

In addition, since issuance of AD 89-05-04, one operator reported finding an eight-inch crack emanating from the fifth most-forward failsafe bar fastener hole on the outboard side of track number six. This location had been visually inspected for cracking approximately 400 landings prior to the crack discovery, and no crack was detected at that time. Since this indicates a higher than expected crack growth rate, the FAA has determined that the currently-required visual inspection interval at this location should be reduced. Therefore, the proposed AD would require repetitive visual inspections of the track for cracks in the web extending from fastener holes 5 through 10, at intervals of 300 flight cycles.

In addition to the actions proposed in this Notice, the FAA is also proposing, as part of a separate rulemaking activity, the eventual replacement of the flap tracks affected by AD 89-05-04 with more durable flap tracks of a later design. This separate rulemaking is contained in Regulatory Docket 89-NM-68-AD, issued May 1, 1989 (54 FR 22300; May 23, 1989).

There are approximately 240 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 125 airplanes of U.S. registry would be affected by this AD, that it would take approximately 296 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The cost of tooling is estimated to be $8,000 per airplane, based on the manufacturer's quoted rental charges for the tool kit. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,480,000.

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 the reasons discussed above, I certify that this proposed regulation (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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations 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. Section 39.13 is amended by amending AD 89–05–04, Amendment 39–6148 (54 FR 7759; February 23, 1989), by revising existing paragraph E. and adding new paragraphs L., M., and N., as follows:

E. Within the next 50 landings after August 15, 1988 (the effective date of AD 88–16–03, Amendment 39–5985), unless accomplished within the past 950 landings, and thereafter at intervals not to exceed 1,000 landings, visually inspect numbers 1 through 8 flap track webs for cracks extending from all fastener holes not inspected in accordance with the requirements of paragraphs A., B., C., or D., above or paragraph L., below. These visual inspections must be accomplished in accordance with the procedures described in Boeing Service Bulletin 747–57–2146, Revision 3, dated May 9, 1986.

L. Within 150 landings after the effective date of this amendment, unless accomplished within the last 150 landings, and thereafter at intervals not to exceed 300 landings, remove the fairing from the forward end of flap track numbers 1 through 8 (except tracks 4 and 5 with a spliced-in end fitting) and visually inspect the flap track webs for cracks extending from the fifth through the tenth most-forward failsafe bar fastener holes on each side of the track. These visual inspections must be accomplished in accordance with the procedures described the Boeing Service Bulletin 747–57–2146, Revision 3, dated May 9, 1986.

M. Within the next 6 months, after the effective date of this amendment, accomplish the following on the first four fail-safe bar fastener holes on each side of the track (eight per track) of flap track numbers 1 through 8 (except tracks 4 and 5 with a spliced-in end fitting):

1. Modify the fastener holes in accordance with Boeing Service Bulletin 747–57A2229, Revision 8, dated January 31, 1989.

2. Verify that modified fastener holes are crack-free and corrosion-free in accordance with paragraph B.2., above.

Note: Modification of the fastener holes does not terminate the repetitive inspection requirements of paragraph B.2.)

N. For airplanes on which the first four flap track failsafe bar fastener holes have been verified to be corrosion-free in accordance with paragraph B.2. of this AD, within 6 months after the effective date of this amendment, and until reworked and interim production flap tracks are replaced with more durable later design flap tracks in accordance with Boeing Service Bulletin 747–57A2229, Revision 8, dated January 31, 1989, revise the Limitations Section of the Airplane Flight Manual (AFM) by adding the following instructions. This may be acccomplished by inserting a copy of this AD into the AFM.

*Landing Flaps*

Maximum landing flaps shall not exceed 25 degrees, unless deemed necessary for safe operation by the pilot.

Issued in Seattle, Washington, on August 15, 1989.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 89–19944 Filed 8–23–89; 8:45 am]

BILLING CODE 4910–13–M

## 14 CFR Part 71

**[Airspace Docket No. 89–AEA–11]**

## Proposed Alteration of Transition Area; Winchester, VA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Aviation Administration is proposing to amend the description of the Winchester, Virginia, 700 foot Transition Area. This is necessary due to the decommissioning of the Shawnee, Virginia VHF Omnidirectional Range/Tactical Air Navigaiton (VORTAC) aid to navigation. The associated Standard Instrument Approach Procedures (SIAP's) based upon this VORTAC have been cancelled as the result of a previous non rule-making study. The intended effect of this proposed action would be to realign the transition area to reflect the actual amount of airspace needed to contain instrument operations when aircraft are executing the SIAP's to the Winchester, VA airport.

**DATES:** Comments must be received on or before September 15, 1989.

**ADDRESSES:** Send comments on the rule in triplicate to: Charles S. Shuler, Manager, Systems Management Branch, AEA–530, Docket No. 89–AEA–530, Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Systems Management Branch, AEA–530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

**FOR FURTHER INFORMATION CONTACT:** Mr. Curtis L. Brewington, Airspace Specialist, Systems Management Branch, AEA–530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 917–0857.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, envtronmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89–AEA–11." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

### The Proposal

The FAA is considering an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the description of the Winchester, Virginia, Transition Area due to the decommissioning of the Shawnee VORTAC and the prior cancellation of SIAP's which were based upon this VORTAC. Section

71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed 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 proposed 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.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) 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:

Winchester, VA [Revised]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the center, lat. 39°08'30" N., long. 78°08'30" W., of Winchester Municipal Airport; within a 9.5-mile radius of the center of the airport extending clockwise from a 187° bearing to a 008° bearing from the airport; within 4 miles either side of the 043° bearing extending from the 6.5-mile radius to 10 miles northeast of the airport; within 5 miles each side of a 134° bearing from a point at lat. 39°08'17" N., long. 78°06'16" W., extending from said point to 14 miles southeast of said point.

Issued in Jamaica, New York, on August 3, 1989.

John D. Canoles,

*Manager, Air Traffic Division.*

[FR Doc. 89-19945 filed 8-23-89; 8:45 am]

BILLING CODE 4910-13-M

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## Federal Highway Administration

## 23 CFR Part 658

[FHWA Docket No. 89-21]

RIN 2125-AC37

## Truck Size and Weight; Dromedary Decks and Plates

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The FHWA proposes to amend its current regulations to clarify that dromedary decks and plates are included under its dromedary box provisions. This would preempt inconsistent State laws and regulations to permit truck tractors equipped with dromedary decks or plates having the capacity to carry cargo that were in legal use on December 1, 1982, to continue to operate throughout their useful lives. Proof of such legal use would continue to rest with the operator of the equipment.

**DATE:** Comments on this docket must be received on or before October 23, 1989.

**ADDRESSES:** Submit written, signed comments to FHWA Docket No. 89-21, Room 4232, HCC-10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Commenters may, in addition to submitting "hard copies" of their comments, submit a floppy disk (either 1.2Mb or 360Kb density) in a format that is compatible with either word processing programs, Word Perfect or WordStar. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., ET, Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self addressed, stamped postcard.

**FOR FURTHER INFORMATION CONTACT:** Mr. Max Pieper, Office of Motor Carrier Information Management and Analysis, (202-366-4029) or Mr. Charles Medalen, Office of the Chief Counsel (202-366-1354), Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

**SUPPLEMENTARY INFORMATION:** The Surface Transportation Assistance Act of 1982 (STAA), Public Law 97-424, 96 Stat. 2097, required the States to permit the operation of specified equipment on the National Network (NN) highways. The purpose of the legislation was to increase motor carrier productivity, but its definition of a truck tractor as a "noncargo carrying power unit" inadvertently denied to operators of tractors already equipped with dromedary boxes the opportunity to use the larger semitrailers authorized by the statute. However, the STAA also authorized the Secretary of Transportation to establish rules to accommodate specialized equipment on the NN. The FHWA, therefore, concluded that it was consistent with the intent of Congress to allow truck tractors with dromedary equipment in lawful operation on December 1, 1982 (the cut-off date for other grandfather rights created by the STAA), to operate on the NN for the remainder of their useful lives. A final rule requiring the States to permit the operation of such vehicles was adopted on June 5, 1984 (49 FR 23302) and codified at 23 CFR 658.13(f).

Truck tractors equipped with functionally-similar, cargo-carrying, dromedary decks or plates were not the subject of any of the comments to the docket for this rulemaking and were, therefore, not addressed in the June 5, 1984, final rule. We are now finding that there exists a small group of carriers that were using dromedary decks or plates to carry cargo, particularly crated household goods, before December 1, 1982. The rationale for grandfathering dromedary boxes appears to be equally applicable to these decks or plates.

Request for Comments

The FHWA solicits comments from all interested persons in regard to the following:

1. Should dromedary decks and plates (some equipped with plywood ends and tops and side curtains) be subject to the same regulations as dromedary boxes?

2. Are there other types of dromedary equipment that should be considered in this proceeding?

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. As discussed herein, this proposal merely clarifies the definition of specialized equipment permitted under the provisions of the STAA.

Further, a small number of vehicles, whose productivity will be increased as intended by the STAA, will be affected by this proposal.

**Regulatory Impact**

The FHWA has considered the impact of this notice and has determined that it is not a major rulemaking action within the meaning of E.O. 12291 and not a significant rulemaking under the regulatory policies and procedures of the DOT. These determinations by the agency are based on the nature of the rulemaking. The FHWA has determined that this rulemaking technically amends the June 5, 1984, final rule (49 FR 23302), clarifying and further defining certain issues contained therein. The impacts of the provisions addressed in this rulemaking do not differ in substance from those fully considered in the original impact statement accompanying the June 5 final rule. The Regulatory Impact Analysis prepared for that rule is available for inspection in the Headquarters Office of FHWA, Public Docket Room 4232, 400 Seventh Street, SW., Washington, DC 20590.

Under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

In consideration of the foregoing, the FHWA proposes to amend chapter 1 of title 23, Code of Federal Regulations, by revising part 658 as set forth below.

**List of Subjects in 23 CFR Part 658**

Grants program—transportation, Highways and roads, Motor carrier size and weight.

Issued on: August 17, 1989.

**Thomas D. Larson,**

*Federal Highway Administrator.*

The FHWA proposes to amend 23 CFR part 658 as follows:

## PART 658—TRUCK SIZE AND WEIGHT, ROUTE DESIGNATIONS—LENGTH, WIDTH AND WEIGHT LIMITATIONS

1. The authority citation for 23 CFR part 658 continues to read as follows:

**Authority:** Secs. 133, 411, 412, 413, and 416 of Pub. L. 97-424, 96 Stat 2097 (23 U.S.C. 127; 49 U.S.C. App. 2311, 2312, 2313, and 2316), as amended by Pub. L. 98-17, 97 Stat. 59, and Pub. L. 98-554, 98 Stat. 2829; 23 U.S.C. 315; and 49 CFR 1.48.

2. Section 658.13 is amended by revising paragraph (f) to read as follows:

**§ 658.13 Length.**

* * * * *

(f) Truck tractors containing a dromedary box, deck or plate in legal operation on December 1, 1982, shall be permitted to continue to operate, notwithstanding their cargo carrying capacity, throughout their useful life. Proof of such legal operation on December 1, 1982, shall rest upon the operator of the equipment.

[FR Doc. 89-19908 Filed 8-23-89; 8:45 am]

BILLING CODE 4910-22-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Parts 1, 35a and 46

**[INTL-0536-89]**

**RIN 1545-AN60**

## Registration Requirements With Respect to Certain Debt Obligations; Application of Repeal of 30 Percent Withholding by the Tax Reform Act of 1984

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed Income Tax Regulations relating to the definition of the term "registration required obligations" with respect to obligations issued to certain foreign persons and relating to the imposition of sanctions on issuers of registration required obligations in bearer form. These regulations would provide the public with guidance necessary to comply with the Tax Equity and Fiscal Responsibility Act of 1982. This document also contains proposed Income Tax Regulations relating to the repeal of 30 percent withholding on certain types of interest by the Tax Reform Act of 1984. They provide the public with guidance necessary to comply with the Tax Reform Act of 1984.

**DATES:** The regulations amending § 1.163-5(c) are proposed to be effective for obligations issued after the 30th day following the date that final regulations are published in the **Federal Register**. The regulations amending § 1.163-5T and § 35a.9999-5 are proposed to be effective upon the date that temporary regulations are published in the **Federal Register**. Comments and requests for a public hearing must be delivered or mailed by October 10, 1989.

**ADDRESS:** Send comments and requests for a public hearing to: Commissioner of Internal Revenue, (Attention: CC:CORP:T:R, INTL-0536-89), Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Carl Cooper of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, (Attention: CC:CORP:T:R(INTL-0536-89)) (202-566-6795, not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act**

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collection of information in this regulation is in § 1.163-5(c)(2)(i)(D). This information is required by the Internal Revenue Service to insure that purchasers of bearer obligations are not U.S. persons (other than those permitted to hold such obligations under section 165(j)). The likely respondents or recordkeepers are individuals and businesses and other for-profit institutions.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents or recordkeepers may require greater or less time depending on their particular circumstances. Estimated total annual reporting and recordkeeping burden: 852 hours.

The estimated annual burden per respondent or recordkeeper is estimated to be approximately 10 minutes (.167

hours). It is estimated that there will be 5,000 respondents, and 100 recordkeepers required to maintain records. Estimated number of respondents and recordkeepers: 5,100. Estimated annual frequency of responses: On occasion.

**Background**

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 163 of the Internal Revenue Code of 1986. Section 1.163–5(c) of the current regulations incorporates by reference certain requirements based on the interpretation of the Securities Act of 1933 by the Securities and Exchange Commission (SEC). The SEC has proposed to revise its interpretation of that Act. The amendments proposed in this document are in response to that action.

In addition, this document contains other proposed income tax regulations relating to sections 163, 871, 1441, 1442, and 4701 of the Internal Revenue Code of 1986.

**Explanation of Provisions**

Section 1.163–5(c)(2)(i)(A) of the current regulations provides that an obligation will be considered to be issued under arrangements reasonably designed to insure that the obligation will be sold (or resold in connection with its original issuance) only to a person who is not a U.S. person if, among other things, the obligation is not registered under the Securities Act of 1933 because it is intended for distribution to persons who are not U.S. persons, and the issuer has obtained, and relies in good faith on, a written opinion of counsel to that effect. It further provides that the term "U.S. person" has the same meaning for this purpose as it has for the purpose of determining whether an obligation is intended for distribution to foreign persons under the Securities Act of 1933.

Section 1.163–5(c)(2)(i)(B) provides that an obligation which is registered under the Securities Act of 1933 or is exempt from registration by reason of section 3 or 4 of such Act, or does not qualify as a security under such Act, will be considered to be issued under arrangements reasonably designed to insure that the obligation will be sold only to a person who is not a U.S. person, if five requirements are met. In general, these requirements reflect the requirements necessary for obtaining an opinion of counsel under § 1.163–5(c)(2)(i)(A). In brief, they are;

(1) The obligation is offered for sale only outside the U.S.;

(2) The issuer does not offer to sell the obligation inside the U.S. or to a U.S. person, and each underwriter promises not to do so;

(3) The issuer or underwriter sends a confirmation to the purchaser of the obligation stating that the purchaser represents that it is not a U.S. person;

(4) The obligation is not delivered in bearer form to the purchaser until a certificate is presented stating that the purchaser is not a U.S. person and is not acquiring for sale or resale inside the U.S. or to a U.S. person; and

(5) The issuer or underwriter does not have actual knowledge that the certificate is false.

The SEC has proposed to change its interpretation of the requirements of the Securities Act of 1933 in a number of respects. Among these proposed changes are a redefinition of the term "U.S. person" on the basis of residence, and elimination of the certification in most cases.

Many of the changes proposed by the SEC are reflected in the proposed revision of § 1.163–5(c)(2)(i). However, the Internal Revenue Service does not believe that the two specific changes described above are consistent with the general purpose of section 163(f) to prevent avoidance of U.S. tax by U.S. persons. In order to insure the effective operation of section 163(f), the proposed regulations in this document provide that § 1.163–5(c)(2)(i) (A) and (B) are amended by the insertion of termination date provisions. Under the termination date provisions, the "A" and "B" alternatives generally cannot be used for obligations issued after the 30th day following the date that final regulations are published in the **Federal Register**. Obligations issued after such day must be foreign targeted under the new proposed "D" alternative of § 1.163–5(c)(2)(i)(D) or under the interstate commerce alternative of § 1.163–5(c)(2)(i)(C), if applicable.

The proposed "D" alternative uses the definition of the term "U.S. person" provided by section 7701(a)(30) of the Code and also retains the certification requirement referred to above. The proposed "D" alternative parallels the SEC's changes in many other respects; however, the proposed "D" alternative is separate and independent from rules or interpretations that the SEC chooses to adopt in its administration of the securities laws. The SEC's interpretation of the securities laws will be considered by the Service where appropriate; however, the Service must ultimately base its interpretations on the tax policies underlying section 163(f)(2)(B).

The proposed regulations in this document also revise paragraphs (a), (c), and (e) of § 35a.9999–5 and add new paragraph (e) of § 1.163–5T.

A–5 of paragraph (a) of § 35a.9999–5 provides conditions that must be satisfied to obtain an exemption from information reporting and backup withholding in the case of interest described in section 861(c) (as in effect prior to the Tax Reform Act of 1986) that is paid outside the United States on an obligation that would be a registration required obligation but for the fact that it has a maturity (at issue) of less than one year. A–6 of paragraph (a) extends the requirements of A–5 to original issue discount obligations. One of the conditions of A–5 is that the obligation satisfy the requirements of section 163 (f)(2)(B) (i) and (ii)(I) and the regulations thereunder (as if the obligation would otherwise be a registration required obligation within the meaning of section 163 (f)(2)(A)).

Proposed § 1.163–5 (c)(2)(i)(D)(*7*) would provide that an obligation generally will not satisfy the requirements of 163 (f)(2)(B)(i) unless a certificate is presented at the end of a 40-day restricted period stating that the obligation is not being acquired by or on behalf of a United States person. Obviously, this certificate cannot be provided in respect of an obligation with a maturity at the time of original issuance of less than 40 days. Moreover, the Internal Revenue Service believes that it may be difficult to satisfy the certification requirement in respect of short-term obligations with maturities of longer than 40 days.

These regulations therefore propose to amend A–6 of paragraph (a) to provide an exception from the certification requirement for certain short-term commercial paper. Under this provision, a certificate would not be required under § 1.163–5(c)(2)(i)(D)(*7*) by virtue of A–6 if the obligation is an original issue discount obligation with a maturity of 90 days or less from the date of issuance.

A–18 of paragraph (c) of § 35a.9999–5 provides that an obligation that would otherwise be in registered form but for the fact that it is convertible into bearer form is considered to be in bearer form. Under A–1 of § 35a.9999–5 (a), this provision applies to obligations issued after July 18, 1984. The provision in A–18 is amended in order to better coordinate the provision with § 1.163–5(c)(2)(vi). A–21 of paragraph (e) of § 35a.9999–5 provides that interest paid to the holder of a pass-through certificate described in § 1.163–5T(d) may qualify as portfolio interest. It provides further that for purposes of sections 871(h) and 881(c), interest is considered to be paid on or with respect to the pass-through

certificate and not with respect to any obligations held by the fund or trust to which the pass-through certificate relates. This rule was intended to apply with respect to payments from the trustee of the pass-through trust to the certificate holder, but not with respect to payments made to the trustee of the pass-through trust. Thus, the rule applies when the trustee of the pass-through trust is a United States person who collects and pays out interest to the certificate holders, but does not apply when the payment is made to a trustee that is a foreign person. A–21 would be amended to clarify this point. A–21 would also be amended to clarify its application to REMICs. Section 1.163–5T is amended to add paragraph (e) concerning REMICS.

**Special Analyses**

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

**Comments and Request for a Public Hearing**

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and seven copies) to the Commissioner of Internal Revenue. Comments are specifically requested on the following subjects: (i) The "targeted offshore offering" exception to the certification requirement under § 1.163–5(c)(2)(i)(D)(*7*); (ii) the applicability of the certification requirement to short-term obligations under § 35a.9999–5(a)(A–6); (iii) the feasibility of adopting an alternative system of periodic blanket certification that would also satisfy the requirement under § 1.163–5(c)(2)(i)(D)(*7*); and (iv) the feasibility of allowing offerings of foreign targeted obligations to foreign persons together with convertible obligations in registered form to U.S. persons.

All comments will be available for public inspection and copying. A public hearing will be held upon written request by any person who submits written comments on the proposed rules. Notice of the time and place for the hearing will be published in the **Federal Register**.

**Drafting Information**

The principal author of these proposed regulations is Carl M. Cooper of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from offices of the Internal Revenue Service and Treasury Department participated in developing the regulations.

**List of Subjects**

*26 CFR §§ 1.161–1 through 1.281–4*

Income taxes, Taxable income, Deductions, Exemptions.

*26 CFR Part 35a*

Employment taxes, Income taxes, Backup withholding, Interest and Dividends Tax Compliance Act of 1983.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR parts 1, 35a and 46 are amended as follows:

**Income Tax Regulations**

*(26 CFR Part 1)*

**Paragraph 1.** The authority for part 1 continues to read in part:

**Authority:** 26 U.S.C. 7805. * * *

**Par. 2.** Section 1.163–5 (c) is amended as follows:

1. Paragraph (c)(2)(i) is amended by removing the first and fourth sentences thereof and be adding the sentences set forth below in their respective places.

2. Paragraph (c)(2)(i)(A) is amended by adding the sentence set forth below after the last sentence thereof.

3. Paragraph (c)(2)(i)(B) is amended by removing the first sentence thereof and adding the sentence set forth below in its place.

4. Paragraph (c)(2)(i)(D) is added as set forth below.

5. Paragraph (c)(3) is amended by redesignating the existing text as paragraph (c)(3)(i) and by adding a new paragraph (c)(3)(ii) as set forth below.

**§ 1.163–5 Denial of interest deduction on certain obligations issued after December 31, 1982, unless issued in registered form.**

* * * * *

(c) *Obligations issued to foreign persons after September 21, 1984.* * * *

(2) *Rules for the application of this paragraph*—(i) *Arrangements reasonably designed to insure sale to non-United States persons.* An obligation will be considered to satisfy paragraph (c)(1)(i) of this section if the conditions of paragraph (c)(2)(i) A, (B), (C), or (D) of this section (i) are met in connection with the original issuance of the obligation. * * * Obligations that meet the conditions of paragraph (c)(2)(i) (A), (B), (C) of this section other than certificates of deposit issued under the conditions of paragraph (c)(2)(i)(C) of this section by a United States person or by a controlled foreign corporation within the meaning of section 957 (a) that is engaged in the active conduct of a banking business within the meaning of section 954 (c) (3) (B) as in effect prior to the Tax Reform Act of 1986, and the regulations thereunder), or (D) may be issued in a single public offering. * * *

(A) * * * Except as provided in paragraph (c)(3 of this section this paragraph (c)(2)(i)(A) applies only to obligations issued on or before [insert date which is 30 days after final regulations are published in **Federal Register**].

(B) The obligation is registered under the Securities Act of 1933, is exempt from registration by reason of section 3 or section 4 of such Act, or does not qualify as a security under the Securities Act of 1933; all of the conditions set forth in paragraph (c)(2)(i)(B)(*1*), (*2*), (*3*), (*4*) and (*5*), of this section are met with respect to such obligation; and, except as provided in paragraph (c)(3) of this section the obligation is issued on or before [insert date which is 30 days after final regulations are published in **Federal Register**].

* * * * *

(D) The obligation is issued after [insert date which is 30 days after final regulations are published in **Federal Register**], is not described in § 1.163–5 (c)(2)(i)(C), and all of the conditions set forth in this subdivision (D) are met with respect to such obligation.

(*1*) *Directed selling efforts.* Neither the issuer nor any distributor makes a directed selling effort with respect to the obligation (or other obligations included in the same offering that are identical to the obligation). For purposes of this paragraph (c) (2) (i) (D) (*1*), the term "directed selling effort" means activity that is undertaken prior to or during the restricted period for an obligation—and that has the purpose of, or could reasonably be expected to have the effect of, conditioning the market in the United States or its possessions for the obligation. The term "directed selling effort" shall include, but not be limited to, the placing of an advertisement in a publication with a general circulation in the United States that refers to the offering of the obligation. However, the placing of an advertisement that is required to be published under foreign law, which contains no more

information than legally required, shall not be deemed to constitute a "directed selling effort." For purposes of this paragraph (c)(2)(i)(D)(*1*), the term "publication with a general circulation in the United States" shall mean any publication that satisfies one or more of the following requirements:

(*i*) The publication is printed in the United States primarily for distribution in the United States;

(*ii*) The publication has had, during the preceding twelve months, an average circulation in the United States of 15,000 or more copies per issue; or

(*iii*) The publication has had, during the preceding twelve months, an average of 50 percent or more of its circulation per issue in the United States.

(*2*) *Offers.* Neither the issuer nor any distributor offers the obligation within the United States or its possessions or to a United States person (other than an exempt distributor or a person described in paragraph (c)(2)(i)(D)(*10*) of this section) during the restricted period. For purposes of this paragraph (c)(2)(i)(D)(*2*), an obligation shall be deemed to be offered within the United States or its possessions if the offeree is within the United States or its possessions.

(*3*) *Sales* (*i*) *In general.* The issuer does not, and each distributor covenants that it will not, sell the obligation within the United States or its possessions or to any United States person (other than an exempt distributor or a person described in paragraph (c)(2)(i)(D)(*10*) of this section) during the restricted period. For purposes of this paragraph (c)(2)(i)(D)(*3*), a sale is deemed to be made to a United States person if the seller of the obligation (whether the issuer or a distributor) has an address within the United States or its possessions for the buyer of the obligation.

(*ii*) *Knowledge.* The issuer does not know that a distributor has sold the obligation within the United States or its possessions or to a United States person, in violation of the covenant described in paragraph (c)(3)(i) of this section, during the restricted period.

(*4*) *Delivery.* Neither the issuer nor any distributor delivers the obligation within the United States or its possessions in connection with a sale of the obligation during the restricted period.

(*5*) *Offering materials.* All offering materials and documents used in connection with the original issuance of the obligation include a statement to the effect that the obligation may not be offered or sold in the United States or its possessions or to a United States person as defined in section 7701(a)(30) (other than an exempt distributor or a person described in paragraph (c)(2)(i)(D)(10)) of this section during the restricted period. Such statement shall appear on the cover or inside cover page of any prospectus or offering circular used in connection with the original issuance of the obligation; in the tax section of any prospectus or offering circular used in connection with the original issuance of the obligation; and in any press release or advertisement made or issued by the distributor. Such statement may appear in summary form on prospectus cover pages and in advertisements or press releases.

(*6*) *Confirmations.* If the issuer or any distributor sells the obligation during the restricted period to a distributor, a dealer, or any other person who receives a selling concession, fee or other remuneration in respect of the securities sold, the seller sends a confirmation to such person stating that such person is subject to the restrictions regarding the offer, sale, and delivery of the obligation during the restricted period as set forth in paragraphs (c)(2)(i)(D) (*1*), (*2*), (*3*), (*4*), and (*5*) of this section. Confirmations may be provided electronically, and in such a case may be stated in summary form.

(*7*) *Certification*—(*i*) *In general.* No later than the 10th day after the last day of the restricted period, a certificate is provided to the issuer or a distributor of the obligation stating that the owner of the obligation on the last day of the restricted period either is not a United States person or is a United States person described in paragraph (c)(2)(i)(D)(*10*) of this section. The certificate must be signed (or sent, as provided in paragraph (c)(2)(i)(D)(*7*)(*ii*) of this section) either by the owner of the obligation or by a financial institution or clearing organization through which the owner holds the obligation directly or indirectly. For purposes of this paragraph (c)(2)(i)(D)(*7*), the term "financial institution" means a financial institution described in § 1.165–12 (c)(i)(v). When a certificate is provided by a clearing organization, the certificate must be based on statements provided to it by its member organizations. The requirement of this paragraph (c)(2)(i)(D)(*7*) shall be deemed not to be satisfied with respect to an obligation if the issuer or a distributor knows that the certificate with respect to such obligation is false. The issuer or distributor will be deemed to know that the certificate is false if the issuer or distributor has a United States address for the owner (other than an owner that is a United States person described in paragraph (c)(2)(i)(D)(*10*) of this section) and does not have documentary evidence as described in subdivision (iii) of A–5 of section 35a.9999–4T that the owner is not a United States person. The certificate must be retained by the issuer or distributor (and statements by member organizations must be retained by the clearing organization, in the case of certificates based on such statements) for a period of four calendar years following the year in which the certificate is received.

(*ii*) *Electronic certification.* The certificate required by paragraph (c)(2)(i)(D)(*7*)(*i*) of this section (including a statement provided to a clearing organization by a member organization) may be provided electronically, but only if the person receiving such electronic certificate maintains adequate records, for the retention period described in paragraph (c)(2)(i)(D)(*7*)(*i*) of this section, establishing that such certificate was received in respect of the subject obligation, and only if the person sending the electronic certificate has agreed in writing with the recipient, prior to the time of certification, that the electronic certificate shall have the effect of a signed certificate described in paragraph (c)(2)(i)(d)(*7*)(*i*) of this section.

(*iii*) *Exception for targeted offshore offerings.* This paragraph (c)(2)(i)(D)(*7*) shall not apply, and no certificate shall be required, in the case of an obligation that is sold during the restricted period in a targeted offshore offering. For purposes of this paragraph (c)(2)(i)(D)(*7*)(*iii*) of this section, a "targeted offshore offering" is an offering of obligations that is targeted to the domestic capital markets of a single foreign country in accordance with customary local practices and documentation; that is neither listed nor the subject of an application for listing on a securities exchange outside the targeted foreign country; and that consists solely of obligations denominated in the local currency of the targeted foreign country. An offering shall not be considered to be a "targeted offshore offering" if the issuer or any distributor knows or has reason to believe that a substantial portion of the offering will be sold or resold outside of the domestic markets of the targeted foreign country in connection with the original issuance.

(*8*) *Distributor.* For purposes of this § 1.163–5(c)(2)(i)(D), the term "distributor" means:

(*i*) Any affiliate of the issuer;

(*ii*) The lead underwriter;

(*iii*) Any person that participates in the original issuance of the obligation pursuant to a contractual arrangement; and

(*iv*) Any person acting on behalf of any of the foregoing, or acting on behalf of the issuer.

(*9*) *Exempt distributor.* For purposes of this § 1.163–5(c)(2)(i)(D), the term "exempt distributor" means a distributor that certifies in writing to the selling issuer or distributor that it is buying for the purpose of resale in connection with the original issuance of the obligation, and that if it retains the obligation for investment, it will only do so in accordance with the requirements of paragraph (c)(2)(i)(D)(*10*) of this section. In the latter case, the certificate required under paragraph (c)(2)(i)(D)(*10*) of this section (other than a blanket certificate) shall be provided to the selling issuer or distributor no later than the 40th day of the restricted period. The provisions of paragraph (c)(2)(i)(D)(*11*) governing the restricted period for unsold allotments or subscriptions shall apply to any obligation retained for investment by an exempt distributor.

(*10*) *Certain United States persons.* An obligation may be offered and sold outside the United States and its possessions to a United States person that is a financial institution purchasing for its own account, or to a United States person that is a customer of, and holds the obligation through, a financial institution, provided that the financial institution holding the obligation provides a certificate to the issuer or distributor no later than the end of the restricted period stating that it agrees to comply with the requirements of section 165(j)(3) (A), (B), or (C) and the regulations thereunder. For purposes of this paragraph (c)(2)(i)(D)(*10*), the term "financial institution" means a United States person that is a financial institution as defined in § 1.165–12(c)(1)(v). A financial institution may provide a blanket certificate to the issuer or distributor stating that the financial institution will comply with the requirements of section 165(j)(3) (A), (B), or (C) and the regulations thereunder. A blanket certificate must be received by the issuer or distributor in the year of the issuance or in either of the preceding 2 calendar years, and must be retained by the issuer or distributor for at least 4 years after the end of the last calendar year to which it relates.

(*11*) *Restricted period.* The purposes of this § 1.163–5(c)(2)(i)(D), the term "restricted period" means the 40-day period beginning on the later of the closing of the offering or the first date on which the obligation (or any other obligation included in the same issue that is identical to the obligation) is offered to persons other than a distributor. Notwithstanding the preceding sentence, any offer of the obligation by the issuer or a distributor shall be deemed to be during the restricted period if the issuer or distributor holds the obligation as part of an unsold allotment or subscription.

(*12*) *Special rule for international organizations and foreign central banks.* For purposes of this § 1.163–5(c)(2)(i)(D), an obligation that is offered or sold to an international organization or foreign central bank shall be deemed not to be offered or sold to a United States person. For purposes of this paragraph (c)(2)(i)(D)(*12*), the terms "international organization" and "foreign central bank" shall have the meanings set forth in section 7701(a)(18) and section 895, respectively, and the regulations thereunder.

(*13*) *Clearing organization.* For purposes of this § 1.163–5(c)(2)(i)(D), a "clearing organization" is an entity which is in the business of holding obligations for member organizations and transferring obligations among such members by credit or debit to the account of a member without the necessity of physical delivery of the obligation.

(3) *Effective date—(i) In general.* * * *

(ii) *Special rules.* If an obligation is originally issued after [insert date which is 30 days after final regulations are published in **Federal Register**] pursuant to the exercise of a warrant or the conversion of a convertible obligation, which warrant or obligation (including conversion privilege) was issued on or before [insert date on which final regulations are published in **Federal Register**], then the rules of § 1.163–5(c)(2)(i)(A) or § 1.163–5(c)(2)(i)(B) shall apply to such obligation as if such rules contained no termination date provision. The issuer of an obligation may choose to apply either the rules of § 1.163–5(c)(2)(i) (A) or (B), or the rules of § 1.163–5(c)(2)(i)(D), to an obligation that is originally issued after [insert date on which final regulations are published in **Federal Register**] and on or before [insert date which is 30 days after final regulations are published in the **Federal Register**].

**Paragraph 3.** The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

**Par 4.** § 1.163–5T is amended by adding new paragraph (e) to read as follows:

**§ 1.163–5T Denial of the interest deduction on certain obligations issued after December 31, 1982, unless issued in registered form (temporary).**

* * * * *

(e) *Regular interests in REMICS.* (1) A regular interest in a REMIC, as defined in sections 860D and 860G and the regulations thereunder, is considered to be a "registration-required obligation" under section 163(f)(2)(A) and § 1.163–5(c) if the regular interest is described in section 163(f)(2)(A) and § 1.163–5(c), without regard to whether any obligation held by the REMIC to which the regular interest relates is described in section 163(f)(2)(A) and § 1.163–5(c). A regular interest in a REMIC is considered to be described in section 163(f)(2)(B) and § 1.163–5(c) if the regular interest is described in section 163(f)(2)(B) and § 1.163–5(c), without regard to whether any obligation held by the REMIC to which the regular interest relates is described in section 163(f)(2)(B) and § 1.163–5(c).

(2) An obligation held by a REMIC is considered to be described in section 163(f)(2) (A) or (B) if such obligation is described in section 163(f)(2) (A) or (B), respectively, without regard to whether the regular interests in the REMIC are so considered.

(3) For purposes of section 4701, a regular interest is considered to be issued solely by the recipient of the proceeds from the issuance of the regular interest (hereinafter the "sponsor"). The sponsor is therefore liable for any excise tax under section 4701 that may be imposed with reference to the principal amount of the regular interest.

(4) In order to implement the purpose of section 163, section 163–5(c), and this section, the Commissioner may characterize a regular interest in a REMIC and any obligation held by such REMIC in accordance with the substance of the arrangement they represent and may impose the penalties provided under sections 163(f)(1) and 4701 in the appropriate amounts and on the appropriate persons. This provision may be applied, for example, where a corporation issues an obligation that is purportedly in registered form and that will qualify as a "qualified mortgage" within the meaning of section 860G(a)(3) in the hands of a REMIC, contributes the obligation to a REMIC as its only asset, and arranges for the sale to investors of regular interests in the REMIC in bearer form that do not meet the requirements of section 163(f)(2)(B). If this provision is applied, the obligation held by the REMIC will not be considered to be issued in registered form or to meet the requirements of section 163(f)(2)(B). The corporation will not be allowed a deduction for the payment of interest on the obligation held by the REMIC, and the excise tax under section 4701,

calculated with reference to the principal amount of the obligation held by the REMIC, will be imposed on the corporation and may be collected from the corporation and its agents.

**Par. 5.** The authority for part 35a continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

**Par. 6.** Section 35a.9999–5 is amended by adding a sentence immediately after the last sentence of A–6 of paragraph (a); by removing the sentence immediately before the last sentence of A–18 of paragraph (c), and adding two new sentences in its place; in paragraph (e), by redesignating the text of existing A–21 as subdivision (i) and adding a sentence immediately following the second sentence, and adding new subdivision (ii). The added sentences read as follows:

**§ 35a.9999–5 Questions and answers relating to repeal of 30 percent withholding by section 127 of the Tax Reform Act of 1984 and to the application of information reporting and backup withholding in light of such repeal.**

* * * * *

(a) *Rules concerning obligations in bearer form.*

* * * * *

A–6. * * * However, an original issue discount obligation with a maturity of ninety days or less from the date of issuance is not required to satisfy the certification requirement of § 1.163–5(c)(2)(i)(D)(*7*).

* * * * *

(c) *Convertibility of obligations.*

A–18. * * * An obligation issued after July 18, 1984, and on or before September 21, 1984, that would otherwise be in registered form but for the fact that it is convertible into bearer form, shall be considered to be in bearer form for purposes of A–1 if it satisfies the applicable requirements of the relevant temporary or proposed regulations under section 163(f)(2)(B), as described in § 1.163–5(c)(2)(vi). An obligation issued after September 21, 1984, that would otherwise be in registered form but for the fact that it is convertible into bearer form shall be considered to be in bearer form. * * *

* * * * *

(e) *Application of Repeal of 30 Percent Withholding to Pass-through Certificates.*

* * * * *

A–21. (i) * * * The rule of this A–21 applies only to payments made to the holder of the pass-through certificate from the trustee of the pass-through trust and does not apply to payments made to the trustee of the pass-through trust. * * *

(ii) Interest paid to a holder of a regular or residual interest in a REMIC will qualify as portfolio interest under section 871(h)(2) or section 881(c)(2) for purposes of the exemption from 30 percent withholding if the interest paid to the holder satisfies the conditions described in A–1 or A–8 of this section. For purposes of A–1 or A–8 of this section and sections 871(h) and 881(c), interest paid to the holder of a regular interest in a REMIC is considered to be paid on or with respect to the regular interest in the REMIC and not on or with respect to any mortgage obligations held by the REMIC. The foregoing rule, however, applies only to payments made to the holder of the regular interest from the REMIC and does not apply to payments made to the REMIC. For purposes of A–1 or A–8 of this section and sections 871(h) and 881(c), interest paid to the holder of a residual interest in a REMIC is considered to be paid on or with respect to the obligations held by the REMIC, and not on or with respect to the residual interest. For purposes of A–1 and A–8 of this section and section 127 of the Tax Reform Act of 1984, a residual interest in a REMIC will be considered as issued after July 18, 1984, only to the extent that the obligations held by the REMIC are issued after July 18, 1984, but a regular interest in a REMIC will be considered issued after July 18, 1984, if the regular interest was issued after July 18, 1984, without regard to the date on which the mortgage obligations held by the REMIC were issued.

**Par. 7.** The authority for Part 46 continues to read as follows:

Authority: 26 U.S.C. 7805. * * *

**Par. 8.** Section 46.4701–1 is amended by adding paragraph (b)(5) to read as follows:

**§ 46.4701–1 Tax on issuer of registration required obligation not in registered form.**

* * * * *

(b) *Definitions.* * * *

* * * * *

(5) *Issuer.* Except as provided in § 1.163–5T(d) (relating to pass-through certificates) and § 1.153–5T(e) (relating to REMICs), the "issuer" is the person whose interest deduction would be disallowed solely by reason of section 163(f)(1).

* * * * *

Fred T. Goldberg, Jr.,

*Commissioner of Internal Revenue.*

[FR Doc. 89–19888 Filed 8–23–89; 8:45 am]

BILLING CODE 4830–01–M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 913

### Illinois Regulatory Program; Public Notice; Permits; Performance Standards; Civil Penalties

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

**ACTION:** Proposed rule.

**SUMMARY:** OSMRE is announcing the receipt of proposed amendments to the Illinois permanent regulatory program (hereinafter referred to as the Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments are intended to make the requirements of the Illinois program no less effective than the Federal program. They concern proposed changes to the Illinois Administrative Code (IAC) at 62 IAC 1700 General; 62 IAC 1701 Definitions; 62 IAC 1761 Areas Designated by Acts of Congress; 62 IAC 1772 Coal Exploration Requirements; 62 IAC 1773 Permits and Permit Processing Requirements; 62 IAC 1774 Revision, Renewal and Transfer of Permit Rights; 62 IAC 1778 Permit Applications—Minimum Requirements for Legal, Financial, Compliance and Related Information; 62 IAC 1779 Permit Applications—Minimum Requirements for Information on Environmental Resources; 62 IAC 1780 Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan; 62 IAC 1784 Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan; 62 IAC 1800 Bonding and Insurance Requirements for Surface Coal Mining; 62 IAC 1816 Permanent Program Performance Standards—Surface Mining; 62 IAC 1817 Permanent Program Performance Standards—Underground Mining; 62 IAC 1843 State Enforcement; and 62 IAC 1846 Individual Civil Penalties.

This notice sets forth the times and locations that the Illinois program and proposed amendments to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments and the procedures that will be followed regarding the public hearing, if one is requested.

**DATES:** Written comments must be received on or before 4:00 p.m. on

September 25, 1989. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on September 18, 1989. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on September 8, 1989.

**ADDRESSES:** Written comments should be mailed or hand delivered to: Mr. James F. Fulton, Director, Springfield Field Office, at the address listed below. Copies of the Illinois program and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSMRE's Springfield Field Office.

Office of Surface Mining Reclamation and Enforcement, Springfield Field Office, 600 East Monroe Street, Room 20, Springfield, Illinois 62701, Telephone: (217) 492–4495.

Illinois Department of Mines and Minerals, 300 West Jefferson Street, Suite 300, Springfield, Illinois 62791, Telephone: (217) 782–4970.

**FOR FURTHER INFORMATION CONTACT:** James F. Fulton, Director, Springfield Field Office; (217) 492–4495.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. Information pertinent to the general background of the Illinois program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the June 1, 1982, **Federal Register** (47 FR 23883 *et seq.*). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 913.11, 913.15, 913.16, and 913.17.

## II. Discussion of Proposed Amendments

Pursuant to 30 CFR 732.17, OSMRE identified required revisions to the Illinois regulatory program by letters dated June 9, 1987; December 16, 1988; and May 11, 1989. OSMRE also notified Illinois of deficiencies which OSMRE had determined to be less effective than the Federal requirements for surface mining and reclamation operations in Illinois program amendments approved by the Director on October 25, 1988 (53 FR 43112), and January 4, 1989 (54 FR 118).

In response to these notifications, Illinois by letter dated July 17, 1989 (Administrative Record No. IL–1075), submitted the following proposed amendments to its program.

The Illinois Administrative Code (IAC), Title 62, Mining, chapter I: Regulations of the Illinois Department of Mines and Minerals, § 1700.11(a), limits the applicability of IAC rules to all coal exploration and active surface coal mining operations.

Section 1701, General Definitions, Appendix A, changes the definition of "previously mined area" to those lands not reclaimed in accordance with the Act and changes the definition of "valid existing rights" in response to a required regulatory program amendment notice published in the **Federal Register** on January 4, 1989 (54 FR 123).

Section 1761.11(a), Areas Designated by Act of Congress, is revised to remove the quarter-mile restriction on the maximum width of wild or scenic river study corridors and § 1761.11(c) is revised to extend the prohibitions/limitations to privately owned places listed on the National Register of Historic Places. Section 1761.12(e) is likewise revised to extend prohibitions/limitations to privately owned places listed on the National Register of Historic Places.

Section 1772.12(b), Requirements for Coal Exploration, is revised to require the applicant for a coal exploration permit to provide, if requested, other information regarding known or unknown historic or archeological resources.

A new § 1773.5, Requirements for Permits and Permit Processing, is added which defines the phrases "owned or controlled" and "owns or controls".

Section 1773.11(a) is revised to restrict the permit renewal requirement to those operations actively conducting surface coal mining operations.

Section 1773.15(b) is revised to prohibit the issuance of permits to any person currently in violation of the Federal Act who owns or controls the permit applicant.

Section 1773.15(c) is revised to delete one permit finding and add two new permit findings. Existing subsection (c)(11) concerning cemeteries is deleted and a new subsection (c)(11) adds a finding that the site of a remining operation, where the applicant intends to reclaim to the lesser standards applicable to remining, is considered a previously mined area. New subsection (c)(12) adds a finding that the effect of the proposed permitting action on properties listed or eligible for listing on the National Register of Historic Places has been taken into account. Section 1773.15(e) is revised to require reconsideration of any approved permit, prior to issuance, based on a review of any new violation and compliance information submitted pursuant to proposed new 62 IAC 1778.13(i) and 1778.14(e).

Section 1773.17(h) is revised to require that, in the absence of a legal stay, within 30 days after issuance of a cessation order for operations conducted under the permit, the permittee must notify the State of any changes that have occurred in the ownership information submitted at the time of application or since submittal of the last update of this information.

Subsection (a)(2)(D) is added to § 1773.19 to clarify the time limits for final permit decisions by the State.

Sections 1773.20 and 1773.21 are added to outline Illinois' procedures for identifying and rescinding improvidently issued permits.

Section 1774.15(b), Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights, is revised to correct a typographical error in this section. The citation to 62 IAC 1773.19(b) is changed to section 1773.19(a)(3).

Section 1774.17(b) is revised to add a new sentence to subsection (b)(2) clarifying the number of newspaper advertisements to be published when an application is filed.

Section 1778.13, Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information, subsection (b) is revised to expand the information requirements for permit applications to include the person who will pay the abandoned mine land reclamation fees. Subsections (c) and (d) are revised to expand informational requirements to include persons who own or control the applicant. New subsection (i) is added to require the applicant to update the identification of interests sections of the permit application after State approval, if necessary. New subsection (j) is added to require the applicant to submit all identification of interests and violation and compliance information in a prescribed format.

Section 1778.14, subsection (c) is revised to require that each permit application include a list of all unabated cessation orders and unabated air or water quality violation notices received prior to the application by any suface coal mining and reclamation operation owned or controlled by either the applicant or any person who owns or controls the applicant. New subsection (e) requires the applicant to update the compliance and violation section of the permit application after State approval, if necessary.

Sections 1779.12(b)(1) and (b)(2), Surface Mining Permit Applications—

Minimum Requirements for Information on Environmental Resources, and sections 1783.12(b) (1) and (b)(2), Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources, are revised to require the applicant to identify and evaluate important historic and archaeological resources that may be eligible for listing on the National Register of Historic Places through the collection of additional information, including field investigations.

Section 1779.20 for surface mining permit applications and Section 1783.20 for underground coal mining permit applications are deleted and the requirements for fish and wildlife resources information are transferred to sections 1780.16 and 1784.21 respectively.

Section 1780.16, Surface Mining Permit Application—Minimum Requirements for Reclamation and Operation Plan, is revised to add the requirements for fish and wildlife resource information from section 1779.20. Section 1780.21(a) is revised to correct a typographical error in the address of the Department's Land Reclamation Division. Section 1780.21(f) is revised to add provisions for the determination of probable hydrologic consequences. Section 1780.21(i) is revised to define when the State may exercise its power to waive the ground water monitoring requirement, in accordance with section 4.02 of the Illinois Administrative Procedures Act (IAPA).

Section 1780.31 is revised to require the applicant to prevent or minimize the impacts of proposed operations on privately-owned places listed on the National Register of Historic Places and allow the State to specify appropriate mitigation and treatment measures for places listed and eligible for listing.

Section 1784.14(a), Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan, is revised to correct an address for the State Land Reclamation Division. Section 1784.14(e) is revised to clarify the scope of the determination of probable hydrologic consequences. Section 1784.14(h) is revised to allow the State to waive the ground water monitoring requirement if it finds the operation will not proximately result in contamination, diminution or interruption of a water source in the permit or adjacent area.

Section 1784.17 is revised to correspond with the requirements for the protection of public parks and historic places previously discussed at sections 1780.31.

Section 1784.21 is revised to add the requirements for fish and wildlife information from section 1783.20.

Section 1800.21(b)(4), Bonding and Insurance Requirements for Surface Coal Mining and Reclamation Operations, is revised to require that the ten percent capital and surplus accounts limitation for letters of credit is applied on a cumulative rather than on an individual basis.

Section 1800.40, subsection (a)(2), is revised to provide a 45 day time frame for submitting a copy of a bond release advertisement. The reference to "informal conferences" is deleted. Revisions to subsection (b)(1) replace the word "receipt" with the word "filing" and extend the period in which to conduct the bond release inspection to 60 days. Revisions to subsection (b)(2) extend the time period for the final bond release decision to 90 days, extend the notification period after a public hearing to 60 days, and add the words "nearest municipality", so that subsection (e), which discussed notification requirements to municipalities, could be deleted. Revisions to subsection (f) would extend the period for holding a public hearing to 60 days after receipt of the request.

Revisions to section 1800.60(b) require that an applicant's public liability insurance policy be maintained in full force during the life of the permit and the liability period necessary to complete all reclamation operations.

Section 1816.49, Permanent Program Performance Standards—Surface Mining Activities, and section 1817.49, Permanent Program Performance Standards—Underground Mining Activities, are revised. Subsection (a)(9) specifies a level of required experience for professionals charged with inspecting impoundments, specifies the timing of impoundment inspections, and clarifies the location at which impoundment inspection reports are to be retained. Subsection (a)(10) specifies exemptions from quarterly impoundment examinations for certain classes of impoundments. Subsections (b)(9) and (c) clarify the spillway requirements for both permanent and temporary impoundments.

Revisions to section 1816.61 for surface mining and section 1817.61 for underground mining relating to general requirements for use of explosives place limitations on requirements specified in other regulations to blasts using more than 25 pounds of explosives.

Section 1816.64(c) for surface mining, subsection (c)(1), is revised to require a public notice of blasting schedule for all blasts. The five pound exemption is deleted.

Revisions to section 1817.64(a) for underground mining would require the operator to notify the State of proposed times and locations of blasting operations.

Revisions to section 1817.66(a) for underground mining require the operator to place signs in the vicinity of the location of blasting.

Revisions to section 1816.67(c) for surface mining and section 1817.67(c) for underground mining requirements for limiting and monitoring the off-site adverse effects of blasting operations change the cube root scaled distance formula for blasts from 500 to 350.

Revisions to section 1816.68(a) for surface mining and 1817.68(a) for underground mining delete the requirement to record wind velocity and direction in the record of blasting operations.

Revisions to section 1816.83(a) for surface mining and 1817.83(a) for underground mining correct a typographical error in a regulation citation in subsection (a)(3). The correct citation for underdrain requirements is section 1816.73(1).

Revisions to section 1816.97 for surface mining and section 1817.97 for underground mining for requirements concerning the protection of fish, wildlife, and related environmental values include a requirement that operators use appropriate methods to exclude wildlife from ponds which contain toxic-forming materials.

Section 1816.99(c) for surface mining is revised to specify that lateral support requirements apply to any mine-related excavation.

Section 1816.102(a) for surface mining is revised to correct a typographical error in a regulation citation. The correct citation for previously mined highwalls is subsection (k)(3)(C).

Section 1817.122 for underground mining is revised to require operators to maintain copies of all public notices mailed pursuant to this section and to make said copies available for inspection by State agents.

Section 1843.11(a)(2), State Enforcement, is revised to limit automatic issuance of cessation orders for non-permitted operations to those operators actually engaged in surface coal mining. New section 1843.11(g) requires that, within 60 days of the issuance of a cessation order, the State shall notify all owners and controllers.

In section 1846, Individual Civil Penalties, regulations for individual civil penalties are provided. They include provisions for computing, assessing, and collecting the penalties.

### III. Public Comments Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is seeking comments on whether the proposed amendments satisfy the applicable program approval criteria of 30 CFR 732.15.

If the amendments are deemed adequate, they will become part of the Illinois program.

*Written Comments*

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

*Public Hearing*

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4:00 p.m. on September 8, 1989. If no one requests an opportunity to coment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber.

Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

*Public Meeting*

If only one person requests an opportunity to comment at a hearing, a public meeting rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE office listed under "ADDRESSES" by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public, and, if possible, notices of meetings will be posted at the locations under "ADDRESSES". A written summary of each meeting will be made a part of the Administrative Record.

### List of Subjects in 30 CFR Part 913

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

Dated: August 11, 1989.

Guy Padgett,

*Acting Assistant Director, Eastern Field Operations.*

[FR Doc. 89-19988 Filed 8-23-89; 8:45 am]

BILLING CODE 4310-05-M

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## 30 CFR Part 936

## Oklahoma Permanent Regulatory Program

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

**ACTION:** Proposed rule; reopening and extension of comment period.

**SUMMARY:** OSMRE is announcing receipt of additional information and revisions pertaining to previously proposed amendments to the Oklahoma permanent regulatory program (hereinafter, the "Oklahoma program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The additional information and revisions pertain to exploration, permit requirements, applicant ownership and control information, reclamation and operations plans, special categories of mining, performance standards for surface mining, performance standards for underground mining, bonding, and inspections. The amendment is intended to revise the State program to be consistent with the corresponding Federal standard, incorporate the additional flexibility afforded by the revised Federal regulations, provide additional safeguard, clarify ambiguities, improve operational efficiency, and achieve use of the best technology currently available.

This notice sets forth the times and locations that the Oklahoma program and the proposed amendment to the program are available for public inspection and reopens the comment period during which interested persons may submit written comments on the proposed amendment.

**DATES:** Written comments must be received by 4:00 p.m., c.d.t., September 25, 1989.

**ADDRESSES:** Written comments should be mailed or hand delivered to Mr. James H. Moncrief at the address listed below.

Copies of the Oklahoma program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one copy of the proposed amendment, free of charge, by contacting OSMRE's Tulsa Field Office.

Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Dirve, Suite 550, Tulsa, OK 74135, Telephone: (918) 581-6430.

Oklahoma Department of Mines, 4040 N. Lincoln, Oklahoma City, OK 74105, Telephone: (918) 521-3859.

**FOR FURTHER INFORMATION CONTACT:** Mr. James H. Moncrief, Director, Tulsa Field Office, at the address or telephone number listed in "ADDRESSES."

**SUPPLEMENTARY INFORMATION:**

### I. Background on the Oklahoma Program

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. General background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Oklahoma program were published in the January 19, 1981, **Federal Register** (46 FR 4910). Subsequent actions concerning the Oklahoma program and program amendments are at 30 CFR 936.15.

### II. Proposed Amendment

By letter dated May 18, 1988, (administrative record No. OK-843), Oklahoma submitted a proposed amendment to its program under SMCRA. Oklahoma submitted the proposed amendment in response to a July 15, 1985, letter (administrative record No. OK-681) and a June 9, 1987, letter (administrative record No. OK-811) that OSMRE sent in accordance with 30 CFR 732.17(d) through (f). Oklahoma proposed to amend 33 Sections of its program in response to the OSMRE letters. OSMRE published a notice in the June 28, 1988, **Federal Register** (53 FR 24321) announcing receipt of the May 18, 1988, amendment and inviting public comment on the adequacy of the proposed amendment. The public comment period ended July 28, 1988. Specific information on the proposed revisions to the Oklahoma program as a result of the May 18, 1988 submittal are presented in the June 28, 1988 **Federal Register** (53 FR 24321).

In a letter dated October 6, 1988, (administrative record No. OK-873), OSMRE notified Oklahoma, pursuant to 30 CFR 732.17(f)(1), of additional changes necessary to make the

Oklahoma program no less effective than the Federal regulations. By letter dated November 14, 1988, (administrative record No. 866) Oklahoma responded by asking OSMRE to formally consider a previously submitted informal amendment package dated September 16, 1988 (administrative record No. OK–862). The amendment package submitted by the November 14, 1988, letter contains proposed changes to 4 parts of the Oklahoma program. This amendment also adds Part 846, Individual Civil Penalties. Specific information on the proposed changes is presented in the January 9, 1989 **Federal Register** (54 FR 634).

To facilitate the processing of the May 18 and November 14, 1988 amendments, OSMRE combined the two amendments into a single amendment. Consequently, OSMRE published a notice in the January 9, 1989, **Federal Register** (54 FR 634) announcing the receipt of the November 14, 1988, amendment, the reopening and extension of the May 18, 1988 amendment, and inviting public comment on the adequacy of the proposed amendments. The public comment period ended February 8, 1989.

During its review of the proposed amendment, OSMRE identified concerns relating to: Jurisdiction, definitions, mining plans, Federal lands, lands unsuitable, exploration, permit requirements, permit revisions, applicant ownership and control, reclamation and operations plans, special categories of mining, bonding, performance standards for surface mining, performance standards for underground mining, prime farmland, preparation plants, inspections, and civil penalties. OSMRE notified Oklahoma of its concerns during a March 3, 1989, meeting (administrative record No. OK–887). In a letter dated June 22, 1989 (administrative record No. OK–888) Oklahoma responded to these concerns by submitting a revised proposed amendment package. The OSMRE reopened the public comment period for 30 days in the July 13, 1989 **Federal Register** notice (54 FR 133).

During its review of the June 22, 1989, amendment package, OSMRE identified concerns relating to: exploration, permit requirements, applicant ownership and control information, reclamation and operations plans, special categories of mining, performance standards for surface mining, performance standards for underground mining, bonding, and inspections. OSMRE notified Oklahoma of its concerns during a meeting on July 6, 1989 (administrative record No. OK–889). Oklahoma responded to OSMRE's concerns by submitting a revised proposed amendment package dated August 8, 1989 (administrative record No. OK–890).

*Public Comment Procedures*

OSMRE is reopening the comment period on the proposed Oklahoma program amendment to provide the public an opportunity to reconsider the adequacy of the amendment in light of the additional materials submitted on August 8, 1989. In accordance with the provisions of 30 CFR 732.17(h), OSMRE is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Oklahoma program.

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

**List of Subjects in 30 CFR Part 936**

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

Dated: August 17, 1989.

**Raymond L. Lowrie,**

*Assistant Director, Western Field Operations.*

[FR Doc. 89–19989 Filed 8–23–89; 8:45 am]

BILLING CODE 4310–05–M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 60 and 61

[FRL–3634–9]

### National Emission Standards for Hazardous Air Pollutants; Mississippi and Tennessee; Delegation of Authority

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

**ACTION:** Notice of delegation.

**SUMMARY:** On April 28, 1989, the State of Mississippi requested delegation of authority for the implementation and enforcement of certain standards in 40 CFR part 60, Standards of Performance for New Stationary Sources (NSPS) and 40 CFR part 61, National Emission Standards for Hazardous Air Pollutants (NESHAP), that had been promulgated and revised since December 14, 1988. On May 31, 1989, these NSPS and NESHAP were delegated to Mississippi (listed in "Supplementary Information").

On May 4, 1989, the Knox County Department of Air Pollution Control requested delegation of one NSPS category. This was delegated to them on May 16, 1989.

Three requests for delegation of authority for the implementation and enforcement of the NSPS and NESHAP were received from the Metropolitan Health Department of Nashville/Davidson County.

On May 10, 1989, the Metropolitan Health Department requested delegation of several NSPS. Also on May 10, 1989, the Metropolitan Health Department resubmitted a June 23, 1986, delegation request for several NESHAP which was inadvertently overlooked by EPA. These NSPS and NESHAP standards were delegated to the Metropolitan Health Department on May 31, 1989 (listed in "Supplementary Information").

The third request was made on May 30, 1989, for three NESHAP categories which were delegated on June 20, 1989 (listed in "Supplementary Information.").

On December 6, 1988, the State of Tennessee requested delegation of several NSPS and NESHAP standards. Since some of the standards were outdated when EPA received the request, EPA requested that Tennessee commit to updating the outdated standards. The committal letter was received on June 5, 1989. The standards were delegated on June 27, 1989.

**DATES:** The effective dates of the delegation are: Mississippi, May 31, 1989; Knox County, Tennessee, May 16, 1989; Nashville/Davidson County, Tennessee; May 31, 1989 and June 20, 1989; State of Tennessee, June 27, 1989.

**ADDRESSES:** Copies of the requests for delegation of authority and EPA's letters of delegation may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV—Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Knox County Department of Air Pollution Control, City/County Building, Room 459, 400 West Main Street, Knoxville, Tennessee 37902.

Metropolitan Health Department, Air Pollution Control Division, 311—23rd Avenue, North, Nashville, Tennessee 37203.

Bureau of Pollution Control, Mississippi Department of Natural Resources, Post Office Box 10385, Jackson, Mississippi 39209.

Division of Air Pollution Control, Tennessee Department of Public Control, 4th Floor, Customs House, 701 Broadway, Nashville, Tennessee 37219.

**FOR FURTHER INFORMATION CONTACT:** Rosalyn D. Hughes of the EPA Region IV Air Programs Branch, at the above address and telephone number (404) 347-2864 or FTS 257-2864.

**SUPPLEMENTARY INFORMATION:** Sections 101, 111(c)(1) and 112(d)(1) of the Clean Air Act authorize EPA to delegate authority to implement and enforce the standards set out in 40 CFR part 60, Standards of Performance for New Stationary Sources (NSPS) and 40 CFR part 61, National Emission Standards for Hazardous Air Pollutants (NESHAP).

On April 28, 1989, the State of Mississippi requested delegation of the NSPS and NESHAP standards that had been promulgated and revised as of December 14, 1988. The following standards were requested by Mississippi (the revised standards are designated by "(R)"):

40 CFR Part 60 Subpart
- F—Portland Cement Plants (R)
- O—Sewage Treatment Plants (R)
- QQQ—VOC Emissions from Petroleum Refinery Wastewater Systems
- SSS—Magnetic Tape Manufacturing

40 CFR Part 61 Subpart
- N—Inorganic Arsenic Emissions from Glass Manufacturing Plants
- O—Inorganic Arsenic Emissions from Primary Copper Smelters
- P—Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities

After a thorough review of the request, the Division Director of the Air, Pesticides and Toxics Management Division determined that such a delegation was appropriate for these source categories with all the conditions set forth in the delegation letter of November 30, 1981, and delegated them to Mississippi on May 31, 1989.

On May 10, 1989 Metropolitan Health Department of Nashville/Davidson County requested delegation of several NSPS. Also, on May 10, 1989, the local agency's Director of Environmental Services brought to EPA's attention a June 23, 1986, request from the Metropolitan Health Department that the delegation of several NESHAP standards be updated. This request was inadvertently overlooked. The following NSPS and NESHAP were requested:

40 CFR Part 60 Subpart
- Subpart Db—Industrial-Commercial Institutional Steam Generating Units for which Construction Commenced After June 19, 1986 (R)
- Subpart Na—Basic Oxygen Process Steelmaking Facilities for which Construction Commenced After January 20, 1983
- Subpart BBB—Rubber Tire Manufacturing Industry
- Subpart QQQ—VOC Emissions from Petroleum Refinery Wastewater Systems
- Subpart TTT—Surface Coating of Plastic Parts for Business Machines

40 CFR Part 61 Subpart
- B—Radon-222 Emissions from Underground Uranium Mines
- C—Beryllium (R)
- D—Beryllium Rocket Motor Firing (R)
- E—Mercury (R)
- F—Vinyl Chloride (R)
- H—Radionuclide Emissions from the Department of Energy Facilities
- I—Radionuclide Emissions from Facilities Licensed by the Nuclear Regulatory Commission and Federal Facilities not covered by Subpart H
- J—Equipment Leaks (Fugitive Emission Sources) of Benzene (R)
- K—Radionuclide Emissions from Elemental Phosphorus Plants
- M—Equipment Leaks (Fugitive Emissions Sources)

After a thorough review of both requests, the Division Director determined that such a delegation was appropriate for all the NSPS and NESHAP standards, except for subparts B, H, I, and K, with all the conditions set forth in the delegation letters of May 25, 1977, and February 20, 1986, and delegated them to Nashville/Davidson County on May 31, 1989. NESHAP subparts B, H, I, and K were not delegated because EPA has not developed the proper technical guidance. Once guidance is developed EPA will on a case-by-case basis review delegation requests for these standards.

On May 30, 1989, the Metropolitan Health Department requested authority for three NESHAP categories:

40 CFR Part 61 Subpart
- N—Inorganic Arsenic Emissions from Glass Manufacturing Plants
- O—Inorganic Arsenic Emissions from Primary Copper Smelters
- P—Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities.

After a thorough review of the request, the Division Director determined that such a delegation was appropriate for these source categories with all the conditions set forth in the delegation letters of May 25, 1977, and February 20, 1986, and delegated them to Nashville on June 20, 1989.

On May 4, 1989, the Knox County Department of Air Pollution Control requested delegation of NSPS Subpart QQQ, VOC Emissions from Petroleum Wastewater Systems. After a thorough review of the request, the Division Director determined that such a delegation was appropriate for this source category with all the conditions set forth in delegation letters of May 20, 1977, and December 15, 1985, and delegated them to Knox County on May 14, 1989.

