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# federal register

Friday  
October 6, 1989

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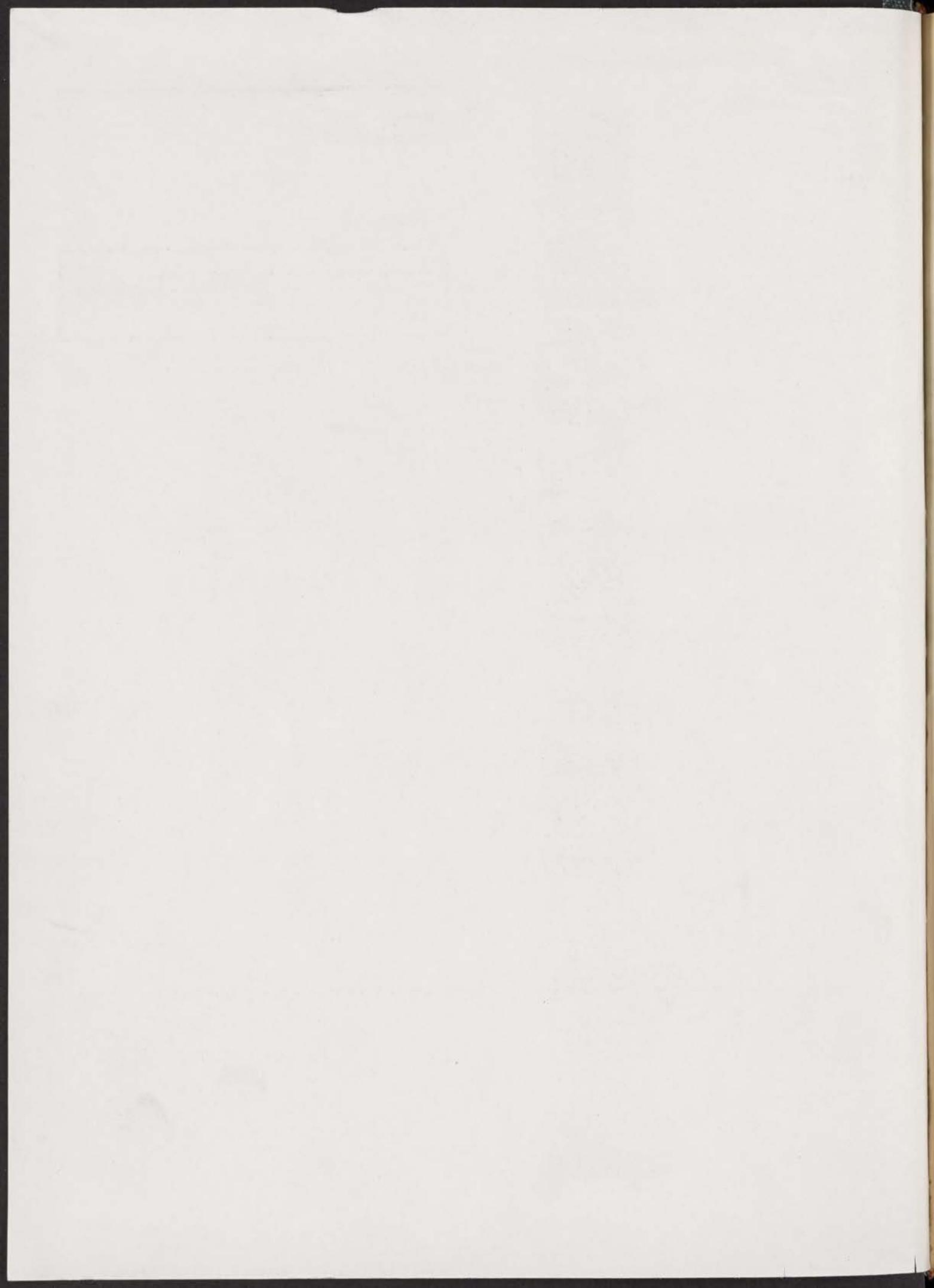
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Friday  
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# Federal Register

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  2. The relationship between the Federal Register and Code of Federal Regulations.
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  4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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**RESERVATIONS:** 202-523-5240.

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# Contents

Federal Register

Vol. 54, No. 193

Friday, October 6, 1989

## Agricultural Marketing Service

### RULES

Milk marketing orders:

Iowa, 41241

Nebraska-Western Iowa, 41240

### PROPOSED RULES

Grapes (Tokay) grown in California, 41251

Milk marketing orders:

Great Basin, 41254

Onion (Vidalia) grown in Georgia, 41252

Oranges and grapefruit grown in Texas, 41249

Tomatoes grown in Florida, 41253

## Agriculture Department

See also Agricultural Marketing Service; Animal and Plant Health Inspection Service; Commodity Credit Corporation; Federal Crop Insurance Corporation

### RULES

World market price determinations:

Cotton, upland, 41237

## Alaska Power Administration

### NOTICES

Wholesale power rates:

Eklutna Project, 41330

## Animal and Plant Health Inspection Service

### NOTICES

Environmental statements; availability, etc.:

Genetically engineered plants; field test permits—

Tobacco, 41312

## Blind and Other Severely Handicapped, Committee for Purchase From

See Committee for Purchase From the Blind and Other Severely Handicapped

## Civil Rights Commission

### NOTICES

Meetings; Sunshine Act, 41427

## Coast Guard

### PROPOSED RULES

Pollution and tank vessels:

Marine vapor control systems, 41366

## Commerce Department

See also Economic Analysis Bureau; Export Administration Bureau; Foreign-Trade Zones Board; International Trade Administration; National Institute of Standards and Technology; National Oceanic and Atmospheric Administration

### NOTICES

Agency information collection activities under OMB review, 41313

(3 documents)

## Committee for Purchase From the Blind and Other Severely Handicapped

### NOTICES

Procurement list, 1989:

Additions and deletions, 41326, 41327

(2 documents)

## Committee for the Implementation of Textile Agreements

### NOTICES

Cotton, wool, and man-made textiles:

Malaysia, 41325

Mexico, 41326

Export visa requirements; certification, waivers, etc.:

Indonesia, 41325

## Commodity Credit Corporation

### RULES

Loan and purchase programs:

Cotton, upland, 41237

### NOTICES

Loan and purchase programs:

Price support levels—

Tobacco; correction, 41363

## Customs Service

### RULES

Fines, penalties, and forfeitures:

Anti-Drug Abuse Act; implementation—

Seizure of property for possession of controlled substances; correction, 41364

## Economic Analysis Bureau

### PROPOSED RULES

Direct investment surveys:

Foreign direct investments in United States—

BE-10; benchmark survey of U.S. direct investment abroad, 41275

## Education Department

### NOTICES

Agency information collection activities under OMB review, 41327

Grants and cooperative agreements; availability, etc.:

National Defense and Perkins (National Direct) Student

Loan Program Directory of Designated Low Income Schools, 41328

## Energy Department

See also Alaska Power Administration; Energy Information Administration; Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department; Western Area Power Administration

### NOTICES

Environmental statements; availability, etc.:

Springfield City Water, Light, and Power, Lakeside

Station; gas reburning-sorbent injection project, 41328

Natural gas exportation and importation:

Northwest Pipeline Corp., 41331

Powerplant and industrial fuel use; new electric powerplant

coal capability; compliance certifications:

Everett Energy Corp., 41333

## Energy Information Administration

### NOTICES

Meetings:

American Statistical Association Committee on Energy Statistics, 41331

**Environmental Protection Agency****RULES**

## Hazardous waste:

Identification and listing—

Methyl bromide production wastes, 41402

**NOTICES**

Environmental statements; availability, etc.:

Agency statements—

Comment availability, 41339

Weekly receipts, 41339

**Executive Office of the President**

See Management and Budget Office

**Export Administration Bureau****NOTICES**

Export privileges, actions affecting:

Lange, Wilfried, et al., 41314

Meetings:

Military Critical Technologies List Implementation  
Technical Advisory Committee, 41314**Federal Crop Insurance Corporation****PROPOSED RULES**

Crop insurance endorsements, etc.:

Beans, canning and processing, 41248

Tomatoes (dollar plan); fresh market, 41246

Crop insurance; various commodities:

Peaches, 41249

**Federal Deposit Insurance Corporation****NOTICES**

Federal Home Loan Bank Board and Federal Savings and

Loan Insurance Corporation; regulations and orders  
allocation, 41359**Federal Energy Regulatory Commission****NOTICES**

Natural gas certificate filings:

Northwest Pipeline Corp. et al.; correction, 41363

*Applications, hearings, determinations, etc.:*

Northern Natural Gas Co.; correction, 41363

**Federal Highway Administration****PROPOSED RULES**

Engineering and traffic operations:

Truck size and weight—

Reasonable access, 41278

**Federal Railroad Administration****NOTICES**

Exemption petitions, etc.:

Southern Pacific Transportation Co., 41358

Southern Railway System, 41359

**Federal Reserve System****PROPOSED RULES**

Home mortgage disclosure (Regulation C):

Home Mortgage Disclosure Act amendments:  
implementation, 41255**NOTICES***Applications, hearings, determinations, etc.:*Employees' Profit-Sharing Plan of United States Trust Co.  
of New York and Affiliated Companies et al., 41341

First Sioux Bancshares, Inc.; correction, 41341

SouthTrust Corp. et al., 41341

Weetamoe Bankcorp et al., 41342

**Federal Retirement Thrift Investment Board****NOTICES**

Meetings; Sunshine Act, 41362

**Federal Trade Commission****RULES**Appliances, consumer; energy costs and consumption  
information in labeling and advertising:

Comparability ranges—

Water heaters, 41242

**NOTICES**

Prohibited trade practices:

R.J. Reynolds Tobacco Co., 41342

**Fish and Wildlife Service****PROPOSED RULES**

Endangered Species Convention:

Appendixes; amendments, 41282

Importation, exportation, and transportation of wildlife:

Designated port status—

Houston, TX, 41295

**NOTICES**

Meetings:

Endangered Species of Wild Fauna and Flora  
International Trade Convention  
Conference, 41346**Food and Drug Administration****RULES**Food, cosmetic and miscellaneous regulations; editorial  
amendments

Correction, 41363

**NOTICES**

Human drugs:

International drug scheduling—

Psychotropic substances; benzodiazepine drugs;  
propylhexedrine; correction, 41363

Meetings:

Advisory committees; panels, etc.; correction, 41363  
Consumer information exchange, 41344**Foreign-Trade Zones Board****NOTICES***Applications, hearings, determinations, etc.:*

Tennessee—

Saturn Corp. automobile manufacturing plant, 41316

**General Services Administration****RULES**

Federal property management:

Federal travel—

Federal and State tax tables; 1989 relocation income  
tax allowance payments calculation, 41244

Utilization and disposal of real property—

Non-Federal interim use of surplus real property, 41244

**NOTICES**

Meetings:

Federal, Academic, and Industry Logistics Experts  
Consortium, 41344**Health and Human Services Department**

See Food and Drug Administration

**Hearings and Appeals Office, Energy Department****NOTICES**

Cases filed, 41338

Decisions and orders, 41334

**Housing and Urban Development Department****NOTICES**

- Grants and cooperative agreements; availability, etc.:  
 Facilities to assist homeless—  
 Excess and surplus Federal property, 41344

**Interior Department**

See also Fish and Wildlife Service; Land Management Bureau; Minerals Management Service; Reclamation Bureau; Surface Mining Reclamation and Enforcement Office

**PROPOSED RULES**

- Superfund and Clean Water Act:  
 Natural resources damage assessments—  
 Type A procedures; Great Lakes environments; correction, 41363

**Internal Revenue Service****RULES**

- Income taxes:  
 Elections under Technical and Miscellaneous Revenue Act of 1988  
 Correction, 41243, 41364  
 (2 documents)

**International Trade Administration****NOTICES**

- Antidumping:  
 Choline chloride from Canada, 41316  
 Residential door locks and parts from Taiwan, 41318  
 Antidumping and countervailing duties:  
 Administrative review requests, 41317  
*Applications, hearings, determinations, etc.:*  
 National Oceanic and Atmospheric Administration et al., 41323  
 New York University Medical Center et al., 41322

**Interstate Commerce Commission****NOTICES**

- Motor carriers:  
 Compensated intercorporate hauling operations, 41352  
 (2 documents)  
 Railroad operation, acquisition, construction, etc.:  
 Blackstone Capital Partners L.P., 41353  
 Camp Lejeune Railroad Co., 41353  
 Nimishillen & Tuscarawas Railway Co., 41353  
 Railroad services abandonment:  
 CSX Transportation, Inc., 41354

**Labor Department**

See Mine Safety and Health Administration; Occupational Safety and Health Administration; Veterans Employment and Training, Office of Assistant Secretary

**Land Management Bureau****NOTICES**

- Environmental statements; availability, etc.:  
 Powder River I Federal coal production region, MT, 41345  
 Mineral interest applications:  
 Arizona; correction, 41364

**Management and Budget Office****NOTICES**

- Budget rescissions and deferrals, 41410

**Mine Safety and Health Administration****NOTICES**

- Safety standard petitions:  
 Aluminum Co. of America, 41354  
 Carter-Roag Coal Co., Inc., 41354  
 GREFCO, Inc., 41355  
 Mine Hill Coal Co., No. 50, 41355

**Minerals Management Service****NOTICES**

- Meetings:  
 Outer Continental Shelf National Advisory Board, 41352

**National Institute of Standards and Technology****NOTICES**

- Information processing standards, Federal:  
 Database language SQL, 41323

**National Oceanic and Atmospheric Administration****PROPOSED RULES**

- Fishery conservation and management:  
 Gulf of Mexico reef fish, 41297  
 Fishery products, processed:  
 Fresh and frozen shrimp; grade standards  
 Correction, 41296

**NOTICES**

- Fishery management councils; hearings:  
 Gulf of Mexico and South Atlantic—  
 Coastal migratory pelagic (mackerel) resources, 41324

**National Science Foundation****NOTICES**

- Agency information collection activities under OMB review, 41355

**Nuclear Regulatory Commission****NOTICES**

- Environmental statements; availability, etc.:  
 Limerick Generating Station, 41356  
*Applications, hearings, determinations, etc.:*  
 Carolina Power & Light Co., 41356

**Occupational Safety and Health Administration****RULES**

- Safety and health standards:  
 Air contaminants, 41243  
 Hazardous energy sources control (lockout/tagout)  
 Correction, 41364

**Office of Management and Budget**

See Management and Budget Office

**Public Health Service**

See Food and Drug Administration

**Reclamation Bureau****NOTICES**

- Agency information collection activities under OMB review, 41345

**Securities and Exchange Commission****NOTICES**

- Self-regulatory organizations; unlisted trading privileges:  
 Chicago Board Options Exchange, Inc., 41357

**Small Business Administration****NOTICES**

- Meetings; regional advisory councils:  
 Massachusetts, 41358



# Rules and Regulations

Federal Register

Vol. 54, No. 193

Friday, October 6, 1989

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

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

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

#### Commodity Credit Corporation

#### 7 CFR Parts 26 and 1427

### Determination of World Price for Certain Commodities; Upland Cotton and Price Support and Production Adjustment Programs

**AGENCY:** Office of the Secretary and Commodity Credit Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The purpose of this rule is to amend the regulations found at: (1) 7 CFR part 26 which set forth the formula which is used by the Secretary of Agriculture to determine and adjust the prevailing world market price for upland cotton; and (2) 7 CFR part 1427 with regard to the administration of the upland cotton price support loan program. These actions are initiated in accordance with section 103A of the Agricultural Act of 1949, as amended, and the Commodity Credit Corporation Charter Act, as amended.

Implementation of the changes made by this rule will improve the effectiveness of the upland cotton program.

**EFFECTIVE DATE:** October 6, 1989.

#### FOR FURTHER INFORMATION CONTACT:

Charles V. Cunningham, Leader, Fibers Group, Commodity Analysis Division, USDA-ASCS, room 3758 South Building, P.O. Box 2415, Washington, DC 20013, or call (202) 447-7954. 2412-7954.

**SUPPLEMENTARY INFORMATION:** This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been designated as "not major." It has been determined that these provisions will not result in: (1) An annual effect on the economy of \$100

million or more; (2) major increases in costs or price for consumers, individual industries, Federal, State or local Government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This titles and numbers of the Federal Assistance Programs to which this final rule applies are: Commodity Loans and Purchases—10.051 and Cotton Production Stabilization—10.052 as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Analysis completed when 7 CFR part 26 was originally added to the Code of Federal Regulations adequately covers the amendments to 7 CFR part 26. In addition, neither the Agricultural Stabilization and Conservation Service (ASCS) nor the Commodity Credit Corporation (CCC) is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of 7 CFR part 1427. Therefore, a new Regulatory Flexibility Analysis has not been prepared.

It has been determined by an environmental evaluation that these actions will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

These programs/activities are not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

A proposed rule was published in the *Federal Register* on May 25, 1989, at 54 FR 22600 which would amend regulations found at 7 CFR part 26 which set forth the formula used by the Secretary of Agriculture to determine and adjust the prevailing world market price for upland cotton, and 7 CFR part 1427 with regard to the administration of the upland cotton price support loan program. The proposed rule provided for a 30-day public comment period which ended June 26, 1989. The Department

received a total of 288 comments. Respondents included 154 warehouses, compresses, gins and related associations, 96 individual producers, 17 Congressional responses, 8 producer associations, 4 Farm Bureau affiliates, 4 cotton cooperative associations, 3 shippers, 1 shipper association and 1 textile association.

### Discussion of Comments

Seventy-six respondents commented on the proposal to permit the Secretary of Agriculture to make a further adjustment in the prevailing world market price if it is determined, after a review of various factors, that such an adjustment is necessary in order for the prevailing world market price to be adjusted to United States quality and location. The proposal further specified data to be considered in deciding whether to make a further adjustment in the adjusted world price, including the following, as available: (1) U.S. prices for Strict Low Middling (SLM) 1½ inch (micronaire 3.5 through 4.9) cotton as quoted in the designated U.S. spot markets relative to the formula-derived adjusted world price; (2) price quotations for the U.S. Memphis territory and California/Arizona territory as quoted for Middling (M) 1¾ inch cotton C.I.F. northern Europe relative to price quotations for other growths as quoted for M 1¾ inch cotton C.I.F. northern Europe; (3) the level of sales of U.S. cotton for export as reported in the weekly U.S. Export Sales report; and (4) other relevant data, including, but not limited to, a comparison of available actual sales prices for grades of cotton and quoted prices for such grades and the estimated volume of cotton available for sale from competing foreign sellers of cotton.

All but two respondents supported the concept of an adjustment. Thirteen respondents expressed general support for discretionary authority to make the additional adjustment and another 40 favored such discretionary authority with a mechanism to trigger its use.

Two different methods for calculating the adjustment were proposed by the respondents as follows:

a. Base the adjustment on the share of U.S. cotton exports as compared to world cotton exports. If U.S. exports fall below 27 percent of world exports, the adjustment shall be up to the difference between the lowest-priced U.S. growth

quoted for M 1 $\frac{1}{2}$  inch cotton C.I.F. northern Europe and the average of the five lowest-priced growths of similar-quality cotton quoted in northern Europe. If U.S. exports fall below 22 percent of world exports, the adjustment should be up to the difference between the lowest-priced U.S. growth quoted and the lowest-priced similar-quality growth quoted for northern Europe delivery.

b. When the price quotation for U.S. Memphis territory as quoted for M 1-3/32 inch cotton C.I.F. northern Europe is not one of the three lowest-priced growths quoted for similar-quality cottons, adjust the formula-derived adjusted world price by the difference between the representative Memphis Territory Spot quote landed northern Europe and the average of the three lowest-priced growths of similar-quality cottons C.I.F. northern Europe. The representative Memphis Territory Spot quote would be an average of U.S. spot market quotes for the Southeastern, North Delta, South Delta and East Texas/Oklahoma markets; and the cost to land would be taken from the current adjusted world price formula.

Fourteen respondents supported implementing either of the proposals or some combination of the two. However, one respondent stated that the derived adjustment should be treated as a minimum rather than a maximum adjustment. Five respondents specifically favored proposal (a) and one supported proposal (b). Another respondent supporting proposal (a) further added that when U.S. carryover stocks or projected stocks were excessive, the Secretary of Agriculture should have the authority to institute price-corrective measures before U.S. exports dropped to traditional levels. Another response favoring proposal (a) suggested that the adjustment operate through the issuance of first handler certificates rather than through a lowering of the adjusted world price in order to avoid penalizing producers prevented from participating in the upland cotton program due to the statutory maximum payment limitation provisions.

Only one other respondent offered a specific proposal for calculating the adjustment. That respondent recommended an adjustment of up to 50 points per week if U.S. export sales did not reflect an acceptable U.S. market share of world cotton trade.

One respondent did not specifically support or oppose the proposed rule with regard to the adjustment. Instead, the respondent pointed out the shortcomings and problems with the current formulas with formula proposed

by other respondents and with the list of factors to be considered in determining the adjustment as set forth in the proposed rule. The respondent did not discuss any specific formula-related alternatives.

Another respondent did not specifically endorse discretionary authority but stated that any adjustment should be formula-derived, not based on subjective evaluation. Another respondent who supported discretionary authority stated that the adjustment should be based on a formula developed and approved ahead of time.

After reviewing the comments received on this issue, it has been determined that § 26.3(b) of the proposed rule should be changed to authorize an additional adjustment in the prevailing world market price whenever: (1) The formula-derived adjusted world price is less than 115 percent of the current marketing year loan level for SLM 1-1/16 inch, micronaire 3.5 through 4.9, cotton, and (2) the Friday through Thursday average price quotation for the lowest-priced U.S. growth as quoted for M 1-3/32 inch cotton C.I.F. northern Europe is greater than the Northern Europe price. The amount of the additional adjustment may not exceed the difference between the Friday through Thursday average price quotation for the lowest-priced U.S. growth as quoted for M 1-3/32 inch cotton C.I.F. northern Europe and the Northern Europe price. Factors considered in determining the actual amount of the adjustment will include the U.S. share of world exports, the current level of U.S. cotton export sales and/or U.S. cotton export shipments, and other relevant data as available.

This procedure incorporates features both from the original proposal and from comments submitted by respondents. It limits the maximum adjustment and provides discretion in determining the amount of the adjustment within the maximum limit. It triggers an adjustment only when the U.S. is uncompetitive relative to the Northern Europe price, and when a lowering of the adjusted world price would likely be effective. The 115 percent trigger level would limit adjustments to those periods when such adjustments would affect the price at which producers repay price support loans.

All of the respondents commented on the proposed rule to reinstate, beginning with the 1989 crop, the assessment and payment of interest and warehouse storage charges during the 8-month loan extension period and to require, as a condition of approving the loan extension, that producers either prepay 8 months' storage charges to the

warehouse or provide documentation from the warehouseman that CCC will not be held responsible for such storage charges. One hundred and fifty-seven respondents opposed either or both of these proposals. Reasons cited for their opposition included:

1. Issuing a statement that CCC is not responsible for the charges would eliminate the incentive for producers to market the cotton.

2. Warehouses need to maintain a lien on the cotton in order to borrow working capital.

3. Independent warehouses would be placed at a disadvantage relative to cooperative warehouses, since the latter can absorb the charges by discounting the members' distribution of earnings.

4. Because the long-standing industry practice is for the storage charges to follow the cotton, warehouses have traditionally accepted delivery of cotton from gins and charged buyers for storage at the time the cotton is shipped. Warehouses generally do not deal directly with producers. They would not know at what point buyers should assume responsibility for storage from the sellers. Warehousemen would have particular difficulty processing unused balances of prepaid amounts in order to make refunds. Warehousemen are not equipped to handle the paperwork involved in implementing the proposal.

The respondents suggested that, in the event prepayment of 8 months' storage charges is required, the responsibility for collecting the charges should rest with the Agricultural Stabilization and Conservation Service (ASCS) through its county office system.

Another 107 respondents opposed prepayment of 8 months' storage charges on the basis that such action would:

1. Lower the net loan to producers, causing financial hardship.

2. Virtually eliminate the 8-month loan extension as a producer option, effectively resulting in a 10-month loan and contributing to increased price volatility, exaggerated seasonal price variation, and increased forfeitures to CCC. Respondents commented that the 10-month loan had been tried and failed in the past and that the 18-month loan works well allowing producers to span two crop years and make available to the market adequate supplies of various cotton qualities.

3. Cause excessive paperwork.

One hundred and three respondents supported the concept that storage charges, starting in month 11 of the term of the loan, be paid by the person who redeems the loan collateral at the time of the redemption. Twenty respondents

specifically opposed the requirement that warehouses provide documentation that CCC not be held responsible for storage charges.

Six respondents supported the proposed rule, with qualifications. Three viewed the proposed rule as only a partial solution urged additional but nonspecified measures. Two responses supported this aspect of the proposed rule and also suggested that CCC require prepayment of 10 months of storage charges when the cotton is initially pledged as collateral for the loan in order to "equalize" the redemption of cotton loan collateral with cash as compared to cotton which had been pledged as collateral for a price support loan and acquired through the use of commodity certificates, thereby facilitating the flow of cotton to the market.

After reviewing the comments received, it has been determined that § 1427.7(a)(2) of the proposed rule should be adopted as final with regard to reinstatement of interest and storage charges during the 8-month loan extension beginning with the 1989 crop. It has been determined that beginning with the 1989 crop, if a producer's price support loan is extended for 8 months and the loan collateral is there after forfeited to CCC, all storage costs associated with the storage of the forfeited cotton, beginning with the first month of such extension, shall be paid to CCC by the producer. This action will encourage the timely movement of cotton into the market. In addition, the producer shall pay to CCC a handling fee of \$1.00 per bale. This action will allow CCC to reduce the administrative costs which will be incurred due to CCC's payment of these storage charges as compared to having the producer make these payments directly to the storing warehouse.

One respondent commented on the procedure for redeeming unextended upland cotton price support loans with cash. The respondent recommended that the proposed rule be amended so that when the adjusted world price exceeds the loan level, carrying charges payable at redemption be determined by quality, including, when applicable, the coarse count adjustment.

The respondent's recommendation was not adopted. The proposed rule did not contain any changes relating to the coarse adjustment because the amount of any adjustment in the adjusted world price will also apply to coarse count qualities of cotton and the relationship between higher quality cottons and coarse count qualities of cotton should not be affected.

## List of Subjects

### 7 CFR Part 26

Cotton, world market price.

### 7 CFR Part 1427

Cotton, Loan programs—agriculture, Packaging and containers, Price support programs, Reporting and recordkeeping requirements, Surety bonds, and Warehouses.

## Final Rule

Accordingly, the regulations found at part 26 of title 7, subpart A and part 1427 of title 7 of the Code of Federal Regulations are amended as set forth below:

### PART 26—[AMENDED]

1. The authority citation for part 26, subpart A, is revised to read as follows:

Authority: 7 U.S.C. 1444-1.

2. Section 26.3(a) is revised to read as follows:

#### § 26.3 Adjusted world price for upland cotton.

(a) The prevailing world market price for upland cotton, adjusted in accordance with paragraph (b) of this section (hereinafter referred to as the "adjusted world price"), shall be applicable to the programs of the Department of Agriculture for the 1986 through 1990 crops of upland cotton as provided in section 103A of the Act.

3. The introductory text of § 26.3(b) is revised to read as follows:

#### § 26.3 Adjusted world price for upland cotton.

(b) The adjusted world price for upland cotton shall equal the Northern Europe price as determined in accordance with § 26.2, adjusted as follows:

4. Section 26.3 is amended by adding a new paragraph (b)(4) as follows:

#### § 26.3 Adjusted world price for upland cotton.

(b) \* \* \*

(4)(i) If it is determined that the prevailing world market price, as adjusted in accordance with paragraph (b)(1) through (b)(3) of this section, is less than 115 percent of the current crop year loan level for Strict Low Middling (SLM) 1½ inch (micronaire 3.5 through 4.9) cotton, and that the Friday through Thursday average price quotation for the lowest-priced U.S. growth as quoted for Middling (M) 1½ inch cotton C.I.F. northern Europe is greater than the Northern Europe price, such price may

be adjusted on the basis of some or all of the following data, as available:

(A) The U.S. share of world exports;  
(B) The current level of cotton export sales and/or cotton export shipments; and

(C) Other data determined by the Secretary, or a designee of the Secretary, to be relevant in establishing an accurate prevailing world market price determination adjusted to United States quality and location.

(ii) The adjustment may not exceed the difference between the Friday through Thursday average price for the lowest-priced U.S. growth as quoted for Middling 1½ inch cotton C.I.F. northern Europe and the Northern Europe price.

### PART 1427—[AMENDED]

5. The authority citation for 7 CFR part 1427 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423 and 1444-1; 15 U.S.C. 714b and 714c; and sec. 501 of Pub. L. 99-198.

6. Section 1427.7 is amended by designating the text of paragraph (a) beginning with the words "Loans on Form A" as paragraph (a)(1) and adding the following new paragraph (a)(2) to read as follows:

#### § 1427.7 Maturity of loans.

(a) \* \* \*

(2) Beginning with the 1989 crop of upland cotton, if a producer's price support loan is extended for 8 months in accordance with paragraph (a)(1) of this section and the loan collateral is thereafter forfeited to CCC:

(i) All storage costs associated with the storage of the forfeited cotton, beginning with the first month of such extension, shall be paid to CCC by the producer; and

(ii) The producer shall pay to CCC a handling fee of \$1.00 per bale.

7. Section 1427.22(a)(2) is amended by designating the existing text as paragraph (a)(2)(i) and by adding a new paragraph (a)(2)(ii) to read as follows:

#### § 1427.22 Repayment of loans.

(2)(i) \* \* \*

(ii) Beginning with the 1989 crop of upland cotton, if a loan is repaid and such loan has not been extended in accordance with § 1427.7; the cotton pledged as collateral for such loan is not acquired by the producer through the use of commodity certificates in accordance with part 1470 of this chapter; and the adjusted world price determined in accordance with 7 CFR part 26 is:

(A) Below the loan rate for base quality (Strict Low Middling 1 $\frac{1}{8}$  inch, micronaire 3.5 through 4.9) upland cotton, CCC will not require the payment of any interest which has accrued with respect to such loan and will pay all of the warehouse charges which have accrued with respect to the cotton pledged as collateral for such loan;

(B) Above the base loan rate by less than the sum of the accrued interest and warehouse charges, CCC will not require the payment of that portion of the accrued interest and will pay that portion of the accrued warehouse charges that are determined to be necessary to permit the loan collateral to be redeemed at the adjusted world price; or

(C) Above the base loan rate by as much as or more than the sum of the accrued interest and warehouse charges, CCC will require the payment of all accrued interest and will not pay any of the accrued warehouse charges. In such case, the loan may be repaid at the loan rate plus accrued interest and any warehouse charges previously paid by CCC.

Signed at Washington, DC, on October 2, 1989.

Jack C. Parnell,

Acting Secretary of Agriculture.

[FR Doc. 89-23669 Filed 10-5-89; 8:45 am]

BILLING CODE 3410-05-M

## Agricultural Marketing Service

### 7 CFR Part 1065

[DA-89-032]

#### Milk in the Nebraska-Western Iowa Marketing Area; Revision of Supply Plant Shipping Percentage and Diversion Limitation Percentage

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

**ACTION:** Revision of rules.

**SUMMARY:** This action revises certain provisions of the Nebraska-Western Iowa Federal milk order. Specifically, the action reduces the shipping standard for pool supply plants by 10 percentage points and increases by 20 percentage points the amount of milk that may be moved directly from farms to nonpool plants and still be priced under the order. The action was requested by Associated Milk Producers, Inc. (AMPI), which operates pool supply plants and represents a significant number of producers whose milk is pooled under the order. The revisions are needed to maintain the pool status for producers

who have historically been associated with the market and to prevent uneconomic movements of milk.

**EFFECTIVE DATE:** October 6, 1989.

**FOR FURTHER INFORMATION CONTACT:** John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

**SUPPLEMENTARY INFORMATION:** Prior document in this proceeding:

Notice of Proposed Revision of Supply Plant Shipping Percentage and Diversion Limitation Percentage: Issued August 21, 1989; published August 25, 1989 (54 FR 35352).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The action lessens the regulatory impact of the order on milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

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

This revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the provisions of §§ 1065.7(b)(3) and 1065.13(d)(4) of the Nebraska-Western Iowa order.

Notice of proposed rulemaking was published in the *Federal Register* (54 FR 35352) concerning a proposed relaxation of the supply plant shipping percentage and the limits on the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. The revisions were proposed to be effective for an indefinite period beginning with the month of September 1989. The public was afforded the opportunity to comment on the notice by submitting written data, views and arguments by September 1, 1989. No comments were received.

#### Statement of Consideration

This action revises the shipping standards set forth in § 1065.7(b) and the diversion limitations set forth in § 1065.13(d)(2) and (3) and is applicable to milk marketed on and after September 1, 1989. The revision reduces the supply plant shipping percentage by

10 percentage points, from the present 40 to 30 percent for the months of September through March. Also, the diversion limits on producer milk are increased by 20 percentage points, from 40 to 60 percent for the months of September through March, and from 50 to 70 percent during other months.

Sections 1065.7(b)(3) and 1065.13(d)(4) of the Nebraska-Western Iowa order allow the Director of the Dairy Division to increase or reduce the shipping percentage standard and the diversion limitation percentage by up to 20 percentage points. The adjustments can be made to help encourage additional shipments of milk or to prevent uneconomic shipments of milk merely for the purpose of assuring that dairy farmers will continue to have their milk priced under the order.

Revision of the supply plant shipping standard and the diversion limitations was requested by Associated Milk Producers, Inc. (AMPI). AMPI operates supply plants that historically have been pooled under the order and represents a substantial number of the dairy farmers who supply the market.

AMPI requested that the revision be applicable during September 1989 through March 1990. AMPI indicates that for the first six months of 1989 producer milk on the market is about 5.9 percent above the same period of 1988, while Class I utilization is down by about one percent. In view of the supply/demand relationship, AMPI indicates that it would be very unlikely for the marketwide Class I utilization to be more than 35 percent during the fall of 1989 or the spring of 1990. As a result, AMPI contends that the supply plant shipping standard should be reduced and the diversion limits should be increased. Such revision, AMPI contends, will eliminate the need for unnecessary shipments of milk and provide for the efficient disposition of milk supplies that are in excess of fluid milk needs.

AMPI also requested that consideration be given to extending the revision for an indefinite period of time. Such an action would eliminate the need for repeating the revision process every spring and fall. AMPI indicates that such a process has been repeated to revise these standards over the past five years and that such a history of the actions provide a basis for longer term action.

In view of marketing conditions, the supply plant shipping and diversion limitation percentages should be relaxed. A reduction of the supply plant shipping percentage will eliminate the need for making unnecessary shipments of milk from supply plants to

distributing plants. At the same time, an increase of the diversion limitation percentage will allow greater quantities of milk to be shipped directly from farms to nonpool manufacturing plants and still be priced under the order. These revisions will allow handlers additional flexibility to efficiently market the supplies of milk that are associated with the market.

The supply plant shipping percentage has been reduced by 10 percentage points for the months of September through March since 1986. Also, with the exception of three months in 1987, the order's diversion limitations have been consistently revised since May 1986. In view of this history, both the supply plant shipping and diversion limitation percentages should be revised for an indefinite period as proposed.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This revision is necessary to reflect marketing conditions and to maintain orderly marketing conditions in the marketing area;

(b) This revision does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of the proposed revision was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this temporary revision. No views were received.

Therefore, good cause exists for making this revision effective upon publication of this notice in the *Federal Register*.

#### List of Subjects in 7 CFR Part 1065

Dairy products, Milk, Milk marketing orders.

It is therefore ordered, that the following provisions §§ 1065.7(b) and 1065.13(d)(2) and (3) of the Nebraska-Western Iowa order are hereby revised.

#### PART 1065—MILK IN THE NEBRASKA-WESTERN IOWA MARKETING AREA

1. The authority for 7 CFR part 1065 continues to read as follows:

Authority: Sections 1-19, 48 Stat. 31, as amended (7 U.S.C. 601-674).

##### § 1065.7 [Amended in part]

2. In the introductory text of § 1065.7(b), the provision "40 percent" is revised to "30 percent".

##### § 1065.13 [Amended in part]

3. In § 1065.13(d)(2) and (3), the provisions "40 percent" and "50

percent" are revised to "60 percent" and "70 percent", respectively.

Signed at Washington, DC, on: October 3, 1989.

W.H. Blanchard,  
Director, Dairy Division.

[FR Doc. 89-23679 Filed 10-5-89; 8:45 am]

BILLING CODE 3410-02-M

#### 7 CFR Part 1079

[DA-89-034]

#### Milk in the Iowa Marketing Area; Revision of Supply Plant Shipping Percentage

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Revision of rule.

**SUMMARY:** This action reduces the shipping percentage for pool supply plants under the Iowa Federal milk order for the months of September through November 1989. The shipping percentage is reduced by 5 percentage points, from 35 to 30 percent of milk receipts. The revision is made in response to a request by Beatrice Cheese, Inc., the operator of a supply plant who ships milk to distributing plants regulated by the order. The action is necessary to prevent uneconomic movements of milk.

**EFFECTIVE DATE:** October 6, 1989.

**FOR FURTHER INFORMATION CONTACT:** John F. Borovics, Marketing Specialist, USDA/AMS/Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, 202-447-2089

**SUPPLEMENTARY INFORMATION:** Prior document in this proceeding:

Notice of Proposed Revision of Supply Plant Shipping Percentage: Issued August 21, 1989; published August 25, 1989 (54 FR 35353).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action lessens the regulatory impact of the order on milk handlers and tends to ensure that the market will be adequately supplied with milk for fluid use with a smaller proportion of milk shipments from supply plants.

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

This revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the provisions of § 1079.7(b)(1) of the Iowa order.

Notice of proposed rulemaking was published in the *Federal Register* (54 FR 35353) concerning a proposed decrease in the shipping percentage for pool supply plants for the months of September through November. The public was afforded the opportunity to comment on the proposed notice by submitting written data, views and arguments by September 1, 1989.

#### Statement of Consideration

After consideration of all relevant material, including the proposal set forth in the aforesaid notice, and other available information, it is hereby found and determined that the supply plant shipping percentage should be lowered by 5 percentage points from the present 35 percent to 30 percent for the months of September through November 1989.

Pursuant to the provisions of § 1079.7(b)(1), the supply plant shipping percentages set forth in § 1079.7(b) may be increased or decreased by up to 10 percentage points during any month to encourage additional milk shipments to pool distributing plants or to prevent uneconomic shipments.

A reduction of 10 percentage points to the supply plant shipping percentage was requested by Beatrice Cheese, Inc., a handler who operates a pool supply plant under the order. The handler contends that the reduction is necessary to prevent uneconomic shipments from supply plants to distributing plants. The handler points out that receipts of producer milk under the order during the first six months of 1989 were up about 4.5 percent from the previous year. In addition, about 26.5 percent of producer milk pooled under the order was used in Class I during the first six months, compared to 27.3 percent the previous year. The handler also points out that receipts of milk at its supply plant during the first six months were about 3.4 percent greater than the previous year. Based on the relationship of fluid milk sales to the receipts of milk, the handler contends that a reduction of the supply plant shipping percentage is necessary to prevent uneconomic shipments during the month of September-November. Absent a reduction, the handler contends that it would have to engage in the uneconomic backhauling of 3.0 to 3.2 million pounds of milk per month in order to pool its supply of milk. The handler maintains that distributing plants would be adequately supplied with milk with a

lowering of the supply plant shipping percentage by 10 percentage points.

The handler also requested that consideration be given to reducing the shipping percentage during the months of September through November for an indefinite period since the supply plant shipping percentage has been reduced by 10 percentage points during these months for the last four years.

Associated Milk Producers, Inc. (AMPI), a cooperative association that represents producers who supply the market, in requesting a suspension action for September-November, cited similar marketing conditions to those expressed by Beatrice Cheese. AMPI projects that, based on the first six months of the year, about 30 percent of the market's milk supply will be needed for Class I use during the September-November period this year.

The National Farmers' Organization, Inc. (NFO), a cooperative association that represents producers who supply the market, and Kraft, Inc., a handler who operates a supply plant under the order, supported the request to reduce the shipping standard by 10 percentage points. NFO indicates that marketing conditions are essentially the same as those of a year earlier when an identical reduction of the supply plant shipping percentage was granted. Kraft, Inc., also indicated a belief that milk production for the remainder of the year would be at least equal to the prior year even though milk production has shown some mixed signals during recent months.

Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents producers under the order, filed comments opposing the requested action. Mid-Am expressed the view that a reduction of the shipping percentage could result in a shortage of milk for Class I use at distributing plants. Mid-Am contends that a review of the market's supply/demand relationship for the first six months of the year is not an appropriate basis for determining the supply plant shipping percentage for the months of September-November. Mid-Am notes that for the months of May through July of this year, producer receipts are approximately 0.2 percent greater than last year, while Class I milk usage is up by about 5.8 percent. In addition, Mid-Am notes that producer milk receipts in July 1989 were below those of the previous year, thus exhibiting a reversal of a trend of increased milk production from the same month of the previous year that has existed since February 1987. As a result of these conditions, and because of anticipated increases in fluid milk sales associated with school openings, and because of the uncertainties of the

impact of the 1988 drought on milk production, Mid-Am contends that the proposed lowering of the shipping standard would be unjustified.

In view of the comments filed, it is obvious that there is an element of uncertainty and disagreement among market participants over the anticipated supply/demand relationship of the market during the September-November 1989 period. Data for the first six months of the year depict a marketing situation that is virtually the same as that of a year earlier while the most recent data indicate a tightening of the supply/demand relationship. As a result of the most recent marketing conditions, the supply plant shipping percentage should be reduced by 5 percentage points (to 30 percent of receipts) rather than by the 10-percent-point reduction that was proposed. Furthermore, the reduction should be limited to September-November 1989 rather than being extended for an indefinite period as was proposed.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This revision is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area for the months of September through November 1989;

(b) this revision does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of the proposed revision was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this revision.

Therefore, good cause exists for making this revision effective upon publication of this notice in the *Federal Register*.

#### List of Subjects in 7 CFR Part 1079

Dairy products, Milk, Milk marketing orders.

It is therefore ordered, that the following provisions of § 1079.7(b), of the Iowa milk order are hereby revised for the months of September through November 1989.

#### PART 1079—MILK IN THE IOWA MARKETING AREA

1. The authority for 7 CFR part 1079 continues to read as follows:

Authority: Sections 1-19, 48 Stat. 31, as amended (7 U.S.C. 601-674).

§ 1079.7 [Temporarily amended in part]  
2. In the introductory text of

§ 1079.7(b), the provision "35 percent" is revised to "30 percent" for the months of September, October and November 1989.

Signed at Washington, DC, on October 3, 1989.

W.H. Blanchard,

Director, Dairy Division.

[FR Doc. 89-23680 Filed 10-5-89; 8:45 am]

BILLING CODE 3410-02-M

#### FEDERAL TRADE COMMISSION

##### 16 CFR Part 305

RIN 3084-AA26

#### Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act; Ranges of Comparability for Water Heaters

AGENCY: Federal Trade Commission.

ACTION: Final rule.

**SUMMARY:** The Federal Trade Commission announces that the present ranges of comparability for water heaters will remain in effect until new ranges are published.

**EFFECTIVE DATE:** October 6, 1989.

**FOR FURTHER INFORMATION CONTACT:** James Mills, Attorney, 202-326-3035, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** Section 324 of the Energy Policy and Conservation Act of 1975 (EPCA)<sup>1</sup> requires the Federal Trade Commission to consider labeling rules for the disclosure of estimated annual energy cost or alternative energy consumption information for at least thirteen categories of appliances. Water heaters are included as one of the categories. Before these labeling requirements may be prescribed, the statute requires the Department of Energy ("DOE") to develop test procedures that measure how much energy the appliances use. In addition, DOE is required to determine the representative average cost a consumer pays for the different types of energy available.

On November 19, 1979, the Commission issued a final rule<sup>2</sup> covering seven of the thirteen appliance categories, including water heaters. The rule requires that energy costs and related information be disclosed on labels and in retail sales catalogs for all water heaters presently manufactured.

<sup>1</sup> Public Law 94-163, 89 Stat. 871 (Dec. 22, 1975).

<sup>2</sup> 44 FR 66466, 16 CFR Part 305.

Certain point-of-sale promotional materials must disclose the availability of energy usage information. If a water heater is advertised in a catalog from which it may be purchased by cash, charge account or credit terms, then the range of estimated annual energy costs for the product must be included on each page of the catalog that lists the product. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of the DOE test procedures.

Section 305.8(b) of the rule requires manufacturers, after filing an initial report, to report annually by specified dates for each product type.<sup>3</sup> Because the costs for the various types of energy change yearly, and because manufacturers regularly add new models to their lines, improve existing models and drop others, the data base from which the ranges of comparability are calculated is constantly changing. To keep the required information in line with these changes, the Commission is empowered, under § 305.10 of the rule, to publish new ranges (but not more often than annually) if an analysis of the new data indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission must publish a statement that the prior range or ranges remain in effect for the next year.

The annual reports for water heaters have been received and analyzed and it has been determined that neither the upper nor lower limits of the ranges for this product category have changed by 15% or more since the last publication of the ranges on July 12, 1988.<sup>4</sup>

In consideration of the foregoing, the present ranges for water heaters will remain in effect until the Commission publishes new ranges for these products.

#### List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

The authority citation for part 305 continues to read as follows:

**Authority:** Sec. 324 of the Energy Policy and Conservation Act (Pub. L. 94-163) (1975), as amended by the National Energy Conservation Policy Act (Pub. L. 95-619) (1978), the National Appliance Energy Conservation Act (Pub. L. 100-12) (1987), and the National Appliance Energy Conservation Amendments of 1988, (Pub. L. 100-357) (1988)

<sup>3</sup> Reports for water heaters are due by May 1.

<sup>4</sup> 53 FR 26237.

42 U.S.C. 6294; sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

Donald S. Clark,

Secretary.

[FR Doc. 89-23666 Filed 10-5-89; 8:45 am]

BILLING CODE 6750-01-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Parts 5h and 602

[T.D. 8267]

RIN 1545-AM7

#### Certain Elections Under the Technical and Miscellaneous Revenue Act of 1988

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

**ACTION:** Correction to temporary regulations (T.D. 8267).

**SUMMARY:** This document contains a correction to the *Federal Register* publication for Friday, September 22, 1989, at 54 FR 38979. The temporary regulations related to the time and manner of making certain elections under the Technical and Miscellaneous Revenue Act of 1988.

**FOR FURTHER INFORMATION CONTACT:** Grace Matuszeski, 202-323-2382 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

The temporary regulations (T.D. 8267) that are the subject of this correction were added to the Temporary Regulations—Elections Under Various Public Laws (26 CFR Part 5h).

##### Need for Correction

As published, the temporary regulations contains an error which may prove to be misleading and is in need of clarification.

##### Correction of Publication

Accordingly, the publication of the temporary regulations which were the subject of FR Doc. 22351, is corrected as follows:

##### § 5h.6 [Corrected]

**Paragraph 1.** On page 38984, second column, line 16 of § 5h.6(a)(4)(i), the language "26A(h)), 6026(b)(1) (Code section" is corrected to read "263A(h)), 6026(b)(1) (Code section".)

Dale D. Goode,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 89-23771 Filed 10-5-89; 8:45 am]

BILLING CODE 4830-01-M

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

#### 29 CFR Part 1910

RIN 1218-AB26

#### Air Contaminants

**AGENCY:** Occupational Safety and Health Administration, Labor.

**ACTION:** Final rule; partial stay of effective date for two substances.

**SUMMARY:** OSHA reduced exposure limits for 375 air contaminants on January 19, 1989, at 54 FR 2332. A stay of the new limits for nitroglycerin and ethylene glycol dinitrate is granted to the explosives industry until December 1, 1989.

**DATE:** These actions take effect on October 1, 1989.

**FOR FURTHER INFORMATION CONTACT:** Mr. James F. Foster, OSHA Office of Public Affairs, Room N-3647, Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, Telephone (202) 523-8151.

**SUPPLEMENTARY INFORMATION:** On January 19, 1989, at 54 FR 2332 OSHA issued a final standard setting new or more protective exposure limits for 375 substances. The new limits are to be achieved with any reasonable combination of controls including engineering controls and respirators by September 1, 1989, and with a preference for engineering controls by December 31, 1992.

The Institute of Makers of Explosives petitioned OSHA to administratively stay the new exposure limits for nitroglycerin and ethylene glycol dinitrate for the explosives industry. OSHA stayed the September 1, 1989, start-up day of the Final Rule Limits column (new) exposure limits for those substances pending settlement negotiations until October 1, 1989. See 54 FR 36765; September 5, 1989.

Settlement negotiations are continuing. Accordingly OSHA is extending the stay of the September 1, 1989, start-up date of the new exposure limits for nitroglycerin and ethylene glycol dinitrate for the explosives industry until December 1, 1989.

This document was prepared under the direction of Alan C. McMillan, Acting Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. It

is issued pursuant to section 6 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), section 4 of the Administrative Procedure Act, 5 U.S.C. 553, 29 CFR part 1911 and Secretary of Labor Order 9-83 (48 FR 35736).

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

Alan C. McMillan,  
Acting Assistant Secretary.

#### PART 1910—[AMENDED]

1. The authority citation for subpart Z of part 1910 continues to read as part as follows:

**Authority:** Secs. 6, 8, Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders 12-71 (36 FR 8754), 8-76 (41 FR 25059), or 9-83 (48 FR 35736) as applicable; and 29 CFR part 1811.

All of subpart Z issued under section 6(b) of the Occupational Safety and Health Act, 29 U.S.C. 655(b) except those substances listed in the Final Rule Limits columns of Table Z-1-A, which have identical limits listed in the Transitional Limits columns of Table Z-1-A, Table Z-2 or Table Z-3. The latter were issued under section 6(a) (U.S.C. 655(a)).

Section 1910.1000, the Transitional Limits columns of Table Z-1-A, Table Z-2 and Table Z-3 also issued under 5 U.S.C. 553. Section 1910-1000, the transitional limits columns of Table Z-1-A, Table Z-2 and Table Z-3 not issued under 29 CFR Part 1911 except for the arsenic, benzene, cotton dust, and formaldehyde listings.

#### § 1910.1000 [Amended]

2. Section 1910.1000, Table Z-1-A is amended by revising the note at the end of the table to read as follows:

**Note:** Pursuant to administrative stays effective September 1, 1989 and published in the *Federal Register* on September 5, 1989, and extended in part by a notice published in the *Federal Register* on October 6, 1989, the September 1, 1989 start-up date specified in 29 CFR 1910.1000(f)(2)(i) is stayed as follows: Until December 1, 1989 for nitroglycerin and ethylene glycol dinitrate in the explosives industry; until October 1, 1989 for perchloroethylene in the drycleaning industry; until September 1, 1990 for the acetone TWA for certain "doffers" in the cellulose acetate fiber industry; and until the decision on the merits of the Eleventh Circuit Court of Appeals in the case of *Courtauld's Fibers, Inc. v. U.S. Department of Labor*, No. 89-7073 and consolidated cases, for the Ceiling for carbon monoxide for blast furnace operations, vessel blowing at basic oxygen furnaces and sinter plants in the steel industry (SIC 33). OSHA will publish in the *Federal Register* notice of the termination of the carbon monoxide stay.

[FR Doc. 89-23658 Filed 10-5-89; 8:45 am]

BILLING CODE 4510-26-M

#### GENERAL SERVICES ADMINISTRATION

#### 41 CFR Chapter 101

[FPMR Temp. Reg. A-33, Supp. 1]

#### Federal and State Tax Tables to be Used for Calculating 1989 Relocation Income Tax (RIT) Allowance Payments

**AGENCY:** Federal Supply Service, GSA.

**ACTION:** Temporary regulation.

**SUMMARY:** FPMR Temporary Regulation A-33 implemented the Federal and State tax tables for calculating 1989 RIT allowance payments. Because these tax tables were published in appendixes A, B, and C 5 to 41 CFR part 302-11 of the Federal Travel Regulation (FTR) (see 54 FR 20344, 20348-20349, and 20350, May 10, 1989), this regulation is removed from the appendix at the end of subchapter A to title 41 of the Code of Federal Regulations.

**DATES:** *Effective date:* October 6, 1989.

*Expiration date:* October 6, 1989.

**FOR FURTHER INFORMATION CONTACT:** Richard Sturdy, Travel Management Division, Regulations Branch (FBTR), Washington, DC 20406, telephone FTS 557-1253 or commercial 703-557-1253.

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

By the Administrator's authority (5 U.S.C. 5724b; EO 11609, July 22, 1971; EO 12466, February 27, 1984), the appendix at the end of subchapter A in 41 CFR chapter 101 is amended by removing FPMR Temporary Regulation A-33.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 89-23459 Filed 10-5-89; 8:45 am]

BILLING CODE 6820-24-M

#### 41 CFR Part 101-47

[FPMR Amendment H-174]

#### Non-Federal Interim Use of Surplus Real Property

**AGENCY:** Federal Property Resources Service, GSA.

**ACTION:** Final rule.

**SUMMARY:** The General Services Administration is amending the regulations concerning non-Federal interim use of surplus Federal real property to implement the provisions of section 4 of Public Law 100-612. Section 4 amends section 203(e)(6) of the Federal Property and Administrative Services Act of 1949, as amended, regarding Congressional review of certain negotiated lease disposals.

**DATE:** This regulation is effective October 6, 1989.

**FOR FURTHER INFORMATION CONTACT:** Marjorie L. Lomax, Director, Policy and Planning Division, Office of Real Estate Policy and Sales, Federal Property Resources Services, General Services Administration (202-535-7052).

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

#### List of Subjects in 41 CFR Part 101-47

Surplus Government property, and Government property management.

Accordingly, 41 CFR part 101-47 is amended as follows:

#### PART 101-47—UTILIZATION AND DISPOSAL OF REAL PROPERTY

1. The authority citation for part 101-47 continues to read as follows:

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

**Subpart 101-47.3—Surplus Real Property Disposal**

2. Section 101-47.312 is revised to read as follows:

**§ 101-47.312 Non-Federal interim use of property.**

(a) A lease or permit may be granted by the holding agency with the approval of the disposal agency, for non-Federal interim use of surplus property; *Provided*, That such lease or permit shall be for a period not exceeding 1 year and shall be made revocable on not

to exceed 30 days' notice by the disposal agency: And provided further, That the use and occupancy will not interfere with, delay, or retard the disposal of the property. In such cases, an immediate right of entry to such property may be granted pending execution of the formal lease or permit. The lease or permit shall be for a money consideration and shall be on such other terms and conditions as are deemed appropriate to properly protect the interest of the United States. Any negotiated lease or permit under this section shall be subject to the applicable

provisions of §§ 101-47.304-9 and 101-47.304-12, except that no explanatory statement to the appropriate committees of the Congress need to be prepared with respect to a negotiated lease or permit providing for an annual net rental of \$100,000 or less, and termination by either part on 30 days' notice.

(b) [Reserved]

Dated: September 13, 1989.

**Richard G. Austin,**

*Acting Administrator of General Services.*

[FR Doc. 89-23458 Filed 10-5-89; 8:45 am]

**BILLING CODE 6820-96-M**

# Proposed Rules

Federal Register

Vol. 54, No. 193

Friday, October 6, 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

### Federal Crop Insurance Corporation

#### 7 CFR Part 401

[Amendment No. 32; Doc. No. 6965S]

#### General Crop Insurance Regulations; Fresh Market Tomato (Dollar Plan) Endorsement

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR part 401), effective for the 1991 and succeeding crop years, by adding a new section, 7 CFR 401.139, the Fresh Market Tomato (Dollar Plan) Endorsement. The intended effect of this rule is to provide the provisions of crop insurance protection on tomatoes in an endorsement to the general crop insurance policy.

**COMMENT DATE:** Written comments, data, and opinions on this proposed rule should be received not later than November 6, 1989, to be sure of consideration.

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

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

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

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

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

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

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

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

FCIC proposes to add to the General Crop Insurance Regulations (7 CFR part 401), a new section to be known as 7 CFR 401.139, the Fresh Market Tomato (Dollar Plan) Endorsement, effective for the 1991 and succeeding crop years, to provide the provisions for insuring tomatoes.

Upon publication of 7 CFR 401.139 as a final rule, the provisions for insuring tomatoes contained therein will supersede those provisions contained in 7 CFR part 444, the Fresh Market Tomato Crop Insurance Regulations, effective with the beginning of the 1991 crop year. The present policy contained in 7 CFR part 444 will be terminated at the end of the 1990 crop year and later removed and reserved. FCIC will propose to amend the title of 7 CFR part

444 by separate document so that the provisions therein are effective only through the 1990 crop year.

Minor editorial changes have been made to improve compatibility with the general crop insurance policy. These changes do not affect the meaning or intent of the provisions. In adding the new Fresh Market Tomato (Dollar Plan) Endorsement to 7 CFR part 401, FCIC proposes to make other changes in the provisions for insuring tomatoes as follows:

1. Section 2—Add a provision to exclude losses due to failure to market the tomatoes unless the failure to market the tomatoes is due to physical damage from an insured cause.

2. Section 3—Stage guarantees are now included in the endorsement.

3. Section 7—Add unit division provisions in the endorsement with language providing that production evidence must be maintained and be made available to use.

4. Section 9—Change the language regarding the value of appraised production to count of tomatoes remaining after the second or third harvest to be the production in excess of 30 cartons. Change the value of appraised production to count for ground culture tomatoes to be the value remaining after the second harvest rather than the third harvest as is the case with staked tomatoes.

5. Section 13—Change the classification size of mature green and ripe tomato to 6 x 7 (2 3/4 inch minimum diameter). Revise the definition of "Acre", "Freeze", "Frost", and, "Tropical Cyclone" to clarify their meaning.

Recently, FCIC's Board of Directors adopted a change which allow a discount against the premium for insureds who choose not to divide their acreage into optional units. Since this discount is available for tomatoes appropriate explanatory language has been added to the annual premium and unit division sections of this endorsement.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register**. Written comment should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

All written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

#### List of Subjects in 7 CFR Part 401

Crop Insurance; Fresh Market Tomato (Dollar Plan) Endorsement

#### Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR part 401), proposed to be effective for the 1991 and succeeding crop years, as follows:

#### PART 401—[AMENDED]

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

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

2. 7 CFR part 401 is amended to add a new section to be known as 7 CFR 401.139, Fresh Market Tomato (Dollar Plan) Endorsement, effective for the 1991 and Succeeding Crop Years, to read as follows:

#### § 401.139 Fresh market tomato (dollar plan) endorsement.

The provisions of the Fresh Market Tomato Crop Insurance Endorsement for the 1991 and subsequent crop years are as follows:

#### Federal Crop Insurance Corporation

#### Fresh Market Tomato (Dollar Plan) Endorsement

#### 1. Insured Crop.

a. The crop insured will be tomatoes (excluding plum and cherry-type tomatoes) planted for harvest as fresh market tomatoes.

b. In lieu of section 2.e.(11) of the general policy, we will insure newly cleared land planted to tomatoes.

c. In addition to the fresh tomatoes not insurable under Section 2 of the general crop insurance policy we do not insure any acreage grown by any entity if that entity had not previously:

(1) Grown tomatoes for commercial sale; or  
(2) Participated in the management of the tomato farming operation.

d. We do not insure any acreage of tomatoes:

(1) Grown for direct consumer marketing;  
(2) Which is not irrigated;  
(3) Which are not grown on plastic mulch unless provided for by the actuarial table;  
(4) On which tomatoes, peppers, eggplants, or tobacco have been grown and the soil was not fumigated or otherwise properly prepared before planting tomatoes;

(5) Which was planted to tomatoes the preceding planting period, unless the tomato plants of the preceding planting period were destroyed prior to reaching stage 2 production as defined in section 3 of this endorsement.

#### 2. Causes of Loss.

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

(1) Excessive rain;  
(2) Frost;  
(3) Freeze;  
(4) Hail;  
(5) Fire;  
(5) Tornado;  
(7) Wind damage or excess precipitation occurring in conjunction with a tropical cyclone; or

(8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting; unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

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

(1) Disease or insect infestation; or  
(2) Failure to market the tomatoes unless such failure is due to actual physical damage from a cause specified in subsection 2.a.

#### 3. Insurance Guarantees

a. The insurance guarantees per acre are by stages and increase at specified intervals, up to the final stage guarantee. The stages and guarantees are as follows:

(1) First stage is from planting until qualifying for stage 2. The first stage guarantee is 50 percent of the final stage guarantee.

(2) Second stage is the earlier of stakes driven, on tie, and pruning or 60 days (30 days for transplants) after planting, and until qualifying for stage 3. The second stage guarantee is 75 percent of the final stage guarantee.

(3) The third stage is 90 days (60 days for transplants) after planting until qualifying for the final stage. The third stage guarantee is 90 percent of the final stage guarantee.

(4) The final stage begins the earlier of 105 days (75 days for transplants) after planting, or the beginning of harvest.

b. Any acreage of tomatoes damaged to the extent that growers in the area would not further care for the tomatoes, will be deemed to have been destroyed even though the tomatoes continue to be cared for. The insurance guarantee for such acreage will be the guarantee for the stage in which such damage occurs.

#### 4. Report of Acreage, Share, and Practice

In addition to the information required in section 3 of the general crop insurance policy, you must report the row width. You must report on or before the acreage reporting date for each planting period all the acreage of fall, winter, and spring-planted tomatoes in the county in which you have a share.

#### 5. Annual Premium

The amount is computed by multiplying the final stage amount of insurance times the premium rate, times the insured acreage, times your share at the time of each planting, times any applicable premium adjustment percentage for which you may qualify as shown in the actuarial table, because you have not selected optional units.

#### 6. Insurance Period

In lieu of section 7 of the general crop insurance policy, insurance attaches on each unit when the tomatoes are planted in each planting period and ends at the earliest of:

a. Total destruction of the tomatoes on the unit;  
b. Discontinuance of harvest of tomatoes on the unit;  
c. The date harvest should have started on the unit on any acreage which will not be harvested;  
d. 140 days after the date of direct seeding, transplanting, or replanting;  
e. Final harvest; or  
f. Final adjustment of a loss.

#### 7. Unit Division

In addition to units defined in section 17 of the general crop insurance policy, insurable tomato acreage will contain units by planting period. Insurable tomato acreage which otherwise would be one unit as provided above, may be divided into two or more optional units. Written, verifiable records of planted and harvested acreage and production for each optional unit must be provided to us at our request. For optional unit division, acreage planted to the insured tomatoes must be located in separate, legally identifiable sections or, in the absence of section descriptions, on land identified by separate ASCS Farm Serial Numbers, *Provided:*

a. The boundaries of the section or farms designated by ASCS Farm Serial Number are clearly identified, and the insured acreage can be easily determined; and

b. The tomatoes are planted in such a manner that the planting pattern does not continue into an adjacent section or farm designated by ASCS Farm Serial Number.

If you have a loss on any unit, preharvest appraisals for that loss unit and production records for all harvested units, whether insured or uninsured, must be provided to us. Production that is commingled between optional units may cause those units to be combined. If your tomato acreage is not divided into optional units as provided in this section, your premium amount will be reduced as provided on the actuarial table.

#### 8. Notice of Damage or Loss

a. If a loss is anticipated by you on any unit within 15 days prior to or during harvest and you are going to claim an indemnity on any unit, you must give us notice not later than 72 hours after the earliest of:

(1) Total destruction of the tomatoes on the unit;

(2) Discontinuance of harvest of any acreage on the unit;

(3) The date harvest would normally start if any acreage on the unit is not to be harvested; or

(4) 140 days after the direct seeding, transplanting, or replanting to the tomatoes (see section 6).

b. You must not destroy any tomato acreage within a unit until inspected by us if an indemnity is to be claimed or the unit.

c. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

#### 9. Claim for Indemnity

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

(1) Multiplying the insured acreage by the amount of insurance, times the percentage for the stage of production defined in section 3;

(2) Subtracting therefrom the total value of production to be counted (see subsection 9.b.); and

(3) Multiplying this result by your share.

b. The total value of production to be counted for a unit will include all harvested and appraised production.

(1) The total value of harvested production will be the greater of:

(a) The dollar amount obtained by multiplying the number of 25-pound cartons of tomatoes harvested in the unit by \$3.00; or

(b) The dollar amount obtained by multiplying the number of 25-pound cartons of tomatoes sold by the price received minus allowable cost set by the actuarial table (However, such price must not be less than zero for any carton).

(2) The value of appraised production to be counted will include:

(a) The value of the potential production (see subsection 13.k.) on tomato acreage that has not been harvested the second time for ground-cultured tomatoes (the third time for staked tomatoes);

(b) The value of unharvested potential production in excess of 30 cartons after the second harvest for ground culture tomatoes (third harvest for staked tomatoes);

(c) The value of the potential production lost due to uninsured causes; and

(d) An amount not less than the dollar amount of insurance per acre for any acreage abandoned or put to another use without prior written consent or which is damaged solely by an uninsured cause.

The value of any appraised production will not be less than the dollar amount obtained by multiplying the number of 25-pound cartons of tomatoes appraised by \$3.00.

(3) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of tomatoes becomes general in the county for the planting period and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

c. A replanting payment is available under this endorsement. The acreage to be replanted must have sustained a loss in excess of 50 percent of the plant stand. The replanting payment per acre will be your actual cost per acre for replanting, but will not exceed the product obtained by multiplying \$175.00 per acre by your share.

#### 10. Cancellation and Termination Date

The cancellation and termination date is July 31.

#### 11. Contract Changes

All contract changes will be available at your service office by April 30 preceding the cancellation date.

#### 12. Production Reporting Dates

The production reporting provision found in section 4 of the general crop insurance policy does not apply to this contract.

#### 13. Meaning of Terms

For the purpose of tomato crop insurance:

a. "Acre" means 43,560 square feet of land on which row widths do not exceed 6 feet, or if row width exceeds 6 feet, the land on which at least 7260 linear feet rows are planted.

b. "Crop Year", in lieu of the definition in the General Policy, means the period within which the tomatoes are normally grown beginning August 1 and continuing through harvesting of the spring-planted tomatoes and is designated by the calendar year in which the spring-planted tomatoes are normally harvested.

c. "Direct consumer marketing" means the method of selling tomatoes from the farm directly to the consumer without the intervention of a wholesaler, retailer, or packer.

d. "Excessive rain" means more than 10 inches of rain on the tomato field within a 24-hour period, after the tomatoes have been seeded or transplanted.

e. "Freeze" means the condition that exists when air temperatures over a widespread area remain at or below 32 degrees Fahrenheit, and cause damage to plant tissue.

f. "Frost" means a deposition or covering by minute ice crystals formed from frozen water vapor, which causes damage to plant tissue.

g. "Harvest" means the picking of marketable tomatoes on the unit.

h. "Mature green tomato" means a tomato which:

(1) Has heightened gloss because of the waxy skin that cannot be torn by scraping;

(2) Has well-formed, jelly-like substance in the locules;

(3) Has seeds that are sufficiently hard so that they are pushed aside and not cut by a sharp knife in slicing; and

(4) Shows no red color.

i. "Planting" means transplanting the tomato plants into the field or direct seeding in the field.

j. "Planting period" means tomatoes planted within the dates set by the actuarial table, as fall-planted, winter-planted, or spring-planted.

k. "Plant stand" means the number of live plants per acre before the plants were damaged due to insurable causes.

l. "Potential production" means the number of 25-pound cartons of mature green or ripe tomatoes with classification size of 6x7 (2½ inch minimum diameter) or larger, which the tomato plants would produce or, would have produced per acre, by the end of the insurance period.

m. "Replanting" means performing the cultural practices necessary to replant insured acreage to tomatoes.

n. "Ripe Tomato" means a tomato which has a definite break in color from green to tannish-yellow, pink or red.

o. "Tomatoes grown for direct consumer marketing" means tomatoes initially intended for direct consumer marketing.

p. "Tropical cyclone" means a large-scale, atmospheric wind-and-pressure system (without regard to the time of year), named by the United States Weather Service and characterized by low pressure at its center and counterclockwise, circular wind motion, in which the minimum sustained surface wind (1-minute mean) is 34 knots (39 miles per hour) or more at the time of loss as recorded by the U.S. Weather Service reporting station nearest to the crop damage.

Done in Washington, DC, on September 20, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-23705 Filed 10-5-89; 8:45 am]

BILLING CODE 3410-08-M

#### 7 CFR Part 401

[Amdt. No. 55; Doc. No. 6943S]

#### General Crop Insurance Regulations; Canning and Processing Bean Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend the Canning and Processing Bean Endorsement (7 CFR 401.118) to provide for unit division guidelines by type in Illinois, Indiana, Iowa, and Pennsylvania. The intended effect of this rule is to include these states among those identified in section 5 of the policy as states where unit division guidelines are permitted.

**COMMENT DATE:** Written comments, data, and opinions on this proposed rule must be submitted no later than November 6, 1989, to be sure of consideration.

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

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Department Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is November 1, 1992.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive

Order 12291 because it will not result in: (a) An annual effect on the economy of \$100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant impact on a substantial number of small entities.