On January 6, 1989, the State of Tennessee submitted several NSPS and NESHAP regulations and requested delegation for those source categories. Their NSPS and NESHAP regulations go through the same process as State Implementation Plan revisions. Once the NSPS or NESHAP is State-effective, it is submitted to EPA. EPA reviewed the regulations and discovered that the submitted version of some source categories was outdated. Before EPA would delegate those source categories to Tennessee, Tennessee was required to submit a letter committing to update the outdated NSPS and NESHAP standards. The letter was received June 5, 1989. The NSPS and NESHAP which were requested are listed below:

40 CFR Part 60 Subpart
- D—Fossil-Fuel-Fired Steam Generators for Which Construction is Commenced after April 3, 1972 (R)
- Da—Electric Utility Steam Generating Units for Which Construction is Commenced After September 8, 1978 (R)
- Db—Industrial-Commercial-Institutional Steam Generating Units
- I—Hot Mix Asphalt Facilities (R)
- J—Petroleum Refineries (R)
- N—Iron and Steel Plants (R)
- Na—Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.
- T—Phosphate Fertilizer Industry: Wet Phosphoric Acid Plants (R)
- U—Phosphate Fertilizer Industry: Superphosphoric Acid Plants (R)
- V—Phosphate Fertilizer Industry: Diammonium Phosphate Plants (R)
- W—Phosphate Fertilizer Industry: Triple Superphosphate Plants (R)
- AA—Steel Plants: Electric Arc Furnaces Constructed After October 24, 1974, and on or Before August 17, 1983 (R)
- AAa—Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Cosntructed After August 7, 1983
- BB—Kraft Pulp Mills (R)
- CC—Glass Manufacturing Plants (R)
- EE—Surface Coating of Metal Furniture
- GG—Stationary Gas Turbines (R)
- HH—Lime Manufacturing Plants (R)
- KK—Lead-Acid Battery Manufacturing Plants
- MM—Automobile and Light-Duty Truck Surface Coating Operations
- NN—Phosphate Rock Plants
- QQ—Graphic Arts Industry: Publication Rotogravure Printing

RR—Pressure Sensitive Tape and Label Surface Coating Operations
SS—Industrial Surface Coating: Large Appliances
TT—Metal Coil Surface Coating
UU—Asphalt Processing and Asphalt Roofing Manufacture
VV—Equipment leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry
WW—Beverage Can Surface Coating Industry
XX—Bulk Gasoline Terminals
FFF—Flexible Vinyl and Urethane Coating and Printing
GGG—Equipment Leaks of VOC in Petroleum Refineries
HHH—Synthetic Fiber Production Facilities
JJJ—Petroleum Dry Cleaners
KKK—Equipment Leaks of VOC from Onshore Natural Gas Processing Plants
LLL—Onshore Natural Gas Processing: $SO_2$ Emissions
OOO—Nonmetallic Mineral Processing Plants
PPP—Wool Fiberglass Insulation Manufacturing Plants
TTT—Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines

40 CFR Part 61 Subpart
E—Mercury (R)
F—Vinyl Chloride (R)
J—Equipment Leaks (Fugitive Emission Sources) of Benzene
N—Inorganic Arsenic Emissions from Glass Manufacturing Plants
O—Inorganic Arsenic Emissions from Primary Copper Smelters
P—Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities
V—Equipment Leaks (Fugitive Emissions Sources)

After a thorough review of the request, EPA's Division Director determined that such a delegation was appropriate for these source categories with all the conditions set forth in the delegation letters of April 11, 1980, and delegated them to Tennessee on June 27, 1989.

I certify, pursuant to 5 U.S.C. section 605(b), that these delegations will not have a signficant impact on a substantial number of small entities.

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

**Authority:** Secs. 111 and 112 of the Clean Air Act (42 U.S.C. 7411 and 7412).

Dated: August 14, 1989.

**Greer C. Tidwell,**

*Regional Administrator.*

[FR Doc. 89-19979 Filed 8-23-89; 8:45 am]

BILLING CODE 6560-50-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 46 CFR Part 151

[CGD 81-082]

RIN 2115-AA70

### Unmanned Barges Carrying Certain Bulk Dangerous Cargoes

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of withdrawal.

**SUMMARY:** On June 4, 1984, an advance notice of proposed rulemaking (ANPRM) concerning the revision of rules in 46 CFR part 151 for barges carrying bulk cargoes was published in the **Federal Register** (49 FR 23085). This rulemaking project is being withdrawn because the amendments that this project would have made have since been made under other Coast Guard rulemakings.

**DATE:** The advance notice of proposed rulemaking is withdrawn as of August 24, 1989.

**FOR FURTHER INFORMATION CONTACT:** Mr. T.J. Felleisen, Office of Marine Safety, Security and Environmental Protection (G-MTH-1), Room 1214, U.S. Coast Guard Headquarters, Washington, DC 20593-0001, (202) 267-1217.

Dated: August 18, 1989.

**J.D. Sipes,**

*Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.*

[FR Doc. 89-20005 Filed 8-23-89; 8:45 am]

BILLING CODE 4910-14-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 0

[Gen. Dkt No. 89-44; DA 89-943]

### Measuring Electromagnetic Emission From Digital Devices

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; extension of reply comment time.

**SUMMARY:** The Chief Engineer, in response to several requests for a 60-day extension, granted an additional 30-day time period in which to file reply comments in the proceeding to revise the FCC procedure for testing digital devices (TP-5). The additional time will give interested parties the necessary time to file meaningful reply comments.

**DATES:** The new date for filing reply comments is September 6, 1989.

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

**FOR FURTHER INFORMATION CONTACT:** Richard Fabina, FCC Laboratory, 301-725-1585.

**SUPPLEMENTARY INFORMATION:** The Notice of Proposed Rule Making was published at 54 FR 11415, March 20, 1989.

### Order Extending Time to File Reply Comments

In the matter of Procedure for measuring electromagnetic emissions from digital devices.

Adopted: August 4, 1989.

Released: August 7, 1989.

By the Chief Engineer:

1. A Notice of Proposed Rule Making in the above entitled proceeding, FCC 89-53, was adopted by the Commission on February 13, 1989, and released on March 7, 1989. Comments in this proceeding originally due May 8, 1989, were extended twice—30 days each time by two separate Commission Orders. The dates for Reply comments originally due June 7, 1989, were extended the same amount of time by each Order. The date for filing comments expired on July 7, 1989. Reply comments are currently due on August 7, 1989.

2. The Computer and Business Equipment Manufacturers Association ("CBEMA") filed with the Commission a petition requesting an additional 60 day extension of the time for filing reply comments. The petitioner expresses the opinion that additional time is needed because the substantial changes to the proposed digital device measurement procedure have elicited comments from more than 24 different parities. The issues raised in these comments are substantive and warrant full investigation before reply comments may be submitted. Separate petitions filed by Hewlett-Packard and Tandy Corporation support CBEMA's motion.

3. Because of the complexity and technical nature of this proceeding, as well as our desire to have a fully developed record before us, we are persuaded that a 30 day extension of the reply comment date is warranted. A 60 day extension is not justifiable because of the two previous 30 day extensions.

4. Accordingly, it is ordered, Pursuant to the delegated authority contained in 47 CFR 0.241(a)(5), that the period of time for the filing of reply comments in

the above proceeding is extended until September 6, 1989.

Thomas P. Stanley,

*Chief Engineer.*

[FR Doc. 89-19933 Filed 8-23-89; 8:45 am]

BILLING CODE 6712-01-M

## 47 CFR Part 15

**[Gen. Docket Nos. 89-116, 89-117 and 89-118; DA 89-973]**

## Procedure for Measurement of Intentional Radiators; Extension of Comment Period

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; extension of time.

**SUMMARY:** The Chief Engineer, in response to several requests for a 60-day extension, granted an additional 30-day time period in which to file comments in the proceeding to revise the FCC procedure for testing intentional radiators (TP-3), unintentional radiators (TP-4) and radio control and security devices and their associated receivers (TP-6) (54 FR 28690-28693, July 7, 1989). The additional time will give interested parties the necessary time to file meaningful comments.

**DATES:** Comments to be filed on or before September 11, 1989 and reply comments to be filed on or before October 9, 1989.

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

**FOR FURTHER INFORMATION CONTACT:** Richard Fabina, FCC Laboratory, 301-725-1585.

**SUPPLEMENTARY INFORMATION:**

In the matter of: FCC procedure for measurement of intentional radiators (except for periodic and spread spectrum devices and devices operating below 30 MHz); FCC procedure for measuring RF emissions from intentional radiators with periodic operation and associated superregenerative receivers; FCC procedure for measurement of unintentional radiators (except digital devices and devices operating below 30 MHz).

Adopted: August 14, 1989

Released: August 16, 1989

By the Chief Engineer: 1. Notices of Proposed Rule Making in the above entitled proceedings, FCC 89-154, FCC 89-155 and FCC 89-156, respectively, were adopted by the Commission on May 12, 1989, and released on June 29, 1989. Comments and reply comments in these proceedings are due on August 21, 1989, and September 5, 1989, respectively.

2. On July 28, 1989, the Computer and Business Equipment Manufacturers Association (CBEMA) filed with the Commission a petition requesting an extension of the time for filing comments in these proceedings to October 9, 1989. A concurrent proceeding in General Docket No. 89-44 is seeking to revise the FCC established measurement procedure for digital devices. The measurement procedures in these proceedings are similar in many aspects, indeed, have the same foundation in RF emission measurement techniques as the digital device measurement procedure proposed in Gen. Docket No. 89-44. Since many of the its members are expected to expand their interests into other low power uses of the RF spectrum, CBEMA is asking for more time for its members to adequately evaluate the proposals in these proceedings.

3. On August 3, 1989, Compaq Computer Corporation (Compaq) filed a petition supporting the CBEMA petition requesting a 60 day extension on the date for filing comments in these proceedings. The Compaq petition essentially states the same reasons for the requested 60 day extension.

4. The Commission values contributions made to the development of national measurement standards by organizations such as CBEMA and Compaq. Because of the additional information and experience which can be added to these proceedings by CBEMA, Compaq and others, as well as our desire to have a fully developed record before us in each proceeding, it has been determined that an extension of the reply comment date in each proceeding is warranted. However, due to our desire to resolve these proceedings as soon as possible, we feel that extending the reply comment period as requested will prolong these proceedings unnecessarily. We believe that the concerns of all interested parties can still be resolved by extending the comment period in each proceeding by 30 days, instead of the requested 60 days. Accordingly, it is ordered, pursuant to the delegated authority contained in 47 CFR 0.241(a)(5), that the period of time for the filing comments in the above proceedings is extended until September 11, 1989, and the time for filing of reply comments is extended until October 9, 1989.

Thomas P. Stanley,

*Chief Engineer.*

[FR Doc. 89-19935 Filed 8-23-89; 8:45 am]

BILLING CODE 6712-01-M

# DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 640

**[Docket No. 90893-9193]**

**RIN 0648-AC29**

## Spiny Lobster Fishery 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 2 to the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic (FMP). This proposed rule would establish a regulatory amendment procedure for the future implementation of specified types of gear and harvest restrictions applicable to the fishery in the exclusive economic zone (EEZ). The intended effects of this proposed rule are to provide a more flexible and timely system implementing rules governing the conduct of the spiny lobster fishery, enhance cooperative Florida (State)/federal management, reduce federal management costs, improve the effectiveness of necessary rules, and presumably increase productivity from the resource.

**DATE:** Written comments must be received on or before October 10, 1989.

**ADDRESSES:** Comments on this proposed rule and requests for copies of Amendment 2 which incorporates the draft regulatory impact review (RIR) and the draft environmental assessment (EA) should be sent to Michael E. Justen, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

**FOR FURTHER INFORMATION CONTACT:** Michael E. Justen, 813-893-3722.

**SUPPLEMENTARY INFORMATION:** The spiny lobster fishery 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 640, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Amendment 2, prepared jointly by the Councils, proposes a regulatory amendment procedure to implement or modify certain gear and harvest limitations, as a substitute for the costly, time-consuming FMP amendment process presently required for such actions. Amendment 2 also modifies in the FMP several of the issues, a management objective, the statement of optimum yield, and the habitat section and adds a new section on vessel safety to the FMP.

The directed fishery for spiny lobsters occurs entirely within or off the waters of Florida with the principal harvest area being the Florida Keys reef tract. Consequently, the great preponderance of landings have occurred in Monroe County, Florida (96 percent in 1984). East coast landings have occurred primarily in Dade County (Miami area), Florida. Landings of smaller amounts and/or of a sporadic nature have

occurred in other east and west coast Florida counties. Over 90 percent of spiny lobsters consumed in the U.S. are imported. Management of the fishery has been based on rules almost entirely developed by the State of Florida.

The FMP provides management authority only for that part of the fishery operating in the EEZ. The fishery within State waters remains under State authority. To achieve its conservation and management objectives of protecting the fishery throughout its range and to effectively coordinate management with the State, the FMP, as implemented in 1982, complemented the State's management regime. Subsequent amendments have largely extended State rules into the EEZ. However, some measures implemented in the EEZ were different from those of the State. In 1984, the Councils prepared Amendment 1 in an attempt to resolve the remaining State/federal management incompatibilities and generally to improve management of the resource. Although the State, through its representative on the two Councils, had extensive input during the 3-year development process of Amendment 1, the resulting state and federal regulations implemented in 1987 still contained significant incompatibilities with regard to bag and size limits, permits, and use of undersized lobsters as attractants. These incompatibilities are largely due to changes by the State during the lengthy period required to implement a change via an amendment to the FMP and exemplify the differences in the relative responsiveness of the federal and state management systems.

Concern over the difficulties experienced in implementing compatible regulations prompted the Councils, the Florida Marine Fisheries Commission (FMFC), and the Director, Southeast Region, NMFS (Regional Director) to pursue alternative state/federal management structures that would optimize the use of limited state and federal resources, prevent duplication of effort, and make maximum use of the existing State regime. Accordingly, Amendment 2 proposes a procedure whereby the FMFC may request the Regional Director to implement in the EEZ by regulatory amendment, with Councils' oversight, modification to certain gear and harvest limitations applicable to State waters that were proposed by the FMFC and approved by the Florida Governor and Cabinet. The regulatory amendment process requires publication of a proposed rule in the Federal Register, a public comment period, and, if the rule is approved, publication of a final rule in the Federal Register.

Under Amendment 2, the Councils, FMFC, and NMFS would adopt a protocol that describes the roles and positions of the federal and State governments in the management of the spiny lobster fishery. The provisions of the protocol are as follows:

1. The Councils and NMFS acknowledge that the fishery is a State fishery (which extends into the EEZ) in terms of current participants in the directed fishery, major nursery, fishing, and landing areas, and historical regulation; and it is a fishery requiring cooperative State/federal efforts for effective management through an FMP.

2. The Councils and NMFS acknowledge that the State is managing and will continue to manage the resource to protect and increase the long-term yields and prevent depletion of the lobster stocks and that the State Administrative Procedure Act and rule implementation procedures, including final approval of the rules by Governor and Cabinet, provide ample and fair opportunity for all persons to participate in the rulemaking procedure.

3. The FMFC acknowledges that rules proposed for implementation under this amendment must be consistent with the management objectives of the FMP, the national standards, other provisions of the Magnuson Act, and other applicable federal law. Federal rules will be implemented in accordance with regulatory amendment procedures.

4. The Councils and NMFS agree that, for any of the rules defined within this amendment, the State may propose the rule directly to NMFS, concurrently informing the Councils of the nature of the rule, and that NMFS will implement the rule within the EEZ provided it is consistent under protocol number 3. If either of the Councils informs NMFS of its concern over the rule's inconsistency with protocol number 3, NMFS will not implement the rule until the Councils, FMFC, and NMFS or their representatives meet and resolve the issue (i.e., until the Council has withdrawn its objection).

5. The State will have the responsibility for collecting and developing the information upon which to base the fishing rules, with assistance by NMFS as needed, and will cooperatively share the responsibility for enforcement with federal agencies.

6. FMFC will provide to NMFS and to the Councils written explanations of its decisions related to each of the rules (including a statement of the problem that the rulemaking addresses, how the rule will solve the problem, and how interested parties were involved in the rulemaking), summaries of public comments, biological, economic and social analyses of the impacts of the proposed rule and alternatives, and such other information that is relevant.

7. The rules will apply to the EEZ for the management area (North Carolina to Texas) unless the Regional Director determines they may adversely impact other state and federal fisheries. In that event, the Regional Director may limit the application of the rule, as necessary, to address the problem.

8. NMFS agrees that its staff will prepare the proposed federal rule. The Councils agree that their staffs, with assistance by the staffs of FMFC and NMFS, will prepare the EA/RIR and other documents required in support of the rule.

The Councils believe that using a regulatory amendment procedure for implementation by the Regional Director, under oversight by the Councils, of certain types of rules adopted by the State has the following advantages:

1. It provides a more flexible and timely system that should result in compatible rules between State and federal jurisdictions.

2. It provides ample and fair opportunity for public input into the rulemaking process through state hearings and workshops, Council oversight, and public comment to NMFS on the proposed rule.

3. It is more cost-effective by (a) allowing the Councils and the Regional Director to use public hearing information gathered by and socioeconomic analyses prepared by the State, (b) increasing enforcement effectiveness through compatible State/federal rules, and (c) shifting the costs of data gathering and interpretation to the State.

4. It provides the Councils with opportunity to review each rule for consistency with the FMP objectives and the Magnuson Act and ensures that Councils' concerns regarding consistency are resolved before a rule may be implemented.

5. It does not prohibit the Councils from exercising their amendment or public hearing authority for changes to the FMP.

6. It provides the State with a more responsive management system for the EEZ portion of a fishery that is largely a State fishery (99.3 percent of spiny lobster permit holders in 1986 were State residents), whereas previously, by virtue of the localized geographical scope of the spiny lobster fishery, the Councils placed higher priority on

amending FMPs with regional application, thereby delaying implementation of compatible rules and adversely impacting effective management of the fishery.

7. It assures that the management objectives of the Council and FMFC are carried out in a manner that more effectively benefits the resource and user groups, within the standards of the Magnuson Act and the standards of the FMFC.

Concomitant with the proposed regulatory amendment procedure for changing certain gear and harvest limitations, Amendment 2 proposes to (1) amend and add to the issues of the "Problems and Issues in the Fishery" identified in the FMP; (2) add to the FMP a "Management Objective" to provide for a more flexible management system that minimizes regulatory delay, thus assuring more effective, cooperative State and federal management of the fishery; (3) modify the statement of optimum yield to remove numerically specified minimum legal carapace and tail lengths, thus permitting modification of those lengths by the regulatory amendment process contained in Amendment 2; (4) add a "Vessel Safety" section; and (5) update the "Habitat of the Stocks" section. These amendments and additions are discussed in Amendment 2, the availability of which was published in the **Federal Register** (54 FR 31063, July 26, 1989. The Secretary may adopt the proposed regulatory text in some form other than as an amendment to 50 CFR part 640, or as an appendix to that part.

**Classification**

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended by Public Law 99-659, requires the Secretary of Commerce (Secretary) to publish regulations proposed by a Council within 15 days of receipt of an amendment and regulations. At this time, the Secretary has not determined that Amendment 2, 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 that determination, will take into account the data, views, and comments received during the comment period.

The Councils prepared within Amendment 2 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.

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 within Amendment 2 a regulatory impact review (RIR) which concludes that this rule, if adopted, would have the economic effect of reducing federal spiny lobster management costs. A copy of the draft RIR may be obtained at the address listed above.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities because the rule would only establish a procedure for the future implementation of specified types of gear and harvest restrictions on fishing in the EEZ. Each future action will be accompanied by an RIR and, if it will have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis will be prepared. As a result, a regulatory flexibility analysis was not prepared for this rule to implement Amendment 2.

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 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.

This proposed rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

The Deputy Assistant Secretary of Commerce for Intergovermental Affairs has determined that Amendment 2 and this proposed rule have sufficient federalism implications to warrant preparation of a federalism assessment (FA) under E.O. 12612. Because section 304(a)(1)(D)(ii) of the Magnuson Act requires the Secretary to publish regulations proposed by a Council within 15 days of receipt, there is insufficient time to prepare an FA prior to publication. However, an FA is being prepared and will be available, upon request, at the address listed above approximately 10 days after the date this rule is published in the **Federal Register**. Based on a preliminary analysis, there are no provisions or elements of Amendment 2 or this proposed rule that are inconsistent with the principles, criteria, and requirements set forth in sections 2 through 5 of E.O. 12612. Further, Amendment 2 and the proposed rule would not appear to affect Florida's ability to discharge traditional state governmental functions, or other aspects of state sovereignty. The FA will address these preliminary determinations as well as the extent to which Amendment 2 and this proposed rule will impose costs or burdens on Florida, and Florida's ability to carry out its responsibilities under Amendment 2 and this proposed rule.

**List of Subjects in 50 CFR Part 640**

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: August 16, 1989.

**James E. Douglas, Jr.,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For reasons set forth in the preamble, 50 CFR Part 640 is proposed to be amended as follows:

## PART 640—SPINY LOBSTER FISHERY OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for the part 640 continues to read as follows:

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

2. Section 640.24 is redesignated as § 640.25 and a new § 640.24 is added to read as follows:

### § 640.24 Modification of gear and harvest limitations.

(a) *Applicability.* The following specified types of rules applicable to the spiny lobster fishery in the EEZ may be established or modified in accordance with the procedures of paragraphs (b), (c), and (d) of this section:

(1) Gear limitations:

(i) Setting the number of traps that may be fished by each vessel;

(ii) Prescribing the construction characteristics of traps, including escape gaps;

(iii) Specifying gear and vessel identification requirements;

(iv) Specifying gear that may be used or prohibited in a directed fishery;

(v) Specifying bycatch levels that may be taken as incidental catch in a non-directed fishery; and

(vi) Specifying the soak or removal periods for traps and the procedures for removal of lost or abandoned traps.

(2) Harvest limitations:

(i) Specifying the recreational bag and possession limits;

(ii) Specifying fishing seasons;

(iii) Restricting use, possession, and handling of undersized lobsters; and

(iv) Specifying minimum legal size limits.

(b) *Initiation.* (1) After final approval by the Florida Governor and Cabinet of a rule proposed by the Florida Marine Fisheries Commission (FMFC), the FMFC will advise the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and the Regional Director of any rule within the scope of paragraph (a) of this section that the FMFC is recommending for implementation in the EEZ by regulatory amendment. Such written recommendation must include:

(i) The FMFC rule;

(ii) The proposed implementation date;

(iii) A statement of the problem that the rule addresses and how the rule will solve the problem;

(iv) A summary of the best available scientific information relative to the problem;

(v) Alternatives to the rule that were considered by the FMFC;

(vi) Analyses of the biological, economic, and social impacts of the rule and the alternatives;

(vii) A statement of how interested persons were involved in the rulemaking and a summary of public comments; and

(viii) Such other information that is relevant.

(2) For a rule to be implemented by the start of the next fishing season, an FMFC rule and recommendation that is consistent with the criteria specified in paragraph (c)(1) of this section must be provided to the Councils and the Regional Director not later than 6 months before the start of the fishing season. The effective date of an FMFC rule implemented under this procedure will be the starting date of the next fishing season following final approval of the regulatory amendment unless otherwise agreed upon by the FMFC, the Councils, and the Regional Director.

(3) The Councils will submit the rule and supporting analyses to their Scientific and Statistical Committees who will advise the Regional Director of the scientific validity of the analyses. The Councils will also submit the rule and supporting analyses to their advisory panels for comment to the Councils and the Regional Director.

(4) If either Council judges the FMFC rule to be inconsistent with the Magnuson Act or the objectives of the FMP, that Council will so advise the other Council, the Regional Director, and the FMFC of that judgment. In that event, the Regional Director will not proceed with implementation of the FMFC rule until the issue of consistency is resolved (i.e., until the Council has withdrawn its objection).

(5) With assistance from the FMFC, the Councils will prepare such supporting documentation (environmental assessment/environmental impact statement, regulatory impact review, regulatory flexibility analysis) as may be required.

(c) *Review.* The Regional Director will review the FMFC rule and recommendations, the supporting analyses, and the supporting documentation. If the Regional Director preliminarily concludes that the rule is consistent with the national standards, other provisions of the Magnuson Act, other applicable law, and the objectives of the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic (FMP) and that the FMFC rule and recommendation are consistent with the scope and procedures of paragraphs (a) and (b) of this section, he will notify the Councils and the FMFC of his intent to implement the FMFC rule in the EEZ by regulatory amendment. If he concludes that the FMFC rule or recommendation is not consistent, he will immediately notify the Councils and the FMFC. The Councils and the FMFC will be given an opportunity to correct a deficiency in the FMFC rule or recommendation, the record, or the supporting documents.

(d) *Implementation.* (1) When the Regional Director preliminarily concludes that the FMFC rule and recommendation are consistent with the criteria specified in paragraph (c) of this section, provided any issue of consistency raised by a Council has been resolved, the Regional Director will draft and the Secretary will publish in the **Federal Register** a Federal proposed rule with a 30-day public comment period.

(2) After reviewing any public comment, if the Regional Director finally concludes that the rule is consistent with the criteria specified in paragraph (c) of this section, the Secretary will publish in the **Federal Register** the final rule.

[FR Doc. 89-19786 Filed 8-18-89; 9:40 am]
BILLING CODE 3510-22-M

# Notices

Federal Register
Vol. 54, No. 163
Thursday, August 24, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forms Under Review by Office of Management and Budget

August 18, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Public Law 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC. 20250, (202) 447–2118.

**Revision**

• Agricultural Research Service
Patent License Application
AD–761
On occasion
Individuals or households; State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Non-profit Institutions; Small businesses or organizations; 100 responses; 300 hours; not applicable under 3504(h)
Willard J. Phelps (301) 344–4032

• Farmers Home Administration
7 CFR 1930–C, Management and Supervision of Multiple Family Housing
Borrowers and Grant Recipients
FmHA 444–27A, 1944–8, –25, –27, –29, 1930–5, –6, –7, and –8
Recordkeeping; On occasion; Monthly
Individuals or households; State or local governments; Farms; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 1,701,985 responses; 1,985,534 hours; not applicable under 3504(h)
Jack Holston (202) 382–9736

• Farmers Home Administration
7 CFR 1944–E, Rural Rental Housing Loan Policies, Procedures and Authorizations
FmHA 1944–7, –33, –34, –35
On occasion
State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 20,935 responses; 139,630 hours; Not applicable under 3504(h)
Jack Holston (202) 382–9736
Extension

• Foreign Agriculture Service
Importation or Sugar; Free From Quota
FAS–947
On occasion; Weekly; Monthly; Quarterly; Annually
Businesses or other for-profit; 1,395 responses; 1,885 hours; not applicable under 3504(h)
Allen Vandergriff (202) 447–2916

**Donald E. Hulcher,**
*Acting Departmental Clearance Officer.*

[FR Doc. 89–19987 Filed 8–23–89; 8:45 am]
BILLING CODE 3410–01–M

## Federal Crop Insurance Corporation

### Nominations for Appointment to the Federal Crop Insurance Commission

The Federal Crop Insurance Corporation (FCIC) solicits, on behalf of the Secretary of Agriculture, nominations for appointment to fill one vacancy on the Congressionally created Federal Crop Insurance Commission (the "Commission"). The Commission was created by the Federal Crop Insurance Act of 1988 (Pub. L. 100–546) (the "Act").

The Act provides for the establishment of a commission to study problems with respect to participation in the crop insurance program; program operations; and ways to improve crop insurance. The Commission consists of twenty one voting members and four non-voting members. The Secretary of Agriculture has appointed ten (10) individuals representing various constituencies of the insurance industry, and ten (10) individuals representing agricultural producer interests. The Manager of FCIC also serves as a voting member and the Chairman and Ranking Minority Members of the House and Senate Agriculture Committees also serve as non-voting members of the Commission.

Nominations from interested parties are hereby solicited to fill one vacancy on the Commission according the following criteria in section 4.(b)(1)(A) of Public Law 100–546:

(A) Four (4) individuals who will represent the views of the companies (for managing general agencies which write crop insurance through other companies) that:

(1) Have a 1989 Reinsurance Agreement under the Federal Crop Insurance Act; and

(2) For the 1967 crop year, wrote the greatest dollar volume of federally reinsured crop insurance;

The Department of Agriculture's programs are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, or marital status. Further, it is the Secretary of Agriculture's policy that membershp on USDA boards and committees reflect, to the extent practicable, the diversity of individuals served by the programs.

Nominations to the Commission in response to this notice are accepted by the filing of a National Agency Check Standard Form (SF–85A).

Interested parties may request a National Agency Check Standard Form (SF–85A), either in writing or by telephone, from Peter F. Cole, Secretary, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

Nominations should be mailed to Peter F. Cole at the above address. For timely consideration, completed SF–85A Forms must be received by not later than September 12, 1989.

Done in Washington, DC on August 15, 1989.

**John Marshall,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 89-20004 Filed 8-23-89; 8:45 am]

BILLING CODE 3410-08-M

## Forest Service

### Mallard Timber Sales; Nez Perce National Forest; Idaho County, Idaho

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; intent to prepare an environmental impact statement.

**SUMMARY:** Notice is hereby given that the Forest Service will prepare an environmental impact statement (EIS) to be known as the Mallard EIS on a proposal to build roads and harvest timber in Mallard Roadless Area 1847, which lies about 36 miles southeast of Grangeville, Idaho. This roadless area is proximate to the Frank Church-River of No Return Wilderness on the south and east; and effects of proposed development have been highly controversial in the past.

**DATE:** Written comments and suggestions should be received on or before September 25, 1989.

**ADDRESS:** Submit comments and suggestions to the District Ranger, Red River Ranger District, Nez Perce National Forest, Box 23, Elk City, ID. 83525.

**FOR FURTHER INFORMATION CONTACT:** Mark Peterson, Supervisory Forester, Red River Ranger District, Elk City, Idaho 83525, telephone (208) 842-2255.

**SUPPLEMENTARY INFORMATION.** The proposed action to be analyzed in this EIS calls for harvest of timber on 1,140 acres over ten years. Collector and local roads would be constructed. A range of alternatives to this proposed action will be considered, including no action (nondevelopment of the roadless area). The EIS will tier to the Nez Perce Forest Plan and Forest Plan EIS. The purpose of the proposed action is to help satisfy short-term demands for timber and to move toward an equal distribution of timber age classes on suitable lands.

On March 12, 1986, notice was published in the **Federal Register** (51 FR 8524) that an environmental impact statement would be prepared to assess the effects of a transportation system and associated timber sales within the Jersey Creek, Noble Creek, and Big Mallard Creek areas. Analysis began on schedule, but was delayed until the Nez Perce Forest Plan was approved in October, 1987. Further analysis after that date indicated that the scope of the proposed action was likely too broad for reasonably thorough site-specific treatment in a single EIS. As a result of this additional analysis two separate proposed actions were formulated. The original notice of intent was cancelled (54 FR 32677); this notice is one of the two which replace it.

All management activities proposed in the Mallard EIS would occur within Roadless Area 1847. Similar management activities are planned at about the same time entirely within Roadless Area 1921; these will be considered separately in the Cove EIS. The two roadless areas are separated by a road corridor, and although the proposed actions are similar and could possibly be treated in the same EIS (40 CFR 1508.25 (a)(3)), the scope of the combined proposals is such that the best way to adequately assess reasonable alternatives and combined impacts is to prepare an EIS for activities proposed within each roadless area.

The two proposed actions may have cumulatively significant impacts on some environmental components in both roadless areas. For example, the Big Mallard Creek drainage would be affected by both proposed actions. Therefore, discussions of fisheries and water quality in this drainage in each EIS will include activities proposed in the other EIS and the combined impact of all activities. Evaluations of impacts on threatened or endangered species habitat will be handled in like manner. Analysis may show further combined treatments to be necessary.

The actions are not connected. The timber harvest and road construction proposed in either roadless area would not automatically trigger actions in the other which may require an environmental impact statement. Either action could proceed without the other; and neither depends upon a larger action for justification.

Primitive area and wilderness possibilities of Roadless Area 1847 have been examined several times over the past 53 years by both the Forest Service and Congress. It was excluded from the Frank Church-River of No Return Wilderness in the Central Idaho Wilderness Act and was not recommended for wilderness or continued roadless management in the Nez Perce Forest Plan.

Public participation in the environmental analysis for the proposed projects was first solicited in the spring of 1986. Two hundred letters were sent to individuals, organizations, and government agencies. Public meetings were held at Red River Ranger Station and Grangeville. Comments on the draft Forest Plan EIS specific to Roadless Area 1847 were reviewed.

Among the issues identified to date are those associated with the magnitude of impacts on:

1. Fish habitat, water quality, and riparian areas;
2. Threatened or endangered species;
3. Big game habitat;
4. Commercial outfitters;
5. Recreational use of the area;
6. Visual quality;
7. Wilderness characteristics.

Considerable interest has also been shown in the silvicultural treatment of high-risk, decadent stands and the economics of timber sales in the area.

Development of alternatives is underway, and additional comments or questions are being solicited at this time. Consultation with the U.S. Fish and Wildlife Service will be initiated with regard to listed species. Letters explaining the division of the project into two proposed actions to be considered in two EISs together with maps of the proposed actions will be sent to those who received previous mailings. No public meetings are scheduled, but they will be arranged if necessary. While public participation in the development of the Mallard EIS is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the draft environmental impact statement (DEIS), which is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in December, 1989. The Cove EIS is on a similar schedule.

A 45-day comment period will follow publication of a notice of availability of the DEIS in the **Federal Register.** The comments received will be analyzed and considered in preparation of a final environmental impact statement (FEIS). The FEIS is scheduled to be completed by May, 1990; and a decision will be made and documented in a Record of Decision.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S, 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact

statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.*, v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so 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 environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3.

I am the responsible official for this environmental impact statement.

Dated: August 17, 1989.

Tom Kovalicky,

*Forest Supervisor, Nez Perce National Forest.*

[FR Doc. 89-19948 Filed 8-23-89; 8:45 am]

BILLING CODE 3410-11-M

## Cove Timber Sales; Nez Perce National Forest; Idaho County, Idaho

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; intent to prepare an environmental impact statement.

**SUMMARY:** Notice is hereby given that the Forest Service will prepare an environmental impact statement (EIS) to be known as the Cove EIS on a proposal to build roads and harvest timber in Gospel-Hump (Jersey-Jack) Roadless Area 1921, which is about 33 miles southeast of Grangeville, Idaho. This roadless area is proximate to the Frank Church-River of No Return Wilderness and effects of proposed development have been highly controversial in the past.

**DATE:** Written comments and suggestions should be received on or before September 25, 1989.

**ADDRESS:** Submit comments and suggestions to the District Ranger, Red River Ranger District, Nez Perce National Forest, Box 23, Elk City, ID. 83525.

**FOR FURTHER INFORMATION CONTACT:** Mark Peterson, Supervisory Forester, Red River Ranger District, Elk City, Idaho 83525, telephone (208) 842-2255.

**SUPPLEMENTARY INFORMATION:** The proposed action to be analyzed in this EIS calls for harvest of timber on 2,200 acres over ten years. Collector and local roads would be constructed. A range of alternatives to this proposed action will be considered, including no action (nondevelopment of the roadless area). The EIS will tier to the Nez Perce Forest Plan and Forest Plan EIS. The purpose of the proposed action is to help satisfy short-term demands for timber and to move toward an equal distribution of timber age classes on suitable lands.

Entry into the area was originally scheduled for 1981. Planning began soon after the Frank Church-River of No Return Wilderness boundary was established in law by the Central Idaho Wilderness Act of 1980 (Pub. L. 96-312) and culminated in four environmental assessments. The first of these dealt with a 14.2-mile collector road, and the other three addressed individual timber sales to be served by the road.

The Forest Supervisor's decision to approve what soon came to be known as the "Jersey-Jack Road" was issued in February, 1981. The decision was appealed in April, and the Forest was upheld by both the Regional Forester and the Chief of the Forest Service. The appellants then took the decision to court and in February, 1985 the Ninth Circuit Court of Appeals in *Thomas* v. *Peterson*, 753 F. 2d 754, 755 ruled that the Forest must "prepare an Environmental Impact Statement(EIS) that analyzes the combined impacts of the road and the timber sales that the road is designed to facilitate."

On March 12, 1986, notice was published in the **Federal Register** (51 FR 8524) that an environmental impact statement would be prepared to assess the effects of a transportation system and associated timber sales within the Jersey Creek, Noble Creek, and Big Mallard Creek areas. Analysis began on schedule, but was delayed until the Nez Perce Forest Plan was approved in October, 1987. Further analysis after that date indicated that the scope of the proposed action was likely too broad for reasonably thorough site-specific treatment in a single EIS. As a result of this additional analysis two separate proposed actions were formulated. The original notice of intent was cancelled (54 FR 32677); this notice is one of the two which replace it.

All management activities proposed in the Cove EIS would occur within Roadless Area 1921. Similar management activities are planned at about the same time entirely within Roadless Area 1847; these will be considered separately in the Mallard EIS. The two roadless areas are separated by a road corridor, and although the proposed actions are similar and could possibly be treated in the same EIS (40 CFR 1508.25 (a)(3)), the scope of the combined proposals is such that the best way to adequately assess reasonable alternatives and combined impacts is to prepare an EIS for activities proposed within each roadless area.

The two proposed actions may have cumulatively significant impacts on some environmental components in both roadless areas. For example, the Big Mallard Creek drainage would be affected by both proposed actions. Therefore, discussions of fisheries and water quality in this drainage in each EIS will include activities proposed in the other EIS and the combined impact of all activities. Evaluations of impacts on threatened or endangered species habitat will be handled in like manner. Analysis may show further combined treatments to be necessary.

The actions are not connected. The timber harvest and road construction proposed in either roadless area would not automatically trigger actions in the other which may require an environmental impact statement. Either action could proceed without the other; and neither depends upon a larger action for justification.

Primitive area, wilderness, and roadless possibilities of Roadless Area 1921 have been examined several times over the past 53 years by both the Forest Service and Congress. It was excluded from the Frank Church-River of No Return Wilderness in the Central Idaho Wilderness Act and was not recommended for wilderness or continued roadless management in the Nez Perce Forest Plan.

Public participation in the environmental analysis for the proposed projects was first solicited in the spring of 1986. Two hundred letters were sent to individuals, organizations, and government agencies. Public meetings were held at Red River Ranger Station and Grangeville. Comments on the draft Forest Plan EIS specific to Roadless Area 1921 were reviewed.

Among the issues identified to date are those associated with the magnitude of impacts on:

1. Fish habitat, water quality, and riparian areas;
2. Threatened or endangered species;
3. Big game habitat;
4. Commercial outfitters;
5. Recreational use of the area;
6. Visual quality;
7. Wilderness characteristics.

Considerable interest has also been shown in the silvicultural treatment of high-risk, decadent stands and the economics of timber sales in the area.

Development of alternatives is underway, and additional comments or questions are being solicited at this time. Consultation with the U.S. Fish and Wildlife Service will be initiated with regard to listed species. Letters explaining the division of the project into two proposed actions to be considered in two EISs together with maps of the proposed actions will be sent to those who received previous mailings. No public meetings are scheduled, but they will be arranged if necessary. While public participation in the development of the Cove EIS is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the draft environmental impact statement (DEIS), which is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in December 1989. The Mallard EIS is on a similar schedule.

A 45-day comment period will follow publication of a notice of availability of the DEIS in the Federal Register. The comments received will be analyzed and considered in preparation of a final environmental impact statement (FEIS). The FEIS is scheduled to be completed by May 1990; and a decision will be made and documented in a Record of Decision.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519. 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages. Inc.* v. *Harris.* 490 F. Supp. 1334. 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so 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 environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Ouality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3.

I am the responsible official for this environmental impact statement.

Dated: August 17, 1989.

**Tom Kovalicky,**

*Forest Supervisor, Nez Perce National Forest.*

[FR Doc. 89–19949 Filed 8–23–89; 8:45 am]

BILLING CODE 3410-11-M

## DEPARTMENT OF COMMERCE

### Agency Information Collection Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (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 Oceanic and Atmospheric Administration.

*Title:* Applications and Reports for Scientific Research and Public Display Permits Under the Marine Mammal Protection Act, the Fur Seal Act, and the Endangered Species Act.

*Form Numbers:* NOAA—None; OMB—0648–0084, 0648–0085.

*Type of Request:* Request for reinstatement of previously approved collections.

*Burden:* 487 respondents; 6,393 reporting hours; average hours per response—13 hours.

*Needs and Uses:* Federal law requires permits for either displaying or conducting scientific research on marine mammals or endangered species. Applicants must submit information showing whether their request meets permit standards set by law. Permit holders must submit reports to ensure the conditions of the permit have been followed.

*Affected Public:* State or local governments, businesses or other for profit institutions, federal agencies or employees, nonprofit institutions, small businesses or organizations.

*Frequency:* On occasion, annual.

*Respondent's Obligation:* Required for benefit.

*OMB Desk Officer:* Russell Scarato, 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Russell Scarato, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 17, 1989.

**Edward Michals,**

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 89–19960 Filed 8–23–89; 8:45 am]

BILLING CODE 3510-CW-M

## National Institute of Standards and Technology

### Users and Implementors of Integrated Services Digital Network (ISDN); Workshop

**AGENCY:** National Institute of Standards and Technology (NIST), Commerce.

**ACTION:** Notice.

**SUMMARY:** The National Computer Systems Laboratory (NCSL) at the National Institute of Standards and Technology (NIST) announces the Seventh North American ISDN Users' Forum (NIU–FORUM). The NIU–FORUM will be hosted by U S WEST Communications. The NIU–FORUM was formed in 1988 under the auspices of NIST to create a strong user voice in the implementation of Integrated Services Digital Network (ISDN) and to ensure that the emerging ISDN services meet users' application needs.

**DATES:** The Seventh North American ISDN Users' Forum (NIU–FORUM) will be held at The Hyatt Regency, Phoenix, Arizona, October 9–12, 1989. Tutorials will be conducted on October 9. This FORUM will consist of joint workshops for the User's (IUW) and Implementor's (IIW). The IUW will continue work

identifying, defining, and prioritizing user applications of ISDN. The IIW will continue defining implementation agreements for ISDN. Working group meetings will discuss issues related to the use and implementation of ISDN technology. Manufacturers and service providers are invited to participate in this workshop.

**ADDRESS:** To obtain registration forms for the workshops, companies may contact: ISDN Workshops, Attn: Kim Brashears, National Institute of Standards and Technology, Building 223, Room B364, Gaithersburg, MD 20899, Telephone: (301) 975–4853.

Upon receipt of the completed registration form, additional registration information will then be mailed to the registrant.

**FOR FURTHER INFORMATION CONTACT:** Dawn Hoffman, (301) 975–2937.

**SUPPLEMENTARY INFORMATION:** The registration fee before September 14, 1989, will be $275. After September 15, 1989, the registration fee will be $325. Participants are expected to make their own travel arrangements and accommodations. NIST reserves the right to cancel any part of the workshops.

Dated: August 21, 1989.

**Raymond G. Kammer,**

*Acting Director.*

[FR Doc. 89–19994 Filed 8–23–89; 8:45 am]

BILLING CODE 3510-CN-M

## National Oceanic and Atmospheric Administration

### North Pacific Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's Fishery Planning Committee and the Council's Interim Pacific Northwest Crab Industry Advisory Committee will hold public meetings.

On September 6, 1989, at 8:30 a.m., the Fishery Planning Committee will meet at the North Pacific Council's office, 605 W. 4th Avenue, Suite 306, Anchorage, AK. The Committee will receive an update on the status of the draft sablefish limited access plan, review halibut limited access alternatives, and make recommendations concerning inshore/offshore allocation alternatives, including the course of future Council action.

On September 6 at 9 a.m., the Council's newly-formed Interim Pacific Northwest Crab Industry Advisory Committee will meet at the Alaska Fisheries Science Center, National Marine Fisheries Service, 7600 Sand Point Way, N.E., Seattle, WA. The Committee is being formed as a result of the North Pacific Council's recently-approved Bering Sea/Aleutian Islands King and Tanner Crab Fishery Management Plan, which defers management of the resource to the State of Alaska, while maintaining federal oversight. The Committee will develop operational procedures and provide an opportunity for the Pacific northwest crab industry to develop and to discuss shellfish management proposals. For more information contact the North Pacific Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99501; telephone: (907) 271–2809.

Dated: August 18,1989.

**Richard H. Schaefer,**

*Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 89–19973 Filed 8–23–89; 8:45 am]

BILLING CODE 3510-22-M

### Endangered Marine Mammals

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

**ACTION:** Issuance of Scientific Research Permit No. 675.

**SUMMARY:** On Thursday, April 6, 1989, notice was published in the **Federal Register** (54 FR 13932), that an application (P440) and been filed by Dr. C. Scott Baker, the Department of Health & Human Services, National Cancer Institute, to take by harassment, including photo-identification and the collection of skin biopsies, 400 humpback whales (*Megaptera novaeangliae*) in territorial waters of the United States.

Notice is hereby given that on August 4, 1989, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), the National Marine Fisheries Service Regulations Governing Endangered Fish and Wildlife permits (50 CFR parts 217–222), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), issued a Permit for the above activities subject to the Special Conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Hwy., Rm. 7330, Silver Spring, Maryland 20910;

Director, Alaska Region, National Marine Fisheries Service, NOAA, 709 West 9th Street, Federal Bldg., Juneau, Alaska 99802;

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, Massachusetts 01930;

Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE., BIN C15700, Seattle Washington 98115;

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, Florida 33702;

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731–7415; and

Administrator, Western Pacific Program Office, National Marine Fisheries Service, NOAA, 2570 Dole Street, Room 106, Honolulu, Hawaii 96822–2396.

Dated: August 4, 1989.

**Nancy Foster,**

*Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.*

[FR Doc. 89–19914 Filed 8–23–89; 8:45 am]

BILLING CODE 3510-22-M

### Marine Mammals; Application for Permit; Dr. Thomas N. James (P452)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), and the regulations governing endangered fish and wildlife permit (50 CFR parts 217–222).

1. *Applicant:* Dr. Thomas N. James, President, University of Texas Medical Branch, Galveston, TX 77550–2774.

2. *Type of Permit:* Scientific research under MMPA and scientific purposes under ESA.

3. *Name and Number of Marine Mammals:* sperm whale specimen (*Physeter catodon*) 1½ hearts.

4. *Type of Take:* The applicant requests authorization to import one and one half sperm whale hearts to study the morphological features of the conduction system of sperm whale hearts and to compare the findings to those of other mammalian species. The findings will be useful for understanding the anatomy and function of the hearts of sperm whales. The hearts are fixed in

10% formalin and have been at the University of Osaka, Japan since 1986.

5. *Location of and Duration of Activity:* Importation from University of Osaka, Japan. 2 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Hwy., Room 7324, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the descretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., Room 7324, Silver Spring, Maryland 20910;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg Florida 33702;

Director, Southeast Region, National Marine Fisheries Service, 9450, Koger Blvd., St. Petersburg, Florida 33702.

Dated: August 16, 1989.

**Nancy Foster,**

*Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.*

[FR Doc. 89-19915 Filed 8-23-89; 8:45 am]

BILLING CODE 3510-22-M

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## Marine Mammals; Application for Permit; Dr. Joseph R. Mobley, (P453)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (15 U.S.C. 1361-1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531-1544), and the regulations governing endangered fish and wildlife permit (50 CFR parts 217-222).

1. *Applicant:* Joseph Robert Mobley, Jr., Ph.D. Chair, Dept. Behavioral Sciences, Chaminade University of Honolulu, 3140 Waialae Ave., Honolulu, HI 96816.

2. *Type of Permit:* Scientific research under MMPA and scientific purposes under ESA.

3. *Name and Number of Marine Mammals:* Humpback whales (*Megaptera novaeangliae*).

4. *Type of Take:* Inadvertent harassment during aerial surveys.

5. *Location of Activity:* Coastlines of all major Hawaiian Islands including Hawaii, Maui, Molokai, Penguin Bank, Lanai, Kahoolawe, Oahu, Kauai, and Niihau.

6. *Period of Activity:* January through April over a 3-year period.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Hwy., Room 7324, Silver Spring, Maryland 20910 within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Hwy., Room 7324, Silver Spring, Maryland 20910; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7514.

Dated: August 16, 1989.

**Nancy Foster,**

*Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.*

[FR Doc. 89-19916 Filed 8-23-89; 8:45 am]

BILLING CODE 3510-22-M

## Marine Mammals: Issuance of Permit; NMFS, Southwest Fisheries Center (P77#33)

On May 9, 1989, notice was published in the **Federal Register** (54 FR 19934) that an application had been filed by the Southwest Fisheries Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, California 92038-0271 for a scientific research permit to take tissue samples via projectile dart from marine mammals encountered during dolphin surveys.

Notice is hereby given that on August 16, 1989, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit is based on a finding that the proposed taking is consistent with the purposes and policy of the Marine Mammal Protection Act. The Service has determined that this research satisfies the issuance criteria for scientific research permits. The taking is required to further a bona fide scientific purpose and does not involve unnecessary duplication of research. No lethal taking is authorized.

The Permit is available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Room 7324, Silver Spring, Maryland 20910; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: August 16, 1989.

**Nancy Foster,**

*Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.*

[FR Doc. 89-19917 Filed 8-23-89; 8:45 am]

BILLING CODE 3510-22-M

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## Marine Mammals

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

**ACTION:** Application for Permit; Dr. J. Ward Testa (P420B).

**SUMMARY:** Notice is hereby given that an Applicant has applied in due form for a Scientific Research Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and

Importing of Marine Mammals (50 CFR Part 216).

1. *Applicant:* Dr. J. Ward Testa, Institute of Marine Science, University of Alaska, Fairbanks, AK 99775–1080.

2. *Type of Permit:* Scientific Research.

3. *Name and Number of Marine Mammals:*

Weddell seal (*Leptonychotes weddellii*)—2000
Crabeater seal (*Lobodon carcinophagus*)—30
Leopard seal (*Hydrurga leptonyx*)—30
Ross seal (*Ommatophoca rossii*)—30
Southern elephant seal (*Mirounga leonina*)—30

4. The Applicant requests permission to (1) capture with physical restraint using a canvas bag placed over the head and tag up to 1200 individual Weddell seals including 500 pups, 400 adult females (of which up to 50% may be pregnant), and 300 adult males, and up to 30 each of Leopard seals, crabeater seals, Ross seals, and southern elephant seals annually with plastic cattle ear tags in both rear flippers; (2) implant up to 300 adult Weddell seals of either sex annually with transponders in the blubber layer just anterior to the tail; (3) instrument up to 30 adult Weddell seals over three years with satellite and radio transmitters; (4) collect and import foreflipper claws from up to 100 subadult animals annually for age estimation; (5) weigh up to 200 pups and up to 200 adults and subadults for both sexes annually using a mobile platform sled; (6) collect blood samples from up to 100 Weddell seals of any age annually; (7) conduct up to seven (7) censuses of the eastern McMurdo Sound population annually and count all seals present on the surface of the ice and record tag numbers and; (8) salvage and import any parts of natural fatalities of the above fire (5) seal species. Permission is also requested to approach up to 2000 Weddell seals each not more than ten (10) times annually in order to read tags. The proposed research is part of a continuing program to understand the population ecology and behavior of Weddell seals in McMurdo Sound, is expected to advance the understanding of the diving behavior and movements of a large marine mammal outside of the breeding season, and to provide continuity in the long-term study of this large marine mammal.

5. Location and Duration of Activity: The focus of this activity will be McMurdo Sound, Antarctica, for a 3-year period. Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Highway, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Room 7330, Silver Spring, Maryland 20910; and

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Building, Juneau, Alaska 99802.

Dated: August 16, 1989.

**Nancy Foster,**

*Director, Office of Protected Resources and Habitat Programs.*

[FR Doc. 89–19918 Filed 8–23–89; 8:45 am]

BILLING CODE 3510–22–M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the United Arab Emirates

August 18, 1989.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** August 24, 1989.

**FOR FURTHER INFORMATION CONTACT:** Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377–3715.

**SUPPLEMENTARY INFORMATION:**

*Authority.* Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased, variously, for swing and carryforward. The limit for Category 352 is being reduced to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 54 FR 52463, published on December 28, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Memorandum of Understanding dated March 14, 1989, but are designed to assist only in the implementation of certain of its provisions.

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

August 18, 1989.

Commissioner of Customs, Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner:

This directive amends, but does not cancel, the directive issued to you on March 22, 1989 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton and man-made fiber textile products, produced or manufactured in the United Arab Emirates and exported during the period which began on January 1, 1989 and extends through December 31, 1989.

Effective on August 24, 1989, the directive of March 22, 1989 is amended to adjust the limits for the following categories, as provided under the provisions of the Memorandum of Understanding dated March 14, 1989 between the Governments of the United States and the United Arab Emirates:

| Category | Adjusted Twelve-Month Limit [1] |
|---|---|
| 338/339 | 371,000 dozen of which not more than 247,333 dozen shall be in Categories 338-S/339-S [2]. |
| 340/640 | 243,800 dozen. |
| 341/641 | 201,400 dozen. |

| Category | Adjusted Twelve-Month Limit [1] |
|---|---|
| 347/348 | 291,200 dozen of which not more than 145,600 dozen shall be in Categories 347-T/348-T [3]. |
| 352 | 115,895 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1988.

[2] In Categories 338-S/339-S, only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0009, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0068, 6112.11.0030 and 6114.20.0005 in Category 338-S; and 6104.22.0060, 6104.29.2046, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022 in Category 339-S.

[3] In Categories 347-T/348-T, only HTS numbers 6103.19.2015, 6103.19.4020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.3010, 6112.11.0050, 6113.00.0035, 6203.19.1020, 6203.19.4020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.3020, 6210.40.2030, 6211.20.1520, 6211.20.3010 and 6211.32.0040, in Category 347-T; and HTS numbers 6104.12.0030, 6104.19.2030, 6104.22.0040, 6104.29.2034, 6104.62.2010, 6104.62.2025, 6104.69.3022, 6112.11.0060, 6113.00.0040, 6117.90.0042, 6204.12.0030, 6204.19.3030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.3010, 6204.69.9010, 6210.50.2030, 6211.20.1550, 6211.20.6010, 6211.42.0030 and 6217.90.0050 in Category 348-T.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 89-19964 Filed 8-23-89; 8:45 am]

BILLING CODE 3510-DR-M

## Amendment Clarifying a Previous Directive Concerning Visa and Quota Reporting for Garments and Clothing Accessories Entered as Sets

August 18, 1989.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs clarifying a previous directive.

**EFFECTIVE DATE:** August 24, 1989.

**FOR FURTHER INFORMATION CONTACT:** Brian Fennessy, Commodity Industry Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-3400.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A **Federal Register** notice and letter to the Commissioner of Customs published on December 29, 1988 (53 FR 52765) announced separate visa and separate statistical reporting requirements for textiles and textile products entered as sets. The letter published below is an amendment, clarifying the previously published letter.

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Mr. Commissioner: This letter amends the directive of December 23, 1988 to further clarify the intent of the Committee for the Implementation of Textile Agreements on the applicability of visa requirements and quota reporting of textiles and their products entered as parts of sets under GRI 3 of the Harmonized Tariff Schedule.

Effective on August 24, 1989, the directive of December 23, 1988 is amended to read as follows:

Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended; all applicable visa and quota requirements will apply for textiles and their products which are classified as parts of a set. This rule applies to all items which, if imported separately, would have required a visa and the reporting of quota.

Effective January 1, 1989, you are directed to prohibit entry for consumption or withdrawal from warehouse for consumption into the United States (i.e., the 50 states, the District of Columbia and the Commonwealth of Puerto Rico) of any textile item for which classification is claimed as sets under General Rules of Interpretations (GRI) 3 of the HTS, where a separate textile category currently exists or comes into existence requiring separate reporting of the components forming those sets.

Entry shall be permitted if all visa and quota requirements are met.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 89-19965 Filed 8-23-89; 8:45 am]

BILLING CODE 3510-DR-M

# DEPARTMENT OF DEFENSE

## Department of the Air Force

### Scientific Advisory Board; Meeting

August 18, 1989.

The USAF Scientific Advisory Board Strategic Cross-Matrix Panel scheduled to meet on September 8, 1989, at HQ Strategic Air Command (SAC), Offutt AFB NE, has been canceled.

The purpose of this meeting was to facilitate the exchange of information amongst Scientific Advisory Board members and SAC staff on strategic missile programs.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4811.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 89-19950 Filed 8-23-89; 8:45 am]

BILLING CODE 3910-01-M

### Scientific Advisory Board; Meeting

August 17, 1989.

The USAF Scientific Advisory Board Ad Hoc Committee on Science and Technology (S&T) Broad Program Appraisal will meet on September 29, 1989, from 8:00 a.m. to 5:00 p.m. at the Pentagon, Washington, DC 20330-5430.

The purpose of this meeting is to review the Air Force S&T base programs. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 89-19971 Filed 8-23-89; 8:45 am]

BILLING CODE 3910-01-M

### Scientific Advisory Board; Meeting

August 16, 1989.

The USAF Scientific Advisory Board Strategic Cross-Matrix Panel will meet on September 12, 1989, from 8:00 a.m. to 5:00 p.m., at Space Systems Division, Los Angeles AFB, CA.

The purpose of this meeting will be to gather information on space technologies as requested by CINCSAC. The meeting at Space Systems Division will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-8845.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 89-19972 Filed 8-23-89; 8:45 am]

BILLING CODE 3910-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project Nos. 2683 and 588]

### James River II, WA; Intention To Prepare an Environmental Impact Statement

August 17, 1989.

The Federal Energy Regulatory Commission (FERC) has received an application for an original license for the operation of the Elwha Project, FERC No. 2683 and an application for a new license for the operation of the Glines Canyon Project, FERC No. 588. The two hydropower projects are located on the Elwha River in Clallam County, Washington. The FERC staff has determined that licensing these projects would constitute a major federal action significantly affecting the quality of the human environment. Therefore, the staff intends to prepare an environmental impact statement (EIS) on the hydroelectric projects in accordance with the National Environmental Policy Act. The staff's EIS will objectively consider both site specific and cumulative environmental impacts of the projects and reasonable alternatives, and will include an economic, financial and engineering analysis.

A draft EIS will be issued and circulated for review by all the interested parties. All comments filed on the draft EIS will be analyzed by the staff and considered in a final EIS. The staff's conclusions and recommendations will then be presented for the consideration of the Commission in reaching its final licensing decision.

#### Scoping Meetings

FERC staff will conduct public scoping meetings in the Seattle and Port Angeles, Washington area. The place and time of these meetings will be announced in a subsequent notice.

#### Procedures

The purpose of the notice is to invite all interested individual's, organizations, tribes, and agencies to assist the staff in identifying the scope of environmental issues that should be analyzed in the EIS. Anyone who has views on the issues or information relevant to the issues, may submit written statements for inclusion in the public record. All comments must be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. All correspondence should clearly show the following caption on the first page: Elwha/Glines Canyon Projects, Washington, Docket Nos. P–2683 and 588.

All those that are formally recognized by the Commission as intervenors in the Elwha/Glines Canyon Projects proceedings are asked to refrain from engaging the staff or its contractor in discussions of the merits of the projects outside of any announced meetings.

Further, parties are reminded of the Commission Rules of Practice and Procedure, requiring parties filing documents with the Commission, to serve a copy of the document on each person whose name is on the official service list.

For further information please contact S. Ronald McKitrick at (202) 376–9269.

**Lois D. Cashell.**

*Secretary.*

[FR Doc. 89–19875 Filed 8–23–89; 8:45 am]

BILLING CODE 6717–01–M

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[Project Nos. 503–006, et al.]

### Hydroelectric Applications (Idaho Power Co., et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1. a. *Type of Application:* Amendment of License.

b. *Project No:* 503–006.

c. *Date Filed:* April 24, 1989.

d. *Applicant:* Idaho Power Company.

e. *Name of Project:* Swan Falls.

f. *Location:* On the Snake River in Ada and Owyhee Counties, Idaho, partially on lands of the United States administered by the U.S. Department of the Interior.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*

Mr. Robert W. Stahman, Secretary and General Counsel, 1220 Idaho Street, P.O. Box 70, Boise, ID 83707, (206) 383–2676.

Mr. Lee S. Sherline, Leighton & Sherline, Suite 101, 1010 Massachusetts Ave. NW, Washington, DC 20001–5402, (202) 898–1122.

i. *Commission Contact:* Mr. James Hunter (202) 376–1943.

j. *Comment Date:* September 15, 1989.

k. *Applicant proposes to:* (1) Replace the existing powerhouse, which contains generating units with a total rated capacity of 10.4 MW, with a new powerhouse on the east bank, containing two identical generating units with a total rated capacity of 25 MW; (2) remove all equipment from the existing powerhouse and fill the draft tubes and turbine pits with concrete to elevation 2,315 feet; (3) construct a new switchyard on the east bank 200 feet downstream from the powerhouse; and (4) build a new 1.2-mile-long, 138–kV transmission line. The estimated cost of this new development is $53,814,800 in August 1988 dollars.

l. This notice also consists of the following standard paragraphs: B, C, and D1.

2. a. *Type of Application:* Transfer of License.

b. *Project No.:* 2307–022.

c. *Date Filed:* June 5, 1989.

d. *Applicant:* Alaska Electric Light and Power Company of Juneau (Licensee) and Alaska Electric Light and Power Company (Transferee).

e. *Name of Project:* Annex Creek and Salmon Creek.

f. *Location:* On Annex and Salmon Creeks near Juneau, Alaska, partially within the Tongass National Forest, in T41S, R69E, 68E, and 67E.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Mr. William A. Corbus, 612 Willoughby Avenue, Juneau, AK 99801–1798.

i. *FERC Contact:* Julie Bernt, (202) 376–1936.

j. *Comment Date:* September 15, 1989.

k. *Description of Project:* On August 31, 1989, a new license was issued to Alaska Electric Light and Power Company of Juneau for the continued operation of the Annex Creek and Salmon Creek Project No. 2307. It is proposed to transfer the license to Alaska Electric Light and Power Company. The purpose of this proposed license transfer is to reflect a corporate name change.

The licensee certifies that it has fully complied with the terms and conditions of its license and obligates itself to pay all annual charges accrued under the license to the date of transfer. The transferee accepts all the terms and conditions of the license and agrees to be bound thereby to the same extent as though it were the original licensee.

l. This notice also consists of the following standard paragraphs: B and C.

3. a. *Type of Application:* Transfer of License.

b. *Project No.:* 2622–001.

c. *Date filed:* June 20, 1989.

d. *Applicant:* Hammermill Paper Company.

e. *Name of Project:* Turners Falls.

f. *Location:* On a power canal taking water from the Connecticut River at Turners Falls, Franklin Cou9nty, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* William J. Madden, Jr., Attorney, Law Offices of Bishop, Cook, Purcell, & Reynolds, 1400 L Street, NW., Washington, DC 20005–3502, (202) 371–5700.

i. *FERC Contact:* Mary Nowak (202) 376–9634.

j. *Comment Date:* September 18, 1989.

k. *Description of Project:* Hammermill Paper Company proposes to transfer the license for the Turners Falls Project No. 2622 to International Paper Company. Through a series of transactions, Hammermill Paper Company was merged into International Paper Company on January 1, 1989. The parties inadvertently failed to seek a transfer of the license for the project prior to the merger and now seek to correct that error with the instant application.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

4. a. Type of Application: Transfer of License.

b. Project No.: 2631–003.

c. Dated Filed: June 20, 1989.

d. Applicant: Hammermill Paper Company.

e. Name of Project: Woronoco Hydroelectric.

f. Location: On a Westfield River, in Hampden County, Massachusetts.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. Applicant Contact: William J. Madden, Jr., Attorney, Law Offices of Bishop, Cook, Purcell, & Reynolds, 1400 L Street NW., Washington, DC 20005–3502, (202) 371–5700.

i. FERC Contact: Mary Nowak (202) 376–9634.

j. Comment Date: September 18, 1989.

k. Description of Project: Hammermill Paper Company proposes to transfer the license for the Woronoco Project No. 2631 to International Paper Company. Through a series of transactions, Hammermill Paper Company was merged into International Paper Company on January 1, 1989. The parties inadvertently failed to seek a transfer of the license for the project prior to the merger and now seek to correct that error with the instant application.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

5. a. Type of Filing: Transfer of License.

b. Project No.: 7174–006.

c. Date Filed: June 13, 1989.

d. Applicant: Mr. Truman Price (transferor) and Truman Price, Inc. (transferee).

e. Name of Project: Cottrell Hydroelectric Project.

f. Location: On McCloskey Creek in Skamania County, Washington.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. Applicant Contact: Mr. Peter W. Brown, Brown, Olsen & Wilson, 21 Green Street, Concord, New Hampshire 03301.

i. Commission Contact: Ms. Deborah Frazier-Stutely at (202) 376–1669.

j. Comment Date: September 15, 1989.

k. Description of Proposed Action: On December 26, 1985, aa major license was issued to Mr. Truman Price for the construction, operation, and maintenance of the Cottrell Project No. 7174. Mr. Truman Price proposes to transfer the license to Truman Price, Inc.

The transferee is a private corporation organized under the laws of the state of Delaware, and domesticated in the states of Maryland and Washington.

The licensee certifies that it has fully complied with the terms and conditions of its license, as amended, and obligates itself to pay all annual charges accrued under the license to the date of transfer. The transferee accepts all the terms and conditions as though it were the original licensee.

l. This notice also consists of the following standard paragraphs: B and C.

6. a. Type of Application: Surrender of License.

b. Project No.: 7806–012.

c. Date filed: June 16, 1989.

d. Applicant: Richard J. Wilkinson and Georgenia M. Wilkinson.

e. Name of Project: Prospect Creek.

f. Location: On the licensee's land on Prospect Creek in Sanders County, Montana near the town of Thompson Falls. T21N R29W, section 18.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. Applicant Contact: Richard J. and Georgenia, M. Wilkinson, P.O. Box 848, Thompson Falls, MT 159873.

i. FERC Contact: Ms. Deborah Frazier-Stutely at (202) 376–1669.

j. Comment Date: September 7, 1989.

k. Description of Proposed Action: The proposed project for which the license is being surrendered would have consisted of: (1) A 10-foot-high, 50-foot-long reinforced concrete diversion dam at elevation 2,555 feet; (2) a 6-foot-diameter, 4,170-foot-long penstock; (3) a powerhouse containing two generating units with a combined capacity of 2,900 kW; (4) a tailrace; (5) 2.4–kV generator leads; (6) a 2.4/4.16–kV step-up transformer; (7) a 200-foot-long, 4.16–kV transmission line tying into an existing Montana Power Company line; and (7) appurtenant facilities.

The licensee states that the project is not financially feasible at this time. Construction of the project has not begun.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

7. a. Type of Application: Surrender of License.

b. Project No.: 9214–005.

c. Date Filed: June 14, 1989.

d. Applicant: Provo Hydro Associates.

e. Name of Project: Murdock Dam Hydro Project.

f. Location: On Provo River in Utah County, Utah.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Domonique Darne, 1900 L Street NW., Suite 603, Washington, DC 20036.

i. FERC Contact: Nanzo T. Coley (20) 376–9416.

j. Comment Date: September 9, 1989.

k. Description of Proposed Action: The license to be surrendered would have included a project consisting of (1) a 60-inch-diameter, 6-foot-long penstock; (2) a powerhouse with an installed capacity of 200 kW under a head of 23 feet; (3) a tailrace returning the flow to the provo River; (4) an underground 12.5–kV transmission line, about 100 feet long; and (5) appurtenant facilities. The applicant estimates the average annual energy output at 1,178,373 kWh. Energy produced at the project would have been sold to Utah Power and Light Company.

l. This notice also consists of the following standard paragraphs: B and C, & D2.

8. a. *Type of Application:* Exemption (small conduit).

b. *Project No.:* 10720–000.

c. *Date Filed:* January 19, 1989.

d. *Applicant:* South Central Connecticut Regional Water Authority.

e. *Name of Project:* Gaillard Hydroelectric Project.

f. *Location:* At the Lake Gaillard Water Treatment Plant, New Haven County, Connecticut.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(r).

h. *Applicant Contact:* Mr. Frank O. Christie, Christie Engineering, South William St., Ballard Mill, Malone, NY 12953.

i. *FERC Contact:* Michael Dees (202) 376–9414.

j. *Comment Date:* September 22, 1989.

k. *Description of Project:* The constructed Gaillard small conduit hydroelectric facility is part of the Lake Gaillard Water Treatment Plant. The water to the hydroelectric plant (and water treatment plant) is conveyed from Lake Gaillard by a 54" pipeline placed in a 76" diameter Great Hill Tunnel. The

300 kW Turbine generator is installed on this raw water pipeline just before it enters into the water treatment plant. The project consist of: (1) a 54' dia. 75 ft. long intake pipe; (2) a 37' W X 44' L X 18' H concrete powerhouse with one 300 kW turbine-generator; (3) a 250' long, 480 volt underground transmission line; (4) 72' dia. 35 ft. long discharge/influent pipeline into water treatment plant; and (5) appurtenant facilities. Applicant estimates that the average annual energy production will be 1.5 GWh. All energy production will be used at the applicants water treatment plant.

1. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

9. a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10790–000.

c. *Date Filed:* June 2, 1989.

d. *Applicant:* West Rutland Pumped Storage Hydroelectric Inc.

e. *Name of Project:* West Rutland Pumped Storage Hydro Project.

f. *Location:* On the Castleton River near West Rutland, Rutland County, Vermont.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Dermont A. McGuigan, Chase Mill, 1 Mill Street, Burlington, VT 05401, (802) 658–5110.

i. *FERC Contact:* Ed Lee (202) 376–5786.

j. *Comment Date:* September 22, 1989.

k. *Description of Project:* The proposed project would consist of either: (1) a 160–MW closed-looped pumped storage project designed to operate with a minimum head of 1000 feet (Alternative No. 1); or (2) a 200–MW closed-looped pumped storage project designed to operate with a minimum head of 1060 feet (Alternative No. 2). Both alternatives will consist of a new upper reservoir and existing quarries as the lower reservoir. The reservoirs will be connected by a tunnel with a underground power-pumping house located in the lower reservoir. No areas within or in the vicinity of the proposed project boundary are included in or have been designated for study for inclusion in the National Wild and Scenic River System. The applicant estimates that the average annual generation would be 2,000 MWh for Alternative No. 1 and 2,400 MWh for Alternative No. 2. The cost of the work and studies to be performed under the permit would be $250,000. No lands of the United States are included in the project. The applicant states that due to the availability of borings from wells and roads constructed in or adjacent to the upper reservoir and tunnel sties, no subsurface exploration will be required, and no disturbance of land, water, or habitat will occur.

1. Purposes of Project: The applicant will sell the generated power to one or more electric utilities located in New York or the New England states.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

10. a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10793–000.

c. *Date Filed:* June 5, 1989.

d. *Applicant:* Mitia Hydro Corporation.

e. *Name of Project:* Mitchell Mill Dam Project.

f. *Location:* On the Cedar River near Mitchell, Mitchell County, Iowa.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Thomas Wilkinson, 700 Higley Bldg., P.O. Box 1968, Cedar Rapids, IA 52406, (319) 366–4990.

i. *FERC Contact:* Ed Lee (202) 376–5786.

j. *Comment Date:* September 22, 1989.

k. *Description of Project:* The proposed project would consist of: (1) An existing 195–foot-long and 20-foot-high concrete dam; (2) a 120-acre reservoir; (3) a new powerhouse containing a single 510-kW generator; (4) a 400-foot-long, 13.8-kV transmission line; and (5) appurtenant facilities. The applicant estimates that the average annual generation would be 2,829 MWh. The cost of the work and studies to be performed under the permit would be $27,000. The site is owned by the Mitchell County Conservation Board, Osage, IA 50461. The applicant estimates that the power generated will be sold to a local utility company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

11. a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10797–000.

c. *Date Filed:* June 5, 1989.

d. *Applicant:* Greia Hydro Corporation.

e. *Name of Project:* Greene Mill Dam Project.

f. *Location:* On the Shell Rock River near Greene, Bulter County, Iowa.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Thomas Wilkinson, 700 Higley Bldg., P.O. Box 1968, Cedar Rapids, IA 52406, (319) 366–4990.

i. *FERC Contact:* Ed Lee (202) 376–5786.

j. *Comment Date:* September 22, 1989.

k. *Description of Project:* The proposed project would consist of: (1) An existing 290-foot-long and 11-foot-high concrete dam; (2) an 85-acre reservior; (3) a new powerhouse containing two 325-kW generators for a total installed capacity of 650 kW; (4) a 25-foot-long, 13.8-kV transmission line; and (5) appurtenant facilities. The applicant estimates that average annual generation would be 3,347 MWh. The cost of the work and studies to be performed under the permit would be $27,000. The site is owned by the Bulter County Conservation Board, Clarksville, IA 50619. The applicant estimates that all power generated will be sold to a local utility company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

12. a. *Type of Filing:* Minor License (5–MW or less).

b. *Project No.:* 10800–000.

c. *Date Filed:* June 9, 1989.

d. *Applicant:* Hydrodynamics, Inc.

e. *Name of Project:* Ross Creek Hydroelectric Project.

f. *Location:* On Ross Creek near the town of Bozeman, in Gallatin County, Montana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Roger Kirk or Susan Young, Hydrodynamics, Inc., P.O. Box 6165, Bozeman, MT 59771, (406) 586–1272.

i. *FERC Contact:* Thomas Dean, (202) 376–9562.

j. *Comment Date:* September 15, 1989.

k. *Description of project:* The proposed project would consist of: (1) A stream-side intake structure at elevation 5,560 feet msl; (2) a 24-inch-diameter, 3,200-foot-long pipeline leading to; (3) a powerhouse at elevation 5,240 feet msl containing a single generating unit with an installed capacity of 450 kilowatt; (4) a tailrace; and (5) a 0.5-mile-long, 12.5 kV transmission line. The applicant estimates the average annual energy generation to be 2.5 GWh.

l. Purpose of Project: Applicant intends to sell project power to Montana Power Company.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

13. a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10802–000.

c. *Date Filed:* June 22, 1989.

d. *Applicant:* Grover-Kelly No. 2 Corp. and RK-DK Associates.

e. *Name of Project:* Braendly Project.

f. *Location:* On the Fishkill Creek in Dutchess County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Kenneth M. Grover, Box 536, Route 100, Croton Falls, NY 10519, (914) 277–8000.

i. *FERC Contact:* Ed Lee, (202) 376–5786.

j. *Comment Date:* September 22, 1989.

k. *Competing Application:* Project No. 10745–000, Date Filed: March 13, 1989, Due Date: June 6, 1989.

l. *Description of Project:* The proposed project would consist of: (1) An existing dam, approximately 165 feet long and 18 feet high, constructed of cut stone with a concrete cap and having a spillway section and two-foot-high flashboards to an elevation of 121.5 feet m.s.l.; (2) a 4.5-acre reservoir having minimal pondage; (3) a new intake structure; (4) a new steel penstock, 8 feet in diameter and approximately 400 feet long; (5) powerhouse containing generator unit with a rated capacity of 925 kW; (6) a tailrace; (7) a 13.8-kV transmission line, approximately 50 feet long, connecting to existing lines; and (8) appurtenant facilities.

The applicant estimates the average annual generation would be 3,450 MWh. The applicant estimates that the cost of studies under permit would be $24,700.

m. *Purpose of Project:* Project power would be sold to Central Hudson Gas and Electric Company.

n. This notice also consists of the following standard paragraphs: A8, A9, A10, B, C, and D2.

14. a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 10804–000.

c. *Date Filed:* June 14, 1989.

d. *Applicant:* City of Ephraim, Utah.

e. *Name of Project:* Ephraim City Hydroelectric Project No. 3.

f. *Location:* On New Canyon and Cotton Creek in Sanpete County, Utah.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Alden C. Robinson, Sunrise Engineering, Inc., 71 West Center Street, Fillmore, Utah 84631, (801) 743–6151.

i. *Commission Contact:* Nanzo T. Coley, (202) 376–9416.

j. *Comment Date:* September 15, 1989.

k. *Description of Project:* The applicant proposes to utilize the water from the existing water supply system, part of licensed project No. 6117, by tapping the existing penstocks. The proposed project would consist of: (1) A proposed 14-inch-diameter penstock that would be connected to the existing 8-inch and 12-inch-diameter penstocks; (2) a proposed powerhouse containing one generating unit rated at 120-kW; (3) a proposed tailrace that would discharge the water into a proposed 21-inch-diameter pipe which would be connected to the existing penstocks and returning the water to the existing system; (4) a proposed 400-foot-long, 480 volt transmission line; (5) appurtenant facilities. The applicant estimates that the average annual energy output would be 632,000 kWh.

l. *Purpose of Project:* Energy produced at the project would be utilized by the applicant.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

**Standard Paragraph**

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motion to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents

must be filed by providng the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203–RB, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Public Law No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in Section 313(b) of the Federal Power Act, 16 U.S.C. Section 8251(b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtain by agencies directly from the Applicant. If an agency does not file comments within the time specified for filig comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. Agency Comments—The Commission requests that the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agenc(ies), for the purposes set forth in Section 408 of the Energy Security Act of 1980, file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, state and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: August 18, 1989.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89–19904 Filed 823–89; 8:45 am]

BILLING CODE 6717-01-M

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**[Project Nos. 2389–002, et al.]**

## Hydroelectric Applications (Augusta Dev. Corp., et al.) Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1. a. *Type of Application:* Transfer of License.

b. *Project No.:* 2389–002.

c. *Date Filed:* June 12, 1989.

D. *Applicant:* Augusta Development Corporation (Transferor) and Edwards Manufacturing Company, Inc. (Transferee).

e. *Name of Project:* Edwards Dam Project.

f. *Location:* On Kennebec River, Augusta, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*

Transferor: Amy S. Koch, Chadbourne & Parke, 1101 Vermont Ave., NW., Suite 900, Washington, DC 20005, (202) 289–3000.

Transferee: Mark Isaacson, Vice President, Edwards Manufacturing Company, Inc., P.O. Box 97, Lisbon Falls, ME 04252, (207) 353–4111.

i. *FERC Contact:* Ed Lee at (202) 376–5786.

j. *Comment Date:* September 28, 1989.

k. *Description of Proposed Action:* On August 12, 1964, a license was issued for the construction, operation, and maintenance of the Edwards Dam project. It is proposed to transfer the license to Edwards Manufacturing Company because the project was sold to Edwards Manufacturing Company. The proposed transfer will not result in any changes to the proposed development. The Transferor certifies that it has fully complied with the terms and conditions of the license and agrees to be bound thereby to the same extent as though it were the original licensee.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

2. a. *Type of Filing:* Amendment of License.

b. *Project No.:* 2426–028.

c. *Date Filed:* January 23, 1989.

d. *Applicant:* State of California, Department of Water Resources.

e. *Name of Project:* California Aqueduct Project.

f. *Location:* The Mojave Siphon Development is on the California Aqueduct near Silverwood Lake, 15 miles north of the City of San Bernardino, San Bernardino County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*

Mr. Viju Patel, Chief, Energy Division, Department of Water Resources, P.O. Box 942836, Sacramento, CA 94236–0001, (916) 445–6687.

i. *FERC Contact:* Thomas Dean, (202) 376–9562.

j. *Comment Date:* September 25, 1989.

k. *Description of Project:* The Mojave Siphon Development of the California Aqueduct Project as amended on August 12, 1982, would consist of: (1) Modification to the existing gated reinforced concrete intake structure; (2) an 11-foot-diameter, 650-foot-long

penstock leading to; (3) a powerhouse containing a single generating unit with a capacity of 7.2 megawatts; (4) an 11-foot-diameter, 190-foot-long pipeline, and a 17-foot-diameter, 865-foot-long tunnel to convey plant tailrace water to Silverwood Lake; (5) a 0.5-mile-long, 33-kV transmission line; and (6) appurtenant facilities. The estimated average annual energy generation is 47 GWh.

The applicant proposes to modify its amended Mojave Siphon Development by: (1) Adding an 18-foot-diameter, 2.36-mile-long pipeline parrallel to the existing 11-foot-diameter pipeline; (2) adding an 18-foot-diameter, 360-foot-long penstock extending from the existing Mojave Siphon valve vault to the powerhouse; (3) changing the single generating unit with three generating units with a combined installed capacity of 32.4 megawatts; (4) adding an 18-foot-diameter, 480-foot-long discharge pipe extending from the powerhouse to the tailrace tunnel; and (5) change the transmission line to 0.1-mile-long and 115-kV. The average annual energy generation with the increased capacity is 111 GWh.

l. *Purpose of Project:* Applicant intends to either wheel the power generated from the proposed facility to its pumping plants for the California Aqueduct, or exchange the power with Southern California Edison Company.

m. This notice also consists of the following standard paragraphs: A4, B, and C.

3. a. Type of Applications: Amendment of License.

b. Project No.: 2543–021.

c. Date Filed: July 13, 1989.

d. Applicant: The Montana Power Company.

e. Name of Project: Milltown Dam Hydroelectric Project.

f. Location: On the Clark Fork River, near Milltown, Missoula County, Montana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact:

G. Howard Van Noy, 40 East Broadway, Butte, MT 59701, (406) 723–5421.

i. FERC Contact: Edward Melisky, (202) 376–9255.

j. Comment Date: September 28, 1989.

k. Description of Project: In an application for amendment of license filed with the Commission on July 13, 1989, the Montana Power Company (licensee) requested that the Commission extend the term of the license for the Milltown Dam Hydroelectric Project. The license, which was issued on June 3, 1968, has a termination date of December 31, 1993. The licensee requests that the Commission change that termination date to December 31, 1999. This notice is being issued to inform interested parties that the Commission will now consider the licensee's request to extend the term of the license.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

4. a. Type of Applications: Transfer of License.

b. Project No.: 2801–011.

c. Date Filed: June 8, 1989.

d. Applicant: Mary C. Heather.

e. Name of Project: Glendale Project.

f. Location: On the Housatonic River, Town of Stockbridge, Berkshire County, Massachusetts.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact:

Mary C. Heather, Sergeant Street, P.O. Box 336, Stockbridge, MA 01262, (413) 298–3141.

i. FERC Contact: Mary Nowak (202) 376–9634.

j. Comment Date: September 21, 1989.

k. Description of Project: Mary C. Heather proposes to transfer the license for the Glendale Project No. 2801 to Mr. Joseph A. Guerrieri. The transferor lacks the time to manage the project and wishes to be disassociated from the project. The transferor inadvertently conveyed project property to the transferee without prior Commission approval. Such an error violates Article 5 of the license for Project No. 2801.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

5. a. Type of Filling: Surrender of License.

b. Project No.: 3552–010.

c. Date Filed: July 28, 1989.

d. Applicant: Oakdale and South San Joaquin Irrigation Districts.

e. Name of Project: Goodwin Dam.

f. Location: On the Stanislaus River in Tuolumne and Calaveras Counties, California.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact:

Jeffrey A. Meith, Minasian, Minasian, Minasian, Spruance, Baber, Meith & Soares, P.O. Box 1679, 1681 Bird Street, Oroville, CA 95965, (916) 533–2885.

i. Commission Contact: Nanzo T. Coley, (202) 376–9416.

j. Comment Date: September 9, 1989.

k. Description of Proposed Action: The license to be surrendered would have included a project consisting of: (1) A 79-foot-high, 480-foot-long dam; (2) a reservoir with a surface area of 70 acres and a storage capacity of 502 acre-feet at elevation 357 feet m.s.l.; (3) a 11-foot-diameter, 100-foot-long penstock; (4) a powerhouse with an installed capacity of 5MW under a head of 61 feet; (5) a 300-foot-long, 17-kV transmission line; and (6) appurtenant facilities. The applicant estimates the average annual energy output at 16,530,000 KWh. Energy produced at the project would have been sold to Pacific Gas and Electric Company.

l. This notice also consists of the following standard paragraphs: B, C, & D2.

6. a. Type of Applications: Surrender of License.

b. Project No.: 4369–009.

c. Date Filed: June 5, 1989.

d. Applicant: City of Anoka.

e. Name of Project: Coon Rapids Dam.

f. Location: In Anoka and Hennepin Counties, Minnesota, on the Mississippi River.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact:

Mark Nagel, City Manager, City of Anoka, Minnesota, 2015 First Avenue, Anoka, MN 55303, (612) 421–6630.

i. FERC Contact: Mary Nowak (202) 376–9634.

j. Comment Date: September 28, 1989.

k. Description of Project: The license for this project was issued on May 29, 1987, for an installed capacity of 10.4 megawatts. The licensee states that it has determined that the project would be economically infeasible. No construction has commenced at the project site.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

7. a. *Type of Application:* Transfer of License.

b. *Project No.:* 7860–010.

c. *Date Filed:* July 3, 1989.

d. *Applicant:* O'Connell Management Company, Inc. and Ammonoosuc River Hydroelectric Corporation.

e. *Name of Project:* Bethlehem Dam Project.

f. *Location:* On the Ammonoosuc River in Grafton County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*

Mr. George K. Lagassa, Mainstream Associates, P.O. Box 947, North Hampton, NH 03862, (603) 431–3746.

i. *FERC Contact:* Robert Bell (202) 376–9237.

j. *Comment Date:* September 28, 1989.

k. *Description of Project:* On December 1, 1987, a licensee was issued to O'Connell Management Company, Inc. (licensee) to construct, operate, and maintain the Bethlehem Dam Project No. 7860. The Licensee intends to transfer the license to Ammonoosuc River Hydroelectric Corporation (transferee), which will purchase, construct and operate the project. The transferee agrees to accept the terms and conditions of the license as if it were the original licensee. The transfer is requested to facilitate the financing and construction of the project.

l. This notice also consists of the following standard paragraphs: B and C.

8. a. *Type of Application:* Amendment of License.

b. *Project No.:* 8615–002.

c. *Date Filed:* May 8, 1989.

d. *Applicant:* Fiske Mill Hydro, Inc.

e. *Name of Project:* Fiske Hydro Project.

f. *Location:* On the Ashuelot River in Cheshire County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Contact Persons:*

Richard Ireland, P.O. Box 2520, South Hamilton, MA 01982, (508) 927–5054.

Matthew J. Bonaccorsi, Timothy Buzzell & Associates, Inc., HC 64 Box 185C, Methodist Hill Rd., Lebanon, NH 03766, (603) 448–3245.

i. *FERC Contact:* Ed Lee (202) 376–5786.

j. *Comment Date:* October 10, 1989.

k. *Description of Project:* The Fiske Mill Hydro Project No. 8615 as licensed consists of: (1) A 19-foot-high and 185-foot-long concrete-capped dam with a spillway crest elevation of 226.8 feet mean sea level (m.s.l.); (2) 2-foot-high flashboards at the spillway creating an impoundment of 4 acres at surface elevation of 228.8 feet m.s.l.; (3) an intake structure at the north abutment; (4) an 80-foot-long steel plate arch canal, 20.5 feet by 13.5 feet in diameter; (5) a powerhouse with 3 turbine-generator units with an installed capacity of 221 kW each, and one unit with an installed capacity of 147 kW; (6) generator leads, a 0.48/4.16-kV step-up transformer, a 100-foot-long 4.16 kV transmission line; and (7) appertenant facilities.

The Applicant proposes to amend its license by increasing the total installed capacity by 100-kW with the installation of one generator located in the northerly existing waste bay adjacent to the powerhouse at the north abutment of the dam. The Applicant states that the new facilities would be in the same general project area, and that no adverse impacts would be expected other than those addressed in the original licensing process. The project would be operated as already licensed with no other charges.

l. *Purpose of Project:* All of the power generated by the Applicant will be sold to a local utility.

m. This notice also consists of the following standard paragraphs: B, C, and D1.

9. a. *Type of Application:* Surrender of License.

b. *Project No.:* 9727–002.

c. *Date Filed:* June 28, 1989.

d. *Applicant:* Bellamy's Mill Power, Ltd.

e. *Name of Project:* Bellamy's Mill Hydropower Project.

f. *Location:* On Fishing Creek, Nash and Halifax Counties, North Carolina.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*

Mr. T. Stewart Gibson, 605 Sunset Avenue, P.O. Box 269, Rocky Mountain, NC 27802, (919) 977–2333.

i. *FERC Contact:* Michael Dees (202) 376–9414.

j. *Comment Date:* September 21, 1989.

k. *Description of Project:* On December 28, 1988, a license was issued to construct, operate, and maintain the Bellamy's Mill Hydropower Project No. 9727. The project would consist of: (a) A granite block gravity dam with an overall length of 220 feet and a height of 12 feet; (b) a 1.0-acre reservoir with a storage capacity of 5.0 acre-feet at a normal water surface elevation of 91.5 feet MSL; (c) a powerhouse to contain an installed capacity of 39 kW; (d) a second powerhouse to contain an installed capacity of 115 kW; (e) generator leads; (f) a 0.44/7.2-kV transformer; (g) a 50-foot-long, 7.2-kV, single-phase transmission line and; (h) appurtenant facilities.

Licensee states that the project is no longer economically feasible.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

10. a. Type of Filing: Minor License (5–MW or less).

b. Project No.: 10048–002.

c. Date Filed: October 26, 1988.

d. Applicant: Turner Creek Power Company, Inc.

e. Name of Project: Turner Creek Hydroelectric Project.

f. Location: In the Tahoe National Forest on Turner Creek, near the town of Sierraville, in Sierra County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. section 791(a)–825(r).

h. Applicant contracts:

Mr. Russell Turner, Turner Creek, Power Company, Inc., P.O. Box 7, Sattley, CA 96124, (916) 587–8909.

i. FERC Contact: Thomas Dean, (202) 376–9562.

j. Comment Date: October 11, 1989.

k. Description of project: The proposed project would consist of: (1) A 6-foot-high, 20-foot-long diversion structure at elevation 5,780 feet msl; (2) a 10-inch-diameter, 5,000-foot-long penstock leading to; (3) a powerhouse at elevation 4,980 feet msl containing a single generating unit with an installed capacity of 100 kilowatts; (4) a tailrace; and (5) a 2,600-foot-long, 12.5-kV transmission line. The applicant estimates the average annual energy generation at 740 MWh.

l. Purpose of Project: Applicant intends to sell project power to Pacific Gas and Electric Company.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

11. a. Type of Application: Preliminary Permit.

b. Project No.: 10780–000.

c. Date Filed: May 22, 1989.

d. Applicant: Flannagan Hydro Associates.

e. Name of Project: Flannagan Dam Project.

f. Location: On the Pound River near Clintwood, Dickenson County, Viriginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r)

h. Applicant Contact:

Mr. David K. Iverson, Synergics, Inc., 410 Severn Avenue, Suite 313, Annapolis, MD 21403, (301) 268–8820.

i. FERC Contact: Michael Dees (202) 386–9414.

j. Comment Date: October 2, 1989.

k. Competing Application: Project No. 10779–000

Date Filed: May 15, 1989

Competition Due Date: September 7, 1989

l. Description of Project: The proposed project would utilize the existing Corps of Engineers' Flannagan Dam and reservoir and would consist of: (1) An existing intake structure and tunnel; (2) a proposed penstock; (3) a proposed powerhouse housing a hydropower unit rated at 7.0 MW; (4) a proposed transmission line 4,500 feet long; and (5) appurtenant facilities. The estimated annual energy production is 17.5 GWh. Project energy would be sold to Appalachian Power Company. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $100,000.

m. This notice also consists of the following standard paragraphs: A8, A10, B, C, and D2.

12. a. Type of Application: Preliminary Permit.

b. Project No.: 10783–000.
c. Date Filed: May 22, 1989.
d. Applicant: James A. Riendeau.
e. Name of Project: Bean Brook Water Power Project.
f. Location: On Bean Reservoir on Bean Brook, near Berlin/Success Town Line, in Coos County, New Hampshire.
g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).
h. Applicant Contact: Mr. James A. Riendeau, 8 Gordon Avenue, Cascade/Gorham, NH 03581, (603) 752–4874.
i. FERC Contact: Mary Nowak (202) 376–9634.
j. Comment Date: October 13, 1989.
k. Description of Project: The proposed project would consist of the following facilities: (1) An existing concrete gravity dam 15 feet high and 262 feet long; (2) an existing reservoir with a surface area of 2 acres and a total storage capacity of 9 acre-feet at a surface elevation of 1,282 feet mean sea level; (3) an existing penstock approximately 5,280 feet long and 10 feet in diameter; (4) a proposed powerhouse containing one generating unit at a total installed capacity of 40 kilowatts; and (5) appurtenant facilities. The applicant estimates that the cost of the studies under permit would be about $1,000. The existing dam is owned by the City of Berlin Water Works and the average annual generation would be 180,000 kilowatthours.
l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.
13. a. Type of Application: Preliminary Permit.
b. Project No.: 10791–000.
c. Date filed: June 2, 1989.
d. Applicant: FORIA Hydro Corporation.
e. Name of Project: Fort Dodge Mill Project.
f. Location: On the Des Moines River in Webster County, Iowa.
g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).
h. Applicant Contact: Mr. Thomas J. Wilkinson, FORIA Hydro Corporation, 700 Higley Bldg., P.O. Box 1968, Cedar Rapids, IA 52406, Phone: (319) 366–4990.
i. FERC Contact: Robert Bell (202) 376–9237.
j. Comment Date: October 12, 1989.
k. Description of Project: The proposed project would consist of: (1) The existing 18-foot-high, 372-foot-long concrete Fort Dodge Dam; (2) an impoundment having a surface area of 90 acres with negligible storage and a normal water surface elevation of 990 feet m.s.l.; (3) an existing powerhouse with two proposed generating units having a total installed capacity of 1260-kW; (4) a proposed 200-foot-long, 13.8-kV transmission line; and (5) appurtenant facilities. The existing dam is owned by the City of Fort Dodge, Iowa. The Applicant estimates the average annual generation would be 7507 MWH. All project energy generated would be sold to a local utility.
l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.
14. a. Type of Application: Preliminary Permit.
b. Project No.: 10795–000.
c. Date filed: June 5, 1989.
d. Applicant: RUTIA Hydro Corporation.
e. Name of Project: Rutland Mill Dam Project.
f. Location: On the West Fork, Des Moines River in Humboldt County, Iowa.
g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).
h. Applicant Contact: Mr. Thomas J. Wilkinson Jr., RUTIA Hydro Corporation, 700 Higley Bldg., P.O. Box 1968, Cedar Rapids, IA 52406, Phone: (319) 366–4990.
i. FERC Contact: Robert Bell (202) 376–9237.
j. Comment Date: October 12, 1989.
k. Description of Project: The proposed project would consist of: (1) The existing 260-foot-long, 13-foot-high concrete Rutland Mill Dam; (2) an impoundment having a surface area of 80 acres with negligible storage and a normal water surface elevation of 1090 feet m.s.l.; (3) an existing powerhouse containing one proposed generating unit having an installed capacity of 700-kW; (4) a proposed 200-foot-long, 24-kV transmission line; and (5) appurtenant facilities. The existing dam is owned by the Humboldt County Conservation Board. The Applicant estimates the average annual generation would be 3549 MWH. All project energy generated would be sold to a local utility.
l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.
15. a. Type of Application: Preliminary Permit.
b. Project No.: 10796–000.
c. Date filed: June 5, 1989.
d. Applicant: HUMIA Hydro Corporation.
e. Name of Project: Humboldt Mill Dam Project.
f. Location: On the East Fork, Des Moines River in Humboldt County, Iowa.
g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).
h. Applicant Contact: Mr. Thomas J. Wilkinson Jr., HUMIA Hydro Corporation, 700 Higley Bldg., P.O. Box 1968, Cedar Rapids, IA 52406, Phone: (319) 366–4990.
i. FERC Contact: Robert Bell (202) 376–9237.
j. Comment Date: October 12, 1989.
k. Description of Project: The proposed project would consist of: (1) An existing 557-foot-long, 12-foot-high concrete Humboldt Dam; (2) an impoundment having a surface area of 80 acres with negligible storage and normal water surface elevation of 1070 feet m.s.l.; (3) an existing powerhouse containing a proposed generating unit with an installed capacity of 634 kW; (4) a proposed 50-foot-long, 12.47-kV transmission line; and (5) appurtenant facilities. The existing dam is owned by the Humboldt County Conservation Board. The Applicant estimates the average annual generation would be 3003 MWH. All project energy generated would be sold to a local utility.
l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

**Standard Paragraphs**

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent

allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203–RB, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Public Law No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in Section 313(b) of the Federal Power Act, 16 U.S.C. Section 8251(b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: August 18, 1989, Washington, DC.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89–19905 Filed 8–23–89; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket Nos. CS71–760 et al.]**

## Fair Operating, Inc. (Ralph E. Fair, Inc.), et al.;

## Applications for Small Producer Certificates [1]

August 17, 1989.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Commission's regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

natural gas in interstate commerce, all as more fully set forth in the 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 September 5, 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 and 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 to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

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. | Date filed | Applicant |
|---|---|---|
| CS71-760..... | 2-13-89 [1] | Fair Operating, Inc., (Ralph E. Fair, Inc.) P.O. Box 4495, Boerne, Texas, 78006. |
| CS87-8-001.... | 7-25-89 [2] | Chieftain International (U.S.) Inc., (Chieftain International, Inc.), 1201 TD Tower, Edmonton Centre, Edmonton, Alberta, Canada, T5J 2Z1. |
| CS89-43-000.. | 7-20-89 | Westland Energy Company, P.O. Box 380, Pampa, Texas, 79065. |
| CS89-44-000.. | 7-31-89 | Harman Operating Company, Inc., 121 S. Broadway, Suite 476, Tyler, Texas, 75702. |
| CS89-45-000.. | 7-28-89 | J. M. Szabuniewicz, INDV. and DBA ITC Texas Property Trust No. 10, P.O. Box 60127, San Angelo, Texas, 76906. |

[1] By letter dated February 9, 1989, Applicant states that on August 29, 1989, Ralph E. Fair, Inc. changed its name to Fair Operating, Inc.

[2] By letter dated July 21, 1989, Applicant requests that the small producer certificate issued in Docket No. CS87-8-000 be redesignated in the name of Chieftain International (U.S.) Inc.

[FR Doc. 89-19874 Filed 8-23-89; 8:45 am]

BILLING CODE 6717-01-M

**[Docket Nos. RP89-14-009, TA89-1-45-006, and TQ89-1-45-005]**

## Inter-City Minnesota Pipelines Ltd., Inc.; Tariff Filing

August 17, 1989.

Take notice that on August 10, 1989, Inter-City Minnesota Pipelines, Ltd., Inc. ("Inter-City"), 245 Yorkland Boulevard, North York, Ontario, Canada M2J 1R1, tendered for filing a revised tariff sheet to Original Volume 1 and Original Volume 2 of its FERC Gas Tariff to be effective December 1, 1988 and February 1, 1989:

Original Volume No. 1
- Corrected Third Substitute First Revised Thirty-First Revised Sheet No. 4
- Corrected Fourth Substitute First Revised Thirty-First Revised Sheet No. 4

Original Volume No. 2
- First Revised Fifth Revised Sheet No. 11
- First Revised Fifth Revised Sheet No. 12

Inter-City states that these sheets are filed in compliance with the Commission orders issued in these dockets on January 30, 1989 and letter order issued August 31, 1989.

Inter-City states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before August 24, 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-19869 Filed 8-23-89; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. RP89-47-001]**

## Natural Gas Pipeline Company of America; Changes in PGA Tariff Procedure

August 17, 1989.

Take notice that on August 9, 1989, Natural Gas Pipelines Company of America (Natural) tendered for filing tariff sheets as part of its FERC Gas Tariff, Third Revised Volume No. 1 (Tariff) the below listed tariff sheets to be effective January 1, 1989.

Fifth Revised Sheet Nos. 121C and 121D
Third Revised Sheet Nos. 121E and 121F

Natural states the purpose of the instant filing is to comply with the Commission's July 11, 1989 letter order issued at Docket No. RP89-47-000. Said order granted Natural's request for waiver of § 154.305(h)(3)(ii)(D) of the Commission's Regulations effective January 1, 1989. The waiver will allow Natural to calculate carrying charges on the Account No. 191 balance using Natural's Temporary LIFO Liquidation Account as the offset rather than the rolling weighted average method set forth in the Regulations.

A copy of this filing is being mailed to Natural's jurisdictional sales customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such protests must be filed on or before August 24, 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-19870 Filed 8-23-89; 8:45 am]

BILLING CODE 6717-01-M

**[Docket Nos. RP88-259-019 and RP89-136-007]**

## Northern Natural Gas Company; Proposed Changes in FERC Gas Tariff

August 17, 1989.

Take notice that on August 9, 1989, Northern Natural Gas Company (Northern) (Division of Enrop Corp.), tendered for filing proposed changes in its FERC Gas Tariff to correct pagination errors in the filing made June 30, 1989 in this proceeding.

The Company states that copies of the filing have been mailed to all parties of record in these proceedings, each of its customers purchasing gas and receiving transportation and gathering services under its FERC Gas Tariff and to interested State Commissions. Any persons desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825

North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such protests should be filed on or before August 24, 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-19871 Filed 8-23-89; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. RP74-41-046, et al.]**

## Texas Eastern Transmission, Corp., et al., Filing of Pipeline Refund Reports

August 17, 1989.

Take notice that the pipeline listed in the Appendix hereto heve submitted to the Commission for filing proposed refund reports. The date of filing and docket number are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before September 7, 1989. Copies of the respective filings are on file with the Commission and available for public inspection.

**Lois D. Cashell,**

*Secretary.*

**Appendix**

| Filing date | Company | Docket No. |
|---|---|---|
| 1-8-87 | Texas Eastern Transmission Corp. | RP74-41-046. |
| 12/30/88 | Texas Eastern Transmission Corp. | RP74-41-047. |
| 7/20/89 | Northwest Pipeline Corporation. | RP72-154-019. |
| 7/27/89 | Questar Pipeline Company. | RP86-87-009. |

[FR Doc. 89-19872 Filed 8-23-89; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. CI89-481-000]**

## Texas Eastern Oil Co.; Application

August 17, 1989.

Take notice that on July 14, 1989, Texas Eastern Oil Company (TEOC) of P.O. Box 2521, Houston, Texas 77252, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for a certificate of public convenience and necessity authorizing TEOC to make and continue sales of natural gas to Texas Eastern Transmission Corporation (Texas Eastern) from properties to be acquired from Texas Eastern, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

TEOC states that Texas Eastern proposes to transfer certain properties located in Texas and West Virginia to TEOC and that production from the subject properties is delivered directly to Texas Eastern for use as system supply. TEOC proposes to make sales from the subject properties to Texas Eastern pursuant to six contracts between TEOC and Texas Eastern dated July 11, 1989. According to TEOC, the gas subject to the application qualifies for NGPA section 104 and 108 pricing. In support of its application, TEOC states that no change in the service provided to Texas Eastern or its respective customers will result from the grant of this application.

Any person desiring to be heard or to make any protest with reference to said applications should on or before September 7, 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 and 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 TEOC to appear or to be represented at the hearing.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-19876 Filed 8-23-89; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. RP89-003]**

## Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

August 17, 1989.

Take notice that Trunkline Gas Company (Trunkline), on August 10, 1989 tendered for filing the following proposed changes in its FERC Gas Tariff, Original Volume No. 1:

Second Substitute Eleventh Revised Sheet No. 3-A.1
Second Substitute Original Sheet No. 9-JC

The proposed effective date of these revised tariff sheets is May 1, 1989.

Trunkline states that these revised tariff sheets are being filed in accordance with Ordering Paragraph (D) of the Commission's Order issued July 11, 1989.

Copies of this letter and enclosure are being served on all jurisdictional customers and interested state agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before August 24, 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-19873 Filed 8-23-89; 8:45 am]

BILLING CODE 6717-01-M

## Western Area Power Administration

## Adjusted Final Post-1989 Allocation of Power; Salt Lake City Area Integrated Projects

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of adjustments to the Final Post-1989 Power Allocations; Salt Lake City Area Integrated Projects.

**SUMMARY:** Final post-1989 allocations from the Salt Lake City Area Integrated Projects (SLCA/IP) were published in the **Federal Register** on April 2, 1987 (52 FR 10620), and a correction notice for those final allocations was published on May 20, 1987 (52 FR 18945). Subsequently, the allocations of certain allottees have been withdrawn, either at the request of the allottee or because the allottees have failed to meet the eligibility requirements listed in the General Power Marketing and Allocation Criteria (Criteria), published in the **Federal Register** on February 7, 1986 (51 FR 4844). Available energy and capacity have been administratively reallocated to Enterprise and Hurricane, Utah. Other adjustments have been made to the allocations of other allottees, who have approached the Western Area Power Administration (Western) with requests that their individual final allocations be modified because of unusual or extenuating circumstances.

**DATES:** These allocations will become final on August 24, 1989, and become effective on September 25, 1989.

**ADDRESS:** For further information on these adjusted final allocations, contact: Mr. Lloyd Greiner, Area Manager, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147, (801) 524–5493.

**SUPPLEMENTARY INFORMATION:**

**Contents of this section**



## I. Background of Allocation Procedures

On February 4, 1983, Western published a **Federal Register** notice (48 FR 5303) requesting applicant profile data (APD) from existing and potential customers in order to determine entities' eligibility to receive allocations of post-1989 SLCA/IP resources. Hypothetical allocations were published in the **Federal Register** on September 4, 1984 (49 FR 34900). Based on public comment, Western formulated and published its Post-1989 General Power Marketing and Allocation Criteria and Call for Applications for Power (Criteria) on February 7, 1986 (51 FR 4844). The hypothetical allocations were revised and published as proposed allocations in the **Federal Register** on September 11, 1986 (51 FR 32362). Following additional public comment, final post-1989 allocations were published in the **Federal Register** on April 2, 1987 (52 FR 10620), and a notice of correction was published on May 20, 1987 (52 FR 18945).

## II. Final Allocation Adjustment Procedures

### *A. Refused or Rescinded Allocations*

The February 7, 1986, Criteria indicate that contractors must have the means to receive and distribute power by September 30, 1988, in order to avoid automatic forfeiture of their contract rights unless Western specifically agrees otherwise in writing. Contractors were required to (1) have transmission arrangements in place by the September 30 deadline in order to receive SLCA/IP power and energy, and (2) have acquired electrical distribution systems with the capability of delivering SLCA/IP power and energy to their loads reported in the 1983 APD. Five entities not meeting the September 30, 1988, deadline were determined to be ineligible for their post-1989 SLCA/IP allocations. The capacity and energy either refused by or rescinded from these entities is listed in table 1 in section II.C.1.

### *B. Reallocation of Capacity and Energy Adjustments*

#### 1. First Right of Refusal Allocations

In the February 1987 Criteria, the cities of Enterprise and Hurricane, Utah, were granted first right to any reallocable energy and capacity, up to an amount equal to one-half of their individual peakloads in the 1975 summer and 1975–76 winter seasons. Since there is sufficient capacity available for reallocation to meet the specified requirements of the two cities, the final special allocations of SLCA/IP energy and capacity of both Enterprise and Hurricane will be adjusted consistent with the Criteria. Enterprise's allocation will be adjusted to a total of 1.292 megawatts (MW) of capacity and 2,945.890 megawatthours (MWh) of energy in the winter season and .992 MW of capacity and 2,265.232 MWh of energy in the summer season. Hurricane's allocation will be adjusted to a winter season total of 3.882 MW of capacity and 8,851.348 MWh of energy and a summer season total of 1.716 MW of capacity and 3,918.486 MWh of energy.

#### 2. Capacity Adjustments

Following the publication of the final post-1989 allocations, several allottees have requested that their capacity allocations be adjusted due to unusual circumstances. All reduced capacity adjustment requests have been granted. Requested increased capacity adjustments have been granted only if, in Western's determination, such adjustments are necessary to ensure that all customers have been treated equitably through the allocation procedures specified in the February 1987 Criteria. Any capacity adjustments will be or have been reflected in the individual allottee's post-1989 firm power sales contracts.

a. *Requested capacity reductions.* Central Valley Electric Cooperative, Inc., Colorado-Ute Electric Association, Inc., Lea County Electric Cooperative, and Roosevelt County Electric Cooperative, Inc., requested and were granted capacity reductions. Those reductions are listed in table 1 in section II.C.1.

b. *Farmers Electric Cooperative, Inc.* After the final allocations were published, Western became aware that Farmers Electric Cooperative, Inc.'s (Farmers), load factor at its requested capacity level was greater than 100 percent. Since Western cannot deliver power at a load factor greater than 100 percent, Western has increased Farmers' capacity to allow it to take its full allocated energy entitlement. Farmers' resulting capacity allocation in the winter season has therefore been changed from 1.602 MW to 2.353 MW, and its summer season capacity allocation has been changed from 1.857 MW to 2.576 MW.

c. Weber Basin Water Conservancy District

*(1) Background.* Weber Basin Water Conservancy District (Weber Basin), the contracting entity for the Bureau of Reclamation's (Reclamation) Weber Basin Project, is a Northern Division existing customer with only a summer allocation. Weber Basin has its own generation to supply a portion of its needs, and Western has historically supplied Weber Basin with all its capacity and energy needs above its own generation. By letter dated April 12, 1968, the Commissioner of Reclamation agreed that Reclamation would supply Weber Basin all its power needs above Weber Basin's own generation in exchange for Colorado River Storage Project (CRSP) use of Weber Basin's excess generation.

Article 10 of Contract No. 14–06–400–5002 between Reclamation and Weber Basin provides that Weber Basin may purchase power from Reclamation as needed to supply Weber Basin's power requirement. Weber Basin has requested and been granted the ability to overrun its allocation under article 10 of that contract.

*(2) Basis for Adjustment.* Because Reclamation and Western have historically delivered more capacity and energy to Weber Basin than its contract rate of delivery (CROD), Weber Basin requested that its final capacity allocation reflect Western's historic deliveries and commitment to Weber Basin rather than Weber Basin's CROD. Western has considered Weber Basin's request upon the condition that such an adjustment should not affect the final allocations of other allottees.

*(3) Allocation Adjustment Methodology.* Western has used Weber Basin's 1980–82 CRSP peak demand and 3-year average energy as bases for adjusting Weber Basin's allocation by applying the allocation methodology for Northern Division existing customers found in the February 1987 Criteria. After applying these bases to the allocation methodology, Western has calculated the following adjusted Weber Basin associated capacity allocations:

| | Associated capacity | SLCA/IP energy entitlement |
|---|---|---|
| Resource Pool 4. | 1.820 MW | 915.704 MWh |
| Resource Pool 6. | 3.324 MW | 1,939.439 MWh |
| Total | 5.144 MW | 2,855.153 MWh |

*(4) Conclusion.* Weber Basin's Resource Pool 4 capacity allocation has been adjusted from 0.415 MW to 1.820 MW. Its Resource Pool 6 capacity allocation has been adjusted from 0.758 MW to 3.324 MW. Weber Basin's final post-1989 SLCA/IP energy entitlement will remain unadjusted.

*C. Reallocation of Capacity and Energy*

1. Available Capacity and Energy

Capacity and energy available for reallocation are shown on the following table:

| | Winter | | Summer | |
|---|---|---|---|---|
| | MW | MWh | MW | MWh |
| **Refused or Rescinded Allocations** | | | | |
| Cedar City | 3.475 | 8,655.275 | 2.750 | 6,987.911 |
| Ivins | 0.131 | 328.168 | 0.118 | 300.073 |
| LaVerkin | 0.246 | 617.549 | 0.211 | 538.062 |
| Springdale | 0.029 | 72.781 | 0.024 | 61.052 |
| West Bountiful | 0.469 | 1,167.983 | 0.444 | 1,126.827 |
| Subtotal rescinded | 4.350 | 10,841.756 | 3.547 | 9,013.925 |
| **Reduced Capacity Allocations** | | | | |
| Central Valley Electric Cooperative, Inc | 3.081 | | 2.612 | |
| Colorado-Ute Electric Association, Inc | 56.000 | | 52.000 | |
| Lea County Electric Cooperative | 2.335 | | 2.570 | |
| Roosevelt County Electric Cooperative, Inc | 2.517 | | 2.869 | |
| Subtotal reduced | 63.933 | | 60.051 | |
| 4–2–87 allocations | 74.490 | | 67.856 | |
| Available capacity | 10.557 | | 7.805 | |
| (4–2–87 Allocations Minus Subtotal Reduced Allocations) Total Available (Rescinded and Reduced Allocations) | 14.907 | 10,841.756 | 11.352 | 9,013.925 |
| **Increased Capacity and Energy Allocations** | | | | |
| Enterprise, UT | 1.292 | 2,945.890 | 0.992 | 2,265.232 |
| Farmers Electric Cooperative, Inc | 2.353 | | 2.576 | |
| Hurricane, UT | 3.882 | 8,851.348 | 1.716 | 3,918.486 |
| Weber Basin Water Conservative District | | | 5.144 | |
| Subtotal increased | 7.527 | 11,797.238 | 10.428 | 6,183.718 |
| 4–2–87 allocations | −4.189 | −5,898.619 | −4.349 | −3,091.859 |
| Total unavailable | 3.338 | 5,898.619 | 6.077 | 3,091.859 |
| (Required for Increased Allocations) Total Available for Reallocation (Available less Unavailable) | 11,569 | 4,943.137 | 5.275 | 5,922.066 |

2. Administrative Reallocation

The February 7, 1986, Criteria indicate that long-term firm energy and associated capacity made available from refused or rescinded allocations may be administratively reallocated without further public process.

**III. Adjusted Final Allocations**

*A. Southern Division Existing Customers*

Table 2: Adjusted final SLCA/IP post-1989 allocations to Southern Division existing customers.

*B. Northern Division Existing Customers*

Table 3: Adjusted final SLCA/IP post-1989 allocations to Northern Division existing customers.

*C. Northern Division Participating Customers*

Table 4: Adjusted final SLCA/IP post-1989 allocations to Northern Division participating customers and special allocations.

Issued at Golden, Colorado, August 11, 1989.

**William H. Clagett,**

*Administrator.*

TABLE 2—POST 1989 SLCA/IP ALLOCATIONS, SOUTHERN DIVISION EXISTING CUSTOMERS.

| Customer Group | Customer | Resource Pool 1— | | | |
|---|---|---|---|---|---|
| | | Capacity (MW) | Energy (MWH) | Capacity (MW) | Energy (MWH) |
| (1) | (2) | (3) | (4) | (5) | (6) |
| Southern Division, Existing Customers | AK-Chin Indian Community | 1.920 | 4,273.433 | 4.244 | 9,373.563 |
| | Arizona Power Pooling Association | 13.568 | 30,197.295 | 27.275 | 60.248.025 |
| | Chandler Heights Citrus Irrig. D | 0.302 | 671.748 | 0.400 | 881.769 |
| | Colorado River Commission of NV | 29.477 | 65,603.370 | 22.420 | 49.521.181 |
| | Colorado River Agency | 0.881 | 1,933.823 | 0.442 | 1,011.397 |
| | Electrical District No. 3 | 2.880 | 6,409.748 | 8.631 | 19,063.962 |
| | Electrical District No. 4 | 3.680 | 8,189.262 | 4.897 | 10,815.570 |
| | Electrical Dist. No. 5-Maricopa Co | 0.233 | 518.692 | 1.274 | 2,813.842 |
| | Electrical Dist. No. 5-Pinal Co | 2.633 | 5,859.936 | 2.948 | 6,510.552 |
| | Electrical District No. 6 | 0.000 | 0.000 | 6.245 | 13,794.786 |
| | Electrical District No. 7 | 0.729 | 1,623.416 | 4,807 | 10,618.756 |
| | Maricopa County MWCD No. 1 | 2.373 | 5,280.927 | 5.748 | 12,697.156 |
| | Ocotillo Water Cons. Dist | 0.272 | 606.459 | 1.162 | 2,565.706 |
| | Queen Creek Irrig. Dist | 0.000 | 0.000 | 1.887 | 4,167.452 |
| | Roosevelt Irrig. Dist | 1.761 | 3,918.404 | 5.243 | 11,581.167 |
| | Roosevelt Water Cons. Dist | 1.616 | 3,596.519 | 2.364 | 5,221.513 |
| | Safford | 0.560 | 1,246.991 | 1.227 | 2,710.445 |
| | Salt River Project Agricultural Improvement and Power District | 52.113 | 15,980.178 | 103.224 | 228,005.552 |
| | San Carlos Irrig. Project | 1.840 | 4,094.242 | 1.366 | 3,018.303 |
| | San Tan Irrig. District | 0.000 | 0.000 | 0.882 | 1,948.991 |
| | Thatcher | 0.363 | 806.788 | 0.556 | 1,228.656 |
| | Wellton-Mohawk Irrig. Dist | 0.448 | 996.974 | 0.146 | 320.783 |
| | Williams Air Force Base | 0.912 | 1,993.462 | 2.265 | 5,002.065 |
| | Yuma Proving Grounds | 0.415 | 1,040.333 | 0.347 | 732.808 |
| Total, Southern Division Existing Customers. | | [1] 118.976 | 264,842.000 | 210.000 | 463,854.000 |

1 24 kilowatts unallocated.

TABLE 3—POST 1989 SLCA/IP ALLOCATIONS, NORTHERN DIVISION EXISTING CUSTOMERS, LOVELAND AREA CUSTOMERS

| Customer Group | Customer | Resource Pool 3—Winter Season | | Resource Pool 4—Summer Season | |
|---|---|---|---|---|---|
| | | Capacity (MS) | Energy (MWH) | Capacity (MW) | Energy (MWH) |
| (1) | (2) | (3) | (4) | (5) | (6) |
| Northern Division Existing Customers, Loveland Area Customers. | Center | 1.801 | 3,954.115 | 1.082 | 2,330.498 |
| | Colorado Springs | 64.864 | 141,272.844 | 16.289 | 35,559.318 |
| | Fleming | 0.068 | 141.403 | 0.087 | 188.137 |
| | Fort Morgan | 9.081 | 19,015.973 | 8.584 | 18,495.260 |
| | Frederick | 0.045 | 115.384 | 0.038 | 95.511 |
| | Haxtun | 0.546 | 1,103.302 | 0.575 | 1,217.513 |
| | Holyoke | 2.023 | 4,214.092 | 1.598 | 3,441.244 |
| | Lamar | 2.663 | 5,555.122 | 2.192 | 4,715.263 |
| | Platte River Power Authority | 145.955 | 382,403.019 | 113.902 | 273,363.902 |
| | Pueblo Army Depot | 2.856 | 6,253.067 | 2.641 | 5,620.433 |
| | Torrington | 1.302 | 2,673.435 | 1.922 | 4,127.592 |
| | Tri-State G&T Assn., Inc. (CO-WY) | 226.027 | 472,836.547 | 272.938 | 587,818.883 |
| | Willwood Light & Power | 0.039 | 86.267 | 0.050 | 108.933 |
| | Wyoming Municipal Power Agency | 6.731 | 14,727.997 | 5.036 | 10,775.528 |
| | Wray | 1.059 | 2,318.709 | 0.501 | 1,104.557 |
| | Yuma, Co | 1.411 | 2,950.599 | 1.223 | 2,634.474 |

TABLE 3—POST 1989 SLCA/IP ALLOCATIONS, NORTHERN DIVISION EXISTING CUSTOMERS, LOVELAND AREA CUSTOMERS—Continued

| Customer Group | Customer | Resource Pool 3—Winter Season | | Resource Pool 4—Summer Season | |
|---|---|---|---|---|---|
| | | Capacity (MS) | Energy (MWH) | Capacity (MW) | Energy (MWH) |
| (1) | (2) | (3) | (4) | (5) | (6) |
| Subtotal, Loveland Area Customers. | | 466.471 | 1,059,621.875 | 428.658 | 951,797.046 |
| Northern Division Existing Customers, Salt Lake City Area Customers. | Aztec | 2.778 | 6,082.158 | 2.039 | 4,494.653 |
| | Brigham City | 12.594 | 27,577.770 | 8.932 | 19,650.298 |
| | Colorado-Ute Elec. Assn.[2] | 30.339 | 76,184.288 | 29.309 | 71,185.143 |
| | Defense Depot Ogden | 3.532 | 7,734.000 | 3.169 | 6,984.667 |
| | Delta | 1.211 | 2,650.876 | 1.061 | 2,337.584 |
| | Deseret G&T Cooperative, Inc.[3] | 110.346 | 230,865.569 | 101.616 | 218,834.447 |
| | Dixie-Escalante Rural Electric Association, Inc.[3] | 24.085 | 50,110.977 | 19.072 | 40,956.172 |
| | DOE-Albuq. Oper. Office | 21.127 | 46,260.616 | 16.328 | 35,985.282 |
| | Farmington | 17.577 | 42,676.272 | 15.968 | 35,191.494 |
| | Gunnison | 7.225 | 15,821.430 | 4.812 | 10,605.277 |
| | Navajo Tribal Util. Auth | 20.817 | 54,457.724 | 18.589 | 48,629.623 |
| | Oak Creek | 0.485 | 1,014.500 | 0.320 | 702.204 |
| | Page | 8.040 | 17,604.906 | 6.687 | 14,737.305 |
| | Plains Electric G&T Coop., Inc | 177.722 | 372,222.505 | 142,303 | 312,070.292 |
| | Saint George [3] | 31.915 | 66,005.078 | 19.673 | 42,118.273 |
| | Truth or Consequences | 6.506 | 14,234.333 | 6.025 | 13,285.367 |
| | Utah Associated Municipal Power Systems [3] | 159.714 | 322,700.063 | 103.718 | 222,853.999 |
| | Utah Municipal Power Agency | 93.566 | 204,880.060 | 79.126 | 174,385.170 |
| | Weber Basin Water Cons. Dist | 0.000 | 0.000 | 1.820 | 915.704 |
| Subtotal, Salt Lake City Area Customers. | | 729.579 | 1,569,083.125 | 580.567 | 1,275,922.954 |
| Total, Northern Division Existing Customers. | | 1,196.050 | 2,628,705.000 | 1,009.225 | 2,227,720.000 |

[2] Allocations assigned to Colorado-Ute Electric Association, Inc., by the following allottees: Delta-Montrose Electric Association, Empire Electric Association, Grand Valley Rural Power, Gunnison County Electric Association, Holy Cross Electric Association, Inc., Intermountain Rural Electric Association, La Plata Electric Association, Sangre de Cristo Electric Association, Inc., San Isabel Electric Association, Inc., San Luis Valley Rural Electric Cooperative, San Miguel Power Association, Inc., Southeast Colorado Power Authority, White River Electric Association, Inc., and Yampa Valley Electric Association, Inc.

[3] Intermountain Consumer Power Association is acting as a single purchasing agent for the following allottees: Deseret G&T Cooperative, Inc., Dixie-Escalante Rural Electric Association, Inc., Saint George, and Utah Associated Municipal Power Systems.

TABLE 4—NORTHERN DIVISION PARTICIPATING CUSTOMERS, PROSPECTIVE CUSTOMERS

| Customer Group | Resource Pool 5—Winter Season | | Resource Pool 6—Summer Season | | Energy (MWH) |
|---|---|---|---|---|---|
| | Customer | Capacity (MW) | Energy (MWH) | Capacity (MW) | |
| (1) | (2) | (3) | (4) | (5) | (6) |
| Participating Customers—Prospective Customers | Arkansas River Power Auth [4] | 1.637 | 4,077.916 | 1.078 | 2,737.564 |
| | Aspen | 1.677 | 4,234.809 | 1.062 | 2,714.455 |
| | Blanding | 0.765 | 1,926.300 | 0.500 | 1,278.588 |
| | Cannon Air Force Base | 1.419 | 3,573.678 | 1.387 | 3,545.692 |
| | Central Valley Elec. Coop., Inc | 3.081 | 9,048.805 | 2.612 | 9,092.366 |
| | County of Los Alamos | 1.569 | 3,951.530 | 1.056 | 2,701.693 |
| | Central Utah WCD | 0.095 | 285.651 | 0.237 | 607.009 |
| | Farmers Electric Cooperative, Inc | 2.353 | 6,887.176 | 2.576 | 7,983.671 |
| | Gallup | 3.592 | 9,048.805 | 3.439 | 8,795.248 |
| | Glenwood Springs | 1.689 | 4,243.525 | 1.246 | 3,182.500 |
| | Helper | 0.472 | 1,181,057 | 0.304 | 773.637 |
| | Hill Air Force Base | 3.592 | 9,048.805 | 3.555 | 9,092.366 |
| | Holloman Air Force Base | 2.065 | 5,386.666 | 1.925 | 4,933.272 |
| | Kanab | 0.611 | 1,539.732 | 0.476 | 1,216.504 |
| | Lea County Elec. Coop | 2.335 | 9,048.805 | 2.570 | 9,092.366 |
| | Mun. Subdist., Northern Co WCD | 0.000 | 0.000 | 3.573 | 9,078.000 |
| | Panguitch | 0.686 | 1,722,833 | 0.642 | 1,638.083 |
| | Price | 1.702 | 4,287.107 | 1.119 | 2,861.732 |
| | Roosevelt County Elec. Coop., Inc | 2.517 | 7,769.264 | 2.869 | 8,788.350 |
| | Sandia/Kirtland | 3.592 | 9,048.805 | 3.555 | 9,092.366 |
| | Santa Clara | 0.331 | 828.047 | 0.300 | 764.669 |
| | Tooele Army Depot | 1.307 | 3,291.706 | 0.920 | 2,352.298 |
| | University of Utah | 3.461 | 8,944.220 | 3.104 | 8,021.611 |
| | Utah State University | 1.152 | 3,017.143 | 1.124 | 2,881.047 |
| | Washington | 0.691 | 1,728.876 | 0.556 | 1,417.587 |
| Subtotal, Prospective Customers | | 42.391 | 114,121,261 | 41.785 | 114,642.674 |

TABLE 4—NORTHERN DIVISION PARTICIPATING CUSTOMERS, PROSPECTIVE CUSTOMERS—Continued

| Customer Group | Resource Pool 5—Winter Season | | Resource Pool 6—Summer Season | | Energy (MWH) |
|---|---|---|---|---|---|
| | Customer | Capacity (MW) | Energy (MWH) | Capacity (MW) | |
| (1) | (2) | (3) | (4) | (5) | (6) |
| Participating Customers—Existing Customers | Colorado-Ute Elect. Assn.[5] | 25.661 | 76,083.552 | 22.691 | 63,962.745 |
| | Delta | 0.510 | 1,284.641 | 0.449 | 1,149.166 |
| | DOE-Albuq. Oper. Office | 0.000 | 0.000 | 3.555 | 9,092.366 |
| | Farmington | 1.289 | 3,254.728 | 3.555 | 9,092.366 |
| | Navajo Tribal Util. Auth | 2.860 | 7,482.443 | 3.213 | 8,404.460 |
| | Weber Basin Water Cons. Dist. | 0.000 | 0.000 | 3.324 | 1,939.439 |
| Subtotal, Existing Customers | | 30.320 | 88,105.364 | 36.787 | 93,640.542 |
| Subtotal, Exist. + Prosp. (Excl. Spec. Alloc) | | 72.711 | 202,226.625 | 78.572 | 208,283.216 |
| Participating Customers—Special Allocations | DOE-Albuq. Oper. Office | 15.000 | 0.000 | 15.000 | 0.000 |
| | Enterprise [6] | 1.292 | 2,945.890 | 0.992 | 2,265.232 |
| | Hurricane [6] | 3.882 | 8,851.348 | 1.716 | 3,918.486 |
| Subtotal, Special Allocations | | 20.174 | 11,797.238 | 17.708 | 6,183.718 |
| Total, Participating Customers | | 92.885 | 214,023.863 | 96.280 | 214,466.934 |

[4] Allocation assigned to Arkansas River Power Authority by Raton, New Mexico.
[5] Allocations assigned to Colorado-Ute Electric Association, Inc. by the following allottees: Delta-Montrose Electric Association, Empire Electric Association, Grand Valley Rural Power, Gunnison County Electric Association, Holy Cross Electric Association, Inc., La Plata Electric Association, San Miguel Power Association, Inc., White River Electric Association, Inc., and Yampa Valley Electric Association, Inc.
[6] Intermountain Consumer Power Association is acting as a single purchasing agent for the following allottees: Enterprise, Utah, and Hurricane, Utah.

[FR Doc. 89-20010 Filed 8-23-89; 8:45 am]
BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-3634-7]

### 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.*), these notices announce that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comments. The ICRs describe the nature of the information collections and their expected costs and burdens; where appropriate, they include the actual data collection instrument.

**DATES:** Comments must be submitted on or before September 25, 1989.

**FOR FURTHER INFORMATION CONTACT:** Sandy Farmer at EPA, (202 382-2740).

**SUPPLEMENTARY INFORMATION:**

#### Office of Air and Radiation

*Title:* NSPS for Onshore Natural Gas Processing Plants—Reporting and Recordkeeping. (EPA ICR #1086.02; OMB #2060-0123). This is a reinstatement of a previously approved collection.

*Abstract:* Onshore natural gas processing plants must keep records demonstrating VOC leak detection, conducted repair programs, and records demonstrating compliance with equipment standards. Semiannual reports of exceedances, which enable enforcement agencies to monitor the leak detections, are required. Also required are records of operation of continuous emission monitoring and of excess emission for SO2. EPA uses records and reports to determine compliance with the standards.

*Burden statement:* The public reporting burden for this collection of information is estimated to average 195 hours per response for reporting and 447 hours per response for recordkeeping. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

*Respondents:* Owners/Operators of Onshore Natural Gas Processing Plants.

*Estimated No. of respondents:* 92.

*Estimated total annual burden of respondents:* 17,963 hours for reporting and 41,088 hours for recordkeeping.

*Frequency of collection:* Semiannually.

*Title:* NSPS for Primary Aluminum Reduction Plants (Subpart S)—Reporting and Recordkeeping. (EPA ICR #1067; OMB #2060-0031). This is a reinstatement of a previously approved collection.

*Abstract:* Owners/Operators must monitor and maintain records of daily production rates for aluminum anode, raw material feed rates, and potline voltages for two years. Monthly performance tests and reports are required. Also required are reports of operation and maintenance conditions when tests reveal high emission levels. This information is used to ensure continuing compliance with the standards.

*Burden statement:* The public reporting burden for this collection of information is estimated to average 67 hours per response for reporting and 88 hours per response for recordkeeping. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

*Respondents:* Owners/Operators of Primary Aluminum Reduction Plants.

*Estimated numbers of respondents:* 5.

*Estimated total annual burden on respondents:* 1,331 hours for reporting and 438 hours for recordkeeping.

*Frequency of collection:* On occasion.

*Title:* NSPS for Bulk Gasoline Terminal (Subpart XX)—Information Requirements. (EPA ICR #0664.03; OMB #2060-0006). This is a reinstatement of a previously approved collection.

*Abstract:* Owners/Operators must notify EPA of construction, modifications, start-ups, shutdowns, malfunctions and dates and result of performance tests; they must record the tank identification number of each gasoline truck loaded; they must notify

EPA of each non-vapor-tight gasoline truck, and record each leak detected; they must also inspect control equipment during loading operations. No excess emission reports are required. EPA uses the information to implement and enforce the standards.

*Burden statement:* The public reporting burden for this collection of information is estimated to average 19.3 hours per response for reporting and 8.5 hours per response for recordkeeping. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

*Respondents:* Owners/Operators of Bulk Gasoline Terminals.

*Estimated No. of respondents:* 31.

*Estimated total annual burden of respondents:* 599 hours for reporting and 264 hours for recordkeeping.

*Frequency of collection:* Initial performance test, and on occasion.

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
Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20530.

Dated: August 15, 1989.

Paul Lapsley,

*Director, Information and Regulatory Systems Division.*

[FR Doc. 89-19980 Filed 8-23-89; 8:45 am]

BILLING CODE 6560-50-M

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[FRL-3634-8]

## RCRA Inspection Manual

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of availability of Inspection Manual.

**SUMMARY:** The Environmental Protection Agency (EPA) announces the availability of a final inspection guidance entitled the *RCRA Inspection Manual.* It was finalized on April 22, 1988, and replaces the RCRA Inspection Manual completed in 1981. The manual provides guidance concerning the procedures and checklists employed by duly authorized inspectors during RCRA inspections pursuant to section 3007 of the Resource Conservation and Recovery Act.

Initially, the Manual was intended only for RCRA field inspectors to assist them in their performance of Compliance Evaluation Inspections of RCRA generators, transporters, and treatment, storage, and disposal facilities. With this notice, we are also making it available to the regulated community.