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

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

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

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

FCIC proposes to amend the Canning and Processing Bean Endorsement (7 CFR 401.118) to allow for unit division guidelines by type in Illinois, Indiana, Iowa, and Pennsylvania.

Under the provisions of the Canning and Processing Bean Endorsement, unless states are specifically cited in section 5 of the policy as being states in which unit division guidelines by type are allowed, they will be placed in the same category as those states where the actuarial structure does not permit unit division guidelines. Recent expansion of the canning and processing bean crop insurance program into Illinois, Indiana, Iowa, and Pennsylvania has created a condition whereby, unless the endorsement is amended to name these states, unit division guidelines by type in such states will not be permitted.

For this reason, FCIC proposes to amend the Canning and Processing Bean Endorsement to list Illinois, Indiana, Iowa, and Pennsylvania, as being states in which unit division guidelines are permitted.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the Federal Register.

Written comment should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

All written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

#### List of Subjects in 7 CFR Part 401

Crop insurance; Canning and processing bean.

#### Proposed Rule

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

#### PART 401—[AMENDED]

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

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

2. The Canning and Processing Bean Endorsement (7 CFR 401.118), is amended by revising the introductory language to section 5 to read as follows:

#### § 401.118 Canning and processing bean endorsement.

\* \* \* \* \*

#### 5. Unit Division

In addition to units defined in section 17 of the General Crop Insurance Policy, canning and processing bean acreage will have units by type (snap or lima). For Idaho, Illinois, Indiana, Iowa, Michigan, Minnesota, New York, Oregon, Pennsylvania, Tennessee, Utah, Washington, and Wisconsin, bean acreage that would otherwise be one unit may be further divided if for each proposed unit you maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year and either:

\* \* \* \* \*

Done in Washington, DC on September 19, 1989.

John Marshall,  
Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-23704 Filed 10-5-89; 8:45 am]

BILLING CODE 3410-08-M

#### 7 CFR Part 403

[Amdt. No. 2; Doc. No. 7495S]

#### Peach (Fresh) Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Withdrawal of notice of proposed rulemaking.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) publishes this notice for the purpose of withdrawing a Notice of Proposed Rulemaking (NPRM) amending the Peach (Fresh) Crop Insurance Regulations (7 CFR part 403), effective for the 1990 crop year. FCIC has determined that there was insufficient time in which to issue a final rule amending the Peach (Fresh) Crop Insurance Regulations.

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

**SUPPLEMENTARY INFORMATION:** On Tuesday, August 15, 1989, FCIC published a Notice of Proposed Rulemaking in the Federal Register at 54 FR 33567 which proposed to amend the Peach (Fresh) Crop Insurance Regulations (7 CFR part 403), effective for the 1990 crop year, to provide that crop insurance will be available on peach orchards with a "pick your own" operation.

FCIC has determined that there was not sufficient time in which to publish a final rule before the August 31, 1990, date for filing contract changes.

For the reason stated above, FCIC has determined that the proposed rule published at 54 FR 33567 should be, and is hereby, withdrawn.

Done in Washington, DC on September 26, 1989.

John Marshall,  
Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-23706 Filed 10-5-89; 8:45 am]

BILLING CODE 3410-08-M

#### Agricultural Marketing Service

#### 7 CFR Part 906

[Docket No. FV-89-100PR]

#### Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas; Proposed 1989-90 Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes authorizing expenditures and establishing an assessment rate for the 1989-90 fiscal period for the Texas Valley Citrus Committee (committee), established under Marketing Order No. 906. This proposed action is needed by the committee to pay anticipated marketing order expenses and to collect assessments from handlers to pay those expenses. The proposed action would enable the committee to continue to perform its duties and the order to operate.

**DATES:** Comments must be received by October 16, 1989.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, 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:** Gary D. Rasmussen, Marketing Order Administration Branch, Fruit and Vegetable Division, AM, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone 202-475-3918.

**SUPPLEMENTARY INFORMATION:**

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

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule 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 about 115 handlers subject to regulation under the marketing order for oranges and grapefruit grown in Texas, and about 2,500 orange and grapefruit producers in Texas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those gross annual receipts are less than \$3,500,000. The majority of these handlers and producers may be classified as small entities.

The marketing order for Texas oranges and grapefruit, administered by the U.S. Department of Agriculture (Department), requires that the assessment rate for a particular fiscal period shall apply to all of the assessable commodities handled from the beginning of such period. An annual budget of expenses is prepared by the committee and submitted to the Department for approval. The members of the committee are handlers and producers of Texas oranges and grapefruit. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by the expected shipments of Texas oranges and grapefruit in 7/10-bushel cartons. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. The recommended budget and rate of assessment is usually acted upon by the committee shortly before a season starts, or during the season when changes are needed, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committee will have funds to pay its expenses.

The committee met on September 5, 1989, and unanimously recommended approval of expenditures of \$1,496,634 for the 1989-90 fiscal period. In

comparison, budgeted expenditures were \$1,376,634 for 1988-89. Major proposed expenditure items for 1989-90 compared with 1988-89 (in parentheses) are as follows: Program Administration—\$150,000 (\$153,000); Mexican Fruit Fly Program—\$143,634 (\$143,634); and Advertising and promotion—\$1,203,000 (\$1,080,000). The expenditures proposed for administration are generally comparable to those for the last fiscal period.

The committee also unanimously recommended approval of an assessment rate of \$0.12 per 7/10-bushel carton of oranges and grapefruit shipped during the 1989-90 fiscal period. This same rate was in effect last period. Assessment income is estimated at \$961,800 based on 8,015,000 cartons of assessable fruit shipped during the 1989-90. Interest income is estimated at \$30,000 for 1989-90. Also, the committee has \$126,000 in prepaid advertising available and it expects its promotion and advertising effort to generate \$96,000 from sales of promotional material. In addition, the committee contemplates withdrawing \$282,834 from its reserve.

The committee further unanimously recommended that unexpended funds from the 1988-89 fiscal period be placed in its reserve fund. The committee's current reserve, which amounted to \$706,486 on August 1, 1989, is well within the maximum authorized under the order.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A comment period of less than 30 days is deemed appropriate for this action. Since committee expenses are incurred on a continuous basis during the entire fiscal period, approval of the expenditures and assessment rate must be expedited.

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

Grapefruit, Marketing agreements and orders, Oranges, Texas.

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

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

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

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

2. New § 906.229 is added to read as follows:

**§ 906.229 Expenses and assessment rate.**

Expenses of \$1,496,634 by the Texas Valley Citrus Committee are authorized, and an assessment rate of \$0.12 per 7/10-bushel carton of assessable oranges and grapefruit is established for the fiscal period ending July 31, 1990. Unexpended funds from the 1988-89 fiscal period may be carried over as a reserve.

Dated: October 2, 1989.

William J. Doyle,

Director, Fruit and Vegetable Division.

[FR Doc. 89-23649 Filed 10-5-89; 8:45 am]

BILLING CODE 3410-02-M

**7 CFR Part 926**

[Docket No. FV-89-104]

**California Tokay Grapes; Increase in Assessment Rate**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

**SUMMARY:** This proposed rule would increase the assessment rate under Marketing Order 926 (California Tokay grapes) for the 1989-90 fiscal period. Funds to administer this program would be derived from assessments on handlers.

**DATE:** Comments must be received by October 16, 1989.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456. Comments should reference the docket number and the date and page number of this issue of the *Federal Register* and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone 202-447-5331.

**SUPPLEMENTARY INFORMATION:** This rule is proposed under Marketing Agreement No. 93 and Marketing Order No. 926 (7 CFR part 926), regulating the handling of Tokay grapes grown in San Joaquin County, California. The marketing 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 proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule 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 10 handlers of California Tokay grapes under this marketing order, and approximately 20 California Tokay grape producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of the handlers and producers may be classified as small entities.

The budget of expenses for the 1989-90 fiscal year was prepared by the Tokay Industry Committee (committee), the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of grapes. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in public meetings. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of Tokay grapes. Because that

rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. A recommended budget and rate of assessment is usually acted upon by the committee before the season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committee will have funds to pay its expenses.

On August 15, 1989, expenses of \$13,575 by the Tokay Industry Committee were approved and an assessment rate of 6 cents per 23-pound lug of grapes was established for the fiscal period ending March 31, 1990 (54 FR 34483). The committee conducted a telephone poll on September 6, 1989, and unanimously recommended increasing the assessment rate established for the 1989-90 fiscal year from 6 cents to 7 cents per 23-pound lug. The reason for the assessment rate increase is that Tokay grape production for this season will be less than anticipated. Severe heat and heavy rains have contributed to a large number of Tokay grapes failing to meet fresh market requirements because of sunburn and decay. While fresh market shipments for the 1989 season were projected at 200,000 23-pound lugs, the estimate has been reduced to 175,000 lugs. The original assessment rate would have yielded \$12,000 in assessment income if the level of expected fresh market shipments was achieved. With the reduced estimate, such income will fall about \$1,500 short of the amount anticipated. Revenues would therefore be \$3,075 less than the committee's budgeted expenses of \$13,575. However, the committee does not have adequate funds in its reserve to meet this need. The assessment rate increase would yield \$1,750 in additional income if the revised level of fresh market shipments is met. In accordance with marketing order requirements, the assessment rate increase would be retroactive to April 1, 1989, the start of the current fiscal period.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1989 shipping season began in August, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable Tokay grapes handled during the fiscal period. Therefore, it is found and determined that a comment period of less than 30 days is appropriate because the assessment rate increase for this program needs to be expedited. The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis.

#### List of Subjects in 7 CFR Part 926

California, marketing agreements and orders, Tokay grapes.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 926 be amended as follows:

#### PART 926—TOKAY GRAPES GROWN IN SAN JOAQUIN COUNTY, CALIFORNIA

1. The authority citation for 7 CFR part 926 continues to read as follows:

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

2. Section 926.228 is revised to read as follows:

#### § 926.228 Expenses and assessment rate.

Expenses of \$13,575 by the Tokay Industry Committee are authorized and an assessment rate of \$0.07 per 23-pound bag of grapes is established for the fiscal year ending March 31, 1990.

Unexpended funds may be carried over as a reserve.

Dated: October 3, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-23681 Filed 10-5-89; 8:45 am]

BILLING CODE 3410-02

#### 7 CFR Part 955

[Docket No. FV-89-101]

#### Georgia Vidalia Onions; Expenses and Assessment Rate

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order 955 for the 1989-90 fiscal period. Authorization of this budget would allow the Vidalia Onion Committee to

incur expenses that are reasonable and necessary to administer the program. Funds to administer this program would be derived from assessments on handlers.

**DATES:** Comments must be received by October 16, 1989.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USD, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456. Comments should reference the docket number and the date and page number of this issue of the *Federal Register* and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone 202-447-5331.

**SUPPLEMENTARY INFORMATION:** This rule is proposed under Marketing Agreement No. 955 and Marketing Order No. 955 (7 CFR part 955), regulating the handling of Vidalia onions grown in Georgia. The marketing 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 proposed rule has been reviewed under Executive Order 12291 and Departmental Regulations 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule 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 180 handlers and 260 producers of Vidalia onions in that portion of Georgia covered under this marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less

than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of the handlers and producers may be classified as small entities.

The budget of expenses for the 1989-90 fiscal year was prepared by the Vidalia Onion Committee (committee), the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of Vidalia onions. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of Vidalia onions. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

The committee met on August 31, 1989, and unanimously recommended a 1989-90 budget of \$157,808. Last season's budget was \$150,000. Major expense items include increases in committee staff salaries and marketing development and production research projects.

The committee also unanimously recommended an assessment rate of \$0.10 per 50-pound bag, the same rate as last season's. This rate, when applied to anticipated shipments of 1.5 million 50-pound bags of onions, would yield \$150,000 in assessment revenue. This amount when added to \$7,808 from the reserve fund would be adequate to cover budgeted expenses.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1989-90 fiscal period began in

mid-September, and the marketing order requires that the rate of assessment apply to all assessable Vidalia onions handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for this program needs to be expedited. The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis.

#### List of Subjects in 7 CFR Part 955

Georgia, Marketing agreements and orders, Vidalia onions.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 955 be amended as follows:

#### PART 955—VIDALIA ONIONS GROWN IN GEORGIA

1. The authority citation for 7 CFR part 955 continues to read as follows:

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

2. A new § 955.202 is added to read as follows:

##### § 955.202 Expenses and assessment rate.

Expenses of \$157,808 by the Vidalia Onion Committee are authorized and an assessment rate of \$0.10 per 50-pound bag of Vidalia onions is established for the fiscal period ending September 15, 1990. Unexpended funds may be carried over as a reserve.

Dated: October 2, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-23650 Filed 10-5-89; 8:45 am]

BILLING CODE 3410-02-M

#### 7 CFR Part 966

[Docket No. FV-89-102]

#### Florida Tomatoes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

**SUMMARY:** This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order 966 for the 1989-90 fiscal period. Authorization of this budget would allow the Florida Tomato Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program would

be derived from assessments on handlers.

**DATES:** Comments must be received by October 16, 1989.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456. Comments should reference the docket number and the date and page number of this issue of the *Federal Register* and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone 202-447-5331.

**SUPPLEMENTARY INFORMATION:** This rule is proposed under Marketing Agreement No. 125 and Marketing Order No. 966 (7 CFR part 966), regulating the handling of tomatoes grown in Florida. The marketing 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 proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule 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 100 handlers and 180 producers of Florida tomatoes covered under this marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The

majority of the handlers and producers may be classified as small entities.

The budget of expenses for the 1989-90 fiscal year was prepared by the Florida Tomato Committee (committee), the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of tomatoes. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in public meetings. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of Florida tomatoes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

The committee met on September 7, 1989, and unanimously recommended a 1989-90 budget of \$1,613,500. Last season's budget was \$1,537,000. The major expense allocation is for education and promotion projects, which at a total of \$1,090,000 accounts for about 70 percent of the budget. Other major expense items include increases for production research projects, committee staff salaries, employee health insurance and retirement programs, office rent and social security taxes.

The committee also unanimously recommended an assessment rate of \$0.025 per 25-pound container, the same rate as last year's. This rate, when applied to anticipated shipments of 58.2 million 25-pound containers, would yield \$1,455,000 in assessment revenue. This amount when added to \$45,000 of other income (e.g., interest revenue) and \$113,500 from the reserve would be adequate to cover budgeted expenses. Additional reserve funds may be used to meet any deficit in assessment income.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined this action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1989-90 fiscal period began in August, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable tomatoes handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for this program needs to be expedited. The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis.

#### List of Subjects in 7 CFR Part 966

Florida, Marketing agreements and orders, Tomatoes.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 966 be amended as follows:

#### PART 966—TOMATOES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 966 continues to read as follows:

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

2. A new § 966.227 is added to read as follows:

##### § 966.227 Expenses and assessment rate.

Expenses of \$1,613,500 by the Florida Tomato Committee are authorized and an assessment rate of \$0.025 per 25-pound container of tomatoes is established for the fiscal period ending July 31, 1990. Unexpended funds may be carried over as a reserve.

Dated: October 2, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-23648 Filed 10-5-89; 8:45 am]

BILLING CODE 3410-02-M

#### 7 CFR Part 1139

[DA-89-037]

#### Milk in the Great Basin Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to suspend for the months of October 1989 through

April 1990 a portion of the Great Basin milk order. The provision proposed to be suspended relates to a "touch base" requirement where a dairy farmer, who was not a producer under the Great Basin order in the previous month, would not be eligible to have milk diverted to a nonpool plant until after one day's production is received at a pool plant. Suspension of this provision was requested by a cooperative association whose members supply a majority of the milk marketed under the Great Basin order.

DATE: October 13, 1989.

ADDRESS: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-4829.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

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

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), the suspension of the following provision of the order regulating the handling of milk in the the Great Basin marketing area is being considered for October 1989 through April 1990:

##### Section 1139.13(d)(6)

All persons who want to send written data, views, or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 7th day after publication of this notice in the Federal Register. The

period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include October in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

#### Statement of Consideration

A suspension of a "touch base" provision applicable to dairy farmers who were not producers the previous month was requested by Western Dairymen Cooperative, Inc. (WDCI) whose members supply a majority of the milk marketed under the Great Basin order. The requested suspension would remove the requirement that a dairy farmer, who was not a producer under the the Great Basin order in the previous month, will not be eligible to have milk diverted to a nonpool plant until after one day's production is received at a pool plant.

WDCI states that this provision has caused considerable inconvenience and unnecessary expense in the movement of milk without any benefit to either the producer members of WDCI or the market in general and has caused the loss of pool participation by producers who are rightfully a part of the reserve supply of milk for the the Great Basin area.

WDCI states that it markets milk for its producer scattered over portions of eleven states under four different Federal milk marketing orders and to several fluid and ungraded milk plants throughout much of the western United States. This, WDCI says, causes them to spread their milk pickup routes over great distances and that these routes must be regularly adjusted for many changing circumstances such as volume, seasonal production variation, and changes in demand for milk at different plant. These factors, WDCI says, are making it next to impossible to follow the status of each dairy farmer that was not a producer the preceding month to make certain that their milk is qualified for diversion, and thus for pooling, as currently called for under the order.

Given the numerous variations in its milk movements, WDCI says that it does not know until the month is over which day's milk from any individual dairy farm was moved to a pool plant. Even if this information was available before a month's end, WDCI said ensuring delivery of at least one day's production to a pool plant before diverting it to a nonpool plant may not be feasible because of the expense involved.

Finally, WDCI states that this order provision discriminates against them because of the varied services performed for the many plants that WDCI supplies supplemental milk. The milk diverted in excess of fluid needs, or that is shifted from plant to plant, is an integral part of the market's Grade A milk supply and deserves to be pooled under the order, according to WDCI.

WDCI requested suspension at the earliest possible date through April 1990. Due to the administrative procedures that must be followed, it is unlikely that the provision could be suspended with regard to milk marketed prior to October 1, 1989, if it is determined that a suspension is warranted. Therefore, the suspension is being considered for the months of October 1989 through April 1990.

#### List of Subjects in 7 CFR Part 1139

Dairy products, Milk, Milk marketing orders.

The authority citation for 7 CFR part 1139 continues to read as follows:

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

Signed at Washington, DC, on: October 3, 1989.

Daniel Haley,  
Administrator.

[FR Doc. 89-23682 Filed 10-5-89; 8:45 am]  
BILLING CODE 3410-02-M

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 203

[Reg. C; Docket No. R-0674]

RIN 7100-AB04

#### Home Mortgage Disclosure

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Proposed rule.

**SUMMARY:** The Board is publishing for public comment a revised Regulation C (Home Mortgage Disclosure). The revised regulation implements amendments to the Home Mortgage Disclosure Act (HMDA) contained in the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA). The FIRREA amendments expand the coverage of HMDA to include mortgage lenders that are not affiliated with depository institutions or holding companies, and require covered institutions to report data regarding mortgage and home improvement loan applications they receive in addition to data regarding loan originations and purchases. Most institutions will now

also be required to report the race, sex and income of mortgage and home improvement loan applicants and borrowers.

The Board is proposing to adopt a "loan/application register" form for HMDA reporting, on which institutions would record the required information for applications completed, loans actually made, and loans purchased. In particular, the Board is seeking public comment on the layout and categories of the loan/application register and on the summary tables that would be produced by the Federal Financial Institutions Examination Council (FFIEC) from the data submitted.

The FIRREA amendments are effective on January 1, 1990, and the first set of reports in the new register format will be due in early 1991. Reports of 1989 loan data, which are due on March 31, 1990, remain subject to the existing provisions of the regulation; and institutions must use the current Form HMDA-1 or HMDA-2 as appropriate.

**DATES:** Comments must be received on or before November 3, 1989.

**ADDRESSES:** Comments should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, or delivered to the Mail Services courtyard entrance on 20th Street, between C Street and Constitution Avenue, NW., Washington, DC, between 8:45 a.m. and 5:15 p.m. weekdays. Comments should include a reference to Docket No. R-0674. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Noto or W. Kurt Schumacher, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at 202-452-2412 or 202-452-3667; for the hearing impaired only, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf, at 202-452-3544.

#### SUPPLEMENTARY INFORMATION:

##### (1) Background

The Board's Regulation C (12 CFR part 203) implements the Home Mortgage Disclosure Act of 1975 (HMDA) (12 U.S.C. 2801 *et seq.*). The regulation currently requires depository institutions, mortgage banking subsidiaries of holding companies, and savings and loan service corporations that have over \$10 million in assets and have offices in metropolitan statistical areas (MSAs) or primary metropolitan statistical areas (PMSAs), to disclose annually their originations and

purchases of mortgage and home improvement loans. Data must be itemized by census tract (or by county, in some instances) and also by type of loan. A disclosure statement covering the data on a calendar-year basis currently must be made available to the public and sent to the institution's federal supervisory agency by March 31 following the calendar year for which the data are compiled.

The Financial Institutions Reform, Recovery and Enforcement Act (FIRREA), which was signed into law on August 9, 1989, made a number of significant amendments to HMDA. (FIRREA, Pub. L. No. 101-73, section 1211, 103 Stat. 183, 524-526 (1989).) First, the coverage of HMDA was expanded to include mortgage lenders that are not affiliated with depository institutions or holding companies. Second, the FIRREA amendments require that institutions report data regarding loan applications; currently, only data regarding loans originated or purchased are reported. Third, the FIRREA amendments require most covered lenders to report the race, sex, and income of mortgage applicants and borrowers; depository institutions with assets under \$30 million are exempt from this particular requirement. Fourth, the FIRREA amendments require that lenders identify the class of purchaser for loans that they sell. Finally, the amendments permit lenders to explain the basis for their lending decisions to their supervisory agency.

The FIRREA amendments apply beginning with calendar year 1990, and data consistent with the new requirements will be due on the reports filed by institutions in early 1991. The FIRREA amendments do not affect the requirements for reports of calendar year 1989 data. The current provisions of Regulation C govern these reports, which are due by March 31, 1990; for these reports, institutions should use Form HMDA-1 or HMDA-2 as appropriate. (The current edition of *A Guide to HMDA Reporting*, published by the FFIEC in January 1989, provides guidance on complying with the current Regulation C and can be used in reporting on the 1989 data. The guide will be rewritten to reflect the FIRREA amendments.)

To implement the FIRREA amendments, the Board is publishing proposed revisions to Regulation C. The proposed revisions provide for a "register" form of reporting. Under the proposed arrangement, lenders would record data on a loan-by-loan and application-by-application basis and submit their registers to their supervisory agency. The Board believes

that institutions would have to maintain detailed information, given the FIRREA requirements, under any reporting arrangement that the Board might adopt. Under the Board's proposal, however, institutions would not have to undertake the additional step and cost of cross-tabulating the data. The register should therefore keep the new reporting burden to a minimum.

The Board is publishing a revised regulation in its entirety in order to facilitate review by commenters. However, the major changes, aside from the expansion in coverage of lenders, affect the data to be collected and the form in which the data will be reported (see § 203.4 of the proposed regulation).

The format for data submission is being developed in consultation with the agencies responsible for enforcing HMDA, namely the Federal Deposit Insurance Corporation (FDIC), the Department of Housing and Urban Development (HUD), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS). Several of these agencies currently require use of a register. It is contemplated that adoption of the register approach under HMDA could lead to elimination of duplicative register requirements, although an agency might collect data, in addition to that required by HMDA, as an addendum to the HMDA register.

The comment period ends on November 3, 1989. Because prompt implementation of the statutory amendments is in the public interest, the Board has set this comment period in place of the 60 days normally called for in the Board's policy statement on rulemaking (44 FR 3957, January 19, 1979). The Board believes an abbreviated comment period is necessary to ensure that a final rule is in place as quickly as possible to provide guidance to covered lenders.

The information that must be collected is mandated by the Congress. However, the Board does invite comment on the layout of the register and on whether additional or different categories and codes should be used to collect the required information. It also invites comment on the summary tables (discussed under "Aggregated data" below) that would be produced by the FFIEC from data submitted by covered institutions.

In accordance with section 3507 of the Paperwork Reduction Act of 1980, 44 U.S.C. Ch. 35, and 5 CFR 1320.13, the proposed revisions to the reporting form will be reviewed by the Board under the authority delegated to the Board by the Office of Management and Budget after

consideration of the comments received during the public comment period.

## (2) Section-by-Section Summary

The proposed changes to each section of the regulation are discussed below.

### *Section 203.1—Authority, Purpose, and Scope*

A new paragraph in § 203.1(b) reflects the purpose of the expanded reporting requirements, stated in the FIRREA amendments, of identifying possible discriminatory lending patterns. Section 203.1 (c) and (d) have been revised to clarify the coverage and scope of the regulation and to set forth the role of the FFIEC in producing reports from data submitted by institutions.

### *Section 203.2—Definitions*

Section 203.2 contains definitions of terms used in the regulation, and has been revised as follows.

*Act.* The definition of "act" in § 203.2(a) is unchanged.

*Application.* Under section 1211(c) of the FIRREA amendments, institutions are required to report data for completed loan applications, in addition to data for loans originated or purchased. A definition of "application" has been added as proposed § 203.2(b); succeeding provisions have been renumbered accordingly.

For purposes of coverage, an application results when an institution has collected the information normally obtained in evaluating borrowers for the type of credit requested. This treatment of "application" in the proposed regulation and of "completed application" in the Board's Regulation B (Equal Credit Opportunity) (12 CFR 202.2(f)) are similar. They differ in that the Regulation B definition requires that the institution have received all the information for evaluating applications for the amount and type of credit requested, including such items as credit reports and insurance approvals, while to meet the requirement for Regulation C, the application is to be treated as complete even if institution has not received reports or approvals by secondary market entities, government entities, or private mortgage insurers. (The treatment under Regulation C is in keeping with congressional intent as reflected in the legislative history.) A completed application would also exist for purposes of Regulation C in instances where, though the application is technically incomplete, the lender has a sufficient basis on which to approve or deny the request for credit. In addition, under Regulation B, an institution may in certain instances send the applicant a notice of incompleteness, and if the

applicant fails to respond within a reasonable period stated in the notice, the institution has no further obligation to act on the credit request. (Refer to Regulation B, § 202.9(c)(2).) The Board solicits comment on whether this situation should be deemed a withdrawn application for purposes of HMDA reporting (and identified as such on the register) or whether a separate category (such as "file closed for incompleteness") should be used.

*Branch office.* The branch office definition has several implications. First, institutions that do not have a home or branch office in an MSA are completely exempt from HMDA. Second, institutions must identify the census tract for loans on property located in any MSA in which the institution has a home or branch office. Third, loan data must be made available to the public at one branch office (or the home office) in each MSA where the institution has a home or branch office. Finally, the institution must post notices in all branch offices located in MSAs to inform the public of the availability of the HMDA data.

Section 203.2(c)(1) of the proposed regulation retains, for depository institutions, the branch office definition currently set forth in § 203.2(b)(1)(i) without substantive change. A branch office for banks, savings and loan associations, and credit unions is an office approved as a branch by a Federal or state supervisory agency.

Just last year, the Congress expanded HMDA coverage to institutions other than depository institutions, namely to mortgage banking subsidiaries of bank and thrift holding companies and to savings and loan service corporations. As discussed in more detail below, the FIRREA amendments further expand the coverage of HMDA to "other lending institutions." For all of these entities, designated as "mortgage lending institutions" in the proposed regulation, the Board proposes to retain the definition of branch office currently in § 203.2(b)(1)(ii), moving it to proposed § 203.2(c)(2). A branch office is any physical office of the institution that receives applications from the public for home purchase or home improvement loans.

In addition, under section 1211(f) of the FIRREA amendments, "other lending institutions"—which is to say any covered institution other than a bank, savings association, or credit union—are deemed to have a branch office in any MSA in which they receive applications for, originate, or purchase five or more home purchase or home improvement loans. Proposed § 203.2(c)(2)

incorporates this rule. The five-or-more-loan rule will apply for purposes of determining coverage and of geographic itemization, but it is contemplated that lending institutions will be required to make disclosure statements available and to post HMDA notices only in those MSAs where they have a physical presence.

**Dwelling.** In the current regulation, parenthetical material in the definitions of home purchase and home improvement loans indicates what is included in the term "dwelling." Proposed § 203.2(d) adds a definition of "dwelling" that consolidates this material as well as the definition of "state."

**FHA, FmHA, and VA loans.** The definition of these loans, currently contained in § 203.2(c), has been deleted from § 203.2 of the regulation and placed in the instructions for completing the reporting form (appendix A to the regulation).

**Financial institution.** Current § 203.2(e) defines the institutions subject to Regulation C as "financial institution[s]," which include depository institutions (banks, savings and loan associations, and credit unions and their majority-owned subsidiaries), mortgage banking subsidiaries of bank and savings and loan holding companies, and savings and loan service corporations.

In the proposed revision to § 203.2(e), the term "financial institution" is defined to refer to all institutions covered by the regulation. Included in the definition are banks, savings and loan associations, and credit unions as well as "mortgage lending institutions" (as discussed below, subsidiaries of depository institutions would fall in the latter category).

Under the current regulation, depository institutions such as banks and savings associations are covered provided they originate "federally related mortgages loans," defined in current § 203.2(d). The term "federally related mortgage loan" is relevant only for determining whether a depository institution is covered by HMDA. Proposed § 203.2(e)(1) combines, in substance, the definition of "financial institution" currently contained in § 203.2(e)(1)(i) and the current definition of "federally related mortgage loan." The Board has found that having separate definitions causes confusion regarding coverage. Accordingly, banks, savings associations, and credit unions are defined as financial institutions under § 203.2(e)(1) if they write home-purchase loans and are federally insured or regulated, or if they write home-purchase loans that are federally

insured or supplemented or will be sold to FNMA, GNMA, or FHLMC. The Board seeks comment on whether this definition could be simplified by providing merely that federally insured institutions making home-purchase loans are covered.

In section 1211(d) of the FIRREA amendments, the Congress expanded the coverage of HMDA to include "other lending institutions." An "other lending institution" is defined in section 1211(e)(2) of the act as "any person engaged for profit in the business of mortgage lending." The proposed regulation refers to these entities as "mortgage lending institutions" in § 203.2(e)(2); the term also covers mortgage banking subsidiaries of bank and savings and loan holding companies and savings and loan service corporations (and, as discussed below, mortgage banking subsidiaries of depository institutions).

An entity is a "mortgage lending institution" under proposed § 203.2(e)(2) if, in the preceding calendar year, 10 percent or more of its loan volume consisted of home purchase loans. This threshold mirrors the rule currently used in § 203.2(e)(1)(ii) to define whether a holding company subsidiary is a "mortgage banking" subsidiary.

Under current § 203.2(e)(2), majority-owned subsidiaries of banks and savings associations are treated as part of their parent institution. Accordingly, data submitted by the parent institution currently include that of the subsidiary and are itemized by census tract only if the loans relate to property in an MSA where the parent has a home or branch office. In light of the definition of "other lending institution" contained in the FIRREA amendments, the Board believes this treatment is no longer appropriate.

Given the statute's five-or-more-loan rule for branch offices, discussed above, to continue the current reporting arrangement for subsidiaries of depository institutions would magnify the difference in treatment accorded to subsidiaries based on corporate structure. A holding company subsidiary would be required to provide census tract information for loans in MSAs where it took applications for, originated, or purchased five or more mortgage loans, while the data of bank subsidiaries, for example, would contain this information only for MSAs in which the parent institution has a physical branch location. The Board believes that a difference in corporate structure does not justify such markedly different results.

Consequently, the Board proposes to treat mortgage lending subsidiaries of

depository institutions as independent corporate entities under the definition of "other lending institution." As such, they will comply with HMDA in their own right as mortgage lending institutions if they meet the 10 percent threshold, under proposed § 203.2(e)(2).

**Home improvement and home purchase loans.** Institutions are required to report data regarding home improvement and home purchase loans. The definitions of these terms are incorporated in proposed § 203.2(f) and § 203.2(g). With the added definition of "dwelling" in proposed § 203.2(d), the parenthetical references to condominiums, cooperatives, and mobile and manufactured homes have been deleted.

**Metropolitan statistical area.** Institutions are required to specify the location of the property to which a loan relates if the property is located in a Metropolitan Statistical Area (MSA) in which the institution has a home or a branch office. The definition of MSA in proposed § 203.2(j) is unchanged.

**State.** The definition of "state," currently contained in § 203.2(i), has been eliminated as unnecessary in light of its inclusion in the proposed definition of "dwelling."

#### Section 203.3—Exempt Institutions

Section 203.3 excludes from the coverage of the regulation small institutions, institutions that do not have offices in MSAs, and institutions that have been granted an exemption because they are subject to a similar state law. A new § 203.3(c)(2) has been added to provide that institutions which become subject to HMDA during the course of a given year—for example, by exceeding the 10 percent threshold for coverage as a "mortgage lending institution"—shall report data beginning with the following calendar year. Current § 203.2(c)(2) has been redesignated § 203.3(c)(3).

#### Section 203.4—Compilation of Loan Data

Section 203.4 sets forth the requirements for reporting of loan data and has been revised extensively. The FIRREA amendments require institutions to report data on all loan applications, not merely on originations and purchases of loans as is currently the case. The FIRREA amendments also require reporting of data of the race, sex, and income of applicants and borrowers, in addition to the geographic information that is currently required. In view of this increase in the data to be reported, the Board believes the cross-tabulated reporting format currently in

use is impractical. The Board is proposing, instead, a register form of reporting.

Currently, institutions report data in a summary format, cross-tabulated by census tract and type of loan, and reflect the number and dollar amount of loans in five loan categories. For loans in MSAs where the institution has a home or a branch office, these data are subtotaled separately for each census tract in which loans are originated or purchased. If this summary format were to be rented, multiple reporting forms would be needed to capture all the data called for by the FIRREA amendments. Institutions would use one form to report loan originations, applications denied, and applications withdrawn within each census tract for the five loan categories. Another form would be required for data on loan purchases. Still another would identify the type of purchaser of loans that are sold. Finally, three sets of multiple forms—one page for each of the five loan categories—would be required for cross-tabulating the data on race, sex, and income with type of loan.

In reviewing the options, the Board has determined that continuing the cross-tabulated form of reporting currently in use would be extremely confusing and burdensome for reporting institutions. In the Conference Report to the FIRREA amendments, the Congress gave the Board flexibility to establish a reporting format that will maximize the utility of the data while minimizing, to the extent possible, the reporting burden for covered institutions. (H.R. Rep. No. 101-222, 101st Cong., 1st Sess. 459). Accordingly, the Board is proposing in § 203.4 that institutions report by means of a loan/application register, using a form like that set forth in appendix A of the proposed regulation. Under this arrangement, institutions would record data on a loan-by-loan and application-by-application basis and would submit the completed register to their supervisory agency. The FFIEC would produce individual reports for each institution and aggregate tables for each MSA using the data from the registers (see the discussions below under "Aggregated data").

The Board believes that the register approach presents a number of advantages. Institutions would collect the detailed information called for by the FIRREA amendments, but would not have to undertake the additional step of preparing cross-tabulated HMDA reports. The Board believes that a register is therefore easier and less costly for institutions to complete. In addition, many institutions are already

familiar with the register format since they have complied with similar requirements of the OTS, the OCC, and the FDIC. These agencies are undertaking to review their current requirements to determine the extent to which the register called for by Regulation C could serve as a substitute for the ones they now require. And while the supervisory agencies would incur significant added costs in entering the increased amount of data that would be submitted, the burden on covered institutions would be eased. The reporting of raw data also would permit the FFIEC to produce reports based on a variety of different breakdowns of the data. The specific requirements for the register and the summary tables that the FFIEC would produce are discussed below in the sections on appendix A and "Aggregated data."

Proposed § 203.4(a) contains, among other things, a requirement that institutions collect data on the race and sex of applicants, and proposed § 203.4(b)(1) tells how race and sex information may be collected.

Section 203.13 of the Board's Regulation B (Equal Credit Opportunity) requires that data about race or national origin and sex be collected on applications for loans to finance the purchase of a principal residence; § 202.5(d) of Regulation B generally prohibits lenders from requesting it in other circumstances. One exception, under § 202.5(b)(2), is that lenders are permitted to request the information if they are required to do so by a Federal regulation. With the addition of § 203.4(b)(1) to Regulation C, lenders must collect this information for home improvement loans and home purchase loans on property not intended as the borrower's principal residence—loans not covered by § 202.13—without violating Regulation B. A form and instructions for collecting data on race and sex is contained in appendix B of the proposed regulation.

The FIRREA amendments require the reporting of data on race, sex, and income for applications and originations but not purchased loans. Depository institutions with assets of \$30 million or less are not required to report this information. Proposed § 203.4(b)(2) provides for optional reporting of these data for loan purchases and by depository institutions with assets of \$30 million or less. Under the FIRREA amendments, mortgage lending institutions do not qualify for the \$30 million exception and hence must include data on race, sex, and income for all applications and loan

originations, though not for purchased loans.

A new § 203.4(c) has been added to implement section 1211(b) of the FIRREA amendments, which permits institutions, at their option, to report reasons for their loan decisions. Proposed § 203.4(c) authorizes optional reporting of such data. Current § 203.4(c), relating to excluded data, has been redesignated § 203.4(d).

Proposed § 203.4(d) relates to data that is not to be reported. Two changes have been made to this provision. First, the Board proposes to eliminate the rule that mortgage banking subsidiaries of bank and savings and loan holding companies are not to report FHA loans, currently contained in § 203.4(c)(2). Data on FHA loans by these institutions was originally collected by HUD outside of HMDA. Now that HUD is a direct participant in the implementation of HMDA, it appears appropriate to collect and disclose these data on the HMDA reports. Dropping the current provision will also result in a uniform rule for reporting of these loans by all institutions and avoid confusion. Otherwise, data would be incomplete as to lending by nondepository institutions, a result that is inconsistent with the congressional intent reflected in the FIRREA amendments.

The exclusion for refinancings between the original parties, currently contained in § 203.4(c)(1)(iii), has been deleted. The Board proposes that refinancings of home purchase loans be treated as home purchase or home improvement loans, as applicable, even when they involve the original borrower and original lender. The Board has found that the exclusion of refinancings between original parties has been a source of confusion. While refinancings between original parties may not technically result in new money being disbursed into the community, the Board believes that these transactions do provide an indication of an institution's willingness to meet credit need. Accordingly, the current exclusion has been deleted and refinancings between the original parties, if they otherwise meet the definition of home purchase or home improvement loans, would be reported in full under the proposed regulation.

#### *Section 203.5—Disclosure and Reporting*

Section 203.5 sets the rules for making loan data available at offices of an institution and reporting the data to supervisory agencies. The Board proposes to require that institutions submit registers for a given calendar year to their supervisory agency by the

following February 15. Currently, disclosure statements are due by March 31. An earlier reporting date is necessary to ensure that disclosure statements can be prepared by the FFIEC in a timely fashion. The Board also believes an earlier date is reasonable given that minimal processing on the part of institutions will be required. Also, the register format will not require institutions to cross-tabulate loan and application information for the entire calendar year in order to prepare their HMDA submissions, as is presently the case.

Section 203.5 of the proposed regulation also provides that institutions make available disclosure statements within 15 business days after receiving them from the FFIEC. As discussed below, the FFIEC will be producing the disclosure statements from the registers that are submitted and will provide those statements to the reporting institutions. The Board considered whether the registers themselves should be disclosed to the public. Currently, those agencies that require registers do not make the registers public, due to privacy and other concerns, and the Board proposes to follow this approach in Regulation C.

Other provisions in § 203.5, such as those concerning notices and times of availability, are unchanged.

#### Section 203.6—Enforcement

Section 203.6 sets forth rules relating to administrative enforcement and bona fide errors. The provisions of this section are essentially unchanged.

#### Appendix A—Forms and Instructions

Appendix A contains the loan/application register and instructions for its completion. Institutions must use the prescribed format but are not required to use the form itself. An institution may, for example, choose to produce a computer printout of its register instead. Due to the volume of data being submitted, the Board encourages covered institutions to develop computer programs that will enable them to submit the data in machine-readable format. The Board plans to publish standards to facilitate electronic submission when it publishes the amended regulation in final form.

The following is a summary of the information that would be provided on the register and the number of characters to be allotted for each data item. The instructions contained in proposed Appendix A provide guidance

on the requirements for the register and answer more detailed questions.

**Application or loan number.** A unique number identifying the application or transaction. For FHA loans, it must be the FHA case number; otherwise any number the institution chooses to use. (25 characters)

**Date of application.** For applications, the date the application was submitted by year, month, and day. (6 characters)

**Application or loan information.** Codes indicating the type of loan, the purpose of the loan, and whether the property is owner-occupied, plus the amount of the loan (or the amount applied for) in thousands of dollars. (1 character each for type, purpose, and occupancy status; 5 characters for amount)

**Action taken and date.** A code indicating whether the entry relates to an approved, rejected, or withdrawn application, or to a loan purchase. Also, the date the action occurred. (1 character for action taken; 4 characters for month and day)

**Location of the property.** For loans written on property in MSAs where the institution has a home or branch office, the location of the property. (4 characters for MSA, 2 for state, 3 for county, and 6 for census tract)

**Applicant characteristics.** A code indicating the race and sex of the applicant and any coapplicant, and the income relied upon in thousands of dollars. This section need not be completed (by any institution) for loan purchases; and it need not be completed by any bank, savings and loan or credit union with \$30 million or less in assets. (1 character each for race and sex of applicant and of coapplicant; 4 characters for income)

**Type of purchaser.** For loans that are sold, a code indicating the class of purchaser. (1 character)

**Reason for denial.** Up to two codes indicating the reasons for denial. This information is optional. (2 characters)

The Board is interested in receiving public comment on whether the number of reasons for denial should be expanded to be more specific, perhaps along the lines of the reasons identified in the model forms for adverse action contained in Regulation B.

#### Appendix B—Form and Instructions for Data Collection on Race and Sex

Appendix B of the current regulation prescribes the supervisory agencies to which institutions must submit their reports. This material has been incorporated into the instructions to the

reporting form, in appendix A. Independent mortgage lending institutions will submit their registers to HUD while subsidiaries of depository institutions or their holding companies will submit their registers to the FDIC, Federal Reserve, or OTS.

Proposed appendix B contains a form that can be used to collect data on race and sex, and instructions for its use. It is identical to the form prescribed in Regulation B for data collection related to applications for home purchase loans, except for the added reference to HMDA.

(3) **Aggregated data.** The FFIEC (with support from each of the federal regulators with HMDA responsibilities) aggregates the loan data received from all reporting institutions in each MSA. The FFIEC also produces tables for each MSA showing lending patterns according to demographic characteristics such as income level and age of housing stock. These tables, together with disclosure statements of the individual institutions, are sent to central data depositories in each MSA, where they are available to the public.

Under the Board's proposal, the FFIEC would generate disclosure statements from the register data submitted by institutions. These statements (in the form of summary tables) would be provided to the institutions, which would in turn make them available to the public. The FFIEC expects that these statements would be provided to institutions by October following submission of the register data on February 15. This timetable is dictated by the large volume of data to be processed. The supervisory agencies and the FFIEC will take appropriate steps, however, to ensure that both the individual disclosure statements and the aggregate tables become available to the public as early as possible. Reporting institutions will be encouraged, for example, to submit data in machine-readable form to facilitate earlier availability.

The FFIEC plans to produce summary tables annually for each institution, to show lending activity in each MSA for which the institution reports data. In addition, aggregate tables based on loan data from all covered institutions would be prepared for each MSA and sent to central data depositories. The Board emphasizes that these tables would be prepared by the FFIEC from register data submitted, and not by individual institutions.

BILLING CODE 6210-01-M





**Loans Sold**  
(Loans sold in 19\_\_)

Name of Institution: \_\_\_\_\_

TYPE OF PURCHASER	Number of Loans	Total Dollar Amount (Thousands)
Federal National Mortgage Association	<div data-bbox="550 657 909 1282" style="border: 2px solid black; background-color: #cccccc; padding: 10px; text-align: center;"> <p><b>Sample Table 3</b></p> <p>To be produced by FFIEC</p> </div>	
Government National Mortgage Association		
Federal Home Loan Mortgage Corporation		
Farmer's Home Administration		
Commercial Bank		
Savings Bank or Savings and Loan Association		
Life Insurance Company		
Other Purchasers		

**Disposition of Loan Applications**  
Conventional Home Purchase Loans

MSA: \_\_\_\_\_

Financial Institution: \_\_\_\_\_

APPLICANT CHARACTERISTICS	Applications Received		Loans Granted		Applications Denied		Applications Withdrawn	
	(#)	(\$)	(#)	(%)	(#)	(%)	(#)	(%)
<b>Race of Applicants</b>								
American Indian/Alaskan Native								
Asian/Pacific Islander								
Black								
Hispanic								
White								
Other								
Joint								
<b>Sex of Applicants</b>								
Male								
Female								
Joint								
<b>Income of Applicants</b>								
0-19,999								
20,000-29,999								
30,000-49,999								
50,000 or more								

Sample Table 4  
To be produced by FFIEC

**Disposition of Loan Applications**  
Conventional Home Purchase Loans

Financial Institution: \_\_\_\_\_

MSA: \_\_\_\_\_

INCOME AND RACE	Applications Received		Loans Granted		Applications Denied		Applications Withdrawn	
	(#)	(\$)	(#)	(%)	(#)	(%)	(#)	(%)
<b>0-19,999</b>								
American Indian/Alaskan Native								
Asian/Pacific Islander								
Black								
Hispanic								
White								
Other								
Joint								
<b>20,000-29,999</b>								
American Indian/Alaskan Native								
Asian/Pacific Islander								
Black								
Hispanic								
White								
Other								
Joint								
<b>30,000-49,999</b>								
American Indian/Alaskan Native								
Asian/Pacific Islander								
Black								
Hispanic								
White								
Other								
Joint								
<b>50,000 or more</b>								
American Indian/Alaskan Native								
Asian/Pacific Islander								
Black								
Hispanic								
White								
Other								
Joint								

Sample Table 5  
To be produced by FFIEC

**Disposition of Loan Applications**  
Conventional Home Purchase Loans

MSA: \_\_\_\_\_

Financial Institution: \_\_\_\_\_

INCOME AND SEX	Applications Received		Loans Granted		Applications Denied		Applications Withdrawn	
	(#)	(\$)	(#)	(%)	(#)	(%)	(#)	(%)
<b>0-19,999</b>								
Male								
Female								
Joint								
<b>20,000-29,999</b>								
Male								
Female								
Joint								
<b>30,000-49,999</b>								
Male								
Female								
Joint								
<b>50,000 or more</b>								
Male								
Female								
Joint								

**Sample Table 6**  
To be produced by FFIEC

**Disposition of Loan Applications**  
Conventional Home Purchase Loans

Financial Institution: \_\_\_\_\_

MSA: \_\_\_\_\_

TYPE OF CENSUS TRACT	Applications Received		Loans Granted		Applications Denied		Applications Withdrawn	
	(#)	(\$)	(#)	(%)	(#)	(%)	(#)	(%)
<b>Racial Composition</b>								
Less than 15% minority								
15-29% minority								
30-49% minority								
50-64% minority								
65-79% minority								
80-100% minority								
<b>Income Characteristics</b>								
Low or moderate income								
Middle income								
Upper income								
<b>Income and Racial Composition</b>								
<b>Low Income, less than 15% minority</b>								
15-29% minority								
30-49% minority								
50-64% minority								
65-79% minority								
80-100% minority								
<b>Middle Income, less than 15% minority</b>								
15-29% minority								
30-49% minority								
50-64% minority								
65-79% minority								
80-100% minority								
<b>Upper Income, less than 15% minority</b>								
15-29% minority								
30-49% minority								
50-64% minority								
65-79% minority								
80-100% minority								
<b>All other tracts</b>								
<b>Small county</b>								

Sample Table 7  
To be produced by FFIEC

Sample Tables 1 and 2 are similar to the current HMDA-1 Part A (Originations) and HMDA-1 Part B (Purchases) forms. Sample Table 1 would show the disposition of loan applications (granted, denied, or withdrawn) by loan category within each census tract. Sample Table 2 would show loans purchased by loan category within each census tract. These two tables would be produced for each MSA in which the institution has offices.

Under section 1211(b) of the FIRREA amendments, institutions are required to identify the class of purchaser of loans that are sold. Using these data from registers, the FIRREA plans to produce a report similar to that set forth as Sample Table 3. This sample table would indicate, for all loans sold by the institution, the number and dollar amount sold by class of purchaser. The table would reflect activity by the institution in all MSAs, and the classes would cover all major categories of purchasers.

The FIRREA also plans to produce four other tables to reflect the data on race, sex, and income that must be reported under section 1211(a) of the FIRREA amendments—Sample Tables 4, 5, 6, and 7. The FIRREA would prepare these tables for each loan category. Sample Table 4 would show disposition of applications by the race, sex and income of applicants or borrowers. Disposition categories would include the total number and dollar amount of applications received, loans granted, applications denied, and applications withdrawn. Sample Table 5 would show the disposition of applications broken down by the income and by the race of the applicant or borrower. Sample Table 6 would show disposition of applications by the income and sex of the applicant or borrower. Sample Table 7 would show the disposition of applications within groups of census tracts, categorized by their race and income characteristics.

(4) *Effective dates.* The FIRREA amendments apply to applications received, and loans originated or purchased, on or after January 1, 1990. Under the Board's proposal, institutions will be required to report data for calendar year 1990 in the revised format by February 15, 1991. The current requirements of Regulation C apply to reports of data for calendar year 1989; accordingly, institutions will use current forms HMDA-1 or HMDA-2, as appropriate, for the reports that are due on March 31, 1990.

(5) *Economic impact statement.* The Board's Division of Research and Statistics has prepared an economic impact statement on the revisions to

Regulation C. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC 20551, at 202-452-3245.

#### List of Subjects in 12 CFR Part 203

Banks, Banking, Consumer protection, Federal Reserve System, Home mortgage disclosure, Mortgages, Reporting and recordkeeping requirements.

For the reasons set forth in this notice and pursuant to the Board's authority under section 305(a) of the Home Mortgage Disclosure Act (12 U.S.C. 2804(a)), the Board proposes to revise 12 CFR part 203 as follows:

#### PART 203—HOME MORTGAGE DISCLOSURE

##### Sec.

- 203.1 Authority, purpose, and scope.
- 203.2 Definitions.
- 203.3 Exempt institutions.
- 203.4 Compilation of loan data.
- 203.5 Disclosure and reporting.
- 203.6 Enforcement.

##### Appendix A—Form and Instructions for Loan/Application Register

##### Appendix B—Form and Instructions for Data Collection on Race and Sex

Authority: 12 U.S.C. 2801-2810.

#### § 203.1 Authority, purpose and scope.

(a) *Authority.* This regulation is issued by the Board of Governors of the Federal Reserve System ("Board") pursuant to the Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.*), as amended. The information-collection requirements have been approved by the U.S. Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and have been assigned OMB No. 7100-0090.

(b) *Purpose.* (1) This regulation implements the Home Mortgage Disclosure Act, which is intended to provide the public with loan data that can be used:

- (i) To help determine whether financial institutions are serving the housing needs of their communities;
- (ii) To assist public officials in distributing public-sector investments so as to attract private investment to areas where it is needed; and
- (iii) To assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.

(2) Neither the act nor this regulation is intended to encourage unsound lending practices or the allocation of credit.

(c) *Scope.* This regulation applies to any financial institution that had assets of more than \$10,000,000 and had a home or branch office in a metropolitan

statistical area (MSA) on December 31 of the year preceding. The regulation requires the institution to report data to its supervisory agency about home-purchase and home-improvement loans it originates, purchases, or for which it receives applications, and to disclose certain data to the public. "Financial institution" includes a bank, savings association, credit union, or other mortgage lending institution, as defined in § 203.2(e).

(d) *Loan aggregation and central data depositories.* Using the loan data submitted by financial institutions, the Federal Financial Institutions Examination Council will prepare disclosure statements for individual institutions and will aggregate loan data for each MSA, showing lending patterns by location, age of housing stock, income level, sex and racial characteristics. Loan data are available to the public at central data depositories located in each MSA. A listing of central data depositories can be obtained from the Federal Financial Institutions Examination Council, Washington, DC 20006.

#### § 203.2 Definitions.

In this regulation:

(a) *Act* means the Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.*), as amended.

(b) *Application* means a completed application for a home-purchase or a home-improvement loan that contains information the financial institution regularly obtains in evaluating applications for the amount and type of credit requested.

(c) *Branch office* means: (1) Any office of a bank, savings association, or credit union that is approved as a branch by a federal or state supervisory agency, but excludes free-standing electronic terminals such as automated teller machines; and

(2) Any office of a mortgage lending institution (other than a bank, savings association, or credit union) that takes applications from the public for home-purchase or home-improvement loans. A mortgage lending institution is also deemed to have a branch office in an MSA if, in the preceding calendar year, it received applications for, originated, or purchased five or more home-purchase or home-improvement loans on property located in that MSA.

(d) *Dwelling* means a residential structure (whether or not it is attached to real property) located in a state of the United States of America, the District of Columbia, or the Commonwealth of Puerto Rico. The term includes an individual condominium unit,

cooperative unit, or mobile or manufactured home.

(e) *Financial institution* means: (1) A bank, savings association, or credit union that originated in the preceding calendar year a home-purchase loan (other than temporary financing such as a construction loan) secured by a first lien on a one-to-four family dwelling if:

- (i) The institution is federally insured or regulated; or
- (ii) The loan is insured, guaranteed, or supplemented by any Federal agency; or
- (iii) The institution intended to sell the loan to the Federal National Mortgage Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation;

(2) A for-profit mortgage lending institution (other than a bank, savings association, or credit union) whose home-purchase loans equaled or exceeded ten percent of its loan volume, measured in dollars, in the preceding calendar year.

(f) *Home-improvement loan* means any loan that: (1) Is stated by the borrower (at the time of the loan application) to be for the purpose of repairing, rehabilitating, or remodeling a dwelling; and

(2) Is classified by the financial institution as a home-improvement loan.

(g) *Home-purchase loan* means any loan secured by and made for the purpose of purchasing, or refinancing the purchase of, a dwelling.

(h) *Metropolitan statistical area or MSA* means a metropolitan statistical area or a primary metropolitan statistical area, as defined by the U.S. Office of Management and Budget.

### 203.3 Exempt institutions.

(a) *Exemption based on asset size or location.* A financial institution is exempt from the requirements of this regulation for a given calendar year if on the preceding December 31:

- (1) Its total assets were \$10,000,000 or less; or
- (2) It had neither a home office nor a branch office in an MSA.

(b) *Exemption based on state law.* (1) A state-chartered financial institution is exempt from the requirements of this regulation if the Board determines that the institution is subject to a state disclosure law that contains requirements substantially similar to those imposed by this regulation and contains adequate provisions for enforcement.

(2) Any state, state-chartered financial institution, or association of such institutions may apply to the Board for an exemption under this paragraph.

(3) An institution that is exempt under this paragraph shall submit the data

required by the state disclosure law to its state supervisory agency, for purpose of aggregation.

(c) *Loss of exemption.* (1) An institution losing an exemption that was based on asset size or location under paragraph (a) of this section shall comply with this regulation beginning with the calendar year following the year in which it lost its exemption.

(2) An institution losing an exemption that was based on § 203.2(e)(1) or (2) shall comply with this regulation beginning with the calendar year following the year in which it lost its exemption.

(3) An institution losing an exemption that was based on state law under paragraph (b) of this section shall comply with this regulation beginning with the calendar year following the year for which it last reported loan data under the state disclosure law.

### § 203.4 Compilation of loan data.

(a) *Data format and itemization.* A financial institution shall compile data regarding applications for, originations of, and purchases of home-purchase and home-improvement loans for each calendar year. These data shall be presented on a loan-by-loan basis in the loan/application register format prescribed in appendix A. The institution shall include the following:

- (1) A number for the loan or loan application, and the date of application.
- (2) The type and purpose of the loan.
- (3) The owner-occupancy status of the property to which the loan relates.
- (4) The amount of the loan or application.
- (5) The type of action taken, and the date.

(6) The location of the property to which the loan relates, by MSA, state, county, and census tract, if the institution has a home or a branch office in that MSA.

(7) The race and sex of the applicant or borrower, and the income relied upon in processing the loan application.

(8) The type of entity purchasing a loan that was originated or purchased and then sold by the institution within the same calendar year.

(b) *Collection of data on race, sex, and income.* (1) Questions regarding the race and sex of the applicant or borrower may be listed on the loan application or on a separate form. If the applicant or borrower chooses not to provide the information, the lender shall obtain the data, to the extent possible, on the basis of visual observation or surname.

(2) Race, sex, and income data need not be reported for:

(i) Loans purchased by the financial institution; or

(ii) Applications received, or loans originated, by a bank, savings association, or credit union with assets on the preceding December 31 of \$30,000,000 or less.

(c) *Optional data.* A financial institution may include in the loan/application register the reason it denied a loan application.

(d) *Excluded data.* A financial institution shall not report:

(1) Loans originated or purchased by the financial institution acting in a fiduciary capacity (such as trustee);

(2) Loans on unimproved land;

(3) Temporary financing (such as bridge or construction loans);

(4) The purchase of an interest in a pool of mortgage loans (such as mortgage-participation certificates); or

(5) The purchase solely of the right to service loans.

### § 203.5 Disclosure and reporting.

(a) *Reporting requirements.* By February 15 following the calendar year for which the loan data are compiled, a financial institution shall send two copies of its loan/application register to the agency office specified in appendix A of this regulation.

(b) *Disclosure to public.* A financial institution shall make its mortgage loan disclosure statements (to be prepared by the Federal Financial Institutions Examination Council) available to the public no later than 15 business days after the statements are received by the institution from its supervisory agency. The financial institution shall make these statements available to the public for a period of five years.

(c) *Availability of disclosure statements.* A financial institution shall make the disclosure statements available at its home office. If it has branch offices in other MSAs, it shall also make statements available in at least one branch office in each of those MSAs; the statements at branch offices need only contain data relating to property in the MSA where that branch office is located. The institution shall make the disclosure statements available for inspection and copying during the hours the office is normally open to the public for business. An institution that provides photocopying facilities may impose a reasonable charge for this service.

(d) *Notice of availability.* A financial institution shall post a general notice about the availability of its disclosure statements in the lobbies of its home office and any branch offices located in an MSA. Upon request, it shall promptly

provide the location of the institution's offices where the statements are available. At its option, an institution may include the location in its notice.

#### § 203.6 Enforcement.

(a) *Administrative enforcement.* A violation of the act or this regulation is subject to administrative sanctions as provided in section 305 of the act. Compliance is enforced by the agencies listed in appendix A of this regulation.

(b) *Bona fide errors.* An error in compiling or recording loan data is not a violation of the act or this regulation if it was unintentional and occurred despite the maintenance of procedures reasonably adapted to avoid such errors.

### Appendix A—Form and Instructions for Loan/Application Register

#### I. Loan/Application Register Form

Public reporting burden for this collection of information is estimated to vary from 4 to 100 hours per response, with an average of 30 hours per response, including time to gather and maintain the data needed to review instructions and complete the information collection. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

#### II. Instructions to Lending Institutions

##### A. Who Must Use This Form

(1) Banks, savings associations, credit unions, and other mortgage lending institutions must complete this loan/application register to list data about loan applications received and loans originated and purchased for a calendar year if on the preceding December 31 the institution:

(a) Had assets of more than \$10,000,000, and

(b) Had a home or a branch office in a metropolitan statistical area or a primary metropolitan statistical area (both referred to in these instructions by the term MSA).

**Example:** If on December 31, 1989, you had a home or a branch office in an MSA and your assets exceeded \$10,000,000, you must complete a register listing all home-purchase and home-improvement loans you originate or purchase during calendar year 1990, and listing also any applications you receive on which final action was taken by year-end 1990.

(2) However, if your institution is a bank, savings association or credit union, you need not complete a register—even if the tests for asset size and location are met—if you made no first-lien mortgage loans on one-to-four family dwellings in the preceding calendar year.

(3) If your institution is a for-profit mortgage lender (other than a bank, savings association, or credit union), you need not

complete a register if your home-purchase loan originations in the preceding year totalled less than 10 percent of your loan volume, measured in dollars.

(4) You must complete a separate loan/application register even if you are a subsidiary of an institution that is also required to complete a register.

##### B. Who Must Use Other Forms

Institutions that have been exempted by the Federal Reserve Board from complying with Federal law because they are covered by a similar state law on mortgage-loan disclosures must use the disclosure form required by their state law.

##### C. Format

(1) You must use the format of this loan/application register, but you are not required to use the form itself. For example, you may produce a computer printout instead. But you must give all the identifying information asked for at the top of the form, use the prescribed column headings, provide the signature of a certifying officer, etc.

(2) If your register is more than one page, number the pages.

(3) At the top of the first page, type or print the name and telephone number of the office for your institution who will be certifying to the accuracy of the data, the name of your institution, and the mailing address. Your supervisory agency will use this name and address to send completed disclosure statements to your institution.

##### D. Submission of Register; Release of Disclosure Statements

(1) If you submit data in hard copy, you must send two copies of your loan/application register to the office specified by your Federal supervisory agency no later than February 15 following the calendar year for which the data are compiled. A list of agencies appears at the end of these instructions.

(2) If you submit your register in machine-readable form, you must obtain the required specifications from your regulatory agency.

(3) Submit only one report for each institution. The report may consist of separate registers from your individual branch offices. However, be certain that the loan numbers discussed under paragraph F(1) are unique within your institution (for example, you could use a letter or number code for different branches to avoid the possibility of duplicate loan numbers).

(4) The first page of the register must be signed by an officer of your institution, certifying to the accuracy of the data.

(5) The Federal Financial Institutions Examination Council will prepare disclosure statements from the data that you submit and will send you, through your supervisory agency, a copy for your institution to make available to the public. You must make these statements available for inspection by the public at your home office (and, if you have branch offices in other MSAs, at one branch office in each of these MSAs) within 15 business days of receiving them.

##### E. Data to Be Shown

(1) Show the data on home-purchase and home-improvement loans that you originated or purchased during the calendar year

covered by the report. Report this data even if the loans were subsequently sold.

(2) Show data for applications received that your institution denied, or that the applicant withdrew, by the end of the calendar year. Report the required data even if the loan application was received in a preceding year, as long as the disposition was made during the year for which you are reporting.

##### F. Itemization of Data to be Shown

Your loan/application register must include the following.

(1) *Application or loan number.* If the loan is to be FHA insured, you must enter the FHA case number. Otherwise, you may enter any number not exceeding 25 characters (letters or numerals, or a combination of both) that would allow retrieval of the loan or application file to which the number refers. Make sure that loan or application numbers are unique within your institution. If your report contains data for branch offices, for example, you could add codes to identify the loans or applications of particular branches.

(2) *Date of application.* Enter the date the loan was applied for by year, month and day. For example, January 31, 1990, would be shown as "90-01-31." Enter "NA" for loans purchased by your institution.

(3) *Application or loan information.*—(a) *Type.* Indicate the type of loan (or application for a loan), by entering the applicable code, as follows:

- 1—Conventional (any loan other than FHA, VA or FmHA loans)
- 2—FHA (Federal Housing Administration) insured
- 3—VA (Veterans Administration) guaranteed
- 4—FmHA (Farmers Home Administration) insured

(b) *Purpose of loan.* Indicate the purpose of the loan by entering the applicable code as follows:

- 1—Home purchase (one-to-four family)
- 2—Home improvement (one-to-four family)
- 3—Multifamily dwelling (both purchase and improvement)

(c) *Explanation of loan purpose*—Code 1: *Home-purchase.*

(i) This code applies to loans made, or applications received, for the purpose of purchasing a residential dwelling for one-to-four families if the loan is secured by a lien.

(ii) At your option, you may use code 1 for loans that are made for home-improvement purposes but are secured by a first lien, if you normally classify such first-lien loans as home-purchase loans.

(iii) Use code 1 for refinancings of home-purchase loans on one-to-four family residential dwellings.

Code 2: *Home-improvement.* (i) Code 2 applies to loans and applications for loans that:

- (A) The borrowers have said are to be used for repairing, rehabilitating, or remodeling one-to-four family residential dwellings, and;
- (B) Are recorded on your books as home-improvement loans.

(ii) You must report both secured and unsecured loans.

(iii) At your option, you may use code 2 for home-equity lines of credit if the borrower or

applicant indicates at the time of application or when the account is opened that a portion of the proceeds will be used for home-improvement. For such lines, under "Amount of loan" in paragraph (e) below, enter only that portion of the line which the borrower or applicant indicates will be for home-improvement purposes. Report only in the year the line is established.

Code 3: *Multifamily dwelling.* (i) This code applies to loans and applications on dwellings for five or more families, including home-purchase and home-improvement loans, and refinancings.

(ii) Do not use this code for loans or individual condominium or cooperative units; use codes 1 or 2 for such loans, as applicable.

(d) *Occupancy.* Use the applicable code to indicate whether the property to which the loan or loan application relates is to be owner-occupied:

- 1—Owner-occupied
- 2—Not owner-occupied
- 3—Not applicable

(i) Code 2 ("not owner-occupied") applies to home-purchase or home-improvement loans or applications on one-to-four family dwellings, located within an MSA in which your institution has a home or a branch office, that were made to borrowers or received from applicants who indicated at the time of the loan application that they did not intend to use the property as a principal dwelling.

(ii) Use code 3 ("not applicable") if you cannot determine from the loan documents whether the property is to be owner-occupied, or if the property to which the loan relates:

- (A) Is not located in an MSA, or is located in an MSA in which your institution has neither a home nor a branch office; or
- (B) Is a multifamily dwelling.

(e) *Amount of loan.* Enter the amount of the loan or application. Round all dollar amounts to the nearest thousand (\$500 should be rounded up to \$1,000), and show in terms of thousands.

(i) For home-purchase loans that you originate "amount" means the original principal amount of the loan. For home-purchase loans that you purchase, "amount" means the unpaid principal balance of the loan at the time of purchase.

(ii) For home-improvement loans (both originations and purchases), you may include unpaid finance charges in the "amount" if that is how you record such loans on your books.

(iii) For home-equity lines of credit you may include in the amount only that portion of the line indicated by the applicant or borrower at the time the application is made or when the account is opened as being for the purpose of home-improvement. Report the line only in the year it is established.

(iv) In the case of a loan application that is denied or withdrawn, enter the amount of the loan applied for.

(4) *Action taken.* By using the following codes, indicate the type of action taken on the application or loan by the end of the calendar year for which you are reporting:

- 1—Loan granted
- 2—Application denied
- 3—Application withdrawn

#### 4—Loan purchased by your institution

(a) *Type.* (i) Do not report any loan application that is still pending at the end of the calendar year for which you are reporting; instead, report it in the year a decision is made.

(ii) Indicate as withdrawn any application that the applicant has expressly withdrawn, or that meets the conditions specified in § 202.9(f) of Regulation B. Do not indicate as withdrawn any applications that are incomplete but do not meet the above conditions.

(b) *Date.* Enter the date (by month and day only) of approval, denial, or withdrawal of the loan application, or purchase of the loan, as applicable. For example, a loan application that was approved on January 31, 1990, would be entered as "01-31." (Because the register will only contain information for a given calendar year, you will not enter the year in this column.)

(5) *Property location.* In these columns you will enter the applicable codes for the MSA, state and county, and census tract locations for the property to which a loan relates.

(a) *MSA.* For each loan or application for a loan, indicate the location of the property by the MSA number, if you have a home or branch office in that MSA. (See paragraph (e) below for treatment of loans on property outside MSAs in which you have offices.) If you are a mortgage lending institution, you are also deemed to have a branch office in an MSA if in the previous year you received applications for, originated, or purchased five or more home-purchase or home-improvement loans on property located in that MSA. Enter only the MSA number, not the MSA name. MSA boundaries are defined by the U.S. Office of Management and Budget; use the boundaries that were in effect on January 1 of the calendar year for which you are reporting.

(b) *State and county.* Use the two-digit (state) and three-digit (county) numerical codes available from your regional supervisory agency. Use only these established codes. Do not use the standard U.S. Postal Service abbreviations for states.

(c) *Census tract.* Indicate the census tract in which the property is located. Enter the code "NA" if the property is located in an area not divided into census tracts on the U.S. Census Bureau's census-tract outline maps (see paragraph (d) below). You may enter either the tract number or the code "NA" if the property is located in a county that had a population of 30,000 or less in the 1980 census.

To determine population, use the Census Bureau's PC80-1-A population series even if the population has increased above 30,000 since 1980.

(d) *Census tract maps.* To determine the census tract number, consult the U.S. Census Bureau's census tract outline maps. You must use the maps of the appropriate MSAs in the Census Bureau's PHC80-2 series for the 1980 census, or equivalent census data from the Census Bureau (such as GBF/DIME files) or from a private publisher. Use the maps in the 1980 series even if more current maps are available.

(e) *Outside-MSA.* For loans on property located outside the MSAs in which you have

a home or branch office (or outside any MSA), enter the code "NA" in the MSA, state, county, and census tract columns. However, remember that if you are a mortgage lending institution (other than a bank, savings association, or credit union) and you received five or more loan applications or originated or purchased five or more home-purchase loans in an MSA, you are deemed to have a branch office in that MSA, whether or not you have an actual building there.

(6) *Race, sex and income.* (See Appendix B of Regulation C for information on the collection of race and sex data, and for a sample data collection form.)