**ADDRESS:** Copies of the document entitled *RCRA Inspection Manual* are available for viewing at all EPA libraries and the RCRA/Superfund docket. The docket number is F-89-RIMA-FFFFF. The docket is located at EPA Headquarters (room M2427), 401 M Street SW., Washington, DC 20460 and is open from 9:00 a.m. to 4:00 p.m. Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials. Call 475-9327 for appointments. Copies cost $.15/page. In addition, this document is available for purchase through the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, Virginia 22161, at (703) 487-4600: RCRA Inspection Manual. (NTIS #PB89-208-169/AS).

**FOR FURTHER INFORMATION CONTACT:** For general information contact: RCRA/Superfund Hotline, (800) 424-9346. For technical information contact Peter R. Siebach, USEPA (OS-520), Office of Waste Programs Enforcement, 401 M Street SW., Washington, DC 20460, telephone (202) 475-9849.

Dated: August 9, 1989.

Robert L. Duprey,

*Acting Assistant Administrator.*

[FR Doc. 89-19978 Filed 8-23-89; 8:45 am]

BILLING CODE 6560-50-M

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[OPTS-59272A; FRL-3635-2]

## Certain Chemicals; Approval of a Test Marketing Exemption

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

**ACTION:** Notice.

**SUMMARY:** This ntoice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME-89-18. The test marketing conditions are described below.

**EFFECTIVE DATES:** August 17, 1989.

**FOR FURTHER INFORMATION CONTACT:** Darlene Jones, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-608, 401 M St. SW., Washington, DC 20460, (202) 382-2279.

**SUPPLEMENTARY INFORMATION:** Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TMS-89-18. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-89-18. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substance.

*TME-89-18*

*Date of Receipt:* July 14, 1989 (54 FR 29779).

*Applicant:* Westvaco Corporation.

*Chemical:* (G) Rosin, polymer with substituted phenols, formaldehyde, pentaerythritol and metal hydroxide.

*Use:* (G) Ink resin.

*Production Volume:* (Confidential).

*Number of Customers:* (Confidential).

*Test Marketing Period:* 1 Year, commencing on first day of manufacture.

*Risk Assessment:* EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market substance will not persent any unreasonable risk of injury to health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: August 17, 1989.

**John W. Melone,**

*Director, Chemical Control Division, Office of Toxic Substances.*

[FR Doc. 89-19976 Filed 8-23-89; 8:45 am]

BILLING CODE 6560-50-M

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**[OPTS-81015; FRL-3634-5]**

## TSCA Inventory; Notice of Intent To Remove 217 Reported Chemical Substances

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

**ACTION:** Notice.

**SUMMARY:** In reviewing the chemical substances included on the Toxic Substances Control Act Chemical Substance Inventory, EPA has concluded that certain chemical substances were incorrectly reported and listed. EPA intends to remove 217 chemical substances from the Inventory and solicits public comment on the appropriateness of that removal.

**DATES:** Comments must be received by EPA on or before October 10, 1989).

**ADDRESSES:** Three copies of the written comments should be addressed to: TSCA Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Comments should bear the identifying notation OPTS-81015. The administrative record supporting this action is available for public inspection in the OPTS Reading Rm. NE Mall G004, at the above address, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

**FOR FURTHER INFORMATION CONTACT:** Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, U.S. Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** Section 8(b) of the Toxic Substances Control Act (TSCA), Pub. L. 94-469, requires the Administrator of the EPA to identify, compile, and keep current a list of chemical substances which are manufactured, imported, or processed for commercial purposes in the United States. To meet this requirement, EPA promulgated the Inventory Reporting Regulations (40 CFR part 710), which appeared in the **Federal Register** of December 23, 1977 (42 FR 64572). These regulations provided the basis for the initial compilation of the TSCA Chemical Substance Inventory, which identifies chemical substances in U.S. commerce.

The Inventory is a compilation of chemical substances that have been manufactured, imported, or processed in the United States for commercial purposes since January 1, 1975. The Inventory's primary purpose is regulatory. It defines a new chemical substance for purposes of section 5(a)(1)(A) of TSCA. If a chemical substance is not included in the Inventory, it is considered a new substance (section 3(9) of TSCA), and a premanufacture notice (PMN) is required at least 90 days before the manufacture or import of such a substance can begin.

For the Inventory to perform its regulatory functions, it must be continuously and accurately updated as new information becomes available. Updated information includes identities of new chemical substances which are being introduced into U.S. commerce and corrections for previously reported information. Recognizing industry's need for making corrections to incorrectly submitted Inventory reports, EPA announced, in the **Federal Register** of July 29, 1980 (45 FR 50544), that it would accept certain types of corrections related to substances previously reported for the Inventory. The types of corrections specified in the July 29, 1980 **Federal Register** notice relate to chemical identity.

Since the publication of the Inventory and the July 29, 1980 **Federal Register** notice, the Agency has received numerous requests to correct certain previously submitted Inventory reports. The Agency reviewed these correction requests and the corresponding reports originally submitted for the Inventory, and concluded that a number of the chemical substances currently listed on the Inventory were erroneously reported. Furthermore, in reviewing the total body of the Inventory submissions, the Agency discovered that each of the incorrectly listed substances was reported only by a submitter who subsequently requested that EPA correct the chemical identity originally reported, or who subsequently notified the Agency that the substance in question was solely manufactured for a non-TSCA use.

There are various reasons why chemical substances were incorrectly reported for the Inventory. First, the mistakes could have been typographical or transcriptional and were not known to the submitter when the original report was submitted. Second, improved analytical equipment and methods may have allowed for a more accurate description of a previously reported substance. Third, EPA may have identified reporting errors and requested corrections. Regardless of the source of error, the result is the same: A chemical substance not eligible for inclusion on the Inventory was reported and currently is included on the Inventory. If these mistakes are not corrected, the integrity of the Inventory will be impaired, and its reliability as an accurate compilation of commercial substances for TSCA purposes will diminish. In addition, substances which should be subject to premanufacture notification (PMN) review before they are manufactured or imported would not be reviewed.

In this notice, the Agency proposes to remove 217 chemical substances. The Agency has found that these chemical substances were incorrectly reported and listed. The substances proposed for removal from the TSCA Inventory are listed by Chemical Abstracts Service (CAS) Registry Number. Each of the 217 chemical substances is further identified by its corresponding Chemical Abstracts Preferred Name.

Each of the 217 chemical substances proposed for removal was reported for the Inventory. Subsequently, persons who had reported the chemical substances in question informed EPA of errors in their submissions. In the majority of the cases the errors were due to mistaken chemical identities. The corrected identities for these chemical substances have been added to the Agency's Master Inventory File. In other cases, substances which are not eligible for reporting under TSCA were included on the Inventory. EPA has checked each of these 217 chemical substances, as originally reported, to determine whether any other person had also reported the same chemical substance for the Inventory. No others were found.

In accordance with EPA policy (OTS Order 7730.7), an erroneously or incorrectly reported chemical substance should be removed from the Inventory. Accordingly, these 217 chemical

substances do not appear to be eligible for continued inclusion on the Inventory.

Publication of this notice does not mean that EPA will actually and automatically delete from the Inventory any of the 217 chemical substances listed below. Rather, the Agency solicits public comments on its intent to remove from the TSCA Inventory the listed substances. EPA is specifically interested in knowing whether any of the chemical substances listed below have been manufactured, imported, or processed for TSCA commercial purposes other than research and development, as defined in the Inventory Reporting Regulations (40 CFR 710.2 (p)), by anyone during the period January 1, 1975 through August 24, 1989. The Agency is also interested to know whether any person can show that any of the chemical substances could have been properly reported for the Inventory. EPA also solicits comments from anyone who believes that any of the chemical substances listed below should not be removed from the TSCA Inventory for any reason. With the publication of this notice, any on-going manufacture, import, or processing of any of the 217 chemical substances listed below which was begun prior to the publication date of this notice may continue until publication of the final notice of disposition. All such comments must be submitted to EPA within the 45-day comment period.

EPA will review all comments received and will make a determination regarding the eventual status of each of the chemical substances listed below. The Agency will announce its decision in a final notice of disposition in the **Federal Register**. EPA will not consider any request to retain any of the listed chemical substances on the Inventory based solely on manufacture, import, or processing of that substance which begins after August 24, 1989. If the Agency determines that any of the listed chemical substances should not be removed from the Inventory, manufacturers, importers, or processors of these chemical substances would be invited to submit Inventory Reports to establish the need to retain the chemical substances on the Inventory. The substance would then remain on the Inventory. On the other hand, if the Agency concludes that a chemical substance is not eligible for inclusion on the Inventory, effective with the publication of the final notice of disposition, the chemical substance will be considered removed from the Inventory--the presence of its name in any previously published version of the Inventory notwithstanding. In that event, the premanufacture requirements of section 5(a) of TSCA would apply to any manufacture or import of the chemical substance from the date of removal.

## CHEMICAL SUBSTANCES PROPOSED FOR REMOVAL FROM TSCA INVENTORY

| CAS Registry No. | Name |
|---|---|
| 80-63-7 | 2-Propenoic acid, 2-chloro-, methyl ester |
| 925-76-8 | 2-Propenamide, N-[2-(dimethylamino)ethyl]- |
| 1471-18-7 | 1-Propene, 3,3'-[[2,2-bis[(2-propenyloxy) methyl]- 1,3-propanediyl]bis(oxy)]bis- |
| 1611-83-2 | 2-Propenamide, 2-methyl-N-phenyl- |
| 2039-85-2 | Benzene, 1-chloro-3-ethenyl- |
| 2556-36-7 | Cyclohexane, 1,4-diisocyanato- |
| 3121-60-6 | Benezenesulfonic acid, 4-hydroxy-5-(2-hydroxy-4- methoxybenzoyl)-2-methoxy-, monosodium salt |
| 3435-51-6 | Benzonitrile, 4-ethenyl- |
| 3539-43-3 | 1-Hexadecanol, dihydrogen phosphate |
| 4270-70-6 | Sulfonium, triphenyl-, chloride |
| 5045-40-9 | 1H-Isoindol-1-one, 3,3'-[(2-methyl-1,3- phenylene)diimino]bis[4,5,6,7-tetrachloro- |
| 5339-85-5 | Benzeneethanol, 2-amino- |
| 6370-14-5 | Chromate(3-), bis[5-chloro-2-hydroxy-3-[(2-hydroxy-1- naphthalenyl)azo]benzenesulfonato(3-)]-, trisodium |
| 6709-58-6 | Benzenediazonium, 4-[(2,6-dichloro-4-nitrophenyl)azo]-2,5-dimethoxy- |
| 7195-45-1 | 1,2-Benzenedicarboxylic acid, bis(oxiranylmethyl) ester |
| 9022-52-0 | Benzene, chloroethenyl-, homopolymer |
| 10054-29-2 | 1-Tetradecanol, dihydrogen phosphate |
| 10127-28-3 | C.I. Solvent Orange 6 |
| 13103-75-8 | Benzenamine, N,N-dimethyl-4-(2-pyridinylazo) |
| 13401-85-9 | 2-Propenoic acid, 2-chloro-, butyl ester |
| 14049-79-7 | Cobaltate(3-), hexakis(cyano-C)-, zinc (2:3), (OC-6- 11)- |
| 18924-98-6 | Phosphoric acid, monobutyl ester, diammonium salt |
| 20640-71-5 | Benzoic acid, 2-[(4-amino-9,10-dihydro-9,10-dioxo-3- sulfo-1-anthracenyl)amino]-4[[2-(sulfooxy)ethyl]sulfonyl]- |
| 23069-48-9 | Disulfide, cyclohexyl ethyl |
| 25086-42-4 | Benzenamine, 4-ethenyl-, homopolymer |
| 25765-19-9 | 2-Propenenitrile, polymer with 2,5-furandione |
| 26100-51-6 | Propanoic acid, 2-hydroxy-, homopolymer |
| 26375-31-5 | 2-Propenoic acid, 2-methyl-, polymer with ethene and ethenyl acetate |
| 27306-78-1 | Poly(oxy-1,2-ethanediyl), .alpha.-methyl-.omega.-[3- [1,3,3,3-tetramethyl-1-[(trimethylsilyl)oxy]disiloxanyl]propyl]- |
| 28107-22-4 | Benzoic acid, 2-hydroxy-, methyl ester, polymer with formaldehyde |
| 28677-93-2 | 1-Propanol, methoxy- |
| 32445-13-9 | Benzenediazonium, 4-[(4-methoxyphenyl)amino]- |
| 34323-54-1 | 2-Propenoic acid, ethyl ester, polymer with ethenyl acetate and 2,5-furandione |
| 34591-13-4 | 1-Hexadecanol, dihydrogen phosphate, monoammonium salt |
| 38491-08-6 | Phosphoric acid, dibutly ester, ammonium salt |
| 38808-51-4 | 2-Propenoic acid, 2-methyl-, oxiranylmethyl ester, polymer with ethenylbenzene and 2-propenoic acid |
| 41969-08-6 | Phosphoric acid, monooctyl ester, monopotassium salt |
| 42986-19-6 | 2-Naphthalenesulfonic acid, 6-amino-4-hydroxy-5-[[2- sulfo-4-[[2-(sulfooxy)ethyl] sulfonyl]phenyl]azo]- |
| 46300-01-0 | Benzenediazonium, 4-cyano-2,5-dimethoxy- |
| 47300-91-4 | Benzenediazonium, 2-methoxy-5-methyl-4-[(4-methyl-2- nitrophenyl)azo]- |
| 52204-35-0 | 2-Anthracenesulfonic acid, 1-amino 4-[[4-[[3-[(2- chloroethyl)sulfonyl]benzoyl] methylamino]-2-sulfophenyl]amino]-9,10- dihydro-9,10-dioxo- |
| 52371-97-8 | 1-Naphthalenesulfonic acid, 6-amino-5-[[2-sulfo-4- [[2-(sulfooxy)ethyl] sulfonyl]phenyl]azo]- |
| 53802-03-2 | C.I. Solvent Red 109 |
| 55650-01-6 | 3H-Indolium, 1,3,3-trimethyl-2- [(methylphenylhydrazono)methyl]-, chloride |
| 56512-49-3 | Benzenesulfonyl chloride, 4-[[4- (dimethylamino)phenyl]azo]- |
| 61670-11-9 | 2,7-Naphthalenedisulfonic acid, 4-hydroxy-5-[(2- hydroxy-1-naphthalenyl)azo]-3-[(2-hydroxy-3-nitro-5-sulfophenyl)azo]- |

## CHEMICAL SUBSTANCES PROPOSED FOR REMOVAL FROM TSCA INVENTORY—Continued

| CAS Registry No. | Name |
|---|---|
| 61951-72-2 | C.I. Leuco Sulphur Yellow 1 |
| 63082-99-5 | 2-Cyclohexene-1-octanoic acid, 5-carboxy-4-hexyl-, monosodium salt |
| 63450-32-8 | 2(3H)-Furanone, 4-hexyldihydro- |
| 63833-78-3 | 3-Pyridinecarbonitrile, 5-[(2-cyano-4- nitrophenyl)azo]-6-[(2-hydroxyethyl)amino]-4-methyl-2-[[3-(2- phenoxyethoxy)propyl]amino]- |
| 64346-12-9 | Phosphoric acid, monooctadecyl ester, compound with 2,2'-iminobis[ethanol] (1:1) |
| 64346-51-6 | Phosphoric acid, monodecyl ester, compound with 2,2'-iminobis[ethanol] (1:2) |
| 64346-58-3 | Phosphoric acid, monododecyl ester, compound with morpholine (1:1) |
| 64509-06-4 | Tetradecen-1-ol, hydrogen phosphate |
| 64509-07-5 | Octadecadien-1-ol, dihydrogen phosphate |
| 64601-16-7 | Docosanoic acid, compound with 1,3-propanediamine acetate eicosanoate (1:1) |
| 64611-70-7 | Chromate(2-), [2-[[(2-hydroxyethyl)imino] methyl]phenolato(2-)-N,O,O']bis[6-hydroxy-5-[(2-hydroxy-4-nitrophenyl)azo]-1-naphthalenesulfonato(3-)]-, disodium |
| 65104-37-2 | Phosphoric acid, monododecyl ester, compound with morpholine (1:2) |
| 65104-38-3 | Phosphoric acid, monododecyl ester, compound with 2,2'-iminobis[ethanol] (1:1) |
| 65104-39-4 | Phosphoric acid, monododecyl ester, compound with 2,2'-iminobis[ethanol] (1:2) |
| 65104-55-4 | 1-Tetradecanol, dihydrogen phosphate, diammonium salt |
| 65104-56-5 | 1-Tetradecanol, dihydrogen phosphate, compound with 2,2'-iminobis[ethanol] (1:1) |
| 65104-57-6 | 1-Tetradecanol, dihydrogen phosphate, compound with 2,2'-iminobis[ethanol] (1:2) |
| 65104-58-7 | 1-Tetradecanol, dihydrogen phosphate, monoammonium salt |
| 65104-59-8 | 1-Tetradecanol, dihydrogen phosphate, compound with morpholine (1:1) |
| 65104-60-1 | 1-Tetradecanol, dihydrogen phosphate, compound with morpholine (1:2) |
| 65104-94-1 | Hexadecadien-1-ol, hydrogen phosphate |
| 65104-95-2 | Hexadecen-1-ol, hydrogen phosphate |
| 65104-96-3 | Octadecadien-1-ol, hydrogen phosphate |
| 65121-80-4 | Phosphoric acid, monodecyl ester, compound with morpholine (1:2) |
| 65121-81-5 | Phosphoric acid, monodecyl ester, compound with 2,2'-iminobis[ethanol] (1:1) |
| 65121-90-6 | Tetradecen-1-ol, dihydrogen phosphate |
| 65122-24-9 | 1-Hexadecanol, dihydrogen phosphate, compound with 2,2'-iminobis[ethanol] (1:1) |
| 65122-25-0 | 1-Hexadecanol, dihydrogen phosphate, diammonium salt |
| 65122-28-3 | Hexadecadien-1-ol, dihydrogen phosphate |
| 65138-75-2 | Phosphoric acid, monododecyl ester, diammonium salt |
| 65138-76-3 | Phosphoric acid, monododecyl ester, monoammonium salt |
| 65138-84-3 | 1-Hexadecanol, dihydrogen phosphate, compound with 2,2'-iminobis[ethanol] (1:2) |
| 65151-42-0 | 1,5-Naphthalenedisulfonic acid, 3,3'-[carbonylbis(imino-4,1-phenyleneazo)]bis-, tetralithium salt |
| 65151-45-3 | 1-Hexadecanol, dihydrogen phosphate, compound with morpholine (1:1) |
| 65151-46-4 | 1-Hexadecanol, dihydrogen phosphate, compound with morpholine (1:2) |
| 65151-78-2 | Phosphoric acid, monooctadecyl ester, compound with 2,2'-iminobis[ethanol] (1:2) |
| 65151-79-3 | Phosphoric acid, monooctadecyl ester, compound with morpholine (1:1) |
| 65151-80-6 | Phosphoric acid, monooctadecyl ester, compound with morpholine (1:2) |
| 65151-84-0 | Phosphoric acid, monooctyl ester, compound with 2,2'-iminobis[ethanol] (1:1) |
| 65151-85-1 | Phosphoric acid, monooctyl ester, compound with morpholine (1:1) |
| 65151-86-2 | Phosphoric acid, monooctyl ester, compound with morpholine (1:2) |
| 65151-91-9 | Hexadecen-1-ol, dihydrogen phosphate |
| 65180-68-9 | 1H-Pyrazole-3-carboxylic acid, 1-[4-[[4-[bis [2-[(2- chloroethyl)sulfonyl]ethyl]amino]-6-chloro-1,3,5-triazin-2-yl]amino]- 2-sulfophenyl]-4,5-dihydro-5-oxo-4-[(2-sulfophenyl)azo]- |
| 65253-54-5 | 1H-Imidazolium, 1-ethenyl-1-methyl-, methyl sulfate, polymer with ethenylbenzene and 2-methylpropyl 2-propenoate |
| 65629-44-9 | Chromate(5-), [6-(acetylamino)-4-hydroxy-3-[(2- hydroxy-3-nitro-5-sulfopheny)azo]-2-naphthalenesulfonato(4-)][4- hydroxy-6-[(2-hydroxy-5-methylphenyl)azo]-3-[(2-hydroxy-3-nitro-5- sulfophenyl)azo]-2-naphthalenesulfonato(4-)]-, pentahydrogen |
| 65718-42-5 | Chromate(5-), bis[4-hydroxy-6-[(2-hydroxy-5- methylphenyl)azo]-3-[(2-hydroxy-3-nitro-5-sulfophenyl)azo]-2- naphtalenesulfonato(4-)]- |
| 66071-02-1* | Fatty acids, dehydrated castor-oil, polymers with pentaerythritol, phthalic anhydride and trimethyloilethane |
| 66558-73-4 | Ethanamine, N,N',N>-[(2,4,6,8,8- pentamethylcyclotetrasiloxane-2,4,6-triyl)tris(oxy)]tris[N-ethyl- |
| 67663-01-8 | 2(3H)-Furanone, 5-hexyldihydro-4-methyl- |
| 67689-48-9 | Cuprate(2-), [3-[[4,5-dihydro-3-methyl-5-oxo-1-[4- [[2-(sulfooxy)ethyl]sulfonyl]phenyl]-1H-pyrazol-4-yl]azo]-4- hydroxybenzenesulfonato(4-)]-, dihydrogen |
| 67746-21-8* | Fatty acids, tallow, polymers with formaldehyde, phthalic anahydride and trimethylolpropane |
| 67762-89-4* | Siloxanes and Silicones, di-Me, Me 3- (oxiranylmethoxy)propyl, reaction products with N-methylglycine sodium salt |
| 67846-54-2 | 2-Anthracenesulfonic acid, 1-amino-4-[[3-[[3,6-dichloro-4-pyridazinyl) carbonyl]amino]-2,4,6-trimethyl-5-sulfophenyl]amino]-9,10-dihydro-9,10-dioxo- |
| 67873-88-5* | 1,2-Benzenedicarboxylic acid, polymer with 1,4- butanediol, (Z)-2-butenedioic acid and 1,2-ethanedoil, reaction products with 3-(triethoxysilyl)-1-propanamine |
| 67892-59-5 | Cuprate(2-), [4-hydroxy-3-[[2-hydroxy-4-[[2- (sulfooxy)ethyl]sulfonyl]phenyl]azo]-1-naphthalenesulfonato(4-)]-, dihydrogen |
| 67923-16-4* | Siloxanes and Silicones, di-Me, [(3- mercaptopropyl)silylidyne]tris- |
| 67939-48-4 | 1H-Imidazo[1,2-a]imidazole-1-carboximidamide, 2,3,5,6-tetrahydro-N-[imino(2,3,5,6-tetrahydro-1H-imidazo[1,2-a]imidazol-1-yl)methyl]-, monohydrochloride |
| 67953-72-4 | Poly(oxy-1,2-ethanediyl), .alpha.-sulfo-.omega.- [2,4,6-tris(2-methylpropyl)phenoxy]-, sodium salt |
| 67969-70-4 | 9,12-Octadecadienoic acid (Z,Z)-, dimer, polymer with 2,2'-[1,4-butanediylbis (oxymethylene)]bis[oxirane] and hexahydro-1, 3-isobenzofurandione |
| 68025-49-0 | Poly[oxy(methyl-1,2-ethanediyl)], .alpha., .alpha.', .alpha.>-phosphinylidynetris [.omega.-hydroxy-, polymer with 1,1'- methylenebis[4-isocyanatobenzene] |
| 68039-62-3 | Chromate(3-), bis[(6-[(5-chloro-2-hydroxy-4-nitrophenyl)azo]-5-hydroxy-1-naphthalenesulfonato(3-)]-, trihydrogen |
| 68039-63-4 | Chromate(3-), [6-[(5-chloro-2-hydroxy-4-nitrophenyl)azo]-5-hydroxy-1-naphthalenesulfonato(3-)][3-hydroxy-4- [(2-hydroxy-1-naphthanlenyl)azo]-1-naphthalenesulfonato(3-)]-, trihydrogen |
| 68071-46-5* | Urea, polymers with formaldehyde, phenol and sulfonated o-cresol, sodium salts |
| 68083-43-2 | Methanaminium, N-[4-[[4-(dimethylamino)phenyl] [4- (methylamino)phenyl]methylene]-2,5-cyclohexadien-1-ylidene]-N-methyl- tetracosa-.mu.-oxododecaoxo[.mu.$_{12}$-[phosphato(3-)- 0:0:0:0':0':0':0>:0>:0>:0>:0''': 0''':0''']]dodecamolybdate(3-) (3:1) |
| 68083-73-8 | 1,3-Isobenzofurandione, polymer with 2,2-bis[(2- propenyloxy)methyl]-1-butanol, 1,2-ethanediol, ethenylbenzene, 2,5-furandione and 1,2-propanediol |
| 68083-96-5 | Propanoic acid, 3-hydroxy-2,2-dimethyl-, 3-hydroxy- 2,2-dimethylpropyl ester, polymer with oxirane |
| 68155-48-6 | Chromate(5-), bis[6-(acetylamino)-4-hydroxy-3-[(2- hydroxy-5-nitro-3-sulfophenyl)azo]-2-naphthalenesulfonato(4-)]-, pentahydrogen |
| 68155-90-8 | Ethanol, 2-chloro-, phosphate (3:1), polymer with phosphorus oxide |
| 68201-73-0 | Chromate(5-), bis[4-hydroxy-6-[(2-hydroxy-5- methylphenyl)azo]-3-[2-hydroxy-5-nitro-3-sulfophenyl)azo]-2- naphthalenesulfonato (4-)]-, pentahydrogen |

## CHEMICAL SUBSTANCES PROPOSED FOR REMOVAL FROM TSCA INVENTORY—Continued

| CAS Registry No. | Name |
|---|---|
| 68201-74-1 | Chromate(5-), bis[6-(acetylamino)-4-hydroxy-3-[(2- hydroxy-3-nitro-5-sulfophenyl)azo]-2-naphthalenesulfonato(4-)]-, pentahydrogen |
| 68214-71-1 | 1H-Imidazo[1,2-a]imidazole-1-carboximidamide, 2,3,5,6-tetrahydro-N-[imino(2,3,5,6-tetrahydro-1H-imidazo[1,2- a]imidazol-1-yl)methyl]-, sulfate (1:1) |
| 68227-48-5 | 2-Cyclohexene-1-octanoic acid, 5-carboxy-4-hexyl-, compound with 2,2',2>-nitrilotris[ethanol] |
| 68227-50-9 | 2-Cyclohexene-1-octanoic acid, 5-carboxy-4-hexyl-, monopotassium salt |
| 68227-90-7 | Poly(oxy-1,2-ethanediyl), .alpha.-[2-(butylamino)ethyl]-.omega.-hydroxy-, compound with acetic acid (1:1) |
| 68258-66-2 | 2-Naphthalenecarboxylic acid, 3-hydroxy-4-[[1- (sulfomethyl)-2-naphthalenyl]azo]-, disodium salt |
| 68295-50-1 | 2,5-Furandione, polymer with 2-methylbutene, 1- pentene and 2-pentene |
| 68324-22-1 | 2-Cyclohexene-1-octanoic acid, 5-carboxy-4-hexyl-, compound with 2,2'-iminobis[ethanol] (1:1) |
| 68399-94-0 | 2-Anthracenesulfonic acid, 1-amino-9,10-dihydro-4- [[4-[(2-hydroxyethyl)sulfonyl]phenyl]amino]-9,10-dioxo- |
| 68411-30-3* | Benzenesulfonic acid, $C_{10-13}$ -alkyl derivs., sodium salts |
| 68412-61-3* | Phosphoric acid, di-$C_{8-18}$ -alkyl esters, compounds with morpholine |
| 68412-62-4* | Phosphoric acid, di-$C_{8-18}$ -alkyl esters, ammonium salts |
| 68427-33-8 | 1H,3H-Naphtho[1,8-cd]pyran-6-sulfonic acid, 1,3- dioxo-, potassium salt (2:1) |
| 68427-34-9 | 1,8-Napthalenedicarboxylic acid, 4-sulfo-, potassium sodium salt (2:1:4) |
| 68440-71-1* | Siloxanes and Silicones, di-Me, Me 3- (oxiranylmethoxy)propyl |
| 68440-72-2* | Siloxanes and Silicones, di-Me, Me 3- (oxiranylmethoxy)propyl, reaction products with 2-(methylamino)ethanesulfonic acid |
| 68441-40-7* | Benzenediazonium, 4-[(4-sulfophenyl)azo]-, chloride, reaction products with formaldehyde-salicylic acid polymer |
| 68459-88-1 | Oxirane, 2,3-dimethyl-, polymer with ethyloxirane and methyloxirane |
| 68512-38-9* | Heparin, reaction products with N,N-didodecyl-N- methyl-1-dodecanaminium chloride |
| 68513-70-2* | Castor oil, polymer with 2,4-TDI and trimethylolpropane |
| 68515-41-3* | 1,2-Benzenedicarboxylic acid, di-$C_{7-9}$ - branched and linear alkyl esters |
| 68515-42-4* | 1,2-Benzenedicarboxylic acid, di-$C_{7-11}$ - branched and linear alkyl esters |
| 68517-01-1 | Chromium, tris(5-hexadecyl-2-hydroxybenzoato- $O^1,O^2$)- |
| 68526-68-1* | Amines, di-$C_{8-30}$ -alkylmethyl |
| 68540-40-9 | Benzoic acid, 5-hexadecyl-2-hydroxy-, calcium salt (2:1) |
| 68551-08-6* | Alchohols, $C_{9-11}$ -branched |
| 68610-57-1* | Phenol, 4,4'-(1-methylethylidene)bis-, polymer with (chloromethyl)oxirane, reaction products with phenol and 2,4,4- trimethyl-1,6-hexanediamine |
| 68610-81-1* | Benzenediazonium, 4-[(2-methoxy-5-sulfophenyl)azo]- 2-methyl-5-[(2-nitro-4-sulfophenyl)amino]-, chloride, reaction products with formaldehyde-salicylic acid polymer |
| 68647-92-7* | Fatty acids, $C_{16-18}$ , polymers with glycerol and phthalic anahydride |
| 68647-93-8* | Fatty acids, $C_{16-18}$-unsaturated, polymers with benzoic acid, pentaerythritol and phthalic anhydride |
| 68649-64-9* | 2-Propenoic acid, polymer with 1,3-butadiene and 2- propenenitrile, reaction products with bisphenol A-epichlorohydrin polymer, 3-carboxy-1-cyano-1-methylpropyl-terminated polybutadiene and 4,4'-sulfonylbis[benzenamine] |
| 68784-56-5* | Benzene, mono-$C_{4-9}$ -alkyl derivs. |
| 68815-25-8* | Sulfuric acid, mono-$C_{12-18}$ -alkyl esters, compounds with triethanolamine |
| 68908-59-8* | Phosphoric acid, di-$C_{8-16}$ -alkyl esters, compounds with diethanolamine |
| 68911-68-2* | Amines, $C_{12-14}$ -tert-alkyl, compounds with 2(3H)-benzothiazolethione |
| 68912-09-4 | Chromate(5-), [6-(acetylamino)-4-hydroxy-3-[(2-hydroxy-5-nitro-3-sulfophenyl)azo]-2-naphthalenesulfonato(4-)][4-hydroxy-6-[(2-hydroxy-5-methylphenyl)azo]-3-[(2-hydroxy-5-nitro-3- sulfophenyl)azo]-2-naphthalenesulfonato(4-)]-, pentahydrogen |
| 68912-10-7 | Chromate(5-), [6-(acetylamino)-4-hydroxy-3-[(2-hydroxy-3-nitro-5-sulfophenyl)azo]-2-naphthalenesulfonato(4-)][4-hydroxy-6-[(2-hydroxy-5-methylphenyl)azo]-3-[(2-hydroxy-5-nitro-3- sulfophenyl)azo]-2-naphthalenesulfonato(4-)]-, pentahydrogen |
| 68912-11-8 | Chromate(5-), [6-(acetylamino)-4-hydroxy-3-[(2-hydroxy-5-nitro-3-sulfophenyl)azo]-2-naphthalenesulfonato(4-)][4-hydroxy-6-[(2-hydroxy-5-methylphenyl)azo]-3-[(2-hydroxy-3-nitro-5- sulfophenyl)azo]-2-naphthalenesulfonato(4-)]-, pentahydrogen |
| 68922-28-1 | Chromate(5-), [6-(acetylamino)-4-hydroxy-3-[(2- hydroxy-3-nitro-5-sulfophenyl)azo]-2-naphthalenesulfonato(4-)][6- (acetylamino)-4-hydroxy-3-[(2-hydroxy-5-nitro-3-sulfophenyl)azo]-2- naphthalenesulfonato (4-)]-, pentahydrogen |
| 68953-01-5* | Fatty acids, tall-oil, esters with ethoxylated sorbitol |
| 68953-32-2* | Fatty acids, tall-oil, mixed esters with myristyl alcohol and pentaerythritol |
| 68953-48-0* | Fatty acids, tall-oil, lauryl esters, mixed with menhaden oil, oxidized |
| 68954-64-3* | 2-Oxepanone, homopolymer, carboxy-terminated |
| 68954-77-8* | Phosphoric acid, di-$C_{8-16}$ -alkyl esters |
| 69178-36-5 | 3,6,9,12,15,18-Hexaoxapentatriacontanoic acid, 34- methyl- |
| 70025-18-2* | Ethanaminium, 2-hydroxy-N,N-bis(2-hydroxyethyl)-N- methyl-, monoesters with tall-oil fatty acids, Me sulfates (salts) |
| 70210-14-9 | 2-Naphthalenesulfonic acid, 6-amino-5-[[4-chloro-2- (2-chlorophenoxy)phenyl]azo]-4-hydroxy-, monosodium salt |
| 70693-26-4* | Urea, reaction products with formaldehyde, glyoxal, melamine and methanol |
| 70788-60-2 | Ethanaminium, N,N,N-trimethyl-2-[(1-oxo-2- propenyl)oxy]-, polymer with N-(1,1-dimethyl-3-oxobutyl)-2-propenamide and methyl 2-methyl-2-propenoate |
| 70815-11-1 | 9-Octadecenamide, N-(2-hydroxyethyl)-N-[2-[[2-[(2- hydroxyethyl)amino]ethyl]amino]ethyl]-, (Z)- |
| 70815-19-9 | Cobaltate(1-), [2,4-dihydro-4-[(2-hydroxy-5- nitrophenyl)azo]-5-methyl-2-phenyl-3H-pyrazol-3-onato(2-)][1-(2- hydroxyphenyl)azo]-2-naphthalenolato(2-)]-, hydrogen, compound with 1- tridecanamine (1:1) |
| 71002-38-5 | Ethanaminium, N,N,N-triethyl-2-[(1-oxo-2- propenyl)oxy]-, ethyl sulfate, polymer with 2-propenamide |
| 71155-97-0 | Phosphoric acid, monodecyl ester, compound with morpholine (1:1) |
| 71173-57-4 | 3-Oxazolidinepropanesulfonic acid, 5-[2-(3-ethyl- 2(3H)-benzoxazolylidene)-1-methylethylidene]-4-oxo-2-thioxo- |
| 71243-81-7* | Hexanedioic acid, polymer with N-(2-aminoethyl)- 1,2-ethanediamine and aziridine, reaction products with epichlorohydrin and polyethylene glycol |
| 71294-50-3 | Hexanedioic acid, polymer with N-(2-aminoethyl)-1,2- ethanediamine, (chloromethyl) oxirane, 2,2-dimethyl-1,3-propanediol, 2-(methylamino)ethanol and 4,4'-(1-methylethylidene)bis[phenol], 2- hydroxypropanoate (salt) |
| 71477-83-3 | Spiro[5H-[1]benzopyrano[2,3-d]pyrimidine-5,1'(3'H)- isobenzofuran]-7,8-diamine, $N^7$,$N^7$-dibutyl- $N^8$,$N^8$-diethyl-4-methyl- |
| 71566-78-4 | Benzenesulfonic acid, dodecyl ester, compound with 4-(phenylazo)-1,3-benzenediamine (1:1) |
| 71889-16-2 | 1-Propanesulfonic acid, 2-methyl-2-[(1-oxo-2- propenyl)amino]-, polymer with N-ethenyl-N-methylacetamide and 2- propenamide |
| 72068-98-3 | Hexanedioic acid, polymer with N-(2-aminoethyl)-1,2- ethanediamine, aziridine and (chloromethyl)oxirane |
| 72089-20-4 | 2,7-Naphthalenedisulfonic acid, 4-amino-6-[[4-[[[4-[(2,4-diaminophenyl)azo]phenyl]amino]sulfonyl]phenyl]azo]-5-hydroxy-3-[(4-nitrophenyl)azo]- |
| 72175-36-1 | 9,10-Anthracenedione, 2-[2-(2-methoxyethoxy)ethoxy]- |
| 72245-24-0* | Benzoic acid, 2-hydroxy-, reaction products with formaldehyde, coupled with diazotized 5-amino-6-[[4-[(4-nitro-2- sulfophenyl)amino] phenyl]azo]-2-naphthalenesulfonic acid disodium salt |
| 72245-25-1* | Cobalt, 4-amino-5-hydroxy-6-[(2-hydroxy-5- nitrophenyl)azo]-1,7-naphthalenedisulfonate 2-[[5-(aminosulfonyl)-2- hydroxyphenyl]azo]-3-oxo-N-phenylbutanamide sodium complexes |
| 72251-76-4* | 2,7-Naphthalenedisulfonic acid, 4-[[2,4-dihydroxy(hydroxymethyl)phenyl]azo]-5-hydroxy-, coupled with diazotized 2-[(4-aminophenyl)amino]-5-nitrobenzenesulfonic acid monosodium salt |
| 72269-57-9 | 1H-Thioxantheno[2,1,9-def]isoquinoline-1,3(2H)- dione, 2-(1-oxooctadecyl)- |
| 72269-58-0 | 1-Naphthalenesulfonic acid, 4-hydroxy-3-[[4-[[[3- [[2-(sulfooxy)ethyl]sulfonyl]phenyl] amino]carbonyl]phenyl]azo]- |

CHEMICAL SUBSTANCES PROPOSED FOR REMOVAL FROM TSCA INVENTORY—Continued

| CAS Registry No. | Name |
|---|---|
| 72403-26-0* | Benzoic acid, 2-hydroxy-, reaction products with formaldehyde, coupled with 2-[(4-aminophenyl)amino]-5- nitrobenzenesulfonic acid monosodium salt |
| 72987-40-7 | 2,7-Naphthalenedisulfonic acid, 4-hydroxy-3-[[1- sulfo-6-[[2-(sulfooxy)ethyl]sulfonyl]-2-naphthalenyl]azo]- |
| 73049-37-3* | Amides, $C_{13-19}$ and $C_{19}$- unsaturated, N,N'-(methylendi-1,4-phenylene)bis- |
| 73157-49-0 | 1H-Pyrazole-3-carboxylic acid, 1-[3-[(4-amino-9,10- dihydro-9,10-dioxo-3-sulfo-1-anthracenyl)amino]-5-sulfophenyl]-4,5- dihydro-5-oxo-4-[[4-[[2-(sulfoxy)ethyl]sulfonyl]phenyl]azo]-, 3-methyl ester |
| 73297-17-3 | Cobaltate(1-), [4-hydroxy-3-[(2-hydroxy-1- naphthalenyl)azo]benzenesulfonamidato(2-)][8-[(2-hydroxyphenyl)azo]-2- naphthalenolato(2-)]-, hydrogen, compound with 3-[(2-ethylhexyl)oxy]- 1-propanamine (1:1) |
| 73297-20-8 | Xanthylium, 3-(diethylamino)-9-[2- (ethoxycarbonyl)phenyl]-6-(ethylamino)-, [2,4-dihydro-4-[(2-hydroxy-5- nitrophenyl)azo]-5-methyl-2-phenyl-3H-pyrazol-3-onato(2-)][2-[(4,5- dihydro-3-methyl-5-oxo-1-phenyl-1H-pyrazol-4-yl)azo]benzoato(2- )]chromate(1-) |
| 73378-64-0* | Copper, [29H,31H-phthalocyaninato(2-)- $N^{29}$,$N^{30}$,$N^{31}$,$N^{32}$]-, chlorosulfonyl derivs., reaction products with 9-methyl-1-decanamine |
| 73378-65-1* | Copper, [29H,31H-phthalocyaninetetrasulfonyl tetrachloridato(2-)- $N^{29}$,$N^{30}$,$N^{31}$,$N^{32}$]-, reaction products with 4-methyl-1-pentanamine |
| 73507-73-0 | Cobaltate(3-), bis[2-hydroxy-5-nitro-3-[[2-oxo-1- [(phenylamino)carbonyl]propyl]azo] benzenesulfonato(3-)]-, sodium dihydrogen |
| 74411-37-3 | Chromate(3-), bis[3-[(4,5-dihydro-3-methyl-5-oxo-1- phenyl-1H-pyrazol-4-yl)azo]-2-hydroxy-5-nitrobenzenesulfonato(3-)]-, trihydrogen, compound with 3-[(2-ethylhexyl)oxy]-1-propanamine (1:1) |
| 74411-39-5 | Chromate(1-), [2,4-dihydro-4-[(2-hydroxy-5- nitrophenyl)azo]-5-methyl-2-phenyl-3H-pyrazol-3-onato(2-)][2-[(4,5- dihydro-3-methyl-5-oxo-1-phenyl-1H-pyrazol-4-yl)azo]benzoato(2-)]-, hydrogen, compound with 3-[(2-ethylhexyl)oxy]-1-propanamine (1:1) |
| 75113-51-8 | Ethanol, 2,2'-[[3-methyl-4-[[4-[[2- (sulfooxy)ethyl]sulfonyl]phenyl]azo]phenyl]imino]bis-, bis(hydrogen sulfate) (ester) |
| 75150-07-1 | Cuprate(4-), [3-[[8-[[4-[bis[2-[(2- chloroethyl)sulfonyl]ethyl]amino]-6-chloro-1,3,5-triazin-2-yl]amino]- 1-hydroxy-3,6-disulfo-2-naphthalenyl]azo]-4-hydroxy-1,5- naphthalenedisulfonato(6-)]-, tetrahydrogen |
| 75701-43-8 | 1,3-Benzenedicarboxylic acid, polymer with 1,4- butanedoiol, dimethyl 1,4-benzenedicarboxylate, 2,2-dimethyl-1,3- propanediol, 1,2-ethanediol and nonanedioic acid |
| 78280-22-5 | 2-Anthracenesulfonic acid, 1-amino-9,10-dihydro- 9,10-dioxo-4-[[4-[[2-(sulfoxy)ethyl]sulfonyl]phenyl]amino]-, potassium sodium salt |
| 78592-92-4 | Chromate(1-), bis[4-[[4-(ethylsulfonyl)-2- hydroxyphenyl]azo]-2,4-dihydro-5-methyl-2-phenyl-3H-pyrazol-3-onato(2- )]-, hydrogen compound with 1,6-hexanediamine (1:1) |
| 81457-66-1* | Amines, $C_{12-18}$ -alkyl, bis[2,4-dihydro-4- [(2-hydroxy-5-nitrophenyl)azo]-5-methyl-2-phenyl-3H-pyrazol-3-onato(2- )]chromate(1-) (1:1) |
| 83899-28-9* | Phosphoric acid, $C_{8-18}$ -alkyl esters, compounds with 2-ethyl-1-hexanamine |
| 85631-50-1* | Diphosphoric acid, $C_{4-20}$ -alkyl esters, potassium salts |
| 90247-37-3* | Diphosphoric acid, $C_{4-20}$ -alkyl esters |
| 90247-38-4* | Diphosphoric acid, $C_{4-20}$ -alkyl esters, ammonium salts |
| 90247-39-5* | Diphosphoric acid, $C_{4-20}$ -alkyl esters, compounds with diethanolamine |
| 90247-40-8* | Diphosphoric acid, $C_{4-20}$ -alkyl esters, compounds with morpholine |
| 90247-41-9* | Diphosphoric acid, mixed $C_{14-18}$ - alkadienyl and $C_{14-18}$ -alkenyl esters |
| 101377-53-1* | Copper, [29H,31H-phthalocyaninato(2-)- $N^{29}$,$N^{30}$,$N^{31}$,$N^{32}$]-, sulfo[[4- [[2-(sulfooxy)ethyl]sulfonyl]phenyl] amino]sulfonyl derivs., potassium sodium salts |
| 106906-32-5 | Xanthylium, 9-(2-carboxyphenyl)-3,6- bis(diethylamino)-,salt with dodecylbenzenesulfonic acid (1:1) |
| 112764-80-4* | Amines $C_{10-14}$ -alkyl, bis[3-hydroxy-4- [(2-hydroxy-1-naphthalenyl)azo-7-nitro-1-naphthalenesulfonato(3- )]chromate(3-) (3:1) |
| 112764-81-5* | Amines $C_{10-14}$ -alkyl, [3-hydroxy-4-[(2- hydroxy-1-naphthalenyl)azo]-7-nitro-1-naphthalenesulfonato(3-)][1-[2- hydroxy-4-nitorphenyl)azo]-2-naphthalenolato(2-)] chromate(2-) (2:1) |
| 112764-82-6* | Amines $C_{10-14}$ -alkyl, [3-hydroxy-4-[(2- hydroxy-1-naphthalenyl)azo]-7-nitro-1-naphthalenesulfonato(3-)][1-[(2- hydroxy-5-nitrophenyl)azo]-2-naphthalenolato(2-)] chromate(2-) (2:1) |

The following Zeolites are listed on the TSCA Inventory, as a result of errors in processing. The Zeolites are considered mixtures, components of which are separately reportable under TSCA. In order to correct these errors, EPA intends to remove these chemical substances from the Inventory.

| | |
|---|---|
| 68608-42-4* | Zeolites, manganese-containing. |
| 68918-02-5* | Zeolites, calcium-iron-magnesium-vanadium- containing. |
| 68989-20-8* | Zeolites, CaA |
| 68989-21-9* | Zeolites, KA |
| 68989-22-0* | Zeolites, NaA |
| 68989-23-1* | Zeolites, NaX |

* CAS Registry numbers followed by an asterisk represent chemical substances of unknown or variable composition, complex reaction products, or biological materials. These substances have nonspecific registrations and lack accepted molecular formula representatives.

Accordingly, EPA proposes the delisting of the 217 chemical substances listed above from the TSCA Inventory.

Dated: August 15, 1989.

**Linda A. Travers,**

*Director,*

*Information Management Division,*

*Office of Pesticides and Toxic Substances.*

[FR Doc. 89-19825 Filed 8-23-89; 8:45 am]

**Billing Code 6560-50-D**

## FEDERAL MARITIME COMMISSION

### Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 224-010975-002.

*Title:* Maryland Port Administration Terminal Agreement.

*Parties:* Maryland Port Administration, Ceres Marine Terminals, Inc. (Ceres).

*Synopsis:* The Agreement provides that the basic agreement (Agreement No. 224-010975) will continue on a month-to-month basis for a term of 3 months pending the final negotiations of a long term lease. The Agreement also provides for Ceres to release 945 square feet of shed space originally leased under the basic agreement.

By Order of the Federal Maritime Commission.

Dated: August 21, 1989.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 89-19940 Filed 8-23-89; 8:45 am]

BILLING CODE 6730-01-M

### Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89-777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR part 540):

Chandris Incorporated and Fantasia Cruising Inc., 900 Third Avenue, New York, New York 10022.

*Vessel:* Horizon.

Dated: August 21, 1989

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 89-19939 Filed 8-23-89; 8:45 am]

BILLING CODE 6730-01-M

### Petition No. P3-89 Maximum Container Weights; Filing of Petition for Rulemaking

Notice is given that a petition for rulemaking has been filed by the South Europe/USA Freight Conference, American Trucking Associations, and ATA Intermodal Council.

Petitioners request that the Commission issue a uniform tariff rule prescribing maximum weights for containers which can be transported in the U.S. foreign commerce and placing responsibility on shippers to comply with all applicable laws and regulations pertaining to road weight limitations. Petitioners propose a rule which would, in the case of an overweight container, authorize carriers to either remove excess cargo from a container and forward the excess as a separate freight collect shipment or to discharge the container to the consignee at any port. Moreover, the proposed rule would place joint and several liability on shippers, consignees and cargo owners for damages, fines and penalties resulting from overweight containers which are supplied or stored by shippers, consignees or cargo owners, or on their behalf.

To facilitate thorough consideration of the petition, interested persons are requested to submit comments regarding the petition no later than October 20, 1989. Comments shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573-0001 and shall consist of an original and 15 copies. Comments shall also be served on the filing parties as follows: (1) Attorneys for South Europe/U.S.A. Freight Conference—Stanley O. Sher, Marc J. Fink, Dow, Lohnes & Albertson, 1255 Twenty-third Street NW., Suite 500, Washington, DC 20037; and (2) Attorney for American Trucking Associations and ATA Intermodal Council—Kenneth E. Siegel, Associate General Counsel, American Trucking Associations, 2200 Mill Road, Alexandria, VA 22314.

Copies of the petition are available for examination at the Washington, DC, Office of the Commission, 1100 L Street NW., Room 11101.

Notice of the filing of a related petition for rulemaking regarding the overweight container issue has also been issued this date. See P4-89 Elimination of "Per Container" Rates—Notice of Filing of Petition for Rulemaking.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 89-19863 Filed 8-23-89; 8:45 am]

BILLING CODE 6730-01-M

### Petition No. P4-89 Elimination of "Per Container" Rates; Filing of Petition for Rulemaking

Notice is given that a petition for rulemaking has been filed by the Transpacific Westbound Rate Agreement, American Trucking Associations, and ATA Intermodal Council.

Petitioners request that the Commission promulgate rules to preclude common carriers from publishing and assessing rates on a "per container" basis with respect to certain commodities which are shown to contribute to overweight container abuses and that the Commission publish a list of such commodities in its rules.

To facilitate thorough consideration of the petition, interested persons are requested to respond to the petition no later than October 20, 1989. Responses shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573-0001, and shall consist of an original and 15 copies. Responses shall also be served on the filing parties as follows: (1) Attorneys for Transpacific Westbound Rate Agreement—R. Frederic Fisher, Lillick & Charles, Two Embarcadero Center, Suite 2700, San Francisco, CA 94111, and (2) Attorney for American Trucking Associations and ATA Intermodal Council—Kenneth E. Siegel, Associate General Counsel, American Trucking Associations, 2200 Mill Road, Alexandria, VA 22314.

Copies of the petition are available for examination at the Washington, DC, Office of the Commission, 1100 L Street, NW., Room 11101.

Notice of the filing of a related petition for rulemaking regarding the overweight container issue has also been issued this date. See P3-89 Maximum Container Rates—Notice of Filing of Petition for Rulemaking.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 89-19864 Filed 8-23-89; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Deposit Guaranty Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presention would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 14, 1989.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Deposit Guaranty Corp.*, Jackson, Mississippi; to acquire 100 percent of the voting shares of Commercial National Corporation, Shreveport, Louisiana, and thereby indirectly acquire Commercial

National Bank in Shreveport, Shreveport, Louisiana.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Amarillo Delaware Bancorp, Inc.*, Wilmington, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of Amarillo National Bank, Amarillo, Texas.

Board of Governors of the Federal Reserve System, August 16, 1989.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 89-19936 Filed 8-23-89; 8:45 am]

BILLING CODE 6210-01-M

## Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 7, 1989.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Nicholas A. Karris*, Chicago, Illinois; to acquire 48.2 percent of the voting shares of First Alsip Bancorp, Alsip, Illinois, and thereby indirectly acquire First State Bank of Alsip, Alsip, Illinois.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President), 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Arnold K. Skeie*, Burnsville, Minnesota, and Frank L. Farrar, Britton, South Dakota; to acquire 92.11 percent of the voting shares of Oppegard Agency, Inc., Dilworth, Minnesota.

Board of Governors of the Federal Reserve System, August 18, 1989.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 89-19937 Filed 8-23-89; 8:45 am]

BILLING CODE 6210-01-M

## The Nippon Credit Bank, Ltd., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 14, 1989.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Nippon Credit Bank, Ltd.*, Tokyo, Japan; to engage *de novo* through its subsidiary, Trading Desk Systems, Inc., New York, New York, in providing to others data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation or operating personnel), data bases, or access to such services, facilities, or data bases by any technological means, provided that: (i) The data to be processed or furnished will be financial, banking, or economic, and the services will be provided pursuant to a written agreement so describing and limiting the services; (ii) the facilities will be designed, marketed, and operated for the processing and transmission of financial, banking, or economic data; and (iii) the hardware provided in connection therewith will be offered only in conjunction with software designed and marketed for the processing and transmission of financial, banking, or economic data, and where the general purpose hardware will not constitute more than 30 percent of the cost of any packaged offering pursuant to § 225.25(b)(7) of the Board's Regulation Y.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Sioux Bancshares, Inc.*, Sioux Center, Iowa; to engage *de novo* through its subsidiary, First Sioux Financial, Sioux Center, Iowa, in the combination of investment advice and brokerage activities pursuant to §§ 225.25 (b)(15) and (b)(4) of the Board's Regulation Y. These activities will be conducted in the State of Iowa.

Board of Governors of the Federal Reserve System, August 18, 1989.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 89-19938 Filed 8-23-89; 8:45 am]

BILLING CODE 6210-01-M

# DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Statement of Organization, Functions and Delegations of Authority; Secretary of Health and Human Services

Notice is hereby given that on July 21, 1989, the President issued a delegation of authority to the Secretary of Health and Human Services as follows:

By virtue of the authority vested in me as President by the Constitution and the statutes of the United States of America, including sections 241-49 of the National Commission on Acquired Immune Deficiency Syndrome Act (Public Law 100-607, Title II, Subtitle D), section 208 of Title 18 of the United States Code, and Section 301 of Title 3 of the United States Code, I hereby delegate to the Secretary of Health and Human Services my authority to make determinations under subsection (b) of section 208 of the United States Code for the two members of the National Commission on Acquired Immune Deficiency Syndrome appointed under section 244(a)(1)(A)(ii) of the National

Commission on Acquired Immune Deficiency Syndrome Act.

Dated: August 16, 1989.

**Michael J. Astrue,**

*General Counsel.*

[FR Doc. 89-19894 Filed 8-23-89; 8:45 am]

BILLING CODE 4150-04-M

## Centers for Disease Control

### National Committee on Vital and Health Statistics (NCVHS) Executive Subcommittee; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the NCVHS Executive Subcommittee established pursuant to 42 U.S.C. 242k, section 306(k)(2), of the Public Health Service Act, as amended, announces the following meeting.

*Name:* NCVHS Executive Subcommittee.

*Time and Date:*

3:00 p.m.-7:00 p.m.—September 11, 1989;

8:00 a.m.-6:00 p.m.—September 12, 1989;

8:00 a.m.-12:00 noon—September 13, 1989.

*Place:* 235 West Main Street, Charlottesville, Virginia 22901.

*Status:* Open.

*Purpose:* The purpose of this meeting is for the Subcommittee to review activities and work plans of the full Committee and other Subcommittees and to make plans for the November 1989 NCVHS meeting.

*Contact Person for More Information:* Substantive program information as well as summaries of the meeting and roster of Committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, Room 2-12, Center Building, 3700 East West Highway, Hyattsville, Maryland 20782, telephone (301) 436-7050.

Dated: August 18, 1989.

**Robert L. Foster,**

*Assistant Director, Office of Program Support, Centers for Disease Control.*

[FR Doc. 89-19919 Filed 8-23-89; 8:45am]

BILLING CODE 4160-18-M

## Health Care Financing Administration

### Region X—Seattle; Statement of Organization, Functions, and Delegations of Authority

Part F. of the statement of organization, functions and delegations of authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (**Federal Register**, Vol. 46, No. 223, pp. 56927-56929, dated Thursday, November 19, 1981; Vol. 48, No. 196, pp. 46446-46447, dated Wednesday, October 12, 1983; Vol. 53, No. 195, pp. 39525-39526, dated Friday, October 7, 1988; Vol. 54, No. 95, pp. 21476-21479, dated Thursday, May 18, 1989; and Vol. 54, No. 102, pp. 22955-22956, dated Tuesday, May 30, 1989) is amended to reflect a reorganization within Region X (Seattle), Office of the Associate Administrator for Operations (AAO). The regional office is reorganizing from a functional structure to a programmatic structure with respect to the administration of the Medicare and Medicaid programs. The reorganization abolishes the current Division of Program Operations and Division of Financial Operations and replaces them with the Division of Medicare and the Division of Medicaid. The organizational alignment and functional statements are identical to those approved within the last 2 years in Regions I, II, III, IV, VII, VIII and IX. The appropriate section titles in the **Federal Register** are being updated to identify the current organizational alignment in each regional office. No changes are being made to the functional statements.

The specific amendments to Part F. are described below:

- Section FP.20.D.2., Division of Financial Operations (FPD(V, VI and X)C) is amended by deleting Region X from the title. The new section title reads: Section FP.20.D.2., Division of Financial Operations (FPD(V and VI)C).
- Section FP.20.D.3., Division of Program Operations (FPD(V, VI and X)D) is amended by deleting Region X from the title. The new section title reads: Section FP.20.D.3., Division of Program Operations (FPD(V and VI)D).
- Section FP.20.D.4., Division of Medicaid (FPD(I-IV and VII-IX)E) is amended by including Region X in the title. The new section now reads: Section FP.20.D.4., Division of Medicaid (FPD I-IV and VII-X)E).
- Section FP.20.D.5., Division of Medicare (FPD(I-IV and VII-IX)F) is amended by including Region X in the title. The new section title reads: Section FP.20.D.5., Division of Medicare (FPD(I-IV and VII-X)F).

**Robert A. Streimer,**

*Acting Associate Administrator for Management.*

[FR Doc. 89-19974 Filed 8-23-89; 8:45 am]

BILLING CODE 4120-01-M

## Health Resources and Services Administration

### Designation of Medically Underserved Populations Including Areas Recommended by the Chief Executive Officer and Local Officials of a State

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** Under the provisions of section 330(b)(6) of the Public Health Service (PHS) Act, 42 U.S.C. 254c(b)(6), as amended by Public Law 99-280, the Governor of the State of Oklahoma has asked the Secretary of Health and Human Services (HHS) to designate a specific population within the State as a medically underserved population (MUP). Also, under section 330(b)(3) of the PHS Act, areas in the States of Michigan, California and Ohio have been proposed for MUP designation. This notice provides an opportunity for local officials and appropriate Community Health Center organizations of States of Oklahoma, Michigan, California and Ohio to provide recommendations and to comment on the proposal to designate as MUPs the populations described in this notice.

**DATE:** Comments should be in writing and should be received by September 25, 1989.

If no adverse comments are received within this period, the populations specified in this notice will be designated as MUPs by the Secretary, effective 30 days after publication. If adverse comments supported by objective data are received, the Secretary will, within 75 days from the date of publication of this notice, review the data and comments received together with the data already provided and any relevant information otherwise available, provide written responses to the commenters, and grant, modify or deny designation of the population(s) as MUPs, as appropriate, based on the review.

**ADDRESS:** Mail comments to Ms. Rhoda Abrams, Director, Office of Program and Policy Development, Bureau of Health Care Delivery and Assistance, 5600 Fishers Lane, Room 7A-08, Rockville, Maryland 20857.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Bohrer, Director, Division of Primary Care Services, Bureau of Health Care Delivery and Assistance, 5600 Fishers Lane, Room 7A-55, Rockville, Maryland 20857, (301) 443-2260.

**SUPPLEMENTARY INFORMATION:** Section 330 of the PHS Act provides that grants may be made to public and nonprofit

private entities to plan, develop and operate Community Health Centers which serve medically underserved populations. Section 330(b)(3) of the PHS Act (42 U.S.C. 254c(b)(3)) and implementing regulations define a medically underserved population as the population of an urban or rural area designated by the Secretary as an area with a shortage of personal health services or a population group designated by the Secretary as having a shortage of such services. On September 2, 1975, and October 15, 1976, the Department of Health and Human Services published criteria in the Federal Register for use in designating and prioritizing such medically underserved areas (MUAs), and the Secretary has made designations and redesignations of MUAs using these criteria. According to the published criteria, a population must have an Index of Medical Underservice (IMU) score of 62 or less to be recommended for additions to the MUA list.

The PHS Act, as amended in 1986 by Public Law 99–280, provides at section 330(b)(6) that the Secretary may also designate a medically underserved population (MUP) which does not meet the published medically underserved population criteria if the chief executive officer and the local officials of the State in which such a population is located recommend the designation of that population, based on unusual local conditions which are a barrier to access to, or availability of, personal health services. The amendments to section 330 made by Public Law 99–280 also provide (in section 330(b)(5)) that the Secretary must notify and consult with the chief executive officer of the State, local officials of the State, and the State organization, if any, which represents a majority of Community Health Centers in such State, before designating or terminating designation of MUPs.

HHS is currently developing a regulation which will specify MUP criteria, procedures for designation of populations which meet those criteria, procedures for designation of recommended populations which do not meet the MUP criteria but have unusual conditions, and procedures for providing the notifications and opportunities for comment required by the law. The Secretary has determined that it would be inappropriate to delay acting on the request of the Governor of Oklahoma or on the requests from the States of Michigan, California and Ohio until the regulations are published. Therefore, the Health Resources and Services Administration (HRSA) is publishing this notice as a way of seeking comments and recommendations on these proposed designations from local officials of the affected areas, from the organizations which represent a majority of the Community Health Centers in the States involved, and from other interested or affected parties.

The MUP justifications which have been submitted by the Governors and/or States and which are presented in this Notice have been reviewed by HRSA and are considered acceptable to support the designations of the populations or areas listed below was MUPs, unless adverse comments are received as a result of publication of this Notice.

The populations and areas which have been recommended for designation as MUPs are:

**(1) Oklahoma—Eastern Oklahoma County**

The Governor of the State of Oklahoma is requesting that the population of census tracts 1080.03, 1080.05, 1080.10, 1080.11, 1081.03, 1088.01, 1088.02, 1088.03, 1088.04, 1089, 1090 of eastern Oklahoma County, which represent the service area of the Mary Mahoney Memorial Health Center, be designated as a Medically Underserved Population (MUP). According to the request, when Federal poverty guidelines are applied, nearly 3,500, or roughly 50 percent of the Mary Mahoney Health Center's patients are not able to pay for medical services. Also, many of these patients do not qualify for programs such as Medicare or Medicaid.

Staff analysis indicates that not all of the requested area is clearly underserved. Census tracts 1080.03, 1080.05, and 1081.03 had only single-digit poverty levels in the 1980 census. Tracts 1080.10 and 1080.11 had 10% poverty, also below the U.S. average, and are within or immediately contiguous to Midwest City, where significant numbers of primary care physicians are located.

However, a smaller area consisting of tracts 1088.01, 1088.02, 1088.03, 1088.04, 1089, and 1090 (including Nicoma Park, Choctaw, and Jones) has an above-average poverty level of 15.7%, a population-to-primary care physician ratio of 2400:1 (demonstrating overutilization), and is further from Midwest City, thus indicating more limited access. Therefore, given the Governor's recommendation, HRSA will concur with designation of this smaller area if no objections are received.

**(2) Michigan—Portions of Flint and Beecher (in Genesee County)**

The Office of Health and Medical Affairs of the State of Michigan is requesting that census tracts 1, 2, 3, 103.02, 103.03, 103.04, 122.01 and 122.02 of Genesee County be designated as a MUP. This area is located along the far north side of the city of Flint and the contiguous unincorporated area further to the north, known as Beecher. This area is an extremely depressed, urban area that has a large minority population, and suffers from chronic high unemployment rates. An area immediately south of this, within Flint, has already been designated as an MUA; an area almost identical to the already-designated MUA plus the proposed MUP has previously been designated as a primary care health manpower shortage area (HMSA).

The requested area scores 49.9 on the Index of Medical Underservice (IMU):

| Factor | Percent/ ratio | Weighted score |
|---|---|---|
| Infant Mortality (deaths per 1000 live births) | 23.2 | 13.1 |
| Population 65+ (as a percent of total population) | 4.6 | 20.2 |
| Population Below Poverty (as a percent of total population) | 24.7 | 10.9 |
| Primary Care Physician to Population Ratio (primary care physicians per 1000 population 1000 population) | .248 | 5.7 |
| Total Index of Medical Underservice Score | | 49.9 |

This score is significantly lower than the maximum value of 62.0 used to indicate underservice.

**(3) Michigan—Portions of Ypsilanti (in Washtenaw County)**

The Office of Health and Medical Affairs of the State of Michigan is requesting that census tracts 25.01, 25.02 and 26.00 of Washtenaw County be designated as an MUP. This area is located in the city of Ypsilanti, Michigan. It is a low-income area that is economically isolated, despite its inclusion in the Ann Arbor-Ypsilanti metropolitan area and its proximity to the Detroit metropolitan area. The area is also isolated by several geographic boundaries—the Huron River to the east, Interstate Highway 94 to the south and southwest, and Michigan Avenue to the north. There are large concentrations of populations which have been deinstitutionalized from nearby mental hospitals and a large concentration of public housing. Durable goods manufacturing plants have laid off

significant numbers of individuals over the past few years which has severed access to needed health benefits. The population's IMU score is well below the 62 upper limit:

| Factor | Percent/ ratio | Weighted score |
|---|---|---|
| Infant Mortality | 20.2 | 16.4 |
| Population 65+ | 12.4 | 19.1 |
| Population Below Poverty | 33.0 | 5.6 |
| Primary Care Physician to Population Ratio | .382 | 10.7 |
| Total IMU Score | | 51.8 |

**(4) California—Vacaville Area (in Solano County)**

The Office of Statewide Health Planning and Development of the State of California is requesting that census tracts 2529.02, 2529.03, 2532.02 and 2532.03 in the Vacaville Division of Solano County, served by the Vacaville Community Clinic, be designated as an MUP.