(a) You must report this information for loans originated and applications received by your institution only where the borrower or applicant is a natural person (and not a corporation or partnership, for example). Moreover, if your institution is a bank, savings association, or credit union with assets of \$30,000,000 or less on the preceding December 31, you may but need not report information on race, sex and income. In addition, the reporting of this information is not required for loans purchased by your institution. If you are not reporting this information, enter the code numbers specified in the lists in paragraphs (c) and (d) below for "not applicable," and enter "NA" under income in paragraph (e).

(b) Race and sex data is not required for applications you receive by telephone or mail; however, you must enter this information if it is given to you. If this information is not obtained by you for telephone or mail applications, enter the code number for the appropriate "information not provided by applicant" code from the lists provided in paragraphs (c) and (d) below.

(c) *Race of borrower or applicant.* Use the following codes to indicate the race or national origin of the applicant or borrower under column "A" and of any co-applicant or co-borrower under column "CA." If there is more than one co-applicant, provide this information only for the first co-applicant listed on the application form.

- 1—American Indian or Alaskan Native
- 2—Asian or Pacific Islander
- 3—Black
- 4—Hispanic
- 5—White
- 6—Other
- 7—Information not provided by applicant; application made by mail or telephone
- 8—Not applicable

(d) *Sex of borrower or applicant.* Use the following codes to indicate the sex of the applicant or borrower under column "A," and of any co-applicant or co-borrower under column "CA." If there is more than one co-applicant, provide this information only for the first co-applicant listed on the application form:

- 1—Male
- 2—Female
- 3—Information not provided by applicant; application made by mail or telephone
- 4—Not applicable

(e) *Income.* Enter the annual income that your institution relied upon in processing the

loan application. Round all dollar amounts to the nearest thousand (\$500 should be rounded up to \$1,000), and show in terms of thousands.

(7) *Type of purchaser of loan.* For loan originations and purchases, indicate the class of purchaser of the loan by use of one of the following codes:

- 1—Loan has not been sold within calendar year
- 2—FNMA (Federal National Mortgage Association)
- 3—GNMA (Government National Mortgage Association)
- 4—FHLMC (Federal Home Loan Mortgage Corporation)
- 5—FmHA (Farmers Home Administration)
- 6—Commercial Bank
- 7—Savings Bank or Savings Association
- 8—Life Insurance Company
- 9—Other type of purchaser

Use codes 2 through 9 to identify the class of purchaser only when you either originated or purchased a loan and then sold it within the same calendar year. If you originated or purchased a loan and did not sell the loan that same calendar year, enter code 1 instead. If you sell a loan in a year following the year in which it was originated or purchased, you need not report the sale.

(8) *Reason for denial.* At your option, you may enter up to two reasons a loan application was denied, using the following codes:

- 1—Income
- 2—Collateral
- 3—Credit history

- 4—Employment history
- 5—Other

#### G. Data to be Excluded

Do not report the following:

- (1) Loans or applications for loans that, although secured by real estate, are made for purposes other than for home-purchase or home-improvement (for example, do not report a loan secured by residential real property for purposes of financing education, a vacation, or business operations);
- (2) Loans made or applications for loans received in a fiduciary capacity (for example, by your trust department);
- (3) Loans or applications for loans on unimproved land;
- (4) Construction loans and applications, and other temporary financing loans and applications;
- (5) The purchase of an interest in a pool of mortgage loans (such as mortgage-participation certificates); or
- (6) The purchase solely of the right to service loans.

#### III. Where to send your register

Send your loan/application registers and direct any questions to the office of your federal supervisory agency specified below. If you are the subsidiary of a bank, savings association, or credit union, send the register to the supervisory agency for your parent institution. Your agency can provide you with HMDA posters that you can use to inform the public of the availability of your disclosure statements.

*National banks and their subsidiaries.*  
District office of the Office of the Comptroller

of the Currency serving the district in which the national bank or subsidiary is located.

*State member banks of the Federal Reserve System, their subsidiaries, and subsidiaries of bank holding companies.*  
Federal Reserve Bank serving the district in which the state member bank or subsidiary is located.

*Nonmember insured banks (except for federal savings banks) and their subsidiaries.*  
Regional Director of the Federal Deposit Insurance Corporation for the region in which the bank or subsidiary is located.

*Savings Institutions Insured Under the Savings Association Insurance Fund of the FDIC, Federally-chartered Savings Banks Insured Under the Bank Insurance Fund of the FDIC (But Not Including State-chartered Savings Banks Insured Under the Bank Insurance Fund), their subsidiaries, and subsidiaries of savings institution holding companies.*  
District Director of the Office of Thrift Supervision for the district in which the institution is located.

*Credit unions.* National Credit Union Administration, Office of Examination and Insurance, 1776 G Street, NW., Washington, DC 20456.

*Other Depository institutions.* Regional Director of the Federal Deposit Insurance Corporation for the region in which the institution is located.

*Other mortgage lending institutions.*  
Regional office of the Secretary of Housing and Urban Development for the region in which the institution is located.

BILLING CODE 6210-01-M



**Codes for Loan/Application Register**

**Application or Loan Information**

**Type:**

- 1 -- Conventional
- 2 -- FHA
- 3 -- VA
- 4 -- FmHA

**Purpose:**

- 1 -- Home purchase (one-to four family)
- 2 -- Home improvement one-to-four family
- 3 -- Multifamily dwelling (both purchase and improvement)

**Occupancy:**

- 1 -- Owner-occupied
- 2 -- Not owner-occupied
- 3 -- Not applicable

**Action Taken**

- 1 -- Loan granted
- 2 -- Application denied
- 3 -- Application withdrawn
- 4 -- Loan purchased by institution

**Applicant Information**

**Race:**

- 1 -- American Indian or Alaskan Native
- 2 -- Asian or Pacific Islander
- 3 -- Black
- 4 -- Hispanic
- 5 -- White
- 6 -- Other
- 7 -- Information not provided (mail or telephone)
- 8 -- Not applicable or information not required

**Sex:**

- 1 -- Male
- 2 -- Female
- 3 -- Information not provided (mail or telephone application)
- 4 -- Not applicable

**Type of Purchaser of Loan**

- 1 -- Loan not sold within calendar year
- 2 -- FNMA
- 3 -- GNMA
- 4 -- FHLMC
- 5 -- FmHA
- 6 -- Commercial bank
- 7 -- Savings Bank or Savings and loan Association
- 8 -- Life insurance company
- 9 -- Other type of purchaser

**Reasons for Denial**

- 1 -- Income
- 2 -- Collateral
- 3 -- Credit history
- 4 -- Employment history
- 5 -- Mortgage insurance not available
- 6 -- Other

BILLING CODE 6210-01-C

**Appendix B—Form and Instructions for Data Collection on Race and Sex***(a) Instructions on Collection of Data on Race and Sex*

You may list questions regarding the race and sex of the applicant on your loan application form, or on a separate form that refers to the application (see the sample form below for recommended language). You must ask for this information, but cannot require the applicant to provide it.

If the applicant chooses not to provide the information, note this fact on the form, and note the data, to the extent possible, on the basis of visual observation or surname.

Inform the applicant that the Federal government is requesting this information in order to monitor compliance with Federal statutes that prohibit lenders from discriminating against applicants on these bases. Inform the applicant that if the information is not provided, you are required

to note the data on the basis of visual observation or surname.

If an application is made entirely by telephone, you need not request this information. Additionally, you need not provide the data when you take an application by mail, if the applicant fails to answer these questions on the application form. If it is not otherwise evident on the face of an application, you should indicate whether it was received by mail or telephone.

*(b) Sample Race and Sex Data Collection Form***(b) Sample race and sex data collection form****INFORMATION FOR GOVERNMENT MONITORING PURPOSES**

The following information is requested by the federal government for certain types of loans related to a dwelling in order to monitor the lender's compliance with equal credit opportunity, fair housing, and home mortgage disclosure laws. You are not required to furnish this information, but are encouraged to do so. The law provides that a lender may neither discriminate on the basis of this information, nor on whether you choose to furnish it. However, if you choose not to furnish the information, under federal regulations the lender is required to note race or national origin and sex on the basis of visual observation or surname. If you do not wish to furnish the information, please check below.

**BORROWER:**

I do not wish to furnish this information

RACE OR  American Indian, Alaskan Native  Asian, Pacific Islander  
 NATIONAL  Black  Hispanic  White  
 ORIGIN  Other (specify) \_\_\_\_\_

SEX  Female  Male

**CO-BORROWER:**

I do not wish to furnish this information

RACE OR  American Indian, Alaskan Native  Asian, Pacific Islander  
 NATIONAL  Black  Hispanic  White  
 ORIGIN  Other (specify) \_\_\_\_\_

SEX  Female  Male

By order of the Board of Governors of the Federal Reserve System, October 3, 1989.

William W. Wiles,  
Secretary of the Board.

[FR Doc. 89-23772 Filed 10-5-89; 8:45 am]

BILLING CODE 6210-01-C

## DEPARTMENT OF COMMERCE

## Bureau of Economic Analysis

## 15 CFR Part 806

[Docket No. 90802-9202]

RIN 0691-AA15

**Direct Investment Surveys: BE-10, Benchmark Survey of U.S. Direct Investment Abroad—1989****AGENCY:** Bureau of Economic Analysis, Commerce.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Section 4(b) of the International Investment and Trade in Services Survey Act (Pub. L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101-3108, as amended) requires that a benchmark survey of U.S. direct investment abroad be conducted covering 1989 and every fifth year thereafter. These proposed rules will revise 15 CFR 806.16 to set forth reporting requirements for the survey covering 1989 and to delete the rules now in § 806.16, which were for the last benchmark survey covering 1982. They will also amend 15 CFR 806.14 to change the year of coverage of this next benchmark survey from 1987, as was specified in the original legislation authorizing the survey, to 1989, as now specified by amendment to that legislation (see Pub. L. 97-33 and Pub. L. 97-70).

**DATE:** Comments on this proposed rulemaking will receive consideration if submitted in writing on or before November 20, 1989.

**ADDRESS:** Comments may be mailed to the Office of the Chief, International Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230, or hand delivered to Room 1008, Tower Building, 1401 K Street, NW., Washington, DC 20005. Comments will be available for public inspection in room 1008, Tower Building, between 8:30 a.m. and 4:30 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Betty L. Barker, Chief, International Investment Division (BD-5E), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 523-0659.

**SUPPLEMENTARY INFORMATION:** These proposed rules set forth the reporting requirements for the BE-10, Benchmark Survey of U.S. Direct Investment Abroad—1989. This survey is to be conducted by the Bureau of Economic Analysis, U.S. Department of Commerce, under the International Investment and Trade in Services

Survey Act, hereinafter, "the Act." Section 4(b) of the Act, as amended, requires that—

\*\*\* \* \* With respect to United States direct investment abroad, the President shall conduct a benchmark survey covering year 1982, a benchmark survey covering year 1989, and benchmark surveys covering every fifth year thereafter. In conducting surveys pursuant to this subsection, the President shall, among other things and to the extent he determines necessary and feasible—

(1) identify the location, nature, and magnitude of, and changes in total investment by any parent in each of its affiliates and the financial transactions between any parent and each of its affiliates;

(2) obtain: (A) Information on the balance sheet of parents and affiliates and related financial data, (B) income statements, including the gross sales by primary line of business (with as much product line detail as is necessary and feasible) of parents and affiliates in each country in which they have significant operations, and (C) related information regarding trade, including trade in both goods and services, between a parent and each of its affiliates and between each parent or affiliate and any other person;

(3) collect employment data showing both the number of United States and foreign employees of each parent and affiliate and the levels of compensation, by country, industry, and skill level;

(4) obtain information on tax payments by parents and affiliates by country; and  
(5) determine, by industry and country, the total dollar amount of research and development expenditures by each parent and affiliate, payments or other compensation for the transfer of technology between parents and their affiliates, and payments or other compensation received by parents or affiliates from the transfer of technology to other persons.

The responsibility for conducting benchmark surveys of U.S. direct investment abroad has been delegated by the President to the Secretary of Commerce, who has redelegated it to the Bureau of Economic Analysis (BEA).

The benchmark surveys are BEA's censuses, intended to cover the universe of U.S. direct investment abroad in value terms. U.S. direct investment abroad is defined as the ownership or control, directly or indirectly, by one U.S. person of 10 percent or more of the voting securities of an unincorporated foreign business enterprise or an equivalent interest in an unincorporated foreign business enterprise, including a branch.

The purpose of the benchmark survey is to obtain universe data on the financial and operating characteristics of, and on positions and transactions between, U.S. parent companies and their foreign affiliates. The data from the survey are needed to measure the size of U.S. direct investment abroad, monitor

change in such investment, assess its impact on the U.S. and foreign economies, and, based upon this assessment, make informed policy decisions regarding U.S. direct investment abroad. The data will provide benchmarks for deriving current universe estimates of direct investment from sample data collected in other BEA surveys in nonbenchmark years. In particular, they will serve as benchmarks for the quarterly direct investment estimates included in the U.S. international transactions and gross national product accounts, and for annual estimates of the U.S. direct investment position abroad and of the operations of U.S. parent companies and their foreign affiliates.

The benchmark surveys are also the most comprehensive of BEA's surveys in terms of subject matter in order that they obtain the detailed information on U.S. direct investment abroad needed for policy purposes. As specified in the Act, policy areas of particular interest include, among other things, trade in both goods and services, employment and employee compensation, taxes, and technology.

As proposed, the survey will consist of an instruction booklet, a claim for not filing the BE-10, and the following report forms:

1. Form BE-10A for reporting by a U.S. Reporter that is not a bank;
2. Form BE-10A BANK for reporting by a U.S. Reporter that is a bank;
3. Form BE-10B(LF) (Long Form) for reporting "large" nonbank foreign affiliates of nonbank parents (those with assets, sales, or net income *outside* the range of negative \$15 million to positive \$15 million);
4. Form BE-10B(SF) (Short Form) for reporting "small" nonbank foreign affiliates of nonbank parents (those with assets, sales, or net income *outside* the range of negative \$3 million to positive \$3 million but *within* the range of negative \$15 million to positive \$15 million) and all nonbank affiliates of bank parents with assets, sales, or net income *outside* the range of negative \$3 million to positive \$3 million; and
5. Form BE-10B BANK for foreign affiliates that are banks and that have assets, sales, or net income *outside* the range of negative \$3 million to positive \$3 million.

Although the proposed survey is intended to cover the universe of U.S. direct investment abroad, in order to minimize the reporting burden, foreign affiliates with assets, sales, and net income *within* the range of negative \$3 million to positive \$3 million would not have to be reported on Form BE-10B(SF)

or BANK (but would be listed on Form BE-10A SUPPLEMENT).

In designing the survey, BEA had extensive discussions with representatives of both survey respondents and data users. BEA held meetings with a Task Force of the Business Council on the Reduction of Paperwork (BCORP) on December 13, 1988 and March 31, 1989. It held meetings with interagency data users on December 8, 1988, and January 10, February 16, and March 13, 1989. In addition, it solicited input from other businesses and from nongovernment data users. The proposed draft incorporates the comments received. In reaching decisions on what questions to include in the survey, BEA considered the Government's need for the data, the burden imposed on respondents, the quality of the likely responses (e.g., whether the data are readily available on respondents' books), and its experience in previous benchmark surveys.

Two changes from the 1982 survey to the 1989 survey, which are reflected in these proposed rules, are:

1. To minimize the reporting burden on respondents and the processing burden on BEA, a short form for reporting "small" nonbank foreign affiliates of nonbank parents and all nonbank foreign affiliates of bank parents has been introduced. In the 1982 benchmark survey, all nonbank foreign affiliates had to be reported on what was the equivalent of the long form. Introduction of the short form will significantly reduce the burden of reporting smaller affiliates.

2. The due date for U.S. Reporters with 50 or more reportable foreign affiliates is June 29, 1990. The due date for all other U.S. Reporters is May 31, 1990. In the 1982 survey, three different due dates were used, depending on the number of foreign affiliates a U.S. Reporter had, and the dates were stretched out over a longer period. The need to compress, and reduce the number of, due dates reflects demands by data users for survey results to be available on a more timely basis. Several companies suggested that an early look at the survey questions would aid them in preparing for the benchmark survey. BEA plans to mail to all U.S. Reporters with 20 or more reportable foreign affiliates a draft copy of the BE-10 report forms as soon as possible after the forms have been approved by the Office of Management and Budget (OMB). This should be in early January 1990. Mailout of the printed forms is scheduled for March 1, 1990.

Other proposed changes in the survey from 1982 to 1989 include revision of the

instructions—primarily for purposes of clarification—and modification, addition, deletion, or combination of some items on the forms. These changes, which, on balance, should result in a net reduction in reporting burden, do not require changes in the rules.

Copies of the proposed survey forms may be obtained from: Office of the Chief, International Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 523-0659.

In addition to revising 15 CFR 806.16 to set forth the reporting requirements for the 1989 benchmark survey, this proposed rulemaking would amend 15 CFR 806.14 to change the year of coverage of this next benchmark survey from 1987 to 1989. The original legislation authorizing the survey required that a benchmark survey be conducted at least once every 5 years. Because a benchmark survey covering 1982 was conducted, the original legislation would have required that the next survey cover 1987. However, amendments to the original legislation made in 1981 (see Pub. L. 97-33 and Pub. L. 97-70) now require the conduct of "a benchmark survey covering year 1982, a benchmark survey covering year 1989, and benchmark surveys covering every fifth year thereafter."

The public reporting burden for this collection of information is estimated to vary from 14 to 8,500 hours per response, with an average of 156 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding the burden estimate, including suggestions for reducing this burden, may be sent to Director, Bureau of Economic Analysis (BE-1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project 0608-0049, Washington, DC 20503.

#### Executive Order 12291

BEA has determined that these proposed rules are not "major" as defined in E.O. 12291 because they are not likely to result in:

- (1) An annual effect on the economy of \$100 million or more;
- (2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the

ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

#### Executive Order 12612

These proposed rules do not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

#### Paperwork Reduction Act

These proposed rules contain a collection of information requirement subject to the Paperwork Reduction Act. A request to collect this information has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. Comments from the public on this collection of information requirement should be addressed to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Department of Commerce.

#### Regulatory Flexibility Act

The General Counsel, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities because few, if any, small businesses are subject to the reporting requirements of this survey. The exemption level is set in terms of the size of a U.S. company's foreign affiliates. If an affiliate is owned 10 percent or more by the U.S. company and has assets, sales, or net income greater than \$3 million (positive or negative), it must be reported. Usually, the U.S. parent company (the one required to file the report) is many times larger.

Also, to minimize the reporting burden on small U.S. businesses, Form BE-10B(SF), the short form, has been introduced for reporting foreign affiliates with assets, sales, and net income of \$15 million or less (but above \$3 million). For these affiliates, far less information must be reported than for those with assets, sales, or net income of more than \$15 million. Affiliates with assets, sales, and net income of \$3 million or less do not have to be reported on Form BE-10B(SF), but must be listed on Form BE-10A Supplement.

**List of Subjects in 15 CFR Part 806**

Balance of payments, Economic statistics, U.S. investment abroad, Reporting and recordkeeping requirements.

Dated: August 25, 1989.

Allan H. Young,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA proposes to amend 15 CFR part 806 as follows:

**PART 806—DIRECT INVESTMENT SURVEYS**

1. The authority citation for 15 CFR part 806 continues to read as follows:

Authority: 5 U.S.C. 301, 22 U.S.C. 3101-3108, and E.O. 11961, as amended.

**§ 806.14 [Amended]**

2. Section 806.14(g)(1) is amended by deleting "at least once every five years" and inserting in its place "in 1982, 1989, and every fifth year thereafter."

3. Section 806.14(g)(2) is revised as follows:

**§ 806.14 U.S. direct investment abroad.**

\* \* \* \* \*

(g) \* \* \*

(2) BE-10—Benchmark Survey of U.S. Direct Investment Abroad: Section 4b of the Act (22 U.S.C. 3103) provides that a comprehensive benchmark survey of U.S. direct investment abroad will be conducted in 1982, 1989, and every fifth year thereafter. The survey, referred to as the "BE-10," consists of a Form BE-10A or BE-10A BANK for reporting information concerning the U.S. Reporter and Form(s) BE-10B(LF), BE-10B(SF), or BE-10B BANK for reporting information concerning each foreign affiliate. Exemption levels, specific requirements for, and the year of coverage of, a given BE-10 survey may be found in § 806.16.

4. Section 806.16 is revised as follows:

**§ 806.16 Rules and regulations for BE-10, Benchmark Survey of U.S. Direct Investment Abroad—1989.**

A BE-10, Benchmark Survey of U.S. Direct Investment Abroad will be conducted covering 1989. All legal authorities, provisions, definitions, and requirements contained in §§ 806.1 through 806.13 and § 806.14(a) through (d) are applicable to this survey. Specific additional rules and regulations for the BE-10 survey are given below.

(a) *Response required.* Section 806.4 requires that all persons subject to the reporting requirements, contained herein, of the BE-10, Benchmark Survey of U.S. Direct Investment Abroad—1989 respond, whether or not they are

contacted by BEA. It also requires that a person, or their agent, who is contacted by BEA about reporting in this survey, either by sending them report forms or by written inquiry, must respond in writing. They may respond by:

(1) Certifying in writing, within 30 days of being contacted by BEA, to the fact that the person had no direct investment within the purview of the reporting requirements of the BE-10 survey;

(2) Completing and returning the "BE-10 Claim for Not Filing" within 30 days of receipt of the BE-10 survey report forms; or

(3) Filing the properly completed BE-10 report by May 31, 1990, or June 29, 1990, as required.

(b) *Who must report.* (1) A BE-10 report is required of any U.S. person that had a foreign affiliate—that is, that had direct or indirect ownership or control of at least 10 percent of the voting stock of an incorporated foreign business enterprise, or an equivalent interest in an unincorporated foreign business enterprise—at any time during the U.S. person's 1989 fiscal year.

(2) If the U.S. person had no foreign affiliates during its 1989 fiscal year, a "BE-10 Claim for Not Filing" must be filed within 30 days of receipt of the BE-10 survey package. No other forms in the survey are required. If the U.S. person had any foreign affiliates during its 1989 fiscal year, a BE-10 report is required and the U.S. person is a U.S. Reporter in this survey.

(3) Reports are required even though the foreign business enterprise was established, acquired, seized, liquidated, sold, expropriated, or inactivated during the U.S. person's 1989 fiscal year.

(c) *Forms for nonbank U.S. Reporters and foreign affiliates.* (1) Form BE-10A (Report for the U.S. Reporter)—A BE-10 report must be completed by a U.S. Reporter that is not a bank. Note: If the U.S. Reporter is a corporation, Form BE-10A is required to cover the fully consolidated U.S. domestic business enterprise.

(i) If a nonbank U.S. Reporter had any foreign affiliates at any time during its 1989 fiscal year, whether held directly or indirectly, for which any one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income (or loss) after provision for U.S. income taxes—was outside the range of negative \$3 million to positive \$3 million, the U.S. Reporter must file a complete Form BE-10A and, as applicable, a BE-10A SUPPLEMENT listing each, if any, exempt foreign affiliate. It must also file a Form BE-10B(LF), BE-10B(SF), or BE-10B BANK,

as appropriate, for each nonexempt foreign affiliate.

(ii) If a nonbank U.S. Reporter had no foreign affiliates for which any of the three items listed in paragraph (c)(1)(i) of this section was outside the range of negative \$3 million to positive \$3 million, then only items 1-4 of Form BE-10A and the BE-10A SUPPLEMENT, listing all exempt foreign affiliates, must be completed.

(2) Form BE-10B(LT) or (SF) (Report for foreign affiliate).

(i) A BE-10B(LF) (Long Form) must be filed for each nonbank foreign affiliate to a nonbank U.S. Reporter, whether held directly or indirectly, for which any one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income (loss) after provision for local income taxes—was outside the range of negative \$15 million to positive \$15 million.

(ii) A BE-10B(SF) (Short Form) must be filed (A) for each nonbank foreign affiliate of a nonbank U.S. Reporter, whether held directly or indirectly, for which any one of the three items listed in (c)(2)(i) of this section was outside the range of negative \$3 million to positive \$3 million but for which all of these items were within the range of negative \$15 million to positive \$15 million and (B) for each nonbank foreign affiliate of a U.S. bank Reporter for which any one of the three items listed in (c)(2)(i) of this section was outside the range of negative \$3 million to positive \$3 million.

(iii) Notwithstanding (c)(2)(i) and (c)(2)(ii) of this section, a Form BE-10B(LF) or (SF) must be filed for a foreign affiliate of the U.S. Reporter that owns another nonexempt foreign affiliate of that U.S. Reporter, even if the foreign affiliate parent is otherwise exempt, i.e., a Form BE-10B(LF) or (SF) must be filed for all affiliates upward in a chain of ownership.

(d) *Forms for U.S. Reporters and foreign affiliates that are banks or bank holding companies.* (1) For purposes of the BE-10 survey, "bank" means a business entity engaged in deposit banking, and Edge Act corporation engaged in international or foreign banking, a foreign branch or agency of a U.S. bank whether or not it accepts deposits abroad, and a bank holding company, i.e., a holding company for which over 50 percent of its total revenues is from banks which it holds. If the bank or bank holding company is part of a consolidated business enterprise and the gross operating revenues from nonbanking activities of this consolidated entity are more than 50 percent of its total revenues, then the

consolidated entity is deemed *not* to be a bank even if banking revenues make up the largest single source of all revenues. (Activities of subsidiaries of a bank or bank holding company that may not be banks but that provide support to the bank parent company, such as real estate subsidiaries set up to hold the office buildings occupied by the bank parent company, are considered bank activities.)

(2) Form BE-10A BANK (Report for a U.S. Reporter that is a bank). A BE-10A BANK report must be completed by a U.S. Reporter that is a bank. Note: For purposes of filing Form BE-10A BANK, the U.S. Reporter is deemed to be the fully consolidated U.S. domestic business enterprise and all required data on the form shall be for the fully consolidated domestic entity.

(i) If a U.S. bank had any foreign affiliates at any time during its 1989 fiscal year, whether a bank or nonbank and whether held directly or indirectly, for which *any one* of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income (loss) after provision for local income taxes—was *outside* the range of negative \$3 million to positive \$3 million, the U.S. Reporter must file a complete Form BE-10A BANK and, as applicable, a BE-10A SUPPLEMENT listing each, if any, exempt foreign affiliate, whether bank or nonbank. It must also file a Form BE-10B(SF) for *each* nonexempt nonbank foreign affiliate and a Form BE-10B BANK for *each* nonexempt foreign bank affiliate.

(ii) If the U.S. bank Reporter had *no* foreign affiliates for which *any one* of the three items listed in paragraph (d)(2)(i) of this section was *outside* the range of negative \$3 million and positive \$3 million, then only items 1-4 of Form BE-10A BANK and the BE-10A SUPPLEMENT, listing all exempt foreign affiliates, should be completed.

(3) For BE-10B BANK (Report for a foreign affiliate that is a bank).

(i) A BE-10B BANK report must be filed for each foreign bank affiliate of a bank or nonbank U.S. Reporter, whether directly or indirectly held, for which *any one* of three items—total assets, sales or gross operating revenues excluding sales taxes, or net income (loss) after provision for local income taxes—was *outside* the range of negative \$3 million to positive \$3 million.

(ii) Notwithstanding paragraph (d)(3)(i) of this section, a Form BE-10B BANK must be filed for a foreign bank affiliate of the U.S. Reporter that owns another *nonexempt* foreign affiliate of that U.S. Reporter, even if the foreign affiliate parent is otherwise exempt, i.e., a Form BE-10B BANK must be filed for

all bank affiliates upward in a chain of ownership. However, a Form BE-10B BANK is not required to be filed for a foreign bank affiliate in which the U.S. Reporter holds only an indirect ownership interest of 50 percent or less and that does not own a reportable nonbank foreign affiliate, but the indirectly owned bank affiliate must be listed on the BE-10A SUPPLEMENT.

(e) *Due date.* A fully completed and certified BE-10 report comprising Form BE-10A or 10A BANK, BE 10A SUPPLEMENT (as required), and Form(s) BE-10B(LF), (SF), or BANK (as required) is due to be filed with BEA not later than May 31, 1990 for those U.S. Reporters filing less than fifty, and June 29, 1990 for those U.S. Reporters filing fifty or more, Forms BE-10B(LF), (SF), or BANK.

[FR Doc. 89-23639 Filed 10-5-89; 8:45 am]

BILLING CODE 3510-06-M

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 23 CFR Part 658

[FHWA Docket No. 87-1, Notice No. 4]

RIN 2125-AB70

#### Truck Size and Weight; Reasonable Access

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

**ACTION:** Supplemental notice of proposed rulemaking (NPRM); re-opening of comment period; request for comments.

**SUMMARY:** An NPRM, Notice No. 2, published on December 30, 1988, proposed to amend § 658.19 of 23 CFR part 658. This section governs reasonable access by commercial vehicles with lengths and widths authorized by the Surface Transportation Assistance Act of 1982 (STAA), as amended. Through this NPRM, the FHWA requested comments by May 1, 1989, regarding a proposed definition of "terminals." It also proposed to establish national minimum access requirements for operation of STAA-defined vehicles on the National Network in all States in a safe and efficient manner. Notice No. 3 was published in the *Federal Register* on May 4, 1989, (54 FR 19196) extending the comment period to September 1, 1989, at the request of those wanting to have the benefit of the results of the Transportation Research Board (TRB) study on "reasonable access" before commenting. On July 6, 1989, the TRB

released a report addressing many of the issues involving reasonable access. This supplemental NPRM has been prepared to solicit comments on a third option based on recommendations in that report. The comment period is hereby reopened and extended to December 1, 1989. Commenters are invited to comment on the third option or on their preferences among the three options that have been published to date or on any other matters pertaining to rulemaking on reasonable access.

**DATE:** Comments must be received on or before December 1, 1989.

**ADDRESSES:** Submit written, signed comments to FHWA Docket No. 87-1, Notice No. 4, room 4232, HCC-10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. 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. Kevin E. Heanue, Office of Planning, (202) 366-2951, Mr. John F. Grimm, Office of Motor Carrier Information Management and Analysis, (202) 366-4039, or Mr. David C. Oliver, Office of the Chief Counsel, (202) 336-1356, Federal Highway Administration, Department of Transportation, 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:

##### Background

On December 30, 1988, the FHWA published an NPRM in the *Federal Register* on "Truck Size and Weight; Reasonable Access" (53 FR 53006). Through this NPRM, the FHWA requested comments from all affected and interested parties regarding proposed changes that would define "terminals" and establish national minimum access requirements for STAA-defined commercial vehicles entering or leaving the National Network. The comment period, which was originally scheduled to close on May 1, 1989, was extended to September 1, 1989, by a notice published in the *Federal Register* on May 4, 1989 (54 FR 19196). The extension was intended to provide time for interested and affected parties to have the benefit of the results of the July 1989 TRB study on "reasonable access" before commenting.

Based on a review of the report, FHWA is now proposing a third option reflecting the TRB recommendations. This supplemental NPRM discusses the third option, and provides specific regulatory language for implementation, and reopens the comment period.

The NPRM published on December 30, 1988, was structured around a presumptive standard of reasonable access of 5 miles coupled with a certification process. The TRB report specifically rejects a mileage-based standard, deeming it "inappropriate" because it is unable to "take into account differences in local highway and traffic conditions." The TRB report recommends an approach which "would require the States to evaluate the adequacy of highways to accommodate STAA vehicles in relation to the performance and handling characteristics of these large vehicles."

The December 30, 1988, NPRM proposed two options. This supplementary notice adds a third option built on the TRB report. The TRB approach would require a process to evaluate proposed route requests, and access could only be denied through an affirmative demonstration of an existing or potential safety problem on the route.

The FHWA invites comments on whether this alternative is consistent with the statute, which requires States only to provide "reasonable access."

#### Option 3—Certification

Option 3 would be a certification-based approach. All States regulating access would be required to have their procedures certified by the FHWA. A State's procedures would be required to consider the characteristics of the class of STAA vehicles and the characteristics of the road on which access is being considered. Safety would be the sole basis for all determinations.

Several general approaches would comply with the TRB recommendations. One approach would be a test drive of a vehicle of the type in question on the route being evaluated. A number of States are using this approach very successfully. Second, templates could be used if adequate route inventories are available. In this case, a template is a device that measures off-tracking on road plans. The use of templates would assess off-tracking and possible lane encroachment. Third, a State's laws or regulations could grant access to any semitrailer with a kingpin setting of 41 feet or less.

The FHWA would review each State's reasonable access policy to determine if certification is warranted.

#### Kingpin Setting

The TRB report discusses the third general approach, using configurations of 41 feet from kingpin to rear axle or axles on STAA tractor-semitrailers as a basis for a State's reasonable access policy. \* \* \* A small majority of the committee further recommend that all States be encouraged to adopt a maximum kingpin setting of 41 feet (measured from the kingpin to the center of the rear trailer axle or group of axles) on their National Network highways and access routes \* \* \* The report added that, \* \* \* Several other committee members proposed stronger action, recommending that all States be required to adopt a maximum kingpin setting of 41 feet and that the FHWA be directed to include this setting in the final rulemaking on access. This kingpin setting should also be included in FHWA regulations that apply to National Network highways as well as access routes \* \* \*

The critical dimension for off-tracking, according to TRB's report, is the distance from the kingpin to the center of the rear axle or axles. The TRB report found that STAA tractor-semitrailers with a longer wheelbase present operational problems on certain interchange ramps and at intersections, particularly in urban areas. These problems reduce access for these vehicles to services and terminals.

In this supplemental NPRM, the FHWA is not proposing a maximum kingpin setting that would apply to the National Network itself. Such a change would go beyond the subject matter of the rule. However, the adoption of a kingpin-to-axle requirement for access would obviously have an effect on vehicles on the network. As the 1982 STAA clearly specified how length should affect the use of the network by STAA vehicles, the kingpin-to-axle settings cannot restrict use of the National Network by STAA vehicles. Option 3, however, would establish a certification criterion for roads providing reasonable access off the National Network. Under this option, a State could not impose maximum limits on kingpin settings of less than 41 feet. Higher maximum limits would remain a subject for State discretion.

The FHWA invites comments on using kingpin setting as a basis for determining the suitability of tractor-semitrailers for access. Comment and information are requested on the proposed minimum distance for State maximum kingpin setting limits and the method of measurement; the effects on safety of the overhang on the longer STAA semitrailers; and the practicality

of law enforcement and compliance. The FHWA also requests information on the impacts this proposal may have on the productivity of shippers, carriers, and truck manufacturers; and the impact on existing and future STAA vehicles that do not conform to the proposed minimum 41 feet for State maximum kingpin settings and do not have rear axles that are adjustable.

#### Option 3—Width

The 1982 STAA increased the authorized vehicle width from 96 inches to 102 inches. The TRB report found that the increase "has only a minor effect on the safe operation of STAA vehicles, except on narrow lanes of 10 feet or less." In keeping with the TRB report, this option provides that no State may deny access to an STAA-defined vehicle based solely on the fact that a vehicle is 102 inches wide. To deny access on a particular route, a State would have to demonstrate that the added width degrades safety significantly on that route.

#### Option 3—Terminals

In defining "terminals," the NPRM of December 30, 1988, proposed three criteria. At least one of these criteria would have to be satisfied before a facility is considered a terminal for the purposes of reasonable access. Under one of the three criteria, a facility could be considered a terminal if STAA vehicles are completely loaded or completely unloaded. The FHWA also asked specific questions in the NPRM on possible alternative definitions, such as a more traditional definition of "terminal." The TRB report's definition does not use the completely loaded/unloaded criterion to define "terminal." It uses a much broader definition: "A terminal is any location where: (a) Freight either originates, terminates, or is handled in the transportation process or (b) carriers maintain operating facilities." The report goes on to state that "This definition is not intended to supersede existing bans or preclude new bans on combination truck travel, such as those on through travel on residential streets, weight-posted roads or bridges, or roads not deemed appropriate for access on the basis of safety and engineering considerations."

The FHWA would like comments on the TRB definition of "terminal." The definition appears to include almost any type of facility or destination with few limitations. Commenters should address how this definition comports with the statute.

### Federalism Impact on States

The FHWA has considered the "federalism" implications of this action in accordance with the principles and policymaking criteria of E.O. 12612, *Federalism*, of October 26, 1987. The NPRM of December 30, 1988, discussed the federalism implications in great detail. The alternative provisions included in this supplemental NPRM, based on the July 1989 TRB report, would impose more adverse impacts on the States and would intrude into State authority more than would provisions in the December 1988 NPRM.

Fifteen States allow unlimited access and thus will not be affected by this rulemaking in any of its options. Approximately 19 of the 35 States that regulate access have some form of route review for designating access. These reviews would be subject to the proposed criteria of Option 3. The remaining 16 States would be required to establish a review process or remove limits on access for STAA vehicles.

Under one of the options in the December 1988 proposal, any State providing access of 5 miles or greater as a standard for reasonable access would meet the reasonable access requirements, provided the State has some type of process to evaluate requests for access greater than 5 miles. Nine States of the remaining 16 States had such a provision and would have qualified. Thus, the number of States affected significantly by the earlier NPRM could have been as low as seven. As discussed in the preamble to the December 1988 NPRM, these numbers are approximate because categorizing the different States' access provisions is difficult. The TRB report contains a substantial, updated discussion of State access provisions.

### Regulatory Impact

The FHWA has determined that this rulemaking is not a major rulemaking action within the meaning of Executive Order 12291. However, this rulemaking has been included in DOT's Regulatory Program for significant rulemakings. These determinations by the FHWA are based on the nature of the rulemaking. The FHWA proposes to amend the existing final rule, issued June 5, 1984, and amended April 13, 1988, by establishing minimum criteria and procedures for the implementation of the reasonable access provisions required by the STAA. The impacts of the three options addressed in the proposed rulemakings do not significantly alter the impacts initially projected in the June 1984 final rule. A Regulatory Impact Analysis was prepared for the

June 1984 rulemaking and is available for inspection in FHWA's Headquarters Office 400 Seventh Street, SW., Washington, DC 20590. Copies may be obtained by contacting Mr. Kevin E. Heanue or Mr. John F. Grimm at the address provided under the heading "FOR FURTHER INFORMATION CONTACT." For the same reason, and under the criteria of the Regulatory Flexibility Act, the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities.

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.

(Catalog of Federal Domestic Assistance Program Number 220.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultations 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.

### List of Subjects in 23 CFR Part 658

Grant programs—transportation, Highways and roads, Motor Carriers—size and weight.

Issued on: September 29, 1989.

T. D. Larson,  
Administrator.

### 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 and 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, 96 Stat. 2829; 23 U.S.C. 315 and 49 CFR 1.48.

2. Section 658.19 is amended by adding new paragraphs (d), (e), (f), and (g) as follows:

#### § 658.19 Reasonable access.

(d) *Options 1 and 2: Terminals.* The term "terminals" includes, at a minimum, facilities at which one or more of the following criteria apply:

(1) Freight enroute to other destinations is transferred, warehoused, or temporarily stored; or

(2) STAA vehicles are completely loaded or completely unloaded; or

(3) STAA vehicles are manufactured, stored, or maintained. States may define terminals to include additional facilities.

(d) *Option 3: Terminals.* The term "terminals" includes, at a minimum, facilities at which one or more of the following criteria apply:

(1) Freight enroute to other destinations is transferred, warehoused, or temporarily stored; or

(2) Freight originates or terminates; or

(3) STAA vehicles are manufactured, stored, or maintained. States may define terminals to include additional facilities.

(e) *Options 1 and 2: Reasonable access—5 miles.* (1) Except as provided herein, reasonable access for a terminal or a facility for food, fuel, repairs, and rest includes, at a minimum, the use of the shortest feasible route up to 5 road miles from the National Network.

(2) States may prohibit the operation of STAA vehicles on particular roads for specific safety reasons. Such roads shall be clearly posted as being unavailable to STAA vehicles.

(3) States, at their option in lieu of posting, may elect to erect positive signing to delineate access for STAA vehicles.

(e) *Option 3: [Reserved]*  
(f) *Option 1: reasonable access—beyond 5 miles.* In addition to reasonable access provided under paragraph (e) of this section (the 5-mile provision) or under general provision of State law, reasonable access includes a process for evaluating access requests for terminals beyond the established mileage limit from the National Network according to the following:

(1) Access routes shall not be prohibited for reasons other than safety.

(2) An access route request shall be deemed granted if no action is taken on the request within 90 days of its submittal.

(3) Access routes granted for any particular vehicle shall be available to all vehicles of the same type.

(f) *Option 2: Reasonable access—beyond 5 miles.* In addition to reasonable access provided under paragraph (e) of this section (the 5-mile provision) or under general provision of State law, reasonable access includes a process for evaluating access requests for terminals beyond the established mileage limit from the National Network.

(f) *Option 3: Reasonable access process.* In addition to reasonable access provided under general provision of State law, reasonable access includes a process for evaluating access requests for terminals not located on the National

Network. The process shall assess the adequacy of requested access routes on the basis of safety and geometric considerations related to any increased dimensions of STAA vehicles.

(g) *Options 1 and 2: Reasonable access—alternate approach—certification.* Any State with reasonable access provisions in conflict with those contained in this section, but which actually provide for a substantially equivalent level of access, may petition FHWA for certification of its procedures as being in compliance with 23 CFR 658.19. The FHWA will approve all such petitions which demonstrate the State has a process that provides for rational accommodation of STAA vehicles and does not impose an unreasonable burden on carriers.

(g) *Option 3: Certification.* (1) A State will be deemed in compliance with 23 CFR 658.19 if its reasonable access process is certified by FHWA.

(2) The FHWA will certify State processes that include:

- (i) One or more of the following:
  - (A) Analysis of specific proposed access routes by STAA vehicle test drive or observation; or
  - (B) Analysis of specific proposed access routes by application of STAA vehicle templates to route plans; or
  - (C) Semitrailer maximum kingpin distance (measured from the kingpin to the center of the rear axle or group of axles) that is not less than 41 feet; and
- (ii) The following:
  - (A) Access denials based only on safety and review of the access route analysis.
  - (B) Access to service facilities (food, fuel, repairs, rest) limited to no less than 1 road-mile from the National Network, except for specific safety reasons on particular roads.
  - (C) Approval of a particular vehicle applies to all vehicles of the same type.
  - (D) Approval of an access request if not acted upon within 90 days of its submittal.
  - (E) All restrictions on 102-inch wide vehicles must be related to the characteristics of specific routes, in particular the lane width. No blanket restrictions are permitted.
  - (F) Distinctions between vehicle types based only on substantial differences in operating characteristics.
  - (G) Length limits, if any, that are no more restrictive than Federal requirements for the National Network.

(3) The FHWA will certify other State processes that provide for rational accommodation of STAA vehicles and do not impose an unreasonable burden on freight carriers, shippers, and receivers. The FHWA will consider the criteria of paragraph (g)(2) of this

section and additional State criteria in reviewing a State's request for certification of its reasonable access process.

[FR Doc. 89-23647 Filed 10-5-89; 8:45 am]

BILLING CODE 4910-22-M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 943

#### Texas Permanent Regulatory Program

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

**ACTION:** Proposed Rule; Public Comment Period and Opportunity for Public Hearing on Proposed Amendment.

**SUMMARY:** OSM is announcing receipt of a proposed amendment to the Texas permanent regulatory program (hereinafter, the Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to general provisions; lands unsuitable for mining; surface coal mining operation permits; coal exploration procedures; bond and insurance requirements; permanent program performance standards for coal exploration; permanent program inspection and enforcement procedures; and training, examination, and certification of blasters. The amendment is intended to revise the Texas program to be consistent with the corresponding Federal standards.

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

**DATES:** Written comments must be received by 4:00 p.m., c.s.t. November 6, 1989. If requested, a public hearing on the proposed amendment will be held on October 31, 1989. Requests to present oral testimony at the hearing must be received by 4:00 p.m., c.s.t. on October 23, 1989.

**ADDRESSES:** Written comments should be mailed or hand delivered to Mr. James H. Moncrief at the address listed below.

Copies of the Texas 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 free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 550, Tulsa, OK 74135, Telephone: (918) 581-6430.

Railroad Commission of Texas, Surface Mining and Reclamation Division, Capitol Station, P.O. Drawer 12967, Austin, TX 78711, Telephone: (512) 463-6900.

**FOR FURTHER INFORMATION CONTACT:** Mr. James H. Moncrief, Director, Tulsa Field Office, (918) 581-6430.

#### SUPPLEMENTARY INFORMATION:

##### I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. General background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Texas program are in the February 27, 1980, *Federal Register* (45 FR 12998). Subsequent actions concerning Texas's program and program amendments can be found at 30 CFR 943.15 and 943.16.

##### II. Submission of Amendment

By letter dated September 22, 1989 (administrative record No. TX-458), Texas submitted to OSM a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment in response to letters, dated May 20, 1985, June 9, 1987, and October 20, 1988, that OSM sent to Texas in accordance with 30 CFR 732.17. The proposed amendments were also submitted to satisfy the required program amendment at 30 CFR 943.16(a). The regulations that Texas proposes to amend are: Subchapter A, General, parts 700 and 701; Subchapter F, Lands Unsuitable for Mining, part 762; Subchapter G, Surface Coal Mining and Reclamation Operations Permits and Coal Exploration Procedures System, parts 770, 771, 776, 778, 779, 780, 783, 784, 785, 786, and 795; Subchapter J, Bond and Insurance Requirements For Surface Coal Mining and Reclamation Operations, Parts 800, 806, and 807; Subchapter K, Permanent Program Performance Standards—Coal Exploration, parts 815, 816, 817, and 819; subchapter L, Permanent Program Inspection and Enforcement Procedures, parts 840, 843, and 845. In addition, Texas proposes to add a new part 850,

for the training, examination, and certification of blasters.

### III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM 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 Texas program.

#### Written Comments

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

#### Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4:00 p.m., c.s.t. on October 23, 1989. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the 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 OSM officials to prepare adequate responses and appropriate questions.

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

#### Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting 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 listed under

"**ADDRESSES**." A written summary of each meeting will be made a part of the administrative record.

#### List of Subjects in 30 CFR Part 943

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

Dated: October 1, 1989.

Raymond L. Lowrie,  
Assistant Director, Western Field Operations.  
[FR Doc. 89-23690 Filed 10-5-89; 8:45 am]  
BILLING CODE 4310-05-M

### Fish and Wildlife Service

#### 50 CFR Part 23

RIN 1018-AA29

#### Foreign Proposals to Amend Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of decision.

**SUMMARY:** The Convention of International Trade in Endangered Species of Wild Fauna and Flora (Convention) regulates international trade in certain animals and plants. Species for which such trade is controlled are listed in Appendices I, II, and III to the Convention. Any nation that is a Party to the Convention may propose amendments to Appendix I or II for consideration by the other Parties.

This notice announces decisions by the Fish and Wildlife Service (Service) on negotiating positions to be taken by the United States delegation with regard to proposals submitted by Parties other than the United States. The proposals will be considered in October 1989 at the seventh regular meeting of the Conference of the Parties in Lausanne, Switzerland.

**DATES:** Proposals mentioned in this notice are scheduled to be discussed along with a preliminary vote by Party nations in committee on the weekdays from October 10 to October 18. A final vote in plenary session is presently scheduled for October 20, without discussion unless one third of the Parties support the reopening of discussion on specific proposals. Any of these proposals that are adopted will enter into effect 90 days afterwards (i.e., on January 18, 1990).

**ADDRESSES:** Please send correspondence concerning this notice to the Office of Scientific Authority; Mail Stop: Room 725, Arlington Square; U.S. Fish and Wildlife Service;

Department of the Interior; Washington, DC 20240. Materials received will be available for public inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday, in room 750, Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Dr. Charles W. Dane, Chief, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC, telephone (703) 358-1708.

#### SUPPLEMENTARY INFORMATION:

#### Background

The Convention regulates import, export, reexport, and introduction from the sea of certain animal and plant species. Species for which trade is controlled are included in one of three appendices. Appendix I includes species threatened with extinction that are or may be affected by international trade. Appendix II includes species that although not necessarily threatened with extinction may become so unless such trade in them is strictly controlled. It also lists species that must be subject to regulation in order that trade in other currently or potentially threatened species may be brought under effective control (e.g., because of difficulty in distinguishing specimens of currently or potentially threatened species from those other species). Appendix III includes species that any Party nation identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs the cooperation of other Parties in controlling trade.

Any Party nation may propose amendments to Appendices I and II for consideration at meetings of the Conference of the Parties. The proposal must be communicated to the Convention's Secretariat at least 150 days before the meeting. The Secretariat must then consult the other Parties and appropriate intergovernmental agencies, and communicate their responses to all Parties no later than 30 days before the meeting. Amendments are adopted by a two-thirds majority of the Parties present and voting.

#### Decisions

This notice announces the negotiating positions to be taken by the United States delegation with regard to proposals submitted by Parties other than the United States for consideration at the forthcoming meeting of the Parties. The Service announced the proposals and invited comments on tentative negotiating positions in the August 23, 1989, *Federal Register* (54 FR 35013).

It is neither practical nor in the best interests of the United States to establish inflexible negotiating positions. However, decisions announced in this notice represent formal guidance to the delegation, which will seek to obtain agreement of the Conference of the Parties with these positions. Such positions will only be modified in the U.S. delegation finds it necessary to do so in response to new information presented or obtained during the meeting in Switzerland.

#### Comments Received

The Service received substantive written comments from 7 States, organizations, and individuals on species other than the African elephant or flying foxes. Approximately 86,000 and 60 comments on the African elephant and flying fox proposals respectively, were received from

organizations and individuals after the U.S. proposals were submitted to the Convention's Secretariat. In addition, 4 persons expressed support or opposition for various proposals at a public hearing on September 8, 1989. These comments along with other information received by the Service were considered in the development of the final U.S. negotiating positions. Several of the tentative positions were modified or reversed. The rationale for these changes and modifications has been provided to those that submitted substantive comments and to other interested persons. The development of this separate "Assessment of Comments on Species Listing Proposals" represents a continuation of the Service's past procedures and allows for more timely and less expensive publication in the **Federal Register**. This "Assessment of Comments on Species Listing Proposals"

is available from the Office of Scientific Authority.

#### Summary of Positions

Additional information has been obtained on several species other than those on which formal comments were received. However, unless revised below and commented upon in the "Assessment of Comments on Species Listing Proposals," the position remains the same as indicated also in the August 23, 1989, **Federal Register** notice. Final negotiating positions of the U.S. delegation on proposals by Parties other than the United States are summarized in the following table; clarification of the U.S. position on selected proposals is indicated by numbers which refer to footnotes after the table.

BILLING CODE 4310-SS-M

Species	Proposed Amendment	Proponent	U.S. Position
MAMMALS			
Order Chiroptera			
<u>Pteropus insularis</u> (Truk flying fox)	Transfer from II to I	Sweden	Support (6,7)
<u>Pteropus mariannus</u> (Mariana flying fox)	do	do	do
<u>Pteropus molossinus</u> (Ponape flying fox)	do	do	do
<u>Pteropus phaeocephalus</u> (Mortlock flying fox)	do	do	do
<u>Pteropus pilosus</u> (Large Palau flying fox)	do	do	do
<u>Pteropus samoensis</u> (Samoan flying fox)	do	do	do
<u>Pteropus tokudae</u> (Little Mariana flying fox)	do	do	Oppose (8)
<u>Pteropus tonganus</u> (Insular flying fox)	do	do	Oppose (9)
Order Carnivora			
<u>Melursus ursinus</u> (Sloth bear)	Add to I	Federal Republic of Germany, India	Support (7)
<u>Ursus americanus</u> (Black bear)	Add to II	Japan	Oppose (1,9)
<u>Ursus arctos</u> (Brown bear)	Retain populations of Afghanistan, India, Mexico, Nepal, and Pakistan in I; include all other popula- tions in II.	China, Denmark	Oppose (15)

Species	Proposed Amendment	Proponent	U.S. Position
<u>Ursus arctos</u> (Brown bear)	Inclusion in II	Japan	Oppose (1,14)
<u>Aonyx cinerea</u> (Asian small-clawed otter)	Transfer from II to I	India	Oppose (9,12)
<u>Lutra perspicillata</u> (Smooth-coated otter)	Transfer from II to I	India	Support (7)
<u>Felis pardalis</u> (Ocelot)	Transfer from II to I	Federal Republic of Germany	Support (21)
<u>Felis tigrina</u> (Little spotted cat)	do	do	Support (21)
<u>Felis weidii</u> (Margay)	do	do	Support (21)
<u>Lynx pardinus</u> (Iberian lynx)	Transfer from II to I	Portugal, Fed. Republic of Germany	Support (6,7)
Order Proboscidea			
<u>Loxodonta africana</u> (African elephant)	do	Austria, Gambia, Hungary, Kenya, Somalia, Tanzania	Support (6,7)
Order Artiodactyla			
<u>Cephalophus jentinki</u> (Jentink's duiker)	Transfer from II to I	Federal Republic of Germany	Support (22)
BIRDS			
Order Rheiformes			
<u>Rhea americana</u> (Rhea)	Add to II	Japan	Oppose (1)

Species	Proposed Amendment	Proponent	U.S. Position
Order Tinamiformes			
<u>Rhynchotus rufescens</u> (3 spp.) (Rufous tinamous)	Remove from II	Uruguay	Support (3)
Order Ciconiiformes			
<u>Ciconia ciconia</u> (White stork)	Add to II	Federal Republic of Germany	Oppose (12)
Order Galliiformes			
<u>Francolinus ochropectus</u> (Djibouti francolin)	Remove from II	Switzerland	Support (3,12)
<u>Francolinus swierstrai</u> (Swierstra's francolin)	do	do	Support (3,12)
Order Psittaciformes			
<u>Agapornis cana</u> (Grey-headed lovebird)	Remove from II (if accepted, Madagascar has indicated that they would include it in Appendix III).	Madagascar	Oppose (9)
<u>Ara maracana</u> (Illiger's macaw)	Transfer from II to I	Paraguay	Oppose (23)
<u>Amazona tucumana</u> (Tucuman amazon)	do	Denmark	Support (6,16)
<u>Cacatua moluccensis</u> (Moluccan cockatoo)	do	Switzerland	Support (6,7)

Species	Proposed Amendment	Proponent	U.S. Position
Order Coraciiformes			
<u>Buceros bicornis</u> (Great pied hornbill)	Remove from I	Switzerland	Support (3,12)
<u>Buceros</u> spp. (Hornbills)	Add to II	do	Support (10)
<u>Buceros rhinoceros</u> (Rhinoceros hornbill)	do	Belgium	Support (10)
Order Passeriformes			
<u>Pitta gurneyi</u> (Gurney's pitta)	Add to I	Thailand	Support (7)
<u>Pitta quajana</u> (Banded pitta)	Add to II	do	Oppose (9)
<u>Pseudochelion sirintaræ</u> (White-eyed river martin)	Transfer from II to I	do	Support (17)
REPTILES			
Order Testudinata			
<u>Chelonia mydas</u> (Green sea turtle)	Transfer from I to II; proposal submitted pursuant to resolution Conf. 5.21; export quota of 3,000 specimens.	Indonesia	Oppose (9)
<u>Eretmochelys imbricata</u> Hawksbill sea turtle)	Transfer from I to II; proposal submitted pursuant to resolution Conf. 5.21; export quota of 3,000 specimens.	do	Oppose (1)

Species	Proposed Amendment	Proponent	U.S. Position
Order Crocodylia			
<u>Crocodylus cataphractus</u> (African slender-snouted crocodile)	Transfer Congo's population from I to II, pursuant to resolution Conf. 5.21 subject to an annual export quota of 600	Congo	Support (24)
<u>Crocodylus niloticus</u> (Nile crocodile)	Transfer Botswana's population from I to II, pursuant to Conf. 3.15 on ranching.	Botswana	Oppose (4)
<u>Crocodylus niloticus</u> (Nile crocodile)	Transfer the Congo's population from I to II, pursuant to resolution Conf. 5.21 subject to an annual export quota of 150	Congo	Support (24)
<u>Crocodylus niloticus</u> (Nile crocodile)	Transfer Ethiopia's population from I to II, pursuant to resolution Conf. 5.21 subject to an annual export quota of 2,845.	Ethiopia	Support (5)
<u>Crocodylus niloticus</u> (Nile crocodile)	Transfer Kenya's population from I to II, pursuant to resolution Conf. 5.21 subject to an annual export quota of 5,000 (with 1,000 from the wild).	Kenya	Oppose (1)
<u>Crocodylus niloticus</u> (Nile crocodile)	Transfer Madagascar's population from I to II, pursuant to resolution Conf. 3.15 on ranching.	Madagascar	Oppose (18)
<u>Crocodylus niloticus</u> (Nile crocodile)	Transfer of Malawi's population from I to II, pursuant to Conf. 3.15 on ranching.	Malawi	Oppose (4)

Species	Proposed Amendment	Proponent	U.S. Position
<u>Crocodylus niloticus</u> (Nile crocodile)	Transfer of Mozambique's population from I to II, pursuant to resolution Conf. 3.15 on ranching.	Mozambique	Oppose (4)
<u>Crocodylus niloticus</u> (Nile crocodile)	Transfer of Somalia's population from I to II, subject to an annual export quota of 2,000 specimens.	Somalia	Support (5)
<u>Crocodylus niloticus</u> (Nile crocodile)	Transfer of Tanzania's population in II, subject to an export quota of 3,500 specimens.	Tanzania	Support (5)
<u>Crocodylus niloticus</u> (Nile crocodile)	Transfer of Zambia's population from I to II, pursuant to resolution Conf. 3.15 on ranching.	Zambia	Support
<u>Crocodylus porosus</u> (Saltwater crocodile)	Transfer Indonesia's population from I to II pursuant to resolution Conf. 5.21 with export quota of 5,000 specimens.	Indonesia	Support (5)
Order Squamata			
<u>Dracaena paraguayensis</u> (Caiman lizard)	Add to II	Paraguay	Support (7)
<u>Shinisaurus crocodilorus</u> (Chinese crocodile lizard)	do		
<u>Varanus bengalensis</u> (Bengal monitor)	Transfer from I to II	Japan	Oppose (1)
<u>Varanus grayi</u> (Gray's monitor)	Transfer from II to I	Federal Republic of Germany	Support (7)
<u>Varanus griseus</u> (Desert monitor)	Transfer from I to II	Federal Republic of Germany	Support (11)
<u>Naja naja</u> (Cobra)	Add to II	Japan	Oppose (1)
		India	Support (7)

Species	Proposed Amendment	Proponent	U.S. Position
<u>Ophiophagus hannah</u> (King cobra)	do	do	Support (7)
<u>Ptyas mucosus</u> (Oriental ratsnake)	do	do	Support (7)
FISHES (PISCES)			
<u>Cynolebias</u> spp. (Pearlfishes)	Remove from II	Switzerland	Support (3)
<u>Latimeria chalumnae</u> (Coelacanth)	Transfer from II to I	Federal Republic of Germany	Support (7,11)
<u>Scleropages formosus</u> (Asian bony-tongue)	Transfer from I to II, pursuant to resolution Conf. 5.21, subject to an annual export quota of 2,500 specimens.	Indonesia	Oppose (1)
CORALS (CNIDARIA)			
<u>Athecata</u> spp.	Add to II	Israel, Philippines	Oppose (19)
<u>Coenothecalia</u> spp.	do	do	do
<u>Scleractinia</u> spp.	do	do	do
<u>Stolonifera</u> spp.	do	do	do
PLANTS			
Family Amaryllidaceae:			
<u>Sternbergia</u> spp. (sternbergias)	Add to II	United Kingdom	Support (7)
Family Apocynaceae:			
<u>Rauwolfia serpentina</u> (snake-root devil-pepper)	Add to II	India	Support (7)

Species	Proposed Amendment	Proponent	U.S. Position
Family Aristolochiaceae:			
<u>Aristolochia indica</u> (Indian birthwort)	Add to II	do	Oppose (9)
Family Berberidaceae:			
<u>Podophyllum emodi</u> (= <u>P. hexandrum</u> ) (Himalayan may-apple)	Add to I	do	Oppose (9, 18, 20)
Family Droseraceae:			
<u>Drosera burmannii</u> (Burmans' sundew)	Add to II	do	Oppose (9)
<u>D. indica</u> (Indian sundew)	do	do	Oppose (9)
<u>D. peltata</u> (shield sundew)	do	do	Oppose (9)
Family Fagaceae:			
<u>Quercus copeyensis</u> (copey oak)	Remove from II	Switzerland	Support (3)
Family Gentianaceae:			
<u>Gentiana kurroo</u> (Indian gentian)	Add to II	India	Support (7, 18)
Family Humiriaceae:			
<u>Vantanea barbourii</u> (caracolillo)	Remove from I	Switzerland	Oppose (2, 16, 18)

Species	Proposed Amendment	Proponent	U.S. Position
Family Juglandaceae:			
<u>Oreomunnea</u> (=Engelhardia) <u>pterocharpa</u> (gavilán blanco)	do	do	Oppose (3,11)
Family Leguminosae (Fabaceae):			
<u>Cynometra hemitomophylla</u> (guapinol negro)	do	do	Oppose (2,18)
<u>Platymiscium pleiostachyum</u> (cristóbal)	do	do	Oppose (2,18)
<u>Tachigali versicolor</u> (cana fistula)	do	do	Oppose (2,18)
Family Liliaceae:			
<u>Gloriosa superba</u> (Malabar gloriosa-lily)	Add to II	India	Oppose (9)
Family Moraceae:			
<u>Batocarpus costaricensis</u> (ojoche macho)	Remove from I	Switzerland	Oppose (2,18)
Family Orchidaceae:			
<u>Eriopsis biloba</u> (Guatemalan pop.) (bilobed eriopsis)	Transfer from II to I	Guatemala	Support (7)
<u>Lemboglossum</u> (=Odontoglossum) <u>maiale</u> (May lemboglossum)	do	do	Support (7)
<u>L. uro-skinneri</u> (Skinner lemboglossum)	do	do	Support (7)

Species	Proposed Amendment	Proponent	U.S. Position
<u>Paphiopedilum</u> spp. (Asian tropical lady-slipper orchids)	do	Netherlands	Support (7,13,18)
<u>Phragmipedium</u> spp. (New World tropical lady-slipper orchids)	do	Federal Republic of Germany	Support (7)
<u>Rossioglossum</u> (= <u>Odontoglossum</u> ) <u>williamsianum</u> (Williams rossioglossum)	do	Guatemala	Support (7,18)
Family Podocarpaceae:			
<u>Podocarpus costalis</u> (coastal podocarp)	Remove from I	Switzerland	Support (3,20)
Family Podophyllaceae: see Family Berberidaceae			
Family Ranunculaceae:			
<u>Aconitum deinorrhizum</u> (then-rooted monkshood)	Add to II	India	Support (7,18)
Family Sterculiaceae:			
<u>Pterygota excelsa</u> (= <u>Basiloxylon excelsum</u> ) (castano)	Remove from II	Switzerland	Support (3,12)
Family Valerianaceae:			
<u>Nardostachys grandiflora</u> (= <u>N. jatamansi</u> ) (Indian nard)	Add to II	India	Support (7,18)

The basis for the final U.S. negotiating position on each proposal:

(1) While this amendment to the appendices has been proposed, the CITES Secretariat had not received any supporting documentation as of September 9, 1989, and the U.S. position is to oppose all proposals without supporting documentation.

(2) Submitted as part of the 10-year review of listings for removal from the appendices because the species is believed to be more common and/or no trade has been documented. However, the species is sufficiently rare and/or the possibility of international trade sufficiently likely that our position is to oppose complete removal from the appendices, but to accept a downlisting of the species to Appendix II.

(3) Submitted as part of the 10-year review of listings for downlisting or removal from the appendices. The United States either supports the proposal believing the information presented to be an accurate interpretation of the likely effect of trade or oppose the proposal because the lack of reported trade for some species proposed for removal may be due to their rarity or lack of proper documentation or reporting of trade.

(4) Information for a ranching proposal does not appear to be adequate. Nevertheless, the United States would support some (perhaps more restrictive) continuation of the existing quota.

(5) Although the United States does not believe the information available is sufficient to support the proposal as submitted, the United States could support a proposal with a reduced quota.

(6) The intention of this proposal is to transfer the taxon from Appendix II to Appendix I since continued trade may threaten it with possible extinction.

(7) Listing of the taxon, as proposed, appears to be justified by information in the proposal or currently available.

(8) While this species is probably extinct, any trade is likely to be internal to the United States and its separate listing on Appendix I does not seem warranted.

(9) The population status (i.e., degree of threat of extinction of the entire species) does not appear to warrant listing, downlisting, or delisting as proposed.

(10) Listing of this species or other taxon appears justified because of its similarity of appearance to others that are subject to trade.

(11) The U.S. position is to support listing this taxon in Appendix I on the basis of resolution Conf. 2.19 (i.e., due to the taxon's rarity any trade in it would

be detrimental) and trade has been documented and may increase.

(12) Available information suggests that there is little likelihood that there has been or will be any significant international trade in this species.

(13) About half of the species in this genus are believed to be threatened with extinction. Resolution Conf. 6.19 provides for the artificially propagated hybrids to be treated as if on Appendix II. As general matter, artificially propagated specimens of Appendix I species can be exported from the United States under a renewable export permit valid for multiple shipments for up to 6 months.

(14) While supporting documentation for this proposal has not been submitted by Japan, a portion of the proposed amendment submitted jointly by China and Denmark would achieve the same listing action, and the U.S. position is to support that portion of the latter proposal (see next item for U.S. position on the Appendix I aspect of that proposal).

(15) The listing of the taxa, as proposed, generally appears to be justified by the information in the proposal or currently available, but the proposal also transfers the Chinese and Russian populations of *Ursus arctos pruinosus* and *U. a. isabellinus* from Appendix I to II which does not appear to be warranted.

(16) Population information is limited although the information presented in the proposal suggests a small and declining population within its restricted range. Furthermore, trade appears sufficiently large to be affecting the survival of the species.

(17) This species appears to be sufficiently rare to be included in Appendix I under provisions of Conf. 2.19. Although no international trade has been recorded, the possibility of specimens being sought is probably sufficient to support this proposal.

(18) Population and international trade information need to be clarified, but information available suggests that trade should be curtailed.

(19) Biological and trade information presented on individual genera is not sufficient to meet the Berne criteria. However, we recognize that enough information may become available to support the addition of some genera to Appendix II.

(20) Biological and trade information presented do not appear to support listing in Appendix I. However, enough information may become available to support listing the species in Appendix II.

(21) Information on several populations does not appear to meet the

Berne criteria for listing in Appendix I, but significant questions about taxonomic distinctiveness and enforcement concerns may warrant support. The U.S. will consider views presented by range States.

(22) Quantitative population and trend information is lacking and recent studies conducted in the species primary habitat indicate larger numbers than previously presumed. Furthermore, trade is limited and does not appear to threaten the survival of the species. Nevertheless, the principal range State supports the listing, the species is endangered, and there may be sufficient potential for trade so that it, in conjunction with other factors, may threaten the survival of the species.

(23) Quantitative population information is lacking, and trade is small. The species appears to be rare, but the U.S. delegation intends to consult further with the range States at the meeting of the Parties to determine whether trade, in conjunction with other factors, threatens the survival of the species.

(24) The proposals and supporting documentation on crocodile quotas for populations in the People's Republic of the Congo were received after the tentative negotiating positions were published in the *Federal Register*. However, the U.S. position is to support the requested quotas which are the same as those adopted at the sixth meeting of the Parties and which were supported at that time by the IUCN Crocodile Specialist Group. Furthermore, the People's Republic of the Congo has not requested renewal of their quota for the dwarf crocodile, *Osteolaemus tetraspis*.

Final negotiating positions given in this table are based upon the best available biological and trade information, taking into account comments received from the public and the criteria for listing species in the appendices (resolutions Conf. 1.1 and 1.2 of the first meeting of the Conference of the Parties to the Convention) and other provisions for listing species including Conf. 2.19 on extremely rare species, Conf. 2.23 and Conf. 3.20 on delistings under special 10-year review procedures, Conf. 3.15 on ranching, Conf. 5.14 on uplisting plant species, and Conf. 5.21 on special criteria for the transfer of taxa from Appendix I to Appendix II with concurrent establishment of export quotas. If further information is presented at the meeting in Switzerland, the U.S. delegation will take it into account in determining whether these positions remain appropriate. As indicated above,

support or opposition to particular proposals may depend on whether questions about them are satisfactorily answered at the meeting. Furthermore, while the United States may not fully support a proposal, partial support has been discussed in the "Assessment of Comments on Species Listing Proposals" and noted in the footnotes to this table summarizing the U.S. negotiating positions.

This notice was prepared by Drs. Charles W. Dane and Bruce MacBryde, Office of Scientific Authority, under authority of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

#### List of Subjects in 50 CFR Part 23

Endangered and threatened plants, Endangered and threatened wildlife, Exports, Fish, Imports, Marine mammals, Plants (agriculture), Treaties.

(Notice of Decision: U.S. Negotiating Positions on Foreign Proposals to Amend CITES)

Dated: October 3, 1989.

Constance B. Harriman,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-23707 Filed 10-5-89; 8:45 am]

BILLING CODE 4310-55-M

#### 50 CFR Part 24

RIN 1018-AB26

#### Endangered and Threatened Wildlife and Plants; Designated Ports for Listed Plants

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Fish and Wildlife Service proposes to amend the regulations concerning importation and exportation of some plants by designating Houston, TX, as an additional port for importing, exporting, and reexporting plants listed under the Endangered Species Act of 1973, as amended (the Act), or the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). It is necessary to designate port for plants in order to implement provisions of the Act or CITES.

**DATES:** Comments must be submitted on or before December 5, 1989. Requests for a public hearing must be received by November 20, 1989.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, P.O. Box 3507, Arlington, Virginia 22203-3507. Comments and

materials may be hand-delivered to the U.S. Fish and Wildlife Service, Office of Management Authority, 4th Floor, Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia, between the hours of 8:00 a.m. and 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Ronald Singer, Senior Staff Biologist, U.S. Fish and Wildlife Service, Office of Management Authority, P.O. Box 3507, Arlington, Virginia, 22203-3507, telephone (703) 358-2095.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Endangered Species Act of 1973, as amended (the Act), requires, among other things, that plants be imported, exported, or reexported only at designated ports or, under certain limited circumstances, at nondesignated ports. Section 9(f) of the Act (16 U.S.C. 1538 [f]) provides for the designation of ports. Under section 9(f)(1) there is authority for the Secretary of the Interior (Secretary) to establish designated ports based on a finding that this action would facilitate enforcement and reduce the costs of enforcing the Act. The United States Department of Agriculture (USDA) and the Secretary are responsible for enforcing provisions of the Act and the Convention of International Trade in Endangered Species of Wild Fauna and Flora (CITES) relating to the importation, exportation, and reexportation of listed plants. This program involves inspections and other enforcements activities concerning all types of specimens of listed terrestrial plants.

In an October 25, 1984, (49 FR 42938 Federal Register notice, the United States Fish and Wildlife Service (Service) designated 87 ports for the importation, exportation, and reexportation of plants under the Act. Houston, TX, is one of these ports. Of these 87 ports, 14 are also designated for the importation, exportation, or reexportation of any plants listed as endangered or threatened in 50 CFR 17.12 (listed plants) or in the appendices of CITES in 50 CFR 23.23 (listed plants). The USDA is now recommending that the port of Houston, TX, be designated as port number 15 for any such listed plants. Listed plants must be imported, exported, or reexported only through these specially designated ports or, under limited circumstances, at non-designated ports. This is to ensure that listed plants will be subject to a species-based inspection system.

For enforcement of the Act and CITES, ports designated for listed plants

should have personnel with expertise in identifying listed plants.

Expertise in identification of listed plants is necessary for determining whether plants without documentation are actually listed plants required to be accompanied by documentation. Plant identification is also necessary to determine if the plant material being imported, exported, or reexported was legally acquired, is accurately identified by this documentation, and its origin as wild or artificially propagated is accurately stated. It is important that designated ports for listed plants have adequate facilities for holding live plants and plant material, since these plants are subject to seizure if imported, exported, or reexported in violation of the Act or CITES. Further, these ports should coincide, as much as possible, with established patterns or plant trade in order to help reduce shipping costs.

Based on consultations between USDA and the Service, it appears that the port of Houston, TX, will have adequate personnel and facilities available for the importation, exportation, or reexportation of listed plants on a regular basis (see 54 FR 23989). It also appears that the proposed designated port of Houston, TX, coincides with established patterns of all plant trade.

For these reasons, it appears that the USDA recommendation would facilitate enforcement of the Act and CITES, and would also be cost effective, both to users of the port and the Government. In this connection, the Service has been advised by USDA that, to a significant extent, USDA would use the same Houston, TX, port facility and personnel proposed in 54 FR 23989 for enforcement activities under the Federal Plant Pest Act, the Plant Quarantine Act, the Act, and CITES.

Under these circumstances, the Service is proposing USDA's recommendation that the port of Houston, TX, be added to the list of ports designated under the Act for the importation, exportation, or reexportation of any listed plant.

#### Requests for Public Hearing

Section 9(f)(1) of the Act provides that any person may request an opportunity to comment at a public hearing before the Secretary of the Interior confers designated port status on any port. Accordingly, the Service will accept public hearing requests within 45 days of the publication of this proposed rule. These requests should be sent to the Office of Management Authority address listed in the ADDRESSES section of this document.

**Determination of Effects of Rule**

The Service has determined that this is not a major rule and does not require preparation of a regulatory analysis under Executive Order 12291. These regulations will not cause a significant impact on the import/export of plants as they would essentially add another port to facilitate the trade of listed plants. Additionally, almost all of the affected plants are presently imported through the designated ports because of USDA regulations in 7 CFR chapter III. Further, there is authority for the Secretary to allow the importation, exportation, or reexportation of plants at nondesignated ports under such terms and conditions as the Secretary may prescribe if it is determined that it would be in the interest of the health or safety of the plants, or if for other reasons, it is determined to be appropriate and consistent with the purpose of section 9(f)(1) of the Act.

**Regulatory Flexibility Act**

The addition of Houston, TX, as a designated port would facilitate the importation, exportation, or reexportation of listed plants as well as the other terrestrial plants proposed by USDA in 54 FR 23989. The Service believes the addition of this port would have a small but positive economic impact on importers, since Texas already has three ports that are designated for the importation, exportation, or reexportation of listed plants. The Service has no way of projecting how heavily the new port would be used, but USDA estimates that between 5 to 20 commercial exporters/importers, most of them small entities, would use this new facility for all plants on a regular basis. It is also estimated that an additional but unknown number of commercial exporters/importers would use the facility on an occasional basis. Most of these exporters/importers would realize small savings in transportation costs, since they would not have access to a fourth plant inspection station. The primary impact, however, would be the increased convenience of having another port in Texas through which to import, export, or reexport listed plants. Furthermore, travelers would also be able to move small quantities of listed plants through this new port. The Service has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

**National Environmental Policy Act**

An environmental assessment was prepared by the Animal and Plant Health Inspection Service of USDA. The Service is considering the adoption of USDA's assessment that this is not a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 which would significantly affect the quality of the human environment. The environmental assessment is on file in the Division of Law Enforcement, 4401 North Fairfax Drive, Room 500, Arlington, Virginia 22203 and may be examined during regular business hours.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials (see 7 CFR 3015, subpart V). Such consultation was conducted with the City of Houston's Division of Aviation Authority.

**Paperwork Reduction Act**

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

**List of Subjects in 50 CFR Part 24**

Import, Export, Endangered and Threatened Plants, Treaties (Agriculture).

Accordingly, 50 CFR part 24 is proposed to be amended as follows:

**PART 24—[AMENDED]**

1. The authority citation for part 24 would continue to read as follows:

**Authority:** Secs. 9(f)(1), 11(f), Pub. L. 93-205, 87 Stat. 893, 897 (16 U.S.C. 1538(f)(1), 1540(f)).

**§ 24.12(a) [Amended]**

\* \* \* \* \*

2. Section 24.12(a) would be amended by adding "Houston, Texas" immediately under "El Paso, Texas."

Dated: August 30, 1989.

**Richard N. Smith,**  
*Acting Deputy Director, Fish and Wildlife Service.*

[FR Doc. 89-23685 Filed 10-5-89; 8:45 am]

BILLING CODE 4310-55-M

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 265**

[Docket No. 90805-9205]

RIN 0648-AA47

**United States Standards for Grades of Fresh and Frozen Shrimp; Correction**

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

**ACTION:** Proposed rule with request for comments; correction.

**SUMMARY:** This document corrects a table in the regulatory text of the United States Standards for Grades of Fresh and Frozen Shrimp, proposed rule, published September 21, 1989 (54 FR 38885). The table was published with some incorrect percentages by weight of sample units of shrimp with shell-on and peeled. For clarification, the corrected table is being reprinted.

**DATE:** Comments must be received by November 6, 1989.

**FOR FURTHER INFORMATION CONTACT:** Earl C. Johnston, Chief, Standards and Specifications Branch, NMFS, 508-281-9219.

In proposed rule document, FR Doc. 89-22209, beginning on page 38885 in the issue of September 21, 1989, make the following correction.

**PART 265—[CORRECTED]****§ 265.103 [Corrected]**

On page 38887, § 265.103(a)(2)(i), the table that appears at the bottom of column 2 extending to the top of column 3 is replaced with the following corrected table:

(A) Shell-on:		
Up to and including 70 count per pound (0.45 kg).	No more than 3 percent by weight.	
Over 70 count per pound (0.45 kg).	No more than 7 percent by weight.	
(B) Peeled:		
Up to and including 40 count per pound (0.45 kg).	No more than 4 percent by weight.	
41-70 count per pound (0.45 kg).	No more than 6 percent by weight.	
71-130 count per pound (0.45 kg).	No more than 7 percent by weight.	
Over 130 count per pound (0.45 kg).	No more than 11 percent by weight.	

Dated: September 29, 1989.  
**James E. Douglas, Jr.,**  
*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 89-23651 Filed 10-5-89; 8:45 am]

BILLING CODE 3510-22-M

## 50 CFR part 641

[Docket No. 90926-9226]

RIN 0648-AC16

## Reef Fish Fishery of the Gulf of Mexico

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.**ACTION:** Proposed rule.

**SUMMARY:** NOAA issues this proposed rule to implement Amendment 1 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). This proposed rule would: (1) Require a permit for vessels harvesting reef fish for sale; (2) establish a 50 percent earned income criterion to qualify for a permit; (3) provide for the charging of fees to cover the administrative costs of issuing permits and trap tags; (4) require reporting by operators of charter vessels; (5) require permitted vessels to display identification numbers; (6) eliminate exemptions to the size limit for red snapper; (7) establish size limits for other major species; (8) prohibit sale of fish smaller than the size limits; (9) extend present boundary of the stressed area where certain gear is prohibited to include all waters off Texas out to the 30 fathom isobath and all waters off Louisiana out to the 10 fathom isobath; (10) prohibit use of longline and buoy gear for taking reef fish inside of 50 fathoms to the west and inside of 20 fathoms to the east of Cape San Blas, Florida; (11) establish bag limits for certain snappers, groupers, and amberjack; (12) provide for the possession of two days' bag limits for charter vessels and headboats on trips in excess of 24 hours; (13) restrict vessels with trawl or entangling net gear aboard to the bag limits; (14) establish annual commercial quotas for red snapper and deep- and shallow-water groupers; (15) prohibit fishing for and sale of reef fish when an annual quota for that species is reached; (16) reduce the number of traps that may be fished by a vessel; (17) make other technical changes to facilitate compliance; (18) establish a procedure for setting total allowable catch (TAC) and adjusting management measures annually; and (19) establish as long-term optimum yield (OY) the restoration of stocks to a 20 percent spawning stock biomass per recruit ratio (SSBR) level by the year 2000.

**DATE:** Written comments must be received on or before November 20, 1989.

**ADDRESSES:** Requests for copies of Amendment 1, which includes the draft regulatory impact review/regulatory

flexibility analysis/environmental assessment (RIR/RFA/EA) should be sent to the Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609.

Comments on the proposed rule should be sent to William R. Turner, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Comments on the information collection requirements that would be imposed by this rule should be sent to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Washington, DC 20503, attention: Paperwork Reduction Act Project 0648-XXXX.

**FOR FURTHER INFORMATION CONTACT:** William R. Turner, 813-893-3722.

**SUPPLEMENTARY INFORMATION:** The reef fish fishery of the Gulf of Mexico is managed under the FMP prepared by the Gulf of Mexico Fishery Management Council (Council), and its implementing regulations at 50 CFR part 641, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Amendment 1 is a major revision of the FMP which, to the extent allowed by available data, addresses snappers, groupers, and other reef fish on a species basis. This change from the FMP's approach of addressing snappers and groupers as a single mixed species complex was made possible by an expanded reef fish data collection effort by NMFS and the states in recent years. Stock assessment analyses based on these data indicate red snapper are severely overfished and other species require reductions in fishing mortality to assure that the spawning stock biomass is maintained at a level adequate to prevent reductions in recruitment to those species or stocks. As a consequence of these analyses, Amendment 1 and these proposed implementing regulations would reduce fishing mortality largely by imposing measures such as bag limits, quotas, size limits, and gear restrictions. They also provide a procedure for setting TAC annually based on stock assessments and for adjusting the measures imposed to achieve TAC.

Three minority reports object to (1) the prohibition of the retention and sale of undersized fish in certain instances; (2) the bag limits being applied to shrimp vessels; (3) the geographical extension of stressed areas; (4) the maximum number of persons aboard charter and headboats to fish commercially; (5) the commercial quota on groupers; (6) the prohibition of entangling nets; or (7) the

20-inch minimum size limit for red grouper. A notice of availability summarizing Amendment 1 and the minority reports was published in the *Federal Register* on August 29, 1989 (54 FR 35707).

**Background**

In 1984, NMFS implemented, cooperatively with the States, a Trip Interview Program (TIP) which collected length-frequency and other biological and statistical information on landings of reef fish by species. Collection of landings data for groupers by species instead of by family was also initiated. These data sets along with similar information collected under the Marine Recreational Fishery Statistics Survey (MRFSS), initiated in 1979 and available by 1984, surveys of Gulf charter and headboat fisheries, and fishery independent information from the Southeast Area Monitoring and Assessment Program provided a data base that allowed stock assessments to be undertaken for major reef fish species.

The stock assessments for red snapper and other species were initiated by the Southeast Fisheries Center (SEFC) of NMFS in 1986 and were completed by SEFC and the Council in 1988. The stock assessments for red snapper concluded that the fishery was being subjected to recruitment overfishing and that the SSBR was likely no greater than 4.8 percent of the unfished level. This analysis and those for the dominant groupers indicated that to restore the spawning stocks to a 20 percent SSBR level, reductions in fishing mortality on the order of 60 to 70 percent would be necessary over the long-term (i.e., until the year 2000) for red snapper and on the order of 20 percent over the short-term for the groupers. Size limits, bag limits, and other reductions in harvest levels necessary to restore each species or species group to the 20 percent SSBR (i.e., the Council's goal for long-term OY from the fishery) and the supporting analyses are set forth in Amendment 1.

**Problems in the Fishery**

Problems affecting the fishery that resulted in the development of Amendment 1 by the Council are as follows:

1. The adult population of red snapper has declined since 1979, and this decline may be greater in the western Gulf. The current snapper fishery is supported primarily by younger fish, ages one to three;

2. Habitat loss is negatively affecting reef fish stocks in the Gulf of Mexico;

3. Longline gear has been introduced in the fishery since the FMP was written; this gear needs to be recognized as a segment of the fishery. If longlines are used in areas where other gear have been used traditionally, an increase in the level of mortality and conflicts among user groups may result;

4. The geographic extent of and limitation on fishing effort within the stressed area require modification to address fishing mortality and user conflicts under current and potential use patterns;

5. Some reef fish species are growth and recruitment overfished;

6. Management measures specified in the FMP to establish a data base for management have not been implemented successfully. Statistical data for many species have been aggregated into genus or family groups which has made it impossible to assess the condition of specific stocks adequately. Biological profile data are needed throughout the Gulf of Mexico on a continuing basis; the present system of opportunistic dockside sampling of the commercial catch is not providing a representative characterization;

7. A significant portion of the catch in the reef fish fishery consists of species not included in the fishery management unit;

8. Present definition of OY for the reef fish fishery is an overestimate and does not provide adequate protection for the resource due to different vulnerabilities among reef fish species to overfishing;

9. Mortality of juvenile red snapper due to trawl bycatch reduces potential yield;

10. Fishing pressure has increased dramatically in the past decade due to increased number of vessels, greater use of sophisticated electronic equipment, and increased use of more efficient gear by all sectors of the fishery;

11. Definitive research is needed to determine whether artificial reefs contribute more to overfishing or to the rebuilding of the reef fish resource in the various Gulf of Mexico habitats;

12. The user groups utilizing and depending on the reef fish resources need to be identified and their socioeconomic and sociocultural characteristics delineated to enable analysis of their respective impacts on the resource and the differential impacts that alternative management measures may exert on the various user groups;

13. The stock boundaries of reef fish are unknown; and

14. Overfishing of the reef fish stocks is the result of directed and nondirected recreational and commercial fishing mortality.

### Management Objectives

The management objectives of Amendment 1 are:

1. To stabilize long-term population levels of all reef fish species by establishing a certain survival rate of biomass into the stock at spawning age to achieve at least 20 percent SSBR (the primary objective);

2. To reduce user conflicts and nearshore fishing mortality;

3. To respecify the reporting requirements necessary to establish a data base for monitoring the reef fish fishery and evaluating management actions;

4. To revise the definitions of the fishery management unit and fishery to reflect the current species composition of the reef fish fishery;

5. To revise the definition of OY to allow specification at the species level;

6. To encourage research on the effects of artificial reefs; and

7. To maximize net economic benefits from the reef fish fishery.

### Management Unit

Presently, snappers, groupers, and seabasses are managed under the FMP. Amendment 1 and the proposed implementing regulation would add the tilefishes, amberjacks, white grunt, red porgy, and gray triggerfish to the management unit. These species previously taken as incidental catch and frequently discarded are now being targeted in the fishery.

### Optimum Yield

Amendment 1 and the proposed implementing regulations state OY as two components. The first is OY as a long-term goal, and the second is an annual specification of TAC for each species (stock) or species group (stock complex) that is designed to achieve the OY over time. The components are designed to bring the FMP into compliance with the provisions of 50 CFR part 602 in order to prevent overfishing or rebuild an overfished stock.

The statement of OY as a long-term goal contained in Amendment 1 is: "Optimum Yield is any harvest level for each species which maintains, or is expected to maintain, over time[,] a survival rate of biomass into the stock of spawning age to achieve at least a 20 percent Spawning Stock Biomass Per Recruit (SSBR) population level, relative to the SSBR that would occur with no fishing". The target date for achieving OY, as specified in the TAC procedure, is on or before January 1, 2000. The target date was selected in part to moderate the short-term impacts of the

harvest restrictions required to achieve OY on users of the reef fish resources, particularly for red snapper. The procedure for specifying an annual TAC contains provisions that are designed to assure the goal will be met, provides safeguards to prevent irreversible overfishing, and will allow the rules to be modified annually based on the most recent information and analyses.

### Definition of Overfishing

Overfishing is defined as:

1. A reef fish stock or stock complex is *overfished* when it is below the level of 20 percent of the [SSBR] that would occur in the absence of fishing.

2. When a reef fish stock or stock complex is overfished, *overfishing* is defined as harvesting at a rate that is not consistent with a program that has been established to rebuild the stock or stock complex to the 20 percent [SSBR] level.

e. When a reef fish stock or stock complex is not overfished, *overfishing* is defined as a harvesting rate that [,] if continued [,] would lead to a state of the stock or stock complex that would not at least allow a harvest of OY on a continuing basis.

The SSBR (reproductive potential) is determined by integrating or summing the multiple, for each age, or relative number of fish alive times the estimated fraction mature times the estimated weight of fish. The two models used to determine SSBR, both variants of yield per recruit models, are the Beverton-Holt continuous model and the Ricker discrete model. The total contribution of a cohort to the spawning stock biomass over its lifetime is found by summing the cohort's contribution at each age, which is then scaled to a per recruit basis to derive the theoretical SSBR measure. The SSBR measure can be used to evaluate alternative fishing mortality scenarios without knowing actual levels of recruitment or spawning stock. Maximum SSBR is obtained by setting fishing mortality to zero.

In the Council's opinion, these definitions satisfy the 50 CFR part 602 Guidelines in that they have sufficient scientific merit; are likely to result in effective Council action to prevent the stock from closely approaching or reaching an overfished status; provide a basis for objective measurement of the status of the stock against the definition; and are operationally feasible.

### Procedure for Establishing an Annual TAC and Adjusting Management Measures (Procedure)

The Procedure provides for the Science and Research Director of SEC to prepare or update the stock assessment for each species (stock) or stock complex annually (i.e., prepare a Stock

Assessment and Fishery Evaluation (SAFE) Report) as provided for in 50 CFR part 602. The Council would be required to appoint a scientific stock assessment panel (Panel) to review the SAFE Report and other relevant information and prepare a report (Report) specifying a range of acceptance biological catch (ABC) for each stock or stock complex. The ABCs would be calculated so as to achieve reef fish population levels at or above the 20 percent SSB goal by January 1, 2000. The Panel would be required to include in the Report to the Council a risk analysis of probabilities of each level of an ABC attaining OY, economic and social impacts of the levels, and recommendations for management measures to attain the ABC. The Council, after holding a public hearing(s) and reviewing comments of the Scientific and Statistical Committee (SSC) and of the Reef Fish Advisory Panel (AP) of the Report, would be required to specify a TAC from within or below the range of ABC or a series of TACs (some of which may be higher than the ABC) to attain the selected level of ABC in not less than three years. It was judged that such gradual approach to reduction of fishing mortality may be less disruptive to the fishery and have less adverse impact on users. The Procedure provides the safeguards to assure that irreversible overfishing does not occur, and that further adjustments to management measures will restore depleted stocks within a specified time frame and be based on progressively more precise and accurate information.

The Council would be required to subdivide the TACs into commercial and recreational allocations which maximize the net benefits of the fishing to the nation and are based on percentages harvested by each sector during the period of 1979-87. If the harvest in any year exceeds the TAC because either the recreational or commercial user group exceeds its allocation, subsequent allocations to the exceeding group will be adjusted to assure meeting the January 1, 2000, spawning stock biomass goal.

The Council would be required to provide to the NMFS Regional Director (RD) its recommendations for TACs for each species or species group, proposed regulations revising quotas and management measures necessary to attain each TAC, the Council's rationale, and analyses of impacts (EA and RIR) of the proposed regulations. A proposed rule containing the recommended TACs, quotas, and harvest restrictions will be published in the *Federal Register* for

public comment. If the RD concludes after review of public comment that the proposed regulations are consistent with the FMP objectives and other applicable law, he will promulgate the regulations by final rule published in the *Federal Register* (see proposed § 641.27 for additional detail).

#### Permits and Reporting Requirements

Amendment 1 and the proposed implementing regulations require a permit in order to fish for reef fish in the exclusive economic zone (EEZ) under a commercial quota or to sell reef fish taken from the EEZ. To qualify for permit, a person must derive more than 50 percent of his or her earned income from commercial or charter (for hire) fishing. Permits would have to be renewed annually and compliance with reporting requirements would be a condition for issuance, reissuance, or continuing validity of a permit.

The requirement that 50 percent of earned income be from commercial or charter fishing to qualify for a permit was proposed, in part, because of the severe restrictions on commercial harvest necessary to restore the principal species in the fishery. By including this requirement, recreational fishermen who previously sold their excess catch of reef fish would no longer be able to do so and would be excluded from participating under the commercial quotas for species for which quotas apply. Since there are likely several thousand of such persons, this reduces the impact of the harvest restrictions on full-time and many part-time commercial fishermen. Most retirement income is not considered earned income under this permit requirement.

The purpose of the permit requirements is to ensure allocations are distributed as set forth by the Council and to improve enforcement of the recreational and commercial catch limits. Without such delineation of these two major user groups, the catch limits proposed for the recreational sector will be unenforceable and recreational catch that is sold would be counted against the commercial quota.

In addition, the Council intends to develop in the future a limited access system for the commercial fishery that may reduce participation levels even further. The Council will submit for publication in the *Federal Register* a notice of a control date for entry into the fishery as the first step in developing such a system by subsequent amendment.

Compliance with the reporting requirements was made a condition of the issuance, reissuance, and continued validity of the permit because only

about 15 percent of present permit holders (trap fishermen) have complied with the current reporting requirements. Sanctions for non-compliance are governed under 15 CFR part 904.

Amendment 1 and the proposed implementing regulations include reporting requirements for charter vessel operators. These requirements are generally identical to those currently applying to operators of headboats and are combined with those for the coastal migratory pelagics fishery under 50 CFR part 642. Amendment 1 and the proposed implementing regulations also require persons holding permits to file a report during months when no fishing occurs and also make other minor technical changes to reporting requirements to facilitate enforcement. The monthly report of no fishing is needed to ascertain periods when fishermen with permits are inactive and to facilitate compliance during active periods of fishing.

#### Vessel and Gear Identification

The proposed implementing regulation would require a vessel for which a permit has been approved to display its official number in a manner visible to both air and surface enforcement craft. Such an identification requirement currently applies to vessels with fish trap permits and would be extended to apply to other permitted commercial vessels. This identification requirement is necessary to allow aerial enforcement of closed areas (e.g., areas where longlining is prohibited) and closed seasons (i.e., periods when all commercial fishing is prohibited after quotas are reached).

#### Size Limits

Amendment 1 and the proposed implementing regulations retain 13 inches total length (TL) as the minimum size for possession of red snapper, but eliminate allowances for possession of undersized fish by fishermen (five per person) and for trawl vessels (unlimited) and prohibit sale of undersized red snapper. The allowances for possession and sale of undersized fish largely made the size limit ineffective (i.e., 39 percent of fish landed were undersized). This was especially true for recreational fishermen since typically 50 percent or more of their trips yielded five or less fish, all of which could legally be undersized. An effective size limit for red snapper would moderately increase yield per recruit (YPR) in terms of poundage available from the resource by about 5 percent, but initially (during first year) could reduce recreational landings by about 29 percent.

Amendment 1 and the proposed implementing regulations also impose minimum size and possession limits for black sea bass, lane and vermilion snapper (8 inches TL); for gray, mutton, and yellow-tail snapper (12 inches TL); for red, Nassau, gag, yellowfin and black groupers (20 inches TL); for greater amberjack (28 inches fork length (FL) for recreational catch and 36 inches FL for commercial catch) and for jewfish (50 inches TL). All of these species are predominantly (up to 99 percent) harvested off Florida. Florida currently has size limits for most of these species that are identical, or slightly smaller, and is expected to adopt the same limits.

Since size limits increase YPR, models were prepared that allowed computation of percent reduction in fishing mortality necessary to reach a 20 percent SSBR level at each minimum size. These models and information on size at maturity were used in selecting the proposed size limits. For most of these species, including red snapper, bag limits and quotas are also imposed to attain the desired reduction in fishing mortality as a function of the minimum size selected. For some species (black sea bass, lane and vermilion snappers, and jewfish) the YPR from the size limit alone will be adequate to attain or maintain the 20 percent SSBR level. The larger size limit for commercially harvested amberjack eliminates the necessity to set a commercial quota on that species. In order to facilitate enforcement and make the size limits effective, fish would be required to be landed with heads and fins intact and sale of fish smaller than the minimum size would be prohibited.

#### Gear Restrictions

Amendment 1 and the proposed implementing regulations would reduce the number of fish traps that can be fished by each permitted vessel from 200 to 100. Trap fishermen fishing the Gulf of Mexico (Gulf) in 1986 used 30 traps per vessel whereas those fishing the Florida Straits generally utilize about 200 according to testimony presented to the Council. Since the reef fish resources of the Gulf are being overfished, the Council proposed reducing the allowable level of traps before trap levels reach those employed in the adjacent Florida Straits. The proposed rule also would limit degradable door hinges and fasteners to jute string or magnesium fasteners since, according to fishermen, other materials deteriorate too slowly.

#### Area Limitations

Amendment 1 and the proposed implementing regulations modify the boundary of the stressed area by including waters of the EEZ shoreward of the 10-fathom contour off Louisiana and shoreward of the 30-fathom contour off Texas. The FMP prohibits the use of fish traps, roller trawls, and powerheads for taking reef fish within the stressed area. The stressed area delineates the nearshore areas subject to the most intensive fishing pressure (primarily by recreational fishermen who generally lack the capability to travel further offshore), and use of more efficient and competing gear is, therefore, prohibited. The inclusion of these additional areas will reduce harvest on the overfished red snapper stock because red snapper is the predominant reef fish species off Louisiana and Texas. Access to the coast of Louisiana is much more restricted than to the coast of Texas, and consequently the nearshore waters are subject to less intensive fishing pressure; therefore, the proposed boundary is closer to shore (10 fathoms versus 30 fathoms) for Louisiana than for Texas.

Amendment 1 and the proposed implementing regulations would prohibit the use of longline and buoy gear for the directed harvest of reef fish in the EEZ inshore of the 50-fathom contour west of Cape San Blas, Florida (85°30' W. longitude) and inshore of the 20-fathom contour east of Cape San Blas. The western restricted area generally covers the range of red snapper as very few occur east of Cape San Blas or outside 50 fathoms. The prohibition will reduce the impact of those gears which typically have harvested large red snapper from the spawning stock and from areas (non-reef areas) where the catch per unit effort (CPUE) by other gear is too low to fish economically for the large spawners. Since fecundity for red snapper increases exponentially with increasing size, it is important to reduce catch of the larger fish in the depressed spawning stock. Since mortality of fish released at the water surface increases with water depth from which they are caught, implementation of a maximum size limit to preserve the larger spawners likely would be an ineffective alternative to the prohibition of buoy and longline gear from that area.

The eastern restricted area is generally located within the range of red grouper, the dominant species of shallow-water grouper. By expanding the restricted area, longline gear (the principal gear in the group fishery) and buoy gear could only be used outside of 20 fathoms. This will prevent harvest

and subsequent release mortality of groupers smaller than the 20-inch minimum size which are common inside of 20 fathoms. Since all groupers reverse sex as they grow and the larger fish are all males, there is less concern over the efficiency of longline and buoy gear to harvest the larger fish.

#### Bag and Possession Limits, Allocations, and Closures

Bag limits are imposed to reduce fishing mortality by recreational fishermen and quotas are imposed to reduce fishing mortality by commercial fishermen. Sale of certain reef fish would be prohibited for the remainder of the fishing year when the quota for those species or species groups is reached. Exception would be made for fish held in cold storage by a dealer or processor. Sale of reef fish taken in the EEZ under a bag limit would be prohibited. Persons fishing under a commercial quota would have to possess vessel permits. Persons on charter vessels and headboats (when under charter) and on commercial vessels temporarily excluded from fishing under a vessel permit (i.e., vessels with trawl or net gear aboard and longline vessels fishing in the restricted area for species other than reef fish) would be limited to the bag limits, except that persons on charter vessels and headboats would be allowed to possess up to two daily bag limits for trips of more than 24 hours duration.

For red snapper, Amendment 1 and the proposed implementing regulations would impose a daily bag limit of seven fish for recreational fishermen and a quota of 3.1 million pounds for commercial fishermen. This is equivalent to a 20 percent reduction from the 1985-1987 level of fishing mortality (harvest) for the initial fishing year. This percentage reduction will not restore the spawning stock to 20 percent SSBR by the year 200 (i.e., long-term OY goal). However, the Procedure for establishing an annual TAC and adjusting management measures allows an annual reassessment of progress made in achieving OY and adjustments to the bag limit and quota to reach that goal. The Council judged that a more gradual approach to reduction of fishing mortality would be less disruptive to the fishery and have less adverse impact on users. The Procedure provides the safeguards to assure that irreversible overfishing does not occur and that further adjustments to measures will be based on progressively more precise and accurate information.

For groupers, Amendment 1 and the proposed implementing regulations would impose a daily bag limit of five fish of all species in aggregate (except jewfish) and separate commercial quotas of 9.2 million pounds for shallow-water groupers and 1.8 million pounds for deep-water groupers (defined by species). This is equivalent to a 14 percent reduction from the 1985-1987 level of fishing mortality (harvest) for the initial fishing year. Since initial estimates of the percent reduction in fishing mortality necessary to attain 20 percent SSBR for groupers was approximately 20 percent, this level of reduction (14 percent) may or may not attain the OY goal by the year 2000. However, the Procedure will allow assessing this annually and adjusting the rules to attain that goal.

Amendment 1 and the proposed implementing regulations would impose an aggregate daily bag limit of 10 fish for all other snapper species, except for vermilion and lane snappers. This bag limit was proposed because restrictions placed on other reef fish species will result in transfer of effort toward harvest of these species, which are predominantly harvested by recreational fishermen. The measures that would be imposed under this proposed rule will be assessed annually under the Procedure. Vermilion and lane snapper were excluded from bag limits and allocations because they become sexually mature at a size smaller than the minimum size limit (e.g., vermilion mature at 6 inches TL) and are therefore protected from recruitment overfishing.

Amendment 1 and the proposed implementing regulations would impose a daily bag limit of three fish with a 28-inch FL minimum size and a larger commercial size limit (36-inch FL) for greater amberjack to reduce harvest equitably. The harvest of greater amberjack has been largely by recreational fishermen with the harvest level escalating in recent years as they become a targeted substitute for less abundant reef fish. Commercial harvest, while much less, has also increased. The recreational bag and the size limits will result in about a 60 percent reduction from the 1985-1987 harvest level in the initial years until the fish reach a larger size.

The bag limits are intended to reduce recreational harvest while spreading the reduced individual catch over the fishing year, whereas the quotas are intended to allow commercial harvest to be taken as efficiently as possible and to prohibit harvest for sale when the quota is taken during each fishing year. The possession of two days bag limits (of legal size fish)

is proposed for charter vessels and headboats since many of these vessels traditionally have made multi-day trips to more distant reef complexes. In all other cases, the possession limits would be the bag limits.

The prohibition on sale of reef fish taken under a bag limit will prevent recreational harvest and bycatch from being counted in the commercial quotas and thereby intensify the impact of the reduced allocation level on that user group. Once a quota for a species or species group is reached, directed fishing and sale of that species or group would be prohibited for the remainder of the fishing year. This is necessary to assure that the allocation not be exceeded. After such a closure, all persons in the reef fish fishery would be subject to the possession limit or daily bag limit, which cannot be sold.

#### Additional Changes

In addition to the changes to the existing regulations necessary to implement Amendment 1, NOAA proposes other changes to facilitate enforcement and to make corrections and clarifications.

Revisions to the purpose and scope section (§ 641.1) are proposed to indicate the full geographical scope of the regulations by specifying those sections that apply in state waters adjoining the EEZ. NOAA believes the public is better served by a general expression of scope in this section with the specific scope of each general provision or management measure stated in that provision or measure. This approach avoids the possibility of misleading fishermen, dealers, and processors as to the scope of the regulations in this part. The definition and use of the term Management area would be removed. The term Exclusive economic zone (EEZ), defined at 50 CFR 620.2 and applicable to part 641, in the context of the geographical scope specified in § 641.1, adequately specifies the extent of each management measure.

The proposed regulations would prohibit the possession of dynamite or a similar explosive substance on board vessels in the reef fish fishery. The use of explosives, excluding those in powerheads, is currently prohibited. Nevertheless, there are persistent reports and indications of the illegal use of dynamite. Indications include underwater explosions not associated with seismic testing or oil rig removal, the landing of reef fish by vessels without operable fishing gear aboard, and the presence ashore of reef fish without the typical markings associated with fish caught by hook, net, or fish

traps. Enforcement of the prohibition on use of explosives in the reef fish fishery has been thwarted by the large area that constitutes the fishing grounds, the small number of available enforcement vessels, and the resultant difficulty of catching a person in the act of using explosives. NOAA is not aware of any legitimate use of dynamite or a similar explosive substance aboard a fishing vessel in the reef fish fishery. Enforcement of the basic prohibition would be enhanced since it will not be necessary to observe the use of dynamite in the fishery.

The gear restrictions applicable to fish traps would be reorganized for clarity into a single subsection (§641.22(b)). Other minor reorganizations and corrections are proposed for clarity and to conform the regulations to current usage.

NOAA expects the initial permit fee and the fee for fish trap identification tags proposed under §641.4(c) to be approximately \$23 and \$1 per tag, respectively.

#### 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 FMP amendment and regulations. At this time, the Secretary has not determined that Amendment 1, 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 Under Secretary for Oceans and Atmosphere, NOAA, has initially 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 Council prepared a RIR which concludes that this rule will have the following economic effects: over the short-term, the economic output would

be reduced by \$35.9 to \$55 million, income by \$12.4 to \$18.7 million and jobs by 903 to 1,364. These effects would be \$15.6 million in output, \$5.7 million in income, and 412 jobs for the commercial sector and \$20.3 to \$39.4 in economic output, \$6.7 to \$13 million in income, and 491 to 952 jobs for the recreational sector. Annual cost to the federal government for enforcement and administration is estimated to be \$160,000. The overall long-term net effect will be positive for both commercial and recreational sectors through restoring the stocks over a ten-year period. Copies of the RIR may be obtained from the address listed above.

This proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. It is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

The Council prepared a Regulatory Flexibility Analysis (RFA) as part of the RIR which describes the effects this rule, if adopted, would have on small business entities. Based on the RFA, the Assessment Administrator for Fisheries, NOAA, concludes that this rule, if adopted, would have significant effects on small entities, summarized as follows: The prohibition on sale of reef fish taken as incidental catch by trawl vessels (6,000) from the EEZ will result in an annual exvessel loss of \$7 per fisherman or \$17.50 per vessel. According to the most recent available data, there are 931 commercial vessels in the directed fishery for reef fish. Since reef fish taken by entangling net vessels are almost all taken from state waters, the prohibition on sale of reef fish taken by this gear from the EEZ will have a little impact on the 29 commercial vessels that use this gear. There will be a short-term reduction of gross exvessel revenue on the other 902 commercial vessels in the fishery, primarily the result of increased size limits. In the intermediate- and long-term, this reduction will largely be restored as the fish grow to a larger size. The amount of the short-term reduction will be equivalent to \$8,824 per vessel. Part of this impact will actually accrue to recreational and part-time fishermen (several thousand) who will be unable to obtain a permit and, thus, will be prohibited from selling reef fish, rather than to the commercial vessels. If the bag and size limits deter fishermen from fishing on the 920 charter vessels and headboats, the short-term annual reduction in revenue per vessel could range between \$243 and \$6,902. It is anticipated the impact will be at the low

end of the range. The effects related to the size limits would be recovered in the following and subsequent years. Initial permit and fish trap identification tag costs would be \$23 and \$1, respectively. Permit costs for commercial vessels would be \$23 and fish trap identification tags would cost \$1. Over the ten-year horizon for rebuilding the stocks, the short-term losses affecting small business entities should be regained and positive benefits should occur after several years. Copies of the RFA may be obtained from the address listed above.

The Council has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Alabama, Florida, Louisiana, and Mississippi. Texas does not have an approved coastal zone management program. These determinations have been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

The Council prepared an EA that discusses the impact on the environment as a result of this rule. Copies of the EA may be obtained at the address listed above and comments on it are requested.

This proposed rule contains two new collection-of-information requirements and revises three existing requirements subject to the Paperwork Reduction Act. A request to collect this information has been submitted to the Office of Management and Budget for approval. The new requirements are (1) a reporting system for charter vessels, and (2) an annual vessel permitting system. The public reporting burdens for these collections of information are estimated to average 3 and 15 minutes, respectively, per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Revision to the existing requirements will require (1) vessels fishing traps and (2) other commercial vessels to file monthly reports whether or not they fished and (3) headboats to submit monthly rather than quarterly reports and include the operator's U.S. Coast Guard license number. The public reporting burdens for these revised collections of information are estimated to average 3, 3, and 5 minutes respectively, per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the

collections of information. Send comments on these reporting burden estimates or any other aspect of the collection of information, included suggestions for reducing the burdens, to NMFS and OMB (see ADDRESSES).

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

#### List of Subjects in 50 CFR Part 641

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 3, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 641 is proposed to be amended as follows:

#### PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 641 continues to read as follows:

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

2. In § 641.1, paragraph (b) is revised to read as follows:

#### § 641.1 Purpose and scope.

\* \* \* \* \*

(b) This part governs conservation and management of reef fish in the EEZ of the Gulf of Mexico, except that §§ 641.5 and 641.25 also apply to fish from adjoining State waters.

3. In § 641.2, the definition for *Management area* is removed; Figures 1 and 2 are redesignated as appendix A, Figures 1 and 2; in the definition for *Fork length*, the parenthetical phrase "(See appendix A, Figure 1.)" is added after the period; in the definition for *Powerhead*, the word "which" is revised to read "that"; in the definition for *Statistical area*, the word, letter, and punctuation "appendix A," are added before the word "Figure"; in the definition for *Total length*, the word "when" is added before the word "depressed" and the parenthetical phrase at the end of the definition is revised to read "(See appendix A, Figure 1.)"; the definitions for *Charter vessel*, *Headboat*, *Reef fish*, and *Roller trawl* are revised; and new definitions for *Buoy gear* and *Trip* are added in alphabetical order to read as follows:

#### § 641.2 Definitions.

\* \* \* \* \*

*Buoy gear* means fishing gear consisting of a float and one or more weighted lines suspended therefrom, generally long enough to reach the bottom, on which there is a hook or

hooks (usually six to 10) at or near the end, which is allowed to draft freely with periodic retrieval to remove catch and rebait hooks.

**Charter vessel** means a vessel whose operator is licensed by the U.S. Coast Guard to carry six or fewer paying passengers and whose passenger fish for a fee. A charter vessel with a permit to fish on a commercial quota for reef fish is under charter when it carries a passenger who fishes for a fee, or when there are more than three persons aboard including operator and crew.

**Headboat** means a vessel whose operator is licensed by the U.S. Coast Guard to carry seven or more paying passengers and whose passengers fish for a fee. A headboat with a permit to fish on a commercial quota for reef fish is operating as a headboat when it carries a passenger who fishes for a fee, or when there are more than three persons aboard including operator and crew.

**Reef fish** refers to fish in the following two categories:

(a) **Management unit.** Species taken in the directed fishery include the following:

Snappers—Lutjanidae Family  
 Queen snapper, *Etelis oculatus*  
 Mutton snapper, *Lutjanus analis*  
 Schoolmaster, *Lutjanus apodus*  
 Blackfin snapper, *Lutjanus buccanella*  
 Red snapper, *Lutjanus campechanus*  
 Cubera snapper, *Lutjanus cyanopterus*  
 Gray (mangrove) snapper, *Lutjanus griseus*  
 Dog snapper, *Lutjanus mahogoni*  
 Lane snapper, *Lutjanus synagris*  
 Silk snapper, *Lutjanus vivanus*  
 Yellowtail snapper, *Ocyurus chrysurus*  
 Wenchman, *Pristipomoides aquilonaris*  
 Vermilion snapper, *Rhomboplites aurorbens*  
 Groupers—Serranidae Family  
 Rock hind, *Epinephelus adscensionis*  
 Speckled hind, *Epinephelus drummondhayi*  
 Yellowedge grouper, *Epinephelus flavolimatus*  
 Red hind, *Epinephelus guttatus*  
 Jewfish, *Epinephelus itajara*  
 Red grouper, *Epinephelus morio*  
 Misty grouper, *Epinephelus mystacinus*  
 Warsaw grouper, *Epinephelus nigritus*  
 Snowy Grouper, *Epinephelus niveatus*  
 Nassau grouper, *Epinephelus striatus*  
 Black grouper, *Mycteroperca bonaci*  
 Yellowmouth grouper, *Mycteroperca interstitialis*  
 Gag, *Mycteroperca microlepis*  
 Scamp, *Mycteroperca phenax*  
 Yellowfin grouper, *Mycteroperca venenosa*  
 Sea Basses—Serranidae Family  
 Bank sea bass, *Centropristis ocyurus*  
 Rock sea bass, *Centropristis philadelphica*  
 Black sea bass, *Centropristis striata*  
 Tilefishes—Malacanthidae Family  
 Goldface tilefish, *Caulolatilus chrysops*

Blackline tilefish, *Caulolatilus cyanops*  
 Anchor tilefish, *Caulolatilus intermedius*  
 Blue-line tilefish, *Caulolatilus microps*  
 Tilefish, *Lophotilus chamaeleonticeps*

Jacks—Carangidae Family

Greater amberjack, *Seriola dumerili*  
 Lesser amberjack, *Seriola fasciata*

Grunts—Haemulidae Family

White grunt, *Haemulon plumieri*

Porgies—Sparidae Family

Red porgy, *Pogrus pagrus*

Triggerfishes—Balistidae Family

Gray triggerfish, *Balistes capricus*

(b) **Fishery.** Species taken incidental to the directed fishery include the following:

Wrasses—Labridae Family

Hogfish, *Lachnolaimus maximus*

Grunts—Haemulidae Family

Tomtate, *Haemulon aurolineatum*

Pigfish, *Orthopristis chrysoptera*

Porgies—Sparidae Family

Grass porgy, *Clamus arctifrons*

Jolthead porgy, *Calamus bajonado*

Knobbed porgy, *Calamus nodosus*

Littlehead porgy, *Calamus proridens*

Pinfish, *Lagodon rhomboides*

Sand Perches—Serranidae Family

Dwarf sand perch, *Diplectrum bivittatum*

Sand perch, *Diplectrum formosum*

Triggerfishes—Balistidae Family

Queen triggerfish, *Balistes vetula*

**Roller trawl** means a trawl net equipped with a series of large solid rollers separated by several smaller spacer rollers on a separate cable or line (sweep) connected to the footrope, which makes it possible to fish the gear over rough bottom, i.e., in areas unsuitable for fishing conventional shrimp trawls. Rigid framed trawls adapted for shrimping over uneven bottom, in wide use along the west coast of Florida, and shrimp trawls with hollow plastic rollers for fishing on soft bottoms, are not considered roller trawls.

**Trip** means a fishing trip, regardless of number of days duration, that begins with departure from a dock, berth, beach, seawall, or ramp and that terminates with return to a dock, berth, beach, seawall, or ramp.

4. Section 641.4 is revised to read as follows:

#### § 641.4 Permits.

(a) **Applicability.** (1) As a prerequisite to selling reef fish and to be eligible for exemption from the bag limits specified in § 641.24(b), an owner or operator of a vessel that fishes in the EEZ or a person who fishes in the EEZ from a structure must obtain an annual vessel permit.

(2) A qualifying owner or operator of a charter vessel or headboat may obtain a permit. However, a charter vessel or headboat must adhere to applicable bag limits when under charter or carrying a passenger who fishes for a fee.

(3) For a corporation to be eligible for a vessel permit, the statement required by paragraph (b)(2)(xi) of this section must be provided by a shareholder or officer of the corporation or the vessel operator.

(4) An owner or operator of a vessel using a fish trap in the EEZ or a person using a fish trap from a structure in the EEZ must obtain both a vessel permit and a color code from the Regional Director.

(5) A vessel permit issued upon the qualification of an operator is valid only when the person is the operator of the vessel.

(b) **Application for permit.** (1) An application for a vessel permit must be submitted and signed by the owner or operator of the vessel or by a person who fishes from a structure. The application must be submitted to the Regional Director at least 60 days prior to the date on which the applicant desires to have the permit made effective.

(2) Permit applicants must provide the following information (a person fishing from a structure may omit vessel information):

(i) Name, mailing address including zip code, and telephone number of the owner of the vessel;

(ii) Name, mailing address including zip code, and telephone number of the applicant, if other than the owner;

(iii) Social security number and date of birth of the applicant and the owner;

(iv) Name of the vessel;

(v) The vessel's official number;

(vi) Home port or principal port of landing, gross tonnage, radio call sign, and length of the vessel;

(vii) Engine horsepower and year the vessel was built;

(viii) Type of gear to be fished and other fisheries vessel is used for;

(ix) Passenger capacity and U.S. Coast Guard license number(s) of vessel operator(s) if the vessel also operates as a charter vessel or headboat during the year;

(x) Any other information concerning vessel and gear characteristics requested by the Regional Director;

(xi) A sworn statement by the applicant certifying that more than 50 percent of his or her earned income was derived from commercial, charter, or headboat fishing during the calendar year preceding the application;

(xii) Proof of certification, as required by paragraph (b)(3) of this section;

(xiii) If fish traps will be used to harvest reef fish,

(A) The number, dimensions, and estimated cubic volume of the fish traps that will be used;

(B) The applicant's desired color code for use in identifying his or her vessel and buoys; and

(C) A statement that the applicant will allow an authorized officer reasonable access to his or her property (vessel, dock, or structure) to examine fish traps for compliance with these regulations; and

(xiv) If fish traps will be used from a fixed structure,

(A) The name and number of the oil or gas structure or the most descriptive identification for other types of structures; and

(B) The location of the structure in latitude and longitude or distance and direction from a fixed point of land.

(3) The Regional Director may require the applicant to provide documentation supporting the sworn statement under paragraph (b)(2)(xii) of this section before a permit is issued or to substantiate why such a permit should not be denied, revoked, or otherwise sanctioned under paragraph (i) of this section.

(4) Any change in the information specified in paragraph (b) of this section must be submitted in writing to the Regional Director by the permit holder within 30 days of any such change. Failure to notify the Regional Director of any change in the required information will result in a presumption that the information is still accurate and current.

(c) *Fees.* A fee will be charged for each permit issued under paragraph (a) of this section and a fee will be charged for each fish trap identification tag required under § 641.6(d). The amount of each fee will be specified on or with the permit application form. The appropriate fee must accompany each permit application or request for fish trap identification tags.

(d) *Insurance.* (1) Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a permit at any time during the fishing year to the applicant. In addition, the Regional Director will issue a numbered tag for each fish trap that is used in the EEZ and will designate a color code to be used for the identification of each vessel and fish trap buoys when such vessel and buoys are used to fish with fish traps in the EEZ.

(2) Upon receipt of an incomplete application, the Regional Director will notify the applicant of the deficiency. If the applicant fails to correct the

deficiency within 30 days, the application will be considered abandoned.

(e) *Permit condition.* Compliance with the reporting requirements of § 641.5 is a condition for the issuance, reissuance, or continuing validity of a permit issued under this section. Failure to comply with those requirements may result in the denial or sanction of a permit pursuant to subpart D of 15 CFR part 904.

(f) *Duration.* A permit remains valid for the remainder of the fishing year for which it is issued unless revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904.

(g) *Transfer.* A permit issued under this section is not transferable or assignable. A person purchasing a vessel with a permit to fish for reef fish must apply for a permit in accordance with the provisions of paragraph (b) of this section. The application must be accompanied by a copy of an executed (signed) bill of sale.

(h) *Display.* A permit issued under this section must be carried on board the fishing vessel or fixed structure, and such vessel or structure must be identified as provided for in § 641.6. The operator of a fishing vessel or person fishing fish traps from a fixed structure must present the permit for inspection upon the request of an authorized officer.

(i) *Sanctions.* Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(j) *Alteration.* A permit that is altered, erased, or mutilated is invalid.

(k) *Replacement.* A replacement permit may be issued. An application for a replacement permit will not be considered a new application.

5. In § 641.5, in paragraph (b), the introductory text and paragraph (b)(2) are revised, in paragraphs (b)(1) and (b)(3) through (6), the semicolons are removed and periods are added in their place, and paragraphs (b)(7) and (8) are removed; in paragraph (c), the introductory text is revised, in paragraphs (c)(1) through (4), the semicolons are removed and periods are added in their place, and in paragraph (c)(5), the semicolon and the word "and" are removed and a period is added in their place; in paragraph (d), in the introductory text, the phrase "or parts thereof" is removed where it appears in two places and the commas preceding and following the second appearance are removed; in paragraph (g), the introductory text is revised, in paragraphs (g)(1) through (3), the semicolons are removed and periods are added in their place, in paragraph (g)(4), the semicolon and the word "and" are

removed and a period is added in their place, and a new paragraph (g)(6) is added; in paragraph (h), in the introductory text, the words "or quarterly" are revised to read "or more frequent"; and paragraphs (f) and (i) are revised to read as follows:

#### § 641.5 Recordkeeping and reporting

(b) *Vessels and persons fishing with fish traps.* The owner or operator of a vessel or a person on a structure permitted under § 641.4 to fish with a fish trap in the Gulf of Mexico EEZ or who fishes in adjoining State waters must maintain a fishing record on a form available from the Science and Research Director. These forms must be submitted to the Science and Research Director so as to be received not later than seven days after the end of each fishing trip or, in the case of a person fishing with fish traps from a structure, not later than seven days after the end of each month. If no fishing occurred during a month, a report so stating must be submitted on one of the forms to be received not later than seven days after the end of each month. If fishing occurred, the following information must be reported:

(2) Pounds of catch of reef fish by species for each type of gear used.

(c) *Vessels not fishing with fish traps.* The owner or operator of a vessel that is permitted under § 641.4 to fish with gear other than fish traps in the Gulf of Mexico EEZ, or who fishes in adjoining State waters, and who is selected by the Science and Research Director, must maintain a fishing record for each fishing trip on a form available from the Science and Research Director. These forms must be submitted to the Science and Research Director on a monthly basis (or more frequently, if requested by the Science and Research Director) so as to be received not later than the 7th day of the end of the reporting period. If no fishing occurred during a month, a report so stating must be submitted on one of the forms. If fishing occurred, the following information must be reported for each trip:

(f) *Charter vessels.* The owner or operator of a charter vessel that fishes for or lands reef fish under the bag limits in the Gulf of Mexico EEZ or in adjoining State waters, and who is selected to report, must maintain a daily fishing record for each trip on forms provided by the Science and Research Director, and must submit the forms to the Science and Research Director

weekly within 7 days of the end of each week (Sunday). Information on the forms includes, but is not limited to the following:

- (1) Name and official number of vessel.
- (2) Operator's Coast Guard license number.
- (3) Date and duration of fishing (hours) of each trip.
- (4) Number of fishermen on trip.
- (5) Fishing location, by statistical area.
- (6) Fishing methods and type of gear.
- (7) Species targeted.
- (8) Number and estimated weight of fish caught by species.

(g) *Headboats.* The owner or operator of a headboat that fishes for or lands reef fish in the Gulf of Mexico EEZ or in adjoining State waters, and who is selected to report, must maintain a fishing record for each trip, or a portion of such trips as specified by the Science and Research Director, on forms provided by the Science and Research Director and must report the following information at least monthly within 7 days of the end of each month:

- (6) Operator's U.S. Coast Guard license number.

(i) *Additional data and inspection.* Additional data will be collected by authorized statistical reporting agents, as designees of the Science and Research Director, and by authorized officers. An owner or operator of a fishing vessel, a person fishing traps from a structure, and a dealer or processor are required upon request to make reef fish or parts thereof available for inspection by the Science and Research Director or an authorized officer.

6. Section 641.6 is revised to read as follows:

**§ 641.6 Vessel and gear identification.**

(a) *Vessels.* (1) A vessel for which a permit has been issued under § 641.4 must display its official number—

- (i) On the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from an enforcement vessel or aircraft;
- (ii) In block arabic numerals in contrasting color to the background;
- (iii) At least 18 inches in height for fishing vessels over 65 feet in length and at least 10 inches in height for all other vessels; and
- (iv) Permanently affixed to or painted on the vessel.

(2) In addition, a vessel for which a permit has been issued under § 641.4 to

fish with fish traps must display its color code—

- (i) On the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from an enforcement vessel or aircraft;
- (ii) In the form of a circle at least 20 inches in diameter; and
- (iii) Permanently affixed to or painted on the vessel.

(b) *Structures.* A person fishing from a structure with a fish trap who has been issued a permit under § 641.4 must display his permit number and color code—

- (1) So as to be clearly visible from an enforcement vessel or aircraft;
- (2) With the permit number in block arabic numerals in contrasting color to the background;
- (3) With the permit number at least 10 inches in height;
- (4) With the color code in the form of a circle at least 20 inches in diameter; and
- (5) Permanently affixed to or painted on the structure.

(c) *Duties of operator or person.* The operator of each fishing vessel specified in paragraph (a) or person specified in paragraph (b) of this section must—

- (1) Keep the official number or permit number and color code clearly legible and in good repair, and
- (2) Ensure that no part of the fishing vessel or structure, its ringing, fishing gear, or any other material aboard obstructs the view of the official number or permit number and color code from any enforcement vessel or aircraft.

(d) *Fish traps.* Each fish trap used or possessed in the EEZ must have affixed to it an identification tag provided by the Regional Director that displays the assigned permit number, a number (normally 1–100) indicating the specific tag number for that trap, and the year for which the tag was issued. A tag for the current year must be affixed to a trap before its first use in a new year or, if in use on January 1, when it is first tended after January 1.

(e) *Buoys.* Each fish trap, or the ends of a string of fish traps, must be marked by a floating buoy or by a buoy designed to be submerged and automatically released. Each buoy used to mark fish traps must display the designated color code and permit number so as to be easily distinguished, located, and identified.

(f) *Presumption of ownership.* A fish trap in the EEZ will be presumed to be the property of the most recently documented owner. This presumption will not apply with respect to traps that are lost or sold if the owner reports the

loss or sale within 15 days to the Regional Director.

(g) *Unmarked traps or buoys.* An unmarked fish trap or buoy deployed in the EEZ is illegal and may be disposed of in any appropriate manner by the Secretary (including an authorized officer). If an owner of an unmarked trap or buoy can be ascertained, such owner is subject to appropriate civil penalties.

7. Section 641.7 is revised to read as follows:

**§ 641.7 Prohibitions.**

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Falsify information specified in § 641.4(b)(2) on an application for vessel permit.

(b) Fail to display a permit, as specified in § 641.4(h).

(c) Falsify or fail to provide information required to be submitted or reported, as required by § 641.5(b) through (h).

(d) Fail to make reef fish or parts thereof available for inspection, as required by § 641.5(i).

(e) Falsify or fail to display and maintain vessel and gear identification, as required by § 641.6.

(f) Possess or purchase barter, trade, or sell a reef fish smaller than the minimum size limits, as specified in § 641.21(a) and (d).

(g) Possess a reef fish without its head and fins intact, as specified in § 641.21(b).

(h) Fish with poisons or explosives or possess on board a fishing vessel any dynamite or similar explosive substance, as specified in § 641.22(a).

(i) Use or possess in the EEZ a fish trap that does not conform to the requirements for escape windows, degradable openings, and mesh sizes specified in § 641.22(b) (1), (2), and (3).

(j) Use in the EEZ shoreward of the 50-fathom isobath a fish trap that exceeds the maximum allowable size specified in § 641.22(b)(4).

(k) Fish or possess in the EEZ more than 100 fish traps per vessel or structure, as specified in § 641.22(b)(5).

(l) Pull or tend a fish trap, except during the hours specified in § 641.22(b)(6)(i); or tend, open, pull, or otherwise molest or have in possession another person's fish trap, except as specified in § 641.22(b)(6)(ii).

(m) Use a powerhead to take reef fish of the management unit in the stressed area, as specified in § 641.23(a)(1).

(n) Use of fish trap or a roller trawl in the stressed area, as specified in § 641.23(a)(2).

(o) Use a longline or buoy gear to fish for reef fish in the longline and buoy gear restricted area, as specified in § 641.23(b).

(p) Exceed the bag and possession limits, as specified in § 641.24(a) through (d).

(q) Operate a vessel with reef fish aboard that are smaller than the minimum size limits, do not have head and fins intact, or are in excess of the cumulative bag limit, as specified in §§ 641.21(c) and 641.24(e).

(r) Transfer reef fish at sea, as specified in § 641.24(f).

(s) Purchase, barter, trade, or sell a reef fish taken by a vessel that does not have a permit or by a person fishing from a structure who does not have a permit, as specified in § 641.4(a), or taken under the bag limits, as specified in § 641.24(g).

8. In § 641.22, Figure 3 and Table 1 are removed; in § 641.24, Figure 4 is redesignated as appendix A, Figure 3; § 641.26 is redesignated as § 641.28; §§ 641.21 through 641.25 are revised; and new §§ 641.26 and 641.27 are added to read as follows:

#### § 641.21 Harvest limitations.

(a) *Minimum sizes.* The following minimum size limits apply for the possession of reef fish in or taken from the EEZ:

(1) Red snapper—13 inches total length.

(2) Gray, mutton, and yellowtail snappers—12 inches total length.

(3) Lane and vermilion snappers—8 inches total length.

(4) Jewfish—50 inches total length.

(5) Red, Nassau, yellowfin, and black groupers and gag—20 inches total length.

(6) Greater amberjack—28 inches fork length for a fish taken by a person subject to the bag limit specified in § 641.24(b)(4) and 36 inches fork length, for a fish taken by a person not subject to the bag limit.

(7) Black sea bass—8 inches total length.

(b) *Head and fins intact.* A reef fish subject to a minimum size limit specified in paragraph (a) of this section possessed in the EEZ must have its head and fins intact and such reef fish taken from the EEZ must have its head and fins intact through landing. Such reef fish may be eviscerated but must otherwise be maintained in a whole condition.

(c) *Operator responsibility.* The operator of a vessel that fishes in the EEZ is responsible for ensuring that reef fish possessed aboard that vessel comply with the minimum sizes specified in paragraph (a) of this section

and are maintained with head and fins intact as specified in paragraph (b) of this section.

(d) A reef fish smaller than the minimum sizes specified in paragraphs (a)(1) through (5) of this section and for greater amberjack, smaller than 36 inches fork length, may not be purchased, bartered, traded, or sold.

#### § 641.22 Gear restrictions.

(a) *Poisons and explosives.* Poisons and explosives may not be used to take reef fish in the EEZ; however, powerheads may be used outside the stressed area. A vessel in the reef fish fishery may not possess on board any dynamite or similar explosive substance.

(b) *Fish traps.* A fish trap used or possessed in the EEZ and a person using a fish trap in the EEZ are subject to the following requirements and limitations:

(1) *Escape windows.* Each trap must have at least two escape windows on each of two sides, excluding the bottom, (a total of four escape windows) that are 2 × 2 inches or larger.

(2) *Openings and degradable fasteners.* (i) A degradable panel or access door must be located opposite each side of the trap that has a funnel.

(ii) The opening covered by each degradable panel or access door must be 144 square inches or larger, with one dimension of the area equal to or larger than the largest interior axis of the trap's throat (funnel) with no other dimension less than 6 inches.

(iii) The hinges and fasteners of each degradable panel or access door must be constructed of one of the following panel or access door must be constructed of one of the following materials:

(A) Untreated jute string of 3/16-inch diameter or smaller; or

(B) Magnesium alloy, time float releases (pop-up devices) or similar magnesium alloy fasteners.

(3) *Mesh sizes.* A fish trap must meet all of the following mesh size requirements (based on centerline measurements between opposite wires or netting strands) (see appendix A, Figure 3):

(i) A minimum of 2 square inches of opening for each mesh;

(ii) One-inch minimum length for the shortest side;

(iii) Minimum distance of 1 inch between parallel sides of rectangular openings, and 1.5 inches between parallel sides of square openings and of mesh openings with more than four sides; and

(iv) One and nine-tenths (1.9) inches minimum distance for diagonal measures of mesh.

(4) *Maximum allowable size.* The maximum allowable size for a fish trap fished in the EEZ shoreward of the 50-fathom isobath (300-foot contour) is 33 cubic feet in volume. Fish trap volume is determined by measuring the external dimensions of the trap, and includes both the enclosed holding capacity of the trap and the volume of the funnel(s) within those dimensions. There is no size limitation for fish traps fished seaward of the 50-fathom isobath.

(5) *Effort limitation.* The maximum number of traps that may be assigned to, possessed, or fished in the EEZ by a vessel or from a structure is 100.

(6) *Tending traps.* (i) A reef fish trap may be pulled or tended only during the period from official (civil) sunrise to official (civil) sunset.

(ii) A reef fish trap may be tended only by a person (other than an authorized officer) aboard the structure or vessel permitted to fish such trap, or aboard another vessel if such vessel has on board written consent of the vessel permit holder.

#### § 641.23 Area limitations.

(a) *Stressed area.* (1) A powerhead may not be used in the stressed area to take reef fish of the management unit. Possession of a powerhead and a mutilated reef fish of the management unit is the stressed area or after having fished in the stressed area constitutes *prima facie* evidence that such reef fish was taken with a powerhead in the stressed area.

(2) A fish trap or a roller trawl may not be used in the stressed area. A fish trap used in the stressed area will be considered unclaimed or abandoned property and may be disposed of in any appropriate manner by the Secretary (including and authorized officer). If an owner of such fish trap can be ascertained, such owner is subject to appropriate civil penalties.

(3) The stressed area is that portion of the EEZ in the Gulf of Mexico shoreward of a line connecting the points listed in appendix A, Table 1. (See also appendix A, Figure 4.)

(b) *Longline and buoy gear restricted area.* (1) Longline and buoy gear may not be used to fish for reef fish in the longline and buoy gear restricted area. For the purposes of this paragraph (b), fishing for reef fish means possessing or landing reef fish—

(i) for which a bag limit is specified in § 641.24(b), in excess of that bag limit; or

(ii) for which no bag limit is specified, in excess of 5 percent by weight of all fish aboard or landed.

(2) A person aboard a vessel that uses on any trip longline or buoy gear in the

longline and buoy gear restricted area to fish for species other than reef fish is limited on that trip to the bag limits specified in § 641.24(b) and, for other reef fish, to 5 percent by weight of all fish aboard the vessel or landed.

(3) The longline and buoy gear restricted area is that portion of the EEZ in the Gulf of Mexico shoreward of a line connecting the points listed in Appendix A, Table 2. (See also Appendix A, Figure 5).

#### § 641.24 Bag and possession limits.

(a) *Applicability.* Bag limits apply to a person who fishes in the EEZ—

(1) From a fixed structure without a permit specified in § 641.4;

(2) From a vessel—

(i) That does not have on board a permit specified in § 641.4,

(ii) With trawl gear or entangling net gear on board,

(iii) With a longline or buoy gear on board when such vessel is fishing or has fished on its present trip in the longline and buoy gear restricted area specified in § 641.23(b), or

(iv) That is carrying a passenger who fishes for a fee; or

(3) For a species for which the quota specified in § 641.25 has been reached and closure has been effected.

(b) *Bag limits.* Daily bag limits are:

(1) Red snapper—7.

(2) Snappers, excluding red, lane, and vermilion snapper—10.

(3) Groupers—5.

(4) Greater amberjack—3.

(5) All others—unlimited.

(c) *Possession limits.* A person subject to a bag limit may not possess in or from the EEZ during a single day, regardless of the number of trips or the duration of a trip, any reef fish in excess of the bag limits specified in paragraph (b) of this section, except that a person who is on a trip that spans more than 24 hours may possess no more than two daily bag limits, provided such trip is aboard a charter vessel or headboat, and,

(1) The vessel has two licensed operators aboard as required by the U.S. Coast Guard for trips of over 12 hours, and

(2) Each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the length of the trip.

(d) *Combination of bag limits.* A person who fishes in the EEZ may not combine a bag limit specified in paragraph (b) of this section with a bag or possession limit applicable to State waters.

(e) *Responsibility for bag and possession limits.* The operator of a vessel that fishes in the EEZ is responsible for the cumulative bag or

possession limit applicable to that vessel, based on the number of persons aboard.

(f) *Transfer of reef fish.* A person for whom a bag or possession limit specified in paragraph (b) or (c) of this section applies may not transfer at sea a reef fish—

(1) Taken in the EEZ; or

(2) In the EEZ, regardless of where such reef fish was taken.

(g) *Sale.* A reef fish taken under the bag limits specified in paragraph (b) of this section may not be purchased, bartered, traded, or sold.

#### § 641.25 Commercial quotas.

Persons who are fishing under a permit issued pursuant to § 641.4, provided they are not subject to the bag limits specified in § 641.24, are subject to the following quotas each fishing year:

(a) Red snapper—3.1 million pounds.

(b) Yellowedge, misty, warsaw, and snowy grouper (deeper-water groupers), combined—1.8 million pounds.

(c) All other groupers, excluding jewfish, combined—9.2 million pounds.

(d) All others—unlimited.

#### § 641.26 Closures.

When a commercial quota specified in § 641.25 is reached, or is projected to be reached, the Secretary will publish a notice to that effect in the *Federal Register*, after the effective date of such notice, for the remainder of the fishing year, the bag limit will apply to all harvest in the EEZ of the indicated species, and the purchase, barter, trade, and sale of the indicated species taken from the EEZ is prohibited. This prohibition does not apply to trade in the indicated species that were harvested, landed, and bartered, traded, or sold prior to the effective date of the notice in the *Federal Register* and were held in cold storage by a dealer or processor.

#### § 641.27 Procedure for specification of total allowable catch (TAC) and adjustment of management measures.

(a) Prior to April 1 each year, or such other time as agreed upon by the Gulf of Mexico Fishery Management Council (Council) and the Regional Director, the Science and Research Director will, as provided for in 50 CFR 602.12(e), update or complete a stock assessment and fishery evaluation (SAFE) report for red snapper and other reef fish stocks or stock complexes; assess the current spawning stock biomass per recruit ratio (SSBR) levels for each stock; estimate current fishing mortality (F) in relation to F(SSBR); estimate other population parameters; summarize statistics on the

fishery; and analyze social and economic data.

(b) The Council will convene a scientific assessment panel (Panel) that will annually review the SAFE report and other relevant data, and will prepare a written report to the Council specifying a range of acceptable biological catch (ABC) for each stock or stock complex in the management unit identified by the Council, NMFS, or the Panel. The ABCs shall be calculated so as to achieve reef fish population levels at or above the 20 percent SSBR goal by January 1, 2000. Where data are inadequate to compute the SSBR model, the Panel will provide the best estimate of ABC that should result in at least 20 percent SSBR level. The ABC ranges will prevent an overfished stock from further decline. A risk analysis showing the probabilities of attaining the stock goal and the annual transitional yields will be calculated for each level of F within the ABC range. The Panel report will include recommendations on quotas, bag limits, size limits, specific gear limits, season closures, and other restrictions required to attain the management goal, along with the associated economic and social impacts.