Slightly more than 11 percent of the primary-service area population is of Hispanic origin, which approximates the countywide distribution of 10.5 percent. The California Employment Development Department estimates that in 1985 the average monthly number of farmworkers in Solano County was 2,390—ranging from 1,530 in March to 3,380 in September. Of these, 29.9 percent were migrant workers and 20.7 percent were local seasonal workers. The characteristics of this migrant population that place added demands on health services are well known: life expectancy that is 60 percent of the U.S. average; higher infant mortality; and more than twice the national death rate from accidents, tuberculosis, influenza, and pneumonia.

In addition to the farmworkers, the area has a second "migratory" group—wives, relatives, dependents, and friends of inmates who are incarcerated at the California Medical Facility. Most are, by definition, single-female parents and children, according to anecdotal clinic records, they often live two or more families to a dwelling. Also, they appear in the census count of their permanent address rather than the census count for the Vacaville area.

In addition to geographic barriers and service deficiencies, several socioeconomic characteristics of the target population tend to isolate medically indigent and Medi-Cal eligible patients from existing health services. Most are probably below the poverty level and are Medi-Cal enrollees whose access to other providers in the county is increasingly limited, owing to their transitory lifestyle. In addition, many have social problems, including alcohol and drug abuse and smoking.

In summary, the proposed MUP population has higher percentages than the areawide population—up to five times higher—of persons who are poor or near poor, on fixed incomes, aged, disabled, and with social handicaps, such as single-parent status and lack of education. It should be clear that they are also up to five times as vulnerable to inadequate health services as is the areawide population.

The Vacaville Census Division of Solano County is currently designated as a primary care HMSA. Primary-care services are available in varying capacities in contiguous Vallejo and Fairfield. Vallejo, however, is more than 30 minute travel time away from the target area under the HMSA guidelines (20 miles under normal conditions on primary roads, 15 miles on mountainous terrain or on secondary roads) and therefore is not readily accessible to the population. Fairfield is more than 20 minutes travel time away and Solano County's Fairfield clinic, the only other area provider of services to the medically indigent, has reached service capacity.

The proposed Vacaville area's IMU score is below the 62.0 upper limit:

| Factor | Percent/ ratio | Weighted score |
|---|---|---|
| Infant Mortality | 9.3 | 24.8 |
| Population 65+ | 16.6 | 16.1 |
| Population Below Poverty | 16.6 | 16.2 |
| Physician to Population Ratio | .1811 | 2.8 |
| | | 59.9 |

**(5) Ohio—Columbus South Side (in Franklin County)**

The Scioto Valley Health Systems Agency of the State of Ohio is requesting that 18 census tracts in Franklin County (52, 55, 56.10, 56.20, 57, 58.10, 58.20, 59, 60, 61, 87.10, 87.20, 87.30, 88.11, 88.12, 88.13, 88.21, 88.22) be designated as an MUP. The area is on the south side of Columbus, Ohio and is served by the South Side Family Health Center. This is a high need area with a large minority population. It is bounded by the outer belt, I270; the Scioto River to the west; and major roads and railroads. An area immediately to the north has already been designated as an MUA.

The proposed Columbus South Side area's IMU score is below the 62.0 upper limit.

| Factor | Percent/ ratio | Weighted score |
|---|---|---|
| Infant Mortality | 14.1 | 20.5 |
| Population 65+ | 10.2 | 19.6 |
| Population Below Poverty | 19.8 | 14.9 |
| Primary Care Physician to Population Ratio | .17 | 2.8 |
| Total IMU Score | | 57.8 |

**(6) Ohio—Lower Linden Area of Columbus (in Franklin County)**

The Department of Health of the State of Ohio is requesting that the Lower Linden area of Columbus, Ohio (census tracts 7.1, 7.2, 7.3, 9.1, 14.0, 15.0, 75.11 and 75.20) be designated as an MUP. The area is currently designated as a primary care Health Manpower Shortage Area. This is the service area for the St. Stephen Clinic, a comprehensive primary care clinic funded by the Columbus City Health Department. Not only does the area have a high poverty rate (26.50), a high infant mortality rate (18.73 percent), and an inadequate number of primary care physicians, but, because of high poverty rates in contiguous tracts, it is unlikely that resources in these contiguous areas would be available for utilization. The area's IMU score is well below the 62.0 upper limit.

| Factor | Percent/ ratio | Weighted score |
|---|---|---|
| Infant Mortality | 18.73 | 16.4 |
| Population 65+ | 7.2 | 20.1 |
| Population Below Poverty | 26.5 | 9.3 |
| Physician to Population Ratio | .26 | 5.7 |
| Total IMU Score | | 51.5 |

This data has been reviewed by the Bureau of Health Care Delivery and Assistance and found to be accurate.

Dated: August 18, 1989.

**John H. Kelso,**

*Acting Administrator.*

[FR Doc. 89-19868 Filed 8-23-89; 8:45 am]

BILLING CODE 4160-15-M

## National Institutes of Health

### National Institute on Aging; Meeting of the Board of Scientific Counselors

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute on Aging, September 14-15, 1989, to be held at the Gerontology Research Center, Baltimore, Maryland. The meeting will be open to the public from 9:00 a.m. on Thursday, September

14 until approximately 5:00 p.m. and will again be open to the public from 9:00 a.m. on Friday, September 15 until 12:00 noon. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on September 14 from 5:00 p.m. until recess, and again on September 15 from 1:00 p.m. until adjournment for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, NIA, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of person privacy.

Ms. June C. McCann, Committee Management Officer, NIA, Building 31, Room 5C02, National Institutes of Health, Bethesda, Maryland 20892, (telephone: 301/496–9322) will provide a summary of the meeting and a roster of committee members. Dr. George R. Martin, Scientific Director, NIA, Gerontology Research Center, Baltimore City Hospitals, Baltimore, Maryland 21224, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.886, Aging Research, National Institutes of Health)

Dated: August 15, 1989.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 89–19877 Filed 8–23–89; 8:45 am]

BILLING CODE 4140–01–M

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## National Institute on Aging; Meeting of the National Advisory Council on Aging

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Council on Aging, National Institute on Aging (NIA), on September 21–22, 1989. On September 21 the Council will meet in Building 31, Conference Room 6, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public from 8:00 a.m. until 2:00 p.m. for a status report by the Director, National Institute on Aging; reports on the Behavioral and Social Research Program; Cancer and Aging; Long Term Care Research; and for discussions of program policies and issues, recent legislation, and other items of interest.

The Council will meet on Friday, September 22 in Conference Room 1–117 at the Gerontology Research Center in Baltimore, Maryland. This meeting will be open to the public from 9:00 a.m. to adjournment for a report on the NIA Intramural Research Program. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting of the Council will be closed to the public on September 21 from 2:00 p.m. to recess for the review, discussion, and evaluation of individual grant applications.

These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June McCann, Council Secretary for the National Institute on Aging, National Institutes of Health, Building 31, Room 5C02, Bethesda, Maryland 20892 (301/496–9322), will provide a summary of the meeting and a roster of committee members upon request.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: August 15, 1989.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 89–19880 Filed 8–23–89; 8:45 am]

BILLING CODE 4140–01–M

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## National Institute of Allergy and Infectious Diseases; Meetings of National Advisory Allergy and Infectious Diseases Council, Acquired Immunodeficiency Syndrome Subcommittee, Allergy and Immunology Subcommittee, Microbiology and Infectious Diseases Subcommittee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Allergy and Infectious Diseases Council, National Institute of Allergy and Infectious Diseases, and its subcommittees on September 28–29, 1989 at the National Institutes of Health, Building 31C, Conference Room 10, Bethesda, Maryland 20892.

The meeting will be open to the public on September 28 from approximately 8:30 a.m. to 8:45 a.m. for opening remarks of the Institute Director and from 10:15 a.m. to recess for meetings of the Council subcommittees. On September 29 the meeting will be open to the public from approximately 8:30 a.m. until 12:15 p.m. for discussion of procedural matters, Council business, and a report from the Institute Director which will include a discussion of budgetary matters. The primary program will include remarks by the Acting Director, NIH; a report on the Intramural Research Program; an update on the National Vaccine Plan; a report on the establishment of STD centers; and, a report from each of the Council subcommittees.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee, NAAIDC Allergy and Immunology Subcommittee and the NAAIDC Microbiology and Infectious Diseases Subcommittee will be closed to the public for approximately three hours for review, evaluation, and discussion of individual grant applications. It is anticipated that this will occur from 8:45 a.m. until approximately 10:15 a.m. on September 28, in conference rooms 4, 8 and 9 respectively. The meeting of the full Council will be closed from approximately 12:15 p.m. until adjournment on September 29 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. John W. Diggs, Director, Extramural Activities Program, NIAID, NIH, Westwood Building, Room 703, telephone (301–496–7291), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855 Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health).

Dated: August 15, 1989.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 89–19881 Filed 8–23–89; 8:45 am]

BILLING CODE 4140–01–M

### National Cancer Institute; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Etiology on October 26–27, 1989. The meeting will be held in Building 31, C Wing, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public from 1:00 p.m. to recess on October 26 and from 9:00 a.m. to adjournment on October 27 for discussion and review of the Division budget and review of concepts for grants and contracts. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public from 9:00 a.m. to approximately 12:00 Noon on October 26 for the review, discussion and evaluation of individual programs and projects conducted by the Division of Cancer Etiology. These programs, projects, and discussions could reveal personal information concerning individuals associated with the programs and projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. David McB. Howell, Executive Secretary of the Board of Scientific Counselors, Division of Cancer Etiology, National Cancer Institute, Building 31, Room 11A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–6927) will furnish substantive program information.

Dated: August 15, 1989.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 89–19878 Filed 8–23–89; 8:45 am]

BILLING CODE 4140–01–M

### National Institute of Diabetes and Digestive and Kidney Diseases; Meeting of the Board of Scientific Counselors

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), September 21, 22, and 23, 1989, National Institutes of Health, Building 2, Room 102, Bethesda, Maryland 20892. This meeting will be open to the public on September 21 from 8 p.m. to 10 p.m., September 22 from 9 a.m. to 12 noon and again from 2 p.m. to 4:30 p.m., and September 23 from 9 a.m. to 10:30 a.m. The open portion of the meeting will be devoted to scientific presentations by various laboratories of the NIDDK Intramural Research Program. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on September 21 from 7:30 p.m. to 8 p.m., September 22 from 12 noon to 2 p.m. and again from 4:30 p.m. to recess, and September 23 from 10:30 a.m. to adjournment for the review, discussion and evaluation of individual intramural programs and projects conducted by the NIDDK, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the meeting and rosters of the members will be provided by the Committee Management Office, National Institute of Diabetes and Digestive and Kidney Diseases, Building 31, Room 9A19, Bethesda, Maryland 20892. Further information concerning the meeting may be obtained by contacting the office of Dr. Jesse Roth, Executive Secretary, Board of Scientific Counselors, National Institutes of Health, Building 10, Room 9N–222, Bethesda, Maryland 20892, (301) 496–4128.

Dated: August 15, 1989.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 89–19879 Filed 8–23–89; 8:45 am]

BILLING CODE 4140–01–M

### National Institute of Diabetes and Digestive and Kidney Diseases; Meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its Subcommittees

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its subcommittees, National Institute of Diabetes and Digestive and Kidney Diseases, on September 25–26, 1989, Wilson Hall, Building 1, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public September 25, from 8:30 a.m. to 12 noon and again on September 26 from 1 p.m. to adjournment to discuss administrative details relating to Council business and special reports. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the subcommittee and full Council meeting will be closed to the public for the review, discussion and evaluation of individual grant applications. The following subcommittees will be closed to the public on September 25 from 1 p.m. to recess: Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney, Urologic and Hematologic Diseases. The full Council meeting will be closed on September 26 from 8:30 a.m. to approximately 12 noon.

These deliberations could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Council meeting may be obtained from Dr. Walter Stolz, Executive Secretary, National Diabetes and Digestive and Kidney Diseases Advisory Council, NIDDK, Westwood Building, Room 657, Bethesda, Maryland 20892, (301) 496–7277.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIDDK, Building 31, Room 9A19, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–6917.

(Catalog of Federal Domestic Assistance Program No. 13.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: August 15, 1989.

**Betty J. Beveridge,**

*Committee Management Officer, NIH*

[FR Doc. 89–19882 Filed 8–23–89; 8:45 am]

BILLING CODE 4140–01–M

### National Library of Medicine; Meeting of the Planning Subcommittee of the Board of Regents of the National Library of Medicine

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Planning Subcommittee of the Board of Regents of the National Library of

Medicine on September 21, 1989, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland.

The entire meeting will be open to the public from 9:00 a.m. to 5:00 p.m. The Subcommittee will discuss electronic imaging technologies and the role of the National Library of Medicine in relation to these technologies. Attendance by the public will be limited to space available.

Ms. Susan Buyer Slater, Deputy Assistant Director for Planning and Evaluation of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland, telephone 301–496–2311, will provide a summary of the meeting, a roster of subcommittee members, and substantive program information upon request.

Date: August 16, 1989.

Betty J. Beveridge,

*Committee Management Officer, NIH.*

[FR Doc. 89–19886 Filed 8–23–89; 8:45am]

BILLING CODE 4140–01–M

## National Library of Medicine; Meeting of the Board of Scientific Counselors

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Library of Medicine, on October 26 and 27, 1989, in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting will be open to the public from 8:30 a.m. to 12:45 p.m. and from 1:45 to 4:45 p.m. on October 26 and from 8:30 a.m. to approximately 12 noon on October 27 for the review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communications. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(6), title 5, U.S.C., and section 10(d) of Public Law 92–463, the meeting will be closed to the public on October 26, from approximately 12:45 p.m. to 1:45 p.m. for the consideration of personnel qualifications and performance of individual investigators and similar items, the disclosure of which would constitute an unwarranted invasion of personal privacy.

The Executive Secretary, Dr. Daniel R. Masys, Director, Lister Hill National Center for Biomedical Communications, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone (301) 496–4441, will furnish summaries of the meeting, rosters of committee members, and substantive program information.

Dated: August 15, 1989.

Betty J. Beveridge,

*Committee Management Officer, NIH.*

[FR Doc. 89–19883 Filed 8–23–89; 8:45 am]

BILLING CODE 4140–01–M

## National Institutes of General Medical Sciences; Meeting of the National Advisory General Medical Sciences Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Sciences, National Institutes of Health, on September 18 and 19, Building 31, Conference Room 10, Bethesda, Maryland.

This meeting will be open to the public on September 18, in Building 31, Conference Room 10, from 8:30 a.m. to 11:00 a.m. for opening remarks; report of the Director, NIGMS; and other business of the Council. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on September 18 from 11:00 a.m. to 6:00 p.m., and on September 19 from 8:30 a.m. until adjournment, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, Room 4A52, Bethesda, Maryland 20892, Telephone: 301, 496–7301 will provide a summary of the meeting, roster of council members. Dr. W. Sue Shafter, Executive Secretary, NAGMS Council, National Institutes of Health, Westwood Building, Room 953, Bethesda, Maryland 20892, Telephone: 301, 496–7061 will provide substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13–821, Biophysics and Physiological Sciences; 13–859, Pharmacological Sciences; 13–862, Genetics Research; 13–863, Cellular and Molecular Basis of Disease Research; and 13–880, Minority Access to Research Careers [MARC]).

Dated: August 15, 1989.

Betty J. Beveridge,

*Committee Management Officer, NIH.*

[FR Doc. 89–19884 Filed 8–23–89; 8:45 am]

BILLING CODE 4140–01–M

## National Center for Nursing Research; Meeting: National Advisory Council for Nursing Research

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Council for Nursing Research, National Center for Nursing Research, September 13–14, 1989, Building 31, Conference Room 6, National Institutes of Health, Bethesda, Maryland 20892.

This meeting will be open to the public on September 13, from 9 a.m. to 2:30 p.m. and on September 14 from approximately 9:30 a.m. to adjournment. Agenda items to be discussed will include the NCNR Director's Report, National Advisory Council for Nursing Research Biennial Report, Report on the Task Force on Nursing Research, and Report from the Director, Office of Minority Health.

Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d)) of Public Law 92–463, the meeting will be closed to the public on September 13 from 2:30 p.m. to recess and on September 14 from 8:30 a.m. to completion of the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ruth K. Aladj, Executive Secretary, National Advisory Council for Nursing Research, National Institutes of Health, Building 31, Room 5–B–23, Bethesda, Maryland 20892, (301) 496–0207, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

Dated: August 15, 1989.

Betty J. Beveridge,

*Committee Management Officer, NIH*

[FR Doc. 89–19885 Filed 8–23–89; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[ID-060-09-4212-08]

### Management Framework Plans; Coeur d'Alene District

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of action; amendment of the Emerald Empire and Chief Joseph Management Framework Plans, Coeur d'Alene District, Idaho.

**NOTICE:** Notice is hereby given that the Emerald Empire and Chief Joseph Management Framework Plans have been amended to categorize all District administered lands into either Management Areas or the Adjustment Area.

**SUMMARY:** Through the Bureau's land use planning process, District administered lands have been categorized so as to permit land tenure adjustments. Nineteen Management Areas have been identified. These areas contain public lands which have been determined to be suitable for long-term retention and other lands which may abe suitable for acquisition. The Adjustment Area contains public lands which have been determined to be nonessential for long-term public ownership. Under this amendment, all public lands currently within Management Areas will be retained in public ownership. The long-term objective being to expand the public land base within the Management Areas by exchanging public land in the Adjustment Area for non-public land in Management Areas. All lands acquired will be managed in accordance with current land use plans.

Any landownership adjustments which may be considered as a result of this land use plan amendment, will involve additional public participation with appropriate notification through the **Federal Register**, news media, and letters to affected and interested parties. A site-specific environmental analysis will be required for each ownership adjustment proposal.

**SUPPLEMENTARY INFORMATION:** Detailed information about the plan amendment can be obtained by contacting Ted Graf, District Planning Coordinator, Bureau of Land Management, Coeur d'Alene District Office, 1808 N. Third Street, Coeur d'Alene, Idaho 83814, phone (208) 765–1511.

*Planning Protest.* Any party that participated in the plan amendments and is adversely affected by the amendments may protest this action only as it affects issues submitted for the record during the planning process. The protest shall be in writing and filed with the Director (760), Bureau of Land Management, 18th and C Streets NW., Washington DC 20240, within 30 days of this notice. The procedures for filing a protest are contained in 43 CFR 1610.5–2. In the absence of any planning protests, this action will become the final determination of the Department of the Interior and the plan amendments will be in affect.

Dated: August 16, 1989.

**Fritz U. Rennebaum,**

*District Manager.*

[FR Doc. 89–19951 Filed 8–23–89; 8:45 am]

BILLING CODE 4310-GG-M

[CO-010-09-4142-02]

### Craig, CO; Advisory Council Meeting

*Time and Date:* October 11, 1989, at 10 a.m.

*Place:* BLM-Craig District Office, 455 Emerson Street, Craig, Colorado.

*Status:* Open to public; interested persons may make oral statements at 10:30 a.m. Summary minutes of the meeting will be maintained in the Craig District Office.

*Matters To Be Considered*

1. Approval of final Recreation 2000 resolution.
2. Approval of final weed control resolution.
3. Riparian workshop update.

*Contact Person for More Information:* Mary Pressley, Craig District Office, 455 Emerson Street, Craig, Colorado 81625–1129, Phone: (303) 824–8261.

Dated: August 16, 1989.

**Dave Nylander,**

*Acting District Manager.*

[FR Doc. 89–19952 Filed 8–23–89; 8:45 am]

BILLING CODE 4310-JB-M

[ID-050-09-4322-14]

### Shoshone District Grazing Advisory Board; Meeting

**AGENCY:** Bureau of Land Management (BLM), Interior.

**SUMMARY:** This notice sets forth the schedule and proposed agenda for a meeting of the Shoshone District Grazing Advisory Board.

**DATE:** Thursday, October 12, 1989, at 9:00 a.m.

**ADDRESS:** BLM District Office, 400 West F Street, Shoshone, ID 83352.

**FOR FURTHER INFORMATION CONTACT:** K. Lynn Bennett, District Manager, Shoshone District Office, P.O. Box 2B, Shoshone, ID 83352. Telephone (208) 886–2206 or FTS 554–6110.

**SUPPLEMENTARY INFORMATION:** The proposed agenda for the meeting includes the following items: (1) The proposed range improvement (8100) fund allocation for 1990 projects, (2) a field inspection of completed projects funded by the Advisory Board contributions, (3) responsibility for maintenance of range improvements, (4) District Fire Rehabilitation Plan, (5) District riparian program update, and (6) the Idaho water adjudication.

Operation and administration of the Board will be in accordance with the Federal Advisory Committee Act of 1972 (Pub. L. 92–463; 5 U.S.C. Appendix 1) and Department of the Interior regulations, including 43 CFR part 1984.

The meeting will be open to the public. Anyone may present an oral statement between 10:00 and 11:00 a.m. or may file a written statement regarding matters on the agenda. Oral statements will be limited to ten minutes. Anyone wishing to make an oral statement should notify the Shoshone District by Tuesday, October 10, 1989. Records of the meeting will be available in the Shoshone District Office for public inspection or copying within 30 days after the meeting.

**K. Lynn Bennett,**

*District Manager.*

[FR Doc. 89–19953 Filed 8–23–89; 8:45 am]

BILLING CODE 4310-GG-M

[ID-050-09-4212-11; IDI-26377]

### Realty Action; Recreation and Public Purposes Act Classification; Idaho

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** The following lands in Jerome County, Idaho have been examined and found suitable for classification for lease or conveyance to Jerome County, Idaho under the provisions of the Recreation and Public Purposes Act (R&PP), as amended (43 U.S.C. 869 *et. seq.*). The County proposes to use the land for an agricultural museum and visitor information center.

T. 9 S., R. 17 E., Boise Meridian
Sec. 14: S2NW4, NE4SW4, N2NW4SW4, N2S2NW4SW4, SE3SW4NW4SW4, S2SE4NW4SW4, NE4NE4SW4SW4, N2N2SE4SW4, S2NE4SE4SW4, SE4NW4SE4SW4, NE4SE4SE4SW4; containing 180 acres.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use

planning and would be in public interest.

The lease/patent, when issued will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. The following rights-of-way:

| Serial No. | Holder | Use |
|---|---|---|
| I-015016 | ID Dept. of Transportation. | I-84 Highway. |
| I-2031 | ID Dept. of Transportation. | Land for Highway R/W. |
| I-504 | ID Dept. of Transporation. | Land for Loop Road. |
| I-13654 | Jerome County | Road Right-of-Way. |
| I-20205 | Jerome County | Road Right-of-Way. |
| I-26996 | Crossroads of Idaho, Inc. | Road, utilities, and sign right-of-way. |

Detailed information concerning this action is available for review at the Shoshone District BLM Office at 400 West F Street, Shoshone, Idaho.

Upon publication of this notice in the Federal Register, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or convenyance under the Recreation and public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication on this notice, interested parties may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, BLM Shoshone District Office, P.O. Box 2–B, Shoshone, ID 83352. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

K. Lynn Bennett,

*District Manager.*

[FR Doc. 89–19957 Filed 8–23–89; 8:45 am]

BILLING CODE 4310–GG–M

[NM–010–4212–20/GP9–0110]

## Realty Action on Proposed Land Disposal in Rio Arriba County, New Mexico

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action on proposed land disposal.

**SUMMARY:** This notice is to advise the public that the Albuquerque District, of the Bureau of Land Management (BLM), is proposing to dispose of approximately 30.44 acres of public land near the Village of Dixon within Rio Arriba County, State of New Mexico.

**SUPPLEMENTARY INFORMATION:** The BLM has determined that the acres of public land described below are suitable for disposal under the Color-of-Title Acts of 1928 (45 Stat. 1069), 1932 (47 Stat. 53; 43 U.S.C. 178), and Sales under section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1713 (1976).

New Mexico Principal Meridian

Dixon II, New Mexico Public Land Disposal Block

T. 23 N., R. 10 E.,

Sec. 28, lots 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126;

Sec. 29, lot 20.

Comprising approximately 16.28 acres.

Disposal of these lands is consistent with: (1) The approved Land Use Recommendations of the BLM's 1979 Rio Grande Management Framework Plan, (2) The 1988 Taos Resource Management Plan, (3) Their location as well as the physical characteristics and the private ownership of adjoining lands, make them difficult and uneconomical to manage as public lands, so disposal would best serve the public interest, (4) This Notice of Realty Action will be published once a week for three weeks in a newspaper of general circulations and will be sent to the New Mexico Congressional Delegation and the relevant congressional committees by BLM. The specific parcels of public land will be disposed of using the following "Tract Disposal Criteria" in descending order of priority:

1. *Color of Title.* Color-of-Title disposal will be made to any applicant within the disposal area who qualifies under the Color-of-Title Acts.

2. *Non-Competitive (Direct) Sale.* Public lands within the disposal block will be sold without competition at Fair Market Value to those individuals who occupied the parcels before June 11, 1979 (the date land use plans were approved) but who do not qualify for title under one of the color-of-title acts.

The terms and conditions applicable the disposal are:

1. The patents will contain a reservation to the United States for ditches and canals.

2. All disposals are for surface estate only. The patents will contain a reservation to the United States for all minerals.

3. Tracts which lie within the 100 year floodplain of the Rio Embudo will be subject to EO 11988 which precludes the seeking of compensation from the United States or its agencies in the event existing or future facilities on those tracts are damaged by flood.

4. All disposal will be made subject to prior existing rights.

Additional information pertaining to this disposal including the environmental documents are available for review at the Taos Resource Area Office, Plaza Montevideo, Cruz Alta Road, Taos, New Mexico 87571, or telephone (505) 758–8851. For a period of 45 days from the date of this notice, interested parties may submit written comments to the Taos Resource Area Manager. Any adverse comments will be evaluated by the New Mexico State Director, Bureau of Land Management, who may vacate or modify this realty action and issue a final determination.

In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated: August 14, 1989.

Robert Dale,

*District Manager.*

[FR Doc. 89–19955 Filed 8–23–89; 8:45 am]

BILLING CODE 4310–FB–M

[WY–040–09–4400–90]

## Resource Management Plan and Environmental Assessment; Pinedale Resource Area

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Preparation of a Coordinated Resource Management Plan and Environmental Assessment for the Big Piney-LaBarge Area in the Pinedale Resource Area, Rock Springs District, Wyoming.

**SUMMARY:** The Pinedale Resource Area is initiating a coordinated resource management plan (CRMP) for the Big Piney-LaBarge area, west of Highway 189. The objective of the plan is to integrate several activity plans, resource

concerns, and anticipated future oil and gas development. An environmental assessment will be prepared, providing analysis of proposed goals and actions provided in the CRMP.

**DATES:** The CRMP and environmental assessment are scheduled for completion in the spring of 1990.

**ADDRESS:** The documents will be available at the Pinedale Resource Area, P.O. Box 768, Pinedale, Wyoming 82941.

**FOR FURTHER INFORMATION CONTACT:** If you wish to be placed on the mailing list or if you wish to provide resource information for the CRMP, contact Arlan Hiner at the address above or phone (307) 367–4358.

**SUPPLEMENTARY INFORMATION:** The CRMP will look at integrated resource concerns, such as wildlife habitat, watershed management, livestock grazing, vegetation, soils, etc. in the Big Piney-LaBarge area.

Specific resource management prescriptions, projects, and actions will be developed. The management prescriptions will be developed in accordance with the direction provided in the current land use plan (Pinedale approved RMP). Initial review of the project indicated that an EIS is not necessary and that an environmental assessment will provide in-depth analysis of alternatives. If, after completion and public review of the EA, a determination is made to prepare an EIS, this notice will serve as the Notice of Intent to prepare an EIS.

**Donald H. Sweep,**

*District Manager.*

[FR Doc. 89–19956 Filed 8–23–89; 8:45 am]

BILLING CODE 4310-22-M

## Minerals Management Service

**[DES 89–17]**

### Availability of the Draft Supplement to the Final Environmental Impact Statement for the Proposed 5-Year Outer Continental Shelf Oil and Gas Leasing Program for Mid-1987 to Mid-1992

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior's Minerals Management Service has prepared a draft supplement to the final Environmental Impact Statement (SEIS) for the 5-Year Outer Continental Shelf Oil and Gas Leasing Program Mid-1987 to Mid-1992 revising the cumulative impact analysis on migratory species for the Alaska and Pacific Outer Continental Shelf Regions.

Information on the availability of the draft SEIS can be obtained from: Regional Director, Alaska Region, Minerals Management Service, 949 East 36th Street, Anchorage, Alaska 99508–4302, phone: (907) 261–4677; Area Coordinator, Pacific Region, Minerals Management Service, 1340 West Sixth Street, Los Angeles, California 90017, phone: (213) 894–4480; and Chief, Branch of Environmental Evaluation, Minerals Management Service, Mail Stop 644, 381 Elden Street, Herndon, Virginia 22070, phone: (703) 787–1674.

Copies of the draft SEIS will be available for review in public libraries located throughout the coastal States. Information regarding the locations of libraries where copies of the statements will be available may be obtained from the offices listed above.

In accordance with 30 CFR 256.2(b), public hearings are tentatively schedueld for the week of September 25th in Los Angeles, California; Sacramento, California; Portland, Oregon; and Anchorage, Alaska, for the purpose of receiving comments and suggestions relating to the draft SEIS. The exact dates, times, and locations of the hearings will be announced by **Federal Register** Notice in the near future.

Comments resulting from reviews of the draft SEIS and written materials prepared as part of testimony at the public hearings will be accepted until October 17, 1989. All comments should be mailed to Minerals Management Service, Mail Stop 644, 381 Elden Street, Herndon, Virginia 22070. Hand deliveries to the Department of the Interior may be made to Room 4230, 18th and C Streets, NW., Washington, DC 20240. Envelopes or packages should be marked "5-Year Program draft SEIS."

After the public hearing testimony and written comments on the draft SEIS have been reviewed and analyzed, a final EIS will be prepared.

Dated: August 21, 1989.

**William D. Bettenberg,**

*Associate Director for Offshore Minerals Management, Minerals Management Service.*

Approved:

**Jonathan P. Deason,**

*Director, Office of Environmental Project Review.*

[FR Doc. 89–20001 Filed 8–23–89; 8:45 am]

BILLING CODE 4310-MR-M

## UNITED STATES INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–431 (Final)]**

### Aluminum Sulfate From Venezuela

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

**SUMMARY:** The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–731 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Venezuela of aluminum sulfate, provided for in subheading 2833.22.00 of the Harmonized Tariff Schedule of the United States (previously reported under item 417.16 of the Tariff Schedules of the United States), that have been found by the Department of Commerce, in a preliminary determination to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before October 18, 1989 and the Commission will make its final injury determination by December 6, 1989 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207, as amended, 53 FR 33034 (Aug. 29, 1988) and 54 FR 5220 (Feb. 2, 1989)), and part 201, subparts A through E (19 CFR part 201).

**EFFECTIVE DATE:** August 9, 1989.

**FOR FURTHER INFORMATION CONTACT:** Debra Baker (202–252–1180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

**SUPPLEMENTARY INFORMATION:**

*Background.* This investigation is being instituted as a a result of an affirmative preliminary determination by the Department of Commerce that imports of aluminum sulfate from Venezuela are being sold in the United States at less than fair value within the meaning of section 733 of the act (19 U.S.C. 1673b). The investigation was requested in a petition filed on March 29, 1989 by General Chemical de Puerto Rico, Inc., Dorado, Puerto Rico. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (54 FR 22632, May 25, 1989).

*Participation in the investigation.* Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

*Public service list.* Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each public document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

*Limited disclosure of business proprietary information under a protective order and business proprietary information service list.* Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in this final investigation to authorized applicants under a protective order, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

*Staff report.* The prehearing staff report in this investigation will be placed in the nonpublic record on October 13, 1989, and a public version will be issued thereafter, pursuant to § 201.21 of the Commission's rules (19 CFR 207.21).

*Hearing.* The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on October 26, 1989 at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on October 16, 1989. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on October 19, 1989, at the U.S. International Trade Commission Building. Pursuant to § 207.22 of the Commission's rules (19 CFR 207.22) each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs is October 23, 1989.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonbusiness proprietary summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any business proprietary materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

*Written submissions.* Prehearing briefs submitted by parties must conform with the provisions of § 207.22 of the Commission's rules (19 CFR 207.22) and should include all legal arguments, economic analyses, and factual materials relevant to the public hearing. Posthearing briefs submitted by parties must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on November 2, 1989. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before November 2, 1989.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such information no later than November 7, 1989. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs.

**Authority:** This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: August 18, 1989.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 89-19906 Filed 8-23-89; 8:45 am]

BILLING CODE 7020-02-M

## INTERSTATE COMMERCE COMMISSION

**[Finance Docket No. 31387 (Sub-No. 1)]**

### Canadian National Railway Co.; Lease From Grand Trunk Western Railroad Co.

August 18, 1989.

Notice to the Parties:

A decision in the above proceeding, served August 17, 1989, and published in the Federal Register on August 18, 1989, at 54 FR 34260, inadvertently contained an error in the "Dates" paragraph.

The "Dates" paragraph is corrected to read as follows:

**DATES:** Written comments must be filed with the Interstate Commerce Commission no later than September 18, 1989. Comments from the Secretary of Transportation and Attorney General of the United States must be filed by October 2, 1989. The service list will be issued shortly thereafter. Comments must be served on all parties of record within 10 days of the Commission's issuance of the service list. Applicant's reply is due by October 23, 1989.

Noreta R. McGee,

*Secretary.*

[FR Doc. 89-19986 Filed 8-23-89; 8:45 am]

BILLING CODE 7035-01-M

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**[ICC Order No. P-103]**

### Passenger Train Operation; Belt Railway Co. of Chicago

The National Railroad Passenger Corporation (AMTRAK) has established through passenger train service between Chicago, Illinois and New Orleans, Louisiana, Train Nos. 58 & 59, the City of New Orleans. These train operations require the use of tracks and other facilities of the Illinois Central Railroad Company (IC). A portion of the IC tracks near Gilman, Illinois are temporarily out of service because of a derailment. An alternate route is available via the Missouri Pacific System that requires the use of approximately 2,000 feet of track of The Belt Railway Company of Chicago, between 80th and 83rd Streets in Chicago.

It is the opinion of the Commission that such an operation is necessary in the interest of the public and the commerce of the people; that notice and public procedure are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

*It is ordered,* (a) Pursuant to authority vested in me by order of the Commission decided January 13, 1986, and of the authority vested in the Commission by section 402(c) of the Rail Passenger Service Act of 1970 (45 USC 562(c)), The Belt Railway Company of Chicago is directed to operate trains of the National Railroad Passenger Corporation over approximately 2,000 feet of track between 80th and 83rd Streets in Chicago, Illinois in order to permit a rerouting around the derailment utilizing the Missouri Pacific System.

(b) In executing the provisions of this order, the common carriers involved shall proceed even if no agreements or arrangements may now exist between them with reference to the compensation terms and conditions applicable to said operations. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign commerce.

(d) *Effective date.* This order shall become effective at 6:00 p.m., (CDT), August 2, 1989.

(e) *Expiration date.* The provisions of this order shall expire at 6:00 p.m., (CDT), August 3, 1989, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon The Belt Railway Company of Chicago and the National Railroad Passenger Corporation, and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, DC, August 2, 1989.

William J. Love, Agent.

Noreta R. McGee,

*Secretary.*

[FR Doc. 89-19933 Filed 8-23-89; 8:45 am]

BILLING CODE 7035-01-M

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**[ICC Order No. P-104]**

### Passenger Train Operation; Chicago Central & Pacific Railroad Co.

The National Railroad Passenger Corporation (AMTRAK) has established through passenger train service between Chicago, Illinois and Seattle, Washington, Train Nos. 7 & 8, the Empire Builder. These train operations require the use of tracks and other facilities of the Soo Line Railroad Company (SL). A portion of the SL tracks between Grand Crossing and West Salem, Wisconsin are out of service because of track work and bridge repair. An alternate route is available via the Burlington Northern Railroad that requires the use of the Chicago & Centeral Pacific Railroad Company tracks between Portage and Savanna, Illinois.

It is the opinion of the Commission that such an operation is necessary in the interest of the public and the commerce of the people; that notice and public procedure are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice. *It is ordered,* (a) Pursuant to authority vested in me by order of the Commission decided January 13, 1986, and of the authority vested in the Commission by section 402(c) of the Rail Passenger Service Act of 1970 (45 USC 562(c)), Chicago & Central Pacific Railroad Company is directed to operate trains of the National Railroad Passenger Corporation between Portage and Savanna, Illinois, in order to permit a rerouting utilizing the Burlington Northern Railroad.

(b) In executing the provisions of this order, the common carriers involved shall proceed even if no agreements or arrangements may now exist between them with reference to the compensation terms and conditions applicable to said operations. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign commerce.

(d) *Effective date.* This order shall become effective at 7:00 a.m., (CDT), August 7, 1989.

(e) *Expiration date.* The provisions of this order shall expire at 7:00 a.m., (CDT), August 8, 1989, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon the Chicago Central & Pacific Railroad Company and the National Railroad Passenger Corporation, and a copy of

this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, DC., August 4, 1989, William J. Love, Agent.

Noreta R. McGee,

*Secretary.*

[FR Doc. 89-19984 Filed 8-23-89; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Registration

By Notice dated November 3, 1988, and published in the **Federal Register** on November 10, 1988, (53 FR 45605), Hoffmann-La Roche Inc., 340 Kingsland Street, Nutley, New Jersey 07110, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Tetrahydrocannabinols (7370) | I |
| Alphaprodine (9010) | II |
| Levorphanol (9220) | II |

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: August 10, 1989.

Gene R. Haislip,

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 89-19995 Filed 8-23-89; 8:45 am]

BILLING CODE 4410-09-M

### Manufacturer of Controlled Substances; Registration

By Notice dated March 27, 1989, and published in the **Federal Register** on April 5, 1989, (64 FR 13754), M.D. Pharmaceutical Inc., 3501 Garry Avenue, Santa Ana, California 92704, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug: | Schedule |
|---|---|
| Methylphenidate (1724) | II |
| Diphenoxylate (9170) | II |

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: August 10, 1989.

Gene R. Haislip,

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 89-19996 Filed 8-23-89; 8:45 am]

BILLING CODE 4410-09-M

### Importer of Controlled Substances; Registration

By Notice dated March 30, 1989, and published in the **Federal Register** on April 12, 1989, (54 FR 14692), Minn-Dak Growers Limited, Highway 81 North, P.O. Box 1276, Grand Rapids, North Dakota 58206-1276, made application to the Drug Enforcement Administration to be registered as an importer of marihuana (7360), a basic class of controlled substance listed in Schedule I. This application is exclusively for the importation of marihuana seed which will be rendered non-viable and used as bird feed.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: August 10, 1989.

Gene R. Haislip,

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 89-19997 Filed 8-23-89; 8:45 am]

BILLING CODE 4410-09-M

### Manufacturer of Controlled Substances; Registration

By Notice dated August 16, 1988, and published in the **Federal Register** on August 24, 1988, (53 FR 32285), Pharmaceuticals Division, Ciba-Geigy Corporation, Regulatory Compliance SEF 1030, 556 Morris Avenue, Summit, New Jersey 07901, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of methylphenidate (1724), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: August 10, 1989.

Gene R. Haislip,

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 89-19998 Filed 8-23-89; 8:45 am]

BILLING CODE 4410-09-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Drug-Free Workplaces

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** Governmentwide interim final rules issued by the Office of Management Budget (OMB), implementing the November 18, 1988, Drug-Free Workplace Act of 1988, require Department of Labor (DOL) grantees and contractors to certify that they will provide drug-free workplaces as a precondition of receiving a grant or contract from DOL. The rules are explained in a Training and Employment Information Notice (TEIN) No. 1-89 issued July 3, 1989, and published at the end of this document. Attachment No. 1 to the TEIN, as **Federal Register** Notice, is not reprinted with this notice.

**EFFECTIVE DATE:** July 3, 1989.

**FOR FURTHER INFORMATION CONTACT:** James MacDonald or Renee Parker, Division of Debt Management, Office of Grants and Contracts Management, Employment and Training Administration, Department of Labor, Room N-4671, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 535-0704.

**SUPPLEMENTARY INFORMATION:** The interim final rules for grantees, effective

as of March 18, 1989, and published January 31, 1989, in the Federal Register at 54 FR 4946, are incorporated as an amendment to the governmentwide common rules pertaining to nonprocurement debarment and suspension. The Department of Labor's rule was published on the same date in the Federal Register at 54 FR 4959 and codified at 29 CFR part 98. The interim final rules relating to contracts are detailed in amendments to the Federal Acquisition Regulation published January 31, 1989, in the Federal Register at 54 FR 4967 and codified at 48 CFR parts 1, 9, 23, and 52.

The interim final rules require grantees to make a drug-free certification as a precondition to the awarding of a grant. Additionally, section B of the drug-free certification requires grantees to submit the listing of the "site(s) for the performance of work" done in connection with the specific grant. A grantee, which is a State, may elect to make a single annual certification to the Department of Labor (DOL). After the effective date of March 18, for calendar year 1989, the certifications must be received prior to the award of new funds. This notice summarizes and announces the issuance of the Training and Employment Information Notice 1–89.

Signed at Washington, DC., this 11th day of August 1989.

**Roberts T. Jones,**

*Assistant Secretary of Labor.*

BILLING CODE 4510-30-M

| U.S. Department of Labor<br>Employment and Training Administration<br>Washington, D.C. 20210 | CLASSIFICATION<br>Drug-Free Workplace Act |
|---|---|
| | CORRESPONDENCE SYMBOL<br>TM |
| | DATE<br>July 3, 1989 |

TRAINING AND EMPLOYMENT INFORMATION NOTICE NO. 1-89

TO: STATE JTPA LIAISONS
STATE EMPLOYMENT SECURITY AGENCIES
STATE WORKER ADJUSTMENT LIAISONS

FROM: ROBERTS T. JONES
Assistant Secretary of Labor

SUBJECT: Drug-Free Workplace Regulatory Requirements

1. Purpose. To explain the responsibilities of the Employment and Training Administration (ETA) and its grantees under the Drug-Free Workplace Act regulatory requirements.

2. References. Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 29 CFR Part 98 (Federal Register 54 FR 4946); and Training and Employment Information Notice (TEIN) No. 21-88.

3. Background. On November 18, 1988, Congress enacted the Drug-Free Workplace Act requiring Federal agency contractors and grantees to certify that they will provide a drug-free workplace as a pre-condition of receiving a contract or a grant from a Federal agency.

The Office of Management and Budget (OMB) coordinated the participation of over 30 Federal agencies, including the

| RESCISSIONS | EXPIRATION DATE<br>Continuing |
|---|---|

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Department of Labor, in the development of regulatory requirements to ensure prompt compliance, prompt issuance of final rules, and uniform government-wide implementation of the Act.

The governmentwide rule was issued as an interim final rule, published in the Tuesday, January 31, 1989, Vol. 54, No. 19 **Federal Register**. As an interim final rule, this regulation is fully in effect and binding after its effective date of March 18, 1989. Comments were solicited and some of the rules may be revised.

The Federal Acquisition Regulation (FAR) rules for contracts are contained in the same **Federal Register** notice but are not covered in this information notice which is addressed only to grantee organizations.

The common rule for grants amends the governmentwide nonprocurement debarment and suspension common rule at 29 CFR part 98 to allow agencies to make use of existing debarment and suspension remedies as an ultimate consequence of noncompliance with the requirements of the Drug-Free Workplace Act. It should be noted that, in contrast to the debarment common rule, the drug-free common rule applies only to prime grantees and does not extend to subgrantees.

These requirements are effective for all grants awarded on or after March 18, 1989 or for existing grants if modified "in such a manner that it would be considered a new commitment."

4. *Definitions:* Controlled substance means a controlled substance as it is used in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1300.11 through 1300.15. Neither the regulations nor this TEIN expand upon the definition.

Grantee means a person who applies for or receives a grant directly from a Federal agency. (See definition of "person" at 29 CFR 98.105(n))

The term "employee" is intended to include persons hired by the grantee to manage the program and serve participants but is not intended to include the program participants.

Certifications are to be signed by the Governor or by a State official authorized to commit the State and its agencies to the requirements of the Drug-Free Workplace regulations.

5. *Requirements.* The ETA may not award a grant unless the certification has been made that the potential grantee will maintain a drug-free workplace.

As a pre-condition to receiving a grant, a potential grantee shall certify to the ETA that it will maintain a drug-free workplace by:

(a) Publishing and distributing to each employee a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace, and specifying the action that will be taken against employees for violation of such prohibition.

(b) Establishing a drug-free awareness program to inform employees about (1) the dangers of drug abuse in the workplace, (2) the grantee's drug-free workplace policy, (3) any available drug counseling and rehabilitation, and (4) the penalties for drug-abuse violations happening in the workplace.

(c) Providing each employee with a statement including language required by (a) above and (d) requiring the employee to abide by the statement and to notify the grantee with five days if he or she is convicted of a drug violation in the workplace.

(e) Notifying the Grant Officer within 10 days of receiving notice of any drug violation conviction. (Such notifications shall be sent to the appropriate ETA Grant Officer.) If the ETA was notified at the time of the violation through the Incident Report system, a supplemental report should be submitted at the time of notice of conviction.

(f) Within 30 days of such notice, taking one of the following actions—a personnel action against the employee up to and including termination, or requiring such employee to participate satisfactorily in a drug-abuse assistance or rehabilitation program. (See the attached certification for more specific language on all of the above requirements.)

6. *Frequency of Certification.* The rules require grantees to make the drug-free certification for each grant. A grantee, which is a State, however, may elect to make a single annual certification to the Department of Labor (DOL). Thus, if a State receives grants from the DOL under a number of different programs, only one certification to DOL has to be made. Therefore, States may choose to make a certification with each grant application or they may choose to make one annual certification.

Certifications from States making one annual certification to DOL should be sent to: U.S. Department of Labor, Office of Procurement and Grants Management, Room S1522, FPB Attn.: Mr. Richard Strom, 200 Constitution Avenue NW., Washington, DC 20210.

After the effective date of March 18, 1989, the annual certification for Calendar Year 1989 must be received prior to receiving any new grants or the award of new funds. Although not required, it is requested that the annual certification for all subsequent calendar years be received by January 31.

Since States may be the recipients of several grant awards from ETA, both at the National and Regional Office levels, although not required, the States are strongly encouraged to include a copy of the single annual certification with each grant application. This will facilitate the processing of grants.

7. *Listing of Worksites.* Section B of the attached sample certification requires the listing of the "site(s) for the performance of work" done in connection with the specific grant. Space is provided for a street address, city, county, State, and zip code.

The common rules defines Drug-Free workplace as a "site for the performance of work" done in connection with a specific grant * * * (29 CFR 98.605(a)(4)). In the preamble to the common rule, it states that the term "site for the performance of work" is taken directly from the statute and it is intended that the grantee will determine what the "site for the performance of work" is and specify such in the grantee's certification (Section by Section Analysis–54 FR 4948). In determining the number of "site(s) for performance of work," to be listed, it should be noted that only the "prime grantee," and not "subgrantees," are covered by requirements under this subpart. Although not specifically addressing the number of sites to be listed, the preamble states that, if a Federal agency provides financial assistance to a State agency, which in turn passes through the assistance to several local agencies, only the State agency that receives the assistance directly from the Federal agency receives the "grant." Consequently, it is only the State agency that is required to make a drug-free workplace certification under the regulation (Section by Section Analysis–54 FR 4948). Again, emphasizing the limits of the requirements, the preamble states that only "prime grantees" and not "subgrantees" are covered by requirements * * * even when the prime grantee is only an office that passes Federal funds through to subgrantees who actually do the work (Section by Section Analysis–54 FR 4949).

8. *Grounds for Suspension, Termination or Debarment.* Grantees found in violation of any of the following will be subject to the imposition of sanctions set forth in the Act: (a) Submission of a false certification; (b) Failure to comply with the requirements of the certification; and (c) Failure by the grantee to make a

good faith effort to maintain a drug-free workplace. Lack of a good faith effort would be indicated by such a number of the grantee's employees having been convicted under criminal drug statutes for violations occurring in the workplace. Circumstances of grantees vary widely so that the actual number of violations will be determined on a case by case basis.

The preamble specifically states that criminal drug violations by employees not occurring in the workplace are not grounds for a sanction. Likewise, evidence of drug abuse by employees in the workplace that does not result in a criminal conviction is not a ground for a sanction.

9. *Sanctions.* Sanctions set forth in the Drug-Free Workplace Requirements include: (a) Suspension (i.e., withholding) of payments under the grant; (b) Suspension or termination of the grant; and (c) Suspension or debarment of the grantee. The decision of which sanction or sanctions to apply in a particular case is left to the discretion of the Federal grantor agency.

In determining the level of organization at which a sanction should be imposed in case of a violation of the certification requirements, the intent of the regulation, where appropriate, is to focus on the "department, division, or other unit" of the grantee responsible for performance under the grant. For example, if several different organizational units of a State agency receives grants from a Federal agency, and one of the State organizational units violates a requirement of the regulation, sanctions could be imposed on that organizational unit, not on the entire State agency. On the other hand, where it is appropriate, in the context of a particular Federal grant program, to view the entire grantee organization as responsible for the implementation of drug-free workplace requirements under this rule, the entire organization could be subject to sanctions.

If the third sanction is exercised, the debarred grantee is ineligible for the award of any grant from any Federal agency for a period, to be specified in the final decision, not to exceed five years. The rules include a provision which allows the agency head to issue a written waiver of any of these sanctions if the agency head determines that such a waiver would be in the public interest. The determination of the "public interest" is within the discretion of the agency head (i.e., in the DOL, the Secretary of Labor) and this waiver authority may not be delegated.

The review and administrative appeal available to grantees can be found in the debarment procedures at 29 CFR 98.310. The debarment regulations at 29 CFR 98.200 state that debarment or suspension does not affect a person's (organization's) eligibility for statutory entitlements or mandatory awards * * *.

10. *Coverage.* For the purpose of the Drug-Free Workplace Act, *grants* include block grants and entitlement grant programs, *whether or not* they are exempted from coverage under the grants management common rule (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

Subgrantees are not required to make a drug-free workplace certification under the regulation.

11. *Exemptions.* Exemptions include grants providing technical assistance in the form of in-kind services; other assistance in the form of loans, loan guarantees, interest subsidies, insurance; direct appropriations; and any veterans' benefits to individuals.

Current grantees, whose grants were approved and awarded prior to the effective date of this regulation, are not required to make certifications in order to continue receiving payments under existing grants.

Grantees are not required to make a certification prior to a no-cost time extension of an existing grant.

12. *Costs.* A grantee's costs incurred specifically to comply with these requirements are to be regarded as allowable costs under the grant, provided that the costs meet the usual criteria for allowability.

Employers are not required by the common rule to provide or pay for rehabilitation programs.

13. *Effective Date.* This Training and Employment Information Notice shall be effective as of the date of issuance.

14. *Inquiries.* Questions concerning this information notice should be directed to James MacDonald on (202) 535-0704.

15. *Attachments.* (1) Federal Register Notice—"The Drug-Free Workplace Requirements; Notice and Interim Final Rules," (2) A sample "Certification Regarding Drug-Free Workplace Requirements."

**Attachment—Certification Regarding Drug-Free Workplace Requirements**

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 29 CFR part 98, §§ 98.305, 98.320 and subpart F.

In addition, this certification is a material representation of fact upon which reliance is placed when the agency determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

A. The prospective grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantees policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement and

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (D)(2), with respect to any employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free

workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee shall insert in the space provided below, or include as a separate attachment, a listing of the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, State, zip code)

Name of Organization

Name and Title of Authorized Representative

Signature

Date

[FR Doc. 89-19897 Filed 8-23-89; 8:45 am]

BILLING CODE 4510-30-M

## Job Training Partnership Act; Announcement of Proposed Noncompetitive Grant Awards

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice of intent to award noncompetitive grants.

**SUMMARY:** The Employment and Training Administration (ETA) announces its intent to award a grant on a noncompetitive basis to Industrial Technology Institute for the Provision of specialized job training and placement services under the authority of the Job Training Partnership Act (JTPA).

**DATES:** It is anticipated that this grant agreement will be executed by September 15, 1989, and will be funded for 18 months. Submit comments by 4:45 p.m. (Eastern Time), on September 8, 1989.

**ADDRESS:** Submit comments regarding the proposed assistance award to: U.S. Department of Labor, Employment and Training Administration, Room C-4305, 200 Constitution Avenue NW., Washington, DC 20210, Attention: Gwendolyn Baron-Simms; Reference FR-DAA-102.

**SUPPLEMENTARY INFORMATION:** The Employment and Training Administration (ETA) announces its intent to award a noncompetitive grant to the Industrial Technology Institute. The proposed grantee will conduct a study of the training and occupational impacts of programmable automation upon U.S. manufacturing in six States: Michigan, Illinois, Ohio, Wisconsin, Indiana, and Minnesota. Examples of programmable automation include: robotics, computer numerical control equipment, computer-assisted design equipment and computer-assisted engineering. A carefully drawn sample of 150 facilities identified as major users of programmable automation will be drawn from a unique data base completed by the Industrial Technology Institute in the summer of 1986. The data base consists of 1400 cases representing 22,000 durable goods manufacturers in Michigan, Illinois, Ohio, Wisconsin, Indiana, and Minnesota. Funds for this activity are authorized by the Job Training Partnership Act (JTPA), as amended, Title IV-Federally Administered Programs. The proposed funding is approximately $89,516 and the project will be completed in 18 months.

Signed at Washington, DC, on August 14, 1989.

**Robert D. Parker,**

*ETA Grant Officer.*

[FR Doc. 89-19896 Filed 8-23-89; 8:45 am]

BILLING CODE 4510-30-M

## Mine Safety and Health Administration

**[Docket No. M-89-112-C]**

### Dorchester Mining Company, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Dorchester Mining Company, Inc., P.O. Box 2560, Wise, Virginia 24293 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 1 Mine (I.D. No. 44-06337) located in Dickenson County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine is in the Dorchester coal seam, and ranges in height from 40 to 54 inches. The rock partings in this area change often making mining heights very inconsistent. The coal seam also has several dips and an uneven bottom throughout the mine.

3. The use of cabs or canopies on the mine's electric face equipment would result in a diminution of safety because the canopies would:

(a) Dislodge roof bolts; and

(b) Create inadequate visibility and cramped conditions for the operators.

4. For these reasons, petitioner requests a modification of the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 25, 1989. Copies of the petition are available for inspection at that address.

Dated: August 16, 1989.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 89-19898 Filed 8-23-89; 8:45 am]

BILLING CODE 4510-43-M

**[Docket No. M-89-110-C]**

### Leeco, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Leeco, Inc., 100 Coal Drive, London, Kentucky 40741 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Mine No. 62 (I.D. No. 15-16412) and its Mine No. 63 (I.D. No. 15-16413) both located in Perry County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mines' electric face equipment.

2. The mines are in the Hazard No. 4 coal seam, and range in height from 39 to 70 inches.

3. The use of cabs or canopies on the mine's electric face equipment would result in a diminution of safety to the miners because the canopies would:

(a) Reduce the equipment operator's vision and seating position causing fatigue, reduced mental alertness, and unsafe operation;

(b) Hinder the operator's escape from the compartment in the event of an emergency; and

(c) Strike and dislodge permanent overhead roof support, due to the undulating character of the coal seam.

4. For these reasons, petitioner requests a modification of the standard in mining heights less than 56 inches.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or

received in that office on or before September 25, 1989.

Copies of the petition are available for inspection at that address.

Dated: August 15, 1989.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 89-19899 Filed 8-23-89; 8:45 am]

BILLING CODE 4510-43-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 89-58]**

### Performance Review Board; Senior Executive Service

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of Membership of SES Performance Review Board.

**SUMMARY:** The Civil Service Reform Act of 1978, Pub. L. 95-454 (section 405) requires that appointments of individual members to a Performance Review Board be published in the **Federal Register.**

The performance review function for the Senior Executive Service in the National Aeronautics and Space Administration is being performed by the NASA Performance Review Board and the NASA Senior Executive Committee. The latter performs this function for senior executives who report directly to the Administrator or the Deputy Administrator. The following individuals are serving on the Committee and the Board:

*Senior Executive Committee*

Samuel W. Keller, Chairperson, Associate Deputy Administrator, NASA Headquarters.

C. Howard Robins, Jr., Associate Administrator for Management, NASA Headquarters.

Franklin D. Martin, Assistant Administrator for Exploration, NASA Headquarters.

Thomas P. Murphy, Non-NASA Member.

*Performance Review Board*

Franklin D. Martin, Chairperson, Assistant Administrator for Exploration, NASA Headquarters.

Ann P. Bradley, Executive Secretary, Assistant Associate Administrator for Personnel Management, NASA Headquarters.

Margaret G. Finarelli, Deputy Associate Administrator for External Relations, NASA Headquarters.

Charles T. Force, Associate Administrator for Space Operations, NASA Headquarters.

Paul F. Holloway, Deputy Director, NASA Langley Research Center.

Richard H. Kohrs, Director, Space Station Freedom, Office of Space Station, NASA Headquarters.

Robert Rosen, Acting Associate Administrator for Aeronautics and Space Technology, NASA Headquarters.

Lawrence J. Ross, Deputy Director, NASA Lewis Research Center Gary L. Tesch, Deputy General Counsel, NASA Headquarters.

James H. Trainor, Director of Space and Earth Sciences, NASA Goddard Space Flight Center.

Thomas E. Utsman, Deputy Director, NASA Kennedy Space Center Paul J. Weitz, Deputy Director, NASA Johnson Space Center.

Richard J. Wisniewski, Deputy Associate Administrator (Institutions), Office of Space Flight, NASA Headquarters.

Thomas N. Tate, Aerospace Industries Association, Non-NASA Member.

Dated: August 18, 1989

**Richard H. Truly,**

*Administrator.*

[FR Doc. 89-20003 Filed 8-23-89; 8:45 am]

BILLING CODE 7510-01-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Advancement Grant Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Advancement Grant Advisory Panel to the National Council on the Arts will be held on September 14-15, 1989, from 9:00 a.m.-5:30 p.m. in Room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

**Yvonne M. Sabine,**

*Director, Council and Panel Operations, National Endowment for the Arts.*

[FR Doc. 89-19966 Filed 8-23-89; 8:45 am]

BILLING CODE 7537-01-M

### Dance Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Challenge III Section) to the National Council on the Arts will be held on September 19, 1989, from 9:00 a.m.-5:00 p.m. in Room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on September 19, 1989, from 4:00 p.m.-5:00 p.m., time permitting. The topic for discussion will be policy issues.

The remaining portion of this meeting on September 19, 1989, from 9:00 a.m.-4:00 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

**Yvonne M. Sabine,**

*Director, Council and Panel Operations, National Endowment for the Arts.*

[FR Doc. 89-19967 Filed 8-23-89; 8:45 am]

BILLING CODE 7537-01-M

### Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Jazz Presenters/Jazz Ensembles Section) to the National Council on the Arts will be held on September 13–15, 1989, from 9:00 a.m.–5:00 p.m. in Room M09 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on September 15, 1989, from 3:00 p.m.–5:00 p.m. The topic for discussion will be policy issues.

The remaining portion of this meeting on September 13–14, 1989, from 9:00 a.m.–4:00 p.m. and on September 15, 1989, from 9:00 a.m.–3:00 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

**Yvonne M. Sabine,**

*Director, Council and Panel Operations, National Endowment for the Arts.*

[FR Doc. 89–19968 Filed 8–23–89; 8:45 am]

BILLING CODE 7537–01–M

## NUCLEAR REGULATORY COMMISSION

### Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guides 3.65, "Standard Format and Content of Decommissioning Plans for Licensees Under 10 CFR parts 30, 40, and 70," identifies the information needed by the NRC staff for evaluations involving decommissioning. The guide also provides a format for submitting this information in a decommissioning plan.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082, telephone (202) 275–2060 or (202) 275–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

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

Dated at Rockville, Maryland, this 17th day of August 1989.

For the Nuclear Regulatory Commission.

**Themis P. Speis,**

*Deputy Director for Generic Issue Resolution, Office of Nuclear Regulatory Research.*

[FR Doc. 89–19991 Filed 8–23–89; 8:45 am]

BILLING CODE 7590–01–M

### Availability of Draft Technical Position on Methods of Evaluating the Seismic Hazard at a Geologic Repository

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is announcing the availability of the "Draft Technical Position on Methods of Evaluating the Seismic Hazard at a Geologic Repository."

**DATE:** The comment period expires October 23, 1989.

**ADDRESSES:** Send comments to Chief, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of this document may be obtained free of charge upon written request to Marlene Creviston, Repository Licensing and Quality Assurance Project Directorate, Division of High-Level Waste Management, U.S. Nuclear Regulatory Commission, Mail Stop 4–H–3, Washington, DC 20555, Telephone 1/800/368–5642, Ext. 20440. Local callers should dial 301/492–3387.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Kalman, Project Manager, Repository Licensing and Quality Assurance Project Directorate, Division of High-Level Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301/492–0428.

**SUPPLEMENTARY INFORMATION:** This Technical Position (TP) is undertaken by the Division of High-Level Waste Management (DHLWM) to provide regulatory guidance to the U.S. Department of Energy (DOE) on appropriate methodologies that address seismic hazard at a geologic repository. This paper considers the seismic hazard for the construction and operation period through permanent closure ("preclosure"), and the period following permanent closure ("postclosure"). This position also considers differences that may exist, during the preclosure, among the surface facilities and the underground facility. Finally, the applicability of existing methodologies for evaluating seismic hazard to a geologic repository is discussed. The term seismic hazard, as used in this TP, is meant to encompass the hazard due to either vibratory ground motion or coseismic faulting, or both, that can affect the design and performance of the geologic repository.

Dated at Rockville, Maryland this 1st day of August 1989.

For the Nuclear Regulatory Commission.

**John J. Linehan,**

*Director, Repository Licensing and Quality Assurance Project Directorate Division of High-Level Waste Management Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 89–19990 Filed 8–23–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 30-05004]

## Consideration of Amendment to Pathfinder Atomic Plant License and Opportunity for Hearing Northern States Power Co.

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Byproduct Material License No. 22-08799-02 issued to Northern States Power Company (the licensee) for possession of the Pathfinder Atomic Plant located in Minnehaha County, South Dakota.

The licensee requested the amendment in a letter dated July 18, 1989, which included as enclosures a decommissioning plan, an environmental report, and a safety analysis report.

The amendment would authorize the licensee to perform final decommissioning of the fuel handling building and the reactor building in accordance with the licensee's decommissioning plan.

The fuel handling building and reactor building contain radioactivity and radioactive components, parts, and waste generated as a result of operation of the Pathfinder Atomic Plant from 1964 through 1967 to produce electricity under License No. DPR-11. The reactor was last operated in September, 1967. Subsequent to final shutdown all fuel was removed from the reactor and shipped offsite, the reactor was permanently disabled, and the facility was repowered with three package boilers burning fossil fuel. The fuel handling and reactor buildings were partially dismantled and decontaminated, placed in a safe-storage condition and isolated from the balance of plant. Following completion of these actions in 1971, the 10 CFR part 50 license was surrendered and a separate license issued pursuant to 10 CFR part 30 was amended to authorize possession only of residual radioactive materials as byproduct material.

Prior to issuance of the proposed amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended, and the Commission's regulations.

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of subpart L, Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings, of the Commission's Rules of Practice for Domestic Licensing Proceedings in 10 CFR part 2. Pursuant to § 2.1205(a) any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice. The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852;

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch;

In addition to meeting other applicable requirements of 10 CFR part 2 of the Commission's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

Each request for a hearing must also be served, by delivering it personally or by mail to:

(1) The applicant, Northern States Power Company, to the attention of Mr. David Musolf, Manager, Nuclear Support Services, 414 Nicollet Mall, Minneapolis, Minnesota 55401; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Any hearing that is requested and granted will be held in accordance with the Commission's Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings in 10 CFR part 2, subpart L.

For further details with respect to the proposed action, see the licensee's request for license amendment dated July 18, 1989, which is available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC.

Dated at Rockville, Maryland this 17th day of August, 1989.

For the Nuclear Regulatory Commission.

**John T. Greeves,**

*Deputy Director, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 89-19993 Filed 8-23-89; 8:45 am]

BILLING CODE 7590-01-M

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## Philadelphia Electric Company

[Docket Nos. 50-352-OL-2, 50-353-OL-2 (Severe Accident Mitigation Design Alternative)]

## (Limerick Generating Station, Units 1 and 2); Appointment of Adjudicatory Employee

Commissioners: Kenneth M. Carr, Chairman, Thomas M. Roberts, Kenneth C. Rogers, James R. Curtiss.

In accord with the requirements of 10 CFR 2.4, notice is hereby given that Mr. Darrel Nash, a Commission employee in the Office of Nuclear Reactor Regulation, has been appointed as a Commission adjudicatory employee within the meaning of § 2.4 to advise the Commission on issues in the above-captioned proceeding related to consideration under the National Environmental Policy Act of severe accident mitigation design alternatives.

Mr. Nash has not been engaged in the performance of any investigative or litigating function in connection with the Limerick facility or in any factually-related proceeding.

Until such time as a final decision is issued in the above-captioned matter, interested persons outside the agency and agency employees performing investigation or litigating functions in the limerick proceeding are required to observe the restrictions of 10 CFR 2.780 and 2.781 in their communications with Mr. Nash.

It is so ordered.

Dated at Rockville, Maryland this 18th day of August, 1989.

For the Commission.

**Samuel J. Chilk,**

*Secretary of the Commission.*

[FR Doc. 89-20013 Filed 8-23-89; 8:45 am]

BILLING CODE 7590-01-M

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[Docket Nos. 50-272 and 50-311]

## Public Service Electric & Gas Co.; Correction

54 FR 31270 published on July 27, 1989 contained exemptions to 10 CFR part 50,

appendix R related to the Salem Generating Station, Units 1 and 2. The word "smoke" on page 31275, Section 9.3, column 2 on line 2 should be corrected to read "fire."

Dated at Rockville, Maryland, this 15th day of August 1989.

For the Nuclear Regulatory Commission.

Walter Butler,

*Director, Project Directorate I–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 89–19992 Filed 8–23–89; 8:45 am]

BILLING CODE 7590–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–27146; File No. SR–PSE–89–19]**

## Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Filing of Proposed Rule Change Relating to Clearing Symbol "Give-Up" for Transactions on the Intermarket Trading System ("ITS")

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 13, 1989, the Pacific Stock Exchange, Inc. ("Exchange" or "PSE") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

*Item 1. Text of the Proposed Rule Change*

The PSE propopses to amend Rule I, section 17(h), to require Equity Floor Brokers to "give-up" Options Market Maker clearing symbols for equity trades originating on the Options Trading Floor and sent out over the Intermarket Trading System ("ITS"). [Brackets indicate language to be deleted, italics indicates new language.]

Rule I

ITS Clearing Member Give-Up

Sec. 17 (a)-(g) No change.

*(h) For each ITS transaction executed for an Exchange Options Floor Member, an Equity Floor Broker shall immediately "give-up" the proper Options Floor Member clearing symbol through which the transaction is to be cleared.*

### II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The proposed PSE Rule I, section 17(h), will require Equity Floor Brokers to "give-up" Options Market Maker clearing symbols for equity trades originating on the Options Trading Floor and sent out over the Intermaket Trading System ("ITS").

The purpose of the proposed rule is to close a loop hole that presently results in substantial lost revenue in the form of outgoing ITS transaction charges. Without an Options Market Maker clearing symbol, the Exchange currently has no way of directly billing the Options Market Maker for equity trades sent on the ITS system by an Equity Floor Broker. Estimated revenue lost in 1988 was approximately $40,000–$50,000.

The proposed rule is presently an informal Exchange policy, and while a few Equity Floor Brokers do "give-up" the Options Market Maker clearing symbol, it is not mandatory. As a result, a strong enforcement stance is not possible. By requiring Equity Floor Brokers to "give-up" the Options Market Maker clearing symbol, the Exchange can begin to generate the lost transaction revenue and institute formal disciplinary action against those failing to abide by the rule provisions.

The proposed rule change is consistent with section 6(b)(4) of the Act, 15 U.S.C. 78f(b)(4), in that it provides for the equitable allocation of reasonable fees among PSE members.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change imposes a burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Written comments on the proposed rule change were neither solicited nor received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the Federal Register or within such longer period: (1) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 14, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 17, 1989.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 89–20007 Filed 8–23–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34-27147; File No. SR-PHLX-88-32]

## Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Technical Amendment to Equity Specialist Evaluation Rules

### I. Introduction

On October 11, 1988, the Philadelphia Stock Exchange, Inc. ("Exchange" or "Phlx") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change which provides for a technical amendment to existing Exchange Rule 515.01. The proposed rule change clarifies the operation of the Exchange's equity specialist evaluation rules.

Notice of the filing of the proposed rule change and its terms of substance was provided by the issuance of a Commission release (Securities Exchange Act Release No. 26731, April 17, 1989) and by publication in the Federal Register (54 FR 16438H, April 24, 1989). No comments were received in connection with the proposal.

### II. Description of the Proposal

Under PHLX Rule 515.01, the operations of PHLX equity specialists are reviewed on a quarterly basis utilizing objective performance data gathered through the Exchange's Equity Specialist Statistical Evaluation Questionnaire ("Equity Statistical Questionnaire").[3] The Equity Statistical Questionnaire consists of 15 weighted questions covering a wide spectrum of equity specialist functions and activities. The Equity Statistical Questionnaire is divided into four categories—PACE, ITS, General and Primary Issues—with each section containing one or more evaluation categories. Specialist units are ranked from worst to best on an overall basis and in each of the ratings categories.[4] Under existing PHLX Rule 515.01, any specialist units ranking in the bottom 15% in overall ratings for two consecutive quarters, or in the bottom 15% on the PACE, ITS or General sections of the survey for three consecutive quarters, will be judged to have performed below minimum standards and are automatically subject to special scrutiny by the Exchange's Allocation, Evaluation and Securities Committee ("Committee"). As a result, a special review of the specialist will be undertaken by the Committee within the following 60 days to determine whether the specialist's performance has improved. If the Committee concludes that the equity specialist's performance has not improved, it may institute reallocation proceedings, although reallocation of the specialist's registered securities is discretionary.

The Exchange is proposing to amend PHLX Rule 515.01 to reflect the fact that although the Committee will automatically review an equity specialist following a substandard rating, the review does not itself automatically result in a reallocation proceeding. As discussed above, currently the language in PHLX Rule 515.01 provides that an equity specialist unit that ranks in the bottom 15% of the ratings over certain periods of time "will be deemed to have performed below minimum standards." This same specialist unit, however, would not automatically be subject to a reallocation proceeding. Rather, the rule provides that, under these circumstances, the Committee "may institute proceedings to determine whether to remove and reallocate one or more securities." The Exchange, in reviewing this rule, determined to correct this apparent inconsistency. Accordingly, the Exchange is proposing this technical amendment so that the language of the rule is consistent with the actual operation of the Exchange's evaluation procedures.

### III. Discussion and Conclusion

The Commission's Division of Market Regulation ("Division") has long favored the incorporation of relative performance measures into specialist evaluation programs "so that specialist who were regularly among the lowest ranked specialists would be subject to performance reviews, regardless of whether their performance met an arbitrarily determined level of acceptable performance." [5] PHLX Rule 515.01 currently employs such relative performance measures, since any equity specialist units ranking in the bottom 15% in overall ratings for two consecutive quarters, or in the bottom 15% on the PACE, ITS or General sections of the survey for three consecutive quarters, are automatically subject to a special review of the Committee within the following 60 days to determine whether the specialist's performance has improved. If the Committee concludes that the equity specialist's performance has not improved, it may institute reallocation proceedings, although reallocation of the specialist's registered securities is discretionary. Moreover, pursuant to PHLX Rule 515.01, mandatory Committee reviews are required if a unit performed below minimum standards on a prior occasion, did not have a specialty stock reallocated, and continues over the next year to demonstrate performance weakness.[6] In such cases the Committee may commence reallocation proceedings if it concludes such action is warranted. The PHLX is proposing to clarify the language of PHLX Rule 515.01 to reflect its actual operation.

In response to questions by Commission staff about how the proposed rule change would affect the PHLX's relative performance criteria, the Exchange responded by emphasizing the fact that the proposed rule change in no way represents a departure from the relative performance standards applicable to PHLX equity specialists.[7] The Exchange contended that although the proposed rule change does not modify the operation of PHLX Rule 515.01, the language of the rule is at variance with the operation of the rule. Finally, the Exchange voiced its continued commitment to employing relative rankings when evaluating equity specialist performance.

The Division agrees with the Exchange's contention that the proposed rule change is technical in nature, and in no way does the change modify the operation of the Exchange's allocation rules or lessen the Exchange's commitment to an effective equity specialist evaluation program that employs relative performance rankings. The current rule does not automatically subject an equity specialist whose performance is below the specified thresholds to a reallocation proceeding. Yet the rule as stated could be construed to deem that the specialist's performance is substandard, a label which may not be warranted. To the extent that there is any opprobrium attached to such a label it may be unjustified. The Commission agrees that that it could appear questionable for an

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] The Exchange's surveillance staff compiles the statistical data and transmits it directly to the Committee for evaluation purposes.

[4] A mean and standard deviation are computed to arrive at overall ratings as well as ratings for the individual PACE, ITS and General categories. Categories may each have different weightings in determining a firm's evaluation overall and on each section.

[5] SEC, Division of Market Regulation, The October 1987 Market Break, at 4-28 (February 1988).

[6] *See, supra* note 6, and accompanying text.

[7] *See* Letter from Richard T. Chase, Executive Vice-President, PHLX, to Howard Kramer, Assistant Director, SEC, Division of Market Regulation, dated February 8, 1989.

exchange to determine that a specialist's performance is substandard, but then determine not to commence a reallocation proceeding. Thus, the Commission believes it is appropriate for the Exchange to amend the rule's language to render it consistent with the rules's operation.

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the requirements of the section 6 of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[8] in that it is designed to promote just and equitable principles of trade and strengthen the Exchange's specialist system as well as further investor protection and the public interest in fair and orderly auction markets on national securities exchanges.

*It is therefore ordered,* Pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change is hereby approved

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Dated: August 17, 1989.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 89-20008 Filed 8-23-89; 8:45 am]

BILLING CODE 8010-01-M

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[File No. 1-9070]

## Self-Regulatory Organizations; Order Granting Application To Strike From Listing and Registration by the American Stock Exchange, Inc.; Adams-Russell, Inc.

August 16, 1989.

The American Stock Exchange, Inc. ("Exchange") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(c) promulgated thereunder to strike the above specified security from listing and registration thereon.

The reasons alleged for striking this security from listing and registration include the following:

The delisting policies of the Exchange provide that consideration may be given to the suspension or removal of any security when, among other things, it appears that the extent of public distribution or the aggregate market value of the security has become so reduced as to make further dealings on the Exchange inadvisable.

In applying these policies, the Exchange gives consideration to suspending dealings in, or removing from the list, a common stock issue if the number of shares publicly held (exclusive of holdings of officers, directors, controlling shareholders or other family or concentrated holdings) is less than 200,000.

The common stock of Adams-Russell, Inc. ("Company") (common stock, par value 1¢) does not qualify for continued listing under these policies for the following reasons:

Pursuant to an offering circular dated June 14, 1989, a wholly-owned subsidiary of M/A-COM, Inc. offered to purchase all of the Company's outstanding common shares at $15.50 each. That offer expired on July 12, 1989. As a result of the offer only 150,998 shares of the Company's common stock remain publicly held.

The Commission, having considered the facts stated in the application and having due regard for the public interest and protection of investors, orders that said application be, and it hereby is, granted, effective at the opening of business on August 17, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 89-20009 Filed 8-23-89; 8:45 am]

BILLING CODE 8010-01-M

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## DEPARTMENT OF TRANSPORTATION

### Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended August 18, 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 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 Number:* 46446
*Date Filed:* August 16, 1989
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:*
*September 13, 1989*
*Description:*
Application of Aeronautica De Cancun, S.A., pursuant to section 402 of the Act and subpart Q of the Regulations, requests a foreign air carrier permit to provide charter transportation of persons and accompanying baggage between points in the United States and points in Mexico.

*Docket Number:* 46448
*Date Filed:* August 16, 1989
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:*
September 13, 1989
*Description:*
Application for Federal Express Corporation pursuant to section 401 of the Act and subpart Q of the Regulations applies for renewal of its authority to serve Vietnam, contained in Segment 3 of Federal Express' certificate of public convenience and necessity for Route 205-F.

*Docket Number:* 46449
*Date Filed:* August 17, 1989
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:*
*September 14, 1989*
*Description:*
Application of British Airways PLC, pursuant to section 402 of the Act and subpart Q of the Regulations requests an amendment of its foreign air carrier permit to authorize it to engage in scheduled foreign air transportation of persons, property and mail between Bermuda and San Juan, Puerto Rico.

*Docket Number:* 46452
*Date Filed:* August 17, 1989
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:*
September 14, 1989
*Description:*
Application of Aero-Chago, S.A., pursuant to section 402 of the Act and subpart Q of the Regulations, request renewal of its Foreign Air Carrier Permit to engage in nonscheduled foreign air transportation of property and mail between points in the United States and points in the Dominican Republic.

*Docket Number:* 46454
*Date Filed: Angust 16, 1989*
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:*
September 15, 1989
*Description:*

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[8] 15 U.S.C. 78f(b)(5) (1982).

[9] 15 U.S.C. 78s(b)(2) (1982).

[10] 17 CFR 200.30-3 (1989).

Application of American Airlines, Inc. pursuant to section 401 of the Act and subpart Q of the Regulations applies for a certificate of public convenience and necessity so as to authorize nonstop air service between Miami, Florida, and Toronto, Ontario, Canada.

Phyllis T. Kaylor,

*Chief, Documentary Services Division.*

[FR Doc. 89-20000 Filed 8-23-89; 8:45 am]

BILLING CODE 4910-62-M

## Federal Highway Administration

### Environmental Impact Statement; Santa Clara and San Benito Counties, California.

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent revision.

**SUMMARY:** The FHWA is issuing this notice revision to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project in Santa Clara and San Benito Counties, California. The original notice, published Thursday, August 4, 1988, on page 29411, Vol. 53, No. 150 of the **Federal Register**, specified the project limits to be within the vicinity of Uvas Creek (post mile 5.4) west of the City of Gilroy and Route 156 (post mile 22.1). This revision expands the scope of study to include upgrading from highway to freeway status a 4.6-mile portion of U.S. Route 101 in Santa Clara County from post mile 0.0 to 4.6, and to expand a 4.6-mile portion of State Route 25 from a 2-lane to a 4-lane facility from Route 101 to the proposed Route 152 near Shore Road.

**FOR FURTHER INFORMATION CONTACT:** C. Glenn Clinton, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95812-1915, Telephone: (916) 551-1314, or Hilmer A. Forsen, Study Manager, State of California, Department of Transportation, Transportation Studies Branch, P.O. Box 7310, San Francisco, California 94120, Telephone: (415) 557-9150.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the California Department of Transportation, will prepare a draft environmental impact statement covering alternative highway development proposals in the State Route 152 corridor in Santa Clara and San Benito Counties in the vicinity of Uvas Creek, west of Gilroy, Santa Clara County, to the junction of State Routes 152 and 156 in Santa Clara County, a distance of approximately 17 miles. Other project activities would include upgrading to freeway status a 4.6-mile portion of Route 101 in Santa Clara County from the San Benito County line to southern Gilroy, and to expand a 4.6-mile portion of State Route 25 from a 2-lane to a 4-lane facility from Route 101 to the proposed Route 152 near Shore Road. The earlier Notice of Intent for this project, published in the **Federal Register** on August 4, 1988, page 29411, described only work on Route 152.

Transportation improvements are needed in the area to relieve existing and anticipating traffic congestion on highways and streets in the corridor.

Alternatives to be considered, in addition to doing nothing or low-cost improvements to the existing transportation systems, include alternative alignments and selection of a route location and right-of-way protection for the construction of a freeway, expressway, conventional highway, or combination thereof.

A public information "open house" to gather information was held on May 6, 1987 in the City of Gilroy's Council Chambers. A public scoping meeting was held at the City Council Chambers on August 17, 1988. An informal public meeting was held on October 11, 1988 in Hollister at the Pacheco School. Other public information meetings will be held as necessary to inform the public on the study.

Letters describing the proposed action, giving the time and place of the meeting, and soliciting comments were sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who previously expressed or were known to have interest in this proposal. Additional meetings will be scheduled with interested agencies and parties who are not already participating in this study. Those parties are urged to advise the persons, previously listed in this notice, of their interest.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided herein.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on August 18, 1989.

C. Glenn Clinton,

*District Engineer, Sacramento, California.*

[FR Doc. 89-19982 Filed 8-23-89; 8:45 am]

BILLING CODE 4910-22-M

## National Highway Traffic Safety Administration

**[Docket No. IP89-06; Notice 1]**

### Receipt of Petition for Determination of Inconsequential Noncompliance; Philips Lighting Co.

Philips Lighting Company of Somerset, NJ, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.108, Federal Motor Vehicle Safety Standard (FMVSS) No. 108, "Lamps, Reflective Devices, and Associated Equipment," on the basis that it is inconsequential as it relates to motor vehicle safety.

This Notice of receipt of a petition is published under Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Standard No. 108 requires that the base of each Type HB3 and HB4 light source be marked by its manufacturer or its importer with its HB Type Designation. In June 1989, Philips Lighting Company stamped approximately 28,800 bulbs with an HB3 designation when the proper type designation for these bulbs was HB4. Of the 28,800 noncompliant bulbs Philips Lighting Company recovered 13,800. The company is seeking exemption primarily for the 15,000 bulbs that were not recovered. However, it is also seeking exemption for the remaining unused 13,800 bulbs and any unshipped units that were similarly marked with the wrong HB number.

Philips Lighting Company supports its petition for inconsequential noncompliance with the following reasons:

1. The "HB" type is not generally used by vehicle owners to identify the proper headlamp bulb, and no confusion by owners is expected to occur as a result of the wrong HB number marking.

2. The number more likely to be used, i.e. the 9005 designation, is correctly stamped on the base and the bulbs that were installed in the correct lens and reflector assemblies, and no safety problems are anticipated.

3. Specific notice of the wrong HB number will be provided to any customer to whom Philips sells to insure that installations are correct.

Interested persons are invited to submit written data, views and arguments on the petition of Philips Lighting Company described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC, 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: September 25, 1989.

**Authority:** Sec. 102, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on: August 21, 1989.

**Ralph Hitchcock,**

*Acting Associate Administrator for Rulemaking.*

[FR Doc. 89–19959 Filed 8–23–89; 8:45 am]

BILLING CODE 4910–59–M

## Saint Lawrence Seaway Development Corporation Advisory Board; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation, to be held at 2:00 p.m., September 11, 1989, at the Corporation's Administration Headquarters, Room 5424, 400 Seventh Street SW., Washington, DC. The agenda for this neeting will be as follows: Opening Remarks, Consideration of Minutes of Past Meeting; Review of Programs; Business, Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than September 6, 1989, Marc C. Owen, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street SW., Washington, DC 20590; 202/366–0091.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC on August 18, 1989.

**Marc C. Owen,**

*Advisory Board Liaison.*

[FR Doc. 89–19981 Filed 8–23–89; 8:45 am]

BILLING CODE 4910–61–M

## UNITED STATES INFORMATION AGENCY

## Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1987 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "Twelve Artists from the German Democratic Republic" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display or the listed exhibit objects at the Harvard University Art Museums in Cambridge, Massachusetts, beginning on or about September 15, 1989 to on or about November 5, 1989; the Wight Art Gallery of the University of California at Los Angeles December 3, 1989 to on or about January 21, 1990; the University of Michigan Museum of Art, Ann Arbor, beginning on or about February 9, 1990 to on or about March 25, 1990, and potentially at the Albuquerque Museum, Albuquerque, New Mexico, from mid-April to mid-June 1990, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: August 17, 1989

**Alberto J. Mora,**

*General Counsel.*

[FR Doc. 89–19913 Filed 8–23–89; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Lorie J. Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202/485–8827, and the address is Room 700, U.S. Information Agency, 301 Fourth Street SW., Washington, DC 20547.

# Sunshine Act Meetings

Federal Register
Vol. 54, No. 163
Thursday, August 24, 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).

**BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.**

**TIME AND DATE:** 10:00 a.m., Wednesday, August 30, 1989.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 22, 1989.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 89–20155 Filed 8–22–89; 3:53 pm]

BILLING CODE 6210–01–M

**NATIONAL SCIENCE FOUNDATION MEETING**

**NAME:** Advisory Committee for Critical Engineering Systems.

**DATE AND TIME:** September 11, 8:30 a.m.–5:00 p.m.; September 12, 8:30 a.m.–12:00 pm.

**PLACE:** National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

**TYPE:** Open.

**CONTACT:** Dr. Robert D. Hanson, Division Director, Biological & Critical Systems, National Science Foundation, 1800 G Street, NW.–Room 1132, Washington, DC 20550, Phone: 202–357–9545.

**MINUTES:** May be obtained from contact person listed above.

**PURPOSE OF MEETING:** To provide advice and recommendations concerning fundamental research for biological and critical engineering systems.

**AGENDA:** Review research content of the Division research programs and discuss plans for the future.

Dated: August 21, 1989.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 89–20055 Filed 8–22–89; 10:22 am]

BILLING CODE 7555–01–M

**SECURITIES AND EXCHANGE COMMISSION**

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of August 22, 1989.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, August 22, 1989, at 2:30 p.m., will be: Opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Robert Rosenblum at (202) 272–2400.

Dated: August 21, 1989.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 89–20100 Filed 8–22–89; 12:48 pm]

BILLING CODE 8010–01–M

# Corrections

Federal Register
Vol. 54, No. 163
Thursday, August 24, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[ID-020-09-4212-12; I-27084]

### Amendment to the Malad Hills Management Framework Plan; Idaho

*Correction*

In notice document 89-18142 beginning on page 32016 in the issue of Thursday, August 3, 1989, make the following corrections:

1. On page 32017, in the 1st column, in the 12th line, "Section 31: Ne¼, E½ NW¼" should read "Section 31: NE¼, E½ NW¼".

2. On the same page, in the same column, in the last paragraph, in the fourth line, after "from"insert "appropriation under the public land".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[MT-930-09-4214-12; MTM 15568]

### Termination of Classification for Multiple-Use Management; Montana

*Correction*

In notice document 89-17586 beginning on page 31254 in the issue of Thursday, July 27, 1989, make the following correction:

On page 31255, in the first column, the 14th line should read, "sec. 9 W½ SW¼, and SE¼ SW¼".

BILLING CODE 1505-01-D

## SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Areas #2373 and #2374]

### New Jersey; Declaration of Disaster Loan Area (And Contiguous Counties in the State of Pennsylvania)

*Correction*

In notice document 89-19164 appearing on page 33809 in the issue of Wednesday, August 16, 1989, make the following correction:

The agency docket line should read as set forth above.

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### Highway Safety Program; Amendment of Conforming Products List of Evidential Breath Testing Devices

*Correction*

In notice document 89-18534 beginning on page 32558 in the issue of Tuesday, August 8, 1989, make the following corrections:

1. On page 32559, in the first column, in the first line "CAMED" should read "CAMEC".

2. On the same page, in the same column, under "CMI, Inc., Owensboro KY", the 14th line should read, "5000 (w/3/8" ID".

3. On the same page, in the same column, under "Intoximeters, Inc., St. Louis, MO", in the 10th and 12th lines "3000 (rev B2A)" should read "3000 (rev B2)", and in the 16th line "Alco-Sensor III" should read "Alco-Sensor IIIA".

BILLING CODE 1505-01-D

federal register

Thursday
August 24, 1989

Part II

# Environmental Protection Agency

40 CFR Parts 80 and 86

Regulation of Fuels and Fuel Additives; Fuel Quality Regulations for Highway Diesel Fuel Sold in 1993 and Later Calendar Years; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 80 and 86

[AMS-FRL-3577-3]

RIN 2060-AC00

## Regulation of Fuels and Fuel Additives; Fuel Quality Regulations for Highway Diesel Fuel Sold in 1993 and Later Calendar Years

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** EPA proposes in today's notice a new national program of diesel fuel quality control. The proposed action would require refiners to reduce the sulfur content of on-highway diesel fuel from current average levels of approximately 0.25 weight percent to levels not exceeding 0.05 percent by weight. The proposal would also require that on-highway diesel fuel aromatic levels be held at or below current average levels (approximately 34 percent). The proposed mechanism for capping aromatics would be to set a minimum cetane index specification of 40. Both requirements would take effect at all points throughout the distribution system on October 1, 1993. These proposed actions would result in substantial reductions in emissions of particulate matter and sulfur dioxide ($SO_2$).

Certification diesel fuel would be changed beginning with both the 1991 and 1994 model years to reflect the changes in commercial diesel fuel quality. Vehicles sold in model years 1991 through 1993 would be certified using 0.10 weight percent sulfur fuel, reflecting the average fuel sulfur level expected to be used over these vehicles' useful lives (as defined in CFR title 40 § 86.085-2). Beginning with the 1994 model year, the certification fuel sulfur level would be that of commercial diesel fuel (*i.e.*, not to exceed 0.05 weight percent).

**DATES:** EPA has not scheduled a public hearing on this Notice of Proposed Rulemaking. A hearing will be held if requested on or before September 7, 1989. Comments on this proposal will be accepted through September 25, 1989. Additional information on the submission of comments can be found under "Public Participation" in the Supplementary Information section of today's notice.

**ADDRESSES:** Interested parties may submit written comments (in duplicate if possible) to: Air Docket Section (A-130), U.S. Environmental Protection Agency, Attention: Docket No. A-86-03, 401 M Street, SW., Washington, DC 20460.

Materials relevant to this proposal have been placed in Docket No. A-86-03 by EPA. The docket is located at the above address in Room M-1500, Waterside Mall (ground floor), and may be inspected between 8 a.m. and 3 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles Moulis, Standards Development and Support Branch, Emission Control Technology Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 668-4229.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

This preamble presents the major issues raised by today's proposed action and discusses EPA's rationale for each aspect of that action. The following sections of the preamble describe: (1) The background of the proposal, (2) the control options which were considered during the rulemaking development process, (3) the cost to the refining industry of the proposed diesel fuel requirements, (4) the economic and environmental benefits of the proposed rulemaking, (5) the overall cost effectiveness of the proposed fuel regulations, (6) the leadtime issues involved, (7) the enforcement aspects of the proposed rulemaking, (8) the issue of diesel engine certification, and (9) the actual proposal in detail, with request for comments on specific issues.

### II. Background

In March of 1985, EPA promulgated particulate emission standards of 0.25 grams per brake horsepower-hour (g/BHP-hr) for heavy-duty trucks (greater than 8,500 lbs), and 0.10 g/BHP-hr for buses, effective beginning in the 1991 model year; and 0.10 g/BHP-hr for heavy-duty trucks beginning in the 1994 model year (50 FR 10606, March 15, 1985). During the rulemaking process, manufacturers expressed concern that sulfur in diesel fuel could either plug the trap-oxidizers that EPA projected would be needed to meet the proposed particulate standard or generate significant particulate sulfate emissions that would make it difficult to meet the standards. To address this concern commenters recommended that EPA regulate the sulfur content of diesel fuel. In the preamble to the final rule, EPA responded that not enough was then known about the effect of diesel fuel sulfur on traps or particulate emissions to take regulatory action at that time, but that it would continue to study the issue and, if warranted, consider regulating diesel fuel sulfur content. In June of 1986, EPA released for public comment a study prepared under contract for EPA by Energy and Resource Consultants, Inc. (ERC), and Sobotka and Company, Inc. (SCI), entitled "Diesel Fuel Quality Effects on Emissions, Durability, Performance, and Costs" (51 FR 23437, June 27, 1986). The draft report by ERC presented the important emission- performance- and durability-related properties of diesel fuel. A version of the Department of Energy's Refinery Evaluation Modeling System (REMS) was used by SCI to estimate the cost involved in making changes in fuel composition.

As presented in the ERC report, the most important emission-related properties of diesel fuel are its sulfur and aromatics content. A reduction in fuel sulfur would directly reduce $SO_2$ and sulfate particulate emissions, while reducing fuel aromatics would reduce carbonaceous and organic particulate emissions. The report also concluded that back-end volatility (*e.g.*, the 90-percent distillation point) does not significantly affect particulate emissions.

ERC and SCI also concluded that, in addition to the emission benefit, a reduction of fuel sulfur from estimated present levels to 0.05 weight percent would reduce corrosive engine wear and extend engine life. A 30 percent extension in engine life was estimated and used in their cost-effectiveness analysis. This effect is difficult to quantify, however, as data which quantify the effect under in-use conditions with modern oils are scarce. According to the report, a reduction of fuel aromatics content would improve ignition quality, which would in turn improve the ability of engines to start in cold temperatures and reduce engine noise.

The REMS refinery model was used to estimate the cost of reducing fuel sulfur alone from estimated average levels of 0.274 percent to 0.05 percent. The results of the model showed that by segregating the production of highway diesel fuel from distillate burner fuels and by using existing desulfurization capacity, this sulfur reduction could be accomplished at a cost of about 1.2 cents per gallon. ERC claimed that this cost would be more than offset by the savings generated by the increased engine life resulting from desulfurization.

ERC and SCI also concluded (although EPA disagreed with this conclusion) that the desulfurization process would effect a reduction in aromatics content to

about 20.3 volume percent varying from refinery to refinery. It was further estimated that an additional reduction of aromatics content to 17 percent would increase refining cost by an additional 0.4 cent per gallon.

Comments received from industry on the ERC/SCI study indicated that additional work was needed in estimating the refinery cost of controlling diesel fuel quality as well as in evaluating the effect of fuel sulfur control on engine life. As a result, EPA commissioned Southwest Research Institute (SWRI) and Bonner and Moore Consultants, Inc. (B&M) to investigate these areas further. A report prepared by SWRI entitled "Study of the Effects of Reduced Diesel Fuel Sulfur Content on Engine Wear" and a B&M report entitled "A Study on Restriction of Sulfur and Aromatics Content of Highway Diesel Fuel" were the result of this effort.

The report by SWRI gave further indication that a reduction in fuel sulfur content might result in a substantial reduction in engine wear. Data in the literature were reviewed and summarized, and an analysis of used oil samples taken from engines operating on high and low sulfur fuel was performed. As documented in the report, it was found that in a large number of used oil samples the amount of wear particles was significantly lower in cases where low sulfur fuel had been used. After reviewing the report, members of industry cautioned that still more investigation was needed before firm conclusions could be drawn regarding the effect of sulfur on engine life.

The Bonner and Moore report examined the effect of fuel quality regulations on the cost of producing diesel fuel. The costs of controlling sulfur to 0.05 weight percent, controlling aromatics to 20 volume percent, and controlling both simultaneously were estimated. Two assumptions regarding the volume of fuel controlled were made in the study. One assumption was that the current degree of segregation (or lack thereof) of heating oil and "highway" diesel fuel would be maintained. The other was that all heating oil would be produced and distributed separately, and would therefore not need to meet "on-highway" fuel specifications. Fuel control cost estimates were developed for each segregation scenario.

In addition to these contracting efforts EPA also engaged in a series of meetings with engine manufacturers. The purpose of these meetings was to monitor the progress being made toward meeting the 1991 and 1994 heavy-duty diesel particulate emission standards. Engine manufacturers repeatedly expressed the need for a reduction in sulfur levels in commercial diesel fuel.

Most recently, in a landmark initiative, members of the diesel engine manufacturing and petroleum refining industries submitted a joint proposal for on-highway diesel fuel modification to EPA. In the proposal, refiners stated that they could provide diesel fuel containing no more than 0.05 weight percent sulfur and meeting a minimum cetane index specification of 40 (as a means of capping aromatics at current levels) by October 1, 1993. Diesel engine manufacturers expressed their belief that this level of fuel quality improvement would be sufficient to allow compliance with the 1994 emission standards. To provide flexibility within the refining industry, it was suggested that only "on-highway" diesel fuel be required to meet these specifications, and that individual refiners be allowed to choose whether or not to market "on-highway" diesel. Engine manufacturers also stated that EPA should allow certification using low sulfur fuel beginning with the 1991 model year to reflect upcoming changes in commercial fuel quality.

The information received from members of industry and government contractors was incorporated into a more recent EPA study. The major focus of the analysis was to determine the cost-effectiveness of a reduction in diesel fuel sulfur content alone, and of a subsequent reduction in diesel fuel aromatics. Thus assumptions were made that would result in the most conservative cost-effectiveness estimates.

Specific topics which were evaluated in detail include the refinery cost of fuel control, the effect of fuel regulations on engine manufacturers' compliance strategies, and the effect of fuel control on engine wear, air quality and health effects.

This more recent study is published today as the Draft Regulatory Impact Analysis (Draft RIA) supporting this proposed rulemaking and has been placed in Docket A–86–03, as referenced above. Although the Draft RIA is now outdated in some aspects, it still comprises the technical basis for today's proposal.

## III. Control Options

The control options which were considered in the rulemaking process include several combinations of fuel sulfur and aromatics control. Sulfur control options were considered down to levels as low as 0.05 percent by weight. The primary sulfur control scenario which was evaluated quantitatively was a sulfur reduction to 0.05 percent by weight with no change in aromatics. Intermediate levels of sulfur control were evaluated qualitatively relative to the 0.05 weight percent level.

Aromatics control options ranging from no control to a reduction to 20 volume percent were also considered. Since diesel fuel aromatics levels have been increasing over past years (due to increased blending of high-aromatic cracked stocks into diesel fuel) and the oil industry proposed to eliminate this slippage, the prospect of merely capping aromatics content at current levels to avoid future deterioration was also considered. The primary scenario evaluated quantitatively was a reduction in aromatics to 20 volume percent subsequent to a reduction of fuel sulfur to 0.05 percent by weight. Both primary control scenarios are evaluated in detail in the Draft RIA.

## IV. Cost of Fuel Control

To date, several independent analyses of the cost and feasibility of diesel fuel quality control have been prepared. These include studies performed for EPA under contract by SCI and Bonner and Moore Management Consultants, Inc., and a survey conducted by the National Petroleum Refiners Association (NPRA) of member refineries. The results of these different studies show some disagreement over the total cost of diesel fuel modifications due to: (1) Uncertainties involved in the modeling process, and (2) uncertainties in the analytical techniques and assumptions made by the NPRA members in their survey responses. The major areas of modeling uncertainty include: (1) The amount of desulfurization equipment currently in place in the refining industry, (2) the availability and performance of technology required for aromatics control, and (3) the ability of the refining industry and fuel distribution system to segregate "on-highway" and "off-highway" distillate fuels. The degree to which the cost of diesel fuel modification is dependent on these areas of uncertainties is discussed in more detail below.

Of these uncertainties, the segregation issue is the most important. According to the NPRA survey, if current fuel distribution practices are maintained, about 2.4 million barrels per day (bbl/day) of distillate would have to meet the low sulfur requirement. Of these 2.4 million bbl/day, however, only 1.2 million bbl/day are used on highways. If refiners and distributors could completely segregate the on- and off-highway portions of the distillate pool,

the controlled volume (and regulatory cost) could be cut nearly in half. In the joint industry proposal for on-highway diesel fuel specifications, it was strongly requested that only on-highway fuel be regulated and that individual refiners be allowed to determine whether or not to market on-highway diesel fuel. The joint industry proposal also contained provisions for distinguishing between on-highway and off-highway diesel fuel (*i.e.*, fuel dying). Although EPA is unable to accurately estimate the quantity of distillate that would be segregated, the language of the joint industry proposal indicates that increased segregation of distillate fuels is likely. To bracket this likelihood, a range of costs will be presented: One assuming complete segregation of on-highway fuel and the other assuming current segregation practices.

*A. Sulfur Reduction*

Diesel fuel sulfur reduction is accomplished by the hydrodesulfurization process. Hydrogen is introduced at elevated temperature and pressure in distillate hydrotreaters, resulting in a reduction in fuel sulfur content. The technology is commercially proven and is currently employed to a large degree by the refining industry. Thus, regulation of fuel sulfur would merely require the extended application of an existing technology.

The near term cost of mandatory removal of sulfur from diesel fuel is affected significantly by two factors: The amount of excess desulfurization capacity that currently exists in the refining industry, and the degree to which refiners can segregate the production of on-highway diesel fuel. The amount of excess desulfurization capacity available will certainly effect the amount of capital investment required for compliance with sulfur regulations. The degree to which the refining industry can segregate distillate fuel types will impact both capital investment and operating cost requirements.

In 1986, NPRA surveyed member refineries to determine the cost of making changes in fuel quality. The results of the survey showed that while 65 of the 139 refiners which responded had no distillate desulfurization capacity, a significant amount of desulfurization capacity did exist. It was estimated that full practical utilization of existing facilities could result in the production of 315,785 bbl/day of 0.05 weight percent sulfur fuel in 1991. NPRA also concluded that increased segregation of distillate fuels would take place in some refineries, but only to a marginal degree. The NPRA survey estimated that controlling diesel fuel sulfur to 0.05 weight percent would require capital expenditures of $3.3 billion and would cost approximately 3.11 cents per gallon of diesel fuel controlled.

This cost is higher than that estimated by the EPA contractor studies. SCI, in an analysis performed subsequent to the ERC/SCI report, estimated that costs for sulfur control could be as low as 1.41 cents per gallon. This cost estimate was generated assuming that only 69 percent of current desulfurization capacity is utilized and that "on-highway" diesel fuel could be segregated. SCI estimated a cost of 2.28 cents per gallon of controlled fuel assuming no excess desulfurization capacity exists and no increased segregation of distillate products is feasible.

Bonner and Moore Consultants Inc. recently completed another study for EPA on the cost of modifying diesel fuel quality. The results of that study showed that diesel fuel sulfur control would cost 2.69 cents per gallon controlled assuming no excess desulfurization capacity is available and no increase in segregation would take place. The cost per gallon of controlled fuel was estimated to be about the same under an increased segregation scenario (off-highway diesel quality was not allowed to deteriorate in the model).

The NPRA survey's estimate of current excess desulfurization capacity and Bonner & Moore's sulfur reduction cost estimates (adjusted for after tax real rate of return on investment) were used to develop a final estimate of sulfur control costs. The Bonner and Moore costs incorporated and addressed comments which were received on the earlier SCI work, and thus were used preferentially here. These adjusted costs were calculated by EPA to be about 2.3 cents per gallon of controlled fuel assuming no increased segregation of distillate products over the base case. This figure is close to that calculated by SCI, as indicated above. A cost of 1.8 cents per gallon of controlled fuel was estimated for the complete (100 percent) segregation scenario.

*B. Aromatics Control*

There are a number of technical options for the removal of aromatics from diesel fuel. Hydrocracking, a technology in widespread use, can be used to mildly reduce aromatic levels in distillate fuels. A more severe process, hydrodearomatization, can also be used, although commercial experience is limited. Solvent extraction can also be used for aromatics removal and is also commercially available, but may not be practical in many refining situations. The Mobil "methanol-to-olefin-to-distillate" process can also be used to produce a low aromatic distillate fuel. Whatever process is used, significant capital investment would be required.

The 1986 NPRA survey results indicated that, not only would aromatics control be expensive, but that 53 of the 139 refineries reporting would be financially unable to install the equipment necessary to produce low aromatics fuel. The control of sulfur and aromatics would require capital investment of an additional $3.34 billion beyond that necessary for sulfur control ($6.65 billion total). This investment Plus operating expenses would raise diesel fuel prices by an additional 3.24 cents per gallon (6.35 cents per gallon for both sulfur and aromatics control).

In an analysis performed after the initial ERC/SCI report, SCI estimated aromatic control costs, assuming solvent extraction would be the technology employed for aromatics removal. Costs for controlling aromatics to 20 percent after controlling sulfur to 0.05 weight percent were estimated in its report to be 0.48 cent per gallon assuming 100 percent segregation. A control cost estimate of 1.26 cents per gallon was generated assuming no increase in fuel segregation (*i.e.*, NPRA segregation assumption).

The recently completed Bonner & Moore report estimated costs for controlling aromatics, with hydrodearomatization used as the principal technology for aromatics reduction. Incremental costs for aromatics control (the difference between sulfur and sulfur/aromatics control costs) were projected to be 2.5 cents per gallon of controlled fuel assuming no increase in fuel segregation, and 2.6 cents per gallon of controlled fuel in the increased segregation case.

Using information contained in all three of these studies, EPA estimates that, with NPRA segregation, aromatics control would cost on additional 2.1 cents per gallon of treated fuel with 0.05 weight percent sulfur control already in place. With 100 percent distillate fuel segregation, aromatics control would cost an additional 2.4 cents per gallon of treated fuel.

## V. Benefits of Fuel Control

Reductions in diesel fuel sulfur and diesel fuel aromatics would result in a number of benefits (both financial and environmental) which can be weighed against the refining cost of modification. As will be described in Section A, improvements in fuel quality would allow engine manufacturers to comply

more easily with future heavy-duty diesel particulate standards and would reduce the cost and complexity of engine hardware necessary for particulate control. In Section B, the relationship between fuel sulfur and engine wear will be described and possible economic benefits will be quantified. The projected nationwide emission and air quality benefits will be presented in Section C. In Sections D and E, the projected health effects and visibility effects of emission reductions resulting from fuel control will be presented.

*A. Exhaust Aftertreatment Technology Benefits*

The 0.1 g/BHP-hr particulate emissions standard promulgated for heavy-duty diesel vehicles for the 1994 model year (50 FR 10606, March 15, 1985) will likely necessitate the use of some type of exhaust aftertreatment device. The design and the cost of the device will be affected by the quality of the fuel used. The purpose of this section is to identify the impact that the proposed fuel control will have on exhaust aftertreatment technology requirements.

The benefits of sulfur control in this area are two-fold. First of all, fuel sulfur contributes to particulate emissions directly via formation of sulfate in the engine exhaust. On average, about 2 percent of the sulfur in the fuel is emitted as sulfate particulate, or about 0.06–0.08 g/BHP-hr (including the weight of bound water). The proposed fuel sulfur regulations would reduce this amount by roughly 80 percent, greatly enhancing engine manufacturers' abilities to comply with the particulate standards.

Secondly, the use of some aftertreatment devices, particularly flow through catalysts or catalyzed traps is effectively prohibited by the current levels of sulfur in fuel. While a catalyst would significantly reduce organic particulate emissions, a highly active catalyst would also greatly increase the amount of sulfate particulate produced in the exhaust, thus negating the beneficial effects of the catalyst. When fuel sulfur is reduced, however, this effect becomes less pronounced, as the concentration of sulfur species in the exhaust is reduced proportionally. A less active catalyst formulation may be able to avoid this problem, albeit with a loss of efficiency in controlling organic particulates.

A smaller emissions benefit can also be achieved by aromatics control. Engine test results show that reductions in fuel aromatics levels result in lower emissions of carbonaceous (RCP) and soluble organic fraction (SOF) particulates. Hence, a reduction in fuel aromatics would reduce particulate formation, and subsequently reduce the need for exhaust treatment devices.

A projection of exhaust aftertreatment technology requirements was made for heavy-duty diesel vehicles for the 1994 and later model years under various fuel control scenarios. The likely aftertreatment technology mixes were determined by evaluating the cost-effectiveness of each technology type with respect to particulate control, for each heavy-duty vehicle class.

The first step in this process was to establish a distribution of baseline particulate emission levels and compositions, based on available test data, for each vehicle class. Next, various aftertreatment technologies were applied incrementally to engines in each heavy-duty class according to the cost-effectiveness of control, until aftertreatment application was sufficient to insure compliance with the particulate standards (assuming averaging within each heavy-duty subclass).

For 1994 and later model year heavy-duty diesels, due to the large contribution of sulfates to engine-out particulate, compliance with the 0.1 g/BHP-hr particulate standard will likely require fleetwide trap-oxidizer application if no fuel controls are implemented. The only exception is the heavy-heavy-duty engine class, where, with averaging, it is projected that slightly under 90 percent of vehicles will require traps.

With sulfur control, the 1994 picture is projected to be somewhat different. The enhanced feasibility of high-activity flow-through oxidation catalysts with sulfur control would allow the displacement of some traps by oxidation catalysts. On average, it is projected that approximately 35 percent of engines would require traps in all vehicle classes while an additional 29 to 55 percent, depending on engine subclass, would require flow-through oxidation catalysts.

Further reduction of aromatics to 20 volume percent would displace traps from an additional 5 percent of all engines and also decrease oxidation catalyst requirements. The only exception would be the medium heavy-duty diesel engine subclass, where trap displacement would be about 9 percent, but oxidation catalyst usage would increase about 8 percent.

The fuel economy, hardware, and maintenance costs savings associated with sulfur control for 1994 would be $324 for light-heavy duty diesels (LHDDEs), $651 for medium-heavy duty diesels (MHDDEs), $752 for heavy-heavy duty diesels (HHDDEs), and $700 for urban buses. The subsequent reduction in fuel aromatics to 20 percent would result in further savings of $31 for LHDDEs, $87 for MHDDEs, $78 for HHDDEs, and $94 for urban buses.

An analysis to determine the savings in aftertreatment costs for 1991–93 model year engines was also performed and is described in the Draft RIA. This analysis was initiated some time ago and assumed that traps would be used on a substantial number of 1991–93 engines. Presently, however, it appears that manufacturers will not use traps to comply with the 1991 model year truck standard, but instead rely on engine-related controls. The adoption of a 0.10 percent sulfur level for certification fuel is expected to reduce certification emissions by about 0.03–0.04 g/BHP-hr from what they would have been, using a 0.25 percent sulfur fuel and thus ease the manufacturers' attempts to achieve the 1991 standards. Nevertheless, since manufacturers' plans for 1991 engines are already largely fixed, EPA does not expect fuel control to affect manufacturers' plans for engine-related controls in this timeframe. Consequently, in-use emissions would remain unaffected. Some truck manufacturers not able to comply with the standard without fuel control might choose to pay nonconformance penalties (NCPs). However, since NCPs are not a net cost to society, but rather a "transfer payment" from one sector of society to another, no aftertreatment-related societal savings can be claimed for fuel control on these engines.

Traps are still expected to be the primary technology used by bus engine manufacturers to comply with the 0.10 g/BHP-hr 1991 bus standard; use of an alternative fuel, such as methanol, may also be employed. Some reduced usage of traps is likely if certification fuel sulfur were reduced. However, due to the fact that a relatively small number of bus engines would be certified over the 3-year period, this savings due to fuel control was not quantified.

*B. Wear Benefits*

An extensive body of data exists in the literature documenting the relationship between diesel fuel sulfur and corrosive engine wear. Because of this effect, engine oils typically contain alkaline additives which work to neutralize the acidic sulfur species present in the combustion chamber. As was postulated in the ERC/SCI study, current oil formulations may not be sufficient to completely control corrosive wear, and, consequently, a reduction in fuel sulfur levels may

significantly reduce engine wear rates. Based on data available at the time, the ERC/SCI report predicted that the reduction in wear as a result of fuel sulfur controls would increase engine life by approximately 30 percent.

After the ERC/SCI report was released, Southwest Research Institute (SwRI) was commissioned by EPA to study the issue further. As stated in its report, SwRI found that engines which had operated on both high and low sulfur fuels in Southern California exhibited a reduction in wear particles found in used oil samples when operated on low sulfur fuel. While the effect of low sulfur fuel differed among engines and fleets, the vast majority of the data showed that a fuel sulfur reduction from roughly 0.3 to 0.05 weight percent resulted in a 30 to 40 percent reduction in wear particles (*i.e.*, oil iron content).

Based on these data, EPA calculates that a reduction in sulfur level to 0.05 weight percent from the national average baseline sulfur level of 0.25 weight percent would result in a wear rate reduction of about 18 percent. Estimating the financial savings to consumers of such a decrease in engine wear rates, however, is a more difficult task. Engines are currently rebuilt for a number of reasons, including excessive oil consumption, loss of power, and major engine failures. While those engines which fail due to cylinder wear-related factors would realize a benefit, many engines may not. For instance, if an engine experiences a major failure, items such as piston rings and cylinder liners will normally be replaced during rebuild. This would effectively eliminate any benefit of reduced corrosive wear which would have been realized had another engine component not failed.

Further, the relative contributions of corrosive and abrasive wear to engine life is not well understood. While both types of wear contribute to deterioration in engine performance and life, it is possible that abrasive wear contributes more to loss of oil control than does corrosive wear. With these factors in mind, an attempt to quantify the economic benefits of reduced engine wear was made.

Three different approaches were taken to this problem. The first was based on the assumption that lower fuel sulfur levels would allow engine manufacturers to extend recommended oil change intervals, with no resulting change in engine life. The second approach assumed that reduced corrosive wear would result in an extension in the life of the engine. The third approach was to assume that a reduction in wear would extend the life of both the engine and vehicle chassis. These methods provided three independent estimates of the potential cost savings.

Using the first approach, information on lifetime mileage, oil change interval, and vehicle life was used to estimate the annual number of oil changes for each diesel vehicle class. It was then assumed that oil change intervals could be extended by 18 percent, resulting in oil cost savings for owners. The results of this analysis showed present value savings of 1.6¢/gal for light-duty diesel vehicles (LDDVs), 1.2¢/gal for light-duty diesel trucks (LDDTs), 0.8¢/gal for LHDDEs, 1.3¢/gal for MHDDEs, 0.9¢/gal for HHDDEs, and 1.8¢/gal for urban buses. The benefit was assumed to apply, beginning in 1994, only to 1988 MY and later LDDVs and LDDTs, and to 1991 MY and later HDDVs. Vehicles produced in previous model years exhibit much higher particulate emissions, which may contaminate the oil and eliminate the ability to extend oil change intervals.

The second approach was to assume that there would be no change in oil change interval, but that reduced wear rates would lead to a longer engine life. The reduction in engine wear was expected to result in longer rebuild intervals only in engines which are rebuilt for reasons related to high oil consumption. Based on data obtained from an EMA survey of rebuild practices, it was estimated that 42 percent of trucks would realize the 18 percent increase in engine life as a result of sulfur control. This 18 percent increase in engine life translates into an economic benefit for the owner by delaying rebuild maintenance costs. Estimated cost savings under this scenario (averaged over the entire fleet) were 2.51¢/gal of diesel fuel consumed for MHDDEs, 2.52¢/gal for HHDDEs and 1.98¢/gal for urban buses. LDDVs, LDDTs and LHDDEs received no benefit since these engines are not normally rebuilt and there was no credit taken for extended vehicle life under this scenario.

The third approach was to estimate the cost savings assuming that reduced engine wear would result in both an extension in rebuild intervals and in total vehicle life. Under this approach, the economic benefits include both delaying maintenance costs and delaying subsequent vehicle purchases. Once again using information on rebuild practices, rebuild costs, and vehicle costs, an estimate of the cost savings on a per gallon fuel consumed basis was generated. Total costs savings estimates were 30¢/gal for LDDVs, 26¢/gal for LDDTs, 23¢/gal for LHDDEs, 11.7¢/gal for MHDDEs, 8.4¢/gal for HHDDEs, and 11.5¢/gal for urban buses. These estimates represent the highest cost savings which could potentially result from sulfur control.

In summary, EPA estimates the potential for reduced engine wear from low-sulfur fuel under three alternative truck manufacturer/owner response scenarios: (1) Extended oil change intervals with no increase in engine life, (2) no change in oil change intervals but an increase in engine life, and (3) no change in oil change intervals with increases in both engine and total vehicle life. EPA has no data to determine which scenario is most likely to occur. The annual benefits of decreased engine wear in year 2010 are estimated at between $400 million and $3.7 billion; fuel costs, however, are estimated to increase between $540 million and $1.3 billion.

Based on these estimates, the annual net benefit accruing directly to truck owners from reduced engine wear alone could be over $2 billion. Under this scenario, truck owners would be willing to pay over $2 billion more per year for low-sulfur diesel fuel than it would cost refiners to produce it. To the extent that these estimates accurately reflect the effects of the proposed regulation, there must be a reason why such large potential net gains have not materialized based on market forces alone. EPA seeks comment on this issue.

One possible explanation is that there are significant costs to truck owners of determining the actual effects of reduced sulfur fuels on engine wear. Since the effects take place inside engines over fairly long periods of time, it may not be easy to observe, isolate, and measure the effects of reduced sulfur fuels. If these information costs are sufficiently large, they could outweigh the potential net benefits of a move to low-sulfur fuel resulting from market forces alone. Under these circumstances, the information costs would effectively prevent the introduction of low-sulfur fuel.

While these cost savings estimates indicate that substantial societal benefits may result from sulfur control, it is fair to include the caveat that the data base behind this analysis is limited. It has even been argued that sulfur control would have no impact on engine wear. However, as will be seen in Section VI of today's notice, fuel sulfur control is desirable even without the inclusion of reduced engine wear benefits.

*C. Emissions and Air Quality*

The diesel fuel quality changes being considered would result in substantial reductions in $SO_2$ emissions and particulate matter formation beyond the reductions resulting from the 1994 0.1 g/BHP-hr particulate standard. In addition, emissions of CO and HC will be indirectly affected by fuel quality modification, due to the changes in aftertreatment technology strategies used by engine manufacturers to comply with the 1994 particulate standards. The projected nationwide emission reductions under the two extreme distillate fuel segregation scenarios (100 percent and NPRA segregation) resulting from fuel sulfur and aromatics control are shown in Tables 1 and 2. Because the effect of diesel fuel control on vehicle emissions changes with model year, the overall emissions and air quality impacts of fuel control varies over time. Because of this, both the near and long term effects of fuel control were evaluated.

As shown in Table l, fuel sulfur control would result in additional reductions in direct particulate matter (PM) from baseline levels (*i.e.,* particulate matter emitted from the exhaust) over that accomplished by the HDD particulate standards alone. This is because fuel sulfur control will result in particulate reductions from pre-1991 HDD and light-duty diesel engines, as well as, depending on the degree of segregation, off-highway sources. In addition, a large reduction in diesel $SO_2$ emissions would result, representing an 80 percent reduction from baseline levels for those emission sources where diesel fuel is controlled. This would represent a reduction of 1.0–2.5 percent in total national $SO_2$ emissions. Beyond that, as described in more detail in the Draft RIA, it was estimated that approximately 12 percent of urban $SO_2$ emissions are converted to sulfate particulates in the urban atmosphere. These atmospherically-formed particulate are referred to as indirect PM. Thus, the reduction in $SO_2$ emissions would result in substantial indirect PM reductions in both the short and long term as well.

TABLE 1.—PROJECTED NATIONWIDE EMISSION REDUCTIONS DUE TO DIESEL FUEL SULFUR CONTROL

[1000 tons/yr]

| Pollutant | 1995 | 2015 |
|---|---|---|
| Total Particulate | * 99–196 | 159–321 |
| Directly Emitted | 10–29 | 3–35 |
| Indirect | 89–167 | 156–286 |
| $SO_2$ | 310–580 | 542–993 |

TABLE 1.—PROJECTED NATIONWIDE EMISSION REDUCTIONS DUE TO DIESEL FUEL SULFUR CONTROL—Continued

[1000 tons/yr]

| Pollutant | 1995 | 2015 |
|---|---|---|
| HC | 14 | 88 |
| CO | 141 | 916 |

*Lower end of range result of 100% distillate segregation, upper end result of current segregation practices.

The emission impacts of controlling fuel aromatics to 20 volume percent were a1so evaluated and are shown in Table 2. Total particulate emission reductions range from 10,000 tons per year in 1995 to 600 tons per year in 2015. Small HC and CO emission reductions would also result from aromatics control. These particulate reductions are a factor of 10 to 20 smaller in the short term than those resulting from sulfur control. Due primarily to the steady state nature of off-highway diesel operation, emissions from off-highway sources should not be strongly affected by fuel aromatics levels. Thus, estimated emission reductions are constant over the range of distillate segregation scenarios.

TABLE 2.—PROJECTED NATIONWIDE EMISSION REDUCTIONS DUE TO SUBSEQUENT DIESEL FUEL AROMATICS CONTROL

[1000 tons/yr]

| Pollutant | 1995 | 2015 |
|---|---|---|
| Direct PM | 10 | 0.6 |
| $SO_2$ | 0 | 0 |
| HC | 38 | 15 |
| CO | 69 | 98 |

Should the degree of segregation of distillate fuels increase significantly, it is possible that refiners may change blending practice to direct low sulfur and aromatic blend stocks to the on-highway pool. Directionally, this practice would have the undesirable side effect of increasing the sulfur and aromatic content of non-highway distillate fuels, thus decreasing environmental benefits. Although this practice might take place to some extent, EPA expects the primary approach to meeting this standard would be to desulfurize on-highway diesel fuel blend stocks. Roughly 70 percent of home heating oil is marketed in northeastern states, where limits on the sulfur content of home heating oils would effectively prohibit the shifting to high sulfur blendstocks to the off-highway pool. Thus, most of the home heating oil market is not even potentially available for such a change. The costs for fuel control presented in this preamble were generated under the assumption that the sulfur and aromatics content of the off-highway pool would not increase. To the extent the sulfur content of off-highway distillate does increase in reality, actual refining costs and emission reductions will be commensurately lower.

The air quality impacts of today's proposed rulemaking were also evaluated using a lead-surrogate model developed for previous analyses supporting diesel particulate emission standards (explained in the Draft RIA). Concentrations of various pollutants in urban areas of various sizes were projected. Model results indicate that by the year 2015, in large metropolitan areas (greater than 1,000,000 residents), annual arithmetic mean particulate concentrations would decrease by an additional 2.3–6.3 $mg/m^3$ as a result of sulfur control. Reductions in annual arithmetic mean concentrations of $SO_2$ ranging from 7.0–16.7 $mg/m^3$ are also projected. (These compare to current $PM_{10}$ and $SO_2$ concentrations in urban areas ranging from 18–90 $mg/m^3$ and 3–67 $mg/m^3$, respectively.)

Results of similar modeling for subsequent diesel fuel aromatics control indicate that for large metropolitan areas (greater than 1,000,000 residents) in the year 2015, aromatics control would result in particulate reductions of only 0.01 $mg/m^3$. A more detailed analysis of the air quality impacts of today's proposal is presented in the Draft RIA.

*D. Health Effects*

As presented above, the fuel controls proposed today will result in reductions in emissions of diesel particulate, $SO_2$ and HC, and at the same time decrease the levels of ambient particles that are atmospheric products of $SO_2$ emissions. Because of the adverse health effects of PM, and $SO_2$, EPA has developed National Ambient Air Quality Standards (NAAQS). Insofar as an area is out of compliance with these standards, a reduction of these regulated pollutants would reduce health risk. The quantitative degree of benefit cannot be calculated precisely since it depends on current levels in a locality and the precise decrease in levels. Nevertheless, the health effects that can be caused by these compounds is very briefly discussed below to illustrate the utility of reducing any existing unacceptable risk.

Short- and long-term exposure to $SO_2$ in association with particles causes excess mortality and morbidity. People

with cardiorespiratory diseases are at higher risk for mortality following long-term exposure. The increase in morbidity from long-term exposure is reflected as an increase in the prevalence of respiratory symptoms in children and adults and the frequency of respiratory illness in children. Acute exposure to low levels of $SO_2$ alone causes pulmonary function changes in asthmatics.

Upon atmospheric transformation, $SO_2$ can form a class of particles called acidic sulfates, which include ammonium sulfate (the least acidic), ammonium bisulfate, and sulfuric acid (the most acidic). Acute exposure of asthmatics to sulfuric acid can cause pulmonary function changes, and it appears that adolescent asthmatics may be more responsive. Acute exposure of animals and humans changes the ability of the lung to clear particles. Animals exposed for long terms to sulfuric acid exhibit alterations in lung function, structure, and clearance; a few of these changes may be permanent. Given the nature of these changes, some scientists have hypothesized (but not proved) that chronic sulfuric acid exposure may lead to chronic bronchitis. Preliminary estimates from an epidemiological study also raise concern about possible chronic effects. Another significant issue relates to the effects of exposure to sulfuric acid plus other chemicals. A 5-year exposure of animals to a combination of $SO_2$ plus sulfuric acid caused pulmonary function decrements and structural damage to the lungs. In some animal studies, acute exposure to sulfuric acid mixed with particles has been found to be synergistic for some types of pulmonary effects.

The non-cancer effects of exposure to low levels of diesel particles such as might occur in the ambient air are not well understood. High levels have been observed to cause effects in occupational situations and in animal studies, but for non-cancer effects, it is not currently possible to quantitatively extrapolate to lower levels.

The non-cancer health effects of exposure to light aromatic and short-chain aliphatic hydrocarbons are not well understood. Persons chronically exposed to some hydrocarbon mixtures have complained of dizziness, drowsiness, headaches, confusion, and general lethargic feeling. Animal studies of some hydrocarbons show neurotoxic and other effects. When such effects are observed, scientists often become concerned about whether children's developing nervous systems may be effected.

Although this discussion focuses on a few chemicals present in emissions that also serve as precursors to other potentially toxic atmospheric chemicals, there are likely to be more complex alterations that will have an unknown impact on health risk. For example, changes in the chemistry of a diesel particle has the potential to alter its health risk, *i.e.*, potency of a particle, which needs to be evaluated separately from a simple reduction in the mass of particles emitted. While it is clear that the emissions of some toxic chemicals will be decreased, the net health impact of all the changes involved can only be assessed with an appropriate research program.

Another area of concern related to diesel particulate control is that of cancer impacts. It might be argued that, since today's proposal will reduce sulfate emissions, there would be a corresponding increase in organic particulate emissions as manufacturers adjusted their control strategies to keep the same total emission rate. In fact, this assumption is the basis of the analysis of the cancer impacts contained in the draft RIA. However, based upon a more current assessment of expected manufacturer control strategies, the Agency no longer expects this to be the case. The position of engine manufacturers is that the 1994 standard is not feasible without sulfur control, in part because the sulfur itself contributes to the particulate level requiring control. The Agency, therefore, expects that the emission reductions associated with lower sulfur fuels will be used by manufacturers not to increase non-sulfate emissions, but to permit certification of their engines at levels sufficiently below the standard to ensure in-use compliance.

There is a second impact of lower sulfur fuels as it relates to available technology for controlling engine-out emissions. The switch to low sulfur fuel will allow the use of catalyzed devices, both catalyzed traps and flow through reduction catalysts, which could not be used without sulfur control. This change will tend to reduce the organic fraction of particulate emissions, because catalyzed devices operate preferentially on the organics. Thus, rather than increasing cancer incidences, sulfur control may actually reduce them a small amount. However, at this time there is inadequate information to make a quantitative estimate of the impact and update the analysis in the draft RIA. The Agency desires to make it clear that EPA no longer believes that the cancer impacts of sulfur control developed in the draft RIA are correct and specifically requests comment on this matter and how the question of cancer impacts should be analyzed. In addition, comments are requested regarding whether regulatory measures should be taken to encourage catalyzed devices for maximum control of the organic emissions.

The proposed cap on the aromatics levels of diesel fuel is not expected to have a significant impact on cancer incidence since it serves only to prevent the levels from increasing in the future. However, to the extent that average aromatics levels drop as the result of this cap, there could be a very small reduction in cancer due to both a decrease in total particulate emissions, and a decrease in the average carcinogenic potency of the particulates. More stringent control of aromatics would result in a somewhat larger reduction in cancer incidence. The cancer-related benefit of such stringent aromatics control is discussed further in Chapter 6 of the Regulatory Impact Analysis, and interested readers are referred to that chapter for more information. Unlike the analysis of the cancer impacts of sulfur, EPA believes the analysis for aromatics control is still fundamentally sound.

### *E. Visibility*

Because particulate matter both scatters and absorbs light, a change in urban visibility is also projected to result from the diesel fuel modifications proposed in today's notice. The projected changes in urban ambient particulate concentrations described above were used in conjunction with a visibility model developed to support previous rulemakings implementing diesel particulate emission standards to project visibility impacts.

Baseline visibilities were determined for the year 1990 for four ranges of city size as well as for rural areas. The percent change in average visibility by the year 2015 for each population category was then determined assuming no change in non-distillate related particulate. It is projected that, with sulfur control, visibility in the year 2015 will improve by amounts ranging from 0.6 to 4.3 percent in urban areas, and will improve by 1.0 percent in rural areas, relative to baseline 2015 levels. An additional reduction of fuel aromatics to 20 volume percent would have little visibility impact.

## VI. Cost-Effectiveness

The cost effectiveness of pollution control is defined as the net societal cost per ton of pollutant removed and is used to rank pollution control programs. The projections of pollutant reductions and the cost and credit elements described above were used in estimating

the cost-effectiveness of diesel fuel control according to a calendar year approach discounted over a 33-year period. The proposed reduction of diesel fuel sulfur would have impacts on the emissions of a number of different pollutants, including particulates (PM), HC, CO, and $SO_2$. However, since PM control is the major focus of this proposal, in the cost-effectiveness analysis the net cost per ton of PM controlled was determined and used in evaluating the various fuel control options. The net societal cost consists of the refinery cost of the fuel control and any fuel composition-related fuel economy penalty, less any societal cost savings "credits" resulting from fuel control. These societal cost savings include utilization of less expensive new engine technology, decreased fuel consumption as a result of reduced trap usage, and savings associated with reduced engine wear.

Since the fuel controls proposed in today's notice would affect different model years' vehicles at the same time, and to varying degrees, a calendar year approach to cost-effectiveness was used (*i.e.*, net costs and emission reductions were estimated for each calendar year). Since the effectiveness of the control changes dramatically over time (due to fleet and technology turnover) the cost-effectiveness was estimated over a 33-year period using a discount rate of 10 percent. The cost-effectiveness, including and excluding various wear credits and gaseous pollutant credits, is shown in Table 3.

TABLE 3.—33-YEAR URBAN COST-EFFECTIVENESS ANALYSIS

| | Cost-Effectiveness ($/ton) |
|---|---|
| *Sulfur Control* | |
| Maximum wear credit included. | −68,148 to −19,253. |
| Minimum wear credit included. | −3,906 to 4,304. |
| No wear credit included. | 2,826 to 6,773. |
| *Aromatics Control* | |
| Primary Analysis | 310,751 to 560,378. |
| High Emission Reduction Sensitivity Analysis. | 135,789 to 244,868. |

As can be seen in Table 3, even if savings from reduced wear are not counted, the cost-effectiveness, of fuel sulfur control is at most $6,773 per ton, and is significantly less when engine wear credits are included. Table 3 shows that aromatics control is much less cost-effective than sulfur control (or the particulate standards themselves). The 33-year cost-effectiveness for aromatics control to 20 percent was calculated to be $310,000–560,000 per ton.

Intermediate sulfur control levels would be less costly to refiners. A small amount of sulfur removal can be obtained very inexpensively, since the necessary equipment already exists and need only be operated. However, any substantial degree of sulfur control will entail the building of new desulfurization capacity with roughly a constant cost per ton of sulfur removal. Since the resulting diesel emission reductions are proportional to the fuel sulfur level, the cost per ton of sulfurous emission controlled is relatively constant down to 0.05 weight percent.

The use of catalytic exhaust treatment devices requires fuels with very low sulfur levels, certainly below 0.10 weight percent and probably quite near the 0.05 weight percent level. Thus, for any sulfur level above 0.05 weight percent, much of the technology credit is lost and the cost-effectiveness would be worse than that for 0.05 weight percent. This, coupled with the oil and engine industries' own proposal of the 0.05 weight percent level, indicates that no lesser amount of control appears appropriate.

Likewise, a sulfur standard below 0.05 weight percent would not appear appropriate at this time. While such control is likely feasible for some combinations of refineries, crude oil slates, and product slates, EPA lacks evidence that such a standard would be feasible for all or even most refineries. Also, 0.05 weight percent appears to be sufficient to permit compliance with the 1994 diesel particulate standard.