(c) The Council will conduct a public hearing on the Panel report(s) at or prior to the time it is considered by the Council for subsequent action. Other public hearings may be held also. The Council will request review of the report(s) by its advisory panel and scientific and statistical committees and may convene these groups to provide advice before taking action.

(d) The Council in selecting a TAC level for each stock or stock complex for which an ABC range has been identified, in addition to taking into consideration the recommendations provided for in paragraphs (a), (b), and (c) of this section will:

(1) Set TAC within or below the ABC range or set a series of annual TACs that come within the ABC range within three years or less; and

(2) Subdivide the TACs into commercial and recreational allocations which maximize the net benefits of the fishery to the nation. The allocations will be based on historical percentages harvested by each user group during the base period of 1979–87. However, if the harvest in any year exceeds the allocation for either the recreational or commercial user group, subsequent allocations pertaining to the respective user group will be adjusted to assure meeting the January 1, 2000, spawning stock biomass per recruit goal.

(e) The Council will provide its recommendations to the Regional

Director for implementing or changing TACs for each stock or stock complex, the quotas, bag limits, trip limits, size limits, closed seasons, and gear restrictions necessary to attain the TAC, along with the reports, a regulatory impact review and environmental assessment of impacts, and the proposed regulations, before October 15 of each year, or such other time as agreed upon by the Council and the Regional Director.

(f) Prior to each fishing year, or such other time as agreed upon by the Regional Director and the Council, the Regional Director will review the Council's recommendations and supporting information and, if he concurs that the recommendations are

consistent with the objectives of the FMP, the national standards, and other applicable law, he shall forward for publication notice of proposed TACs and associated management measures (harvest restrictions) by November 1, of each year or such other time as agreed upon by the Council and the Regional Director, providing up to 30 days for additional public comment. The Regional Director will take into consideration all information received and will forward for publication in the Federal Register the notice of final rule by December 1 of each year, or such other time as agreed upon by the Council and the Regional Director.

(g) Appropriate management measures that may be implemented or

modified by proposed and final rules include:

(1) The TACs for each stock or stock complex that are designed to achieve a specific level of ABC within the first year or annual levels of TAC designed to achieve the ABC level within three years.

(2) Bag limits, size limits, vessel trip limits, closed seasons or areas, gear restrictions, and quotas designed to achieve the TAC level.

9. A new appendix A is added to part 641 consisting of new Tables 1 and 2, newly redesignated Figures 1, 2, and 3, and new Figures 4 and 5 to read as follows:

### Appendix A to Part 641—Tables and Figures

TABLE 1.—SEAWARD COORDINATES OF THE STRESSED AREA

Point No.	Reference location <sup>1</sup>	N. lat.	W. long.
1	Seaward limit of Florida's waters northeast of Dry Tortugas	24°45.5'	82°41.5'
2	North of Marquesas Keys	24°48.0'	82°06.5'
3	Off Cape Sable	25°15.0'	82°02.0'
4	Off Sanibel Island—Inshore	26°26.0'	82°29.0'
5	Off Sanibel Island—Offshore	26°26.0'	82°59.0'
6	West of Egmont Key	27°30.0'	83°21.5'
7	Off Anclote Keys—Offshore	28°10.0'	83°45.0'
8	Off Anclote Keys—Inshore	28°10.0'	83°14.0'
9	Off Deadman Bay	29°38.0'	84°00.0'
10	Seaward limit of Florida's waters east of Cape St. George	29°35.5'	84°38.6'
Thence westerly along the seaward limit of Florida's waters to			
11	Seaward limit of Florida's waters south of Cape San Blas	29°32.2'	85°27.1'
12	Southwest of Cape San Blas	29°30.5'	85°52.0'
13	Off St. Andrew Bay	29°53.0'	86°10.0'
14	De Soto Canyon	30°06.0'	86°55.0'
15	South of Florida/Alabama border	29°34.5'	87°38.0'
16	Off Mobile Bay	29°41.0'	88°00.0'
17	South of Alabama/Mississippi border	30°01.5'	88°23.7'
18	Horn/Chandeleur Islands	30°01.5'	88°40.5'
19	Chandeleur Islands	29°35.5'	88°37.0'
20	Seaward limit of Louisiana's waters off North Pass of the Mississippi River	29°16.3'	89°00.0'
Thence southerly and westerly along the seaward limit of Louisiana's waters to			
21	Seaward limit of Louisiana's waters off Southwest Pass of the Mississippi River	28°57.3'	89°28.2'
22	Southeast of Grand Isle	29°09.0'	89°47.0'
23	Quick flashing horn buoy south of Isles Dernieres	28°32.5'	90°42.0'
24	Southeast of Calcasieu Pass	29°10.0'	92°37.0'
25	South of Sabine Pass—10 fathoms	29°09.0'	93°41.0'
26	South of Sabine Pass—30 fathoms	28°21.5'	93°28.0'
27	East of Arkansas Pass	27°49.0'	96°19.5'
28	East of Baffin Bay	27°12.0'	96°51.0'
29	Northeast of Port Mansfield	26°46.5'	96°52.0'
30	Northeast of Port Isabel	26°21.5'	96°35.0'
31	U.S./Mexico EEZ boundary	26°00.5'	96°36.0'
Thence westerly along U.S./Mexico EEZ boundary to the seaward limit of Texas' waters.			

<sup>1</sup> Nearest identifiable landfall, boundary, navigational aid, or submarine area.

TABLE 2.—SEAWARD COORDINATES OF THE LONGLINE AND BUOY GEAR RESTRICTED AREA

Point No.	Reference location <sup>1</sup>	N. lat.	W. long.
1	Seaward limit of Florida's waters north of Dry Tortugas	24°48.0'	82°48.0'
2	North of Rebecca Shoal	25°07.5'	82°34.0'
3	Off Sanibel Island—Offshore	26°26.0'	82°59.0'
4	West of Egmont Key	27°30.0'	83°21.5'
5	Off Anclote Keys—Offshore	28°10.0'	83°45.0'
6	Southeast corner of Florida Middle Ground	28°11.0'	84°00.0'

TABLE 2.—SEAWARD COORDINATES OF THE LONGLINE AND BUOY GEAR RESTRICTED AREA—Continued

Point No.	Reference location <sup>1</sup>	N. lat.	W. long.
7	Southwest corner of Florida Middle Ground	28°11.0'	84°07.0'
8	West corner of Florida Middle Ground	28°26.6'	84°24.8'
9	Northwest corner of Florida Middle Ground	28°42.5'	84°24.8'
10	South of Carrabelle	29°05.0'	84°47.0'
11	South of Cape St. George	29°02.5'	85°09.0'
12	South of Cape San Blas lighted bell buoy—20 fathoms	29°21.0'	85°30.0'
13	South of Cape San Blas lighted bell buoy—50 fathoms	28°58.7'	85°30.0'
14	De Soto Canyon	30°06.0'	86°55.0'
15	South of Pensacola	29°46.0'	87°19.0'
16	South of Perdido Bay	29°29.0'	87°27.5'
17	East of North Pass of the Mississippi River	29°14.5'	88°28.0'
18	South of Southwest Pass of the Mississippi River	28°46.5'	89°26.0'
19	Northwest tip of Mississippi Canyon	28°38.5'	90°08.5'
20	West side of Mississippi Canyon	28°34.5'	89°59.5'
21	South of Timbalier Bay	28°22.5'	90°02.5'
22	South of Terrebonne Bay	28°10.5'	90°31.5'
23	South of Freeport	27°58.0'	95°00.0'
24	Off Matagorda Island	27°43.0'	96°02.0'
25	Off Aransas Pass	27°30.0'	96°23.5'
26	Northeast of Port Mansfield	27°00.0'	96°39.5'
27	East of Port Mansfield	26°44.0'	96°37.5'
28	Northeast of Port Isabel	26°22.0'	96°21.0'
29	U.S./Mexico EEZ boundary	26°00.5'	96°24.5'

Thence westerly along U.S./Mexico EEZ boundary to the seaward limit of Texas' waters.

<sup>1</sup> Nearest identifiable landfall, boundary, navigational aid, or submarine area.

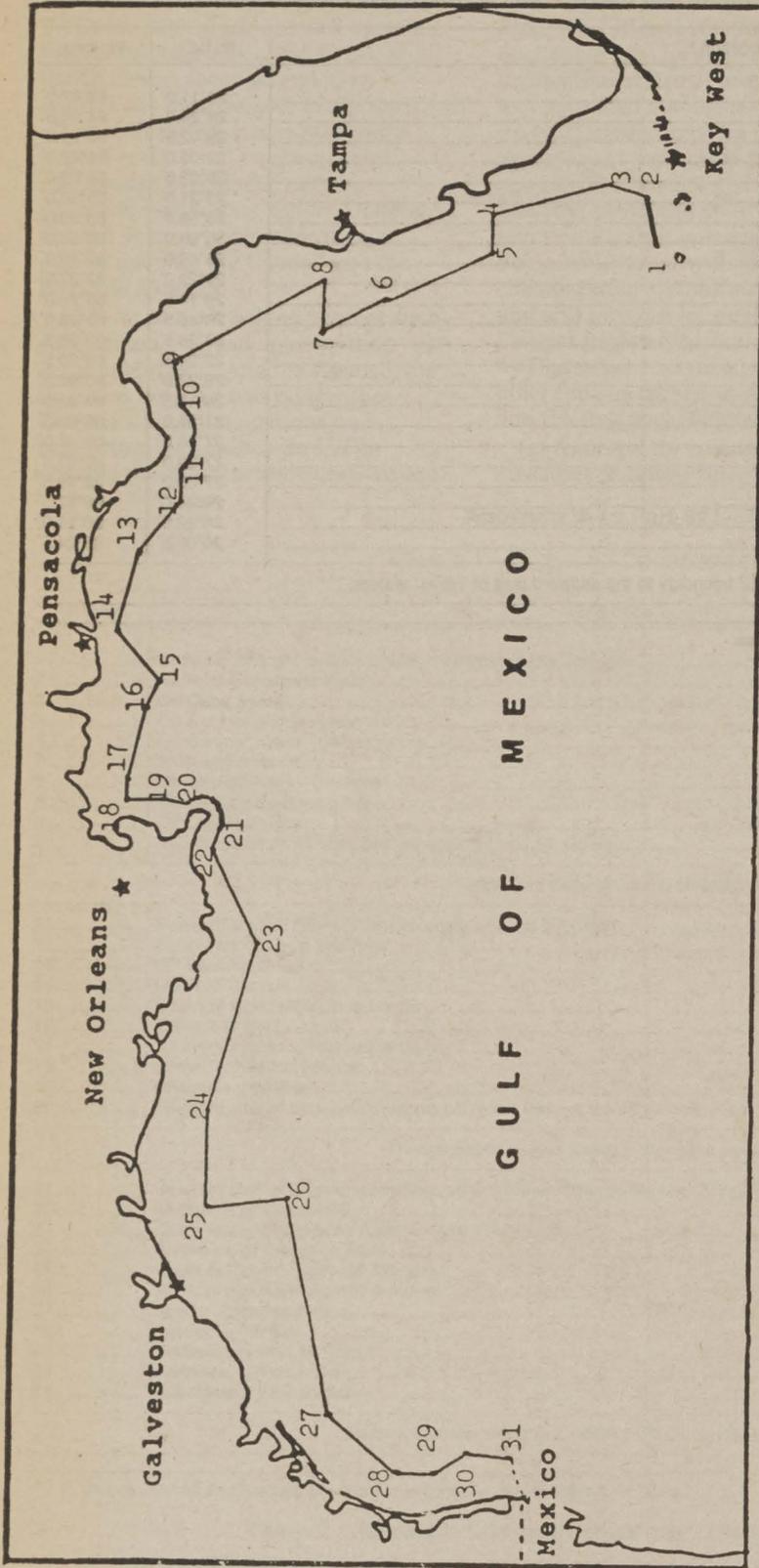


Figure 4. Seaward Limits of the Stressed Area.

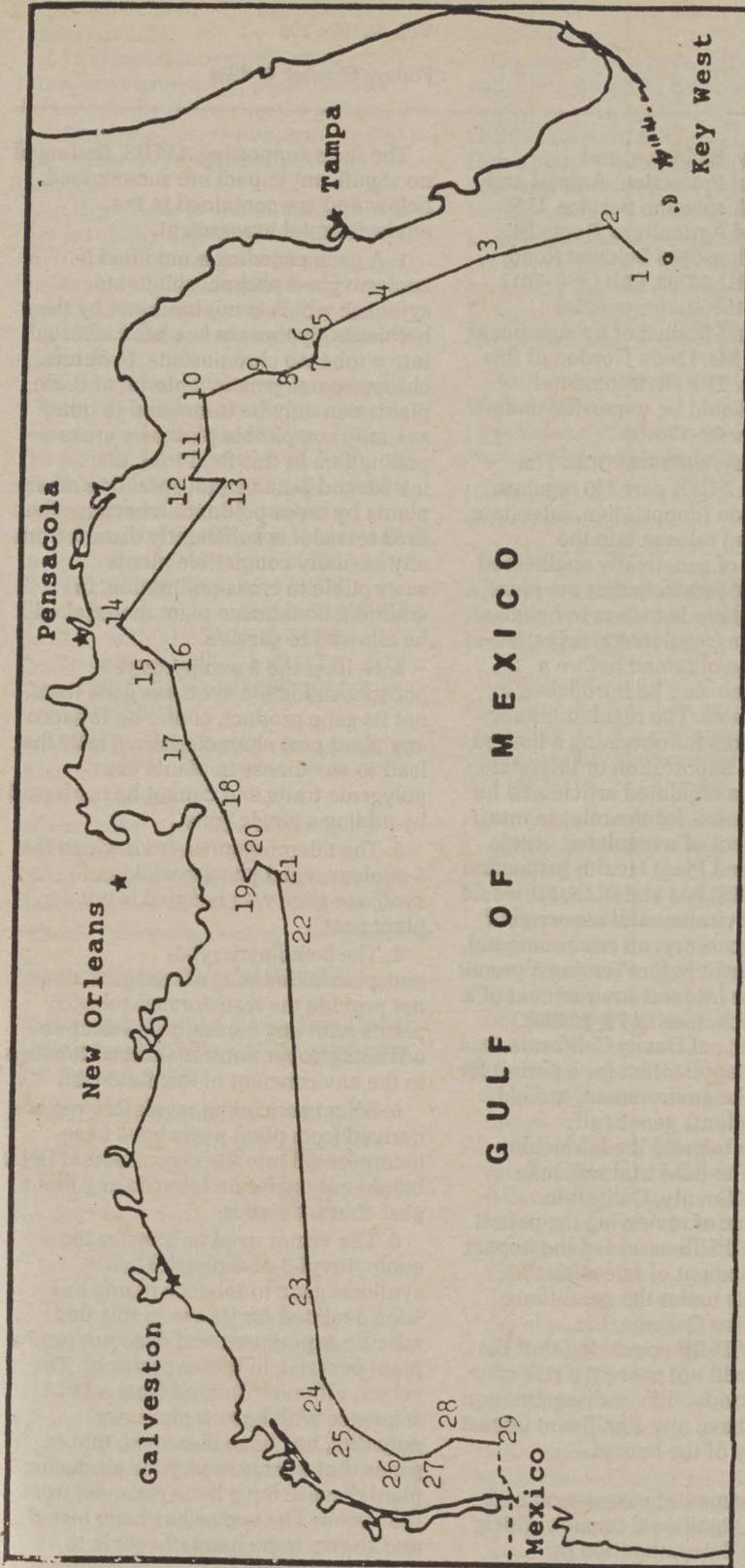


Figure 5. Seaward Limits of the Longline and Buoy Gear Restricted Area.

[FR Doc. 89-23708 Filed 10-3-89; 2:27 pm]

BILLING CODE 3510-22-C

## Notices

Federal Register

Vol. 54, No. 193

Friday, October 6, 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

#### Animal and Plant Health Inspection Service

[Docket No. 89-158]

#### Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Tobacco Plants

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Calgene, Inc., to allow the field testing in Yolo County, California, of tobacco plants genetically engineered to tolerate the herbicide glyphosate. The assessment provides a basis for the conclusion that the field testing of these genetically engineered tobacco plants will not present a risk of introduction or dissemination of a plant pest and will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

**ADDRESS:** Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. Sally McCammon, Biotechnologist, Biotechnology Permit Unit,

Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 845, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessment and finding of no significant impact, write Ms. Linda Gordon at this same address. The environmental assessment should be requested under permit number 89-136-04.

**SUPPLEMENTARY INFORMATION:** The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced in the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

Calgene, Inc., of Davis, California, has submitted an application for a permit for release into the environment, to field test tobacco plants genetically engineered to tolerate the herbicide glyphosate. The field trial will take place in Yolo County, California.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the tobacco plants under the conditions described in the Calgene, Inc., application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by Calgene, Inc., as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene encoding a modified 5-enolpyruvyl-3-phosphoshikimate synthase which is not inhibited by the herbicide glyphosate has been inserted into a tobacco chromosome. In nature, chromosomal genetic material of these plants can only be transferred to other sexually compatible plants by cross-pollination. In this field trial, the introduced gene cannot spread to other plants by cross-pollination because the field test plot is sufficiently distant from any sexually compatible plants susceptible to cross-pollination. In addition, no tobacco plant material will be allowed to survive.

2. Neither the 5-enolpyruvyl-3-phosphoshikimate synthase gene itself, nor its gene product, confer on tobacco any plant pest characteristic. Traits that lead to weediness in plants are polygenic traits and cannot be conferred by adding a single gene.

3. The microorganism from which the 5-enolpyruvyl-3-phosphoshikimate synthase gene was isolated is not a plant pest.

4. The 5-enolpyruvyl-3-phosphoshikimate synthase gene does not provide the transformed tobacco plants with any measurable selective advantage over nontransformed tobacco in the environment in this field test.

5. Select noncoding regulatory regions derived from plant pests have been incorporated into the chromosomal DNA but do not confer on tobacco any plant pest characteristics.

6. The vector used to transfer the 5-enolpyruvyl-3-phosphoshikimate synthase gene to tobacco plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this experiment. The vector, although derived from a DNA sequence with known plant pest potential, has been disarmed; that is, genes that are necessary for producing plant disease have been removed from the vector. The vector has been tested and shown to be nonpathogenic to plants.

7. The vector agent, the bacterium that was used to deliver the vector DNA and 5-enolpyruvyl-3-phosphoshikimate synthase gene into the plant cell, has been shown to be eliminated and no

longer associated with the transformed tobacco plants.

8. Horizontal movement of the introduced gene is not possible. The vector acts by delivering the gene to the plant genome (i.e., chromosomal DNA). The vector does not survive in the plants.

9. Glyphosate is one of the herbicides that is rapidly degraded in the environment. It has been shown to be less toxic to animals than many herbicides commonly used.

10. The field test site is small (99,825 square feet).

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500-1509), (3) USDA Regulations Implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC, this 3rd day of October 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-23678 Filed 10-5-89; 8:45 am]

BILLING CODE 3410-34-M

## DEPARTMENT OF COMMERCE

### Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35)

*Agency:* National Oceanic and Atmospheric Administration, Commerce

*Title:* Comparative Consumer Attitude Study—Seafood Advertising and Promotion Program

*Form Number:* None

*Type of Request:* New collection

*Burden:* 4500 respondents; 750 reporting hours; average hours per response—.16 hours

*Need and Uses:* The National Fish and Seafood Promotion Council is planning a seafood promotion program. This study will measure the effectiveness of that program

*Affected Public:* Individuals or households

*Frequency:* On occasion

*Respondent's Obligation:* Voluntary

*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: September 28, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-23635 Filed 10-5-89; 8:45 am]

BILLING CODE 3570-CW-M

### Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35)

*Agency:* National Oceanic and Atmospheric Administration, Commerce

*Title:* Coastal Zone Management Program Administrative Grants—Performance Reports

*Form Number:* None; OMB—0648-0119

*Type of Request:* Request for extension of OMB approval of a currently cleared collection

*Burden:* 29 respondents; 2,436 reporting hours; average hours per response—21 hours

*Needs and Uses:* States which have received grants to implement federally-approved coastal zone management plans must submit quarterly performance reports. The information is used to ensure that the activities being funded are meeting the objectives, and that the state is adhering to its approved plan

*Affected Public:* State or local governments

*Frequency:* Quarterly, semi-annually, and annually

*Respondent's Obligation:* Required to obtain or maintain a benefit

*OMB Desk Officer:* Russell Scarato, 394-7340

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: September 29, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-23636 Filed 10-5-89; 8:45 am]

BILLING CODE 3510-CW-M

### Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration, Commerce

*Title:* Marine Mammal Mortality Reports  
*Form Number:* Agency—None; OMB—0648-0099

*Type of Request:* Request for reinstatement of a previously approved collection for which approval has expired.

*Burden:* 1 respondent; .25 reporting hour; average hours per response—.25 hours

*Needs and Uses:* Commercial fishermen who have obtained a general permit or a certificate of exemption under the Marine Mammal Protection Act are required to report on marine mammals killed incidental to commercial fishing operations. The information is used by NOAA in determining the nature and extent of the interactions between marine mammals and commercial fishing vessels

*Affected Public:* Business or other for profit

*Frequency:* On occasion

*Respondent's Obligation:* Mandatory

*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: September 29, 1989.

Edward Michals,

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 89-23637 Filed 10-4-89; 8:45 am]

BILLING CODE 3570-CW-M

### Bureau of Export Administration

#### MCTL Implementation Technical Advisory Committee; Partially Closed Meeting

A meeting of the MCTL Implementation Technical Advisory Committee will be held October 17, 1989 at 9:30 a.m., in the Herbert C. Hoover Building, Room 1617-F, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis in the implementation of the Militarily Critical Technologies List (MCTL) into the Export Administration Regulations as needed. The meeting is called on short notice because of COCOM deliberations which have just recently been scheduled.

#### Agenda

##### General Session

1. Opening Remarks by the Chairman.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Report of Committee's Working Group on MITAC Projects.
5. Briefing on 1989 Chairmen's Meeting.

##### Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, in order to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the below listed address: Ms. Ruth D. Fitts, U.S. Department of Commerce/BXA, Office of Technology & Policy Analysis, 14th Street and Constitution Avenue, NW., Room 4069A, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202-377-4959.

Dated: September 29, 1989.

Betty A. Ferrell,

*Director, Technical Advisory Committee Unit, Office of Technology and Policy Analyses.*

[FR Doc. 89-23701 Filed 10-5-89; 8:45 am]

BILLING CODE 3510-DT-M

[Docket No. 9110-01, 9110-02, 9110-03]

#### Decision and Order; In Re Wilfried Lange Purchasing Pool Company and PPC Computer Handles

##### Summary

Pursuant to the August 31, 1989, recommended Decision and Order of the Administrative Law Judge (ALJ), which Decision and Order is attached hereto and affirmed by me, Wilfried Lange, individually and doing business as Purchasing Pool Company and PPC Computer Handles, (hereafter Respondent) and all successors, assignees, officers, partners, representatives, agents and employees are hereby denied for a period of fifteen years from the date here of all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Export Administration Regulations (15 CFR parts 768-799).

##### Order

On August 27, 1989, the ALJ entered his Recommended Decision and Order in the above-referenced matter. The Decision and Order, a copy of which is attached hereto and made a part hereof,

has been referred to me for final action. Having examined the record and based on the facts in this case, I hereby affirm the Decision and Order of the ALJ.

This constitutes final agency action in this matter.

Dated: September 28, 1989.

Dennis E. Kloske,

*Under Secretary for Export Administration.*

#### Decision and Order

*Appearance for Respondent:* Wilfried Lange, Am Stelg 3, 8913 Schondorf, Federal Republic of Germany.

*Appearance for Agency:* Anthony K. Hicks, Attorney-Advisor, Office of Chief Counsel for Export Administration, U.S. Department of Commerce, Room H-3329, 14th & Constitution Avenue, NW., Washington, DC 20230, (202) 377-5311.

#### Preliminary Statement

On April 20, 1989, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Agency), issued a charging letter to Wilfried Lange, individually and doing business as Purchasing Pool Company and PPC Computer Handles GmbH (Respondents), charging Respondents with violating the Export Administration Act III 1985) and Section 787.5 of the Export Administration Regulation (the Regulations). The Respondents failed to answer.

Because of the failure to answer, this office issued an Order, dated June 6, 1989, ruling Respondents in default and directing Agency Counsel to file an evidentiary submission by July 6, 1989, pursuant to § 388.8 of the Regulations, which provides:

##### Default (a) General

If a timely answer is not filed, the department shall file with the Administrative Law Judge a proposed Order together with the supporting evidence for the allegations in the charging letter. The Administrative Law Judge may require further submissions and shall issue any Order he deems justified by the evidence of record, any Order so issued shall have the same force and effect as an Order issued following the disposition of contested charges.

Agency counsel filed the Motion for Default Judgment on June 29, 1989. The Agency also submitted documentary evidence to support allegations made in the charging letter. A copy of the above mentioned Motion for Default Judgment was also sent to the Respondents on July 7, 1989, to which there has been no response.

## Facts and Discussion

The charging letter, alleged that, on or about January 25, 1987, Lange falsified material facts in connection with five separate transactions. It is specifically alleged that, by so doing, Lange committed five violations of section 787.5 of the Regulations, each of which involves U.S.-origin commodities controlled under section 5 of the Act for national security reasons.<sup>1</sup>

The facts giving rise to the five charges are as follows: On or about November 25, 1986, an investigation was initiated under the Act, to ascertain the whereabouts of two DEC VAX 11/750 computers and certain other controlled U.S.-origin commodities that the Respondent Lange purchased during the years 1985 and 1986. Ex. 2. As a part of that investigation, Lange was asked to provide sales invoices identifying the persons to whom he had sold the two DEC VAX 11/750 computers and any other U.S.-origin commodities he has acquired during those years. Ex. 2.

In response to an Agency investigators request, on or about January 25, 1987, Lange provided five sales invoices, Ex. 3(a), representing that Lange's company, PPC, had sold certain U.S.-origin commodities to:

1. Multifunktion GmbH, Bad Honningen, West Germany (Multifunktion), under account number 113-85; the invoice is dated November 22, 1985 and the controlled commodity listed therein is a VAX 11/750 computer. Exs. 3(b) and 4;

2. Prosystem Vertriebs GmbH, Kelsterbach, West Germany (Prosystem) under account number 202-86; the invoice is dated January 17, 1986 and the controlled commodity listed therein is a VAX 11/750 computer Exs. 3(c) and 4;

3. Elba Electric GmbH, Altlußheim, West Germany (Elba), under account number 107-86; the invoice is dated May 6, 1986 and the controlled commodity listed therein is a CDC 9766 Disk Drive. Exs. 3(d) 5;

4. Peka GmbH, Hamburg, West Germany (Peka), under account number 118-86; the invoice is dated July 24, 1986 and the controlled commodity listed therein is an FP 750 Floating Point for a

VAX 11/750 computer. Exs. 3(e) and 5; and

5. Prowie GmbH, Augsburg, West Germany (Prowie), under account number 126-86; the invoice is dated December 3, 1986 and the controlled commodity listed therein is an FP 750 Floating Point for a VAX 11/750. Exs. 3(f) and 5.

It was demonstrated that Lange had not in fact sold the above listed commodities to Multifunktion, Prosystem, Elba, Peka or Prowie. Exs. 6 and 2. In fact, the representations made on each of the five invoices that Lange provided to the Department were false.

Under section 787.5 of the Regulations, no person may falsify or conceal any material fact from the Office of Export Enforcement in the course of an investigation instituted under the authority of the Act.

The above-described evidence, established that during an investigation, Respondent Lange was asked to provide sales invoices that would identify the whereabouts of two DEC VAX 11/750 computers and certain other controlled U.S.-origin commodities.

The names of the persons to whom Lange had sold the two DEC VAX 11/750 computers and other U.S.-origin commodities he had acquired during ten years 1985 and 1986 were material facts because the DEC VAX 11/750 Floating Point for a VAX 11/750 computer are commodities that were controlled for reasons of national security. It was material, for the Agency to know the parties to whom those commodities had been sold in order for it to ensure that they had not fallen into the hands of those who were not entitled to receive such exports.

The evidence of record establishes that Respondent, during the course of an investigation provided five invoices, each of which contained false representations of material fact. By so doing, Lange falsified material facts in connection with five separate transactions and thereby committed five violations of Section 787.5 of the Regulations, each of which involved U.S.-origin commodities controlled under section 5 of the Act for national security reasons.

## Conclusion

The evidence submitted by Agency Counsel supports the allegations made in the charging letter of April 20, 1989. The Respondent falsified material facts in connection with the five separate export transactions as alleged.

The pattern of conduct demonstrated by the violations show an intent to violate United States export laws and regulations. The further reexport of

these restricted pieces of equipment is a factor in aggravation further indicating a deliberate illegal scheme. I find that, as requested, an Order denying export privileges for fifteen years from the date that a final order should be entered in this proceeding. Such action is warranted and is reasonably necessary to protect the public interest, and to achieve effective enforcement of the Export Administration Act and the Regulations.

## Order

I. For a period of fifteen years from the date of the final Agency action, Respondents

Wilfried Lange individually and doing business as Purchasing Pool Company and PPC Computer Handles GmbH

and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated export license application;

(ii) In preparing or filing any export license application or reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to matters which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

<sup>1</sup> Effective October 1, 1988, the Export Administration Regulations were redesignated as 15 CFR parts 768-799 (53 FR 37751, September 28, 1988). The transfer merely changed the first number of each Part from "3" to "7". Until such time as the Code of Federal Regulations is republished, the Regulations can be found at 15 CFR parts 368-399 (1988).

The Regulations governing the violations at issue are found in the 1987 version of the Code of Federal Regulations. Those regulations are codified at 15 CFR parts 368-399 (1987) and, to the degree to which they pertain to this matter, are substantially the same as the 1988 version.

IV. All outstanding individual validated export licenses in which Respondents appears on participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondents' privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

V. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure and specific authorization from the Office of Export Licensing, shall, with respect to the U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VI. By order of April 20, 1988 (53 FR 15253, April 28, 1988), which was renewed on June 20, 1988 (53 FR 23294, June 21, 1988); August 19, 1988 (53 FR 32639, August 26, 1988); October 18, 1988 (53 FR 43249, October 26, 1988); December 17, 1988 (53 FR 52207, December 27, 1988) and on February 15, 1989, (54 FR 7459, February 21, 1989), Wilfried Lange, individually and doing business as Purchasing Pool Company and PPC Computer Handles GmbH, was temporarily denied export privileges. The final Order in this matter will conclude the administrative proceeding initiated against these Respondents as a result of the investigation which first gave rise to the April 28, 1988 Order. Accordingly, upon entry of the final Order in this proceeding, the Temporary Denial Order will be vacated without further action.

VII. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C. App. 2412(c)(1)).

Dated: August 31, 1989.

Hugh J. Dolan,

*Administrative Law Judge.*

To be considered in the 30-day statutory review process which is amended by section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW., Room 3898B, Washington, DC, 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 388.23(b), 50 FR 53134 (1985).

[FR Doc. 89-23638 Filed 10-5-89; 8:45 am]

BILLING CODE 3510-DT-M

### Foreign-Trade Zones Board

[Docket No. 18-89]

#### Foreign-Trade Zone 78—Nashville, TN; Application for Subzone: GM-Saturn Auto Plant, Maury County, TN

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Metropolitan Nashville Port Authority, grantee of FTZ 78, requesting special-purpose subzone status for the automobile manufacturing plant of Saturn Corporation (subsidiary of General Motors Corporation), located in Maury County, Tennessee, adjacent to the Nashville Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on September 25, 1989.

The new Saturn plant (1,900 acres) is located on Highway 31, in Maury County, adjacent to the City of Spring Hill, Tennessee, some 32 miles south of Nashville. The plant is currently under construction. Production of automobiles (3,000 employees) is slated to begin in mid-1990. While most components will come from domestic suppliers, dutiable components from abroad will account for some 3 percent of vehicle value at the outset. The major foreign components will be: electronics, wiring harnesses, torque converters, starters, blocker rings, transmission bearings, timing chains, levers and instrument clusters.

Zone procedures would exempt Saturn from Customs duty payments on the foreign components used in its exports. On domestic sales, the company would be able to choose the

duty rate on finished autos (2.5%) for the foreign-sourced components (average duty rate, 4.1%). The savings would help improve the plant's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Joel R. Mish, District Director, U.S. Customs Service, South Central Region, 423 Canal Street, New Orleans, Louisiana 70130; and, Colonel James T. King, District Engineer, U.S. Army Engineer District Nashville, P.O. Box 1070, Nashville, Tennessee 37202-1070.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before November 17, 1989.

A copy of the application is available for public inspection at each of the following locations: U.S. Department of Commerce District Office, Parkway Towers, Suite 1114, 404 James Robertson Parkway, Nashville, TN 37219; Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2835, 14th & Pennsylvania Ave., NW., Washington, DC 20230.

Dated: September 29, 1989.

John J. Da Ponte, Jr.,

*Executive Secretary.*

[FR Doc. 89-23641 Filed 10-5-89; 8:45 am]

BILLING CODE 3510-D5-M

### International Trade Administration

[A-122-016]

#### Choline Chloride from Canada; Final Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration Department of Commerce.

**ACTION:** Notice of final results of antidumping duty administrative review and revocation.

**SUMMARY:** On August 10, 1989, the Department of Commerce published the preliminary results of its administrative review and intent to revoke the antidumping duty order on choline chloride from Canada. The review covers Chinook Chemicals Co., Ltd and

the period November 17, 1986 through January 8, 1988.

We gave interested parties an opportunity to comment on the preliminary results and intent to revoke. We received no comments. Based on our analysis, the final results of review are the same as the preliminary results.

**EFFECTIVE DATE:** October 6, 1989.

**FOR FURTHER INFORMATION CONTACT:**

Maureen McPhillips or Chip Hayes, Office of Antidumping Compliance, International Trade Administration, Import Administration, Department of Commerce, Washington, DC 20230; telephone: (202) 377-1130.

**SUPPLEMENTARY INFORMATION:**

**Background**

On August 10, 1989, the Department of Commerce ("the Department") published in the *Federal Register* (54 FR 32838) the preliminary results of its administrative review and intent to revoke the antidumping duty order on choline chloride from Canada (49 FR 45469, November 16, 1984). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

**Scope of Review**

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the *Harmonized Tariff Schedule* ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by the review are shipments of choline chloride from Canada. Choline chloride is marketed in several forms including, but not limited to, a solution of 70 percent choline chloride in water (aqueous choline chloride) or in potencies of 50 to 60 percent dried on a cereal carrier. During the review period, such merchandise was classifiable under *Tariff Schedules of the United States Annotated* ("TSUSA") item number 439.5055 and is currently classifiable under HTS item number 2923.10.00. The TSUSA and HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

The review covers Chinook Chemicals Co., Ltd., the only known manufacturer and/or exporter of Canadian choline chloride to the United States, and the

period November 17, 1986 through January 8, 1988.

**Final Results of Review and Revocation of Antidumping Duty Order**

We invited interested parties to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are the same as the preliminary results. We determine that the weighted-average dumping margin for Chinook is 0.0008 percent, a rate we consider *de minimis*.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between the United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

There is no evidence in the record indicating that there is any likelihood of the resumption of sales at less than fair value by Chinook Chemicals Co., Ltd., the only known manufacturer and/or exporter of Canadian choline chloride to the United States. Accordingly, we determine to revoke the antidumping duty order on choline chloride from Canada. The revocation applies to all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after January 8, 1988, the date of our tentative determination to revoke (53 FR 548).

The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after November 17, 1986, without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries.

The administrative review, revocation, and notice are in accordance with section 741(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1) and § 353.22 of the Commerce Regulations published in the *Federal Register* on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.22). Because the tentative revocation was published (53 FR 548, January 8, 1988) prior to March 28, 1989, we are proceeding with the revocation pursuant to 19 CFR 353.54 (1988) of the Commerce Regulations.

Dated: September 29, 1989.

**Eric I. Garfinkel,**

*Assistant Secretary for Import Administration.*

[FR Doc. 89-23702 Filed 10-5-89; 8:45 am]

**BILLING CODE 3510-DS-M**

**Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review**

**AGENCY:** International Trade Administration/Import Administration, Commerce.

**ACTION:** Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

**BACKGROUND:** Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.22 or § 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

**OPPORTUNITY TO REQUEST A REVIEW:** Not later than October 31, 1989, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in October for the following periods:

	Period
<b>Antidumping Duty Proceeding:</b>	
Italy: Pressure Sensitive Plastic Tape (A-475-059).....	10/01/88-09/30/89
Japan: Steel Wire Rope (A-588-045).....	10/01/88-09/30/89
Japan: Tapered Roller Bearings, and Parts Thereof, Finished and Unfinished, Over 4 inches (A-588-604).....	10/01/88-09/30/89
The People's Republic of China: Barium Chloride (A-570-007).....	10/01/88-09/30/89
The People's Republic of China: Shop Towels of Cotton (A-570-003).....	10/01/88-09/30/89
<b>Countervailing Duty Proceeding:</b>	
Brazil: Certain Agricultural Tillage Tools (C-351-406).....	01/01/88-12/31/88
India: Certain Iron-Metal Castings (C-533-063).....	01/01/88-12/31/88
Iran: Roasted In-Shell Pistachios (C-507-601).....	01/01/88-12/31/88
New Zealand: Certain Steel Wire Nails (C-614-701).....	01/01/88-12/31/88
Sweden: Certain Carbon Steel Products (C-401-401).....	01/01/88-12/31/88

	Period
Thailand: Certain Steel Wire Nails (C-549-7C1).....	01/01/88-12/31/88

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the *Federal Register* a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by October 31, 1989.

If the Department does not receive by October 31, 1989 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: September 29, 1989.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 89-23644 Filed 10-5-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-807]

**Preliminary Determination of Sales at Less Than Fair Value: Certain Residential Door Locks and Parts Thereof from Taiwan**

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** We preliminarily determine that certain residential door locks and parts thereof from Taiwan (hereinafter residential door locks) are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of residential door locks from Taiwan as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we

will make a final determination by December 18, 1989.

**EFFECTIVE DATE:** October 6, 1989.

**FOR FURTHER INFORMATION CONTACT:** Mary Clapp or James Terpstra, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3965 and 377-4103, respectively.

**SUPPLEMENTAL INFORMATION:**

**Preliminary Determination**

We preliminarily determine that residential door locks from Taiwan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

**Case History**

Since the notice of initiation (54 FR 21999, May 22, 1989), the following events have occurred. On June 8, 1989, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Taiwan of residential door locks (54 FR 25351, June 14, 1989).

On June 13, 1989, petitioners alleged that sales in the home market were being made at prices below the cost of production (COP). On June 27, 1989, we informed petitioners that their COP allegation was deficient and that additional information would be required in order to initiate a COP investigation. Petitioners filed additional information in support of their COP allegation on August 18, 1989. After careful analysis of petitioners' COP allegation, we determined that there was insufficient information on the record to provide a specific and objective basis to establish reasonable grounds to believe or suspect that any of the respondents are engaged in below cost sales. Accordingly, on September 1, 1989, we informed petitioners of our decision not to initiate a COP investigation.

On June 14, 1989, the Department presented sections A, B and C of its questionnaire to Taiwan Fu Hsing Industrial Co., Ltd. (Fu Hsing), Tong Lung Metal Industry Co., Ltd. (Tong Lung) and Posse Lock Manufacturing Co., Ltd. (Posse). These three companies accounted for a substantial portion of exports of the subject merchandise from Taiwan to the United States during the period of investigation.

Responses to section A of the questionnaire were due on June 28, 1989, and responses to the remaining sections were due on July 14, 1989. At the request of the respondents, the response deadlines for Sections B and C of the questionnaire were extended to July 28, 1989. Responses to section A were received on June 26, 1989, and responses to Sections B and C were received July 28, 1989.

The Department issued deficiency letters to respondents on August 11 and August 23, 1989, the latter requesting that computer tapes with correct product comparisons be submitted no later than September 12, 1989. On August 31 and September 1, 1989, respondents submitted new computer tapes; however, respondents stated that these tapes did not contain the requested product comparisons.

On September 11, 1989, Tong Lung submitted a computer tape and stated that this tape now contained the correct product comparisons. On September 12, 1989, Fu Hsing and Posse advised the Department that the tapes submitted on August 31 and September 1, 1989, respectively, did, in fact, contain the revised similar product comparisons requested in the Department's August 23, 1989 deficiency letter. On September 21, 1989, Fu Hsing submitted an additional tape which purportedly contained the revised product comparisons and stated that the August 31 1989 tape, which was submitted in error, did not contain the revised product comparisons.

On September 25, 1989, upon realizing that respondents had misinterpreted our instructions for selecting product matches, we informed respondents that they would have one last opportunity to submit the correct product comparisons no later than October 2, 1989.

**Scope of Investigation**

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS) as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS item numbers. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive as to the scope of the product coverage.

The products covered by this investigation include the following three categories of residential door locks: (1) Tubular or cylindrical knob-operated locksets with spring latches or dead latches, whether face-plated or drive-in type, including entry-handled sets; (2) dead locks, whether face-plated or drive-in type; and (3) lever-operated locksets, whether face-plated or drive-in type. All three categories are imported from Taiwan and sold in any of the following forms: Fully assembled partially assembled, unassembled, or parts relating hereto.

Pursuant to a request from the ITC, we have clarified the scope of the investigation to fully differentiate between residential and other door locks. This clarification, included in the ITC's preliminary determination, is described below.

Residential door locks are differentiated from other door locks (*i.e.*, those for commercial or other uses) by the size of the face-plate or housing assembly, as follows: (1) Face-plated spring lock/latch, dead latch or dead bolt units have (a) a face-plate size of 1 inch or less (plus a tolerance of + 1/16 inch) in width, regardless of length, or (b) an outside diameter of the latch or dead bolt housing assembly of 3/8 inch or less (plus a tolerance of + 1/16 inch) in outside diameter; and (2) drive-in type spring lock/latch, dead latch or dead bolt units have a housing assembly (including the sleeve retaining device) of 1 inch or less (plus a tolerance of + 1/16 inch) in outside diameter. These door locks are typically used in the construction of new one- and two-family dwellings, apartment buildings, condominiums, and mobile and prefabricated homes and in the replacement or retrofitting of existing locks in these dwellings. This merchandise is currently classifiable under HTS item 8301.40.6030. This category does not include door locks suitable for use with garage, overhead, or sliding doors.

#### Period of Investigation

The period of investigation is November 1, 1988 through April 30, 1989.

#### Such or Similar Comparisons

For all respondent companies, pursuant to section 771(16)(C) of the Act, we established three categories of "such or similar" merchandise consisting of: (a) Tubular and cylindrical locksets; (b) dead locks and dead bolts; and (c) sectional handled locksets and interconnected locksets.

Product comparisons were made on the basis of the following criteria which are ranked in the order of importance.

For tubular and cylindrical locksets we used the following criteria: (1) Type of lock, whether tubular or cylindrical; (2) function of lock, whether entry, privacy or passage; (3) knob operated or lever operated locks; (4) knob type; (5) lock finish; and (6) standard latch or drive-in latch. For dead locks we considered: (1) Number of cylinders, whether single or double; (2) lock finish; and (3) standard latch or drive-in latch. For sectional handled locksets and interconnected locksets we considered: (1) Type of lockset, whether sectional handled or interconnected; (2) type of lock, whether tubular or cylindrical; (3) knob operated or lever operated lock; (4) knob or handle type; and (5) lockset finish.

Where there were no sales of identical merchandise in the home or third country markets with which to compare merchandise sold in the United States, sales of the most similar merchandise were compared on the basis of the characteristics described above. We made adjustments for differences in the physical characteristics of the merchandise in accordance with section 773(a)(4)(C) of the Act.

In order to determine whether there were sufficient sales of certain residential door locks in the home market to serve as the basis for calculating foreign market value, we compared the volume of home market sales to the volume of third country sales within each such or similar category, in accordance with section 773(a)(1) of the Act. In accordance with § 353.48 of the Department's regulations published in the *Federal Register* on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.48), where the volume of home market sales was at least 5 percent of the volume of third country sales, we used home market sales as the basis for foreign market value. Where the volume of home market sales was less than 5 percent of the volume of third country sales, we determined that home market sales did not constitute a viable basis for calculating foreign market value. In these instances, we used third country sales as the basis for foreign market value.

For Tong Lung, we determined that there were sufficient home market sales to unrelated customers to constitute a viable basis for calculating foreign market value for the such or similar category of tubular and cylindrical locksets. For the two such or similar categories of dead bolts and dead locks, and sectional handled and interconnected locksets, we determined that there were insufficient home market sales to constitute a viable basis for

calculating foreign market value. We therefore used third country sales for those categories. We determined that for dead bolts and dead locks, sales to Canada and Australia were the most appropriate basis for calculating foreign market value because the merchandise sold in these countries was the most comparable to that sold in the United States and was sold in sufficient quantities. For sectional handled and interconnected locksets, we determined that sales to Canada were the most appropriate basis for calculating foreign market value because the merchandise sold in Canada was the most comparable to that sold in the United States and was sold in sufficient quantities.

For Posse, we determined that there were sufficient home market sales to unrelated customers to constitute a viable basis for calculating foreign market value for two such or similar categories: tubular and cylindrical locksets, and dead bolts and dead locks. For the such or similar category of sectional handled and interconnected locksets, we determined that there were insufficient home market sales to constitute a viable basis for calculating foreign market value. We determined that sales to Australia were the most appropriate basis for calculating foreign market value because the merchandise sold to Australia was the most comparable to that sold in the United States and was sold in sufficient quantities.

For Fu Hsing, we used best information available as described in the "Fair Value Comparisons" section of this notice.

#### Fair Value Comparisons

To determine whether sales of residential door locks from Taiwan to the United States were made at less than fair value, we compared the United States price to the foreign market value, as specified in the "United States Price" and "Foreign Market Value" sections of this notice. In accordance with section 776(c) of the Act, where a company has submitted a response which we consider to be substantially deficient, or has submitted information too late to be considered for purposes of this preliminary determination, we relied on best information available. Those instances where we have used best information available are fully described below.

In the computer tapes submitted on July 28, 1989, all three respondents failed to make their identical and similar product comparisons in accordance with the instructions outlined in the

Department's questionnaire. These tapes contained numerous incorrect product comparisons. In response to our August 23, 1989 deficiency letter requesting that respondents revise their product comparisons in strict accordance with the instructions outlined in the original questionnaire, Fu Hsing, Posse, and Tong Lung submitted computer tapes on August 31, September 1, and September 11, 1989, respectively. Respondents again failed to make their product comparisons in accordance with the instructions outlined in the questionnaire, and these tapes contained numerous incorrect product comparisons. From our analysis of respondents' submissions, it appeared that respondents had interpreted the "five percent adequate measure test" described in section B of the questionnaire to be applied to each specific product comparison. That is, respondents only compared a U.S. product to the identical or most similar home market product if the volume of sales of the home market product was at least five percent of the volume of sales of the U.S. product. In a meeting held on September 22, 1989, counsel for respondents confirmed that respondents had in fact applied the "five percent adequate measure test" on a product-by-product basis.

While respondents' incorrect product comparisons are not usable for purposes of this preliminary determination, we have granted respondents an opportunity to submit revised product comparisons for use in the final determination. Provided that the information is submitted in conformity with our instructions, and prior to our preliminary determination, we will verify the revised information.

For two of the respondents, Tong Lung and Posse, the data submitted, while containing numerous incorrectly matched products, also contains a significant number of correct matches to serve as a reliable basis for our fair value comparisons. Therefore, for purposes of this preliminary determination, we have used the information reported by Tong Lung and Posse for all fair value comparisons for which the product comparisons were correctly reported. However, because Tong Lung and Posse failed to follow our instructions, resulting in numerous incorrect product comparisons, we have used best information available for the incorrect comparisons, in accordance with section 776(c) of the Act. For fair value comparisons in which Tong Lung and Posse had incorrect product matches, we used the highest margin alleged in the petition as best

information available. To calculate the weighted average margin listed in the "Suspension of Liquidation" section of this notice, we weighted by quantity the margins calculated using Tong Lung's and Posse's correctly reported sales information with the margin alleged by petitioners for the incorrectly reported product comparisons.

In the case of Fu Hsing, not only was there a limited number of correctly matched sales, but there was also a significant number of products sold in the United States for which no match was provided at all. Additionally, the recurring misstatements and apparent confusion concerning which submitted tape contained the correct revised product comparisons undermined the credibility of the submitted data. Furthermore, the computer tape submitted on September 21, 1989, only ten days before the preliminary determination, was received too late to analyze fully and use for purposes of this determination. For these reasons, we determined that the data Fu Hsing submitted do not provide a reliable basis for our fair value comparisons. Consequently, we used best information available in accordance with section 776(C) of the Act for all of Fu Hsing's sales. As best information available for Fu Hsing, we used the highest margin alleged in the petition. Where the petition did not contain a margin for a particular such or similar category, we used the average of the highest margins alleged in the petition for the other such or similar categories. To calculate the margin listed in the "Suspension of Liquidation" section of this notice, we weighted the margin for each such or similar category by the quantity of sales to the United States for that category.

#### United States Price

For both Tong Lung and Posse, where U.S. sales were reported with correct home market product comparisons, we based the United States price on purchase price, in accordance with section 772(b) of the Act, because all sales were made directly to unrelated parties prior to importation into the United States.

##### A. *Fu Hsing*:

For Fu Hsing, we used best information available as described in the "Fair Value Comparisons" section of this notice.

##### B. *Tong Lung*:

For Tong Lung, where U.S. sales were reported with correct product comparisons, we calculated purchased price based on packed f.o.b. and f.o.r. Taiwan port, c.i.f., and c.&f. prices to unrelated customers in the United States. We made deductions, where

appropriate, for discounts, rebates, brokerage and handling, foreign inland freight, containerization expenses, ocean freight, marine insurance and harbor maintenance fees, in accordance with section 772(d)(2) of the Act. Tong Lung reported in its narrative response that harbor maintenance fees were 0.05 percent of gross unit price. Because the data in the computer tape did not correspond, we recalculated harbor fees based on the information in the narrative response. Tong Lung reported an adjustment to third country price for a surcharge. However, because no information describing this surcharge was submitted on the record, we disallowed the claimed adjustment.

We added rebated duties and a special rebate from the China Steel Corporation pursuant to section 772(d)(1)(B) of the Act. When foreign market value was based on home market sales, pursuant to 772(d)(1)(C) of the Act we added the amount of value-added taxes which would have been collected if the merchandise had not been exported.

##### C. *Posse*:

For Posse, where U.S. sales were reported with correct product comparisons, we calculated purchase price based on packed f.o.b. Taiwan port prices to unrelated customers in the United States. We made deductions, where appropriate, for brokerage and handling, foreign inland freight, harbor maintenance fees, and containerization expenses. We recalculated harbor maintenance fees as described above for Tong Lung. We added rebated duties and a special rebate from the China Steel Corporation pursuant to section 772(d)(1)(B) of the Act. When foreign market value was based on home market sales, pursuant to section 772(d)(1)(C) of the Act, we also added the amount of value-added taxes which would have been collected if the merchandise had not been exported.

#### Foreign Market Value

In accordance with section 773(a)(2) of the Act, we calculated foreign market value based on home market or third country sales, as appropriate.

##### A. *Fu Hsing*:

For Fu Hsing, we used best information available as described in the "Fair Value Comparisons" section of this notice.

##### B. *Tong Lung*:

For the such or similar category of tubular and cylindrical locksets, we used sales in the home market as the basis of foreign market value. We calculated foreign market value based on the packed, delivered prices to

unrelated customers in the home market. We made deductions, where appropriate, for inland freight. We deducted home market packing costs and added U.S. packing costs. We made an adjustment for home market indirect selling expenses, which included salesmen's salaries and transportation expenses. These expenses were offset by the amount of commission paid on U.S. sales, in accordance with § 353.41(e)(1) of the Department's regulations.

We made circumstance of sale adjustments for differences in credit terms, including bank charges and transit interest, pursuant to § 353.56 of the Department's regulations.

We made an upward adjustment to tax-exclusive home market prices for the value-added tax we computed for the United States price.

Where appropriate, we made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise, including differences in consumer packaging, in accordance with § 353.57 of the Department's regulations.

For the such or similar categories of dead bolts and dead locks, and sectional handled and interconnected locksets, we used sales to third countries as the basis for foreign market value. We calculated foreign market value based on the packed, f.o.b. prices to unrelated customers in the third countries. We made deductions, where appropriate, for discounts, brokerage and handling, foreign inland freight, harbor maintenance fees and containerization expenses. We recalculated the harbor maintenance fee based on Tong Lung's narrative response. We deducted third country packing costs and added U.S. packing costs.

We made deductions, where appropriate, for differences in credit terms, including bank charges and transit interest and commissions. We added rebated duties and a special rebate from the China Steel Corporation pursuant to section 772(d)(1)(B) of the Act. Tong Lung reported an adjustment to third country price for a surcharge. However, because no information describing this charge was submitted on the record, we disallowed the claimed adjustment.

Where appropriate, we made further adjustments to the third country price to account for differences in the physical characteristics of the merchandise, including differences in consumer packaging, in accordance with § 353.57 of the Department's regulations.

#### C. Posse:

For the such or similar categories of tubular and cylindrical locksets, and

dead bolts and dead locks, we used sales in the home market as the basis for foreign market value. We calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. We made deductions, where appropriate, for inland freight. We deducted home market packing costs and added U.S. packing costs.

We made circumstance of sale adjustments for differences in credit terms, including bank charges and transit interest, pursuant to § 353.56 of the Department's regulations.

We made an upward adjustment to tax-exclusive home market prices for the value-added tax we computed for the United States price.

Where appropriate, we made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise, including differences in consumer packaging, in accordance with § 353.57 of the Department's regulations.

For the such or similar category sectional handled and interconnected locksets, we used sales to the third country as the basis for foreign market value. We calculated foreign market value based on the packed, f.o.b. Taiwan port prices to unrelated customers in the third country. We made deductions, where appropriate, for foreign inland freight and containerization expenses. We deducted third country packing costs and added U.S. packing costs. We made deductions, where appropriate, for differences in credit terms, including bank charges and transit interest. We added rebated duties and a special rebate from the China Steel Corporation to the third country price pursuant to section 772(d)(1)(B) of the Act.

Where appropriate, we made further adjustments to the third country price to account for differences in the physical characteristics of the merchandise, including differences in consumer packaging, in accordance with § 353.57 of the Department's regulations.

#### Currency Conversion

We used the official exchange rates in effect on the dates of U.S. sales, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at the rates certified by the Federal Reserve Bank.

#### Verification

As provided in section 776(b) of the Act, we will verify all information used in reaching the final determination in this investigation.

#### Suspension of Liquidation

In accordance with section 773(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of residential door locks, as defined in the "Scope of Investigation" section of this notice, that are entered or withdrawn from warehouse for consumption on or after the date of publication of this notice in the *Federal Register*. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of residential door locks exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice. The margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Fu Hsing .....	60.83
Tong Lung .....	30.31
Posse .....	25.41
All others .....	41.67

#### ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

The ITC will determine whether these imports are materially injuring, or threaten material injury to, a U.S. industry before the latter of 120 days after the date of this determination, or 45 days after the final determination, if affirmative.

#### Public Comment

In accordance with § 353.38 of the Commerce Department's regulations, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than November 28, 1989, and rebuttal briefs no later than December 4, 1989. In accordance with § 353.38(b) of the Department's regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to

comment on arguments raised in case or rebuttal briefs. The hearing will be held at 10:00 a.m. on December 6, 1989, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099 within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with § 353.38(b) of the Department's regulations, oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Dated: October 2, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-23703 Filed 10-5-89; 8:45 am]

BILLING CODE 3510-DS-M

#### Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with subsections 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Program Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

**Docket Number: 89-224. Applicant:** USDC, NOAA, National Marine Fisheries Service, 3209 Frederic Street, Pascagoula, MS 39568-1207. **Instrument:** Digital Fishing Measuring Board, Model FMB-IV. **Manufacturer:** Limnoterra Atlantic, Inc., Canada. **Intended Use:** The instrument will be used for investigating the length of individual specimens of fish, shrimp and other select marine species. The system will save considerable time in processing and editing data for analysis and make data available in a shorter time period.

**Application Received by Commissioner of Customs:** September 9, 1989.

**Docket Number: 89-225. Applicant:** Research Triangle Institute, Office of Purchasing, P.O. Box 12193, Research Triangle Park, NC 27709-2193. **Instrument:** Electron Microscope, Model H-7000. **Manufacturer:** Hitachi, Japan. **Intended Use:** The instrument will be used to identify and characterize the six asbestos minerals in bulk and air samples (chrysotile (serpentine), amosite (grunerite), anthophyllite, crocidolite (riebeckite), tremolite and actinolite). Additional uses include the identification of synthetic fibers used as asbestos substitutes, such as mineral wool, fiberglass and ceramic wool and microanalysis of various particulates related to indoor air quality. **Application Received by Commissioner of Customs:** September 12, 1989.

**Docket Number: 89-226. Applicant:** Texas A&M Research Foundation, University at Wellborn Road, College Station, TX 77843. **Instrument:** Whole Seedling Porometer, Model CS-102. **Manufacturer:** Micromet Systems, Canada. **Intended Use:** Studies of stomatal conductance and whole-seedling transpiration of planted loblolly pine seedlings. These studies will be conducted to determine the effects of a range of residual overstory densities on planted loblolly pine seedling water relations. **Application Received by Commissioner of Customs:** September 13, 1989.

**Docket Number: 89-227. Applicant:** University of San Diego, Alcalá Park, San Diego, CA 92110. **Instrument:** Electron Microscope, Model EM 900. **Manufacturer:** Carl Zeiss, Inc., West Germany. **Intended Use:** The instrument will be used to teach Theory and Practice of Electron Microscopy to junior and senior undergraduate students. **Application Received by Commissioner of Customs:** September 13, 1989.

**Docket Number: 89-228. Applicant:** Alabama A&M University, Normal, AL 35762. **Instrument:** Structural Loading Frame & Experimental Set-ups. **Manufacturer:** Hi-Tech Scientific, Ltd., United Kingdom. **Intended Use:** The instrument will be used for educational purposes in the course Structural Analysis. The objective of this course is to understand structural response to loading- a prerequisite for Structural Design. **Application Received by Commissioner of Customs:** September 13, 1989.

**Docket Number: 89-229. Applicant:** Columbia University, Lamont-Doherty Geological Observatory, Route 9W,

Palisades, NY 10964. **Instrument:** Atlas Hydrosweep DS System. **Manufacturer:** Krupp Atlas Elektronik, GmbH, West Germany. **Intended Use:** The instrument will be used to image features on the ocean floor at a resolution of 1-2 meters, allowing structural features to be clearly identified, and their origin and evolution to be understood. Experiments will include mapping selected areas of the seafloor from the shallow continental shelves, to deep water including mid-ocean ridges, fracture zones, submarine volcanoes and deep-sea trenches. **Application Received by Commissioner of Customs:** September 14, 1989.

**Docket Number: 89-230. Applicant:** Washington University School of Medicine, 660 South Euclid Avenue, St. Louis, MO 63110. **Instrument:** Isotope Ratio Mass Spectrometer, Model SIRA Series II. **Manufacturer:** VG Analytical, Ltd., United Kingdom. **Intended Use:** The instrument will be used to study stable isotope enrichment in various biochemical substrates, biological fluids, and excreted metabolic products during stable isotope tracer infusion studies of metabolism in humans. The experiments to be conducted involve infusion or injection of stable isotopically labeled substrates (e.g., [1-<sup>13</sup>C] leucine, [U-<sup>13</sup>C]glucose, [<sup>15</sup>N]glycine) with subsequent collection of the appropriate biological samples for determination of isotope dilution. Material classes submitted for study include amino acids, body proteins, glucose and other carbohydrates, fatty acids of various chain length and saturation, urea, and ammonia. The enrichment data are used for standard kinetic calculations of metabolic fuel transport rates between body organs and for kinetic modeling of biochemical system dynamics in vivo. In addition, the instrument will be used to train pre- and post-doctoral students from a wide variety of disciplines, including chemistry, biochemistry, pharmacology, medicine and pediatrics. **Application Received by Commissioner of Customs:** September 14, 1989.

**Docket Number: 89-231. Applicant:** Health Research, Inc., 1683 Corning Tower, Empire State Plaza, Albany, NY 12237. **Instrument:** Stable Isotope Ratio Mass Spectrometer, Model PRISM Series II. **Manufacturer:** VG Isotech, United Kingdom. **Intended Use:** The instrument will be used for isotope ratio measurements of <sup>12</sup>C/<sup>13</sup>C, H/D, <sup>14</sup>N/<sup>15</sup>N, <sup>16</sup>O/<sup>18</sup>O, <sup>36</sup>Ar/<sup>40</sup>Ar, <sup>38</sup>Ar/<sup>40</sup>Ar and additional isotopes in atmospheric gases such as O<sub>2</sub>, N<sub>2</sub>, CO<sub>2</sub>, CH<sub>4</sub>, Co, Ar as they are separated from natural environmental atmospheric samples taken at various locations and from

preserved atmospheric samples obtained from air bubble inclusions found in polar ice recovered in deep ice cores. The objective of the research projects is to obtain a more complete understanding on the controls and changes in the atmospheric concentrations of methane and carbon dioxide as a function of time with regard to environmental and climate changes. *Application Received by Commissioner of Customs: September 15, 1989.*

*Docket Number: 89-232. Applicant: University of Akron, 225 South Forge Street, Akron, OH 44325. Instrument: Electron Microscope, Model JEM-1200 EXII. Manufacturer: JEOL, Ltd., Japan. Intended Use: The instrument will be used to further the study and understanding of polymer science: the characterization of the morphology of new and existing polymers, blends, and crystals. Experiments will be conducted to determine: (a) the effects of shadowing, or etching on single polystyrene molecules, surface replication of bulk crystalline and liquid crystal polymers, and (b) size/distribution data on latex, high contrast stained rubber blends, visual polymers by negative imaging. In addition the instrument will be used in courses to provide basic theory of biological and/or polymer TEM, to train students thoroughly in the operation of the instrument and prepare them for their individual pursuit of research. *Application Received by Commissioner of Customs: September 18, 1989.**

*Docket Number: 89-233. Applicant: College of the Holy Cross, College Street, Worcester, MA 01610. Instrument: Rapid Kinetics Accessory, Model SFA-11. Manufacturer: Hi-Tech Scientific, Ltd., United Kingdom. Intended Use: The instrument will be used in Physical Chemistry Laboratory, a course designed to illustrate some of the principles of physical chemistry, to train in careful experimentation, to develop the habit of quantitative interpretation of physical measurement and to encourage ability in research. *Application Received by Commissioner of Customs: September 18, 1989.**

Frank W. Creel,  
Director, Statutory Import Programs Staff.  
[FR Doc. 89-23643 Filed 10-5-89; 8:45 am]  
BILLING CODE 3510-DS-M

### Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural

Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

*Docket Number: 89-153. Applicant: New York University Medical Center, New York, NY 10016. Instrument: Electron Microscope, Model JEM-1200EX/SEG/DP/DP. Manufacturer: JEOL, Ltd., Japan. Intended Use: See notice at 54 FR 24372, June 7, 1989. *Instrument Ordered: October 21, 1988.**

*Docket Number: 89-165. Applicant: Southwest Foundation for Biomedical Research, San Antonio, TX 78284. Instrument: Electron Microscope, Model JEOL-1200EX. Manufacturer: JOEL, Ltd., Japan. Intended Use: See Notice at 54 FR 30788, July 24, 1989. *Instrument Ordered: March 23, 1989.**

*Docket Number 89-167. Applicant: Brandeis University, Rosenstiel Basic Medical Sciences Research Center, Waltham, MA 02254-9110. Instrument: Electron Microscope, Model CM12. Manufacturer: N.V. Philips, The Netherlands. Intended Use: See notice at 54 FR 30788, July 24, 1989. *Instrument Ordered: February 10, 1989.**

*Docket Number: 89-168. Applicant: University of Arkansas for Medical Sciences, Little Rock, Arkansas 72205-7199. Instrument: Electron Microscope, Model JEM-100CX. Manufacturer: JEOL, Ltd., Japan. Intended Use: See notice at 54 FR 30788, July 24, 1989. *Instrument Ordered: March 15, 1989.**

*Docket Number: 89-170. Applicant: New York State Department of Health, Albany, NY 12201. Instrument: Electron Microscope, Model H-7000, with Accessories. Manufacturer: Hitachi, Ltd., Japan. Intended Use: See notice at 54 FR 30789, July 24, 1989. *Instrument Ordered: March 21, 1989.**

*Docket Number: 89-173. Applicant: Board of Trustees of Southern Illinois University, School of Medicine, Springfield, IL 62702. Instrument: Electron Microscope, Model H-7000. Manufacturer: Nissei Sangyo America, Ltd., Japan. Intended Use: See notice at 54 FR 30789, July 24, 1989. *Instrument Ordered: May 1, 1989.**

*Docket Number: 89-180. Applicant: University of Cincinnati, Cincinnati, OH 45221-0012. Instrument: Electron Microscope, Model CM20T. Manufacturer: N.V. Philips, The Netherlands. Intended Use: See notice at 54 FR 31721, August 1, 1989. *Instrument Ordered: April 7, 1989.**

*Docket Number: 89-190. Applicant: Old Dominion University, Norfolk, VA 23529. Instrument: Electron Microscope, Model JEM-100CX II. Manufacturer: JEOL, Ltd., Japan. Intended Use: See notice at 54 FR 34542, August 21, 1989. *Instrument Ordered: May 18, 1989.**

*Docket Number: 89-194. Applicant: Rensselaer Polytechnic Institute, Troy, NY 12180-3590. Instrument: Electron Microscope, Model CM12. Manufacturer: N.V. Philips, The Netherlands. Intended Use: See notice at 54 FR 34543, August 21, 1989. *Instrument Ordered: June 9, 1989.**

*Comments: None received Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. REASONS: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.*

Frank W. Creel,  
Director, Statutory Import Programs Staff  
[FR Doc. 89-23642 Filed 10-5-89; 8:45 am]  
BILLING CODE 3510-DS-M

### National Institute of Standards and Technology

[Docket No. 90892-9192]

#### Intentions To Adopt a Test Method and Establish a Validation Service for the Federal Information Processing Standard (FIPS) for Database Language SQL

**AGENCY:** National Institute of Standards and Technology (NIST), Commerce.

**ACTION:** Notice and request for comments on a test method and a validation service for a trial use period for the Federal Information Processing Standard (FIPS) 127, Database Language SQL.

**SUMMARY:** The NIST intends to adopt the SQL Test Suite as the test method to be used for validating SQL implementations for conformance to FIPS 127, Database Language SQL. This validation system will be used to assess the degree to which SQL implementations conform to FIPS 127.

Beta testing with this software has been completed, and Version 1.2 is the current version of the software.

The NIST is providing a validation service for a trial use period to verify the accuracy and completeness of the SQL validation procedures. To assess the suitability of the test method for testing conformance to the FIPS, NIST solicits the views of industry, the public, and State and local governments.

**DATE:** The test service will start in April 1990 and will continue for the trial use period until a further notice is published in the *Federal Register*.

**ADDRESS:** Written comments concerning the SQL Test Service should be sent to: National Institute of Standards and Technology, ATTN: SQL Test Service, Technology Building, Room B154, Gaithersburg, MD 20899.

**FOR FURTHER INFORMATION CONTACT:** Joseph Collica, telephone (301) 975-3267, or Joan Sullivan, telephone (301) 975-3258, National Institute of Standards and Technology, Gaithersburg, MD 20899.

**SUPPLEMENTARY INFORMATION:**

*Background:* The Federal Information Processing Standard Publication (FIPS PUB) 127, Database Language SQL, was approved on March 10, 1987, and became effective August 3, 1987. In accordance with FIPS PUB 127, relational database packages acquired for federal use after this date should implement the standard. The purpose of the SQL standard is to promote portability of relational databases applications for use with a variety of database implementations.

Federal Agencies should require conformance to FIPS 127 whether database implementations are developed internally, acquired as part of an ADP system procurement, used under an ADP leasing arrangement, or specified for use in contracts for programming services. Testing should be required in order for agencies to determine if the SQL implementations conform to the FIPS PUB. The NIST SQL Test Suite and the test results provided from the NIST validation service are sources for federal agencies to use in making this determination.

*Updates to the Test Method:* The Test Suite will be periodically updated and used as the basis for validating FIPS 127 implementations. The update process will be used to correct errors identified in the SQL Test Suite and to introduce new or modified programs as appropriate. Modification to the Test Suite is also intended to ensure that implementations are being built according to the technical specifications of the standard. Should an interpretation

of the FIPS be made that would affect the test suite, these changes would also be reflected during the update process.

*Obtaining Validation Services:* The NIST provides validation services on a cost-reimbursable basis. These services are available to both the producers and users of SQL implementations. Upon receipt of a request for validation, NIST will supply the client with a SQL Information Pack which will include a description of the test service and procedures, an Order Form, a Software License Agreement, and Scheduling Request. To obtain the SQL Test Suite and documentation the client must return a completed Order Form and Software License Agreement, along with proper payment to the NIST.