With respect to aromatics control, EPA would expect some improvement in the cost-effectiveness of aromatics control as the standard were increased from 20 volume percent. However, like sulfur control, for any substantive degree of control, we expect such improvement to be much less than a factor of two, leaving the 33-year cost-effectiveness well above $150,000 per urban ton of PM control. Further, EPA's assessment is that fuel aromatics control is not necessary for compliance with emission standards, and, in fact, that any emissions effect, or overall environment benefit, would be small or negligible. Therefore, EPA believes it would be inappropriate to propose more stringent controls at this time.

At the same time, capping aromatics at current levels would likely entail only operational adjustments within the refinery and no need for new equipment. Coupled with control of only on-highway diesel fuel, we expect such a cap to entail little cost. EPA believes it is appropriate to propose such a cap today and has chosen a minimum cetane specification (recommended in the joint industry proposal) as a means of so doing. However, it is uncertain whether setting a cetane index specification is the most effective method of capping aromatics. As described more thoroughly in Section X of this preamble, EPA is requesting comments on the adequacy of this proposed specification as a means of capping aromatics.

## VII. Leadtime

The effective date of the diesel fuel regulations proposed in today's rulemaking is based on two factors. One, refiners need time to design, purchase, and install the required processing equipment. Two, the benefits of sulfur control in expanding the technological options for compliance with the 1994 heavy-duty diesel particulate regulations make it highly desirable that today's proposed regulations take effect prior to the introduction of the 1994 model year. EPA contracted with SCI to study the leadtime necessary for complying with the proposed regulations, taking into account the potential burden to the refining industry of the RVP regulations proposed in 1987 (52 FR 31274). Considering the amount of capital equipment necessary, SCI concluded that, if on-highway and off-highway diesel fuel could be segregated, compliance could be achievable by late 1993, given promulgation of a final rule by mid-1990. If segregation of diesel fuels proved infeasible, SCI concluded that compliance might require a longer leadtime.

In the joint industry proposal submitted to EPA, the oil refiners proposed that diesel fuel containing no greater than 0.05 percent sulfur by weight could be supplied by October 1, 1993. The proposal indicated that segregation of on-highway and off-highway diesel would likely occur to some extent. Thus, both those organizations responsible for the joint industry proposal and SCI agree that compliance could take place by late 1993. Therefore, an effective date for today's proposed regulations of October 1, 1993 appears appropriate.

## VIII. Enforcement Options and Selection

### *A. Introduction*

The environmental goal of motor fuel regulation is to improve or protect air quality by controlling the type of fuel used in motor vehicles or motor vehicle

engines. Environmental benefits can be lost through misfueling, when a noncomplying or inappropriate fuel is used in a motor vehicle. Regulations could forbid misfueling itself or seek to prevent misfueling by controlling fuel distribution. To reach the environmental goal with the most efficient use of enforcement resources, motor fuel regulations are best targeted at the fuel distribution network.

As in all regulations controlling the marketing of motor fuels, the fact that motor fuel passes through the control of many parties, from refiner to retailer, before reaching the consumer, raises questions of responsibility and control when violations are identified. This aspect of the distribution system raises two principal issues pertaining to enforcement: (1) At what point in the distribution network should diesel fuel be required to meet standards, and (2) which parties should be held legally responsible for violations of these standards at the various points in the distribution network. Each of these issues will be discussed in turn.

*B. Point of Application*

An important consideration affecting enforcement is the issue of where in the distribution network standards will be applied. The options considered by the Agency in deciding where the diesel fuel standards should apply include:

1. At all sites in the distribution network;
2. Only sites under the control of "downstream" parties, including retail outlets and wholesale purchaser-consumers;
3. Only sites under the control of "upstream" parties, including refiners and importers;
4. Sites controlled by both "downstream" and "midstream" parties, including retail outlets, wholesale purchaser-consumers, blending facilities, bulk terminals, and bulk plants; and
5. Sites controlled by both "upstream" and "midstream" parties, including refineries, import and blending facilities, bulk terminals, and bulk plants.

In choosing among these options, some of the factors which were considered by the Agency were: (1) Which plan offers the best chance of preventing a noncomplying fuel from reaching consumers, (2) the amount of resources needed for successful enforcement of the regulations, taking into consideration the number of facilities that will have to be monitored and the difficulty of identifying the party who initially introduced the noncomplying fuel into the distribution network, and (3) which plan would most effectively encourage quality control measures and discourage fuel switching (the use of less expensive noncomplying diesel fuel).

Highway diesel engines can operate equally well on either off-highway or on-highway diesel fuel. Only on-highway diesel fuel, however, will bear the cost of additional processing required for compliance with today's proposed standards. Thus, it is likely that there will be a possibility of, and an economic incentive for, fuel switching at each point in the distribution network. Therefore, in order to ensure that unregulated diesel fuel is not used in highway vehicles, the Agency today proposes a diesel fuel standard that is applicable throughout the entire distribution network. This approach is consisted with that used in the lead in gasoline and recently promulgated volatility regulations.

*C. Legal Responsibility for Violations*

In general, there are three options for the assignment of legal responsibility for diesel fuel standards violations. The first option is to place legal responsibility only on the party who originally introduced the noncomplying diesel fuel into commerce. This would be the party who manufactured, blended, or initially mislabeled the noncomplying diesel fuel. Under this option, when a violation is found, the responsible party must be identified by tracing the noncomplying diesel fuel back through the distribution chain to its source.

A second option is to hold liable the regulated party offering for sale, supplying or transporting a noncomplying diesel fuel. Under this enforcement approach, the source of the noncomplying diesel fuel need not be identified. Every regulated party selling, supplying or transporting diesel fuel or offering to sell or supply, would effectively be responsible for monitoring the diesel fuel to verify that the fuel complies with standards.

The third option includes both types of liability described above but goes one step further to include a vicarious liability provision. Vicarious liability, for purposes of diesel fuel regulation, means that parties upstream in the distribution chain can be held responsible for violations which are found at downstream facilities over which they could exercise some control. vicarious liability raises a presumption of liability, that can be rebutted by the regulated party, as specified in the defenses included in the proposed regulations.

The Agency proposes that the third option, with the vicarious liability provisions, be implemented. This approach has been used by the Agency in its fuel contamination liability regulations (40 CFR 80.23). It has also been adopted in the recently promulgated volatility control regulations (40 CFR 80.27). While these two sets of regulations cover gasoline and include specifications different from those proposed in this regulation, essentially the same parties are covered by all three sets of regulations. Therefore, it is appropriate that these proposed regulations covering diesel fuel contain the same liability scheme which has previously been applied to the regulated parties. The commonality of these enforcement schemes simplifies the industry's ability to comply and enhances the Agency's enforcement of the regulations.

*D. Compliance Monitoring*

In the case of the lead in gasoline control regulations, industry compliance with the regulations is monitored through a combination of auditing and spot sampling in the field. The gasoline volatility regulations will be enforced primarily through spot sampling at all points in the distribution chain. Monitoring compliance with the diesel fuel standards, however, presents some enforcement problems which differ from those of gasoline. As the diesel fuel industry notes in the proposal it and other related industries and associations submitted to the Agency, the diesel fuel industry's past experience with the collection of fuel excise taxes has shown that the greater the number of suppliers and resellers, the more difficult, costly and ineffective auditing can be.

Another of the difficulties in verifying compliance with diesel fuel standards is distinguishing between diesel motor fuel which is intended for on-highway use and meets standards for on-highway diesel fuel, and diesel fuel which is intended for off-highway use and is not in compliance with on-highway diesel fuel standards. The sulfur content and cetane index of diesel fuel can only be determined through sophisticated laboratory tests which will make field compliance testing impossible.

To address this problem, the diesel fuel industry suggests that off-highway diesel fuel be dyed as a way of marking or labeling the off-highway diesel fuel. The Agency finds the industry's suggestion to be a practical one. Therefore, the Agency proposes to establish the presumption that any diesel fuel in the control of a regulated party is on-highway diesel fuel and subject to the standards of this proposed

regulation, unless it is visibly dyed. More specifically, EPA proposes that any diesel fuel which does not show visible evidence of being dyed with 1,4 dialkylamino-anthraquinone (which has a characteristic blue color and is currently used in some grades of aviation gasoline), will be considered to be subject to the proposed standards. Comments are requested on this approach, including the Agency's choice of dye and whether a concentration of dye should be specified along with the visible color requirement.

This scheme of dyeing will place the impetus on the industry to add the dye at the earliest possible point once the decision is made that the diesel fuel will be used for other than motor vehicle purposes. Once dye is added to the non-highway diesel fuel, it cannot be removed later in the distribution chain if the fuel is subsequently used for motor vehicles. Any mixing of complying and noncomplying blends will also be apparent. Requiring that on-highway diesel fuel be dyed, on the other hand, would permit distributors to wait to the last point in the distribution chain to dye the fuel, preventing EPA from enforcing the sulfur content and aromatics standards earlier in the distribution chain. However, with the off-highway fuel dyed, the decision to produce or import complying fuel will probably be made at the refinery or import facility and no dye would be added.

In addition to the usual control afforded by the use of dyes, the Agency will also collect diesel fuel samples at any point in the distribution chain. These samples will be collected according to the procedures outlined in Appendix G of these proposed regulations. These samples will then be tested according to the ASTM standard test methods for sulfur percentage (ASTM–2622–82) and cetane index (ASTM–976). The ASTM methods for determining cetane index and sulfur percentage will be incorporated by reference in the final rule.

## IX. Diesel Engine Certification Fuel

EPA has consistently required that diesel fuel for certification (and subsequent compliance testing) be representative of commercially available diesel fuel. As such, it is appropriate to propose that the sulfur level of fuel used to certify 1994 and later engines be no more than 0.05 weight percent. (The current specification for aromatics and cetane appears adequate, so no change here appears necessary.) However, 1991–93 engines would operate on both current fuel (roughly 0.25 weight percent sulfur) and controlled fuel, so the question arises as to which fuel, or a combination thereof, should be used in certification.

The joint industry proposal requested that 1991–93 certification fuel contain no more than 0.05 weight percent sulfur. EPA believes this would be inappropriate since these engines would be operated on high sulfur fuel for much of their useful lives and their emissions could exceed the PM standards during this time, while just meeting the standards on low-sulfur fuel. However, it also appears inappropriate to ignore the fact that these engines would be operated on low-sulfur fuel for a portion of their useful lives. Thus, EPA believes it is appropriate to require these engines to certify on a fuel with a sulfur level representing an average of what will be used over the engines' useful life. We considered doing this for each model year individually, but this would be costly and very complex logistically, as each laboratory would have to maintain stocks of five diesel fuels for many years to come. Thus, we propose that a single average sulfur level fuel be used for 1991–93 certification. Based on mileage accumulation data taken from heavy-duty diesel vehicles, this average sulfur level is 0.10 weight percent.[1] Thus the certification levels of 1991–1993 model year engines would represent the average in-use emissions over the full useful life of these engines. It is important to note, however, that EPA believes that, for the reasons discussed previously, actual in-use emissions of these vehicles will not be affected by this change to the certification fuel.

## X. Description of the Proposal

This section summarizes in detail the proposed control measures contained in today's notice. The detailed requirements may be found in their entirety in the proposed regulations published with today's notice.

### *A. Commercial Fuel Requirements*

#### 1. Standards

After September 30, 1993, all diesel fuel sold, supplied, offered for sale or supply, dispensed, or transported in any state for use in on-highway diesel vehicles shall contain no more than 0.05 percent sulfur by weight, and shall have a minimum cetane index of 40. EPA is aware that the effective date of compliance for refiners will be prior to September 30, 1993, because the on-highway diesel fuel must be fully available throughout the distribution system by that date.

[1] "Calculation of Average Fuel Sulfur Level of 1991–93 Model Year Heavy-Duty Diesels," Timothy Sprik, EPA, December, 1988.

#### 2. Enforcement Provisions

a. *Overall Enforcement Scheme.* The proposed enforcement provisions in this notice are based on the requirement that on-highway diesel fuel have a cetane index number of at least 40 and that the percentage of sulfur by weight be no greater than 0.05 percent at all points in the distribution network. All parties in the distribution network are covered by these regulations, including refiners, importers, distributors, carriers, resellers, retail and wholesale purchaser-consumers. Any diesel fuel for use in motor vehicles must comply with these standards when introduced into commerce, sold, offered for sale, supplied, offered for supply, dispensed, or transported. Basically, once diesel fuel has been introduced into the distribution network, the fuel must comply with these standards at all points up to and including the time it leaves the pump.

The proposed regulations define cetane, cetane index, diesel fuel, sulfur percentage, refinery, retail outlet, distribution, reselling, wholesale purchaser-consumer and carrier. Methods of determining cetane index and sulfur percentage will be incorporated by reference to 40 CFR Part 80 and are ASTM standard test method and *7622–82,* respectively.

This notice also sets forth proposed regulations establishing presumptions of liability for parties found with noncomplying fuel. There is also a vicarious liability provision which holds certain upstream parties in the distribution network responsible for violations at downstream facilities over which they could have exercised some control. Defenses to vicarious liability are included in the proposed regulations.

b. *Sampling Methodology.* The proposed sampling methodology is set forth in appendix G. The sampling procedures include nozzle sampling, bottle sampling, tap sampling, and manual line sampling. The purpose of the sampling methodology is to assure that the sample taken is true and unaltered and is representative of the diesel fuel being tested.

c. *Testing Methodologies.* Two testing methodologies have been proposed. The first one, ASTM standard test method 2622–82, determines the percentage of sulfur in the diesel fuel by means of X-ray spectrometry. The second test, ASTM standard test method, is a method for estimating the ASTM cetane index of the diesel fuel from the API gravity and mid-boiling point.

The issue of what enforcement tolerance should be allowed when using

these test methods will be addressed in a manner consistent with other mobile source related standards. The diesel fuel refiners and other regulated parties will be expected to meet the applicable sulfur and cetane limits as established by the regulations when finalized. They must take test variability into account in producing and marketing diesel fuel and cannot rely on the Agency to automatically provide an enforcement tolerance in addition to the absolute standards established for sulfur or cetane limits. If the sulfur content of motor vehicle diesel fuel were found to contain 0.06 weight percent sulfur and the applicable standard were 0.05 weight percent sulfur, this would be considered a violation of the regulatory standard that could subject liable parties to enforcement action.

d. *Liability provisions.* The proposed liability Provisions (40 CFR 80.29 through 80.31) are patterned after the liability scheme used in the Agency's lead contamination regulations, at 40 CFR 80.23 and are almost identical to the volatility regulations, at 40 CFR 80.27. One of the main features of these provisions is the presumption of liability where regulated parties are found offering for sale, supplying, or transporting diesel fuel which fails to meet the requirements for sulfur percentage or cetane index. It is the responsibility of the regulated party to monitor the diesel fuel which is being offered for sale, supplied or transported control to verify that the fuel complies with standards.

Another important feature of the diesel fuel enforcement provisions is the inclusion of vicarious liability provisions, much like those used successfully in the lead contamination regulations and recently promulgated in the volatility regulations. Vicarious liability means that parties upstream from the site of the violation can be held responsible for violations found at downstream facilities over which they can exercise some control. The proposed regulations will also extend vicarious liability for violations at non-branded retail outlet and wholesale purchaser-consumers to refiners and importers. This change from previous schemes places all parties on the same level in terms of oversight for assuring product quality. Years of enforcement experience with the gasoline regulations have shown that a far larger percentage of violations occur at non-branded facilities.

Defenses to vicarious liability are set forth in the proposed regulations. Basically, an upstream party can avoid vicarious liability if that party can show that the violation was caused by actions of someone other than that party's employees or agents. For the purpose of these proposed regulations, carries will be presumed to be the agents of distributors and are also presumptively liable. The specific evidence required to support this defense varies depending on which party is raising the defense, but in general a party must show proof of some kind of oversight program, such as records of testing on the diesel fuel or a contractual obligation between the upstream and the downstream parties involved.

*B. Fuel Specifications for Vehicle Certification and Other Compliance Testing*

Certification fuel used for 1991–1993 model year engines would contain 0.10 sulfur percentage by weight (%0.02 weight percent). Beginning with the 1994 model year, certification fuel would have a sulfur content ranging from 0.03 to 0.05 sulfur percentage by weight. All other compliance testing (e.g., recall, selective enforcement audits) would be conducted using test fuels containing the same amount of sulfur as the test fuel used in certifying the particular model year vehicle being tested. That is, 1991–1993 model year engines would be tested with fuel containing 0.10 sulfur percentage by weight (±0.02 weight percent) and 1994 and later model year engines would be tested with fuel having a sulfur content ranging from 0.03 to 0.05 sulfur percentage by weight.

*C. Requests for Comment on Specific Issues*

We request and encourage general and specific comments with supporting data and analysis on the following issues.

1. In the Draft RIA, the cost and feasibility of fuel sulfur and aromatics control was evaluated over the entire range of on-highway and off-highway distillate segregation scenarios. EPA requests comments on all elements of the refining cost analysis as presented in the Draft RIA. EPA specifically requests comments on the feasibility of and extent to which such segregation would likely take place, as well as the likely cost of so modifying the fuel distribution system. Comments on the amount of excess desulfurization capacity available and the time period over which it will be available are also requested. To the extent that increased capacity is required, comments are also requested on the potential for increased VOC or other emissions from refineries.

2. EPA has assessed the impact of a sulfur reduction on engine manufacturer ability to comply with the 1994 particulate standard. This assessment was based on projections of likely engine-out emissions and their composition and estimates of specific aftertreatment device costs, feasibilities and efficiencies. Please provide specific comments on each of the elements of this analysis.

3. Please comment on the effect of fuel sulfur reductions on diesel emissions.

4. We request comments on the effect of aromatics control on particulate, HC, CO, and NOx emissions, particularly the relative effect of different aromatic species (*e.g.*, mono-, di-, tri-cyclic) on emissions, and how this effect varies between older, high-emitting engines and future, low-emitting engines. We also request comment on whether cetane index or aromatics content is the cause of the occasional NOx emission effect and whether this effect would occur in-use with aromatics control.

5. We request specific comments on the assumptions and methodology used in the analysis of the effects of a fuel sulfur reduction on engine and vehicle life.

6. We request specific comments on EPA's analysis of the amount of urban sulfate particulate produced from $SO_2$ emissions.

7. We request comments on the credits used to value the control of emissions of gaseous pollutants in the cost effectiveness analysis presented in the Draft RIA.

8. An analysis of the potential economic benefits of trading and banking of sulfur credits in the context of this proposed regulation was performed for EPA by SCI. The SCI analysis was based on creating credits by providing fuel with lower sulfur levels than current average fuel sulfur content levels for each of the five PADDs. Results of the study (available in Public Docket A–86–03) showed that a significant savings to the refining industry would result if credits could be created and banked prior to the imposition of controls in October 1993. However, refining industry members, in the joint industry proposal to EPA, specifically stated that banking and trading would not be desirable. EPA's previous experience with lead trading and banking under the lead phasedown regulations has shown that enforcement of a bank and trading scheme applicable to sulfur content would be extremely difficult to enforce.

EPA requests comments on the merits and demerits of phased and "non-phased" (as defined by the SCI analysis) sulfur regulations, in which refiners could earn credits for achieving lower than certain specified levels of sulfur in

diesel fuel prior to October 1, 1993, in exchange for permission to sell higher than 0.05 percent on-highway diesel fuel for a period thereafter. It should be recognized that if the engine exhaust characteristics of the pre- and post-1994 diesel fleet are likely to differ, full credit may not be granted, (*i.e.*, the credits could be required to be exchanged at other than 1:1 after 1994). EPA is interested in comments as to whether reductions in diesel sulfur prior to October 1, 1993, are sufficiently valuable to merit the implementation of a credit banking and trading system. Does the 0.10 sulfur percentage certification fuel specification for 1991–93 engines affect the desirability of credit trades? What reporting requirements would be necessary to enforce a banking and trading program?

9. As part of the enforcement scheme outlined in this preamble, EPA has proposed that diesel fuels intended exclusively for off-highway use could be distinguished by the addition of 1,4-dialkylamino-anthraquinone dye. The Agency is interested in comments from the industry as to the practicality of this approach. Specific issues upon which comments are sought include what specific dyes should be used and whether these dyes present any health-based risk either in the fuel or when combusted? Is any test beyond the proposed visibility standard required to identify dyed fuel? Will the inclusion of such a dye present any problems to the users of off-highway diesel fuel? Where in the distribution system can this approach be implemented. Is the dyeing rule feasible to apply to imported distillates? If so, how would it be implemented operationally? Do any countries currently use a dyeing program for diesel fuel control purpose? If so, what experience have the refiners had with the success of these programs? Cost?

10. EPA has proposed setting a minimum cetane index specification of 40 as a means of capping fuel aromatics at current levels. However, fuel survey data shows that diesel fuel aromatics correlates rather poorly with cetane index, and may not be a sufficient safeguard against future aromatics increases. EPA requests specific comments on the effectiveness with which the Proposed cetane index specification would control fuel aromatics and also on the merits and demerits of other possible means of capping fuel aromatics, including direct measurement of diesel aromatics by Fluorescent Indicator Adsorption (FIA). EPA requests comments on whether the level of such a cap should be set at current average aromatic levels (requiring the control of fuels which are currently higher than average), or at less stringent levels (e.g., 75th percentile, 90th percentile, etc.).

## XI. Public Participation

*Comments and the Public Docket*

As in past rulemaking actions, EPA desires full public participation in arriving at our final decisions. In addition to those areas where specific comment has been requested earlier in this preamble, EPA solicits comments on all aspects of today's proposal from all interested parties. Wherever applicable, full supporting data and detailed analyses should also be submitted to allow EPA to make maximum use of the comments. Commenters are especially encouraged to provide specific suggestions for changes to any aspects of the proposal that they believe need to be modified or improved. All comments should be directed to the EPA Air Docket Section, Docket No. A–86–03 (see **"ADDRESSES"**).

The Agency will base its decision on the discloseable public record. However, the Agency realizes that some manufacturers may want EPA to consider pertinent information that may be proprietary. Commenters desiring to submit proprietary information for consideration should clearly distinguish such information from other comments to the greatest possible extent, and clearly label it "Confidential Business Information." Submissions containing such proprietary information should be sent directly to the contact person listed above, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket. If a commenter wants EPA to base the final rule in part on a submission labeled as confidential business information, then a nonconfidential version of the document which summarizes the key data or information should be sent to the docket.

Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the commenter.

## XII. Statutory Authority

Authority for the actions proposed in this notice is granted to EPA by sections 114, 202, 206, 207, 208, 211, and 301 of the Clean Air Act (42 U.S.C. 7414, 7521, 7525, 7541, 7542, 7545, and 7601).

## XIII. List of Subjects

*40 CFR Part 80*

Fuel additives, Diesel fuel, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

*40 CFR Part 86*

Administrative practice and procedures, Air pollution control, Diesel fuel, Motor vehicles, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

## XIV. Regulatory Flexibility Analysis

Section 605 of the Regulatory Flexibility Act requires EPA to perform an analysis of the impact of proposed regulations on small entities when a significant impact on a substantial number of such entities would occur. An analysis of this issue was performed for EPA by SCI. According to the SCI report, 74 refineries, representing 8.4 percent of the total U.S. crude distillation capacity, were classified as small refiners at the beginning of 1986. SCI used aggregate refinery modeling to estimate the cost of modifying fuel quality at these facilities. The modeling results showed that, for those refineries which could finance the necessary equipment, sulfur control costs were nearly the same for small refiners as for the rest of the U.S. refining industry. Control costs to reduce both sulfur and aromatics were from 26 to 51 percent higher for small refiners.

SCI did state that the investments required for fuel control might be difficult for some small refiners to finance, and might cause some small refiners to discontinue the production of highway diesel fuel. This should not be an insurmountable problem, however, since these refiners should be able to shift their product slates to meet "off-highway" distillate needs in their geographic area, while other refiners with hydrodesulfurization capacity (or the financial ability to build it) would increase "on-highway" diesel production. The request for product slate flexibility in the joint industry proposal suggests that this approach would be taken by some refiners. Thus, this proposed regulation should not have a significant impact on a substantial number of small entities, if segregation in the distribution system takes place.

## XV. Administrative Designation and Regulatory Analysis

The Administrator has determined that this proposed action would constitute a major regulation, and accordingly a Draft Regulatory Impact Analysis has been prepared as required

under Executive Order 12291. This analysis includes detailed assessments of the estimated economic and environmental impacts of the regulations proposed here, as well as thorough analyses of the technological feasibility of the proposed emission standards and other regulatory provisions and the alternatives that were considered in the development of this proposal.

The Draft Regulatory Impact Analysis has been placed in the public docket referenced at the beginning of today's notice. In addition, interested parties may obtain single copies through a written request to the public contact listed previously.

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and any EPA response to those comments are in the public docket for this rulemaking.

### XVI. Reporting and Recordkeeping Requirements

This proposed rulemaking does not impose any reporting or record keeping requirements, and thus is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Dated: August 11, 1989.

**William K. Reilly,**

*Administrator.*

For the reasons set out in the preamble, parts 80 and 86 of Title 40 of the Code of Federal Regulations are proposed to be amended as follows:

## PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

**Authority:** Sections 114, 211 and 301(a) of the Clean Air Act as amended, 42 U.S.C. 7414, 7545 and 7601(a).

2. Section 80.2 is proposed to be amended by adding new paragraphs (w), (x), (y), (z), (aa), (bb), (cc), (dd) and (ee) to read as follows:

**80.2 Definitions.**

* * * *

(w) "Cetane index" or "Calculated cetane index" is a means for directly estimating the ASTM cetane number (a number representing the ignition properties of diesel engine fuel oils) of distillate fuels from API gravity and mid-boiling point.

(x) "Diesel fuel" means any fuel sold in any State and suitable for use in diesel motor vehicles and diesel motor vehicle engines, and which is commonly or commercially known or sold as diesel fuel.

(y) "Sulfur percentage" is the percentage of sulfur by weight in diesel fuel as determined by ASTM standard test method D–2622–82.

(z) "Refinery" means a plant at which diesel fuel is produced.

(aa) "Retail outlet" means any establishment at which diesel fuel is sold or offered for sale for use in motor vehicles.

(bb) "Distributor" means any person who transports or stores or causes the transportation or storage of diesel fuel at any point between any diesel fuel refinery and any retail outlet or wholesale purchaser-consumer's facilities.

(cc) "Reseller" means any person who purchases diesel fuel identified by the corporate, trade, or brand name of a refiner from such refiner or a distributor and resells or transfers it to retailers or wholesale purchaser-consumers displaying the refiner's brand, and whose assets or facilities are not substantially owned, leased, or controlled by such refiner.

(dd) "Wholesale purchaser-consumer" means any organization that is an ultimate consumer of diesel fuel and which purchases or obtains diesel fuel from a supplier for use in motor vehicles and receives delivery of that product into a storage tank of at least 550-gallon capacity substantially under the control of that organization.

(ee) "Carrier" means any distributor who transports or stores or causes the transportation or storage of diesel fuel without taking title to or otherwise altering either the quality or quanity of the diesel fuel.

3. New § 80.29 is proposed to be added, to read as follows:

**§ 80.29 Controls and prohibitions on diesel fuel quality.**

(a) *Prohibited activities.* Beginning October 1, 1993, no refiner, importer, distributor, reseller, carrier, retailer or wholesale purchaser-consumer shall manufacture, introduce into commerce, sell, offer for sale, supply, dispense, offer for supply, or transport any diesel fuel for use in motor vehicles unless the diesel fuel is free of visible evidence of the dye 1,4-dialkylamino-anthraquinone and has a cetane index of at least 40 and a sulfur percentage no greater than 0.05 percent.

(b) *Determination of compliance.* Any diesel fuel which does not show visible evidence of being dyed with 1,4-dialkylamino-anthraquinone (which has a characteristic blue color) shall be considered to be available for use in diesel motor vehicles and motor vehicle engines, and shall be subject to the prohibitions of paragraph (a) of this section. Compliance with the standards listed in paragraph (a) of this section shall be determined by the use of one of the sampling methodologies specified in Appendix G to this part.

Note: The testing methodologies specified for sulfur percentage, ASTM D–2622–82, and cetane index, ASTM D–976, will be incorporated by reference in the final regulation.

(c) *Liability.* Liability for violations of paragraph (a) of this section shall be determined according to the provisions of § 80.30.

(d) *Penalties.* Penalties for violations of paragraph (a) of this section shall be determined according to the provisions of § 80.5.

4. New § 80.30 is proposed to be added, to read as follows:

**§ 80.30 Liability for violations of diesel fuel control and prohibitions.**

(a) *Violations at refiners or importers facilities.* Where a violation of a diesel fuel standard set forth in § 80.29 is detected at a refinery or importer's facility, the refiner or importer shall be deemed in violation.

(b) *Violations at carrier facilities.* Where a violation of a diesel fuel standard set forth in § 80.29 is detected at a carrier's facility, whether in a transport vehicle, in a storage facility, or elsewhere at the facility, the following parties shall be deemed in violation:

(1) The carrier, except as provided in paragraph (g)(1) of this section; and

(2) The refiner or importer at whose refinery or import facility the diesel fuel was produced or imported, except as provided in paragraph (g)(2) of this section.

(c) *Violations at branded distributor or reseller facilities.* Where a violation of a diesel fuel standard set forth in § 80.29 is detected at a distributor or reseller's facility which is operating under the corporate, trade or brand name of a refiner or any of its marketing subsidiaries, the following parties shall be deemed in violation:

(1) The distributor or reseller, except as provided in paragraph (g)(3) of this section;

(2) The carrier (if any), if the carrier caused the diesel fuel to violate the standard by fuel switching, blending, mislabeling, or any other means; and

(3) The refiner under whose corporate, trade, or brand name (or that of any of its marketing subsidiaries) the distributor or reseller is operating, except as provided in paragraph (g)(4) of this section

(d) *Violations at unbranded distributor facilities.* Where a violation of a diesel fuel standard set forth in § 80.29 is detected at the facility of a distributor not operating under a refiner's corporate, trade, or brand name, or that of any of its marketing subsidiaries, the following shall be deemed in violation:

(1) The distributor, except as provided in paragraph (g)(3) of this section;

(2) The carrier (if any), if the carrier caused the diesel fuel to violate the standard by fuel switching, blending, mislabeling, or any other means; and

(3) The refiner or importer at whose refinery or import facility the diesel fuel was produced or imported, except as provided in paragraph (g)(2) of this section.

(e) *Violations at branded retail outlets or wholesale purchaser-consumer facilities.* Where a violation of a diesel fuel standard set forth in § 80.29 is detected at a retail outlet or at a wholesale purchaser-consumer facility displaying the corporate, trade, or brand name of a refiner or any of its marketing subsidiaries, the following parties shall be deemed in violation:

(1) The retailer or wholesale purchaser-consumer, except as provided in paragraph (g)(5) of this section;

(2) The distributor and/or reseller (if any), except as provided in paragraph (g)(3) of this section;

(3) The carrier (if any), if the carrier caused the diesel fuel to violate the standard by fuel switching, blending, mislabeling, or any other means; and

(4) The refiner whose corporate, trade, or brand name, or that of any of its marketing subsidiaries, is displayed at the retail outlet or wholesale purchaser-consumer facility, except as provided in paragraph (g)(4) of this section.

(f) *Violations at unbranded retail outlets or wholesale purchaser-consumer facilities.* Where a violation of a diesel fuel standard set forth in § 80.29 is detected at a retail outlet or at a wholesale purchaser-consumer facility not displaying the corporate, trade, or brand name of a refiner or any of its marketing subsidiaries, the following parties shall be deemed in violation:

(1) The retailer or wholesale purchaser-consumer, except as provided in paragraph (g)(5) of this section;

(2) The distributor (if any), except as provided in paragraph (g)(3) of this section;

(3) The carrier (if any), if the carrier caused the diesel fuel to violate the standard by fuel switching, blending, mislabeling, or any other mean; and

(4) The refiner or importer at whose refinery or import facility the diesel fuel was produced or imported, except as provided in paragraph (g)(2) of this section.

(g) *Defenses.* (1) In any case in which a carrier would be in violation under paragraph (b)(1) of this section, the carrier shall not be deemed in violation if he can demonstrate:

(i) Bills of lading, invoices, delivery tickets, loading tickets or other documents from the refiner or importer at whose refinery or import facility the diesel fuel was produced or imported, or the carrier, reseller, or distributor from whom the diesel fuel was received, which represented to the carrier that the diesel fuel was in compliance with the diesel fuel standards; and

(ii) Evidence of an oversight program conducted by the carrier, for monitoring the diesel fuel stored or transported by that carrier, such as periodic sampling and testing of the cetane index and sulfur percentage of incoming diesel fuel, or any other evidence that shows that care was taken to avoid blending the diesel fuel with anything which would change its cetane index or sulfur percentage; and

(iii) That the violation was not caused by the carrier or his employee or agent.

(2) In any case in which a refiner or importer would be in violation under paragraph (b)(2), (d)(3), or (f)(4) of this section, the refiner or importer shall not be deemed in violation if he can demonstrate:

(i) That the violation was not caused by him or his employee or agent; and

(ii) Test results, performed in accordance with the sampling and testing methodologies set forth in Appendix G to this part, ASTM test method D–2622–82 for sulfur percentage, or ASTM test method D–976 for cetane index, which evidence that the diesel fuel determined to be in violation was in compliance with the diesel fuel standards when it was delivered to the next party in the distribution scheme.

(3) In any case in which a distributor or reseller would be in violation under paragraph (c)(1), (d)(1), (e)(2) or (f)(2) of this section, the distributor or reseller shall not be deemed in violation if he can demonstrate:

(i) That the violation was not caused by him or his employee or agent; and

(ii) Bills of lading, invoices, delivery tickets, loading tickets or other documents from the refiner at whose refinery the diesel fuel was produced, the importer at whose facility the diesel fuel was imported, or the carrier, reseller or distributor from whom the diesel fuel was received, which represented to the distributor or reseller that the diesel fuel was in compliance with the diesel fuel standards when delivered to the distributor or reseller; and

(iii) Evidence of an oversight program conducted by the distributor or reseller, such as periodic sampling and testing of diesel fuel, for monitoring the sulfur percentage and cetane index of the diesel fuel that the distributor or reseller sells, supplies, offers for sale or supply, or transports.

(4) In any case in which a refiner would be in violation under paragraph (c)(3) or (e)(4) of this section, the refiner shall not be deemed in violation if he can demonstrate all of the following:

(i) Test results, performed in accordance with the sampling and testing methodologies set forth in Appendix G to this part, ASTM test method D–2622–82 for sulfur percentage, or ASTM test method D–976 for cetane index, at the refinery at which the diesel fuel was produced, which evidence that the diesel fuel determined to be in violation was in compliance with the diesel fuel standards when transported from the refinery;

(ii) That the violation was not caused by him or his employee or agent; and

(iii) That the violation:

(A) Was caused by an act in violation of law (other than the Act or this part), or an act of sabotage or vandalism, whether or not such acts are violations of law in the jurisdiction where the violation of the requirements of this part occurred, or

(B) Was caused by the action of a reseller or a retailer supplied by such reseller, in violation of a contractual undertaking imposed by the refiner on such reseller designed to prevent such action, and despite reasonable efforts by the refiner (such as periodic sampling and testing) to insure compliance with such contractual obligation, or

(C) Was caused by the action of a retailer who is supplied directly by the refiner (and not by a reseller), in violation of a contractual undertaking imposed by the refiner on such retailer designed to prevent such action, and despite reasonable efforts by the refiner (such as periodic sampling and testing) to insure compliance with such contractual obligation, or

(D) Was caused by the action of a distributor subject to a contract with the refiner for transportation of diesel fuel from a terminal to a distributor, retailer or wholesale purchaser-consumer, in violation of a contractual undertaking imposed by the refiner on such distributor designed to prevent such action, and despite reasonable efforts by the refiner (such as periodic sampling and testing) to ensure compliance with such contractual obligation, or

(E) Was caused by a carrier or other distributor not subject to a contract with the refiner but engaged by him for transportation of diesel fuel from a terminal to a distributor, retailer or wholesale purchaser-consumer, despite reasonable efforts by the refiner (such as specification or inspection of equipment) to prevent such action, or

(F) Occurred at a wholesale purchaser-consumer facility: Provided, however, that if such wholesale purchaser-consumer was supplied by a reseller, the refiner must demonstrate that the violation could not have been prevented by such reseller's compliance with a contractual undertaking imposed by the refiner on such reseller as provided in paragraph (g)(4)(iii)(B) of this section.

(iv) In paragraphs (g)(4)(iii) (A) through (E) of this section, the term "was caused" means that the refiner must demonstrate by reasonably specific showings, by direct or circumstantial evidence, that the violation was caused or must have been caused by another.

(5) In any case in which a retailer or wholesale purchaser-consumer would be in violation under paragraph (e)(1) or (f)(1) of this section, the retailer or wholesale purchaser-consumer shall not be deemed in violation if he can demonstrate that the violation was not caused by him or his employee or agent.

(6) In paragraphs (g)(1)(iii), (g)(2)(i), (g)(3)(i), (g)(4)(ii) and (g)(5) of this section, the respective party must demonstrate by reasonably specific showings, by direct or circumstantial evidence, that it or its employee or agent did not cause the violation.

5. New Appendix G is proposed to be added to read as follows:

## Appendix G—Sampling Procedures for Diesel Fuel

1. *Scope*

1.1 This method covers procedures for obtaining representative samples of diesel fuel for the purpose of testing for compliance with the cetane index and sulfur percentage standards set forth in § 80.29.

2. *Summary of Method*

2.1 It is necessary that the samples be truly representative of the diesel fuel in question. The precautions required to ensure the representative character of the samples are numerous and depend upon the tank, carrier, container or line from which the sample is being obtained, the type and cleanliness of the sample container, and the sampling procedures that are to be used. A summary of the sampling procedures and their application is presented in table 1. Each procedure is suitable for sampling a material under definite storage, transportation, or container conditions. The basic principle of each procedure is to obtain a sample in such manner and from such locations in the tank or other container that the sample will be truly representative of the diesel fuel.

3. *Description of Terms*

3.1 "Average sample" is one that consists of proportionate parts from all sections of the container.

3.2 "All-levels sample" is one obtained by submerging a stoppered beaker or bottle to a point as near as possible to the draw-off level, then opening the sampler and raising it at a rate such that it is about ¾ full (maximum 85 percent) as it emerges from the liquid. An all-levels sample is not necessarily an average sample because the tank volume may not be proportional to the depth and because the operator may not be able to raise the sampler at the variable rate required for proportionate filling. The rate of filling is proportional to the square root of the depth of immersion.

3.3 "Running sample" is one obtained by lowering an unstoppered beaker or bottle from the top of the gasoline to the level of the bottom of the outlet connection or swing line, and returning it to the top of the top of the diesel fuel at a uniform rate of speed such that the beaker or bottle is about ¾ full when withdrawn from the diesel fuel.

3.4 "Spot sample" is one obtained at some specific location in the tank by means of a thief bottle, or beaker.

3.5 "Top sample" is a spot sample obtained 6 inches (150 mm) below the top surface of the liquid (Figure 1).

3.6 "Upper sample" is a spot sample taken at the mid-point of the upper third of the tank contents (Figure 1).

3.7 "Middle sample" is a spot sample obtained from the middle of the tank contents (Figure 1).

3.8 "Lower sample" is a spot sample obtained at the level of the fixed tank outlet or the swing line outlet (Figure 1).

3.9 "Clearance sample" is a spot sample taken 4 inches (100 mm) below the level of the tank outlet (Figure 1).

3.10 "Bottom sample" is one obtained from the material on the bottom surface of the tank, container, or line at its lowest point.

3.11 "Drain sample" is one obtained from the draw-off or discharge valve. Occasionally, a drain sample may be the same as a bottom sample, as in the case of a tank car.

3.12 "Continuous sample" is one obtained from a pipeline in such manner as to give a representative average of a moving stream.

3.13 "Mixed sample" is one obtained after mixing or vigorously stirring the contents of the original container, and then pouring out or drawing off the quantity desired.

3.14 "Nozzle sample" is one obtained from a diesel pump nozzle which dispenses diesel fuel from a storage tank at a retail outlet or a wholesale purchaser-consumer facility.

4. *Sample Containers*

4.1 Sample containers may be clear or brown glass bottles, or cans. The clear glass bottle is advantageous because it may be examined visually for cleanliness, and also allows visual inspection of the sample for free water or solid impurities. The brown glass bottle affords some protection from light. The only cans permissible are those with the seams soldered on the exterior surface with a flux of rosin in a suitable solvent. Such a flux is easily removed with gasoline, whereas many others are very difficult to remove.

4.2 Container closure. Cork, rubber or glass stoppers, or screw caps of plastic or metal, may be used for glass bottles; screw caps only shall be used for cans to provide a vapor-tight closure seal. Any closure method will be satsifactory as long as no leakage will occur nor will the stopper or cap affect sample results.

4.3 Cleaning procedure. All sample containers must be absolutely clean and free of water, dirt, lint, washing compounds, naphthas, or other solvents, soldering fluxes or acids, corrosion, rust, and oil.

5. Regular *Sampling Apparatus*

5.1 Sampling apparatus is described in detail under each of the specific sampling procedures. Clean, dry, and free all sampling apparatus from any substance that might contaminate the material, using the procedure described in 4.3.

6. *Time and Place of Sampling*

6.1 When loading or discharging diesel fuel, take samples from both shipping and receiving tanks, and from the pipeline if required.

6.2 Ship or barge tanks. Sample each product after the vessel is loaded or just before unloading.

6.3 Tank cars. Sample the product after the car is loaded or just before unloading.

Note: When taking samples from tanks suspected of containing flammable atmospheres, precautions should be taken to guard against ignitions due to static electricity. Metal or conductive objects, such as gage tapes, sample containers, and thermometers, should not be lowered into or suspended in a compartment or tank which is being filled or immediately after cessation of pumping. A waiting period of approximately one minute will generally permit a substantial relaxation of the electrostatic charge; under certain conditions a longer period may be deemed advisable.

7. *Obtaining Samples*

7.1 Directions for sampling cannot be made explicit enough to cover all cases. Extreme care and good judgement are necessary to ensure samples that represent the general character and average condition of the material. Clean hands are important. Clean gloves may be worn but only when absolutely necessary, such as in cold weather, or when handling materials at high temperature, or for reasons of safety. Select wiping cloths so that lint is not introduced, contaminating samples.

7.2 As many petroleum vapors are toxic and flammable, avoid breathing them or igniting them from an open flame or a spark produced by static. Follow all safety precautions specific to the material being sampled.

8. *Handling Samples*

8.1 Container outage. Never completely fill a sample container, but allow adequate room for expansion, taking into consideration the temperature of the liquid at the time of filling and the probable maximum temperature to which the filled container may be subjected.

9. *Shipping Samples*

9.1 To prevent loss of liquid during shipment, and to protect against moisture and dust, cover with suitable vapor tight caps. The caps of all containers must be screwed down tightly and checked for leakage. Postal and express office regulations applying to the shipment of flammable liquids must be observed.

10. *Labeling Sample Containers*

10.1 Label the container immediately after a sample is obtained. Use waterproof and oilproof ink or a pencil hard enough to dent the tag, since soft pencil and ordinary ink markings are subject to obliteration from moisture, oil smearing and handling. Include the following information:

10.1.1 Date and time (the period elapsed during continuous sampling);

10.1.2 Name of the sample;

10 1.3 Name or number and owner of the vessel, car, or container;

10.1.4 Brand and grade of material; and

10.1.5 Reference symbol or identification number.

11. *Sampling procedures*

11.1 The standard sampling procedures described in this method are summarized in Table 1. Alternative sampling procedures may be used if a mutually satisfactory agreement has been reached by the party(ies) involved and EPA and such agreement has been put in writing and signed by authorized officials.

TABLE 1.—SUMMARY OF DIESEL FUEL SAMPLING PROCEDURES AND APPLICABILITY

| Type of Container | Procedure | Paragraph |
|---|---|---|
| Storage tanks, ship and barge tanks, tank cars, tank trucks. | Bottle sampling | 11.2 |
| Storage tanks with taps. | Tap sampling | 11.3 |
| Pipe and lines | Continuous line sampling. | 11.4 |
| Retail outlet and whole-sale purchaser-consumer facility storage tanks. | Nozzle sampling | 11.5 |

11.2 Bottle or beaker sampling. The bottle or beaker sampling procedure is applicable for sampling liquids of 16 pounds (1.12 kgf/cm²) RVP or less in tank cars, tank trucks, shore tanks, ship tanks, and barge tanks.

11.2.1 Apparatus. A suitable sampling bottle or beaker as shown in Figure 2 is required

11.2.2 Procedure.

11.2.2.1 All-levels sample. Lower the weighted, stoppered bottle or beaker as near as possible to the draw-off level, pull out the stopper with a sharp jerk of the cord or chain and raise the bottle at a uniform rate so that it is about ¾ full as it emerges from the liquid.

11.2.2.2 Running sample. Lower the unstoppered bottles or beaker as near as possible to the level of the bottom of the outlet connection or swing line and then raise the bottle or beaker to the top of the gasoline at a uniform rate of speed such that it is about ¾ full when withdrawn from the diesel fuel.

11.2.2.3 Upper, middle, and lower samples. Lower the weighted, stoppered bottle to the proper depths (Figure 1) as follows:

Upper sample—middle of upper third of the tank contents

Middle sample—middle of the tank contents

Lower sample—level of the fixed tank outlet or the swing-line outlet

At the selected level pull out the stopper with a sharp jerk of the cord or chain and allow the bottle or beaker to fill completely, as evidenced by the cessation of air bubbles When full, raise the bottle or beaker, pour off a small amount, and stopper immediately.

11.2.2 4 Top sample. Obtain this sample (Figure 1) in the same manner as specified in 11.2.2.3 but at six inches (150 mm) below the top surface of the tank contents.

11.2.2.5 Handling. Stopper and label bottle samples immediately after taking them, and deliver to the laboratory in the original sampling bottles.

11.3 Tap sampling. The tap sampling procedure is applicable for sampling liquids of twenty-six pounds (1.83 kgf/cm²) RVP or less in tanks which are equipped with suitable sampling taps or lines. The assembly for tap sampling is shown in Figure 3.

11.3.1 Apparatus.

11.3.1.1 Tank taps. The tank should be equipped with at least three sampling taps placed equidistant throughout the tank height and extending at least three feet (0.9 meter) inside the tank shell. A standard ¼ inch pipe with suitable valve is satisfactory.

11.3.1.2 Tube. A delivery tube that will not contaminate the product being sampled and long enough to reach to the bottom of the sample container is required to allow submerged filling.

11.3.1.3 Sample containers. Use clean, dry glass bottles of convenient size and strength or metal containers to receive the samples.

11.3.2 Procedure.

11.3.2.1 Before a sample is drawn, flush the tap (or gage glass draincock) and line until they are purged completely Connect the clean delivery tube to the tap. Draw upper, middle, or lower samples directly from the respective taps after the flushing operation. Stopper and label the sample container immediately after filling, and deliver it to the laboratory.

11.4 Continuous sampling. The continuous sampling procedure is applicable for sampling liquids of 16 pounds (1.12 kgf/cm²) RVP or less and semiliquids in pipelines, filling lines, and transfer lines. The continuous sampling may be done manually or by using automatic devices.

11.4.1 Apparatus.

11.4.1.1 Sampling probe. The function of the sampling probe is to withdraw from the flow stream a portion that will be representative of the entire stream. The apparatus assembly for continuous sampling is shown in Figure 4. Probe designs that are commonly used are as follows:

11.4.1.1.1 A tube extending to the center of the line and beveled at a 45 degree angle facing upstream (Figure 4(a)).

11.4.1.1.2 A long-radius forged elbow or pipe bend extending to the center line of the pipe and facing upstream. The end of the probe should be reamed to give a sharp entrance edge (Figure 4(b)).

11.4.1.1.3 A closed-end tube with a round orifice spaced near the closed end which should be positioned in such a way that the orifice is in the center of the pipeline and is facing the stream as shown in Figure 4(c).

11.4.1.2 Probe location. Since the fluid to be sampled may not in all cases be homogeneous, the location, the position and the size of the sampling probe should be such as to minimize stratification or dropping out of heavier particles within the tube or the displacement of the product within the tube as a result of variation in gravity of the flowing stream. The sampling probe should be located preferably in a vertical run of pipe and as near as practicable to the point where the product passes to the receiver. The probe should always be in a horizontal position.

11.4.1.2.1 The sampling lines should be as short as practicable and should be cleared before any samples are taken.

11.4.1.2.2 Where adequate flowing velocity is not available, a suitable device for mixing the fluid flow to ensure a homogeneous mixture at all rates of flow and to eliminate stratification should be installed upstream of the sampling tap. Some effective devices for obtaining a homogeneous mixture are as follows: Reduction in pipe size; a series of baffles; orifice or perforated plate; and a combination of any of these methods.

11.4.1.2.3 The design or sizing of these devices is optional with the user, as long as the flow past the sampling point is homogeneous and stratification is eliminated.

11.4.1.3 To control the rate at which the sample is withdrawn, the probe or probes should be fitted with valves or plug cocks.

11.4.1.4 Automatic sampling devices that meet the standards set out in 11.4.1.5 may be used in obtaining samples of diesel fuel. The quality of sample collected must be of sufficient size for analysis, and its composition should be identical with the composition of the batch flowing in the line while the sample is being taken. An automatic sampler installation necessarily includes not only the automatic sampling device that extracts the samples from the line, but also a suitable probe, connecting lines, auxiliary equipment, and a container in which the sample is collected. Automatic samplers may be classified as follows:

11.4.1.4.1 Continuous sampler, time cycle (nonproportional) type. A sampler designed and operated in such a manner that it transfers equal increments of liquid from the pipeline to the sample container at a uniform rate of one or more increments per minute is a continuous sampler.

11.4.1.4.2 Continuous sampler, flow responsive (proportional) type. A sampler that is designed and operated in such a manner that it will automatically adjust the quantity of sample in proportion to the rate of flow is a flow-responsive (proportional) sampler. Adjustment of the quantity of sample may be made either by varying the frequency of transferring equal increments of sample to the sample container, or by varying

the volume of the increments while maintaining a constant frequency of transferring the increments to the sample container. The apparatus assembly for continuous sampling is shown in Figure 4.

11.4.1.4.3 Intermittent sampler. A sampler that is designed and operated in such a manner that it transfers equal increments of liquid from a pipeline to the sample container at a uniform rate of less than one increment per minute is an intermittent sampler.

11.4.1.5 Standards of installation. Automatic sampler installations should meet all safety requirements in the plant or area where used, and should comply with American National Standard Code for Pressure Piping, and other applicable codes (ANSI B31.1). The sampler should be so installed as to provide ample access space for inspection and maintenance.

11.4.1.5.1 Small lines connecting various elements of the installation should be so arranged that complete purging of the automatic sampler and of all lines can be accomplished effectively. All fluid remaining in the sampler and the lines from the preceding sampling cycle should be purged immediately before the start of any given sampling operation.

11.4.1.5.2 In those cases where the sampler design is such that complete purging of the sampling lines and the sampler is not possible, a small pump should be installed in order to circulate a continuous stream from the sampling tube past or through the sampler and back into the line. The automatic sampler should then withdraw the sample from the sidestream through the shortest possible connection.

11.4 1.5.3 Under certain conditions, there may be a tendency for water and heavy particles to drop out in the discharge line from the sampling device and appear in the sample container during some subsequent sampling period. To circumvent this possibility, the discharge pipe from the sampling device should be free of pockets or enlarged pipe areas, and preferably should be pitched downward to the sample container.

11.4.1.5.4 To ensure clean, free-flowing lines, piping should be designed for periodic cleaning.

11.4.1.6 Field calibration. Composite samples obtained from the automatic sampler installation should be verified for quantity performance in a manner that meets with the approval of all parties concerned (including EPA), at least once a month and more often if conditions warrant. In the case of time-cycle samplers, deviations in quantity of the sample taken should not exceed ±five percent for any given setting. In the case of flow-responsive samplers, the deviation in quantity of sample taken per 1,000 barrels of flowing stream should not exceed ±5 percent. For the purpose of field-calibrating an installation, the composite sample obtained from the automatic sampler under test should be verified for quality be comparing on the basis of physical and chemical properties, with either a properly secured continuous nonautomatic sample or tank sample. The tank sample should be taken under the following conditions:

11.4.1.6.1 The batch pumped during the test interval should be diverted into a clean tank and a sample taken within one hour after cessation of pumping.

11.4.1.6.2 If the sampling of the delivery tank is to be delayed beyond one hour, then the tank selected must be equipped with an adequate mixing means. For valid comparison, the sampling of the delivery tank must be completed within eight hours after cessation of pumping, even though the tank is equipped with a motor-driven mixer.

11.4.1.6.3 When making a normal full-tank delivery from a tank, a properly secured sample may be used to check the results of the sampler if the parties (including EPA) mutually agree to this procedure.

11.4.1.7 Receiver. The receiver must be a clean, dry container of convenient size to receive the sample. All connections from the sample probe to the sample container must be free of leaks. Two types of container may be used, depending upon service requirements.

11.4.1 7.1 Atmospheric container. The atmospheric container shall be constructed in such a way that it retards evaporation loss and protects the sample from extraneous material such as rain, snow, dust, and trash. The construction should allow cleaning, interior inspection, and complete mixing of the sample prior to removal. The container should be provided with a suitable vent.

11.4.1.7.2 Closed container. The closed container shall be constructed in such a manner that it prevents evaporation loss. The construction must allow cleaning, interior inspection and complete mixing of the sample prior to removal. The container should be equipped with a pressure-relief valve.

11.4.2 Procedure.

11.4.2.1 Nonautomatic sample. Adjust the valve or plug cock from the sampling probe so that a steady stream is drawn from the probe. Whenever possible, the rate of sample withdrawal should be such that the velocity of liquid flowing through the probe is approximately equal to the average linear velocity of the stream flowing through the pipeline. Measure and record the rate of sample withdrawal as gallons per hour. Divert the sample stream to the sampling container continuously or intermittently to provide a quantity of sample that will be of sufficient size for analysis.

11.4.2.2 Automatic sampling. Purge the sampler and the sampling lines immediately before the start of a sampling operation. If the sample design is such that complete purging is not possible, circulate a continuous stream from the probe past or through the sampler and back into the line. Withdraw the sample from the side stream through the automatic sampler using the shortest possible connections. Adjust the sampler to deliver not less than one and not more than 40 gallons (151 liters) of sample during the desired sampling period. For time-cycle samplers, record the rate at which sample increments were taken per minute. For flow-responsive samplers, record the proportion of sample to total stream. Label the samples and deliver them to the laboratory in the containers in which they were collected.

11.5 Nozzle sampling. The nozzle sampling procedure is applicable for sampling diesel fuel from a retail outlet or wholesale purchaser-consumer facility storage tank.

11.5.1 Apparatus. Sample containers conforming with 4.1 should be used. A spacer, if appropriate, and a nozzle extension as shown in Figures 6 and 7 shall be used when nozzle sampling.

11.5.2 Procedure. Immediately after diesel fuel has been delivered from the pump and the pump has been reset, deliver a small amount of product into the sample container. Rinse sample container and dump product into waste container. Insert nozzle extension (Figure 7) into sample container and insert pump nozzle into extension with slot over air bleed hole. Fill slowly through nozzle extension to 70–80 percent full (Figure 8). Remove nozzle extension. Cap sample container at once. Check for leaks.

12. *Special Precautions and Instructions.*

12.1 Precautions. Official samples should be taken by, or under the immediate supervision of, a person of judgement, skill, and sampling experience. Never prepare composite samples for this test. Make certain that containers which are to be shipped by common carrier conform to applicable Interstate Commerce Commission, state, and local regulations. When flushing or purging lines or containers, observe the pertinent regulations and precautions against fire, explosion, and other hazards.

12.3 Sample containers. Use containers of not less than one quart (0.9 liter) nor more than two gallons (7.6 liters) capacity, of sufficient strength to withstand the pressure to which they may be subjected. Open-type containers have a single opening which permits sampling by immersion. Closed-type containers have two openings, one in each end (or the equivalent thereof), fitted with valves suitable for sampling by water displacement or by purging.

12.4 Transfer connections. The transfer connection for the open-type container consists of an air tube and a liquid delivery tube assembled in a cap or stopper. The air tube extends to the bottom of the container. One end of the liquid delivery tube is long enough to reach the bottom of the diesel fuel chamber while the sample is being transferred to the chamber. The transfer connection for the closed-type container consists of a single tube with a connection suitable for attaching it to one of the openings of the sample container. The tube is long enough to reach the bottom of the diesel chamber while the sample is being transferred.

12.5 Sampling open tanks. Use clean containers of the open type when sampling open tanks and tank cars An all-level sample obtained by the bottle procedure described in 11.2 is recommended. Before taking the sample, flush the container by immersing it in the product to be sampled. Then obtain the sample immediately. Pour off enough so that the container will be 70–80 percent full and close it promptly. Label the container and deliver it to the laboratory.

12.6 Sampling closed tanks. Containers of either the open or closed type may be used to obtain samples from closed or pressure tanks. If the closed type is used, obtain the sample using the water displacement procedure described in 12.8 or the purging procedure described in 12.9. The water displacement

procedure is preferable because the flow of product involved in the purging procedure may be hazardous.

12.8 Water displacement procedure. Completely fill the closed-type container with water and close the valves. While permitting a small amount of product to flow through the fittings, connect the top or inlet valve of the container to the tank sampling tap or valve. Then open all valves on the inlet side of the container. Open the bottom or outlet valve slightly to allow the water to be displaced slowly by the sample entering the container. Regulate the flow so that there is no appreciable change in pressure within the container. Close the outlet valve as soon as diesel fuel discharges from the outlet; then in succession close the inlet valve and the sampling valve on the tank. Disconnect the container and withdraw enough of the contents so that it will be 70–80 percent full. If the vapor pressure of the product is not high enough to force liquid from the container, open both the upper and lower valves slightly to remove the excess. Promptly seal and label the container, and deliver it to the laboratory.

12.9 Purging procedure. Connect the inlet valve of the closed-type container to the tank sampling tap or valve. Throttle the outlet valve of the container so that the pressure in it will be approximately equal to that in the container being sampled. Allow a volume of product equal to at least twice that of the container to flow through the sampling system. Then close all valves, the outlet valve first, the inlet valve of the container second, and the tank sampling valve last, and disconnect the container immediately. Withdraw enough of the contents so that the sample container will be 70–80 percent full. If the vapor pressure of the product is not high enough to force liquid from the container; open both the upper and lower valves slightly to remove the excess. Promptly seal and label the container, and deliver it to the laboratory.

For the reasons set forth in the preamble, part 86 of title 40 of the *Code of Federal Regulations* is revised to read as set forth below:

6. The authority citation for part 86 continues to read as follows:

Authority: Secs. 202, 203, 206, 207, 208, 215, 301(a), of the Clean Air Act as Amended; 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550 and 7601(a).

7. A new § 86.113–91 is proposed to be added to subpart B, to read as follows:

**§ 86.113–91 Fuel specifications.**

(a) *Otto-cycle test fuel.* (1) Gasoline having the following specifications will be used by the Administrator in exhaust and evaporative emission testing of petroleum-fueled Otto-cycle vehicles. Gasoline having the following specification or substantially equivalent specifications approved by the Administrator, shall be used by the manufacturer in exhaust and evaporative testing except that octane specifications do not apply.

| Item | ASTM test method No. | Value |
|---|---|---|
| Octane, research, min | D2699 | 93 |
| Sensitivity, min. | | 7.5 |
| Lead (organic), g/U.S. gal. | D3237 | 0.050[1] |
| (g/liter) | | (0.013)[1] |
| Distillation Range: | | |
| IBP[2], °F | D86 | 75–95 |
| (°C) | | (23.9–35) |
| 10 pct. point, °F | D86 | 120–135 |
| (°C) | | (48.9–57.2) |
| 50 pct. point, °F | D86 | 200–230 |
| (°C) | | (93.3–110) |
| 90 pct. point, °F | D86 | 300–325 |
| (°C) | | (148.9–162.8) |
| EP, (max.) °F | D86 | 415 |
| (°C) | | (212.8) |
| Sulfur, weight pct., max | D1266 | 0.10 |
| Phosphorus, max. g/U.S. gal. | D3231 | 0.005 |
| (g/liter) | | (0.0013) |
| RVP[3,4], psi | D3231 | 8.7–9.2 |
| (kPa) | | (60.0–63.4) |
| Hydrocarbon composition: | | |
| Olefins, max. pct | D1319 | 10 |
| Aromatics, max. pct | D1319 | 35 |
| Saturates | D1319 | [5] |

[1] Maximum.
[2] For testing at altitudes above 1,219 m (4,000 ft) the specified range is 75°–105°F (23.9°–40.6 °C).
[3] For testing which is unrelated to evaporative emission control, the specified range is 8.0–9.2 psi (55.2–63.4 kPa).
[4] For testing at altitudes above 1,219 m (4,000 ft) the specified range is 7.9–9.2 psi (54.5–63.4 kPa).
[5] Remainder.

(2) Unleaded gasoline representative of commercial gasoline which will be generally available through retail outlets shall be used in service accumulation for petroleum-fueled Otto-cycle vehicles. Leaded gasoline will not be used in service accumulation.

(i) The octane rating of the gasoline used shall be no higher than 1.0 Research octane number above the minimum recommended by the manufacturer and have a minimum sensitivity of 7.5 octane numbers, where sensitivity is defined as the Research octane number minus the Motor octane number.

(ii) The Reid Vapor Pressure of the gasoline used shall be characteristic of the motor fuel used during the season in which the service accumulation takes place.

(3) Methanol fuel used for exhaust and evaporative emission testing and in service accumulation of methanol-fueled Otto-cycle vehicles shall be representative of commercially available methanol fuel and shall consist of at least 50 percent methanol by volume.

(i) Manufacturers shall recommend the methanol fuel to be used for testing and service accumulation in accordance with paragraph (a)(3) of this section.

(ii) The Administrator shall determine the methanol fuel to be used for testing and service accumulation.

(4) Other methanol fuels may be used for testing and service accumulation provided:

(i) They are commercially available, and

(ii) Information, acceptable to the Administrator, is provided to show that

only the designated fuel would be used in customer service, and

(iii) Use of a fuel listed under paragraph (a)(3) of this section would have a detrimental effect on emissions or durability, and

(iv) Written approval from the Administrator of the fuel specifications must be provided prior to the start of testing.

(5) The specification range of the fuels to be used under paragraphs (a)(2), (a)(3), and (a)(4) of this section shall be reported in accordance with § 86.090–21(b)(3).

(b) *Diesel test fuel.* (1) The petroleum fuels employed for testing diesel vehicles shall be clean and bright, with pour and cloud points adequate for operability. The petroleum fuel may contain nonmetallic additives as follows: cetane improver, metal deactivator, antioxidant, dehazer, antirust, pour depressant, dye, dispersant and biocide.

(2) Petroleum fuel for diesel vehicles meetinq the following specifications, or substantially equivalent specifications approved by the Administrator, shall be used in exhaust emission testing. The grade of petroleum fuel recommended by the engine manufacturer, commercially designated as "Type 2–D" grade diesel, shall be used.

| Item | ASTM test method No. | Type 2-D |
|---|---|---|
| Cetane Number | D613 | 42–50 |
| Distillation range: | | |
| IBP, °F | D86 | 340—400 |
| (°C) | | (171.1–204.4) |
| 10 pct. point. °F. | D86 | 400–460 |
| (°C) | | (204.4–237.8) |
| 50 pct. point, °F. | D86 | 470–540 |
| (°C) | | (243.3–282.2) |
| 90 pct. point, °F. | D86 | 560–630 |
| (°C) | | (293.3–332.2) |
| EP, °F | D86 | 610–690 |
| (°C) | | (321.1–365.6) |
| Gravity, °API | D287 | 32–37 |
| Total sulfur, pct. | D2622 | 0.08–0.12 |
| Hydrocarbon composition. | D1319 | |
| Aromatics, min. pct.. | | 27 |
| Paraffins, naphthenes, olefins. | | [1] |
| Flashpoint, min. °F. | D93 | 130 |
| (°C) | | (54.4) |
| Viscosity, centistokes. | D445 | 2.2–3.4 |

[1] Remainder.

(3) Petroleum fuel for diesel vehicles meeting the following specifications, or substantially equivalent specifications approved by the Administrator, shall be used in service accumulation. The grade of petroleum diesel fuel recommended by the engine manufacturer, commercially designated as "Type 2–D" grade diesel fuel, shall be used.

| Item | ASTM test method No. | Type 2-D |
|---|---|---|
| Cetane Number | D613 | 38–58 |
| Distillation range: | | |
| 90 pct. point, °F. | D86 | 540–650 |
| (°C) | | (282.2–343.3) |
| Gravity, °API | D287 | 30–39 |
| Total sulfur, pct. | D2622 | 0.08–0.12 |
| Flashpoint, min. °F. | D93 | 130 |
| (°C) | | (54.4) |
| Viscosity, centistokes. | D455 | 1.5–4.5 |

(4) Methanol fuel used for exhaust and evaporative emission testing and in service accumulation of methanol-fueled diesel vehicles shall be representative of commercially available methanol fuel and shall consist of at least 50 percent methanol by volume.

(i) Manufacturers shall recommend the methanol fuel to be used for testing and service accumulation in accordance with paragraph (b)(4) of this section.

(ii) The Administrator shall determine the methanol fuel to be used for testing and service accumulation.

(5) Other fuels may be used for testing and service accumulation provided:

(i) They are commercially available, and

(ii) Information, acceptable to the Administrator, is provided to show that only the designated fuel would be used in customer service, and

(iii) Use of a fuel listed under paragraphs (b)(2) and (b)(3) or (b)(4) of this section would have a detrimental effect on emissions or durability, and

(iv) Written approval from the Administrator of the fuel specifications must be provided prior to the start of testing.

(6) The specification range of the fuels to be used under paragraphs (b)(2), (b)(3), (b)(4), and (b)(5) of this section shall be reported in accordance with § 86.090–21(b)(3).

(c) Fuels not meeting the specifications set forth in this section may be used only with the advance approval of the Administrator.

(d) *Mixtures of petroleum and methanol fuels for flexible fuel vehicles.* (1) Mixtures of petroleum and methanol fuels used for exhaust and evaporative emission testing and service accumulation for flexible fuel vehicles shall be within the range of fuel mixtures for which the vehicle was designed.

(2) Manufacturer testing and service accumulation may be performed using only those mixtures (mixtures may be different for exhaust testing, evaporative testing, and service accumulation) expected to result in the highest emissions, provided:

(i) The fuels which constitute the mixture will be used in customer service, and

(ii) Information, acceptable to the Administrator, is provided by the manufacturer to show that the designated fuel mixtures would result in the highest emissions, and

(iii) Written approval from the Administrator of the fuel specifications must be provided prior to the start of testing.

(3) The specification range of the fuels to be used under paragraph (d)(1) of this section shall be reported in accordance with § 86.090–21(b)(3).

8. A new § 86.113–94 is proposed to be added to Subpart B, to read as follows:

**§ 86.113–94 Fuel specifications.**

(a) *Otto-cycle test fuel.* (1) Gasoline having the following specifications will be used by the Administrator in exhaust and evaporative emission testing of petroleum-fueled Otto-cycle vehicles. Gasoline having the following specification or substantially equivalent specifications approved by the Administrator, shall be used by the manufacturer in exhaust and evaporative testing except that octane specifications do not apply.

| Item | ASTM test method no. | Value |
|---|---|---|
| Octane, research, min.. | D2699 | 93 |
| Sensitivity, min. | | 7.5 |
| Lead (organic), g/U.S. gal.. | D3237 | 0.050[1] |
| (g/liter) | | (0.013)[1] |
| Distillation Range: | | |
| IBP[2], °F | D86 | 75–95 |
| (°C) | | (23.9–35) |
| 10 pct. point, °F | D86 | 120–135 |
| (°C) | | (48.9–57.2) |
| 50 pct. point, °F | D86 | 200–230 |
| (°C) | | (93.3–110) |
| 90 pct. point, °F | D86 | 300–325 |
| (°C) | | (148.9–162.8) |
| EP, (max.) °F | D86 | 415 |
| (°C) | | (212.8) |
| Sulfur, weight pct., max.. | D1266 | 0.10 |
| Phosphorus, max. g/U.S. gal.. | D3231 | 0.005 |
| (g/liter) | | (0.0013) |
| RVP[3,4], psi | D3231 | 8.7–9.2 |
| (kPa) | | (60.0–63.4) |
| Hydrocarbon composition: | | |
| Olefins, max. pct., | D1319 | 10 |
| Aromatics, max. pct.,. | D1319 | 35 |
| Saturates | D1319 | [5] |

[1] Maximum.

[2] For testing at altitudes above 1,219 m (4,000 ft) the specified range is 75°–105 °F (23.9°–40.6 °C).

[3] For testing which is unrelated to evaporative emission control, the specified range is 8.0–9.2 psi (55.2–63.4 kPa).

[4] For testing at altitudes above 1,219 m (4,000 ft) the specified range is 7.9–9.2 psi (54.5–63 4 kPa).

[5] Remainder.

(2) Unleaded gasoline representative of commercial gasoline which will be generally available through retail outlets shall be used in service accumulation for petroleum-fueled Otto-cycle vehicles. Leaded gasoline will not be used in service accumulation.

(i) The octane rating of the gasoline used shall be no higher than 1.0 Research octane number above the minimum recommended by the manufacturer and have a minimum sensitivity of 7.5 octane numbers, where sensitivity is defined as the Research octane number minus the Motor octane number.

(ii) The Reid Vapor Pressure of the gasoline used shall be characteristic of the motor fuel used during the season in which the service accumulation takes place.

(3) Methanol fuel used for exhaust and evaporative emission testing and in service accumulation of methanol-fueled Otto-cycle vehicles shall be representative of commercially available methanol fuel and shall consist of at least 50 percent methanol by volume.

(i) Manufacturers shall recommend the methanol fuel to be used for testing and service accumulation in accordance with paragraph (a)(3) of this section.

(ii) The Administrator shall determine the methanol fuel to be used for testing and service accumulation.

(4) Other methanol fuels may be used for testing and service accumulation provided:

(i) They are commercially available, and

(ii) Information, acceptable to the Administrator, is provided to show that only the designated fuel would be used in customer service, and

(iii) Use of a fuel listed under paragraph (a)(3) of this section would have a detrimental effect on emissions or durability, and

(iv) Written approval from the Administrator of the fuel specifications must be provided prior to the start of testing

(5) The specification range of the fuels to be used under paragraphs (a)(2), (a)(3), and (a)(4) of this section shall be reported in accordance with § 86.090–21(b)(3).

(b) *Diesel test fuel.* (1) The petroleum fuels employed for testing diesel vehicles shall be clean and bright, with pour and cloud points adequate for operability. The petroleum fuel may contain nonmetallic additives as follows: Cetane improver, metal deactivator, antioxidant, dehazer, antirust, pour depressant, dye, dispersant and biocide.

(2) Petroleum fuel for diesel vehicles meeting the following specifications, or substantially equivalent specifications approved by the Administrator, shall be used in exhaust emission testing. The grade of petroleum fuel recommended by the engine manufacturer, commercially designated as "Type 2–D" grade diesel, shall be used.

| Item | ASTM test method No. | Type 2–D |
|---|---|---|
| Cetane Number | D613 | 40–48 |
| Cetane Index | D976 | 40–48 |
| Distillation range: | | |
| IBP, °F | D86 | 340–400 |
| (°C) | | (171.1–204.4) |
| 10 pct. point, °F | D86 | 400–460 |
| (°C) | | (204.4–237.8) |
| 50 pct. point, °F | D86 | 470–540 |
| (°C) | | (243.3–282.2) |
| 90 pct. point, °F | D86 | 560–630 |
| (°C) | | (293.3–332.2) |
| EP, °F | D86 | 610–690 |
| (°C) | | (321.1–365.6) |
| Gravity, °API | D287 | 32–37 |
| Total sulfur, pct. | D2622 | 0.03–0.05 |
| Hydrocarbon composition. | D1319 | |
| Aromatics, min. pct.. | | 27 |
| Parafins, naphthenes, olefins. | | [1] |
| Flashpoint, min. °F | D93 | 130 |
| (°C) | | (54.4) |
| Viscosity, centistrokes. | D445 | 2.2–3.4 |

[1] Remainder.

(3) Petroleum fuel for diesel vehicles meeting the following specifications, or substantially equivalent specifications approved by the Administrator, shall be used in service accumulation. The grade of petroleum diesel fuel recommended by the engine manufacturer, commercially designated as "Type 2–D" grade diesel fuel, shall be used.

| Item | ASTM test method No. | Type 2–D |
|---|---|---|
| Cetane Number | D613 | 38–58 |
| Distillation range: | | |
| 90 pct. point, °F | D86 | 540–630 |
| (°C) | | (282.2–343.3) |
| Gravity, °API | D287 | 30–39 |
| Total sulfur, pct. | D2622 | 0.03–0.05 |
| Flashpoint, min. °F | D93 | 130 |
| (°C) | | (54.4) |
| Viscosity, centistrokes. | D455 | 1.5–4.5 |

(4) Methanol fuel used for exhaust and evaporative emission testing and in service accumulation of methanol-fueled diesel vehicles shall be representative of commercially available methanol fuel and shall consist of at least 50 percent methanol by volume.

(i) Manufacturers shall recommend the methanol fuel to be used for testing and service accumulation in accordance with paragraph (b)(4) of this section.

(ii) The Administrator shall determine the methanol fuel to be used for testing and service accumulation.

(5) Other fuels may be used for testing and service accumulation provided:

(i) They are commercially available, and

(ii) Information, acceptable to the Administrator, is provided to show that only the designated fuel would be used in customer service, and

(iii) Use of a fuel listed under paragraphs (b)(2) and (b)(3) or (b)(4) of this section would have a detrimental effect on emissions or durability, and

(iv) Written approval from the Administrator of the fuel specifications must be provided prior to the start of testing.

(6) The specification range of the fuels to be used under paragraphs (b)(2), (b)(3), (b)(4), and (b)(5) of this section shall be reported in accordance with § 86.090–21(b)(3).

(c) Fuels not meeting the specifications set forth in this section may be used only with the advance approval of the Administrator.

(d) *Mixtures of petroleum and methanol fuels for flexible fuel vehicles.* (1) Mixtures of petroleum and methanol fuels used for exhaust and evaporative emission testing and service accumulation for flexible fuel vehicles shall be within the range of fuel mixtures for which the vehicle was designed.

(2) Manufacturer testing and service accumulation may be performed using only those mixtures (mixtures may be different for exhaust testing, evaporative testing, and service accumulation) expected to result in the highest emissions, provided:

(i) The fuels which constitute the mixture will be used in customer service, and

(ii) Information, acceptable to the Administrator, is provided by the manufacturer to show that the designated fuel mixtures would result in the highest emissions, and

(iii) Written approval from the Administrator of the fuel specifications must be provided prior to the start of testing.

(3) The specification range of the fuels to be used under paragraph (d)(1) of this section shall be reported in accordance with § 86.090–21(b)(3).

9. A new § 86.1313–91 is proposed to be added to subpart N, to read as follows:

**§ 86.1313–91 Fuel specifications.**

(a) *Otto-cycle test fuel.* (1) Gasoline having the specifications listed in Table N90–1 will be used by the Administrator

in exhaust emission testing petroleum-fueled Otto-cycle engines. Gasoline having these specifications or substantially equivalent specifications approved by the Administrator, shall be used by the manufacturer in exhaust emission testing, except that the octane specification does not apply.

TABLE N91-1

| Item | ASTM | Value |
|---|---|---|
| Octane, research, min.. | D2699 | 93 |
| Sensitivity, min | | 7.5 |
| Lead (organic), g/U.S. gal.. | D3237 | (0.050) [1] |
| (g/liter) | | (0.013) [1] |
| Distillation range: | | |
| IBP, °F | D86 | 75–95 |
| (°C) | | (23.9–35) |
| 10 pct. point, °F | D86 | 120–135 |
| (°C) | | (48.9–57.2) |
| 50 pct. point, °F | D86 | 200–230 |
| (°C) | | (93.3–110) |
| 90 pct. point, °F | D86 | 300–325 |
| (°C) | | (148.9–162.8) |
| EP, max. °F | D86 | 415 |
| (°C) | | (212.8) |
| Sulphur, max. wt. pct.... | D1266 | 0.10 |
| Phosphorus, max., g/U.S. gal.. | D3231 | 0.005 |
| (g/liter) | | (0.0013) |
| RVP, psi | D323 | 8.0–9.2 |
| (kPa) | | (60.0–63.4) |
| Hydrocarbon composition: | | |
| Olefins, max. pct. | D1319 | 10 |
| Aromatics, max. pct.. | D1319 | 35 |
| Saturates | D1319 | [2] |

[1] Maximum.
[2] Remainder.

(2) Unleaded gasoline representative of commercial gasoline which will be generally available through retail outlets shall be used in service accumulation.

(i) The octane rating of the gasoline used shall be not higher than one Research octane number above the minimum recommended by the manufacturer and have a minimum sensitivity of 7.5 octane numbers, where sensitivity is defined as the Research octane number minus the Motor octane number.

(ii) The Reid Vapor Pressure of the gasoline used shall be characteristic of the motor fuel used during the season in which the service accumulation takes place.

(3) Methanol fuel used for exhaust and evaporative emission testing and in service accumulation of methanol-fueled Otto-cycle engines shall be representative of commercially available methanol fuel and shall consist of at least 50 percent methanol by volume.

(i) Manufacturers shall recommend the methanol fuel to be used for testing and service accumulation in accordance with paragraph (a)(3) of this section.

(ii) The Administrator shall determine the methanol fuel to be used for testing and service accumulation.

(4) Other methanol fuels may be used for testing and service accumulation provided:

(i) They are commercially available, and

(ii) Information, acceptable to the Administrator, is provided to show that only the designated fuel would be used in customer service, and

(iii) Use of a fuel listed under paragraph (a)(3) of this section would have a detrimental effect on emissions or durability, and

(iv) Written approval from the Administrator of the fuel specifications must be provided prior to the start of testing.

(5) The specification range of the fuels to be used under paragraphs (a)(2), (a)(3), and (a)(4) of this section shall be reported in accordance with § 86.090–21(b)(3).

(b) *Diesel test fuel.* (1) The petroleum fuels for testing diesel engines employed for testing shall be clean and bright, with pour and cloud points adequate for operability. The petroleum fuel may contain nonmetallic additives as follows: Cetane improver, metal deactivator, antioxidant, dehazer, antirust, pour depressant, dye, dispersant, and biocide.

(2) Petroleum fuel for diesel engines meeting the specifications in Table N90–2, or substantially equivalent specifications approved by the Administrator, shall be used in exhaust emissions testing. The grade of petroleum fuel recommended by the engine manufacturer commercially designated as "Type 1–D" or "Type 2–D" grade diesel fuel shall be used.

TABLE N91-2

| Item | ASTM | Type 1–D | Type 2–D |
|---|---|---|---|
| Cetane | D613 | 48–54 | 42–50 |
| Distillation range: | | | |
| IBP, °F | D86 | 330–390 | 340–400 |
| (°C) | | (165.6–198.9) | (171.1–204.4) |
| 10 pct. point, °F | D86 | 370–430 | 400–460 |
| (°C) | | (187.8–221.1) | (204.4–237.8) |
| 50 pct. point, °F | D86 | 410–480 | 470–540 |
| (°C) | | (210–248.9) | (243.3–282.2) |
| 90 pct. point, °F | D86 | 460–520 | 560–630 |
| (°C) | | (237.8–271.1) | (293.3–332.2) |
| EP, °F | D86 | 500–560 | 610–690 |
| (°C) | | (260–293.3) | (321.1–365.6) |
| Gravity, °API | D287 | 40–44 | 32–37 |
| Total sulfur, pct | D2622 | 0.08–0.12 | 0.08–0.12 |
| Hydrocarbon composition: | | | |
| Aromatics, pct | D1319 | 8[1] | 27[1] |
| Parafins, Naphthenes, Olefins | D1319 | [2] | [2] |
| Flashpoint, min., °F | D93 | 120 | 130 |
| (°C) | | (48.9) | (54.4) |
| Viscosity, centistokes | D445 | 1.6–2.0 | 2.2–3.4 |

[1] Minimum.
[2] Remainder.

(3) Petroleum fuel for diesel engines meeting the specifications in Table N90–3, or substantially equivalent specifications approved by the Administrator, shall be used in service accumulation. The grade of petroleum diesel fuel recommended by the engine manufacturer, commercially designated as "Type 1–D" or "Type 2–D" grade diesel fuel shall be used:

TABLE N91-3

| Item | ASTM | Type 1-D | Type 2-D |
|---|---|---|---|
| Cetane Number | D613 | 42-56 | 30-58 |
| Distillation range: | | | |
| 90 pct. point, °F | D86 | 440-530 | 540-630 |
| (°C) | | (226.7-276.7) | (282.2-332.2) |
| Gravity, °API | D287 | 39-45 | 30-42 |
| Total sulfur, pct | D2622 | 0.08-0.12 | 0.08-0.12 |
| Flashpoint, min., °F | D93 | 120 | 130 |
| (°C) | | (48.9) | (54.4) |
| Viscosity, centistokes | D455 | 1.2-2.2 | 1.5-4.5 |

(4) Methanol fuel used for exhaust and evaporative emission testing and in service accumulation of methanol-fueled diesel engines shall be representative of commercially available methanol fuel and shall consist of at least 50 percent methanol by volume.

(i) Manufacturers shall recommend the methanol fuel to be used for testing and service accumulation in accordance with paragraph (b)(4) of this section.

(ii) The Administrator shall determine the methanol fuel to be used for testing and service accumulation.

(5) Other fuels may be used for testing and service accumulation provided:

(i) They are commercially available, and

(ii) Information, acceptable to the Administrator, is provided to show that only the designated fuel would be used in customer service, and

(iii) Use of a fuel listed under paragraphs (b)(2) and (b)(3) or (b)(4) of this section would have a detrimental effect on emissions or durability, and

(iv) Written approval from the Administrator of the fuel specifications must be provided prior to the start of testing.

(6) The specification range of the fuels to be used under paragraphs (b)(2), (b)(3), (b)(4), and (b)(5) of this section shall be reported in accordance with § 86.090-21(b)(3).

(c) Fuels not meeting the specifications set forth in this section may be used only with the advance approval of the Administrator.

(d) *Mixtures of petroleum and methanol fuels for flexible fuel vehicles.* (1) Mixtures of petroleum and methanol fuels used for exhaust and evaporative emission testing and service accumulation for flexible fuel vehicles shall be within the range of fuel mixtures for which the vehicle was designed.

(2) Manufacturer testing and service accumulation may be performed using only those mixtures (mixtures may be different for exhaust testing, evaporative testing, and service accumulation) expected to result in the highest emissions, provided:

(i) The fuels which constitute the mixture will be used in customer service, and

(ii) Information, acceptable to the Administrator, is provided by the manufacturer to show that the designated fuel mixtures would result in the highest emissions, and

(iii) Written approval from the Administrator of the fuel specifications must be provided prior to the start of testing.

(3) The specification range of the fuels to be used under paragraph (d)(2) of this section shall be reported in accordance with § 86.090-21(b)(3).

10. A new § 86.1313-94 is proposed to be added to Subpart N, to read as follows:

**§ 86.1313-94 Fuel specifications.**

(a) *Otto-cycle test fuel.* (1) Gasoline having the specifications listed in Table N90-1 will be used by the Administrator in exhaust emission testing petroleum-fueled Otto-cycle engines. Gasoline having these specifications or substantially equivalent specifications approved by the Administrator, shall be used by the manufacturer in exhaust emission testing, except that the octane specification does not apply.

TABLE N94-1

| Item | ASTM | Value |
|---|---|---|
| Octane, research, min | D2699 | 93 |
| Sensitivity, min | | 7.5 |
| Lead (organic), g/U.S. gal. | D3237 | (0.050)[1] |
| (g/liter) | | (0.013)[1] |
| Distillation range: | | |
| IBP, °F | D86 | 75-95 |
| (°C) | | (23.9-35) |
| 10 pct. point, °F | D86 | 120-135 |
| (°C) | | (48.9-57.2) |
| 50 pct. point, °F | D86 | 200-230 |
| (°C) | | (93.3-110) |
| 90 pct. point, °F | D86 | 300-325 |
| (°C) | | (148.9-162.8) |
| EP, max. °F | D86 | 415 |
| (°C) | | (212.8) |
| Sulphur, max. wt. pct | D1266 | 0.10 |
| Phosphorus, max., g/U.S. gal. | D3231 | 0.005 |
| (g/liter) | | (0.0013) |
| RVP, psi | D323 | 8.0-9.2 |

TABLE N94-1—Continued

| Item | ASTM | Value |
|---|---|---|
| (kPa) | | (60.0-63.4) |
| Hydrocarbon composition: | | |
| Olefins, max. pct | D1319 | 10 |
| Aeromatics, max. pct. | D1319 | 35 |
| Saturates | D1319 | [2] |

[1] Maximum.
[2] Remainder.

(2) Unleaded gasoline representative of commercial gasoline which will be generally available through retail outlets shall be used in service accumulation.

(i) The octane rating of the gasoline used shall be not higher than one Research octane number above the minimum recommended by the manufacturer and have a minimum sensitivity of 7.5 octane numbers, where sensitivity is defined as the Research octane number minus the Motor octane number.

(ii) The Reid Vapor Pressure of the gasoline used shall be characteristic of the motor fuel used during the season in which the service accumulation takes place.

(3) Methanol fuel used for exhaust and evaporative emission testing and in service accumulation of methanol-fueled Otto-cycle engines shall be representative of commercially available methanol fuel and shall consist of at least 50 percent methanol by volume.

(i) Manufacturers shall recommend the methanol fuel to be used for testing and service accumulation in accordance with paragraph (a)(3) of this section.

(ii) The Administrator shall determine the methanol fuel to be used for testing and service accumulation.

(4) Other methanol fuels may be used for testing and service accumulation provided:

(i) They are commercially available, and

(ii) Information, acceptable to the Administrator, is provided to show that

only the designated fuel would be used in customer service, and

(iii) Use of a fuel listed under paragraph (a)(3) of this section would have a detrimental effect on emissions or durability, and

(iv) Written approval from the Administrator of the fuel specifications must be provided prior to the start of testing.

(5) The specification range of the fuels to be used under paragraphs (a)(2), (a)(3), and (a)(4) of this section shall be reported in accordance with § 86.090–21(b)(3).

(b) *Diesel test fuel.* (1) The petroleum fuels for testing diesel engines employed for testing shall be clean and bright, with pour and cloud points adequate for operability. The petroleum fuel may contain nonmetallic additives as follows: Cetane improver, metal deactivator, antioxidant, dehazer, antirust, pour depressant, dye, dispersant, and biocide.

(2) Petroleum fuel for diesel engines meeting the specifications in Table N94–2, or substantially equivalent specifications approved by the Administrator, shall be used in exhaust emissions testing. The grade of petroleum fuel recommended by the engine manufacturer commercially designated as "Type 1–D" or "Type 2–D" grade diesel fuel shall be used.

TABLE N94–2

| Item | ASTM | Type 1–D | Type 2–D |
|---|---|---|---|
| Cetane Number | D613 | 40–54 | 40–48 |
| Cetane Index | D976 | 40–42 | 40–48 |
| Distillation range: | | | |
| IBP, °F | D86 | 330–390 | 340–400 |
| (°C) | | (165.6–198.9) | (171.1–204.4) |
| 10 pct. point, °F | D86 | 370–430 | 400–460 |
| (°C) | | (187.8–221.1) | (204.4–237.8) |
| 50 pct. point, °F | D86 | 410–480 | 470–540 |
| (°C) | | (210–248.9) | (243.3–282.2) |
| 90 pct. point, °F | D86 | 460–520 | 560–630 |
| (°C) | | (237.8–271.1) | (293.3–332.2) |
| EP, °F | D86 | 500–560 | 610–690 |
| (°C) | | (260.0–293.3) | (321.1–365.6) |
| Gravity, °API | D287 | 40–44 | 32–37 |
| Total sulfur, pct | D2622 | 0.03–0.05 | 0.03–0.05 |
| Hydrocarbon composition: | | | |
| Aromatics, pct | D1319 | 8[1] | 27[1] |
| Parafins, Naphthenes, Olefins | D1319 | [2] | [2] |
| Flashpoint, min., °F | D93 | 120 | 130 |
| (°C) | | (48.9) | (54.4) |
| Viscosity, centistokes | D445 | 1.6–2.0 | 2.0–3.2 |

[1] Minimum.
[2] Remainder.

(3) Petroleum fuel for diesel engines meeting the specifications in Table N94–3, or substantially equivalent specifications approved by the Administrator, shall be used in service accumulation. The grade of petroleum diesel fuel recommended by the engine manufacturer, commercially designated as "Type 1–D" or "Type 2–D" grade diesel fuel shall be used:

TABLE N94–3

| Item | ASTM | Type 1–D | Type 2–D |
|---|---|---|---|
| Cetane Number | D613 | 40–56 | 30–58 |
| Distillation range: | | | |
| 90 pct. point, °F | D86 | 440–530 | 540–630 |
| (°C) | | (226.7–276.7) | (282.2–332.2) |
| Gravity, °API | D287 | 39–45 | 30–42 |
| Total sulfur, pct | D2622 | 0.03–0.05 | 0.03–0.05 |
| Flashpoint, min., °F | D93 | 120 | 130 |
| (°C) | | (48.9) | (54.4) |
| Viscosity, centistokes | D455 | 1.2–2.2 | 1.5–4.5 |

(4) Methanol fuel used for exhaust and evaporative emission testing and in service accumulation of methanol-fueled diesel engines shall be representative of commercially available methanol fuel and shall consist of at least 50 percent methanol by volume.

(i) Manufacturers shall recommend the methanol fuel to be used for testing and service accumulation in accordance with paragraph (b)(4) of this section.

(ii) The Administrator shall determine the methanol fuel to be used for testing and service accumulation.

(5) Other fuels may be used for testing and service accumulation provided:

(i) They are commercially available, and

(ii) Information, acceptable to the Administrator, is provided to show that only the designated fuel would be used in customer service, and

(iii) Use of a fuel listed under paragraphs (b)(2) and (b)(3) or (b)(4) of this section would have a detrimental effect on emissions or durability, and

(iv) Written approval from the Administrator of the fuel specifications

must be provided prior to the start of testing.

(6) The specification range of the fuels to be used under paragraphs (b)(2), (b)(3), (b)(4), and (b)(5) of this section shall be reported in accordance with § 86.090–21(b)(3).

(c) Fuels not meeting the specifications set forth in this section may be used only with the advance approval of the Administrator.

(d) *Mixtures of petroleum and methanol fuels for flexible fuel vehicles.* (1) Mixtures of petroleum and methanol fuels used for exhaust and evaporative emission testing and service accumulation for flexible fuel vehicles shall be within the range of fuel mixtures for which the vehicle was designed.

(2) Manufacturer testing and service accumulation may be performed using only those mixtures (mixtures may be different for exhaust testing, evaporative testing, and service accumulation) expected to result in the highest emissions, provided:

(i) The fuels which constitute the mixture will be used in customer service, and

(ii) Information, acceptable to the Administrator, is provided by the manufacturer to show that the designated fuel mixtures would result in the highest emissions, and

(iii) Written approval from the Administrator of the fuel specifications must be provided prior to the start of testing.

(3) The specification range of the fuels to be used under paragraph (d)(2) of this section shall be reported in accordance with § 86.090–21(b)(3).

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Part III

# Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

**Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Sacramento Prickly Poppy and the Virgin River Chub; Final Rules**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018-AA10**

## Endangered and Threatened Wildlife and Plants; Final Rule to Determine Argemone pleiacantha ssp. pinnatisecta (Sacramento prickly poppy) To Be an Endangered Species

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Fish and Wildlife Service determines *Argemone pleiacantha* ssp. *pinnatisecta* (Sacramento prickly poppy) to be an endangered species, under the authority contained in the Endangered Species Act of 1973 (Act), as amended. The Sacramento prickly poppy is endemic to several canyons in the Sacramento Mountains, Otero County, New Mexico. Known populations consist of 1,310 plants, which occur on Bureau of Land Management (BLM), Lincoln National Forest, Oliver Lee State Park, New Mexico and Otero County Highway rights-of-way, and private lands. This species is threatened by livestock grazing, pipeline construction, flooding, and road construction and maintenance. Final determination that *Argemone pleiacantha* ssp. *pinnatisecta* is endangered implements the protection provided by the Act.

**EFFECTIVE DATE:** September 25, 1989.

**ADDRESSES:** The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service Ecological Services Field Office, 3530 Pan American Highway NE., Suite D, Albuquerque, New Mexico 87107.

**FOR FURTHER INFORMATION CONTACT:** Charlie McDonald, Endangered Species Botanist, U.S. Fish and Wildlife Service Ecological Services Field Office, Albuquerque, New Mexico (see **ADDRESSES** above) (505/883-7877 or FTS 474-7877).

**SUPPLEMENTARY INFORMATION:**

### Background

*Argemone pleiacantha* ssp. *pinnatisecta* (Sacramento prickly poppy) is a robust perennial known from nine canyons in the Sacramento Mountains of Otero County, south-central New Mexico. The Sacramento prickly poppy was first collected in 1953 by Mr. G.B. Ownbey and Mr. Findley on the western slopes of the Sacramento Mountains. Mr. Ownbey described the taxon in a monograph of the genus *Argemone* for North America and the West Indies (Ownbey 1958).

This member of the Poppy family (Papaveraceae) has 3–12 prickly stems branching from the base, and commonly grows to a height of 5–15 decimeters (20–60 inches) (Soreng 1982). The pale lemon to nearly white milky sap readily distinguishes this subspecies from the typical subspecies, which has yellow-orange sap. The attractive flowers have numerous yellow stamens and six white petals that are 3–4 centimeters (1.2–1.6 inches) long and as wide. Leaves are long, relatively narrow, and have box-shaped sinuses between spine-tipped lobes.

The Sacramento prickly poppy occurs at 1300–2200 meters (4,200–7,100 feet) elevation. At lower elevations, the surrounding vegetation is Semi-Desert Grassland; at the upper elevations the vegetation is Great Basin Conifer Woodland (Brown 1980). The Sacramento prickly poppy occurs in open, disturbed, or relatively undisturbed areas within these plant communities. The species grows in limestone canyons, or roadsides, fields, grassy flats, steep slopes, and floodplain and channel deposits. Populations are usually found where there is enhanced, but not wet, soil moisture conditions. These conditions are met on north-facing slopes, in canyon bottoms, along roadsides, and near leaks in pipelines.

The plants are located on New Mexico State and Otero County highway rights-of-way, on private land, Oliver Lee State Park, Bureau of Land Management lands, and Lincoln National Forest lands.

Soreng (1982) estimated that three populations of *Argemone pleiacantha* ssp. *pinnatisecta* contained fewer than 170 plants in 1982, and suggested that these populations were declining. Flash floods are one of the reasons for this decline: one population decreased from 100 plants to six after a flash flood scoured the canyon in 1978 (Soreng 1982). The probability of such flooding has been increased by overgrazing, which disturbs topsoil and reduces plant cover. Plant recruitment may be low because seedlings and young plants are more palatable to livestock than mature plants (Soreng 1986). Soreng suggested that regeneration was insufficient to maintain population numbers.

Malaby (1987) surveyed eight canyons and found 1,290 plants. A total of 6,330 acres of Federal, State, city, and private land was surveyed. In a 1988 survey, Malaby (1988) found 23 additional plants in two locations. Previous surveys (Hutchins 1974, Spellenberg 1977 and 1978, and Meiiji 1979) have been conducted on both BLM and BIA administered lands and only 1 population was found on BLM land.

Section 12 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) directed the Secretary of the Smithsonian Institution to prepare a report of those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of Section 4 of the Act and of its intention to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to Section 4 of the Act.

This list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Argemone pleiacantha* ssp. *pinnatisecta* was included in the July 1, 1975, notice of review and in the June 16, 1976, proposal.

The Endangered Species Act Amendments of 1978 required that all proposals over two years old be withdrawn. A one-year grace period was given to those proposals already more than 2 years old. Subsequently, on December 10, 1979, (44 FR 70796), the Service published a notice of the withdrawal of the portion of the June 16, 1976, proposal that had not been made final, along with other proposals that had expired; this notice of withdrawal included *Argemone pleiacantha* ssp. *pinnatisecta*.

On December 15, 1980 (45 FR 82485), and September 27, 1985 (50 FR 39526), the Service published updated notices reviewing the native plants being considered for classification as threatened or endangered. *Argemone pleiacantha* ssp. *pinnatisecta* was included in these notices as a category 1 species. Category 1 comprises taxa for which the Service has sufficient biological data to support proposing them as endangered or threatend.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within one year of their receipt. Section 2(b)(1) of the Act's Amendments of 1982 further requires that all petitions pending on October 12, 1982, be treated as having

been newly submitted on that date. Because *Argemone pleiacantha* ssp. *pinnatisecta* was included in the 1980 notice, the petition to list this species was treated as being newly submitted on October 12, 1982. On October 13, 1983; October 12, 1984; October 11, 19085; and October 10, 1986, the Service made the required one-year findings that listing of *Argemone pleiacantha* ssp. *pinnatisecta* was warranted, but precluded by other listing actions of higher priority. Biological data, supplied by Soreng (1982, 1986), fully support the listing of *Argemone pleiacantha* ssp. *pinnatisecta*. The proposed rule of July 13, 1987 (52 FR 26164) was based primarily on Soreng's biological data and constituted the final one-year finding required by section 4(b)(3)(B) of the Act for this species.

**Summary of Comments and Recommendations**

In the July 13, 1987, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the *Alamogordo Daily News* on August 2, 1987. No public hearing was requested or held.

Three comments were received. The Nature Conservancy supports the listing, the biologist who prepared the initial status report for the Service supports the listing and provided information on population declines, and the U.S. Forest Service requested that the species not be listed. Specific issues raised in these comments are discussed below.

*Comment:* The Nature Conservancy agreed with the proposal to list *Argemone pleiacantha* ssp. *pinnatisecta* as endangered and requested that the Service designate critical habitat for this plant. *Response:* As discussed in the rule, the Service has determined that it would not be prudent to determine critical habitat for the plant at this time. The U.S. Forest Service, which administers much of the land on which the plant occurs, has implemented conservation measures such as reduced livestock grazing and plant propagation from seed. The Service notes that, even without critical habitat designation, the habitat of the Sacramento prickly poppy receives protection under Section 7 of the Act whenever a Federal agency is involved.

*Comment:* The U.S. Forest Service stated that adequate protection measures on Forest land and a greater abundance of plants than previously thought both may preclude the need for listing. In addition, they recommend additional surveys on BLM and BIA lands. They also suggest formulation of a conservation agreement with the Service. *Response:* The Service recognizes and appreciates the conservation measures enacted by the U.S. Forest Service. However, the Service believes that the plant is still in danger of extinction owing to habitat destruction and modification, scarcity, and limited distribution. Of the plants found in the 1987 Forest Service survey, 74% occurred in the Alamo Canyon System. A 1978 flood destroyed most of the plants in Alamo Canyon, and a future catastrophic event such as this is a potential threat. Of the other canyons surveyed, only two contained more than 100 plants. Soreng (pers. comm., 1987) reported that several populations had declined since his 1982 status report. Surveys have been conducted on both BLM and BIA administered lands and only 12 plants were found on BLM lands in 1988 (Howard pers. comm., 1989). Conservation agreements may be appropriate when only one landowner is involved. However, the Sacramento prickly poppy is found on Federal, State, City, and private land. A conservation agreement is not appropriate in this case.

**Summary of Factors Affecting the Species**

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Argemone pleiacantha* ssp. *pinnatisecta* G.B. Ownbey (Sacramento prickly poppy) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Sacramento prickly poppy habitat has been and continues to be destroyed or modified by livestock grazing, pipeline construction, flooding, and road construction and maintenance. Cattle grazing has both direct and indirect effects on the Sacramento prickly poppy. When cattle stocking rates are high, plants of this species are trampled and others are eaten (Soreng 1982). While trampling or grazing may not kill mature plants with an established tap root, these actions may kill seedlings and affect the reproduction of mature plants. Overgrazing has caused disturbance of topsoil and a reduction in plant cover throughout the range of the Sacramento pickly poppy (Soreng 1982). The poor condition of the watershed could increase the probability of flash floods. The Sacramento prickly poppy is particularly vulnerable to flooding because many plants occur on floodplain and channel deposits. Forest Service personnel noted that one population was nearly eliminated during a flash flood in 1978 (Soreng 1982).

The diversion of permanent spring water from drainages in the Sacramento Mountains to pipelines for human and livestock use has created artificially dry conditions in the areas where the Sacramento prickly poppies occur. Fletcher (pers. comm., 1986) believes the installation of a pipeline in one canyon and subsequent drying was the cause of the greatest reduction in the numbers of Sacramento prickly poppy.

Road construction, widening, and maintenance pose a threat to the Sacramento prickly poppy because a number of plants occur along roadsides. These plants are subject to destruction by mechanical disturbance, herbicide application, and soil and gravel dumping.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Alkaloids present in the seeds and juices of other species of *Argemone* have been used in the past as purgatives and as treatments for a wide variety of ailments including ophthalmia. However, no medicinal use of the Sacramento prickly poppy is known.

C. *Disease or predation.* Although Soreng (1982) noted that the stems of some plants had been chewed by insects, and Fletcher (1978) reported insect larvae boring into the stems, such damage to Sacramento prickly poppy plants appears to be insignificant. As indicated above, grazing by cattle may be causing reduction in recruitment rates.

D. *The inadequacy of existing regulatory mechanisms.* The taxon is protected by the New Mexico Native Plant Law. This law prohibits the collection of this species unless a permit is granted by the New Mexico Department of Energy, Minerals and Natural Resources. The Forest Service has included *Argemone pleiacantha* ssp. *pinnatisecta* on its Sensitive Plant Species List. As a matter of policy, the Forest Service and BLM consider Federal candidate species in their environmental assessments and planning.

E. *Other natural or manmade factors affecting its continued existence.*

Scarcity and limited distribution make this species vulnerable to both natural and man-caused threats. Any further reduction in plant numbers could reduce the reproductive capabilities and genetic potential of the species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Argemone pleiacantha* ssp. *pinnatisecta* as endangered without critical habitat. This status seems appropriate because the habitat of the few remaining populations is threatened by overgrazing, pipeline construction, flooding, and road construction and maintenance. The reasons for not designating critical habitat are discussed below.

### Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the Sacramento prickly poppy at this time. Plants are vulnerable to taking or vandalism because of their immobility and accessibility. Any reduction in the small number of plants would be significant. Publication of critical habitat descriptions and maps would be detrimental, highlighting the easy accessibility of the plants. No benefit can be identified that would outweigh the threats of vandalism or taking that might result from such a publication. The Forest Service and BLM are aware of the locations of the Sacramento prickly poppy, have acknowledged the threats to these populations, and are considering the species during planning. All other involved parties and landowners will be notified of the location and importance of protecting this species and its habitat. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it would not be prudent to determine critical habitat for *Argemone pleiacantha* ssp. *pinnatisecta* at this time. No net benefit would accrue from designating critical habitat for the conservation of this species.

### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service at the earliest opportunity. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Most populations of the Sacramento prickly poppy have been found on U.S. Forest Service lands. In the past, Forest Service actions such as trail and road construction and maintenance, and designation of water rights and grazing allotments have impacted known populations. Future management activities can be planned to avoid adverse impacts on populations and potential habitat of the Sacramento prickly poppy. A 1988 field survey identified 12 plants occurring on BLM land in San Andreas Canyon. There is an existing water pipeline and grazing allotment in the area; however, BLM anticipates no future increase in the grazing allotment and BLM will coordinate with the Service and the pipeline right-of-way owner to minimize impacts from potential future pipeline improvements (Mike Howard pers. comm., 1989). Section 7(a) of the Act requires the Forest Service and BLM to consult with the U.S. Fish and Wildlife Service prior to the initiation of planned activities that may affect this listed plant. Road construction or maintenance that is done by the State or County with Federal funds and that may affect the Sacramento prickly poppy would require the Federal Highways Administration to consult with the Service.

The Act and its implementing regulations found at 50 CFR 17.61 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant; transport it in interstate or foreign commerce in the course of a commercial activity; sell or offer it for sale in interstate or foreign commerce; or remove it from areas under Federal jurisdiction and reduce it to possession. In addition, for listed plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of listed plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. With regard to the subject of this final rule, it is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Washington, DC 20238–7329 (202/343–4955).

### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

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### Author

The primary authors of this final rule are Sonja E. Jahrsdoerfer and Sue Rutman, Endangered Species Biologists, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766–3972 or FTS 474–3972). Status information was provided by Dr. Robert Soreng, New Mexico State University, Las Cruces, New Mexico.

### List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

### Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

### PART 17—[AMENDED]

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

**Authority:** Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411; Pub. L. 100–478, 102 Stat. 2306; Pub. L. 100–653, 102 Stat. 3825 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.12 (h) by adding the following, in alphabetical order under the family Papaveraceae, to the List of Endangered and Threatened plants:

**§ 17.12 Endangered and threatened plants.**

* * * * *

(h) * * *

| Species | | Historic range | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|
| Scientific name | Common name | | | | | |
| Papaveraceae—Poppy family: | | | | | | |
| * | * | * | * | * | * | |
| *Argemone pleiacantha* ssp. *pinnatisecta* | Sacramento prickly poppy | U.S.A. (NM) | E | 359 | NA | NA |
| * | * | * | * | * | * | |

Dated: July 18, 1989.

**Susan Recce Lamson,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 89–19901 Filed 8–23–89; 8:45 am]

BILLING CODE 4310–55–M

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**50 CFR Part 17**

**RIN 1018–ABOZ**

## Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Virgin River Chub

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Service determines the Virgin River chub (*Gila robusta seminuda*) to be an endangered species under the provisions of the Endangered Species Act (Act) of 1973, as amended. This species occurs in the Virgin River in Arizona, Nevada, and Utah. Threats to the Virgin River chub include habitat changes, disease, floods, toxic spills, and competition with exotic fishes. The species is particularly vulnerable to these threats because of its very limited distribution. In accordance with 4(b)(6)(C) of the Act, the final designation of critical habitat included in the proposed rule is postponed. This rule implements the full protection provided by the Act for the Virgin River chub.

**EFFECTIVE DATE:** September 25, 1989.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the Service's Fish and Wildlife Enhancement Office, 1745 West, 1700 South, Salt Lake City, Utah 84104.

**FOR FURTHER INFORMATION CONTACT:** Mr. Donald L. Archer, Salt Lake City, Utah (see ADDRESSES above) (801/524–4430 or FTS 588–4430).

**SUPPLEMENTARY INFORMATION:**

### Background

*Gila robusta seminuda* was first collected from the Virgin River near Washington, Utah, by members of the Wheeler Survey and described as a species intermediate between *Gila robusta* and *Gila elegans* (Cope and Yarrow 1875). Later authors have treated this chub as a subspecies of robusta along with other chubs from various stream systems in the Colorado River basin (Ellis 1914, Miller 1946, LaRivers and Trelease 1952). Holden and Stalnaker (1970) showed that the subspecific name *seminuda* should refer only to the chub in the Virgin River, and that specimens from other localities represent other subspecies of *Gila robusta*. Holden and Stalnaker (1970) and Minckley (1973) indicated that the Virgin River population is a valid subspecies, and Smith et al. (1977) supported this conclusion with extensive taxonomic analyses.

The Virgin River chub is a very silvery medium-sized minnow that averages about 20 centimeters (cm) or 8 inches (in) in total length but can grow to a length of 45 cm (18 in). *Gila robusta seminuda* can be distinguished from other subspecies by the number of rays (9 to 10) in the dorsal, anal, and pelvic fins, and the number of gill rakers (24 to 31). The back, breast, and part of the belly have small, deeply embedded scales that are difficult to see and may be absent in some individuals. This characteristic is the basis for the subspecific name *seminuda*.

A closely related form of *Gila robusta*, which appears to be an undescribed

subspecies, is found in the Moapa River in Nevada. The Moapa River was originally a tributary of the Virgin River, but both are now tributaries to Lake Mead, a reservoir on the Colorado River. Although the Moapa form of *Gila robusta* has also suffered population declines in the past, has a reduced range, and presently exists at low population levels (Cross 1976, Deacon and Bradley 1972), the Moapa form is not affected by the present listing of the Virgin River chub.

*Gila robusta seminuda* is endemic to 134 miles of the Virgin River in southwest Utah, northwest Arizona, and southeast Nevada. Historically, the Virgin River chub is believed to have occurred throughout most of the Virgin River from its original confluence with the main stem Colorado upstream to La Verkin Creek, near the town of Hurricane, Utah. Cope and Yarrow (1875) refer to the chub's abundance near Washington, Utah, as "this species is by no means scarce, as several hundred were observed captured by boys with hook and line." However, recent studies (Cross 1975, Woundfin Recovery Team 1977–1986) suggest that a large decrease in range and numbers of this species has occurred in the last century, primarily from 1860 to 1900 when many of the present water diversions were constructed. These diversions dewatered approximately 35 miles of the chub's natural habitat. With the construction of Hoover Dam and the impoundment of Lake Mead an additional 40 miles of river was inundated, for a nearly total destruction of almost 56 percent of the chub's original habitat.

This species presently occurs in only 50 miles of the mainstream Virgin River between Mesquite, Nevada, and La Verkin Creek near Hurricane, Utah; only twice has it been recorded in a tributary (Cross 1975, Hickman 1985). It is most common in deeper areas where waters are swift, but not turbulent, and is generally associated with boulders or other cover (Minckley 1973). It occurs over sand and gravel substrates in water less than 90 °F (30 °C), and is very tolerant of high salinity and turbidity (Deacon and Holden 1977). The Virgin River chub is an omnivore, eating algae, aquatic and terrestrial insects, organic detritus, and crustaceans (Cross 1975).

In a study of the fishes of the Virgin River from 1973 to 1975, Cross (1975) found very few young-of-the-year Virgin River chubs or adults over 17.5 cm (7 in) in standard length. During this study, Cross was able to capture only 154 individual chubs, comprising only 1 percent of the 10,822 native fish specimens he collected. The Woundfin Recovery Team reported good chub reproduction in 1978, 1983 and 1986. Hickman (1988) found good reproduction in 1983 and 1986 but very little in 1984, 1985, 1987 or 1988.

The size of many riverine fish populations, such as the Virgin River chub population, often fluctuates over time due to erratic environmental conditions. It is not clear what the major influencing factors are but fish produced during successful years may dominate the population and, for long-lived species, may influence its structure for many years. Thus, the size and future survival of the population is strongly influenced by the frequency of successful reproductive years and the survival of the young of those years. Man's alteration of natural hydrologic cycles and other perturbations in the Virgin River has caused changes in this system that may have resulted in fewer periods of optimal reproduction for the Virgin River chub.

During 1988, after salvaging 1200 Virgin River chub, all fishes were eradicated from a 21-mile reach of the Virgin River in Utah from the Washington Fields diversion downstream to the head of the Virgin River Gorge. The purpose was to eradicate the exotic red shiner (*Notropis lutrensis*). A few months later the fish population below Quail Creek Reservoir was further impacted by a devastating flood which resulted from the collapse of a dike retaining about 25,000 acre feet of water in the Quail Creek Reservoir. This event is believed to have had a devastating impact on the entire fish population in 85 miles of the Virgin River.

Potential threats to the species' survival include further water removal, additional impoundments, sedimentation, pollution, channel alteration, disease, and competition and/or predation by introduced species. The threats are magnified by the low numbers and naturally limited range of this fish and its consequent vulnerability to extensive losses from a single threat or even a single event.

Lands along those portions of the Virgin River occupied by the Virgin River chub are administered by the Bureau of Land Management (BLM), the States of Utah and Arizona, and private landowners. In Arizona about 80 to 90 percent of the lands along the river are administered by BLM, with private land being concentrated in the vicinity of Littlefield. In Utah, about 13 miles of the lands along the river are managed by BLM, the State owns 4 parcels with small amounts of river frontage, and the remainder is privately owned. In Nevada, lands along the river above the town of Mesquite are privately owned.

On August 23, 1978, the Service published a proposal to list the Virgin River chub as endangered with critical habitat (43 FR 37668). On September 30, 1980, the Service withdrew the above proposal, because it was not finalized within 2 years of its initial publication in the Federal Register (45 FR 64853) as required by the Endangered Species Act Amendments of 1978. On December 30, 1982, *Gila robusta seminuda* was included on the Vertebrate Notice of Review (47 FR 58454) in category 1. Category 1 includes those taxa for which the Service currently has substantial biological information to support proposing to list the species as endangered or threatened. In April 1983 the Woundfin Recovery Team recommended that this chub, which is found in the same river as the endangered woundfin (*Plagopterus argentissimus*), be added to the Federal list as endangered. Under contract with the Service, a status report on the Virgin River chub was prepared by Mr. C.O. Minckley. This 1983 report recommended that the chub be listed as endangered with critical habitat. On June 24, 1986, the Service published in the Federal Register (51 FR 22949) a proposal to list the Virgin River chub as endangered and to designate its critical habitat.

### Summary of Comments and Recommendations

In the June 24, 1986, proposed rule (51 FR 22949) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. The original comment period closed on August 25, 1986, but was reopened on September 18, 1986 (51 FR 33096), to accommodate the public hearing and remained open until December 15, 1986. Appropriate State agencies, county and city governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices summarizing the proposed rule and inviting general public comment were published in the *Daily Spectrum* on July 28, 1986, and in the *Deseret News* on July 31, 1986. Comments were received from 40 entities and are discussed below. Comments given at the public hearing are also summarized.

Requests for a public hearing were received from John S. Williams, Executive Director, Five County Association of Governments, St. George,

Utah; Jerry B. Lewis, Chairman, Washington County Commission, St. George, Utah; Callister, Duncan and Nebekes, Attorneys-at-Law, Salt Lake City, Utah; Tom Hatch, Chairman, Color Country Resource Conservation and Development, Cedar City, Utah; Norman H. Bangerter, Governor, State of Utah, Salt Lake City; and Robert A. Stark, Mayor, Washington City, Utah. A public hearing was held in St. George, Utah, on October 15, 1986. Interested parties were contacted and notified of the hearings, and a notice of the hearing was published in the **Federal Register** on September 8, 1986 (51 FR 33096). Newspaper notices announcing the public hearing were published in the *Daily Spectrum* on October 5, 1986, and in the *Deseret News* on September 19, 1986. A total of 30 people attended the hearing. A transcript of this hearing is available for inspection (see **ADDRESSES**). The 17 oral comments received in the hearings are also summarized below.

Because of the need for a prompt determination of endangered status for the Virgin River chub, and because of the complexity of the economic analysis that must accompany the final rule designating critical habitat, the Service has decided for the present to make final only the listing portion of the proposed rule. Section 4(b)(6)(C) of the Act allows the Service to postpone the designation of critical habitat for up to one additional year from the date of publication of the proposed rule. The final decision on the designation of critical habitat for the Virgin River chub will be made at a later date. Therefore, comments received regarding the proposed critical habitat designation will not be discussed here, but will be addressed in the final notice on critical habitat.

Comments from 32 parties were received: 12 supported the proposal; seven questioned or opposed the proposal and 13 either commented on information in the proposal but expressed neither support nor opposition, were nonbiological or irrelevant to the proposal, or contained only economic or other comments related to critical habitat designation.

Of the 30 people attending the public hearing, 16 people representing 17 parties presented oral statements. Seven parties opposed the listing, six supported the listing, and four parties either commented on information in the proposal but expressed neither support nor opposition, gave nonbiological comments, or provided economic or other comments related to critical habitat designation.

All letters and written or oral statements received during the comment period and public hearings are combined in the following discussion. All comments are available for public inspection (see **ADDRESSES**).

Comments supporting the proposal were received from Arizona Game and Fish Department, Arizona Department of Commerce, Nevada Department of Wildlife, Desert Fishes Council, American Society of Ichthyologists and Herpetologists, Utah Wildlife Federation, American Fisheries Society, Southern Utah Residents Concerned about the Environment, and seven other interested parties.

Comments questioning or in opposition to the proposal were received from Governor Norman Bangerter, Washington County Commission, Washington County Water Conservancy District, Washington County Farm Bureau, Utah Farm Bureau Federation, Five County Association of Governments, Color Country Resource Conservation and Development, Washington City, Cities of Hurricane and St. George, and two other interested parties.

Requests for information or comments that expressed neither support nor opposition, were nonbiological, economic, or related to critical habitat were received from Senator Orin Hatch, Senator Jake Garn, Arizona Department of Water Resources, Arizona State Land Department, Utah Department of Natural Resources, Soil Conservation Service (Utah Office), Bureau of Reclamation Upper Colorado Regional Office and Lower Colorado Regional Office, Federal Highways Administration, Washington Office of the Bureau of Land Management (responding for the Arizona State Office), Colorado River Basin Salinity Control Forum, and three interested parties.

Summaries of substantive comments addressing the listing of the Virgin River chub are covered in the following discussion. Comments of similar content are placed in a number of general groups. These comments and the Service's responses are given below:

*Issue 1:* Listing the Virgin River chub will adversely affect future economic development of southern Utah, particularly by affecting water resource development. In addition, listing is not necessary because existing regulations and controls, along with better water planning, are sufficient to protect the chub.

*Response:* The Act requires the Service to list a species "solely on the basis of the best scientific and commercial data available", regardless of the economic impacts. However, the Service does not intend to curtail the future economic development of the area by listing this species. Rather, the Service's intent is to provide the legal platform whereby the conservation of this species will be recognized in future planning. The Act only requires Federal agencies that carry out, fund, or permit projects to provide for the conservation of only those species that are listed as endangered or threatened. The listing of the woundfin as endangered, in 1970, has not impacted ongoing irrigation projects nor has it prevented the construction of Quail Creek Reservoir. Listing the Virgin River chub means that the Service will continue to work with other Federal agencies when they plan a project that may affect the continued survival of the species. The record demonstrates that endangered species rarely cause the abandonment of a project, but rather cause the project to proceed in a manner that provides for the conservation of the species. In addition to working with other Federal agencies, the Service hopes to develop a cooperative relationship with State and local governments and private local user groups to work towards the conservation and recovery of the species.

*Issue 2:* The 1984 studies by Hickman (Hickman 1985) seem to show an increase in chub abundance since Cross sampled the population in the early 1970's (Cross 1975).

*Response:* Hickman's data (1985, 1988) is not directly comparable with Cross (1975) because Hickman used more efficient sampling gear and sampled at different sampling sites. While Hickman has collected many more chubs, his sampling efforts greatly exceeded that of Cross. Hickman's observations relative to reproductive success concur with that of the Woundfin Recovery Team, which shows that the chub has spawned successfully only 3 of the past 12 years (1978, 1983, and 1986). This lack of breeding success has continued through the 1988 spawning season. The Service does not interpret 3 years of reproductive success out of the past 12 years as either establishing a trend or as acceptable evidence that the species is not endangered.

*Issue 3:* Listing the Virgin River chub is premature; the Service should wait until additional biological data are gathered or until ongoing studies are complete.

*Response:* The available biological data indicate that the Virgin River chub is sufficiently reduced in numbers and range, and is faced with threats serious

enough to warrant listing this species as endangered.

*Issue 4:* The endangered woundfin inhabits some of the same reaches of the Virgin River as the Virgin River chub. Why does the Service need to list the Virgin River chub when the protection of the Act given to the woundfin will be good enough to protect the Virgin River chub too?

*Response:* The Virgin River chub fully meets the requirements for listing as endangered as defined by the Act, therefore, the Service is required to list the species. If the Virgin River chub is not listed, its habitat needs will not be taken into account when planning for the habitat needs of the woundfin. Hickman's (1985) results indicate that both young-of-the-year and larger chubs may frequent the same areas as the woundfin, but according to current ecological theory, their habitat requirements cannot be identical. Therefore, the habitat for the chub cannot be adequately considered and protected in the planning and recovery process for the woundfin.

*Issue 5:* Several commenters disagreed with the Service's conclusion that habitat alteration is a threat to the species. They questioned whether any significant alteration has occurred, and argue that in the past the species has coexisted with development and can be expected to continue to coexist.

*Response:* The Service believes that habitat alterations, particularly impoundments and irrigation diversions that have already occurred, have significantly changed and reduced the habitat of the Virgin River chub and have contributed to the species' decline. The Virgin River chub has persisted in this greatly modified river, but further alteration and destruction of the species' habitat can only contribute to its decline. Ways in which habitat alteration and destruction have affected the Virgin River chub are discussed under "Factor A" of the "Summary of Factors Affecting the Species."

*Issue 6:* Chubs are more abundant in heavily impaired habitat (between the Washington Fields Diversion to the Arizona State line) than they are in what appears to be better habitat.

*Response:* The available data does not support this statement. Virgin River chub abundance is generally highest where the best feeding and holding habitats occur. These habitats are not spread evenly throughout the river, but are usually found where the better flows occur in the river. Highly impacted areas, such as immediately below Washington Fields Diversion, have lower concentrations of chubs.

*Issue 7:* The Service's population estimates are artificially low because flooding has decreased the number of fish.

*Response:* It is true that recent flood events appear to have negatively affected the chub populations in some areas. These floods are catastrophic events that have reduced the chub populations, thus the Service's population estimates are not "artificially low." Because there has been a major reduction in the species range, substantial changes in its native habitat, and infrequent spawning success, it will be much harder for these populations to recover to preflood numbers.

*Issue 8:* The fish is not a valid species or subspecies.

*Response:* Taxonomic experts unanimously agree that *Gila robusta seminuda* is a valid subspecies. The Virgin River chub has several features that distinguish this subspecies from other subspecies in the genus.

*Issue 9:* Instead of listing, why can't the Service form a committee, like that formed for the Upper Colorado River fishes, to oversee recovery actions and resolve water use conflicts?

*Response:* The available data indicate that the Virgin River chub fully meets all the criteria necessary for listing as endangered. Therefore, the Service is required to list the species. Once listed, the chub will receive the same protection the woundfin, Colorado squawfish, humpback chub, and bonytail chub receive. Recovery efforts for the latter three species are coordinated by both the Upper Colorado River Coordinating Committee and the Colorado River Fishes Recovery Team. Virgin River Chub recovery will be coordinated by the Woundfin Recovery Team, which will be renamed the Virgin River Fishes Recovery Team. Without listing, there would be little reason to consider chub habitat needs in any planning for the Virgin River.

*Issue 10:* Several commenters provided or commented on new data that have been collected since the publication of the proposed rule.

*Response:* The Service is aware of these data and has incorporated them into the final rule.

### Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Virgin River chub should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Virgin River chub (*Gila robusta seminuda*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* As with most desert river systems, the Virgin River has been extensively modified to accommodate human needs, which include irrigation, municipal and industrial uses, recreation, and limited hydropower production. Types of river modifications include: Conversion of flowing waters into still waters by impoundment; alteration of flow regimes (including conversion of perennial waters to intermittent or no flow, and the reduction, elimination, or modification of natural flooding patterns); alteration of water temperatures (either higher or lower); alteration of silt and bed loads; increase in water salinity; loss of marshes and backwaters; and alteration of stream channel characteristics from a well-defined, surface level, vegetated channel with a diversity of substrates and habitats, into a shallower, wider stream bed with little riparian vegetation, uniform substrates, and little habitat diversity. Causes of such alterations include: impoundments, water diversions, riparian vegetation destruction and alteration, channel down cutting, erosion, road construction, channelization, flood control, agricultural use of the stream banks, water pollution, and other watershed disturbances.

Water diversions and impoundments have caused the most obvious negative effects to the Virgin River chub population. Diversions have dewatered or reduced to shallow, braided streams some 35 miles of the Virgin River. These early changes in the Virgin River undoubtedly caused reductions in the abundance of native fishes, including the Virgin River chub, but the changes did not reduce the chubs to the point of extinction.

The Virgin River chub population has persisted in the river despite major river modifications and loss of habitat. Further modifications proposed along the Virgin River and its tributaries are likely to reduce habitat to a point that the river will no longer support the chub and the species will become extinct. Planned modifications to Virgin River tributaries include the following actions. The Washington County Conservancy District has identified four potential

reservoir sites including: Ash Creek above Toquerville, the East Fork of the Virgin River, North Creek above the town of Virgin, and Bullock Reservoir on the North Fork of the Virgin River (Thompson 1986). In addition, the Soil Conservation Service has several projects proposed in the Virgin River basin in Utah, including flood control and irrigation projects (Holt, *in litt.*). To avoid negative impacts to the chub, these projects will have to be carefully planned to provide for the conservation of the chub and its habitat.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The Service has no evidence to suggest overuse of this fish for any of these purposes.

C. *Disease or predation.* The Asian fish tapeworm (*Bothriocephalus acheilognathi*) poses a major threat to the Virgin River chub (Deacon 1986, Heckmann *et al.* 1986). This parasite was first recorded in Virgin River chubs in the St. George area by Heckmann *et al.* (1986), but probably occurred in chub populations in the lower river since 1979 (Heckmann *et al.* 1986). Fish heavily infected with tapeworms may be less able to cope with environmental stresses created by river modifications and to compete with exotic fishes than are uninfected fish. Heckmann *et al.* (1986) found that parasite loads were correlated with water quality, flow rates, and habitat disturbance, with the highest number and frequency occurring in disturbed sites. Heckmann *et al.* (1986) has speculated that the Asian tapeworm was introduced into the Virgin River via the non-native red shiner (*Notropis lutrensis*).

Unlike other portions of the Colorado River basin, the Virgin River has had relatively few exotic predatory fish species. In the past 70 years, only a few exotic predatory fish, such as green sunfish (*Lepomis cyanellus*), black bullhead (*Ictalurus melas*), and largemouth bass, have been able to invade the Virgin River, and then only with limited success. This lack of success is due primarily to the naturally high salinity, temperature, and turbidity of the stream and its highly fluctuating flows. The extreme physical conditions appear to have inhibited the invasion of many exotic species. Actions that alter natural environmental conditions may create conditions more favorable to exotic fishes.

The red shiner (*Notropis lutrensis*), an exotic species, is a relatively recent addition to the ichthyofauna of the upper Virgin River system. Red shiners have been found below the Virgin River Gorge for more than 25 years, where their increase has corresponded to a decrease in native fishes. Red shiners have been implicated in the decline of several other native species, are considered to be a threat to the federally endangered woundfin, and may present a significant threat to early life stages of the chub. In the St. George area, the red shiner (*Notropis lutrensis*) became established in 1985 and dominated fish collections within one year. In 1988 a major renovation effort was undertaken to remove the red shiner from 21 miles of the upper river and prevent its reinvasion through the construction of a barrier dam at the head of the Virgin River Gorge. The success of this undertaking continues to be evaluated. The red shiner's recent invasion demonstrates the seriousness of the threat of exotic fish invasions to all native species in the Virgin River.

D. *The inadequacy of existing regulatory mechanisms.* The State of Arizona currently lists the Virgin River chub under Group 2 of the Threatened Native Wildlife of Arizona (Arizona Game and Fish Commission 1982). Group 2 includes those animals whose continued presence in Arizona is now in jeopardy. The State of Nevada lists the species as sensitive (Nevada Board of Wildlife Commissioners 1981), a category which includes those species that may be candidates for classification to a more restrictive status. The State of Utah lists the Virgin River chub as threatened, meaning it is likely to become endangered in the foreseeable future. These State listings protect the chub from unregulated taking. However, none of these State listings provide habitat protection for the chub.

In 1986, Utah passed a law which provides the Utah Division of Wildlife Resources with the opportunity to acquire water rights for in-stream flow purposes to protect fish and wildlife habitat. This provision may allow the State to work with cooperating agencies and individuals to protect sensitive, endangered or threatened species and their habitats. The Nevada water law has no provisions for the acquisition and protection of in-stream water rights for the preservation of fish and wildlife in their habitat.

E. *Other natural or manmade factors affecting its continued existence.* The reduced numbers and range of the Virgin River chub make it particularly vulnerable to the threats discussed above. Because the Virgin River chub exists under continued and expanding levels of stress, any activity that affects the quantity or quality of its habitat will also affect the subspecies.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the Service has decided to list the Virgin River chub as endangered. A decision to take no action would constitute failure to properly classify the Virgin River chub pursuant to the Endangered Species Act and would exclude this chub from the protection provided by the Act. A decision to propose only threatened status would not adequately reflect the small population size, the reduced range, and the multiple threats faced by this fish. For the reasons given below, critical habitat designation is being postponed. Designation of critical habitat will be addressed in a subsequent **Federal Register** notice.

**Critical Habitat**

Section 4(a)(3) of the Act requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. Section 4(b)(6)(C) further indicates that a concurrent critical habitat determination is not required, and that the final decision on designation may be postponed for one additional year from the date of publication of the proposed rule, if the Service finds that a prompt determination of endangered or threatened status is essential to the conservation of the species involved. The Service considers that a prompt determination of endangered status for the Virgin River chub is essential. As a proposed species, the Virgin River chub is eligible only for the limited consideration given under the conference requirement of section 7(a)(4) of the Act, as amended. This does not require a limitation on the commitment of resources on the part of concerned Federal agencies or applicants for Federal permits. Therefore, to ensure that the full benefits of section 7 and other conservation measures provided by the Act will apply to the Virgin River chub, prompt determination of endangered status is essential.

Section 4(b)(2) of the Act requires the Service to consider economic impacts of designating a particular area as critical habitat. The Service received considerable information during the comment period on the possible economic impacts of designating critical habitat. Critical habitat designation is being deferred to allow time to undertake a full economic analysis.

### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. Potential recovery actions for the Virgin River chub include: (1) Conducting studies on larval drift and the impact of parasites and red shiners; (2) chemical elimination of all fish from below Washington Fields Diversion and restocking the reclaimed river with native species (including the chub); (3) construction of a fish passage barrier below Riverside, Nevada; (4) recommending water management policies; and (5) providing legally protected in-stream flow. The protection required of Federal agencies and prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Portions of the Virgin River flow through Bureau of Land Management lands, the Soil Conservation Service is involved in irrigation water conservation and water quality improvement, potential water projects on the river would be under the jurisdiction of the Bureau of Reclamation, and most construction and alteration activities in the river require an authorizing permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act. These agencies will have to consult with the Service if their actions may affect the Virgin River chub or its critical habitat. In addition, Federal agencies that fund, authorize, or construct flood control, agricultural, hydropower facilities, channelization, and highway and bridge construction projects would also have to consult with the Service prior to the action.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specific period of time to relieve undue economic hardship that would be suffered if such relief were not available.

### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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### Author

This rule was prepared by Sonja Jahrsdoerfer, U.S. Fish and Wildlife

Service, Endangered Species Biologist, Albuquerque, New Mexico 87103 (505/766–3972 or FTS 474–3972). Donald Archer, U.S. Fish and Wildlife Service, Salt Lake City, Utah (801/524–4430 or FTS 588–4430) reviewed the rule and provided information on the 1988 eradication project and 1989 flood.

**List of Subjects in 50 CFR Part 17**

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

**Regulation Promulgation**

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulation, is amended as set forth below:

**PART 17—[AMENDED]**

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

**Authority:** Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411; Pub. L. 100–478, 102 Stat. 2306; Pub. L. 100–653, 102 Stat. 3825 (16 U.S.C. 1531 et seq.); Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under "Fishes," to the List of Endangered and Threatened Wildlife.

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| Fishes: | | | | | | | |
| * | * | * | * | * | * | * | |
| Chub, Virgin River | *Gila robusta semidnuda* | U.S.A. (AZ, NV, UT). | Entire | E | 360 | NA | NA |

* * * * *

Dated: August 1, 1989.

**Susan Recce Lamson,**

*Acting Assistant Secretary for Fish and Wildlife and Parks*

[FR Doc. 89–19902 Filed 8–23–89; 8:45 am]

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