**Authority:** Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100-235.

Dated: October 2, 1989.

Raymond G. Kammer,

Acting Director.

[FR Doc. 89-23670 Filed 10-5-89; 8:45 am]

BILLING CODE 3510-CN-M

**National Oceanic and Atmospheric Administration**

**Gulf of Mexico and South Atlantic Fishery Management Councils; Public Hearings**

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

**ACTION:** Notice of public hearings and request for comments.

**SUMMARY:** The Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) will convene a series of public hearings on draft Amendment 5 to the Coastal Migratory Pelagic (Mackerel) Fishery Management Plan (FMP). Individuals and organizations may comment in writing to the Councils, at the addresses given below, if they are unable to attend the hearings.

**DATES:** Written comments will be accepted until November 20, 1989. See "SUPPLEMENTARY INFORMATION" for dates, time, and locations of the hearings.

**ADDRESSES:** Written comments should be sent to Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609-2486; or Robert K. Mahood,

Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407-4699.

**FOR FURTHER INFORMATION CONTACT:** Wayne E. Swingle, Gulf of Mexico Fishery Management Council, 813-228-2815; or Robert K. Mahood, 803-571-4366.

**SUPPLEMENTARY INFORMATION:** Draft Amendment 5 to the Coastal Migratory Pelagic FMP will address the following measures: (1) Extend the management area through the Mid-Atlantic Council's area of jurisdiction; (2) identify new problems in the fishery and revise objectives; (3) revise the fishing year for Gulf Spanish mackerel; (4) revise the definition of "overfishing"; (5) provide that the South Atlantic Council will be responsible for preseason adjustments of TACs and bag limits for the Atlantic migratory groups of mackerel while the Gulf Council will be responsible for Gulf migratory groups; (6) continue to manage the two recognized Gulf migratory groups of kind mackerel as one until management measures appropriate to the eastern and western groups can be determined; (7) reallocate Gulf Spanish mackerel between recreational and commercial fishermen; (8) redefine recreational bag limits as daily limits; (9) redefine qualifications to obtain a commercial permit; (10) prohibit the sale of king mackerel taken under a bag limit; (11) provide trip limits for commercial Spanish mackerel vessels; (12) specify that Gulf king mackerel may be taken only by hook-and-line and run-around gill nets; (13) impose a bag limit of two cobia per person per day; (14) establish a minimum size of 12-inch fork length or 14-inch total length for king mackerel; (15) provide management for dolphin; and (16) include a definition of "conflict" to provide guidance to the Secretary of Commerce.

All hearings will begin at 7:00 p.m., and will adjourn at 10:00 p.m., local time for each area. The hearings are scheduled as follows:

Sunday, October 22, 1989—

Holiday Inn, Beachside, North  
Roosevelt Boulevard, Key West,  
Florida

Monday, October 23, 1989—

Texas A&M Research and Extension  
Center, Highway 44 (four miles west  
of the airport), Corpus Christi,  
Texas

Broward County Government Center,  
115 South Andrews Avenue, Room  
515, Ft. Lauderdale, Florida

Holiday Inn, Sunshine Parkway, 7151  
Okeechobee Road, Rooms A & B, Ft.  
Pierce, Florida

Tuesday, October 24, 1989—

Riviera Utilities, Kilowatt Room, 413  
East Laurel Avenue (Highway 98,  
Foley, Alabama

Holiday Inn, Oceanfront, 1617 First  
Street North, Jacksonville, Florida

Wednesday, October 25, 1989—

Best Western Bayside Inn, Bay Room,  
711 West Beach Drive, Panama City,  
Florida

Quality Inn, 490 New Jesup Highway,  
Brunswick, Georgia

Thursday, October 26, 1989—

Holiday Inn, Downtown, 121 West  
Boundary Street, Savannah, Georgia

Friday, October 27, 1989—

Holiday Inn, South Forest Beach  
Drive, Hilton Head Island, South  
Carolina

Saturday, October 28, 1989—

Quality Royale Beach Cove Inn, 4800  
South Ocean Boulevard, North  
Myrtle Beach, South Carolina

Monday, October 30, 1989—

City Hall Auditorium, 300 Municipal  
Drive, Madeira Beach, Florida  
New Hanover County Courthouse, 320  
Chestnut Street, Room 302,  
Wilmington, North Carolina

Tuesday, October 31, 1989—

Duke Auditorium, Duke Marine  
Laboratory, Pivers Island, Beaufort,  
North Carolina

Wednesday, November 1, 1989—

Nichols State University, Powell  
Auditorium, Thibodaux, Louisiana  
Marine Resource Center, Airport  
Road, Manteo, North Carolina

Thursday, November 2, 1989—

Lake Wright Quality Inn, 6280  
Northampton Boulevard, Room MR-  
1, Norfolk, Virginia.

Dated: October 2, 1989.

David S. Crestin,

Deputy Director, Office of Fisheries  
Conservation and Management, National  
Marine Fisheries Service.

[FR Doc. 89-23652 Filed 10-5-89; 8:45 am]

BILLING CODE 3510-22-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Amendment of Export Visa Requirements for Certain Cotton and Man-Made Fiber Textile Products Exported From Indonesia

October 3, 1989.

**AGENCY:** Committee for the  
Implementation of Textile Agreements  
(CITA).

**ACTION:** Issuing a directive to the  
Commissioner of Customs amending  
visa requirements.

**EFFECTIVE DATE:** October 15, 1989.

**FOR FURTHER INFORMATION CONTACT:**  
Jennifer Tallarico, International Trade  
Specialist, Office of Textiles and  
Apparel, U.S. Department of Commerce,  
(202) 377-4212.

#### 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).

Coverage of the export visa system  
between the Governments of the United  
States and Indonesia is being extended  
to include certain merged categories,  
produced or manufactured in Indonesia  
and exported from Indonesia on and  
after October 15, 1989.

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 52 FR 20134, published on May 29,  
1987.

Auggie D. Tantillo,  
Chairman, Committee for the Implementation  
of Textile Agreements.

Committee for the Implementation of Textile  
Agreements

October 3, 1989

Commissioner of Customs,  
Department of the Treasury, Washington,  
D.C. 20229.

Dear Mr. Commissioner: This directive  
amends, but does not cancel, the directive  
issued to you on May 19, 1987, by the  
Chairman, Committee for the Implementation  
of Textile Agreements. You were directed to  
prohibit entry and withdrawal from  
warehouse for consumption in the United  
States of certain cotton, wool and man-made  
fiber textile products, produced or  
manufactured in Indonesia for which the  
Government of Indonesia had not issued an  
appropriate export visa.

Effective on October 15, 1989, the directive  
of May 19, 1987 is amended further to include  
cotton and man-made fiber textile products in  
the following merged categories, produced or  
manufactured in Indonesia and exported  
from Indonesia on and after October 15, 1989:

Merged Categories: 334/335, 336/636,  
351/651, 619/620, 625/626/627/628/629

Shipments entered or withdrawn from  
warehouse on or after October 15, 1989 and  
exported from Indonesia on and after  
October 15, 1989 which are not accompanied  
by an appropriate export visa shall be denied  
entry and a new visa or visa waiver must be  
obtained.

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. 89-23700 Filed 10-5-89; 8:45 am]

BILLING CODE 3510-DR-M

### Adjustments of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Malaysia

October 3, 1989.

**AGENCY:** Committee for the  
Implementation of Textile Agreements  
(CITA).

**ACTION:** Issuing a directive to the  
Commissioner of Customs increasing  
limits.

**EFFECTIVE DATE:** October 4, 1989.

**FOR FURTHER INFORMATION CONTACT:**  
Kimbang Pham, 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 or  
call (202) 343-6496. 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 Categories 351/  
651 and 647/648 are being increased for  
carryover.

A description of the textile and  
apparel categories in terms of HTS  
numbers is available in the **Correlation:**  
Textile and Apparel Categories with the  
Harmonized Tariff Schedule of the  
United States (see **Federal Register**  
notice 53 FR 44937, published on  
November 7, 1988). Also see 53 FR 49901,  
published on December 12, 1988.

The letter to the Commissioner of  
Customs and the actions taken pursuant  
to it are not designed to implement all of  
the provisions of the bilateral  
agreement, but are designed to assist  
only in the implementation of certain of  
its provisions.

Auggie D. Tantillo,  
Chairman, Committee for the Implementation  
of Textile Agreements.

Committee for the Implementation of Textile  
Agreements

October 3, 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 December 6, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the period which began on January 1, 1989 and extends through December 31, 1989.

Effective on October 4, 1989, the directive of December 6, 1988 is being amended to increase the limits for the following categories, under the terms of the current bilateral textile and apparel agreement between the Governments of the United States and Malaysia:

Category	Adjusted twelve-month limit <sup>1</sup>
351/651 .....	168,371 dozen
647/648 .....	1,085,964 dozen of which not more than 782,969 dozen shall be in Category 647-K <sup>2</sup> and not more than 782,969 dozen shall be in Category 648-K <sup>3</sup>

<sup>1</sup> The limits have not been adjusted to account for any imports exported after December 31, 1988.

<sup>2</sup> In Category 647-K, only HTS numbers 6103.23.0040, 6103.29.1020, 6103.43.1520, 6103.43.1540, 6103.49.1020, 6103.49.3014, 6112.12.0050, 6112.19.1050, 6112.20.1060, 6113.00.0045, 6103.23.0045, 6103.29.1030, 6103.43.1550, 6103.43.1570 and 6103.49.1060.

<sup>3</sup> In Category 648-K, only HTS numbers 6104.23.0032, 6104.23.0034, 6104.29.1030, 6104.29.1040, 6104.29.2038, 6104.63.2010, 6104.63.2025, 6104.63.2030, 6104.63.2060, 6104.69.2010, 6104.69.2020, 6104.69.3026, 6112.12.0060, 6112.19.1060, 6112.20.1070, 6113.00.0050 and 6117.90.0048.

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. 89-23659 Filed 10-5-89; 8:45 am]

BILLING CODE 3510-DR-M

### Amendment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

October 3, 1989.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs increasing limits.

**EFFECTIVE DATE:** October 11, 1989.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, 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 Government of the United Mexican States requested increases in the current Special Regime limit for Categories 359-C/659-C and the designated consultation level for Category 359-0. The United States Government has agreed to the increases.

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 52461, 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 bilateral agreement, 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

October 3, 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 December 22, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns, among other things, imports of certain cotton and man-made fiber textiles and textile products, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1989 and extends through December 31, 1989.

Effective on October 11, 1989, the directive of December 22, 1988 is amended further to increase the limit for Categories 359-C/659-C and 359-0, as follows:

Category	Amended twelve-month limit <sup>1</sup>
359-C/659-C <sup>2</sup> .....	1,400,000 kilograms
359-0 <sup>3</sup> .....	1,100,000 kilograms
Non-special regime category sublimit 359-C/659-C .....	180,880 kilograms

<sup>1</sup> The limits have not been adjusted to account for any imports exported after December 31, 1988.

<sup>2</sup> In Categories 359-C/659-C, only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 in Category 359-C; and 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010 in Category 659-C.

<sup>3</sup> In Category 359-0, all HTS numbers except 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 in Category 359-C.

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. 89-23659 Filed 10-5-89; 8:45 am]

BILLING CODE 3510-DR-M

### COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

#### Procurement List 1989; Proposed Additions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Proposed additions to procurement list.

**SUMMARY:** The Committee has received proposals to add to Procurement List 1989 commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** November 6, 1989.

**ADDRESS:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to

Procurement List 1989, which was published on November 15, 1988 (53 FR 46018):

#### Commodities

*Strap, Webbing*

5340-00-235-4432

5340-00-235-4434

5340-00-451-8157

*Light, Damage Control Helmet*

6230-01-285-4396

*Compound, Water Displacing*

6850-00-142-9389

6850-00-142-9409

*Fluid, Deicing-Defrosting*

6850-00-835-0484

*Fluid, Penetrating*

6850-00-508-0076

6850-00-973-9091

6850-00-985-7180

*File, Work Organizer*

7520-00-286-1724

7520-00-286-1725

7520-00-286-1726

#### Services

Commissary Warehouse Service  
Nellis Air Force Base, Nevada

Publications Distribution, Pacific

Northwest Research Station (PNW),  
Research Information Service, 319 SW  
Pine Street, Portland, Oregon.

E.R. Alley, Jr.,

*Deputy Executive Director.*

[FR Doc. 89-23683 Filed 10-5-89; 8:45 am]

BILLING CODE 6820-33-M

#### Procurement List 1989 Additions and Deletion

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Additions to and deletion from procurement list.

**SUMMARY:** This action adds to and deletes from Procurement List 1989 services to be provided by workshops for the blind or other severely handicapped.

**EFFECTIVE DATE:** November 6, 1989.

**ADDRESS:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milman (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** On July 14 and August 11, 1989, the Committee for Purchase from the Blind and Other

Severely Handicapped published notices (54 FR 29768 and 33051) of proposed additions to and deletion from Procurement List 1989, which was published on November 15, 1988 (53 FR 46018).

#### Additions

No comments were received concerning the proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified workshops to provide the services at a fair market price and impact of the additions on the current or more recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the services listed.

c. The actions will result in authorizing small entities to provide the services procured by the Government.

Accordingly, the following services are hereby added to Procurement List 1989:

#### Services

Janitorial/Custodial, U.S. Border Station, International Bridge Plaza, Sault Ste.-Marie, Michigan.

Janitorial/Custodial, U.S. Army Reserve Center, DePace Building, Boot and Chestnut Streets, Downingtown, Pennsylvania.

Janitorial/Custodial, U.S. Army Reserve Center, 1020 Sandy Street, Norristown, Pennsylvania.

Janitorial/Custodial, U.S. Army Reserve Center, Potshop and Berks Road, Worcester, Pennsylvania.

#### Deletion

After consideration of the relevant matter presented, the Committee has determined that the service listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

Accordingly, the following service is hereby deleted from Procurement List 1989:

*Assembly, Food Packet, Assault Ration*

8970-01-225-6504

E. R. Alley, Jr.,

*Deputy Executive Director.*

[FR Doc. 89-23684 Filed 10-5-89; 8:45 am]

BILLING CODE 6820-33-M

#### DEPARTMENT OF EDUCATION

##### Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed information collection requests.

**SUMMARY:** The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

**DATES:** Interested persons are invited to submit comments on or before November 6, 1989.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** Margaret B. Webster (202) 732-3915.

**SUPPLEMENTARY INFORMATION:** Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: October 3, 1989.

Carlos U. Rice,

Director, for Office of Information Resources Management.

#### Office of Bilingual Education and Minority Languages Affairs

Type of Review: NEW.

Title: Title VII Bilingual Fellows Supply and Demand Study.

Frequency: One time.

Affected Public: Individuals or households; State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations.

#### Reporting Burden:

Responses: 1,394

Burden Hours: 1,037

#### Recordkeeping Burden:

Recordkeepers: 0

Burden Hours: 0

**Abstract:** This study is designed to collect empirical data that will be used by the Department and the U.S. Congress to assess whether or not the number of fellowships awarded under the Bilingual Fellowship Program adequately meets the need for individuals trained in bilingual related fields of education. These data will assist the Department in formulating its recommendations to Congress with regards to the number of Fellows who should be supported on an annual basis to meet the need for well trained personnel.

[FR Doc. 89-23677 Filed 10-5-89; 8:45 am]

BILLING CODE 4000-1-M

#### Office of Postsecondary Education

##### Availability of the 1989-90 National Defense and Perkins (National Direct) Student Loan Program Directory of Designated Low-Income Schools

**AGENCY:** Department of Education.

**ACTION:** Notice of availability of the 1989-90 National Defense and Perkins (National Direct) Student Loan Program Directory of Designated Low-Income Schools.

**SUMMARY:** The Secretary announces that the 1989-90 National Defense and

Perkins (National Direct) Student Loan Program Directory of Designated Low-Income Schools (Directory) is now available at institutions of higher education participating in the Perkins Loan Program, State and Territory Departments of Education and the United States Department of Education. Under the National Defense, National Direct and Perkins Loan programs, a borrower may have a portion of his or her loan cancelled if the borrower teaches full-time for a complete academic year in a selected elementary or secondary school having a high concentration of students from low-income families. In the 1989-90 Directory, the Secretary lists, on a State-by-State and Territory-by-Territory basis, the schools in which a borrower may teach during the 1989-90 school year to qualify for cancellation benefits.

**DATE:** The Directory is available.

**ADDRESS:** Information concerning specific schools listed in the Directory may be obtained from Ronald W. Allen, Campus-Based Programs Branch, Division of Program Operations and Systems, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW. (Room 4651, ROB-3), Washington, DC 20202-5453, Telephone (202) 732-3730.

**FOR FURTHER INFORMATION CONTACT:** Directories are available at (1) each institution of higher education participating in the Perkins Loan Program; (2) each of the fifty-seven (57) State and Territory Departments of Education; and (3) the U.S. Department of Education.

**SUPPLEMENTARY INFORMATION:** The Secretary selects the schools which qualify the borrower for cancellation under the procedures set forth in 34 CFR 674.53 and 674.54 of the National Defense, National Direct and Perkins Loan Program regulations.

The Secretary has determined that for the 1989-90 academic year, full-time teaching in the schools set forth in the 1989-90 Directory qualifies a borrower for cancellation.

The Secretary is providing the Directory to each institution participating in the Perkins Loan Program. Borrowers and other interested parties may check with their lending institution, the appropriate State Department of Education, or the Office of Postsecondary Education of the Department of Education concerning the identity of qualifying schools for the 1989-90 academic year.

The Office of Postsecondary Education retains, on a permanent basis, copies of all past and current Directories.

(Catalog of Federal Domestic Assistance Number 84.037; National Defense, National Direct and Perkins Loan Cancellations)

Dated: September 29, 1989.

William L. Moran,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 89-23676 Filed 10-5-89; 8:45 am]

BILLING CODE 4000-01-M

#### DEPARTMENT OF ENERGY

##### Finding of No Significant Impact; Gas Reburning-Sorbent Injection Project at Springfield City Water, Light, and Power Lakeside Station

**AGENCY:** U.S. Department of Energy.

**ACTION:** Finding of no significant impact.

**SUMMARY:** The Department of Energy (DOE) has prepared an environmental assessment (EA), DOE/EA-0381, for gas reburning-sorbent injection (GR-SI) at City Water, Light, and Power's Lakeside Station, Boiler No. 7. Based on the analyses in the EA, DOE has determined that the proposed action is not a major Federal action significantly affecting the quality of the human environment, within the meaning of the National Environmental Policy Act (NEPA) of 1969. Therefore, the preparation of an Environmental Impact Statement is not required and the Department is issuing this Finding of No Significant Impact (FONSI).

**COPIES OF THE EA ARE AVAILABLE FROM:** Dr. Earl Evans, Office of Clean Coal Technology, Pittsburgh Energy Technology Center, P.O. Box 10940, Pittsburgh, Pennsylvania 15236-0940, 412-892-5709.

**FOR FURTHER INFORMATION CONTACT:** Carol Borgstrom, Director, Office of NEPA Project Assistance, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202-586-4600.

**PROPOSED ACTION:** The proposed action is a demonstration project involving co-firing pulverized coal with natural gas in combination with sorbent injection at CWLP Lakeside Station, Boiler No. 7. The proposed action is part of DOE's Clean Coal Technology Program, which is designed to evaluate emerging technologies to displace oil and natural gas or to utilize coal more cleanly, efficiently, and economically than currently available technology. The Energy and Environmental Research Corporation (EER) would conduct the demonstration project at Lakeside Station, Springfield, Illinois Unit No. 7, a 33 MWe cyclone-fired boiler.

**BACKGROUND:** In December 1985, Congress made funds available for a Clean Coal Technology (CCT) Program in Public Law No. 99-190 "for the purpose of conducting cost-shared Clean Coal Technology projects for the construction and operation of facilities to demonstrate the feasibility for future commercial applications of such technology \* \* \*" and authorized DOE to conduct the CCT program. DOE issued a Program Opportunity Notice (PON) on February 17, 1986, to solicit proposals for conducting cost-shared CCT demonstrations. The EER proposal for a gas reburning-sorbent injection (GR-SI) demonstration at Lakeside Station was one of nine selected by the DOE for negotiation. EER and DOE signed Cooperative Agreement No. DE-FC22-87PC79796 in June 1987. Co-funding for the project is being provided by the Gas Research Institute (GRI) and the Illinois Department of Energy and Natural Resources (ENR).

The combination of technologies to be demonstrated, gas reburning with sorbent injection, involves introduction of natural gas into the boiler above the main heat release zone. In the upper part of the furnace which is downstream of this zone, burnout air and calcium-based sorbent are injected into the gas stream. Gas reburning is effective in the reduction of NO<sub>x</sub> emissions to molecular nitrogen (N<sub>2</sub>). The sorbent injected into the flue gas stream reacts with gas phase SO<sub>2</sub>/SO<sub>3</sub> to form calcium sulfate. The calcium sulfate is subsequently removed by the plant particulate control equipment.

The Lakeside Station and the adjacent Daliman Station occupy a 75-acre site on the northwest shore of Lake Springfield, in the Southeast section of the city of Springfield in Sangamon County, Illinois.

**ENVIRONMENTAL IMPACTS:** Potential environmental consequences of the proposed action were analyzed for both construction activities and plant operation.

#### Construction

Minor fugitive dust emissions from an 0.1 acre area, where equipment installation and minor landscaping are planned, is expected. Transportation effects would be negligible with an increase from the existing traffic of 120 to 121 trucks per day at the site. Construction noise would be short-term and characteristic of an already heavily industrialized site. There are a few residences near the plant. A 1400-foot natural gas pipeline would be built entirely on-site and would temporarily disturb approximately an acre of

existing roadway and grass-covered property.

No increase in soil erosion is expected and there will be no adverse impacts to archaeological, cultural, or historical resources. Construction labor force requirements of less than 20 personnel would be provided from an ample local workforce.

#### Operation

Once operational, emission rates of NO<sub>x</sub> and SO<sub>2</sub> are expected to decrease by 60 percent and 50 percent respectively. The particulate emission rate from Unit 7 is expected to remain unchanged but total particulate emissions will increase slightly due to a 1 percent higher capacity factor. Fugitive dust emissions from transportation and storage of sorbents will be controlled by a dustless, pneumatic handling system and fully enclosed tanker trucks. Coal pile runoff will be unchanged and there will be a small reduction in plant water use. The amount of bottom ash will be less and continue to be disposed in the ash pond, but the amount of GR-SI fly ash will increase so that there will be an increase in solid waste disposal. The fly ash wastes will be transported to a landfill permitted by the Illinois EPA to accept this waste type. The proposed action will not impact any federally-listed threatened or endangered species and no ecologically sensitive areas will be disrupted.

**ALTERNATIVES CONSIDERED:** An overall strategy for compliance with the National Environmental Policy Act (NEPA) was developed for the CCT Program consistent with the Council on Environmental Quality NEPA regulations (40 CFR parts 1500-1508) and the DOE guidelines for compliance with NEPA (52 FR 47662, December 15, 1987). This strategy includes both programmatic and project-specific environmental impact considerations, during and subsequent to the selection process.

This strategy has three major elements. The first involves preparation of a comparative programmatic environmental impact analysis, based on information provided by the offerors and supplemented by DOE, as necessary. This environmental analysis ensures that relevant environmental consequences of the CCT Program and reasonable programmatic alternatives are evaluated in the selection process.

The second element involves preparation of a pre-selection project-specific environmental review based on project-specific environmental data and analyses that offerors supplied as a part of their proposals. This analysis

contained a discussion of the site-specific environmental, health, safety, and socioeconomic issues associated with the demonstration project. It included, to the maximum extent possible, a discussion of alternative sites and/or processes reasonably available to the offeror, a discussion of the environmental impacts of the proposed project and practical mitigating measures, and a list of permits, to the extent known, that must be obtained to implement the proposal. It also contained the strengths and weaknesses of each proposal relative to the demonstration project environmental and site-related criterion. The third element provides for preparation by DOE of site-specific documents for each project selected for financial assistance under the PON.

In the EA, DOE considered the following alternatives to the proposed action of a demonstration project involving co-firing pulverized coal with natural gas in combination with sorbent-injection and/or coal cleaning at CWLP Lakeside Station, Boiler No. 7: No action, alternative technologies, and alternative sites.

Under the no action alternative, the GR-SI technologies would not be installed at Lakeside Station. Environmental conditions would remain the same and the beneficial NO<sub>x</sub> and SO<sub>2</sub> reductions would not be realized. DOE would be unable to evaluate GR-SI technology on a full-scale utility boiler and the goals of the Clean Coal Technology Program would not be advanced.

Likewise, installation of alternative emission control technologies would not provide DOE with information on the effectiveness of GR-SI. In particular, information would be lacking on the effect of GR-SI with a cyclone-fired boiler. Installing alternative technologies is not a practical option.

Two alternative sites, Edwards and Hennepin Stations, are considered by the applicant (EER) to be suitable for installation of GR-SI technologies. The environmental impacts of installing the GR-SI process at these alternative sites are evaluated in independent NEPA compliance actions. The units suitable for retrofit at these stations are front-wall-fired and tangentially-fired, respectively, and would not demonstrate the GR-SI technology, in a cyclone-fired unit.

Although Lakeside Station, Hennepin Station, and Edwards Station are located near the Illinois River, they are at a substantial distance from one another; therefore, cumulative impacts

from development at two or even three locations is not expected.

**FLOODPLAIN STATEMENT OF FINDINGS:**

The GR-SI project will be conducted in Unit 7 of Lakeside Station. Coal combustion and flue gas cleaning wastes are currently transported to an on-site waste disposal area which is within the 100-year floodplain. During the GR-SI project the bottom ash will continue to be sluiced to the ash pond but the amount of ash will be slightly less. However, the GR-SI fly ash will not be disposed in the ash pond, but will be disposed of in a permitted off-site landfill. A Floodplain/Wetlands Involvement Notice for the project was published in the *Federal Register*, Volume 54, Number 45, Thursday, March 9, 1989. No comments were received in reply to the notice. On the basis of the floodplain assessment in the Environmental Assessment (EA-0381), Appendix A, DOE has determined that there will be only a beneficial impact to the floodplain due to the decreased amount of waste that will be disposed of in the ash pond. All actions will be in conformity with local floodplain protection standards and the requirements of the Illinois Department of Transportation and the U.S. Army Corps of Engineers pertaining to floodplains.

**Determination**

The proposed action, a demonstration project involving co-firing pulverized coal with natural gas in combination with sorbent-injection and/or coal cleaning at CWLP Lakeside Station, Boiler No. 7, does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act. This finding is based on the analysis in the EA. Therefore, an Environmental Impact Statement for the proposed action is not required.

Issued in Washington, DC, on September 28, 1989.

Raymond P. Berube,

*Acting Assistant Secretary, Environment, Safety and Health.*

[FR Doc. 89-23710 Filed 10-5-89; 8:45 am]

BILLING CODE 8450-01-M

**Alaska Power Administration**

**Eklutna Project, Order Approving an Extension of Power Rates on a Temporary Basis**

**AGENCY:** Alaska Power Administration, DOE.

**ACTION:** Notice of an extension of power rates—Eklutna Project, Rate Schedules A-F9, A-N10, and A-W1.

**SUMMARY:** Notice is hereby given that the Deputy Secretary approved on September 26, 1989, Rate Order No. APA-8 which extends the present power rates for the Eklutna Project. This is a temporary rate action effective October 1, 1989, for a period of up to 12 months.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gordon J. Hallum, Chief, Power Division, Alaska Power Administration, P.O. Box 020050, Juneau, AK 99802-0050, (907) 586-7405.

**SUPPLEMENTARY INFORMATION:** On July 28, 1989, the Alaska Power Administration (APA) published a *Federal Register* notice of its intention to seek a 5-year extension of the present power rate for the Eklutna Project and included comments on the proposal. The present rates are 1.9 cents per kilowatthour for firm energy, 1.0 cents per kilowatthour for nonfirm energy, and 0.03 cents per kilowatthour for wheeling. The rates were approved by FERC in 1984 for a period ending September 30, 1989.

Significant objections to the 5-year extension were encountered on grounds that a rate reduction may be in order if APA's revenue and cost estimates are correct.

In view of these objections, APA proposed a temporary extension of the existing Eklutna rates to allow for additional studies and development of a new rate proposal. Authority for such temporary extensions is provided in 10 CFR 903.23(b).

Following review of APA's proposal within the Department of Energy, I approved on September 28, 1989, Rate Order No. APA-8 which extends the present Eklutna rates for up to 12 months beginning October 1, 1989.

Issued at Washington, DC, September 28, 1989.

W. Henson Moore,

*Deputy Secretary.*

In the Matter of: Alaska Power Administration—Eklutna Project Power Rates

**Order Approving Power Rate Extension on a Temporary Basis**

[Rate Order No. APA-8]

This is a temporary rate extension. It is made pursuant to the authorities in 10 CFR 903.23(b).

*Background*

The Eklutna Project was completed by the U.S. Bureau of Reclamation in 1955. The Alaska Power Administration has operated and maintained the project since 1967. The Eklutna Project is a

single-purpose project comprised of a dam, reservoir, 30,000-kw hydroelectric plant, 45 miles of 115-kV transmission lines, and three substations serving the Anchorage and Palmer areas. All project costs are allocated to power. The entire output of the project is under contract with three preference customers in the Anchorage-Palmer area, pursuant to a 1969 negotiated operating agreement with its three customers. Allocations are: 25,500,000 kWh to Matanuska Electric Association; 45,900,000 kWh to Chugach Electric Association; and the remaining 81,600,000 kWh to the Anchorage Municipal Light and Power. All allocations are on a take-or-pay basis. The allocations are subject to adjustment due to extended curtailment of service from uncontrollable forces, including inadequate supply of water for power generation.

Rate Schedules A-F9, A-N10 and A-W1 now in effect for Eklutna Project were confirmed and approved by order of the Federal Energy Regulatory Commission, Docket No. EF84-1011-000 issued December 27, 1984. The rate schedules expire September 30, 1989.

Schedule A-F9 for wholesale firm power service, available to wholesales power customers, provides for a change of 19.0 mills/kWh for all firm energy with no capacity charge.

Schedule A-N10 for wholesale nonfirm power service, available to firm power customers, normally maintaining their own generating facilities, provides for a charge of 10.0 mills/kWh for all nonfirm energy, with no capacity charge.

Schedule A-W1 for wheeling power is a provision for a uniform wheeling charge of .3 mills/kWh for all three Eklutna Project customers.

Studies prepared by the Alaska Power Administration as required by DOE Order No. RA 6120.2 demonstrate that the present rates remain sufficient to meet revenue requirements for the next several years. On that basis, APA proposed a 5-year extension of the existing rates. That proposal encountered significant objections on grounds that a rate reduction may be in order as early as 1991 if APA's revenue and cost estimates are accurate.

To provide time for further studies and to develop a new rate proposal, APA requested a temporary extension of the existing rates for up to 12 months under the provisions of 10 CFR 903.23(b).

*Availability of Information*

Information regarding this rate extension, including study, comments, and other supporting material, is available for public review in the offices of the Alaska Power Administration.

**Order**

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby approve and extend on a temporary basis for a period of up to 12 months, effective October 1, 1989, Rate Schedules A-F9, A-N10, and A-W1.

Issued at Washington, DC, the 28th day of September 1989.

W. Henson Moore,

Deputy Secretary.

[FR Doc. 89-23709 Filed 10-5-89; 8:45 am]

BILLING CODE 6450-01-M

**Energy Information Administration****American Statistical Association Committee on Energy Statistics; Open Meeting**

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

**Name:** American Statistical Association's Committee on Energy Statistics, a utilized Federal Advisory Committee.

**Date and Time:** Thursday, November 2, 1989, 1:30 p.m.-5:00 p.m.; Friday, November 3, 1989, 9:00 a.m.-3:00 p.m.

**Place:** Grand Hyatt Hotel, 1000 H Street, NW., Washington, DC 20001.

**Contact:** Ms. Renee Miller, EIA Committee Liaison, U.S. Department of Energy, Energy Information Administration, EI72, Washington, DC 20585, Telephone: (202) 586-2088.

**Purpose of Committee:** To advise the Department of Energy, Energy Information Administration (EIA), on EIA technical statistical issues and to enable the EIA to benefit from the Committee's expertise concerning other energy statistical matters.

**Tentative Agenda:** Thursday, November 2, 1989

- A. Opening Remarks
- B. Major Topics:
  1. Report on National Energy Modeling System
  2. Fuel Switching
  3. The Energy Information Administration's International Data Program (Public Comments)

Friday, November 3, 1989

- 4. New Sample Designs
  - a. Monthly Electricity Sales and Revenue
  - b. Coal Prices
- 5. Chlorofluorocarbons
- 6. New Quality Audits (Public Comments)
- C. Topics for Future Meetings

**Public Participation:** The meeting is open to the public. The chairperson of the committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the committee either before or after the meeting. If there are any questions, please contact Ms. Renee Miller, EIA Committee Liaison, at the address or telephone number listed above or Ms. Wanda Thompson at (202) 586-2222.

**Transcripts:** Available for public review and copying at the Public Reading Room, (Room 1E-290), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6025, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday.

Issued at Washington, DC on October 2, 1989.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 89-23713, Filed 10-5-89; 8:45 am]

BILLING CODE 6450-01-M

**Office of Fossil Energy**

[FE Docket No. 89-60-NG]

**Northwest Pipeline Corp.; Application To Extend Existing Long-Term Authorization To Import Natural Gas From Canada**

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application to extend authority to import Canadian natural gas and request for an emergency order granting interim authority for such extension.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on August 22, 1989, of an application filed by Northwest Pipeline Corporation (Northwest) for authorization to extend Northwest's existing import authorization, which currently expires October 31, 1989, to allow continued importation of up to 152 MMcf per day of natural gas at Kingsgate, British Columbia for a primary term extending to October 31, 2004, and year and year thereafter.

Northwest further requests that in the event a permanent order cannot be issued by November 1, 1989, an emergency interim order pursuant to 10 CFR 590.403 be issued by that date authorizing Northwest's continued import of gas at Kingsgate so that it will be able to continue service to markets which are dependent upon the availability of gas at Kingsgate.

The application is filed pursuant to section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

**DATE:** Protests, motions to intervene, notices of interventions, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., November 6, 1989.

**ADDRESS:** Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:**

P. J. Fleming, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4819.  
Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, Washington, DC 20585, (202) 586-6667.

**SUPPLEMENTARY INFORMATION:**

Northwest currently is authorized, under DOE Opinion and Order No. 297, issued January 31, 1989, to import from Westcoast Energy, Inc. (Westcoast), up to 152 MMcf of natural gas per day for a term ending October 31, 1989, in accordance with the provisions of a September 23, 1960, Kingsgate Gas Sales Agreement, as amended. The gas imported by Northwest at Kingsgate is transported by Pacific Gas Transmission Company (PGT) for Northwest's account from Kingsgate to Northwest's sales delivery points located on PGT's pipeline and to the Starr Road (Spokane) interconnect between PGT's pipeline and Northwest's Spokane lateral. Historically, Northwest has relied upon the purchase of gas imported at Kingsgate to help meet its firm sales requirements under service agreements which were scheduled to terminate concurrently with Northwest's existing Kingsgate import authority on October 31, 1989. In the transition to becoming an open-access transporter of natural gas, Northwest states that it has completed negotiations for new firm sales agreements with its existing customers that extend Northwest's obligation to continue providing a significant volume of firm sales service through an initial term ending October 31, 2004.

Northwest and Westcoast have negotiated and executed a new amendment, dated August 15, 1989, to the Kingsgate gas sales agreement, a copy of which was appended to the application. The new agreement,

proposed to be effective November 1, 1989, extends the primary term of the agreement from October 31, 1989 to October 31, 2004, consistent with Northwest's new sales agreements. The new agreement also increases the minimum take provision under the Kingsgate gas sales agreement to require Northwest to take or pay for a minimum annual volume of gas equal to 35 percent of its actual system gas sales during each contract year, without a sales displacement adjustment. Northwest's minimum annual volume obligation can increase from 35 percent to as high as 45 percent of its actual system gas sales if such actual system gas sales exceed a 58 percent annual load factor with respect to the total of contract demand under Northwest's firm sales agreements. That is, subject to a 45 percent maximum, the 35 percent take-or-pay obligation will increase by one-half of the percentage that Northwest's actual system gas sales exceed the described 58 percent load factor.

Deficiency volumes in excess of three percent must be paid for at the end of the contract year, but can be made up the following contract year after Northwest has first purchased its minimum annual volume for that contract year. However, if Northwest is deficient in its annual purchases by no more than three percent in a contract year, that deficiency volume simply will be added on to the minimum annual volume for the following contract year. Similarly, up to three percent of excess purchases in a contract year would be subtracted from the following year's minimum annual volume.

Further, although contract demand under the Kingsgate gas sales agreement remains 151,731 Mcf per day of natural gas, if Northwest's daily take nominations would exceed the volume committed to Westcoast under its upstream supply arrangement (Coleman Agreement) that supports the sales agreement, Westcoast is only obligated to use reasonable efforts to obtain and deliver any excess gas on an interruptible basis.

Northwest states that the August 15 amendment continues the two-part demand/commodity pricing provisions under the currently authorized import arrangement. The total monthly demand charge is the aggregate of the following three components: (1) The demand charge billed by Alberta Natural Gas Company Ltd. to Westcoast for transportation of gas that Westcoast sells to Northwest at Kingsgate, net of certain revenue credits for interruptible services provided by Alberta Natural and Westcoast; (2) the Kingsgate

demand charge, which is comprised of Westcoast's fixed administrative costs allocated to sales to Northwest at Kingsgate, reduced by certain revenue credits for other Westcoast transportation and sales services to Kingsgate; and (3) the demand charge paid by Pan-Alberta Gas Ltd. (Pan-Alberta) to NOVA Corporation of Alberta (NOVA), which includes both the fixed cost component of the cost-of-service and the costs associated with interruptible charges paid by Pan-Alberta to NOVA for the transportation of gas sold by Pan-Alberta to Westcoast under the Coleman agreement for resale to Northwest at Kingsgate, less certain revenue credits to recognize the use of Pan-Alberta's transportation capacity on NOVA for other purposes. The total monthly demand charge is projected to be approximately seven million dollars (U.S.) annually.

The commodity charge for all volumes sold by Westcoast to Northwest at Kingsgate will be equal to the commodity price determined under the currently effective September 16, 1987, amendment to the Kingsgate gas sales agreement, subject to recalculation on January 1, 1990, and quarterly thereafter to maintain a market responsive price. The recalculation formula adjusts a base commodity charge of \$1.50 to reflect changes to the September/October 1987 base period level by two factors, namely, Westcoast's sales price to B.C. Gas Inc. (formerly British Columbia Hydro and Power Authority) for residential and commercial customers and the price of Bunker C fuel oil in the Seattle and Portland areas, with the first factor weighted at 55 percent and the second at 45 percent. The June 1989 commodity rate was approximately \$1.36 per MMBtu (U.S.). Northwest states however, that notwithstanding these pricing provisions, the annualized price of gas to Northwest shall not be less than the minimum price, if any, that may be prescribed for natural gas exports by Canada's National Energy Board.

According to the application, either party may initiate renegotiation of the commodity charge during calendar years 1991 and 1992 if, over a 12-month period ending July 1 of such calendar years, the total charge per MMBtu, calculated on a 100 percent load factor basis, paid by Northwest under the Kingsgate gas sales agreement is at least ten percent above or below the average price paid by Northwest for U.S. domestic market-out gas plus the average gathering and conditioning rates paid to Northwest by all shippers.

Commencing in 1993, either Northwest or Westcoast, prior to May 15 of any calendar year, may initiate renegotiation of the terms and conditions of the Kingsgate gas sales agreement. Additional renegotiation opportunities are triggered in the event of any of the following:

(1) Failure of Northwest to receive satisfactory regulatory approval for its new sales service agreements;

(2) Promulgation of Canadian gas export pricing policies that preclude the continuation of market-sensitive pricing of gas sold by Westcoast to Northwest;

(3) Issuance of Federal Energy Regulatory Commission orders, other than one denying flow through of gas costs on an as-billed basis, that effectively preclude Northwest from recovering in its regulated sales rates any portion of its Canadian gas costs; and

(4) Enactment of legislation or taking of other governmental or regulatory action beyond the reasonable control of either party that would be materially detrimental to either party's continued performance under the Kingsgate gas sales agreement.

In any of the foregoing renegotiation scenarios, if Northwest and Westcoast are unable to reach timely agreement on new terms and conditions, the Kingsgate gas sales agreement may be terminated.

To avoid a service disruption, Northwest requests an emergency interim import authorization in the event a permanent order cannot be issued prior to November 1, 1989. Since it is clear that the DOE cannot extend a full 30-day comment period and still issue a new decisional order in this docket by the end of October, the DOE may consider issuing an emergency interim order if such a measure is consistent with the public interest. However, DOE hereby places Northwest and other potential applicants on notice that failure to file an application in a timely fashion (in the case of a long-term import authorization at least four to six months before the need for the requested action) such to allow the regulatory process to proceed at a normal rate will not guarantee emergency treatment and may very well result in termination of import volumes during the regulatory review process.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6884, February 22, 1984). Other matters to be considered in making a public

interest determination in a long-term import proposal such as this include the need for the gas and security of the long-term supply. Parties that may oppose this application should comment in their responses on the issued of competitiveness, security of supply and need for the gas as set forth in the policy guidelines. The applicant asserts that this import arrangement is in the public interest because it is competitive, needed and its gas source will be secure. Parties opposing the arrangement bear the burden of overcoming this assertion.

#### NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the Federal Register (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

#### Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be

taken on the application. All protests, motion to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590.

Protest, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for an oral presentation should identify the substantial question or fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice in accordance with 10 CFR 590.316.

A copy of Northwest's application is available for inspection and copying from the Office of Fuels Programs Docket Room, Room 3F-056, at the

above address, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on September 29, 1989.

**Constance L. Buckley,**

*Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 89-23711 Filed 10-5-89; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. FE C&E 89-22; Cert. Notice—48]

#### Filing Certification of Compliance: Coal Capability of New Electric Powerplant

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Notice of filing.

**SUMMARY:** Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended, ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a), 42 U.S.C. 8311 (a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the Federal Register a notice reciting that the certification has been filed. Two owners and operators of a proposed new electric base load powerplant have filed a self certification in accordance with section 201(d). Further information is provided in the SUPPLEMENTARY INFORMATION section below.

**SUPPLEMENTARY INFORMATION:** The following companies have filed a self certification:

Name	Date received	Type of facility	Megawatt capacity	Location
Everett Energy Corporation North Falmouth, MA and EnDyna Power Corp., Hoboken, NJ	09-21-89	Combined cycle cogen	90	Everett, MA

Amendments to the FUA on May 21, 1987, (Pub. L. 100-42) altered the general prohibitions to include only new electric base load powerplants and to provide for the self certification procedure.

Copies of this self certification may be reviewed in the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, phone number (202) 586-6769.

Issued in Washington, DC, on September 28, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-23712 Filed 10-5-89; 8:45 am]

BILLING CODE 6450-01-M

## Office of Hearings and Appeals

### Issuance of Decisions and Orders During the Week of June 12 Through June 16, 1989

During the week of June 12 through June 16, 1989 the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

#### Appeals

##### *Knolls Action Project, 6/12/89, KFA-0299*

On May 12, 1989, the Knolls Action Project (KAP), filed an Appeal from a determination issued to it on April 7, 1989 by the Department of Energy's (DOE) Office of Naval Reactors (ONR). In that determination, the ONR denied portions of the KAP's request for information related to activities at the Knolls Atomic Power Laboratory (KAPL) pursuant to Freedom of Information Act (FOIA) Exemptions 1, 3, 4, 5 and 6. Since the names of individuals withheld pursuant to Exemption 6 were separate from the material currently classified, the OHA made an immediate determination on the ONR's withholding of these names. In considering the Appeal, the DOE found that the determination to withhold names of individuals pursuant to Exemption 6 was consistent with the FOIA and the DOE's implementing regulations. Accordingly, the DOE denied the KAP's Appeal.

*Knolls Action Project, et al., 6/14/89, KFA-0284 et al.*

Knolls Action Project and four other Appellants filed Appeals from partial denials by the Office of Naval Reactors of requests for information that they had submitted under the Freedom of Information Act. In considering Knolls Action Project's Appeal and the appropriate portions of the other Appeals, the DOE found that the deleted, non-classified portions of the requested document were properly withheld under Exemption 6. The remaining portions of the four other Appeals address the withholding of classified material under Exemptions 1 and 3, and will be determined in a separate Decision and Order.

#### Implementation of Special Refund Procedures

##### *Elias Oil Company, 6/14/89, KEF-0022*

The DOE issued a Decision and Order implementing a plan for the distribution of \$90,000 (plus accrued interest) received pursuant to an agreement entered into between the U.S. Department of Justice and two individuals: F. Lee Thorne (of Elias Oil Company) and Charles Pabian (of CITCO) on August 17, 1983. The DOE determined that the settlement fund should be distributed to CITCO customers that purchased diesel fuel during the months of February 1974, April 1974, and June 1975. The specific information to be included in Applications for Refund is set forth in the Decision.

#### Refund Applications

##### *Atlantic Richfield Company/ D.*

*Ciambelli or Marino Cuozzo, et al., 6/12/89, RF304-1605 et al.*

The DOE issued a Decision and Order concerning forty-six applications for refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. All of the applicants documented the volume of their ARCO purchases and were reseller/retailers requesting refunds of \$5,000 or less or end users. Therefore, each applicant was presumed injured. The refunds granted in this decision totaled \$73,309, including \$17,019 in accrued interest. *Atlantic Richfield Company/Zephyr, Inc., 6/14/89, RF304-2958*

The DOE issued a Decision and Order concerning an Application for Refund filed by Zephyr, Inc. (Zephyr) from a consent order fund made available by Atlantic Richfield Company (ARCO). Zephyr elected to limit its refund to the 41 percent mid-level presumption of injury, and, thus, was determined to have been injured in its purchases made during the period June 14, 1973 through January 27, 1981. In addition, Zephyr

documented its purchases from ARCO made between March 6, 1973 and June 13, 1973, and requested a full volumetric refund for those purchases. Under the procedures of the ARCO special refund proceeding, a reseller or retailer is not subject of any proof of injury requirements or presumption limits for purchases made during the period March 6, 1973 through June 13, 1973. Accordingly, the DOE concluded that Zephyr should receive its 41 percent presumption refund, plus a refund for the purchases it made during the March 6, 1973 through June 13, 1973 period. The total refund granted to Zephyr was \$68,155, representing \$52,333 in principal and \$15,822 in accrued interest.

##### *Crown Central Petroleum Corporation/ H. Brauns, Inc., et al., 6/13/89, RF313-112 et al.*

The DOE issued a Decision and Order considering applications filed by eight purchasers of Crown refined petroleum products in the Crown Central Petroleum Corporation special refund proceeding. Each applicant was found to be eligible for a refund based on the volume of products it purchased from Crown. The refund applications were granted using a presumption of injury procedure set forth in *Crown Central Petroleum Corp., 18 DOE ¶ 85,326 (1988)*. The total amount of refunds approved in this Decision was \$48,989, representing \$41,799 in principal plus \$7,190 in accrued interest.

##### *Dorchester Gas Corp./Marion Corp., 6/15/89, RF253-61*

The DOE issued a Decision concerning an application for refund in the Dorchester Gas Corporation refund proceeding submitted by the Marion Corp. Marion indicated that it purchased propane from Dorchester between August 18, 1973 and January 31, 1976. Marion did not attempt to demonstrate that it was disproportionately overcharged, but rather elected to base its refund on a presumption of injury. The refund granted in this Decision is \$7,434.

##### *Exxon Corporation/E.I. Dupont De Nemours and Company, 6/13/89, RF307-6646*

The DOE issued a Decision and Order concerning an Application for Refund filed by E.I. Dupont de Nemours and Co. in the Exxon Corporation special refund proceeding. The Applicant is a chemical manufacturer which purchased Exxon petroleum products during the consent order period. Because the Applicant was an end-user, the DOE determined that it was eligible to receive its full allocable share. Consequently, DuPont was

granted a refund of \$111,152 (\$93,429 in principal and \$17,723 in interest).

*Eastern Oil Co./Anthony Llanes, 6/14/89, RF306-5*

The DOE issued a Decision and Order in the Eastern Oil Co. special refund proceeding to Anthony Llanes (Llanes), a reseller of Eastern refined petroleum products. Llanes was identified in the Remedial Order issued to Eastern as a purchaser of Eastern products and had an allocable share greater than \$5,000. Llanes elected to limit his claim to the small claims threshold of \$5,000 and therefore did not need to provide further evidence of injury other than a certification that he was a regular purchaser from Eastern. Accordingly, Llanes received a total refund of \$6,137 (\$5,000 principal and \$1,137 interest). In this Decision, the DOE indicated that because a significant amount of time had passed since the commencement of the Eastern proceeding, it would no longer accept Applications for Refund in this proceeding after July 14, 1989.

*Exxon Corporation/Frank Black's Exxon Service, Inc., et al., 6/15/89, RF307-6532 et al.*

The DOE issued a Decision and Order concerning 50 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was a retailer of Exxon products whose allocable share is less than \$5,000. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is \$43,411 (\$36,489 principal plus \$6,922 interest).

*Exxon Corporation/Harmon & Lord, Inc., 6/12/89, RF307-4968*

The DOE issued a Decision and Order concerning an Application for Refund on behalf of Harmon & Lord, Inc. (Harmon) in the Exxon Corporation special refund proceeding. Harmon purchased directly from Exxon and was a reseller of Exxon products whose allocable share is less than \$5,000. The firm's Application was filed by the current majority holder of Harmon's stock, although she did not become the majority stockholder until after the end of the consent order period. Since Harmon is the corporate "individual" entitled to claim a refund based upon its purchases from Exxon, the DOE determined that its current majority stockholder is the appropriate party to represent Harmon in this proceeding. Therefore, the DOE determined that Harmon is eligible to receive a refund equal to its full allocable share. The amount of the refund granted in this Decision is \$5,493 (\$4,617 principal plus \$876 interest).

*Exxon Corporation/Louis Exxon Service, et al., 6/16/89, RF307-6231 et al.*

The DOE issued a Decision and Order concerning nine Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was either a reseller whose allocable share is less than \$5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is \$17,001 (\$14,290 principal plus \$2,711 interest).

*Exxon Corporation/Maple Hill Enco, et al., 6/13/89, RF307-1019 et al.*

The DOE issued a Decision and Order concerning 36 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased product directly from Exxon and was either a reseller whose allocable share is less than \$5,000 or an end-user of Exxon products. The DOE found that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is \$27,549 (\$23,156 principal plus \$4,393 interest).

*Exxon Corporation/Metropolitan Fuels Co., 6/13/89, RF307-5651, RF307-8067*

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Exxon Corporation special refund proceeding. Both Applications were based on the purchases of Exxon products by Metropolitan Fuels Company. One application, filed by Steuart Petroleum Company, the current owner of Metropolitan, was denied because the right to a refund was not transferred to Steuart from the previous owners. James T. Curtis filed the other application on behalf of himself and three former co-owners. They were found eligible to receive the refund because they were the owners of Metropolitan during the consent order period. The sum of the refund granted was \$5,997 (\$5,000 principal plus \$997 interest).

*Exxon Corporation/Minisink Valley Cent. Schools, et al., 6/12/89, RF307-2726 et al.*

The DOE issued a Decision and Order concerning 50 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was a retailer of Exxon products whose allocable share is less than \$5,000. The DOE determined that

each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is \$39,149 (\$32,908 principal plus \$6,241 interest).

*Exxon Corp./Paul L. Picco, 6/13/89, RF307-7840, RF307-7888*

The DOE issued a Decision and Order regarding two claims filed in the Exxon Corporation special refund proceeding for one refund with respect to purchases made by a former owner-operator of an Exxon service station. In accordance with the proposal of the attorneys for the parties, the refund of \$1,171 (\$976 principal and \$195 interest) was granted jointly to the former Exxon dealer's widow and daughter.

*Getty Oil Company/Ozark Truck Plaza, Inc. [Young], Ozark Truck Plaza [Easley], 6/12/89, RF265-1106, RF265-1109, RF265-1735, RF265-1736*

The DOE issued a Decision and Order concerning applications filed in the Getty Oil Company Special Refund Proceeding by the present and prior owners of Ozark Truck Plaza (Ozark), a retailer of motor gasoline and diesel fuel. Because Ozark had been sold in a transaction involving the unqualified transfer of all its common stock, the DOE held that the present owner was the party entitled to apply for any refund on the basis of Ozark's purchases of Getty gasoline and diesel fuel. In analyzing the Ozark application, the DOE found that the firm had documented the volume of its Getty motor gasoline and middle distillates purchases which it had made indirectly through the Tri-County Oil Company, a Getty jobber. The Ozark-Young refund was calculated based upon mid-range presumptions of injury adopted in *Getty Oil Company*, 15 DOE ¶ 85,064 (1986) and the procedures outlined in *Pioneer Corp./E.I. du Pont de Nemours & Co.*, 14 DOE ¶ 95,190 (1986). The refund totaled \$16,144 representing \$7,811 in principal and \$8,333 in interest. The application filed by the prior owner was dismissed.

*Gulf Oil Corporation/Carr's Gulf Service Station, Roberson's Gulf, 6/14/89, RF300-7422, RF300-10637*

The DOE issued a Decision and Order concerning two Applications for Refund submitted by Federal Refunds, Inc. (FRI) on behalf of Carr's Gulf Service Station and Roberson's Gulf in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. On April 12, 1989, the OHA issued a Decision and Order which stated that it will send refund checks of claimants represented by FRI in the Gulf refund proceeding directly to

the claimants, rather than to FRI. See *Gulf Oil Corporation/LeBlanc's Gulf Service*, 18 DOE ¶85,876 (1989) (*LeBlanc's*). In the present cases, the DOE found that FRI failed to provide any meaningful service to the applicants or to the refund process. Accordingly, for those reasons, as well as the reasons outlined in *LeBlanc's* the refund checks will be sent directly to the applicants considered in the Decision, rather than to FRI. The sum of the refunds granted in the Decision, which includes principal and interest is \$5,223.

*Gulf Oil Corporation/Eurico Candelario, et al.*, 6/13/89, RF300-8208 et al.

The DOE issued a Decision and Order concerning ten Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest is \$66,779.

*Gulf Oil Corporation/Riverfront Gulf Service, Inc., et al.*, 6/15/89, RF300-307 et al.

The DOE issued a Decision and Order concerning seven Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is \$14,546.

*Gulf Oil Corporation/Rocket Supply Corporation, Satellite Petroleum Corp., Hicks Oils & Hicksgas, Inc.*, 6/13/89, RF300-8345, RF300-8346, RF300-8347.

The DOE issued a Decision and Order concerning three Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by Rocket Supply Corporation, Satellite Petroleum Corp., and Hicks Oils & Hicksgas, Inc. Because the firms were under common ownership during the consent order period, and because their allocable share exceeds \$5,000, their applications were consolidated to apply the presumptions of injury. The three firms collectively purchased 138,095,092 gallons of covered Gulf products, and their Applications were approved under the 40 percent presumption of injury. The refund granted in this Decision, including accrued interest is \$48,952.

*Marathon Petroleum Co./Emerson Electric Co.*, 6/13/89, RF250-2742.

Emerson Electric Company filed an application for refund from a consent order fund made available by Marathon Petroleum Company. In considering that application, the DOE found that Emerson had not shown that any of the refined petroleum products upon which

the application was based originated with Marathon. Accordingly, the DOE concluded that granting Emerson a refund would not constitute restitution for injury from alleged Marathon violations. The refund application was therefore denied.

*Merle Oil Company, Inc.*, 6/14/89, RR272-34.

The DOE issued a Decision and Order concerning a Motion for Reconsideration filed by Merle Oil Company, Inc. (Merle) in the Subpart V crude oil refund proceedings. As a reseller of refined petroleum products during the period August 19, 1973 through January 27, 1981, Merle was required to demonstrate that it had been injured by crude oil overcharges; that is, that it absorbed the crude oil overcharges. Merle did not demonstrate that it was injured and therefore its original Application was denied in a Decision and Order on February 2, 1989. See *Fuels, Inc.*, 18 DOE ¶ 85,582 (1989). In its Motion for Reconsideration, Merle asserts that it was injured by crude oil overcharges and that its original Application should have been granted. However, Merle failed to demonstrate that it absorbed the crude oil overcharges. Thus, its Motion for Reconsideration was denied.

*Mobil Oil Corporation/Belle Vernon Oil Company, Suchko Gas & Oil*, 6/13/89, RF225-5289 et al.

The Department of Energy issued a Decision and Order concerning the applications for refund filed by Belle Vernon Oil Company and Suchko Gas & Oil in the Mobil Oil Corporation special refund proceeding. *Mobil Oil Corporation*, 13 DOE ¶ 85,339 (1986). The firms were related through ownership during the Mobil consent order period and they shared a contractual relationship with Mobil. With regard to Belle Vernon's claim, the DOE found that it was not eligible to receive a refund on all the volumes of product it claimed since some of those purchases were made for and by Suchko Gas on the contract of Belle Vernon. Furthermore, the DOE found that it would be inequitable to apply the \$5,000 small claims presumption separately on both claims because of the common ownership. The DOE determined that Paul Suchko, the part owner of one firm and the sole owner of the other, could not benefit from a refund in excess of \$5,000 due to the unusual history of the relationship between the two firms. The total refund granted to Paul Suchko was \$6,294 (\$5,000 in principal plus \$1,294 in interest). The total refund granted to his brother and part owner of Belle Vernon,

Andrew Suchko, was \$1,553 (\$1,234 in principal plus \$319 in interest).

*Mobil Oil Corporation/Dorazio's Mobil Service Station*, 6/13/89, RF225-10698

The DOE issued a Decision and Order granting the Application for Refund filed by Dorazio's Mobil Service Station in the Mobil Oil Corporation special refund proceeding. According to the procedures set forth in *Mobil Oil Corporation*, 13 DOE ¶ 85,339 (1985), Dorazio's a retailer of Mobil products, was found eligible for a refund based on the volume of gasoline it purchased from Mobil. The amount of the refund approved in this Decision and Order is \$364, representing \$289 in principal and \$75 in interest.

*Murphy Oil Corporation/Consumers Oil Co.*, 6/15/89, RF309-1310

The DOE issued a Supplemental Order in the Murphy Oil Corporation special refund proceeding, in which we granted a refund to Intercity Oil Co. based on Consumers Oil Co.'s purchases of petroleum products from Murphy. The DOE had previously granted a refund on these purchases to Arne Moores, the former owner of Consumers, but had rescinded it when it was discovered that Mr. Moore's sale of Consumers to Intercity had consisted of a sale of stock. Generally, the DOE has held that eligibility to receive a refund is transferred when a corporation is sold through a sale of stock. The DOE therefore granted a refund to Intercity, the purchase of Consumer's stock. As Intercity had already received a \$5,000 refund in this proceeding based on its own purchases, it was not eligible to receive another small claims refund. Accordingly, its total refund was calculated under the 40% presumption, and it was granted an additional refund of \$935 (\$794 in principal plus \$141 in interest).

*Murphy Oil Corporation/West Metarie Spur, et al.*, 6/13/89, RF309-1009 et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by 33 claimants in the Murphy Oil Corporation special refund proceeding. Each applicant documented its purchases of regulated petroleum products from Murphy and was found to be eligible for a refund from the Murphy consent order fund according to the procedures established in *Murphy Oil Corp.*, 17 DOE ¶ 85,782 (1988). The refunds approved in the Decision totaled \$90,107 (\$76,530 in principal plus \$13,577 in interest).

*Northeast Petroleum Industries, Inc./George E. Warren Corporation, et al.*, 6/15/89, RF264-01 et al.

The DOE issued a Decision and Order concerning 13 Applications for Refund filed by resellers or retailers of motor gasoline covered by a Consent Order that the DOE entered into with Northeast Petroleum Industries, Inc. Each applicant submitted information indicating the volume of its Northeast purchases. In nine of these claims, the applicants were eligible for a refund below the \$5,000 small claims threshold. In the remaining 4 claims, each of the applicants elected to limit its claim to \$5,000. The sum of the refunds approved in this Decision is \$60,886, representing \$34,213 in principal and \$26,673 in accrued interest.

*Shell Oil Company/Excelsior Auto Electric Shell, et al., 6/14/89, RF315-3502 et al.*

The DOE issued a Decision and Order granting 103 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the Applicants purchased + allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision Was \$66,643 (\$57,088 principal plus \$9,555 interest).

*Shell Oil Company/Hinkle Shell Service, et al., 6/14/89, RF315-3292 et al.*

The DOE issued a Decision and Order granting 88 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the Applicants purchased directly from Shell and was either a reseller whose allocable share was less than \$5,000 or an end-user of Shell products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a

proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision was \$66,643 (\$57,088 principal plus \$9,555 interest).

*Shell Oil Company/Pavia Shell Service, et al., 6/15/89, RF315-2800 et al.*

The DOE issued a Decision and Order granting 126 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the Applicants purchased directly from Shell and was either a reseller whose allocable share was less than \$5,000 or an end-user of Shell products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision was \$114,492 (\$98,073 principal plus \$16,419 interest).

*Shell Oil Company/Stamley Houston, et al., 6/15/89, RF315-2606 et al.*

The DOE issued a Decision and Order granting 126 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the Applicants purchased directly from Shell and was either a reseller whose allocable share was less than \$5,000 or an end-user of Shell products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision was \$107,681 (\$92,242 principal plus \$15,439 interest).

*Total Petroleum/Palcom Oil Company, 6/15/89, RF310-201*

The DOE issued a Decision and Order concerning an Application for Refund filed by Palcom Oil Company in which the firm sought a portion of the settlement fund obtained by the DOE through a consent order entered with Total Petroleum, Inc. Palcom was a motor gasoline retailer which operated four outlets in the Detroit, Michigan metropolitan area during the Total consent order period. After consultations with Total officials and an evaluation of the firm's method of estimating its purchase volumes, the DOE determined that Palcom's claim was reasonable and did not overstate the firm's actual level of motor gasoline purchases. Applying the standards established in *Total Petroleum, Inc., 17 DOE ¶ 85,542 (1988)*, the DOE determined that Palcom was eligible for a refund of \$9,009 (\$7,617 principal and \$1,392 interest).

*Tuscan Dairy Farms, Inc. et al., 6/3/89, RF272-31823 et al.*

The DOE issued a Decision and Order granting refunds in the Subpart V crude oil refund proceeding to 48 applicants based on their purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant was an end-user presumed to have been injured by the alleged overcharges. Each applicant submitted actual purchase volumes or reasonable estimates of its purchase volumes. The sum of the refunds granted in this Decision is \$99,248.

*Crude Oil End-Users*

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	No. of applicant	Total refund
C.R. & S. Construction et al	RF272-55800	6/14/89	146	\$16,681
Harsy Mine Services et al	RF272-58200	6/14/89	145	\$15,264
Jim Jauernig et al	RF272-57800	6/16/89	148	\$21,741
Larkin Co., Inc. et al	RF272-54000	6/14/89	165	\$17,444
Lee A. Hemmer et al	RF272-57401	6/14/89	153	\$20,619
Leroy Myers et al	RF272-53000	6/14/89	121	\$19,084
New Life Home/Youth for Christ et al	RF272-60600	6/16/89	121	\$17,249
Paula K. Stevens et al	RF272-61201	6/14/89	121	\$15,398
Robert F. Kibler Farm et al	RF272-60400	6/14/89	111	\$14,434
San Tan Tillage et al	RF272-55200	6/14/89	143	\$18,560

**Dismissals**

The following submissions were dismissed:

Name	Case No.
Abbott Oil Company	RF307-9820
Bean's Arco	RF304-3739
Binswanger Glass Company	RF272-75486

Name	Case No.
Bud Lord's Arco #1	RF304-9364
Donald's Service Station	RF304-9365
E.M. Haynes, Jr., Inc.	RF307-9891
Florida Center Gulf	RF313-44
Forlani's Garage	RF300-10375
Habel's Arco	RF307-9949
James R. Martin	RF304-9351
	RF272-1853

Name	Case No.
Mason's Exxon	RF307-9889
Mira Oil Company	RF304-5001
	RF304-5002
National Exxon	RF307-9831
Nott Company	RF272-53932
Parkway Gulf Service	RF272-71829
Ray's Arco	RF304-9363
Smith's Arco	RF304-9215

Name	Case No.
University Corporation for Atmospheric Research	RF272-68409
Vince's Tire Service	RF304-9384
40 West Gulf	RF300-157

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy*

*Guidelines*, a commercially published loose leaf reporter system.

Dated: September 28, 1989.

**George B. Breznay,**  
*Director, Office of Hearings and Appeals.*  
[FR Doc. 89-23715 Filed 10-5-89; 8:45 am]

BILLING CODE 6450-01-M

#### Cases Filed During the Week of August 25 Through September 1, 1989

During the Week of August 25 through September 1, 1989, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: September 28, 1989.

**George B. Breznay,**  
*Director, Office of Hearings and Appeals.*

#### LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of August 25 through September 1, 1989]

Date	Name and location of applicant	Case No.	Type of submission
Aug. 31, 1989	Joe E. Smith, Washington, DC	KEF-0146	Implementation of special refund procedures. If Granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R. Part 205, Subpart V, in connection with a July 8, 1983 final Order of the Federal Energy Regulatory Commission.
Aug. 31, 1989	John R. Penley, New York, NY	KFA-0314	Appeal of an information request denial. If Granted: John R. Penley would receive access to information regarding protest activities at the Savannah River Plant.
Aug. 31, 1989	Meridian Oil, Santa Fe Energy & Samedan Oil Corporation, Washington, DC.	KEF-0143, KEF-0144, KEF-0145	Implementation of special refund procedures. If Granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R. Part 205, Subpart V, in connection with refunds of Tertiary Incentive Program revenues made by Meridian Oil, Santa Fe Energy & Samedan Oil Corporation.
Aug. 31, 1989	William Albert Hewgley, Kingston, Tennessee	KFA-0315	Appeal of an information request denial. If Granted: The August 18, 1989 Freedom of Information/Privacy Act Request Denial issued by the DOE Oak Ridge Operations Office would be rescinded, and William Albert Hewgley would receive access to information from Martin Marietta Energy Systems, Inc.

#### REFUND APPLICATIONS RECEIVED

[Week of August 25 to September 1, 1989]

Date received	Name of refund proceeding/name of refund applicant	Case No.
8/25/89 thru 9/1/89	Crude oil refund applications received	RF272-75611 thru RF272-75632
8/25/89 thru 9/1/89	Atlantic Richfield refund applications received	RF304-10277 thru RF304-10291
8/25/89 thru 9/1/89	Shell oil refund applications received	RF315-6922 thru RF315-7056
8/28/89	National Helium/California	RQ3-529
8/29/89	Vickers/Oklahoma	RQ1-530
8/30/89	AJO Trading Corporation	RC272-69
8/30/89	W.K. Phipps Exxon	RF307-10048
8/30/89	Warren J. Peake	RF307-10049
8/30/89	Carl Jaax, Jr.	RA272-12
8/30/89	Grand Ave. Spur	RF307-1370

[FR Doc. 89-23714 Filed 10-5-89; 8:45 am]

BILLING CODE 6450-01-M

#### Western Area Power Administration

#### Intent To Prepare an Environmental Impact Statement, Flatiron-Erie 115-Kilovolt Transmission Line Upgrade Project, Colorado

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** Notice is hereby given that, in accordance with the National Environmental Policy Act of 1969 (NEPA) and Council on Environmental Quality regulations (40 CFR 1500-1508), the Western Area Power Administration (Western) intends to prepare an

environmental impact statement (EIS) on a proposed action to uprate the existing 31.5 mile-long Flatiron-Erie 115-kilovolt (kV) Transmission Line. The proposed project is located in Boulder, Larimer, and Weld Counties, Colorado, and passes through the city of Longmont. The proposed project consists of the replacement of approximately 50 existing wood pole H-frame structures with similar structures that would be 5- to 20-feet taller. The replacement of these structures would allow the Flatiron-Erie line to be operated at a maximum loading of 109 MVA (547 amperes). Presently, the line is limited to loadings of 66 to 85 MVA, depending on location. Little or no additional right-of-way (ROW) would be required for the transmission line, but additional ROW might be required for access roads.

The objective of the EIS and related studies will be to assess potential environmental impacts of the proposed project and alternatives. Alternatives to be investigated include, but are not limited to, no action, rerouting, undergrounding, and design options. Studies will include the assessment of possible impacts to vegetation and wildlife, threatened and endangered species, floodplains and wetlands, and critical habitats. Potential impacts to land uses, social and economic factors, and historic or prehistoric cultural resources will also be addressed.

A proposed Flatiron-Gunbarrel 230/115-kV Transmission Line Project, which included a portion of the Flatiron-Erie transmission line, was previously considered by Western. An environmental assessment (EA) was initiated for this proposed project. Public meetings held at that time identified a number of issues significant to area residents. These issues included potential health considerations from electric and magnetic fields, visual impacts, possible effects on property values, ROW encroachment, conflict with local construction ordinances, underground construction options, and additional routing options outside the city of Longmont. In order to more fully address these concerns and allow further public involvement in the planning process, Western suspended the EA process and began an EIS process.

Since that time, the entire project has been reassessed by Western and the participating utilities. Additional planning and system studies have resulted in the decision to delay the 230-kV portion of the previous proposed project. Western's 115-kV Flatiron-Erie

line requires near-term work to maintain its viability as a critical link in the region's existing transmission system. Western proposes to uprate the existing line as outlined above to accomplish this goal and will prepare an EIS to address the issues which have been raised. The 230-kV transmission line link will continue to be an option in overall regional transmission system planning, and will be addressed in a separate NEPA process if and when it becomes a definite proposal.

**DATES:** Initial public scoping and information meetings were held in 1987 and 1988 as part of the EA process on the Flatiron-Gunbarrel project as then proposed. Landowners having an assessment associated with the existing line were contacted by letter to inform them of these meetings, and public meeting notices were placed in local newspapers. The mailing list developed during this process will be updated for the Flatiron-Erie project to include landowners along the Gunbarrel-Erie portion of the line, and continually throughout the EIS process as interested parties are identified. Further public input will be solicited in future public meetings and a public hearing to be held during the EIS process. Landowners and interested parties will again be notified by letter, and by notices published in local newspapers in advance of the meetings. Western will also ask Federal, State, and local agencies to provide issues and concerns for consideration in the EIS.

The first scoping meeting for the proposed Flatiron-Erie project will be held on November 15, 1989, at 7 pm. at: Raintree Plaza Hotel and Conference Center, Front Range Room, 1900 Diagonal Highway 119, Longmont, CO 80501.

Anyone interested in the proposed project is invited to attend this scoping meeting. Those interested in receiving further information during the course of project planning should provide their names and addresses to Western representatives at the scoping meeting, or send this information to the address given below. Written comments may be sent to this address at any time during the EIS process.

**FOR FURTHER INFORMATION CONTACT:** Mr. Frederick J. Weiss, Assistant Area Manager for Engineering, J2000, Loveland Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539, (303) 490-7239.

Issued at Golden, Colorado, September 25, 1989.

William H. Claggett,  
Administrator.

[FR Doc. 89-23716 Filed 10-5-89; 8:45 am]

BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3669-1]

### Environmental Impact Statement; Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 382-5076 or (202) 382-5073. Availability of Environmental Impact Statements Filed September 25, 1989 Through September 29, 1989 Pursuant to 40 CFR 1506.9.

EIS No. 890267, Draft, FHW, PR, PR-3 Relocation, between the Municipalities of Fajardo, and Humacao, Funding, PR, Due: November 20, 1989, Contact: Juan O. Cruz (000) 766-5600.

EIS No. 890268, Draft, FHW, PA, Uniontown Bypass/PA-6040 (Section A04) Construction, US 40 in Hopwood to US 119 near Chadville, 404 Permit and Funding South Union Township, Fayette County, PA, Due: November 22, 1989, Contact: Manuel A. Marks (717) 782-3411.

EIS No. 890269, Final, FHW, MD, US 1 Improvements, Silver Spring Road to MD-152, Funding and 404 Permit, Baltimore and Harford Counties, MD, Due: November 6, 1989, Contact: Herman Rodrigo (301) 962-4132.

Dated: October 3, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-23697 Filed 10-5-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3669-2]

### Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared September 18, 1989 through September 22, 1989 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact

statements (EISs) was published in FR dated April 7, 1989 (54 FR 15006).

#### Draft EISs

ERP No. D-BLM-K70004-NV, Rating EC2, Nellis Air Force Range Planning Area Resource Management Plan, Implementation, Nye, Lincoln and Clark Counties, NV.

*Summary:* EPA expressed environmental concerns because the proposed action may have adverse impacts on riparian areas and wildlife resources. EPA noted that the DEIS lacked sufficient information on mining, grazing, right-of-way, vegetation wildlife and wild horse management to fully assess potential environmental impacts. EPA asked that these activities and BLM management goals, objectives and actions for them should be more fully described in the FEIS.

ERP No. D-BOP-E40722-SC, Rating EC2, Estill Minimum Security Federal Prison Camp, Construction and Operation, Estill Hampton County, SC.

*Summary:* EPA believes that the proposed project has the potential to affect the hydrology of wetlands on and off the project site. EPA requests that the final EIS contain a stormwater runoff plan to minimize potential impacts.

ERP No. D-CGD-E40723-FL, Rating EC2, Miracle Parkway Everest Parkway Improvement and Midpoint Bridge Construction, Over the Caloosahatchee River, US Coast Guard Approval and Permit, Cape Coral to Fort Myers, Lee County, FL.

*Summary:* EPA feels additional information on measures to mitigate existing potential impacts to wetlands and water quality from highway construction and potential noise impacts should be detailed in the final EIS.

ERP No. D-FHW-E40721-NC, Rating EO2, Northern Wake Expressway, Construction, NC-55 Near Morrisville to US 64 Near Knightdale, Funding and 404 Permit, Wake and Durham Counties, NC.

*Summary:* EPA expressed major objections regarding impacts to 140 acres of wetlands and 40 stream crossings. Additional impacts regarding air and noise were also noted. EPA requested that the final EIS contain both additional analysis and provide alternatives/mitigations to reduce these impacts.

ERP No. D-OSM-K01007, Rating EO2, Blac Mesa and Kayenta Coal Mines, Mining and Reclamation Operations Permit, Lif-of-Mine Mining Plan and 404 Permit, Hopi and Navajo Reservations, Navajo County, AZ.

*Summary:* EPA expressed environmental objections because the proposed project may result in significant adverse impacts to air quality and water quality, especially the use of regional aquifer resources. There was insufficient information on water, air and biotic resources to properly evaluate environmental impacts, alternatives and appropriate mitigation measures. EPA also expressed objections because the draft EIS lacked an alternative analysis to enable federal agencies and the public to consider less damaging actions than the proposed action. EPA recommended that serious consideration be given to the preparation of a supplemental EIS to analyze alternatives with less severe environmental impacts, particularly on regional aquifer resources and air quality due to particulates.

ERP No. D-UAF-K12006-CA, Rating EC2, Space Launch Complex 7 (SLC-7) Construction and Operation, South Vandenberg Air Force Base, Santa Barbara County, CA.

*Summary:* EPA expressed environmental concerns because the proposed project may have adverse impacts on wetlands and other special aquatic sites regulated under section 404 of the Clean Water Act. EPA requested that the final EIS discuss compliance with the 404(b) (1) Guidelines. EPA also asked that the final EIS contain more information on existing air quality conditions in Santa Barbara County and air quality modeling; compliance with the corrective action, underground storage tank and waste minimization provisions of the Resource Conservation and Recovery Act; and a commitment that project activities will not interfere with the assessment, identification and cleanup of hazardous substances if they are located on the project site.

#### Final EISs

ERP No. F-BOP-D81016-MD, Cumberland Minimum Security Federal Prison Camp and Correctional Institution Facility, Construction and Operation, Mexico Farms Industrial Park, Cumberland, Allegany County, MD.

*Summary:* EPA concerns with the draft EIS were adequately addressed in the final EIS.

ERP No. F-FHW-E40710-NC, East Charlotte Outer Loop Construction, US 74/Independence Boulevard near NC-3180 to I-85 near the US 29 Connector, Funding and 404 Permit, Mecklenburg County, NC.

*Summary:* EPA feels the success of the Water Level Management Plan is

dependent on control of non-point source pollutant loadings from the watershed. Aggressive pursuit of the watershed area non-point source pollution mitigation proposals are necessary.

ERP No. F-FHW-K40160-CA, CA-52 Construction, Santo Road to CA-67, Funding and 404 Permit, San Diego and Santee Cities, San Diego County, CA.

*Summary:* EPA requested that the Record of Decision contain a commitment that mitigation measures to protect wetlands and endangered species are adopted by the Federal Highway Administration. Future Route 52 project planning should incorporate measures to help protect air quality, and the development of mitigation measures to control nonpoint source water pollution is closely coordinate with EPA and the State Water Pollution Control Agency.

ERP No. FS-IBR-J28007-CO, Rudi Reservoir Round II Water Sale Marketing Program, Fryingpan-Arkansas Project, Co.

*Summary:* EPA has no objections to the proposed action.

ERP No. F-SCS-C36064-NY, Virgil Creek Watershed Flood Prevention Plan, Funding and Implementation, Town of Dryden, Town of Harford and Village of Dryden, Tompkins and Cortland Counties, NY.

*Summary:* EPA has no objection to the implementation of the project.

ERP No. F-UMT-K54017-CA, Muni Metro System Turnaround Project, Facilities Construction, Embarcadero, Clay Street to Brannon, Funding, City and County of San Francisco, CA.

*Summary:* Review of the final EIS was not deemed necessary. No formal comments were sent to the agency.

ERP No. F-USN-E10006-NC, Mid-Atlantic Electronic Warfare Range (MAEWR) Within Restricted Airspace R-5306A Establishment, Beaufort, Carteret, Craven, Hyde and Pamlico Counties, NC.

*Summary:* EPA has concerns about the lack of meaningful cumulative impact analysis of airspace utilization conflicts and noise effects on the area inhabitants. Several electromagnetic issues raised in the draft EIS also remain unresolved.

Dated: October 3, 1989.

William D. Dickerson,  
Deputy Director, Office of Federal Activities.

[FR Doc. 89-23698 Filed 10-5-89; 8:45 am]

BILLING CODE 6560-50-M

**FEDERAL RESERVE SYSTEM****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 October 20, 1989.

**A. Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Employees' Profit-Sharing Plan of United States Trust Company of New York and Affiliated Companies*, New York, New York; to acquire 14.16 percent of the voting shares of U.S. Trust Corporation, New York, New York, and thereby indirectly acquire United States Trust Company of New York, New York, New York.

**B. Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Arnold B. Chace, Jr.*, Providence, Rhode Island, and Malcolm G. Chace, III, Providence, Rhode Island; to acquire 10.61 percent of the voting shares of Guaranty Bancshares Corporation, Shamokin, Pennsylvania, and thereby indirectly acquire Guaranty Bank, National Association, Shamokin, Pennsylvania, and Guaranty Bank of Princeton (in organization), Princeton, New Jersey.

**C. Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Lakeview, Inc.* Omaha, Nebraska; to acquire an additional 6.89 percent of the voting shares of Sherman County Management, Inc., Loup City, Nebraska, for a total of 16.75 percent, and thereby indirectly acquire Sherman County Bank, Loup City, Nebraska.

Board of Governors of the Federal Reserve System, October 2, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-23664 Filed 10-5-89; 8:45 am]

BILLING CODE 6210-01-M

**First Sioux Bancshares, Inc.; Correction**

This notice corrects a previous *Federal Register* notice (FR Doc. 89-19938) published at page 35247 of the issue for Thursday, August 24, 1989.

Under the Federal Reserve Bank of Chicago, the entry for First Sioux Bancshares, Inc., is amended to read as follows:

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 consumer financial counseling, securities brokerage and insurance annuity sales pursuant to § 225.25 (b)(15), (b)(20) and (b)(8)(iii) of the Board's Regulation Y. These activities will be conducted in the State of Iowa.

Comments on this application must be received by October 20, 1989.

Board of Governors of the Federal Reserve System, October 2, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 23663 Filed 10-5-89; 8:45 am]

BILLING CODE 6210-01-M

**Southtrust Corp. et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities**

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity 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 each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than October 26, 1989.

**A. Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *SouthTrust Corporation*, Birmingham, Alabama; to acquire 20.83 percent of the voting shares of Municipal Development Co. II, Ltd., Birmingham, Alabama, and thereby engage in community development activities pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted throughout the State of Alabama.

**B. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First of America Bank Corporation*, Kalamazoo, Michigan; to acquire The Securities First Corporation, Peoria, Illinois, and Taylor, Bean & Whitaker Mortgage Corporation, Ocala, Florida, and thereby engage in making, acquiring, and servicing loans and other extensions of credit relating to mortgages pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in Bethalto, Illinois; Champaign, Illinois; Collinsville, Illinois; Moline, Illinois; Peoria, Illinois; Rockford, Illinois; Springfield, Illinois; and Ocala, Florida. Comments on this application must be received by October 20, 1989.

Board of Governors of the Federal Reserve System, October 2, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-23661 Filed 10-5-89; 8:45 am]

BILLING CODE 6210-01-M

### Weetamoe Bancorp, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Boards approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 27, 1989.

**A. Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Weetamoe Bancorp*, Somerset, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Slade's Ferry Trust Company, Somerset, Massachusetts.

**B. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Marathon Financial Corporation*, Stephens City, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of The Marathon Bank, Stephens City, Virginia.

**C. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Buckley Bancorp, Inc.*, Buckley, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Buckley State Bank, Buckley, Illinois.

2. *Hi-Bancorp, Inc.*, Highwood, Illinois; to acquire 25 percent of the voting shares of CNP Bancorp, Inc., Mundelein, Illinois, and thereby

indirectly acquire New Century Bank, Mundelein, Illinois.

3. *Mercantile Bancorp, Inc.*, Hammond, Indiana; to acquire 100 percent of the voting shares of Meadowview Bancorp Inc., Kankakee, Illinois, and thereby indirectly acquire First National Bank of Kankakee County, Kankakee, Illinois.

**D. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Las Cruces B.R.G., Inc.*, Las Cruces New Mexico; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of the Rio Grande, N.A., Las Cruces, New Mexico.

Board of Governors of the Federal Reserve System, October 2, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-23662 Filed 10-5-89; 8:45 am]

BILLING CODE 6210-01-M

### FEDERAL TRADE COMMISSION

[Docket No. 9206]

#### R.J. Reynolds Tobacco Company; Proposed Agreement With Analysis to Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a tobacco corporation from making representations identified in the complaint and from misrepresenting the results, design, purpose or content of any scientific test or study concerning any association between cigarette smoking and health effects.

**DATE:** Comments must be received on or before December 5, 1989.

**ADDRESS:** Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Judith Wilkenfeld, FTC/S-4002, Washington, DC 20580. (202) 326-3150.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted,

subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

The agreement herein, by and between R.J. Reynolds Tobacco Company, a corporation (hereafter referred to as "Reynolds" or "respondent"), by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Reynolds is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of New Jersey, with its office and principal place of business located at 401 North Main Street, Winston-Salem, North Carolina 27101.

2. Reynolds has been served with a copy of the complaint issued by the Federal Trade Commission charging Reynolds with violations of section 5(a) of the Federal Trade Commission Act, and has filed its answer denying said charges.

3. While Reynolds believes that the advertisement attached to the complaint constitutes non-commercial speech, for purposes of this agreement, Reynolds (i) waives the right to assert that the advertisement is not commercial speech in any proceeding in enforcement facts set forth in the Commission's complaint in this proceeding. This agreement does not constitute waiver of Reynolds' right to assert that any other advertisement constitutes non-commercial speech under the First Amendment.

4. Respondent waives: (a) any further procedural steps; (b) the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; (c) all rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and (d) any claim under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its

acceptance of this agreement and so notify the respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent of any liability or of any issue of law or fact except as provided in paragraph 3 above.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may without further notice to respondent, (1) issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondent's address as stated in this agreement shall constitute service. Respondent waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or to contradict the terms of the order.

8. Respondent has read the complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

#### Order

##### I.

*It is ordered*, That respondent, R.J. Reynolds Tobacco Company, a corporation; its successors and assigns; and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising or promotion of cigarettes that constitutes commercial speech under the First Amendment of the U.S. Constitution, in or affecting commerce,

as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing directly or by implication that the MR FIT study was designed and/or performed to test whether cigarette smoking causes coronary heart disease.

B. Representing directly or by implication that the MR FIT study is credible scientific evidence that cigarette smoking is not as hazardous as the public or the reader had been led to believe.

C. Representing directly or by implication that the MR FIT study tends to refute the theory that smoking causes coronary heart disease.

D. Failing to disclose, in any discussion of the MR FIT study that questions the relationship between smoking and smokers' risk of coronary heart disease, that: (a) Men in the study who quit smoking had a significantly lower rate of coronary heart disease death than men who continued to smoke; or (b) that the MR FIT study results are consistent with previous studies showing that those who quit smoking enjoy a substantial decrease in coronary heart disease mortality.

E. Misrepresenting in any manner, directly or by implication, in any discussion of cigarette smoking and chronic or acute health effects, the results, design, purpose or content of any scientific test or study explicitly referred to concerning any claimed association between cigarette smoking and chronic or acute health; *except that* this paragraph shall not apply to (i) any scientific test or study concerning the amount of tar and nicotine in any cigarette; or (ii) claims phrased as opinions unless (a) they are not honestly held, (b) they misrepresent the qualifications of the holder or the basis of his opinion, or (c) reasonable consumers are likely to interpret them as implied statements of fact.

##### II.

*It is further ordered*, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations under this Order.

##### III.

*It is further ordered*, That respondent shall, within sixty (60) days after service of this Order upon it and at such other times as the Commission may require, file with the Commission a written

report setting forth in detail the manner and form in which it has complied or intends to comply with this Order.

#### Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from the R.J. Reynolds Tobacco Company.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

According to the Complaint issued by the Commission in this proceeding, R.J. Reynolds Tobacco Company ("Reynolds") published an advertisement entitled "Of cigarettes and science." This advertisement discussed in the context of a larger discussion about how science is supposed to work, a scientific study known as the Multiple Risk Factor Intervention Trial (MR FIT). According to the complaint, the advertisement invited consumers to consider and question the relationship that they had been told exists between smoking and heart disease. The complaint alleged that Reynolds' advertisement contained three false or misleading representations about the MR FIT study: (1) That MR FIT was designed and performed to test whether cigarette smoking causes coronary heart disease; (2) that MR FIT provides credible scientific evidence that smoking is not as hazardous as the public or the reader has been led to believe; and (3) that MR FIT tends to refute the theory that smoking causes coronary heart disease. That complaint also alleged that, in light of the representations contained in the advertisement, it was a deceptive practice for Reynolds to fail to disclose certain facts about the study and the lower risk from coronary heart disease in men who quit smoking.

Under the terms of the proposed consent order, Reynolds must cease and desist from making the three representations identified in the complaint. Moreover, in any discussion of the MR FIT study that questions the relationship between smoking and smokers' risk of coronary heart disease, Reynolds must disclose that: (1) The men in the study who quit smoking had a significantly lower rate of coronary disease death than men who continued

to smoke; or (2) the study results are consistent with previous studies showing that those who quit smoking enjoy a substantial decrease in death from coronary heart disease. Finally, Reynolds must cease and desist from misrepresenting the results, design, purpose or content of any explicitly referred to scientific test or study concerning any claimed association between cigarette smoking and chronic or acute health effects. This final provision does not apply to certain statements of Reynolds' opinion or to representations about the amount of tar and nicotine in cigarettes.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 89-23665 Filed 10-5-89; 8:45 am]

BILLING CODE 6750-01-M

## GENERAL SERVICES ADMINISTRATION

### Federal Supply Service

#### Consortium of Federal, Academic and Industry Logistics Experts

*Meeting Notice:* Notice is hereby given that the Consortium of Federal, Academic, and Industry Logistics Experts will meet October 25, 1989, from 10:00 a.m. to 12:00 noon in Crystal Mall Building 4, Room 1129, Arlington, Virginia. Notice is required by the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the implementing regulation, 41 CFR 101-6.

The purpose of the meeting is to provide a forum for discussion of logistics issues. The agenda for the meeting will include an update of fiscal year 1989 agenda topics, and Mr. Stan Duda (GSA/FSS) will report on Personal Property Tracking System (PPTS).

The meeting will be open to the public.

For further information contact Mr. William B. Foote, Assistant Commissioner for Customer Service and Marketing, GSA/FSS, Washington, DC 20406, telephone (703) 557-7970.

Dated: September 26, 1989.

Donald C. J. Gray,

Commissioner.

[FR Doc. 89-23667 Filed 10-5-89; 8:45 am]

BILLING CODE 6820-24-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### Consumer Participation; Open Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting:

Baltimore District Office, chaired by Leonard Genova, Consumer Affairs Officer. The topic to be discussed is food labeling.

**DATES:** Monday, October 16, 1989, 12 m.

**ADDRESSES:** University of West Virginia, Allen Hall, Rm. 511, Morgantown, WV 26502.

**FOR FURTHER INFORMATION CONTACT:**

Leonard Genova, Consumer Affairs Officer, Food and Drug Administration, 900 Madison Ave., Baltimore, MD 21201, 301-962-3731.

**SUPPLEMENTARY INFORMATION:** The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: October 2, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-23671 Filed 10-5-89; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-89-1917; FR-2606]

#### Underutilized and Unutilized Federal Buildings and Real Property Determined by HUD To Be Suitable for use for Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This notice identifies

unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

**EFFECTIVE DATE:** October 6, 1989.

**ADDRESS:** For further information, contact James Forsberg, Room 7228, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755-6300; TDD number for the hearing- and speech-impaired (202) 426-0015. [These telephone numbers are not toll-free.]

**SUPPLEMENTARY INFORMATION:** In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD is publishing this notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a notice in the *Federal Register* identifying the properties determined as suitable.

The properties identified in this notice may ultimately be available for use by the homeless, but they are first subject to review by the landholding agencies pursuant to the court's Memorandum of December 14, 1988 and section 501(b) of the McKinney Act. Section 501(b) required HUD to notify each Federal agency with respect to any property of such agency that has been identified as suitable. Within 30 days from receipt of such notice from HUD, the agency must transmit to HUD: (1) Its intention to declare the property excess to the

agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Finally, in lieu of declaring any particular property as excess, the landholding agency may decide to make the property available to the homeless for use on an interim basis.

Homeless assistance providers interested in any property identified as suitable in this notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 30 days from the date of this Notice. For complete details concerning the timing and processing of applications, the reader is encouraged to refer to HUD's Federal Register notice on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: James Polliard, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405 (202) 535-7067. (This is not a toll-free number.)

Dated: September 29, 1989.

Stephen A. Glaude,  
Deputy Assistant Secretary for Program Management.

#### Suitable Building (by State)

(Number of Properties [ ])

Oklahoma

Chimney Hill Radio Station [1]

Pontotoc County, OK

Landholding Agency: GSA.

Location:

GSA Property No. 7-B-OK-552  
(Excess); Approx. 10 miles SW of  
Ada, OK in Pontotoc Co. on  
Highway 12.

Comment:

76.5 sq ft. on 2.81 acres; rural area; no  
utilities.

[FR Doc. 89-23554 Filed 10-5-89; 8:45 am]

BILLING CODE 4210-29-M

### DEPARTMENT OF THE INTERIOR

#### Bureau of Land Management

[MT-020-09-4121-09]

#### Extension of Comment Period on Draft Powder River I Supplemental Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

**SUMMARY:** The comment period on the draft Powder River I Supplemental EIS (DEISS) has been extended by 30 days beyond the previously discussed 60-day comment period (July 26, 1989–September 26, 1989) to October 26, 1989. The DEISS addresses possible economic, social, and cultural impacts to the Northern Cheyenne and Crow Tribes from leasing up to 11 Powder River Round I federal coal tracts.

**DATES:** Written comments should be sent to: Loren Cabe, Project Manager, Powder River I Supplemental EIS, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107. All comments received during the review period, whether oral or written, concerning the adequacy of the draft Supplemental EIS will be considered in the preparation of the final Supplemental EIS.

**FOR FURTHER INFORMATION CONTACT:** Loren Cabe, Project Manager, Powder River I Supplemental EIS, BLM Montana State Office, 222 North 32nd Street, P.O.

Box 36800, Billings, Montana 59107, telephone (406) 255-2920.

Sandra E. Sacher,

Associate District Manager.

[FR Doc. 89-23640 Filed 10-5-89; 8:45 am]

BILLING CODE 4310-84-M

#### Bureau of Reclamation

#### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the telephone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1006-0002), Washington DC, 20503, telephone 202-395-7340.

Title: Recreation and Wildlife Summary.

OMB approval number: 1006-0002.

Abstract: Recreation and Wildlife Summary data are needed to plan, develop, administer, and monitor recreation areas on Bureau of Reclamation projects. These data are used in making land management decisions and in responding to Congressional and public inquiries. Respondents are State and county government agencies and water user organizations that have recreation management agreements with the Bureau of Reclamation.

Bureau Form Number: None.

Frequency: Annual.

Description of Respondents: Non-Federal Public Bodies.

Annual Responses: 160.

Annual Burden Hours: 560.

Bureau Clearance Officer: Carolyn Hipps-303-236-6769.

Dated: September 14, 1989.

B.E. Martin,

Acting Deputy Commissioner Bureau of Reclamation.

[FR Doc. 89-23668 Filed 10-5-89; 8:45 am]

BILLING CODE 4310-09-M

## Fish and Wildlife Service

## Conference of the Parties of the Convention on International Trade in Endangered Species of Wild Fauna and Flora; Seventh Regular Meeting

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice sets forth summaries of the U.S. negotiating positions for the seventh regular meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

**FOR FURTHER INFORMATION CONTACT:** Arthur Lazarowitz, Chief Operations Branch, Office of Management Authority, P.O. Box 3507, Arlington, Virginia 22203-3507, telephone (703) 358-2095.

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

In accordance with § 23.35 of 50 CFR part 23, subpart D, of the Fish and Wildlife Service's (Service) rules providing for public participation in the development of negotiating positions for meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (hereinafter referred to as CITES or the Convention), the Service publishes summaries of the United States' negotiating positions for the seventh regular meeting of the Conference of the Parties to CITES (COP7) to be held in Lausanne, Switzerland, October 9-20, 1989.

The Service published summaries of proposed negotiating positions for most of the matters to be addressed at the Meeting in the *Federal Register* of September 5, 1989 (54 FR 38905 *et seq.*). That notice also requested information and comments from the public related to the proposed negotiating positions and announced a public meeting for the same purposes that was subsequently held on Friday, September 8, 1989, in Washington, DC.

What follows is a summary of U.S. negotiating positions on most of the items on the provisional agenda of the meeting, a summary of written information and comments received in response to the *Federal Register* notice of September 5, and the record of the public meeting of September 8, 1989, and summaries of the rationales for the negotiating positions which include where necessary, responses to the information and comments received. The words "change" and "no change" are used in parentheses before the

summaries of the negotiating positions and rationales to indicate whether or not there has been a substantial deviation from the proposed negotiating positions and/or rationales as published in the September 5 *Federal Register* notice. Numbers and title correspond to those used in the September 5 notice.

*Negotiating Positions (Summaries)*

## I. Officials Opening Ceremony

*Negotiating Position:* (No change) No position necessary.

*Information and Comments:* None received.

*Rationale:* Not necessary.

## II. Welcoming Address

*Negotiating Position:* (No change) As chair of the Standing Committee, the United States will present a welcoming address that will emphasize the need for the Parties, the Secretariat and nongovernmental organizations to rededicate themselves and provide the leadership to make CITES one of the most important and effective conventions for conservation of wild fauna and flora.

*Information and comments:* One commenter stated that CITES, including the Secretariat, was not living up to its potential.

*Rationale:* (No change) It is believed that CITES has not lived up to its potential and that in light of renewed public concern for the environment the time is ripe to reinvigorate the implementation process.

## III. Adoption of the rules of procedure

*Negotiating Position:* (Change) The United States will suggest that consideration be given to the admission of the press to the proceedings of Committees I and II in such a manner as not to disturb the normal functioning of these committees.

*Information and Comments:* One commenter supported public admittance, and another opposed because it would be disruptive.

*Rationale:* (Change) World attention will be focused on COP7 because of concern over the serious decline of African elephant populations. Public awareness of CITES will be enhanced by opening Committee I and Committee II meeting. However, limitations on public attendance may be necessary in order to ensure the normal functioning of these committees. Generally, the Plenary sessions shall be open to the public (Rule 21 of the provisional Rules of Procedure, Doc. 7.3). Sessions of Committees I and II are open to delegates and observers, but no mention is made of public attendance (Rule 22).

Decisions taken in Committees I and II are not open for discussion in Plenary sessions unless one-third of the voting delegates support a motion to open debate (Rule 13 paragraph 6). In addition, before COP6, the Plenary sessions were open to debate and open to the public. At COP6 the Plenary sessions were generally closed to the public. Thus, the public was foreclosed from the debate of most of the issues at COP6 and will be so foreclosed unless the changes here proposed are adopted. This position will be asserted by the United States not as the Chair of the Bureau.

## IV. Election of Chair and Vice-Chair of the Meeting and of Committees I and II

*Negotiating Position:* (No change) Support the election of Chair and Vice-Chair on the basis of capabilities and regional representation.

*Information and comments:* None received.

*Rationale:* (No change) CITES is a worldwide convention. CITES would benefit from use of human resources from every region of the world.

## V. Adoption of Agenda and Working Programme

*Negotiating position:* (Change) The United States favors a full and fair hearing on the proposed uplisting of the African elephant from CITES' appendix II to appendix I. Any attempt to deny a full and fair hearing either by scheduling or by restrictions on debate will be vigorously opposed.

*Information and comments:* Four commenters opposed a so-called fast-tracking of the elephant uplisting issue whereby debate in Committee I would open on the first Tuesday of the meeting (October 10) and probably close the next day. The Plenary would then vote on the issue on Friday (October 13). One other commenter proposes that Committees I and II meet jointly to consider the uplisting and implementation issues related to the African elephant ivory trade.

*Rationale:* (Change) Conservation of the African elephant is related to the observation of other species of wildlife and plants in the African region. The uplisting issue and the ivory trade are a true test of the effectiveness of CITES as a world conservation agreement. The United States wants full and fair consideration of the information and issues and various opinions and proposals on resolving elephant issues before final votes are taken. While the United States is not prepared at this time to propose a joint session of Committees I and II on elephant issues,

it may be a useful procedure to facilitate consideration of elephant issues if developments at the meeting warrant its use.

#### VI. Establishment of the Credentials Committee and Committees I and II

*Negotiating position:* (No change) Support the establishment of the Credentials Committee and Committees I and II.

*Information and comments:* None received.

*Rationale:* (No change) Establishment of the Credentials Committee is a *pro forma* matter. The United States supports the establishment of Committees I and II provided most Parties participating in COP7 have been able to send at least two delegates, or that the rules governing debate of Committee I and Committee II recommendations have been sufficiently relaxed to ensure that most delegations will have had an opportunity to debate such recommendations before a final decision is made.

#### VII. Report of the Credentials Committee

*Negotiating position:* (No change) Support adoption of the report of the Credentials Committee if it does not recommend the exclusion of legitimate representatives of countries party to CITES. Representatives whose credentials are not in order should be afforded observer status as under Article XI.7(a). If credentials have been delayed, representatives should be allowed to vote on a provisional basis. A liberal interpretation of the rules of procedure on credentials should be adhered in order to permit clearly legitimate representatives to participate.

*Information and comments:* None received.

*Rationale:* (No change) Adoption of the report is usually *pro forma*. Exclusion of representatives whose credentials are in order could undermine cooperation among Parties which is essential to the effective implementation of CITES.

#### VIII. Admission of Observers

*Negotiating position:* The United States supports the admission as observers of all representatives which meet the requirements specified in CITES that they be technically qualified in protection, conservation or management of wild fauna and flora.

*Information and comments:* None received.

*Rationale:* (No change) Participation of qualified nongovernmental organizations at COP's is specifically provided by Article XI of CITES. The

United States has typically supported the opportunities of all technically qualified observers to participate to the maximum extent. Such wide participation has, on the whole, proven beneficial.

#### IX. Matters Related to the Standing Committee

##### 1. Report by the Chairman

*Negotiating position:* (No change) As Chair, the United States will stress the leadership role of the Standing Committee as it relates to oversight of the development and execution of the Secretariat's budget and the provision of general policy and operational direction to the Secretariat concerning CITES implementation.

*Information and comments:* Three commenters stressed the necessity of oversight of the Secretariat by the Standing Committee. Two of the three pointed out the possibility of conflicts of interests when personnel secondments are made to the Secretariat from Parties that have substantial trade interests.

*Rationale:* (Change) The operations of the Secretariat would be more effective if guided by a set of long-term goals and objectives established by the Parties that could then be used to structure short-term work plans. The Secretariat's budget needs to be presented in a comprehensive, clear and concise fashion so that the Standing Committee and the Parties can better oversee the Secretariat's budget functions. The Secretariat staff must be given long-term contracts and full benefits as a matter of the highest priority. There was consensus at the eighteenth meeting of the Standing Committee that core positions would be better filled from the regular budget if possible.

##### 2. Election of New Members

*Negotiating position:* (No change) Support the election of regional members that are willing and able to actively participate in Standing Committee activities.

*Information and comments:* None received.

*Rationale:* (No change) The Standing Committee has the potential to become a stronger leader in the development of CITES. Its mandate was substantially strengthened by COP6 and its review of the economy and efficiency of the Secretariat was a good start at using this expanded mandate. Capable and energetic regional members are essential to the development of the Standing Committee's leadership role. In keeping with the principle of rotation of office the United States will not be standing for re-election as North

American regional member of the Standing Committee and will probably be replaced by Canada. New Representatives from Europe and Oceania will also be chosen to replace the Federal Republic of Germany and Australia.

##### 3. Election of Alternate Regional Members

*Negotiating position:* (No change) Advocate the adoption of a U.S. proposal to amend the mandate of the Standing Committee to establish alternate regional members.

*Information and comments:* None received.

*Rationale:* (No change) Alternate regional members would attend Standing Committee meetings only in the absence of the member of the region to which the alternate belongs. Because of their representational function and authority to vote, attendance of regional members or their alternates is important to the effective functioning of the Standing Committee.

#### X. Report of the Secretariat

*Negotiating position:* (Change) The United States is willing to consider comments from the public and from other government with regard to the performance of the Secretariat of its responsibilities under CITES.

*Information and comments:* One commenter stressed the need for oversight of the Secretariat. Another asked whether the United States would entertain information on the Secretary General's failure "to provide the kind of leadership CITES needs." Another urged the United States, as Chair of the Standing Committee, to communicate any deficiencies of the Secretariat to UNEP. A fourth urged that a process of evaluating the Secretariat and the Secretary General of CITES (including standards of conduct) be adopted before long-term employment contracts are reestablished for the Secretariat, and that a memorandum of understanding between the Standing Committee and UNEP be drafted to settle any question of responsibility should evaluation of the Secretariat be negative. One commenter was satisfied with the Secretariat's performance on an overall basis.

*Rationale:* (Change) This agenda item enables the Secretariat to make a report to the COP of its activities in the immediately prior year. It usually contains such information as an accounting of CITES membership, reservations, Party submission of annual and biennial reports and the like. Normally, the Parties accept the report

with little comment. The Secretariat's report has not been received by the Service as of this date. Full consideration will be given to any comments concerning the performance of the Secretariat. As noted under item IX.1, Report by the Chairman (of the Standing Committee), there are certain deficiencies in the operation of the Secretariat that need to be remedied. Secretariat staff members are employees of the United Nations Environment Programme (UNEP), which has the ultimate authority for personnel decisions. While the Executive Director of UNEP is responsible for providing the CITES Secretariat, it has recognized the need to consult with the Standing Committee regarding the appointment of the Secretary General.

#### XI. Financing and Budgeting of the Secretariat and Meetings of the Conference of the Parties

*Negotiating position:* (No change) Oppose any substantial increase in the Secretariat's budget representing an increase in its work program; recommend that the Secretariat continue to work with the Standing Committee to impose economies. Make clear the U.S. Government's position that its contributions under the financial amendment are voluntary. Continue to press for complete accounting of external revenues and expenditures and for a more transparent budget presentation.

*Information and comments:* One commenter suggested that fees for nongovernmental organization participation at COP's be raised, that a minimum annual contribution for Parties be set at \$1000, and that document fees be charged for large Party delegations to COP's.

*Rationale:* (Change) A large part of the increase in the 1990-1991 budget flows from the Standing Committee's decision to transfer the ivory control unit's budget from external funding to the core budget in order to exercise closer oversight. UNEP's decision to reclassify most of the professional positions in the Secretariat also caused part of the increase. External funding still represents a large part of the Secretariat's budget, and the Parties still need a comprehensive accounting of those funds. The Standing Committee recently rejected a proposal for a \$1000 minimum annual contribution and could not agree on increasing the participation charge from its current \$150 level.

#### XII. Committee Reports and Recommendations

##### 1. Animals Committee

*Negotiating position:* (No change) None necessary.

*Information and comments:* None received.

*Rationale:* The Animals Committee's report may contain information and/or recommendations on continuation of the review of significant trade in appendix II species, on the draft resolution on first breeding facility for bred-in-captivity criteria for a new species, a request for committee operating budget, and a summary of marking techniques. These issues are discussed separately elsewhere in this notice. The overall applicability of the Berne criteria may also be discussed but no conclusion/recommendation is expected to be presented.

##### 2. Plants Committee

*Negotiating position:* (No change) Continue to encourage development of the committee, and accomplishment of its tasks identified in the report, to improve the effectiveness of CITES for plants. Tasks include: (1) Strengthen interaction with other (including regional) plant organizations and institutions; (2) publish identification Guide; (3) publish checklists and develop computerized databases on listed higher taxa; (4) study significant trade in orchids (and selected succulents); (5) assess trade in bulbs, timber, and possibly medicinal plants; (6) other stated (administrative) items to encourage or assist Parties in implementing CITES and to consistently interpret its provisions for plants; and (7) expand educational efforts.

*Information and comments:* None received.

*Rationale:* (No change) The United States has chaired the prior Plant Working Group and the Committee since 1983. Improving CITES effectiveness for the many listed (and the many possibly qualifying plants is a long-term undertaking. Consider request for operating budget.

##### 3. Identification Manual Committee

*Negotiating position:* (No change) Continue to foster development of the animal and plant identification manuals and the plant guide for use by port and border enforcement officers and to seek information on their usefulness. Renew efforts to recruit a new chairman for the Committee, preferably one from the European region for the sake of continuity.

*Information and comments:* None received.

*Rationale:* (No change) The identification manuals are a long-term undertaking due to the large number of species controlled by CITES. The former chairman of the manual for animals, a Swiss Federal Government employee, resigned at COP6 and is acting as a caretaker until a successor can be found.

##### 4. Nomenclature Committee

*Negotiating position:* (No change) Encourage and support the development/adoption of checklists for all taxa. Support clarification of any taxa not adequately described by proponents at the time of listing in the Appendices.

*Information and comments:* (No change) One commenter raised several questions related to how the Parties should deal with listing status questions when an inadequate scientific description of a taxon was given at the time of the listing.

*Rationale:* (No change) Implementation of the Convention is strengthened by use of uniform names of listed species by all parties, and adopted checklists provide guidance. Furthermore, the Chairman of the Nomenclature Committee has requested that the CITES Secretariat "prepare proposed 'procedures for action' of the Nomenclature Committee in cases requiring interpretation of the nomenclatural status of species in the absence of supporting documentation at the time the listing was adopted by the Parties." The Chairman of the Nomenclature Committee also requested the CITES Secretariat to "obtain an independent legal opinion of the limits of authority [that] permanent committees hold with regard to interpreting the intent of the Conference of the Parties (in relation to the preparation of the procedures for action)."

#### XIII. Interpretation and Implementation of the Convention

##### 1. Report on National Reports Under Article VIII, Paragraph 7, of the Convention

*Negotiating position:* (No change) Support measures that would encourage or pressure Parties to submit their annual reports and that would upgrade their quality.

*Information and comments:* None received.

*Rationale:* (No change) Approximately 70 percent of the Parties are submitting an annual report, up from 58 percent in 1981. Accurate and complete report data are essential to

adequately measure the impact of international trade on the species and can be a useful enforcement tool.

## 2. Review of Alleged Infractions

*Negotiating position:* (Change) The United States would support necessary and appropriate recommendations designed to obtain wider compliance with the terms of CITES, including measures that would encourage Parties to submit complete, accurate and timely trade reports and to notify the Secretariat of the name of their Scientific Authority.

*Information and comments:* One commenter recommended that the United States should introduce or support resolutions on infractions including the failure to notify the Secretariat of the designation of a Scientific Authority. Another cited Spain, Italy, Japan and Singapore as problem countries and recommended that the Secretariat spend more time on infractions and provide the Parties with more notice of alleged infractions urging the Standing Committee to become involved in the process and Parties to take sanctions on Parties repeatedly cited as infractors. This Commenter also called on the Secretariat to include in its infractions review more information on shipments of live specimens and to review trade in species subject to reservations before each COP.

*Rationale:* (change) Article XIII provides for COP review of alleged infractions. A COP may make whatever recommendations it deems appropriate. The Service has received a first draft of the Secretariat's Infractions Report which covers the period July 1987-May 1989, and notes that 15 Parties have not identified a Scientific Authority and so notified the Secretariat. Inclusion of the Standing Committee in the infractions process may have merit.

## 3. Trade in Ivory from African Elephants

*Negotiating Position:* (Change) If the African elephant is listed on appendix I, with no populations excluded from such listing, oppose any move to allow countries to trade in stockpiles of African elephant ivory or other parts or derivatives for primarily commercial purposes. Support continuation of the trade in trophies with adequate trade and biological safeguards.

*Information and comments:* Three commenters opposed allowing trade in stockpiles. Two favored allowing such trade under tight controls because such trade funds some conservation programs and because not to allow trade would be an unnecessary waste. One commenter recommended use of so-called Pelly

Amendment sanctions on countries that take reservation or whose materials show a repeated pattern of violations of CITES.

*Rationale:* (Change) Except for pre-convention specimens, importation of appendix I specimens for primarily commercial purposes is not allowed under the terms of CITES. It is very doubtful that legal trade of ivory stocks could be accomplished without providing cover for illegal trade. In response to a 1981 request to allow commercial trade in appendix I flood-killed lizards, the Parties recommended they be saved in storage or destroyed (Conf. 3.14). Pelly Amendment sanctions are available if the activities of nationals of a foreign country diminish the effectiveness of CITES. Certainly, the applicability of such sanctions to the African elephant issue will be considered in the light of the results of COP7. Trophy hunting can provide a benefit to the species and is recognized for appendix I species (Conf. 2.11).

## 4. Trade in Rhinoceros Products

*Negotiating position:* (No change) Support reasonable proposals that would enhance interdiction of the illegal rhinoceros horn trade and rhinoceros protection in the wild.

*Information and comments:* None received.

*Rationale:* (No change) Illegal taking and trade of rhinoceros horn have been further depleting the already endangered species. Further measures need to be taken on the supply side and in the consumer countries.

## 5. Trade in Leopard Skins

*Negotiating position:* (Change) Advocate stricter controls if necessary to prevent quota violations. Oppose any further increases in quotas without adequate supporting data that includes well documented studies based on sound scientific principles. Oppose allowing exporting countries to set quotas without approval of the COP.

*Information and comments:* One commenter favored no increase in export quotas for leopard skins and recommended a study of the leopard trade to detect quota violations and stated that the Secretariat's leopard study was not subject to proper year review. Another commenter supported the present quota system and further studies to clarify the population status of the leopard.

*Rationale:* (Change) Trade of leopard skins for noncommercial purposes is allowed under CITES resolution Conf. 6.9. which recognizes killing in defense of life and property and to enhance the survival of the species. The leopard

report produced for the Secretariat is inadequate. Thus far, no quota increases have been requested for consideration by COP7. The United States believes that the Secretariat's recommendation to remove the COP from the quota setting process is not supported by information sufficient to show that the biological and trade status of the leopard warrants such action.

## 6. Trade in Plant Specimens

*Negotiating position:* (No change) No draft resolutions or other documents are pending. The Plants Committee will hold its second meeting simultaneously with portions of COP7. Encourage and be generally supportive of recommendations and items presented at COP7 that would improve CITES effectiveness for plants. If an item on certification of orchid nurseries is presented, consider supporting it provided it remains within the existing CITES framework for issuance of certificates and permits for artificially propagated specimens of species.

*Information and comments:* None received.

*Rationale:* (No change) As no specific items have been presented, no firmer positions can be adopted. The Conservation Committee of the International Orchid Commission and the Orchid Specialist Group of the Species Survival Commission of the IUCN, are seeking ways to expedite trade in artificially propagated orchids, as discussed in the first meeting of the Plants Committee. Orchid specialists familiar with various countries may offer advice and assistance to Parties in reaching their decisions as to which nurseries propagate orchids artificially. So long as certification is based on species and certain knowledge of each facility (not just on general information and without first knowing the facility's full inventory), and so long as the Parties remain actively responsible in using the advice and assistance to issue certificates and permits, the effort should be encouraged.

## 7. Marking of Specimens

*Negotiating position:* (Change) Support continuing efforts to find new practical and effective methods of marking animals and plant specimens. Oppose any attempt to weaken current marking requirements for ranched, captive-bred and quota species.

*Information and comments:* One commenter was opposed, for "compelling practical reasons," to regulate marking beyond the current requirements.

*Rationale:* (Change) Article VI provides that where appropriate and feasible a Management Authority may affix a mark upon any specimen to assist in identifying the specimen. The Animals Committee may present a paper at COP7 that describes and evaluates current marking systems for live animals and parts evaluates current marking systems for live animals and parts and derivatives and that questions the system of marking of ranched specimens recommended by resolution Conf. 5.16 (see also item XIII.18, Trade in ranched specimens between Parties, non-Parties and reserving Parties). That paper contains a draft resolution that would, in part, remove marking requirements for "very small parts and manufactured derivatives" and, contrary to Article XIV, paragraph 1, attempts to nullify stricter domestic marking requirements on specimens from other countries.

### 8. Significant Trade in Appendix II Species

*Negotiating Position:* (No change) Support expeditious completion on studies of significantly traded appendix II species. Support regular funding for the coordination of significant trade study projects.

*Information and comments:* Two commenters recommended a suspension of trade in possible problem species that are being significantly traded.

*Rationale:* (Change) It has been 6 years since the Parties recognized that some appendix II species may have been traded at levels detrimental to their survival and without sufficient information to know whether or not this was the case. Over 85 has been done. Without adequate biological data, the possibility that some of those species are being detrimentally affected by trade is rather high. The United States is willing to consider the possibility of imposing further requirements for trade in such species.

### 9. Sale of Confiscated Specimens of Species Included in Appendix II

*Negotiating Position:* (No change) Oppose any proposal that would give the Secretariat general authority to receive confiscated specimens for the purpose of auction and that would authorize the Secretariat to expend the proceeds of auction to establish a conservation program with the confiscating country to study the status of the species and/or assist the Management Authority of that country.

*Information and comments:* None received.

*Rationale:* (No change) The administration of such auctions and

project development proposals would divert valuable resources of the Secretariat to activities best left to the individual Parties. While some governments may have problems assuring that the disposal of confiscated specimens and the disposition of the proceeds thereof is free from wrongdoing, the Secretariat should not be seen as a surrogate for such governments and, given the possibility of a large and continuing supply of such specimens, as a commercial establishment for the sale of appendix II specimens.

### 10. Export/Re-Export Permit/Certificates

*Negotiating Position:* (No change) Support proposals that a security stamp must be authenticated on its face and its number printed on the face of the permit or certificate; that permits/certificates should be refused if modified without indication that modification was made by the appropriate authorities; that the date of issuance of the country of origin permit number be included on the re-export certificate (if available); that re-export certificates indicate country of last re-export with permit number and date of issuance in block 5 of the standardized permit; that validity of such documents be conditional on transport of live animals in accordance with IATA Live Animals Regulations; and that each Party send to the Secretariat three signature specimens of each official authorized to sign CITES export permits and re-export certificates.

*Information and comments:* None received.

*Rationale:* (No change) Printing the number of the security stamp on the face of the permit or certificate and cancelling the security stamp would mitigate against removal and reuse of security stamps. Modification of permits/certificates without official indication of the validity of such modification makes it difficult to distinguish between official and unofficial (sometimes fraudulent) modification. Inclusion of the date of issuance of the country of origin export permit in some instances would facilitate the search for the permit by the issuing authority. Inclusion of the last country of re-export's permit number and issuance date on the next re-export certificate would facilitate tracing back of a shipment of CITES specimens that has entered two or more countries. Current U.S. regulations under the Lacey Act requires shipping containers for live mammals and birds to meet, at a minimum, space and design guidelines of IATA's Live Animals

Regulations (LAR). These regulations are a stricter domestic measure, permissible under Article XIV of CITES. The Service has been conditioning its export permits/re-export certificates on compliance with LAR.

### 11. Treatment of Genuine Re-export Certificates for Illegal Specimens

*Negotiating Position:* (No change) Support the proposition that an importing country has the right to question the validity of a CITES document which on its face was appropriately issued, but which may not have been issued in accordance with all CITES requirements.

*Information and comments:* Two commenters supported the U.S. position as proposed.

*Rationale:* (No change) While substantial weight must be given to the official documents of another country, they should not be binding on the importing country (and exporting country if prospective trade involves appendix I species) if that country has good reason to believe that issuance was not in accordance with all CITES requirements. CITES does not state that the importing country must accept all official documents of the exporting country. CITES does provide that each Party may take stricter domestic measures regarding the conditions for trade or the complete prohibition thereof (Article XIV, paragraph 1(a)).

### 12. Transport of Live Animals

*Negotiating Position:* (No change) Support modification of resolution Conf. 6.24 if that modification would not weaken resolutions adopted at previous COP's.

*Rationale:* (Change) The United States will oppose any attempt to weaken resolution Conf. 6.24 or eliminate paragraph (d) of Conf. 4.24. These resolutions recommend, among other things, a continuing dialogue between CITES and IATA on the basis that CITES does not relinquish its authority to require humane air transport of wild fauna, and use of an effective, practical checklist for export/import inspectors to assure that transport is/was in keeping with CITES requirements.

### 13. Guidelines for Evaluating Marine Turtle Ranching Proposals

*Negotiating position:* (No change) Support the recommendations of a meeting convened by the International Union for the Conservation of Nature and Natural Resources (IUCN) relating to guidelines for evaluating marine turtle ranching proposals, provided they

would promote protection of wild populations of marine turtles.

*Information and comments:* None received.

*Rationale:* (Change) While the Parties have considered several ranching proposals, none have been accepted. The meeting convened by IUCN in San Jose, Costa Rica in January of 1988 produced draft guidelines, but none have been finalized. The guidelines as proposed are extensive, leave unresolved several issues and may need further review before presentation to a COP.

*14. Review of Resolution Conf. 5.21 on Special Criteria for the Transfer of Taxa from Appendix I to Appendix II*

*Negotiating position:* (Change) Support the continuation of Conf. 5.21 (relaxation of the strict "Berne Criteria" for downlisting species) only for those species that have already been proposed for downlisting to appendix II by virtue of Conf. 5.21 but only for one or two more COP's, whereupon such species should only remain on appendix II on the basis of information that meets the Berne Criteria for downlisting to appendix II (See Conf. 1.2).

*Information and comments:* Alleging several flaws in the trade and administration of some crocodile populations on appendix II by virtue of Conf. 5.21, one commenter recommended that a four-year limit be placed on downlistings under Conf. 5.21 and imposition of a deadline for submission of new Conf. 5.21 quota proposals.

*Rationale:* (Change) Conf. 5.21 allows an exemption from the strict criteria for downlisting species placed on appendix I at COP1 or at the original negotiation meeting of CITES in 1973. Conf. 5.21 coupled downlisting with export quotas to reduce the possibilities that trade would be detrimental to the survival of the species. Since data were insufficient for meeting the Berne Criteria for downlisting, export quotas based on such data are not likely to provide assurance of nondetrimental trade over an extended period of time. Management of the species for export under the quota system should enhance the capabilities of Conf. 5.21 countries of origin to obtain the data necessary to meet the downlisting Berne Criteria. Conf. 5.21 was only supposed to be a "temporary mechanism" to allow species incorrectly listed on appendix I to be transferred to appendix II.

*15. Consideration of Criteria and Applications for Inclusion of New Species in the "Register of Operations Which Breed Specimens of Species Included in Appendix I in Captivity for Commercial Purposes"*

*Negotiating position:* (No change) Support the adoption of reasonable criteria designed to assure that breeding operations are not established or maintained in a manner detrimental to the survival of the species.

*Information and comments:* One commenter was critical of the current U.S. and Canadian proposed criteria for approval of the appendix I captive breeding operation to appear in the Register of Operations, because they allow reference to the status of other operations and populations in the wild and would discourage such operations.

*Rationale:* (Change) While resolution Conf. 2.12 defines the term "bred in captivity," the Animals Committee decided more definition was needed to enable Parties to feel more assured that the first breeding operation for a "new species" would meet or would continue to meet Conf. 2.12 criteria. The United States and Canada have submitted like proposals for COP7 consideration that would provide such assurance. The United States is willing to submit its proposal to further review at the Animals Committee meeting to take place on October 8, 1989, in Lausanne, Switzerland.

*16. Exemption for Blood and Tissue Samples for DNA Studies from CITES Permit Requirements*

*Negotiating position:* (No change) Oppose any exemption for blood and tissue samples that is not within the term of CITES and existing CITES resolutions.

*Information and comments:* Two commenters opposed any exemption, one stating that any exemption must be within the terms of CITES and that any other exemption should benefit the species involved in trade or its systematics. One commenter urged the United States to keep an open mind on this issue and expand any exemption to include tissue samples for physiological investigations, reproductive assays and artificial reproductive techniques.

*Rationale:* (No change) Presumably, a real problem exists in expediting CITES formalities to accommodate specimens subject to spoilage or high trade volume. All reasonable solutions should be explored to resolve the problem short of negating the requirements of CITES.

*17. Return of Live Animals of Appendix II or III Specimens*

*Negotiating position:* (No change) Oppose any recommendation that would favor return of live appendix II or III specimens accompanied by faulty documents to the country of export without penalty to the importer or exporter.

*Information and comments:* Two commenters opposed immediate return of live animals, one stating that punishment for violating CITES should be done in the normal fashion not imposing the expense of return on the exporter, the other stating that return would put the animals at risk of harm.

*Rationale:* (No change) The application of sanctions for illegal trade is essential to fostering compliance with CITES rules.

*18. Trade in Ranched Specimens Between Parties, Non-Parties and Reserving Parties*

*Negotiating position:* (No change) Oppose any substantial weakening of the marking and trade criteria of resolution Conf. 5.16.

*Information and comments:* None received.

*Rationale:* (No change) The marking and trade criteria of Conf. 5.16 were specifically tightly drawn to provide strong assurances that the wild appendix I populations related to ranched appendix II populations would not be impacted by trade in specimens from the ranching operations. Trade was limited to non-reserving Parties (non-Parties and reserving Parties could not participate in such trade), in part, to prevent the wild appendix I specimens from being traded as appendix II ranched specimens and probably as an inducement to reserving Parties and non-Parties to become Parties.

*19. Amendments to Appendix III*

*Negotiating position:* (No change) Oppose any move to restrict appendix III listings to coincide with meetings of COP.

*Rationale:* (No change) Article XVI allows any Party to unilaterally list a species in appendix III at any time. Presumably, this proposal is for purposes of administrative convenience, since it would enable regulatory agencies to adjust to new species listings all at one time—once every 2 years after each COP. However, it would work to postpone appendix III listings and the protection afforded thereby for up to two years. Perhaps a resolution could encourage Parties to consider deferring appendix III listings

to COP's if to do so would not produce biological harm to the species.

#### XIV. Consideration for Amendment of Appendices I and II

(Information on negotiating positions for so-called species proposals for COP7 will soon appear or has recently appeared in a recent *Federal Register* notice originated by the Service's Office of Scientific Authority.)

#### XV. Conclusion of the Meeting

##### 1. Determination of the Time and Venue of the Next Regular Meeting of the Conference of the Parties

*Negotiating position:* (No change) Favor holding COP8 in the Pacific area, provided adequate funding is available and all Parties will be admitted to the host country without political difficulties. Support the holding of COP's on a biennial basis.

*Information and comments:* None received.

*Rationale:* (No change) As yet, the Pacific area has not hosted a COP. It is an important wildlife and plant area with significant trade problems. Holding the COP there would help focus attention in that area on CITES and stimulate interest in its goals and activities. COP meetings energize governmental and nongovernmental organizations concerned with CITES to reexamine its implementation. Studies have indicated that much needs to be done to bring implementation up to a satisfactory level. Stretching out meetings to 3-year intervals under these circumstances is not appropriate. It is likely that the apparent cost savings that would result from a 3-year interval would be reduced by an increase in committee meetings in the interim.

##### 2. Closing Remarks

*Negotiating position:* (No change) No position necessary.

*Information and comments:* None received.

*Rationale:* The United States will make a determination at COP7 whether to make a closing statement, and the nature thereof based on the outcome of COP7.

This notice was prepared by Arthur Lazarowitz, Chief, Operations Branch, Office of Management Authority under the authority of the Endangered Species Act of 1973, 16 U.S.C. 1531-43.

Dated: October 4, 1989.

Constance B. Harriman,

Assistant Secretary of Fish and Wildlife and Parks.

[FR Doc. 89-23788 Filed 10-5-89; 8:45 am]

BILLING CODE 4310-55-M

#### Minerals Management Service

##### National Outer Continental Shelf Advisory Board; Meeting

**AGENCY:** Department of the Interior, Minerals Management Service, Pacific OCS Region.

**ACTION:** National Continental Shelf Advisory Board, Pacific Regional Technical Working Group Committee; Notice and agenda for meeting.

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Public Law 92-463.

The Pacific Regional Technical Working Group (RTWG) Committee of the National OCS Advisory Board is scheduled to meet November 2, 1989 from 9:00 a.m. to 5:00 p.m., at the Travelodge Hotel at Fisherman's Wharf, 250 Beach Street, San Francisco, California 94133.

The tentative Agenda for the meeting covers the following topics:

##### —Reports:

Review of OCS Policy Committee Meeting (October 1989)  
Status of Presidential OCS Task Force Study

##### —Pacific OCS Issues and Updates:

Supplemental 5-Year Plan/Draft EIS  
Pacific OCS Northwest Task Force  
Office of Leasing and Environment  
Office of Resource Evaluation  
Office of Field Operations  
FY 90-91 Environmental Studies

##### —Public Comment Period.

Minutes of the meeting will be available for public inspection and copying at the following location: Pacific OCS Region, Minerals Management Service, 1340 West Sixth Street, Room 277, Los Angeles, CA 90017.

Dated: September 29, 1989.

J. Lisle Reed,

Regional Director, Pacific OCS Region.

[FR Doc. 89-23657 Filed 10-5-89; 8:45 am]

BILLING CODE 4310-MR-M

#### INTERSTATE COMMERCE COMMISSION

##### Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent Corporation, ADDCO Holding Co., 69 Empire Drive, St. Paul, MN 55103.

2. Wholly owned subsidiaries which will participate in the operations, and state of incorporation:

1. ADDCO Manufacturing Co., Inc.—A Minnesota Corp.
2. ADDCO Trucking Co., Inc.—A Minnesota Corp.
3. Nicholson Co., Inc.—A Minnesota Corp.

Noreta R. McGee,  
Secretary.

[FR Doc. 89-23686 Filed 10-5-89; 8:45 am]

BILLING CODE 7035-01-M

##### Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A 1. Parent corporation and address of principal office: Ashland Oil, Inc., 1000 Ashland Drive, Russell, KY 41114.

2. Wholly-owned subsidiaries which will participate in the operations and states of incorporation:

Subsidiary	Jurisdiction of incorporation
Ashland Chemical, Inc.....	Ohio
Ashland Development, Inc.....	Delaware
Ashland Ethanol, Inc.....	Delaware
Ashland Oil and Transportation Co.	Kentucky
Ashland Petroleum, Inc.....	Delaware
Ashland Pipeline Co.....	Ohio
Inland Towing Co.....	Delaware
Mid-Valley Supply Co.....	Kentucky
Tri-State Marketing Services, Inc...	Delaware
APAC-Alabama, Inc.....	Delaware
APAC-Arizona, Inc.....	Delaware
APAC-Arkansas, Inc.....	Delaware
APAC-Carolina, Inc.....	Delaware
APAC-Florida, Inc.....	Delaware
APAC-Georgia, Inc.....	Delaware
APAC, Inc.....	Delaware
APAC-Kansas, Inc.....	Delaware
APAC-Mississippi, Inc.....	Delaware
APAC-Oklahoma, Inc.....	Delaware
APAC-Tennessee, Inc.....	Delaware
APAC-Texas, Inc.....	Delaware
APAC-Virginia, Inc.....	Delaware
REG X Condor, Inc.....	Delaware
Scurlock Oil Company.....	Kentucky
TAP-CO, Inc.....	North Carolina
Algonquin Pipe Line Co.....	Illinois
Ohio River Pipe Line Company.....	Delaware
Owensboro-Ashland Company.....	Delaware
Soco Pipeline Co.....	Texas
Transport Supply Co, Inc.....	Texas
Banton Marine Corp.....	Texas
Rich Oil, Inc.....	Delaware
Drew Chemical Corporation.....	Delaware
Warren Brothers Hauling, Inc.....	Delaware
IG-LO Transportation, Inc.....	Delaware
Tanner Southwest, Inc.....	Arizona
The Tanner Companies.....	Arizona
RCT Co., Inc.....	Arizona
Western Equipment Co.....	Arizona
SuperAmerica Group, Inc.....	Kentucky
Ashland Branded Marketing, Inc....	Delaware

Subsidiary	Jurisdiction of incorporation
Valvoline, Inc.....	Kentucky
Ashland Industrial Products, Inc.....	Delaware
Carrollton Petroleum, Inc.....	Delaware
IG-LO Inc.....	Delaware
Mac's Oil & Chemicals, Inc.....	Delaware
Lexington Coating Technology, Inc.....	Delaware
Valvoline Instant Oil Change, Inc.....	Delaware

B. 1. Parent corporation and address of principal office: Ludlow Corporation, One Tyco Park, Exeter, New Hampshire 03833, Incorporated in Massachusetts.

2. Wholly-owned subsidiaries which will participate in the operations and State(s) of incorporation: Twitchell Corporation, 4031 Ross Clark Circle, Dothan, Alabama 36302, Incorporated in Alabama.

Noreta R. McGee,  
Secretary.

[FR Doc. 89-23687 Filed 10-5-89; 8:45 am]  
BILLING CODE 7035-01-M

[Finance Docket No. 31493]

**Blackstone Capital Partners L.P.; Control Exemption; CNW Corp. and Chicago and North Western Transportation Co.**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** The Interstate Commerce Commission exempts under 49 U.S.C. 10505 from the requirements of 49 U.S.C. 11343 the acquisition of control by Blackstone Capital Partners L.P. of CNW Corporation and its carrier subsidiaries—Chicago and North Western Transportation Company, Midwestern Railroad Properties, Inc., and Western Railroad Properties, Inc., subject to standard labor protective conditions.

**DATES:** The exemption will be effective on October 9, 1989. Petitions for reconsideration must be filed by October 26, 1989.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275-7245. (TDD for hearing impaired: (202) 275-1721).

**ADDRESSES:** An original and 10 copies of all documents must be sent to: Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 31493, Interstate Commerce Commission, Washington, DC 20423.

In addition, one copy of all documents must be sent to petitioner's representative: Betty Jo Christian, Timothy M. Walsh, STEPTOE & JOHNSON, 1330 Connecticut Avenue, NW., Washington, DC 20036-1795.

**SUPPLEMENTAL INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

Decided: September 28, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley and Phillips. Commissioner Phillips commented with a separate expression. Commissioner Lamboley concurred in part and dissented in part with a separate expression.

Noreta R. McGee,

Secretary

[FR Doc. 89-23728 Filed 10-5-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30553 (Sub-No. 1)]

**Camp Lejeune Railroad Co., Renewal of Lease Exemption; a Rail Line in North Carolina**

Camp Lejeune Railroad Company, a wholly owned subsidiary of Southern Railway Company, has leased and operated 5.6 miles of rail line in North Carolina owned by the United States of Department of the Navy under a lease originally authorized by the Commission in 1984.<sup>1</sup> The lease expired August 31, 1989. The parties have agreed to extend the lease until August 31, 1994.

This notice is filed under 49 CFR 1180.2(d)(4), which exempts renewal of leases and any other matters where the Commission has previously authorized the transaction and only an extension in time is involved. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Any comments must be filed with the Commission and served on Thomas W. Ambler, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510-2191.

As a condition to use of this exemption any employees affected by the lease transaction will be protected pursuant to *Mendocino Coast Ry., Inc.—Lease and Operate*, 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980).

Decided: September 26, 1989.

<sup>1</sup> See Finance Docket No. 30553, *Camp Lejeune Railroad Company—Lease Exemption* (not printed), served September 17, 1984.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-23593 Filed 10-5-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31529]

**Nimishillen & Tuscarawas Railway Co., Acquisition and Operation Exemption; Line of Mahoning Valley Railway Co.**

Nimishillen & Tuscarawas Railway Company, a non-carrier, filed a notice of exemption to acquire and operate approximately 24.07 miles of rail line owned and operated by the Mahoning Valley Railway Company. The rail line consists of two segments. The first segment (the "Massillon Line") begins at a point about 2,300 feet south of Ordbrook Avenue, S.W., in the Township of Perry, Stark County, OH, and extends in a northeasterly direction to a point adjacent to the Consolidated Rail Corporation (Conrail) interchange yard, also in Perry. The second segment (the "Canton Line"), bounded on the north by the line of Conrail and on the south by the properties of Republic Engineered Steels, Inc. (Republic), begins at a point about 1,500 feet east of Trump Road in the Township of Canton, Stark County, OH, and extends in a southwesterly direction to a point about 750 feet from the western border of Republic's facilities, also in Canton. (The line then encircles Republic's facilities and merges back into itself.) This transaction is expected to be consummated on September 29, 1989.

Any comments must be filed with the Commission and served on: Peter F. Moriarty, Weiner, McCaffrey, Brodsky & Kaplan, P.C., Suite 800, 1350 New York Avenue, NW., Washington, DC 20005-4797.

Applicant may not engage in any activities that would jeopardize the potentially historic character of the line and related structures 50 years old or older until completion of the process under section 106 of the National Historic Preservation Act. See *Class Exemption—Acq. & Oper. of R. Lines Under 49 U.S.C. 10901*, 4 I.C.C.2d 305 (1988).

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: September 28, 1989.

By the Commission, Jane F. Mackall,  
Director, Office of Proceedings.  
Noreta R. McGee,  
Secretary.  
[FR Doc. 89-23594 Filed 10-5-89; 8:45 am]  
BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 304X)]

**CSX Transportation, Inc.—  
Abandonment Exemption—in Van  
Buren County, MI**

**AGENCY:** Interstate Commerce  
Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** The Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904 the abandonment by CSX Transportation, Inc. (CSXT), of 1.6 miles of rail line between mileposts 15.67 and 17.27 at Hartford, in Van Buren County, MI, subject to standard labor protective conditions, and the condition that CSXT continue service should its proposed sale of the line not be consummated.

**DATES:** Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on November 6, 1989. Formal expressions of intent to file an offer<sup>1</sup> of financial assistance under 49 CFR 1152.27(c)(2) must be filed by October 16, 1989, petitions to stay must be filed by October 16, 1989, and petitions for reconsideration must be filed by October 26, 1989.

**ADDRESSES:** Send pleadings referring to Docket No. AB-55 (Sub-No. 304X) to:

- (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and
- (2) Petitioner's representative: Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275-7245. (TDD for hearing impaired: (202) 275-1721.)

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concept, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4356/4359. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

Decided: September 29, 1989.

<sup>1</sup> See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

By the Commission, Chairman Gradison,  
Vice Chairman Simmons, Commissioners  
Andre, Lamboley, and Phillips.  
Noreta R. McGee,  
Secretary.  
[FR 89-23668 Filed 10-5-89; 8:45 am]  
BILLING CODE 7035-01-M

**DEPARTMENT OF LABOR**

**Office of the Assistant Secretary for  
Veterans' Employment and Training**

**Secretary of Labor's Committee on  
Veterans' Employment; Cancellation of  
Meeting**

The Secretary's Committee on Veterans' Employment was established under section 308, title III, Public Law 97-306 "Veterans Compensation, Education and Employment Amendments of 1982," to bring to the attention of the Secretary, problems and issues relating to veterans' employment.

Notice is hereby given that the Secretary of Labor's Committee on Veterans' Employment which was scheduled to meet on Wednesday, October 11, 1989, at 10:00 a.m., in the Secretary's Conference Room, S-2508, FPB has been cancelled. The Notice announcing the meeting was published on September 15, 1989 at 54 FR 38301.

Signed at Washington, DC, this 4th day of October, 1989.

Donald E. Shasteen,  
Assistant Secretary for Veterans'  
Employment and Training.

[FR Doc. 89-23820 Filed 10-5-89; 8:45 am]  
BILLING CODE 4510-79-M

**Mine Safety and Health Administration**

[Docket No. M-89-13-M]

**Aluminum Company of America;  
Petition for Modification of Application  
of Mandatory Safety Standard**

Aluminum Company of America, Point Comfort Operations, Point Comfort, Texas 77978 has filed a petition to modify the application of 30 CFR 56.13017 (compressor discharge pipes) to its Bayer Alumina Plant (I.D. No. 00320) located in Calhoun County, Texas. 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 compressor discharge pipes where carbon build-up may occur are required to be cleaned periodically as recommended by the manufacturer,

but no less frequently than once every two years.

2. As an alternate method, petitioner proposes to use a specifically formulated fire-resistant hydraulic fluid, composed of butylated triphenyl phosphate (FYRQUEL 550 R&O) in the plant air compressors. The use of this fluid would eliminate the potential for carbon build-up and the necessity for cleaning the discharge pipes every two years.

3. In support of this request, petitioner states that—

(a) Continuous monitoring instrumentation with alarms would be installed on the R-110 and Building 51 air compressors; and

(b) Overheating air compressors would be taken out of service when the alarm sounds.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 6, 1989. Copies of the petition are available for inspection at that address.

Dated: September 28, 1989.

Patricia W. Silvey,  
Director, Office of Standards, Regulations  
and Variances.

[FR Doc. 89-23693 Filed 10-5-89; 8:45 am]  
BILLING CODE 4510-49-M

[Docket No. M-89-145-C]

**Carter-Roag Coal Co., Inc.; Petition for  
Modification of Application of  
Mandatory Safety Standard**

Carter-Roag Coal Co., Inc., P.O. Box 2327, Elkins, West Virginia 26241 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Mine No. 1A (I.D. No. 46-06715) located in Randolph County, West 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 underground

permanent pumps be housed in fireproof structures or areas, and air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. The pump is located in a sump area and contains a walkway used for pump inspection, a permanent overhead monorail used for pump installation, and limited space between the sump and the trolley wire.

3. These conditions would make permanent housing difficult and reduce the effectiveness of housing if installed.

4. Due to adverse water conditions, which have been a major problem, the pump is highly utilized and an important part of dewatering. An attempt to relocate the pump or alterations to the present area could alter the water flow.

5. As an alternate method, petitioner proposes to place a dry chemical fire extinguisher within the area. This would provide immediate firefighting equipment should a fire occur. The location of the pump is frequently passed by incoming and outgoing personnel, supply shipments, and routine man trips and any fire would be readily detected.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

#### Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 6, 1989. Copies of the petition are available for inspection at that address.

Dated: October 2, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-23694 Filed 10-5-89; 8:45 am]

BILLING CODE 4510-43-M

#### [Docket No. M-89-14-M]

#### GREFCO, Inc.; Petition for Modification of Application of Mandatory Safety Standard

GREFCO, Inc., P.O. Box 308, Antonito, Colorado 81120 has filed a petition to modify the application of 30 CFR 56.13020 (use of compressed air) to its El

Grande Openpit Mine (I.D. No. 29-00250) located in Taos County, New Mexico. 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 compressed air not be directed toward a person. When compressed air is used, all necessary precautions must be taken to protect persons from injury.

2. As an alternate method, petitioner proposes that employees be allowed to use compressed air regulated to a maximum of 30 psi, to blow dust from their clothing.

3. In support of this request, petitioner states that a PEM safety-type air blow gun has been installed. This type of air blow gun operates at less than 30 psi at the nozzle tip with 175 psi input pressure. It has a safety nozzle tip that expels air if the tip is blocked. The air blow gun meets OSHA's standards when used for cleaning needs.

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 November 6, 1989. Copies of the petition are available for inspection at that address.

Dated: September 28, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-23695 Filed 10-5-89; 8:45 am]

BILLING CODE 4510-43-M

#### [Docket No. M-89-146-C]

#### Mine Hill Coal Co., No. 50; Petition for Modification of Application of Mandatory Safety Standard

Mine Hill Coal Company, No. 50, P.O. Box 819, Minersville, Pennsylvania 17954 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Little Buck Mountain Slope Mine (I.D. No. 36-07548) located in Schuylkill County, Pennsylvania. 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 cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Effective safety catches or other devices are not available for the conveyances used on the steeply pitching and undulating slopes with numerous curves and knuckles in the main haulage slopes of this anthracite mine.

3. If "makeshift" safety devices were installed they would activate on knuckles and curves when no emergency exists and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat, and to the hoisting rope above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

#### Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 6, 1989. Copies of the petition are available for inspection at that address.

Dated: September 28, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-23696 Filed 10-5-89; 8:45 am]

BILLING CODE 4510-43-M

#### NATIONAL SCIENCE FOUNDATION

#### Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

*Title:* National Science Foundation Proposal/Award Information.

*Affected Public:* Individuals, state and local governments, businesses or other for profit, non-profit institutions, and small businesses or organizations.

*Responses/Burden Hours:* 37,000 responses; 120 burden hours each.

*Generic Clearance Request:* The National Science Foundation supports research in all scientific disciplines, science education and research policy. This support is made through grants, contracts, and other agreements awarded to universities, university consortia, non-profit, small business and other research organizations. These awards are based on proposals submitted to the Foundation in accordance with the requirements contained in NSF Publication "Grants for Research and Education in Science and Engineering, NSF 83-57." The provisions of this brochure apply to all NSF programs and related activities, such as foreign travel, conferences, symposia, and research or education equipment and facilities. Some programs operate from more specific program announcements or solicitations which elaborate on the provisions of this brochure.

Interested persons are invited to submit comments to the following individuals within 30 days of the published date of this notice.

1. *Agency Clearance Officer:* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, or telephone (202) 357-7335.

2. *OMB Desk Officer:* Office of Information and Regulatory Affairs, ATTN: Jim Houser, Desk Officer, OMB, 722 Jackson Place, room 3208, NEOB, Washington, DC 20503.

Dated: October 3, 1989.

Herman G. Fleming,

*NSF Reports Clearance Officer.*

[FR Doc. 89-23689 Filed 10-5-89; 8:45 am]

BILLING CODE 7555-01-M

## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-352/353]

### Availability for Supplement to the Final Environmental Statement for Limerick Generating Station, Units 1 and 2

Notice is hereby given that a supplement to NUREG-0974, "Final Environmental Statement related to the operation of Limerick Generating Station, Units 1 and 2," has been

prepared by the Nuclear Regulatory Commission. The supplement provides the NRC staff's evaluation of the alternative of facility operation with the installation of further mitigation design features. The Limerick Generating Station, Units 1 and 2 is located on the Schuylkill River, near Pottstown, in Limerick Township, Montgomery and Chester Counties, Pennsylvania.

Copies of the supplement are available for inspection by the public in the Commission's Public Document Room at 2120 L Street, NW., Washington, DC and at the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464. The document is also being made available at the Pennsylvania Inter-Governmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108 and at the Delaware Valley Regional Planning Commission, Bourse Building, 21 South 5th Street, Philadelphia, Pennsylvania 19106.

Copies of the supplement may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, and from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082.

Dated at Rockville, Maryland, this 29th day of September 1989.

For the Nuclear Regulatory Commission.

**Mohan C. Thadani,**

*Acting Director, Project Directorate I-2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 89-23674 Filed 10-5-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-324]

### Carolina Power & Light Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-62 issued to Carolina Power & Light Company (CP&L or the licensee) for operation of the Brunswick Steam Electric Plant, Unit 2, located in Brunswick County, North Carolina.

The proposed amendment would waive the requirement to conduct a Type A Containment Integrated Leak Rate Test during the current refueling outage. This is requirement because the last two Type A tests were initially

considered to be failures. The next Type A test would be conducted during the next refueling outage if the amendment is approved. A similar request was submitted May 23, 1989, as an exemption to 10 CFR part 50, appendix J.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By November 6, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rule of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 25555 and at the Local Public Document Room located at the William Madison Randall Library, University of North Carolina at Wilmington, 601, S. College Road, Wilmington, North Carolina 28403. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference of the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should

also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged or expected opinion which support the contention and on which the petitioner intends to rely or proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner

or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Elinor G. Adensam, Director, Project Directorate II-1; petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this *Federal Register* notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to R.E. Jones, General Counsel, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated June 14, 1989, as supplemented August 21, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the William Madison Randall Library, University of North Carolina at Wilmington, 601 S. College Road, Wilmington, North Carolina 28403.

Dated at Rockville, Maryland, this 27th day of September 1989.

For the Nuclear Regulatory Commission.

**Elinor G. Adensam,**

*Director Project Directorate II-1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 89-23-675 Filed 10-5-89; 8:45 am]

BILLING CODE 7590-01-M

## SECURITIES AND EXCHANGE COMMISSION

[File No. 7-5357]

### Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Chicago Board Options Exchange, Inc.

October 2, 1989.

The Chicago Board Options Exchange, Inc. ("CBOE") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 thereunder for unlisted trading privileges ("UTP") in Ryan's Family Steak Houses, Inc., and Harnischfeger Industries, Inc. for the purpose of trading the common stock of these securities as part of a market basket on the Standard & Poor's 500 and 100 Indexes ("Index").<sup>1</sup> As indicated in their application, Ryan's Family Steak Houses, Inc. is an over-the-counter ("OTC") security that is quoted on the National Association of Securities Dealers Automated Quotation System ("NASDAQ") and that is not registered on any national securities exchange.<sup>2</sup> Last sale information in the stock is reported through NASDAQ facilities. Harnischfeger Industries, Inc. is listed and registered on the New York Stock Exchange, Inc. and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 11, 1989, written data, views and arguments concerning the above-referenced application.<sup>3</sup> Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Commentators are asked to address whether they believe the requested grants of UTP would be consistent with section 12(f)(1)(C) of the Act. Under this Section the Commission can only approve the UTP application if it finds, after this notice and opportunity for hearing, that the extensions of

<sup>1</sup> See proposed rule filing SR-CBOE-88-20. The CBOE previously applied for UTP in the 500 stocks comprising the Standard and Poor's 500 Index to accommodate CBOE's proposal to trade market baskets. See Securities Exchange Act Release No. 27237, 54 FR 38475. After that application, however Standard & Poor's announced the two securities as replacement stocks for the Index.

<sup>2</sup> In its previous application the CBOE also registered UTP for 31 OTC stocks.

<sup>3</sup> Notice already has been sent to the issuer and the relevant markets.

unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

Further, in considering the CBOE's application for extension of UTP in a stock not registered on another national securities exchange, section 12(f)(1)(C) of the Act requires the Commission to consider, among other matters, the public trading activity in such securities, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system. The Commission may not grant such application if any rule of the national securities exchange making an application under section 12(f)(2)(C) of the Act would unreasonably restrict competition among dealers in such securities or between such dealers acting in the capacity of market makers who are specialists and such dealers who are not specialists.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-23691 Filed 10-5-89; 8:45 am]

BILLING CODE 8010-01-M

## SMALL BUSINESS ADMINISTRATION

### Region I Advisory Council; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Boston, will hold a public meeting at 1:00 p.m., Wednesday, November 8, 1989, in the Conference Room of the Thomas P. O'Neil Federal Building, 10 Causeway Street, room 265, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call John J. McNally, District Director, U.S. Small Business Administration, 10 Causeway Street, room 265, Boston, Massachusetts 02222-1093.

Dated: September 27, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 89-23656 Filed 10-5-89; 8:45 am]

BILLING CODE 8025-01-M

[Application Number: 02/02-5533]

### Cathay Capital Corp.; Application for a Small Business Investment Company License

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1989)) by Cathay Capital Corporation (CCC) of 17-23 E. Broadway, Fifth Floor, New York, New York 10002, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 et seq.).

The proposed officers, directors, and major shareholders of the Applicant are as follows:

Name and address	Title	Percentage of ownership
Isaac Shih, 3804 Bailey Ave., E-1, Bronx, New York 10463.	Director and Chairman of the Board.	45
Joan Shih, 3804 Bailey Ave., E-1, Bronx, New York 10463.	Director, Secretary & Treasurer.	45
James Tong, 20 Confucius Plaza, New York, New York 10002.	Director, President ....	05

The Applicant, CCC, a New York Corporation, will begin operations with \$1,000,000 paid-in capital and paid-in surplus. The Applicant will conduct its activities principally in the State of New York, but will consider investments in other areas of the United States.

As an SBIC under section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended, from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantage.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the company under their management, including adequate profitability and financial

soundness in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Dated: September 29, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment

[FR Doc. 89-23656 Filed 10-5-89; 8:45 am]

BILLING CODE 8075-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[BS-Ap-No. 2924]

### Southern Pacific Transportation Co.; Public Hearing

The Southern Pacific Transportation Company has petitioned the Federal Railroad Administration (FRA) seeking approval of the proposed discontinuance and removal of the automatic block signal system from Gazelle, California to Glendale, Oregon and from Cornutt, Oregon to Springfield Junction, Oregon. This proceeding is identified as FRA Block Signal Application Number 2924.

The FRA has issued a public notice seeking comments of interested parties and conducted a field investigation in this matter. After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly a public hearing is hereby set for 10 a.m. on December 6, 1989, in room 227 of the Federal Office Building located at 211 E. 7th Street in Eugene Oregon.

The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA

representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC on September 27, 1989.

J.W. Walsh,

*Associate Administrator for Safety.*

[FR Doc. 89-23653 Filed 10-5-89; 8:45 am]

BILLING CODE 4910-06-M

[BS-Ap-No. 2588]

### Southern Railway System; Public Hearing

The Southern Railway System has petitioned the Federal Railroad Administration (FRA) seeking approval of the proposed discontinuance of the traffic control and automatic block signal systems between Edgewood, Georgia and Lee, Georgia, on the Central of Georgia Railway Company. This proceeding is identified as FRA Block Signal Application No. 2588.

After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

A public hearing in this proceeding was set for May 28, 1987 but, at the request of the carrier, the hearing was postponed. The Southern Railway has now petitioned the FRA to continue this proceeding.

Accordingly, a public hearing is hereby set for 10 a.m. on December 13, 1989, in Room 333 of the U.S. Post Office Building at 451 College Street in Macon, Georgia.

The hearing will be an informal one, and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons who want to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct

of the hearing, will be announced at the hearing.

Issued in Washington, DC, on September 27, 1989.

J.W. Walsh,

*Associate Administrator for Safety.*

[FR Doc. 89-23654 Filed 10-5-89; 8:45 am]

BILLING CODE 4910-06-M

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

### Federal Deposit Insurance Corp.

[OTS No. 89-239]

### Allocation of Regulations and Orders Pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989

Dated: October 3, 1989.

**AGENCIES:** Office of Thrift Supervision, Department of the Treasury; Federal Deposit Insurance Corporation.

**ACTION:** Notice of allocation of regulations and orders.

**SUMMARY:** Pursuant to sections 401(i) and 402(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Public Law No. 101-73, the Director of the Office of Thrift Supervision ("OTS") and the Chairperson of the Federal Deposit Insurance Corporation ("FDIC") (jointly the "Agencies") are to identify the regulations and orders of the former Federal Home Loan Bank Board ("Bank Board") and Federal Savings and Loan Insurance Corporation ("FSLIC") that relate to the conduct of conservatorships and receiverships, the provision, rates, or cancellation of insurance of accounts, and the administration of the FSLIC insurance fund and are to publish notice of the allocation of those regulations and orders between the Agencies. This Notice sets forth that allocation.

#### FOR FURTHER INFORMATION CONTACT:

Office of Thrift Supervision: Deborah Dakin, Regulatory Counsel, (202) 906-6445, Regulations and Legislation Division, Office of the General Counsel, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Federal Deposit Insurance Corporation: Alan J. Kaplan, Counsel, (202) 898-3734, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:** The FIRREA, signed into law on August 9, 1989, provided for a substantial reorganization of the regulation and insurance of savings associations. Functions formerly performed by the

Bank Board and the FSLIC in these areas have now been divided between the OTS and the FDIC. Section 401(i) of the FIRREA provides that within sixty days of its enactment the Director of the OTS and the Chairperson of the FDIC shall "(1) identify the regulations and orders which relate to the conduct of conservatorships and receiverships in accordance with the allocation of authority between them under this Act and the amendments made by this Act; and (2) promptly publish notice of such identification in the Federal Register." Section 402(b), in conjunction with section 402(a), requires a similar identification, allocation, and publication for regulations and orders that relate to "(1) the provision, rates, or cancellation of insurance of accounts; or (2) the administration of the insurance fund of the Federal Savings and Loan Insurance Corporation."

This notice lists the regulations relating to these areas<sup>1</sup> in effect on August 9, 1989 and the disposition of those regulations upon transfer. In general, the rules relating to the authority to appoint conservators and receivers for savings associations are being transferred to the OTS, while those relating to the conduct and powers of conservatorships and receiverships, all aspects of insurance of accounts, the provision of financial assistance to institutions to prevent default, and administration of the deposit insurance fund are being transferred to the FDIC. Upon such transfer, such regulations will be part of the regulations of the appropriate agency, which may then modify, redesignate (*i.e.*, renumber) or repeal such regulations as it deems appropriate within the requirements of the FIRREA, the Home Owners' Loan Act (in the case of OTS), and the Federal Deposit Insurance Act (in the case of FDIC). The regulations of the OTS appear in 12 CFR chapter V and the regulations of the FDIC appear in 12 CFR chapter III.

This notice in and of itself does not have a substantive effect on the regulations or those subject to them; it merely provides a convenient reference source for the disposition of the affected regulations. Section 401(h) provides that, subject to section 402 (which contains special rules for the continuation and coordination of regulations relating to insurance of accounts and

<sup>1</sup> The regulations of the Bank Board and the FSLIC governing the chartering of Federal savings associations and the regulation of all savings associations and savings and loan holding companies have been transferred to the OTS and are neither addressed by sections 401(i) or 402 nor set forth in this Notice.

administration of the FSLIC insurance fund), all orders, resolutions, determinations, and regulations issued, made, prescribed, or allowed to become effective by the FSLIC or the Bank Board that were in effect on the date of FIRREA's enactment continue in effect

and are enforceable by the appropriate successor agency until modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, any court or competent jurisdiction, or by operation of law.

Accordingly, the following listed rules of the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation have been allocated between the Office of Thrift Supervision and the Federal Deposit Insurance Corporation as follows:

## Title 12

Part or Section		Disposition
Subchapter C—Federal Savings and Loan System		
Part	Appointment of Conservators and Receivers.....	OTS
547	Powers of Conservator and Conduct of Conservatorships.....	FDIC
548	Powers of Receiver and Conduct of Receivership.....	FDIC
594		
Subchapter D—Federal Savings and Loan Insurance Corporation		
Part	Application for Insurance of Accounts.....	FDIC
562	Operations:	
563		
Sec.		
563.8-2	Corporation's right of purchase.....	FDIC
563.15	Premiums.....	FDIC
563.16	Premiums in mergers, consolidations, or purchases of bulk assets.....	FDIC
563.16-2	Secondary reserve.....	FDIC
563.28	Advertising of insurance of accounts.....	FDIC
563.29	Name of association.....	OTS
563.29-1	Continuation of insurance.....	FDIC
563.30	Reservation of right concerning advertising.....	FDIC
563.31	Other insurance or guaranty.....	FDIC
563.36	Equal opportunity in employment.....	FDIC
Part		
564	Settlement of insurance.....	FDIC
565	Termination of insurance.....	FDIC
569a	Receivers for insured institutions other than federal associations:	
Sec.		
569a.1	Grounds for appointment of receiver.....	OTS
569a.2	Appointment of receiver.....	OTS
569a.3	Notice of appointment.....	OTS
569a.4	Possession by receiver.....	FDIC
569a.5	Procedure on taking possession.....	FDIC
569a.6	Powers and duties as receiver.....	FDIC
569a.7	Priority of claims.....	FDIC
569a.8	Creditor claims.....	FDIC
569a.9	Claims of accountholders.....	FDIC
569a.10	Audits.....	FDIC
569a.11	Accounting practices, reports.....	FDIC
569a.12	Final discharge and release of receiver.....	FDIC
569a.13	Purchase and assumption transactions.....	FDIC
Part		
569c	Receivership rules.....	FDIC
570	Board rulings:	
Sec.		
570.12	Insurance of accounts evidenced by negotiable instruments.....	FDIC
570.13	Insurance of annuity accounts.....	FDIC
Part		
572	Net worth certificates.....	FDIC
572a	Voluntary assisted-merger program.....	FDIC
575	Procedures for the administration and determination of claims filed with the FSLIC as receiver.....	FDIC
575a	Presentment of claims to receiver prior to commencing litigation.....	FDIC
576	Procedures for the processing and determination on review of determinations of the FSLIC as receiver.....	FDIC
577	Procedures for the administration and determination of requests for expedited relief from decisions or threatened actions of the FSLIC as receiver.....	FDIC
578	FSLIC financial operations.....	FDIC

All orders of the Federal Home Loan Bank Board appointing the federal Saving and Loan Insurance Corporation as conservator or receiver and all orders of the Federal Home Loan Bank Board or Federal Savings and Loan Insurance Corporation affecting the conduct or powers of a conservatorship or receivership, both as in effect as of August 9, 1989, are allocated to the FDIC, the Resolution Trust Corporation, or the FSLIC resolution Fund (which is managed by the FDIC), as appropriate. All order of the Federal Home Loan Bank Board approving applications for insurance of accounts, including all conditions contained therein, as in effect as August 9, 1989, are allocated to the OTS.

Dated: at Washington, DC, this 3rd day of October 1989.

Office of Thrift supervision.

**M. Danny Wall,**

*Director.*

Federal Deposit Insurance Corporation.

**L. William Seidman,**

*Chairperson.*

[FR Doc. 89-23864 Filed 10-5-89; 8:45 am]

BILLING CODE 6720-01-M

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## Sunshine Act Meetings

Federal Register

Vol. 54, No. 193

Friday, October 6, 1989

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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).

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### FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

**TIME AND DATE:** 10:00 a.m., October 16, 1989.

**PLACE:** 5th Floor, Conference Room, 805 Fifteenth Street, N.W., Washington, D.C.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Approval of the minutes of last meeting.
2. Thrift Savings Plan Activities report by Executive Director.
3. Review of the Price Waterhouse report on "Review of Thrift Savings Plan Annuity Operations at the Thrift Investment Board and Metropolitan Life."

**CONTACT PERSON FOR MORE**

**INFORMATION:** Tom Trabucco, Director,  
Office of External Affairs, (202) 523-5660

Dated: October 3, 1989.

Francis X. Cavanaugh,

*Executive Director, Federal Retirement Thrift  
Investment Board.*

[FR Doc. 89-23789 Filed 10-4-89; 11:34 am]

BILLING CODE 6760-01-M

# Corrections

Federal Register

Vol. 54, No. 193

Friday, October 6, 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 AGRICULTURE

### Commodity Credit Corporation

**1989 Price Support Levels for Fire-Cured (Type 21), Fire-Cured (Types 22-23), Dark Air-Cured (Types 35-36), Virginia Sun-Cured (Type 37), Cigar-Filler and Binder (Types 42-44, 53-55) and Cigar-Filler (Type 46) Tobaccos**

#### Correction

In notice document 89-21248 beginning on page 37491 in the issue of Monday, September 11, 1989, make the following corrections:

1. On page 37493, in the table, in the second and third columns, in the third entry, "106.7" and "105.2" should read "105.9" and "104.4", respectively.

2. On the same page, in the same table, insert "Virginia sun-cured, type 37"; "106.7"; and "105.2," in their respective columns, between the third and fourth entries.

BILLING CODE 1505-01-D

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. RP89-136-011 and TM90-1-59-001]

### Northern Natural Gas Co., Division of Enron Corp.; Filing

#### Correction

In notice document 89-22659 appearing on page 39465 in the issue of Tuesday, September 26, 1989, make the following corrections:

1. On page 39465, in the third column, the docket heading should read as set forth above.

2. On the same page, in the same column, the subject heading should read as set forth above.

BILLING CODE 1505-01-D

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. CP89-2082-000, et al.]

### Northwest Pipeline Corp., et al.; Natural Gas Certificate Filings

#### Correction

In notice document 89-22495 beginning on page 39224 in the issue of Monday, September 25, 1989, make the following correction:

On page 39225, in the second column, under "5. American Distribution Co. (Alabama Division)", the docket numbers should read "[Docket Nos. CP84-474-012 and CP86-263-004]".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Ch. I

[Docket No. 87N-0246]

### Certain Food, Cosmetic, and Miscellaneous Regulations; Editorial Amendments; Confirmation of Effective Date

#### Correction

In rule document 89-22051 appearing on page 38514 in the issue of Tuesday, September 19, 1989, make the following corrections:

1. On page 38514, in the first column, under "FOR FURTHER INFORMATION CONTACT:", in the fourth line, the phone number should read "301-443-2994".

2. On the same page, in the second column, in the second complete paragraph, in the 12th line, insert "21 CFR Parts" after "except for:".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Advisory Committees; Notice of Meetings

#### Correction

In notice document 89-21871 beginning on page 38439 in the issue of Monday,

September 18, 1989, make the following correction:

On page 38439, in the third column, in the first full paragraph, in the third line, "17509" should read "1750".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 89N-0303]

### International Drug Scheduling; Convention on Psychotropic Substances; Certain Benzodiazepine Drugs; Propylhexedrine

#### Correction

In notice document 89-21948 beginning on page 38441 in the issue of Monday, September 18, 1989, make the following correction:

On page 38441, in the second column, under "II. Notification", in the second line of the reference citation, "HOW" should read "WHO".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

#### 43 CFR Part 11

### Natural Resource Damage Assessments

#### Correction

In proposed rule document 89-22382, beginning on page 39015 in the issue of Friday, September 22, 1989, make the following correction:

On page 39016, in the second column, in the **DATE** section the date should read "October 23, 1989".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

[AZ 020-41-5410-10-ZAFH;AZA-23386]

## Receipt of Conveyance of Mineral Interest Application

*Correction*

In notice document 89-18574 appearing on page 32698 in the issue of Wednesday, August 9, 1989, make the following correction:

On page 32698, in the second column, under "Gila and Salt River Meridian, Arizona", in the seventh line, "SE 1/4" should read "SW 1/4".

BILLING CODE 1505-01-D

## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

## 29 CFR Part 1910

[Docket No. S-012A]

RIN 1218-AA53

## Control of Hazardous Energy Sources (Lockout/Tagout)

*Correction*

In rule document 89-20574 beginning on page 36644 in the issue of Friday, September 1, 1989, the following file line was omitted:

[FR Doc. 89-20574 Filed 8-31-89; 8:45am]

BILLING CODE 1505-01-D

## DEPARTMENT OF THE TREASURY

## Customs Service

## 19 CFR Part 171

[T.D. 89-86]

## Seizure of Property for Possession of Controlled Substances

*Correction*

In rule document 89-21211 beginning on page 37600 in the issue of Monday, September 11, 1989, make the following corrections:

**§ 171.12 [Corrected]**

1. On page 37603, in the first column, in § 171.12(b), in the eighth line, insert "the" after "mailing of".

**§ 171.51 [Corrected]**

2. On the same page, in the same column, in § 171.51(a), in the ninth line, "or" should read "of".

3. On the same page, in the second column, in § 171.51(b)(5), in the eighth line, "of" should read "for".

4. On the same page, in the third column, in § 171.51(b)(6)(i), in the third line, "of" should read "or".

**§ 171.52 [Corrected]**

5. On page 37604, in the second column, in § 171.52(b), in the 20th line, "pursuant" was misspelled.

BILLING CODE 1505-01-D

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 5h

RIN 1545-AM76

## Certain Elections Under the Technical and Miscellaneous Revenue Act of 1988

*Correction*

In rule document 89-22350 beginning on page 38979 in the issue of Friday, September 22, 1989, make the following corrections:

**§ 5h.6 [Corrected]**

1. On page 38981, in § 5h.6(a)(1), in the fourth column of the table, in the third and fourth lines, "January 20, 1990" should read "January 22, 1990".

2. On page 38982, in the 4th column of the same table, in the 8th and 9th entries, in the 5th and 10th lines respectively, "January 20, 1990" should read "January 22, 1990".

3. On page 38984, in § 5h.6(a)(2)(i)(B) and (b), in the 1st and 16th lines respectively, "January 20, 1990" should read "January 22, 1990".

**Note:** For a Department of the Treasury/ Internal Revenue Service correction to this document see the Rules section of this issue.

BILLING CODE 1505-01-D

# **Federal Register**

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Friday  
October 6, 1989

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## **Part II**

### **Department of Transportation**

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#### **Coast Guard**

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**33 CFR Parts 154, 155, and 156**

**46 CFR Parts 32, 35, and 39**

**Marine Vapor Control Systems; Notice of  
Proposed Rulemaking**

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

33 CFR Parts 154, 155, 156

46 CFR Parts 32, 35, 39

[CGD 88-102]

RIN 2115-AC65

## Marine Vapor Control Systems

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to adopt new regulations for the safe design, installation, and operation of marine vapor control systems. Some states, in an attempt to meet the national ambient air quality standard for ozone set by the EPA under the Clean Air Act, have issued requirements for the control of volatile organic compound (VOC) emissions from tank vessels which carry oil and chemicals in bulk. Vapor emission control is also being considered as a means of reducing occupational exposure to toxic chemicals such as benzene. Unsafe vapor control system design or operation could result in fires and explosions, tank ruptures and oil spills. This rulemaking will not require the installation or use of vapor control systems.

**DATE:** Comments must be received on or before November 20, 1989.

**ADDRESSES:** Comments should be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/3600) (CGD 88-102), U.S. Coast Guard, 2100 Second St. SW., Washington, DC 20593-0001, (202) 267-1477. Comments may also be delivered to and will be available for inspection and copying at the Marine Safety Council, room 3600, U.S. Coast Guard, 2100 Second Street, SW., Washington, DC, between 8:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Robert H. Fitch, Office of Marine Safety, Security and Environmental Protection (G-MTH-1), room 1214, (202) 267-1217, between 7:00 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:** The public is invited to participate in this proposed rulemaking by submitting written views, data or arguments. Comments should include the name and address of the person making them, identify this notice (CGD 88-102) and the specific section of the proposal to which each comment applies, and give the reason for each comment. If an

acknowledgement is desired, a stamped self-addressed post card or envelope should be enclosed.

The rules as proposed may be changed in light of the comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

No public hearing is planned. However, one may be held at a time and place to be set in a subsequent notice in the Federal Register if written requests for a public hearing are received and it is determined that the opportunity to make oral presentations will be beneficial to the rulemaking process.

**Drafting Information**

The principal persons involved in drafting this proposal are: Lieutenant Commander Robert H. Fitch, Project Manager, and Lieutenant Commander Don M. Wrye, Project Counsel, Office of Chief Counsel.

**Background**

During loading or ballasting of bulk liquid cargo tanks, the liquid introduced into a tank displaces vapors within the tank, which in typical operations today are released to the atmosphere. The displaced vapors of certain cargoes contain VOC's which are a precursor to the formation of ozone, a major air pollutant in some areas. Several states, acting pursuant to their authority under the Clean Air Act of 1970, are considering requirements for the control of VOC emissions from the loading and ballasting of tankships and tank barges. Three states currently have regulations which will require the control of marine VOC emissions in the future.

Marine occupational exposure offers another reason for using vapor control systems. In a separate regulatory project (CGD 88-040), the Coast Guard is developing regulations requiring lower occupational exposure limits for benzene. In anticipation of these requirements, vessel and facility operators are considering the use of marine vapor control systems for the purpose of reducing occupational exposure to benzene and other hazardous chemicals.

In a typical vapor control system, vapors emitted from a tank vessel being loaded or ballasted are collected and piped ashore where they are destroyed through a process such as incineration, recovered through a process such as refrigeration/condensation, or returned to the shore tank being emptied (vapor balancing). When vapors are collected for purposes of reducing occupational exposure, and air pollution is not a factor, facility operators may choose to

pipe the vapors to a remote location and disperse them to the atmosphere.

The use of marine vapor control systems introduces potentially significant new hazards to the loading and ballasting operations of tank vessels. The Coast Guard can best address these hazards through the development of safety regulations for tank vessels and facilities using vapor control systems. This rulemaking will not require the installation or use of vapor control systems.

The primary hazards associated with the use of vapor control equipment are: cargo tank over- or underpressurization; overfill and spillage; and fire, explosion, and detonation. The severity and likelihood of accidents which might result from the use of vapor control systems warrant Coast Guard measures to minimize the risk of such accidents. It is, for example, possible for a vapor control system pipeline interconnecting a tank on a tank vessel with a shoreside vapor processing system to be filled with a flammable vapor. An ignition of this vapor could initiate a detonation wave which would propagate along the pipeline in either direction at the speed of sound and would generate pressure exceeding 600 pounds per square inch. Such an ignition could originate in shoreside vapor processing units such as incinerators or flares which are likely to be the most commonly used vapor processing systems. In 1983, such a flare initiated casualty occurred in a marine vapor control system. As a result, two barges were totally destroyed and considerable damage was done to the facility. Review of the casualty indicates that additional safety features, routine inspections and better training of personnel would have contributed to minimizing the likelihood of this casualty.

Present regulations do not address vapor control in the comprehensive manner considered necessary for safe operation of vapor control systems. There are currently no safety regulations applicable to facility vapor control system installations. In the case of tank vessels, while there are existing regulations for piping and electrical equipment which are applicable to vapor control equipment on vessels, the regulations are at this time inadequate in addressing all of the hazards associated with vapor control. Because of the complexities of vapor control systems, proper training of both ship and facility personnel is also considered essential to the safe operation of vapor control systems. At this time there are no Coast Guard requirements dealing with the training and qualifications of

personnel operating vapor control systems.

Recognizing the hazards associated with vapor control systems, the Coast Guard began to review proposed shoreside systems used in handling limited numbers of vessels in dedicated trade. While effective when vapor control system use was limited to a small number of dedicated trades, the case by case reviews fell short of providing a comprehensive safety check and providing the standardization considered necessary for widespread application of vapor control. Case by case review was also an inefficient means of conveying to Coast Guard field units and to industry the level of safety which must be provided.

The use of vapor control systems is expected to increase dramatically as states require their use to help achieve Clean Air Act standards for air quality and as industry increases its use of vapor control systems to meet new or proposed limits for occupational exposure to benzene and other carcinogenic chemicals carried in bulk. Given the anticipated increased use of vapor control systems, the Coast Guard can best ensure safety through regulations.

Because there was little historical experience to provide background data for vapor control systems and serious concerns existed over potential safety hazards introduced in implementing vapor control requirements, in 1986 the Coast Guard funded a National Research Council (NRC), Commission on Engineering and Technical Systems, Marine Board study to assess the technical, safety and economic aspects of vapor control systems. The NRC study was released in January, 1988 and concluded that control and recovery of hydrocarbon vapors from tankships and tank barges was feasible with available technology provided that national safety standards for vapor emission controls were developed and implemented.

In response to the NRC recommendation, the Chemical Transportation Advisory Committee (CTAC) Subcommittee on Vapor Control was formed to develop standards for the design and operation of vapor control systems. The Subcommittee held its first meeting in August 1987. Six Subcommittee and ten working group meetings were held to develop the standards. All meetings were open to the public and announced in the *Federal Register*. CTAC presented the recommendations to the Coast Guard in February 1989.

The Coast Guard funded a failure modes and effects analysis and a worst case scenario analysis on several

hypothetical vapor control systems which included the safety provisions contained in draft recommendations prepared by CTAC. On basis of the analysis, the Coast Guard proposed changes to the CTAC draft recommendations. CTAC reviewed the Coast Guard recommendations and incorporated some of those recommendations in their final recommendations. The American Petroleum Institute (API) has funded a quantitative risk analysis (referred to as the API risk analysis) based upon the final CTAC recommendations. Some changes resulting from the API risk analysis have been incorporated in these proposed rules. Both the Coast Guard and the API studies are included in this rulemaking docket and are available for examination.

The CTAC recommendations were used as the basis for these proposed regulations. The recommendations were reorganized and revised as appropriate to conform with language required for regulations, and some recommendations were not included because they were outside the scope of this rulemaking. Specific technical deviations from the CTAC recommendations are discussed in the Discussion section that follows:

The objective of this regulatory proposal is to provide standards for the safe design and operation of vapor control systems and provide qualification requirements for personnel operating vapor control systems. The requirements would be applicable to vessels and facilities that use vapor control systems. This rulemaking will not require the installation or use of vapor control systems. The requirement to use a vapor control system will stem from a state requirement to control vessel emissions, or alternatively, as part of a vessel or facility operator's program for complying with personnel exposure requirements for hazardous chemicals.

#### Discussion of the Proposed Regulation 33 CFR Part 154

The Coast Guard has another regulatory project (CGD 86-034) which would change part 154 to apply existing requirements for bulk oil transfer facilities to facilities which transfer bulk liquid hazardous materials. A Notice of Proposed Rulemaking of this project was published in the *Federal Register* on June 13, 1988 at 53 FR 22118, and a Supplemental Notice of Proposed Rulemaking was published in the *Federal Register* on June 9, 1989 at 54 FR 24718. Some of the changes in that rulemaking are necessary to make this part applicable to facilities using vapor

control. Changes to §§ 154.100, 154.105, and 154.106 included in that proposal are repeated in these proposed rules for the convenience of the reader. If CGD 86-034 becomes a final rule before this rulemaking, the proposed changes for those sections will be deleted from this rulemaking except for some additional incorporation by reference standards in § 154.106.

#### Section 154.100 Applicability

This section would amend the applicability of this part to include facilities which transfer bulk liquid hazardous materials.

#### Section 154.105 Definitions

This section would redefine "facility" to include facilities which transfer hazardous materials to or from a vessel.

#### Section 154.106 Incorporation by Reference

This section would list the materials which are incorporated by reference into this part.

#### Section 154.310 Operations Manual: Contents

This section would require operating procedures and a line diagram of a facility's vapor control system to be included in the facility's operations manual.

#### Section 154.740 Records

This section would require a facility to keep records of repairs to the vapor control system and all automatic shutdowns of the vapor control system. This was not part of the CTAC recommendations. However, the Coast Guard's position is that this is needed to indicate to the Coast Guard recurring problems which may require design changes.

#### 33 CFR 154, Subpart E

A new subpart E would be added to part 154 entitled "Vapor Control Systems" which would include requirements for the safe design and operation of vapor control systems at facilities. The following sections would be included in the new subpart:

#### Section 154.800 Applicability

This section would describe the applicability of this subpart. The rules would be applicable to any facility which recovers flammable or combustible vapors from tank vessels. Recovery of vapors from liquefied flammable gases is exempted. The CTAC recommendations listed applicability only for vapors from crude oil, benzene, and gasoline cargoes. The

Coast Guard anticipates that vapor control systems must be utilized in controlling emissions from a wider range of cargoes. The requirements developed by CTAC can apply equally to all cargoes listed in Table 30.25-1 of 46 CFR part 30 and to hydrocarbon compounds (i.e., only made up of hydrogen and carbon) listed in 46 CFR Table 151.01-10(b) or Table 1 of 46 CFR part 153. Cargoes listed in 46 CFR Table 151.01-10(b) or Table 1 of 46 CFR part 153, which are not hydrocarbons liquids, are given special consideration in § 154.803 of this subpart.

#### *Section 154.802 Definitions*

This section would give definitions of terms which are used in this subpart. Several terms were added to those provided by CTAC in order to define terms which may not otherwise be clear to people likely to use these rules. "Recognized industry standards" which was included in the CTAC recommendations, is not included in these proposed rules because the subject is dealt with in the section on "Incorporation by Reference". "Sources of ignition", which was included in the CTAC recommendations, is not included in these proposed rules because its primary usage in the CTAC recommendations is not contained in these proposed rules.

#### *Section 154.803 Other Hazardous Materials*

This section would require a facility which collects vapors of cargoes listed in 46 CFR Table 151.01-10(b) or Table 1 of 46 CFR part 153, which are not hydrocarbons liquids, to meet the requirements in this subpart and any additional requirements which the Commandant (G-MTH) may prescribe. These cargoes may have unusual flammability characteristics or other particular hazards which are not adequately addressed by this subpart and must receive special consideration.

#### *Section 154.804 Review of System Designs and Initial Inspection*

This section describes the proposed process for review of a facility's vapor control system design. It includes provisions for review by a third party acceptable to the Coast Guard. All new and existing facility vapor control systems would be reviewed and certified by an entity acceptable to the Coast Guard, including these facility vapor control systems which were previously approved by the Coast Guard. Owners or operators of a facility with a previously approved vapor control system would have six months to make their submittal, twelve months

to make modifications after notification by the certifying entity, and not more than two years total to come into compliance with the regulations. The CTAC recommendations called for previously approved existing systems to be accepted by the Coast Guard without formal review, however, the Coast Guard is proposing that formal review. When the Coast Guard previously reviewed the systems, the potential hazards were not fully understood, and they were not reviewed to the same standards of safety which would be required by these regulations.

This section would also require a qualitative failure analysis as part of the review process. It would require the analysis to show that the vapor control system has two means of protection to prevent an ignition in the facility's system from propagating to the vessel and to prevent an ignition on the vessel from propagating into the facility's system, and these means of protection must operate automatically, independent of human intervention. The CTAC recommendations called for three means of protection to prevent an ignition from propagating to the vessel, however, the first means of protection was intended to be good design which eliminates sources of ignition. The Coast Guard's position is that this good design means of protection is addressed throughout these proposed rules, would be difficult to demonstrate in a failure analysis, and therefore is not needed. Although not included in the CTAC recommendations, the Coast Guard is proposing to include in the definition of "means of protection" that these means of protection must operate without intervention, because an operator is not likely to be able to act with sufficient speed to prevent propagation of an ignition.

This section would authorize the certifying entity to conduct the initial inspection and testing of the installation to verify that the system conforms to the plans and specifications, and meets the requirements of this subpart. After the certifying entity certifies that the installation meets the requirements of this subpart, the Captain of the Port will endorse the facility's Letter of Adequacy that the facility is acceptable to collect vapors.

The CTAC recommendations did not address procedures relating to alterations to a vapor control system. The Coast Guard's position is that alterations involving any component required by this subpart must be approved and inspected by an approval entity. Therefore, this provision is included.

#### *Section 154.806 Application for Acceptance as a Certifying Entity*

This section would give the process and required qualifications for obtaining Coast Guard acceptance as a certifying entity. The CTAC recommendations provided for a professional engineer to perform the review. The Coast Guard's position is that persons other than professional engineers may be qualified to perform the review, and that additional criteria should be met to demonstrate acceptable qualifications. The Coast Guard wants certifying entities to be available when the final rules become effective. Entities may submit their applications based on these proposed rules, and the Coast Guard will begin to grant acceptances when the final rules are published. If there are no acceptable entities when the final rules become effective, the Commandant (G-MTH) will consider conducting the review and analysis required by § 154.804 of this subpart on an interim basis and Coast Guard field units will conduct the initial inspection.

#### *Section 154.808 Vapor Control System, General*

This section would give some general requirements for a facility's vapor control system. The proposed requirements would include provisions for elimination of potential sources of ignition, for vapor collection system components to meet ANSI Standard B31.3 with a design working pressure of at least 150 psig, for a means to drain and collect any liquid condensate in the vapor line, and for a liquid knockout vessel to protect the vapor compressor from liquid carryover. Based upon the results of the API risk analysis, this section would also require a high level alarm and overflow shutdown for the knockout vessel to prevent liquid carryover.

#### *Section 154.810 Vapor Line Connections*

This section would give requirements for the facility vapor connection, shutoff valves at the facility vapor connection, and vapor hoses and loading arms. A requirement for the automatic shutoff valve to close in five seconds, and to be located upstream of any vapor assist device and the point where inerting, diluting, or enriching gas is introduced into the system, has been included. The Coast Guard is proposing to require an isolation valve capable of manual operation in addition to the automatic shutoff valve called for in the CTAC recommendations. The Coast Guard's position is that the facility needs to be able to isolate its vapor collection

system from the vessel manually, in case of failure of the automatic shutoff valve.

The requirements for vapor hoses and vapor loading arms would be expanded from the CTAC recommendations. The proposed rules would require that the hoses and loading arms have a maximum allowable working pressure of at least 25 psi pressure and 2.0 psi vacuum, require annual testing of hoses, and require specific types of connections. The rules would also require the last 1.5 meters of vapor piping or vapor loading arm to be painted a bright orange color (international orange), and all of the vapor hose to be that color in lieu of only the last two feet as specified in the CTAC recommendations. Although CTAC wanted a standard color to be used to distinguish vapor connections, it could not agree on a color. The Coast Guard is proposing to require orange because it is easily recognizable and will not conflict with existing piping color code systems.

Both the Coast Guard hazards analysis and the API risk analysis recognized the hazard involved in misconnecting a loading hose to the vessel vapor connection and recommended steps to prevent it from occurring. The Coast Guard's position is that this can best be handled by requiring some means of physically preventing misconnection. The Coast Guard proposes to require a lug with a corresponding hole on each flange to prevent misconnection. Suggestions of other physical means to prevent misconnection are solicited.

#### *Section 154.812 Vessel Liquid Overfill Protection*

This section would give requirements for facilities to prevent the overfill of tank barges. These requirements are needed because of the potentially increased hazards resulting from the closed loading of tank vessels associated with vapor control. The requirements would be applicable to facilities loading tank barges which use the overfill protection measures proposed in 46 CFR 39.20-9(b). It would give requirements for an overfill control panel located on the facility, which would receive a high level signal from sensors on the tank barge. Although the CTAC recommendations did not specify an automatic shutdown of cargo loading, the Coast Guard's position is that this should be required. The need for this automatic shutdown is indicated by the Coast Guard's hazards analysis and API's risk analysis. The Coast Guard is also proposing that the loading should

automatically shut down when signal circuit continuity is lost.

#### *Section 154.814 Vessel Vapor Overpressure and Vacuum Protection*

This section would give requirements to prevent a facility from over- or underpressurizing a tank vessel. The requirements would include maximum and minimum pressures at the facility vapor connection, and high and low pressure alarms and shutdowns. The CTAC recommendations specified a maximum pressure of 0.2 psig for inland tank barges and 0.3 psig for ocean tank barges. The Coast Guard's position is that the 0.1 psig pressure difference does not add any benefit, and therefore is proposing to require that the maximum pressure be 0.3 psig for all non-inerted vessels. The Coast Guard is proposing that the facility's vapor collection system have a capacity at least equal to 1.25 times the facility's maximum loading rate in order to reduce the possibility of overpressurizing a vessel. The 1.25 factor is used to account for vapor generation during loading.

This section would also include provisions for high/low pressure alarms and high/low pressure shutdowns of the vapor collection system and cargo loading when the high/low pressure levels are exceeded by a specific pressure. The CTAC recommendations did not include maximum/minimum settings for the alarms and shutdowns. The Coast Guard has decided that these maximum/minimum settings should be specified in order to ensure standard performance criteria.

The Coast Guard's hazards analysis recommended that the pressure sensing devices used to activate high pressure alarms and shutdowns be located in the vapor collection line as close to the tank vessel as possible, that is, upstream of the facility's first valve, so this provision has been included. The API risk analysis recommended that a liquid vacuum breaker to relieve excessive vacuum should be located in the vapor collection line if a device is used to assist drawing the vapors, so this has been included. Provisions are also included which would require the liquid vacuum breaker to be tested for capacity in accordance with API Standard 2000. The Coast Guard is proposing that a means of determining whether the maximum allowable loading rate is exceeded for a vessel must be provided.

#### *Section 154.820 Fire, Explosion and Detonation Protection*

This section would give requirements to prevent a fire, explosion, or detonation in a facility's vapor control system. The CTAC recommendations

required three means of protection against flame propagation from any source of ignition in the vapor control system to the tank vessel, and two means of protection against flame propagation from the tank vessel to the facility. The Coast Guard's position is that this approach is too confusing, not sufficiently specific, and may result in some systems not having an adequate level of safety. This section would be more specific than the CTAC recommendations, yet still retain flexibility to allow operators to design any type of system which would provide for an adequate level of safety.

This section would require a two-way detonation arrester at the facility vapor connection. The CTAC recommendations identified this device as one of the means of protection. An ASTM specification for the testing of detonation arresters is under development, and is expected to be published prior to the publishing of these requirements as a final rule. In these proposed rules, the number of this specification is left blank and will provide in the final rule. A draft of this specification is included as Appendix A. Detonation arresters have not yet been tested to the requirements of this specification. The Coast Guard expects that due to the expense of the test, no company will want to perform the test until the standard is adopted. It is anticipated that some commercially available detonation arresters can meet the draft ASTM standard. API has expressed its intention to conduct tests after the standard is adopted.

This section would also require a means of maintaining the concentration of the vapor mixture outside the flammable range. The operator would have the option of using either air dilution, enrichment, or inerting. The proposed regulation would provide the acceptable range of hydrocarbon concentration or oxygen concentration based upon a percentage of either the upper or lower flammable limit. An alarm would be required when the mixture deviates from the acceptable concentration range and an automatic shutdown of the vapor collection system would be required when the concentration deviates even further from the acceptable range. The CTAC recommendations would require an inerting system to alarm when the oxygen content exceeded 7.0 percent and to shut down vapor transfer at 8.0 percent. Coast Guard regulations and requirements of the International Convention for the Safety of Life at Sea of 1974, as amended (SOLAS 74/83), require that the oxygen content in cargo

tanks of certain oil tankers be maintained at 8.0 percent by volume or less. The Coast Guard's position is that this concentration provides an acceptable margin of safety for ships and that it will be equally appropriate for vapor control purposes. Therefore, these proposed regulations require an oxygen concentration of 8.0 percent for the alarm set point and 9.0 percent for the shutdown set point.

This proposed section goes into more detail on the means of analyzing the vapor stream than was recommended by CTAC, such as including provisions for the injection of a test span gas. The API risk analysis indicated that there was a danger of the cargo tanks being overpressurized by a blockage in the vapor collection line, or of the cargo tanks being overpressurized by the diluting, enriching or inerting gas system. Therefore, a provision was added to require a pressure relieving device in the facility vapor collection line.

The CTAC recommendations recognized an explosion suppression system as an acceptable fire protection measure. The Coast Guard has reservations on the effectiveness of an explosion suppression system for this application, and questions whether the design criteria for such a system have been adequately defined. Tests to demonstrate its effectiveness are now being planned. If these tests demonstrate the effectiveness of an explosion suppression system, design criteria will also be developed, and the Coast Guard will modify the final rule to allow the use of an explosion suppression system as a fire protection measure.

This proposed section requires a flame arrester at all outlets to the atmosphere of the vapor control system and at any incinerator or flare. Each flame arrester must meet an ASTM standard which is under development and is expected to be published prior to the publishing of these requirements as a final rule. In these proposed rules, the number of this specification is left blank and will be provided in the final rule. A draft of this specification is included as Appendix B.

The CTAC recommendations did not address all of the ignition hazards introduced by an incinerator or flare used to destroy the vapors or by a compressor or blower used to assist the movement of the vapors. This section would provide additional requirements to address these hazards.

If inerted vapors are handled by the vapor collection system, there may be a build-up of pyrophoric iron sulphide deposits in the system. If air is

introduced into the system, there is a danger of heating by the pyrophoric iron sulphide. This section proposes a requirement for a facility to have provisions to reduce the risk of heating from pyrophoric iron sulfide deposits if the vapor control system handles inerted vapors.

#### *Section 154.840 Personnel*

Since few systems are currently installed, the Coast Guard is proposing that training be specifically tailored to a particular facility's installed vapor control system. The guidelines for a training program were developed by CTAC and are included as Appendix D. For personnel who have not previously received vapor control system training, the proposed rules would require a 40 hour course, with at least 8 hours of hands-on training in normal and emergency operating procedures. For personnel who have completed this training at another facility or similar training for vessel personnel, the training could be reduced to 24 hours, including 8 hours of hands-on training in normal and emergency operating procedures. Comments are specifically requested on the duration of the training and whether individual training courses should be approved by the Coast Guard.

#### *Section 154.850 Operational Requirements*

This section would detail operational requirements for a facility using a vapor control system. It would include limitations on the loading rate and verification that all necessary valves in the vapor control system are open. In addition to the CTAC recommendations, the Coast Guard is proposing that a facility shall only receive vapors from a vessel approved for vapor control, that all alarms and sensing devices must be tested not more than 24 hours prior to each loading operation, that both oxygen or hydrocarbon analyzers must be operable at the start of each loading operation, and that the cargo loading must be terminated whenever the vapor control system is shut down.

The CTAC recommendations did not address the size or the length of vapor hose which can be used. The proposed regulations assume that pressure drops through hoses will be minimal. The Coast Guard's position is that, in order for this to be a reasonable assumption, the length of vapor hose should be limited to 30 meters and the inside diameter to no less than that of the vessel's vapor collection system piping. Longer hose lengths may be used if provisions are made to account for the resistance of the additional vapor hose.

The Coast Guard hazard analysis and the API risk analysis brought out several other potential hazards which were not addressed in the CTAC recommendations. The following provisions to address these additional hazards were added to this proposed rulemaking: The initial loading rate to each cargo tank should be limited in order to reduce the possibility of generating static electricity; and vapors from an inerted vessel must be at a higher pressure than on the facility side of the isolation valve before the valve is opened, in order to prevent the possibility that non-inerted air will enter the vessel's vapor collection line and cause heating of pyrophoric iron sulphide deposits.

The CTAC recommendations did not address line clearing of the cargo loading line. The Coast Guard's position is that line clearing risks overpressurizing cargo tanks when a vessel is closed loading. Therefore, line clearing would be prohibited.

A damaged flame arrester at a flare contributed to a casualty with a vapor control system. The flame arrester had been damaged by a previous flare-back. Therefore, a provision is included to inspect the flame arrester prior to continuing transfer operations if a flame is detected on the flame arrester or if it is suspected that a flare-back has occurred.

#### **33 CFR Part 155**

##### *Section 155.750 Contents of Oil Transfer Procedures*

This section would require operating procedures and a line diagram of the vessel's vapor collection system to be included in the vessel's oil transfer procedures.

#### **33 CFR Part 156**

##### *Section 156.120 Requirements for Oil Transfer*

This section would require that certain operational conditions of the vapor control system be verified prior to conducting a transfer operation.

##### *Section 156.170 Equipment Tests and Inspections*

This section would require certain tests and inspections to be performed on a facility's or vessel's vapor control system. The CTAC recommendations did not include provisions for periodic testing and inspection other than tests prior to each transfer operation. The Coast Guard's position is that most components of the vapor control system which are not tested prior to each transfer operation should be tested

annually. Although periodic inspection of detonation arresters is necessary, the Coast Guard does not have sufficient information to determine how often inspection should be required. Clogging of detonation and flame arresters varies with different cargoes. The Coast Guard proposes to require annual inspection of detonation and flame arresters, and requests information regarding the frequency of inspection considered necessary based on operational experience. The Coast Guard also proposes to require weekly calibration of hydrocarbon and oxygen analyzers.

#### 46 CFR Part 32

##### *Section 32.53-85 Instruction Manual—T/ALL*

This section would require a vessel's inert gas instruction manual to be amended to include procedures relating to vapor control operations.

#### 46 CFR Part 35

##### *Section 35.35-20 Inspection Prior to Transfer of Cargo—TB/ALL*

This section would require certain operational conditions of a tank vessel's vapor control system to be verified prior to conducting an oil transfer operation.

##### *Section 35.35-30 "Declaration of Inspection" for Tankships—T/ALL*

This section would require checks to a vessel's vapor control system prior to transfer to be added to the vessel's Declaration of Inspection as an appendix.

#### 46 CFR Part 39

A new part 39 entitled "Vapor Control Systems" would be added which would include requirements for the safe design and operation of vapor control systems on tank vessels. The CTAC recommendations had separate requirements for tankships and tank barges. Because of the extent of overlap, the Coast Guard is proposing that these requirements should be combined, with differing requirements pointed out. The following sections would be included in the new part:

##### *Section 39.10-1 Applicability—TB/ALL*

This section would describe the applicability of this part. This part would be applicable to any tankship or tank barge which recovers hydrocarbon vapors. Because state requirements to control vapor emissions may require foreign vessels in U.S. ports to control vapor emissions, these safety regulations would apply to foreign vessels collecting vapor emissions. Recovery of vapors from liquefied

flammable gases is exempted. The CTAC recommendations listed applicability only for vapors from crude oil, benzene, and gasoline cargoes. The Coast Guard anticipates that vapor control systems may be utilized in controlling emissions from a wider range of cargoes. The requirements developed by CTAC can apply equally to all cargoes listed in Table 30.25-1 of 46 CFR part 30 and to hydrocarbon compounds (i.e., only made up of hydrogen and carbon) listed in 46 CFR Table 151.01-10(b) or Table 1 of 46 CFR part 153. Cargoes listed in 46 CFR Table 151.01-10(b) or Table 1 of 46 CFR part 153, which are not hydrocarbon liquids, are given special consideration in § 39.10-7 of this part.

##### *Section 39.10-3 Definitions—TB/ALL*

This section would give definitions of terms which are used in this part which may not otherwise be clear to people likely to use these rules. The CTAC recommendations did not include a definition section for tankships or tank barges.

##### *Section 39.10-5 Incorporation by Reference—TB/ALL*

This section would list the materials which are incorporated by reference into this part.

##### *Section 39.10-7 Other Hazardous Materials—TB/ALL*

This section would require a facility which collects vapors of cargoes listed in 46 CFR Table 151.01-10(b) or Table 1 of 46 CFR part 153, which are not hydrocarbon liquids, to meet the requirements in this subpart and any additional requirements which the Commandant (G-MTH) may prescribe. These cargoes may have unusual flammability characteristics or other particular hazards which are not adequately addressed by this subpart and must receive special consideration.

##### *Section 39.10-9 Vessel Vapor Processing Unit—TB/ALL*

Since a tank vessel with a vapor processing unit on board has hazards similar to a facility with a vapor control system, this section would require such a vessel to be reviewed to verify that the vessel provides an equivalent level of safety as required for a facility in proposed 33 CFR 154, subpart E. Although this requirement was not part of the CTAC recommendations, CTAC addressed this type of vessel assuming that it would meet the requirements for a facility. Therefore, this is consistent with the assumption and intent of the CTAC recommendations.

##### *Section 39.10-11 Personnel—TB/ALL*

Since few systems are currently installed, the Coast Guard is proposing that training be specifically tailored to a vapor control system installed on a particular vessel or class of vessels. The guidelines for a training program were developed by CTAC and are included as Appendix D. For personnel who have not previously received vapor control system training, the proposed rules would require a 40-hour course, with at least 8 hours of hands-on training in normal and emergency operating procedures. For personnel who have completed this training on another vessel or similar training for facility personnel, the training could be reduced to 24 hours, including 8 hours of hands-on training in normal and emergency operating procedures. Comments are specifically requested on the duration of the training and whether individual training courses should be approved by the Coast Guard.

##### *Section 39.10-13 Submission of Vapor Control System Designs—TB/ALL*

This section would specify the procedures for submitting vessel vapor control plans to the Coast Guard's Marine Safety Center (MSC) for review. The installation on a foreign flag vessel would be certified by the classification society which classes the vessel. All new and existing vessel vapor control systems would have to be reviewed and approved by the MSC. Owners or operators of a vessel with a previously approved vapor control system would have six months to make their submittal, twelve months to make modifications after notification by the Coast Guard, and not more than two years total to come into compliance with the regulations. The CTAC recommendations were that previously approved existing systems should not need further review. However, the Coast Guard's position is that further review is necessary. When the Coast Guard previously reviewed the systems the potential hazards were not fully understood, and they were not reviewed to the same standards of safety which would be required by these regulations.

##### *Section 39.20-1 Vapor Collection System—TB/ALL*

This section would give some general requirements for a tank vessel's vapor collection system. It would give requirements for the vessel vapor connection line and for vapor hoses. The CTAC recommendations did not require the vapor piping to be permanently installed. The Coast Guard is proposing that vapor piping should be permanently

installed. However, the Coast Guard recognizes that there may be instances when the use of vapor hoses would be acceptable. Therefore, the proposed regulations allow for exceptions. The CTAC recommendations called for the vessel vapor connection to be in the vicinity of the loading manifold. The Coast Guard agrees that such a location is desirable. However, the recommendation provided by CTAC is vague and would do little to enhance safety. The API is presently developing a standard for manifold arrangements which will provide a more definitive description than the CTAC recommendation. When this standard is received, the Coast Guard may propose adopting it as a requirement. Comments are specifically requested on the need for specifying the location of the vapor connection and what this location should be.

The requirements for vapor hoses and vapor loading arms would be expanded from the CTAC recommendations. The proposed regulations would require that the hoses have a maximum allowable working pressure of at least 25 psig, be capable of withstanding a vacuum of 2.0 psi, and require specific types of connections. They would also require the last 1.5 meters of the vessel's vapor piping to be painted a bright orange color (international orange), and all of the vapor hose to be that color in lieu of only the last two feet as specified in the CTAC recommendations. As previously discussed, orange is proposed because it is easily recognizable and will not conflict with existing piping color code systems.

Both the Coast Guard hazards analysis and the API risk analysis recognized the hazard involved in misconnecting a loading hose to the vessel vapor connection and recommended steps to prevent it from occurring. The Coast Guard's position is that this can best be handled by requiring some means of physically preventing misconnection. The Coast Guard proposes to require a lug with a corresponding hole on each flange to prevent misconnection. Suggestions of other physical means to prevent misconnection are solicited.

#### *Section 39.20-3 Cargo Gauging System—TB/ALL*

This section would require a closed gauging system on a tank vessel which recovers hydrocarbon vapors in order to determine liquid level in the cargo tank, and gives the requirements for such a system. The CTAC recommendations for tank barges called for the gauging system to be permanently installed, while this was not included for

tankships. The Coast Guard's position is that the gauging system should be permanently installed on all vessels.

This section would also require a secondary gauging system for the topping off range for tank barges which recover hydrocarbon vapors, because they will not normally have the high level and overflow alarms that tankships have. The CTAC recommendations did not specify the range for this secondary gauging system. The Coast Guard's position is that at least the cargo level in the top 1.5 meters of the tank should be indicated by this system. However, where a tank barge does have the same high level and overflow alarms that are required for tankships, the proposed regulations exempt them from the secondary gauging system requirements. Although not included in the CTAC recommendations, the Coast Guard is proposing that an exemption under these circumstances would be appropriate.

#### *Section 39.20-7 Tankship Liquid Overflow Protection—T/ALL*

This section would require a high level alarm and a tank overflow alarm on tankships which recover hydrocarbon vapors, and give the requirements for these alarms. The CTAC recommendations called for the high level alarm to be set at no less than 95 percent of the tank capacity and the overflow alarm to be set at no higher than 98.5 percent of tank capacity. The Coast Guard's position is that it is not appropriate to specify a lower limit for the high level alarm, but that tanks should not normally be filled over 97 percent capacity. Therefore, the proposed regulations require that the high level alarm set point be not higher than 97 percent capacity. The Coast Guard has decided that the set point for the overflow alarm should be given as a performance standard. Therefore, the proposed regulations require that the alarm should be set to go off at a level where the operator has sufficient time to shut down cargo loading before the cargo tank overflows. The requirements are intended to be similar to the requirements for high level and overflow alarms in 46 CFR part 153.

#### *Section 39.20-9 Tank Barge Liquid Overflow Protection—B/ALL*

This section would give the overflow protection requirements for tank barges which recover hydrocarbon vapors. The Coast Guard is proposing four different alternatives: dual high level alarms meeting § 39.20-7, an overflow control system which has sensors on the tank barge and electrical connection to an

overflow control panel on shore, an acceptable spill valve, or an approved rupture disk. The CTAC recommendations called for a spill valve to limit the back pressure in the tank from reaching the design pressure of the tank. The Coast Guard's position is that it would create less confusion to specify a maximum back pressure of 3.0 psig for tankships and 2.0 psig for tank barges. An ASTM specification for spill valves is under development, and is expected to be published prior to the publishing of these requirements as a final rule. In these proposed rules, the number of this specification is left blank and will be provided in the final rule. A draft of this specification is included as appendix C.

The use of rupture disks introduces some additional concerns which are not present when spill valves are used. Spill valves resist passage of flame into a cargo tank in the case of a fire on deck. Rupture disk arrangements may not, since, when the disk ruptures, it leaves an open path into the tank. Alternatively, if a valve is provided to close off the rupture disk discharge, the valve may be left closed when the tank is loaded. These proposed rules require approval from the Commandant for rupture disk arrangements addressing these added concerns. The Coast Guard has already approved one such arrangement.

#### *Section 39.20-11 Vapor Overpressure and Vacuum Protection—TB/ALL*

This section would give requirements to prevent over- or underpressurizing a cargo tank on a vessel which recovers hydrocarbon vapors. The Coast Guard is proposing to require pressure relief devices with an adequate capacity to vent vapors at a rate at least 1.25 times the maximum loading rate without exceeding 3.0 psig for tankships or 2.0 psig for tank barges, and with a relief pressure of not less than 1.5 psig. Vacuum relief devices would be required which have an adequate capacity to vent air into the tank at a rate at least 1.25 times the maximum loading rate without exceeding 1.0 psi vacuum, and with a relief pressure of not less than 0.5 psi vacuum. The 1.25 factor is used to account for vapor generation during loading.

The CTAC recommendations did not specify the maximum back pressure or vacuum which can be reached in the tank. Also, the CTAC recommendations did not specify the minimum pressure or vacuum setting of the relief devices. The Coast Guard is proposing minimum relief settings and maximum tank pressure and vacuum to enhance

standardization of systems and, thereby, improve safety.

This section would require that a relief device installed after the effective date of these regulations have means to check that the device is operating freely. The CTAC recommendations for tank barges called for a delay in the implementation of this requirement until January 1, 1991. The Coast Guard's position is that this delay is unwarranted because the feature is currently available from most manufacturers of relief devices.

Although not part of the CTAC recommendations, the Coast Guard is proposing that the capacity of relief devices must be demonstrated through testing in accordance with API Standard 2000.

*Section 39.20-13 High and Low Vapor Pressure Protection for Tankships—T/ALL*

This would require sensors and alarms on tankships which recover hydrocarbon vapors to warn against over- or underpressurizing the tankship. The CTAG recommendations did not specify the number of pressure sensors or the location of the pressure sensors. The Coast Guard's position is that short of having a pressure sensor at each tank, a vessel should have two pressure sensors located at the forwardmost and aftermost tanks which are connected to the vapor collection system. If only one pressure sensor is provided, the operator of a vessel will not know the highest or lowest pressure reading on the vessel, particularly when multiple tanks forward and aft of the vessel vapor connection are being loaded. Provisions are included for arrangements which do not have tanks connected to the vapor collection system which are both forward and aft of the vessel vapor connection. Although not specified in the CTAC recommendations, the Coast Guard is proposing that the high pressure alarm be activated when the pressure reaches 50 percent of the lowest pressure relief device setting, and that the low pressure alarm be activated when the pressure falls to four inches water gauge (0.144 psig) for inerted tankships, or 0.5 psi vacuum for other tankships.

*Section 39.30-1 Operational Requirements—TB/ALL*

This section would detail operational requirements for a tank vessel using a vapor control system. Although not part of the CTAC recommendations, the Coast Guard is proposing that a tank vessel may only transfer vapors to a facility or vessel which is approved to receive the vapors.

This section would include limitations on the loading rate based upon the venting capacity of the pressure relief devices or the capacity of the vapor collection system, in both cases assuming that vapors are vented at 1.25 times the loading rate. The 1.25 factor is used to account for vapor generation during loading. The CTAC recommendations for tankships and tank barges differ in their approach to ensuring that the maximum allowable pressure in a cargo tank is not exceeded due to excessive loading rates. The tankship recommendations require the size of the vapor collection lines to be sufficient to prevent the back pressure in the tank from exceeding the tank's maximum operating pressure. The tank barge recommendations require the loading rate to be limited so that the pressure does not exceed any pressure relief device setting or the venting capacity of the pressure relief devices. The Coast Guard's position is that this would be best handled as an operational requirement, and that 50 percent of any pressure relief device setting should be specified as the maximum back pressure in order to provide a greater margin of safety. The Coast Guard is also proposing that the maximum pressure in the tank when venting vapors at 1.25 times the maximum loading rate be 3.0 psig for tankships and 2.0 psig tank barges. If the capacity of the tank vessel's vapor collection system is the limiting factor, the maximum loading rate will vary with the pressure at the facility's vapor connection. Information on the maximum loading rate would be provided as part of the vessel's oil transfer procedures required under proposed 33 CFR 155.750(d). The information may be provided as a table or graph giving the maximum allowable loading rate versus the pressure at the vessel's vapor connection.

This section would limit cargo tank filling to a capacity of 97 percent or the set point level for the high level alarm, whichever is lower. The CTAC recommendations called for a maximum filling limit of 98%. The Coast Guard's position is that filling a tank higher than 97% carries too high a risk that the person in charge will not be able to shut down loading in time and that the loading should not be continued after the high level alarm goes off. The 97% filling limit is consistent with the requirement in 46 CFR 153.409 for the setting of the high level alarm. Vessels with special circumstances would be able to request permission from the Commandant to fill higher than 97%.

This section would require certain operational conditions to be met in order to open gauge for cargo sampling

or custody transfer. The International Safety Guide for Oil Tankers and Terminals recommends waiting at least 30 minutes after loading a tank before gauging or sampling the tank with metallic equipment, to allow static electricity accumulations to dissipate. This requirement is included in this section.

This section would limit the initial loading rate to each cargo tank to one meter per second linear velocity until the cargo level in the tank reaches one meter in height. This requirement is consistent with standard industry guidelines. The purpose is to minimize the risk of a vapor ignition due to static electricity. The CTAC recommendations for tank barges included a similar requirement, but they did not specify at what height of cargo the reduced loading rate could be increased. The CTAG recommendations for tankships did not include this requirement.

This section would also require the inert gas generator to be isolated from the vapor collection system while the vapors are being collected, and the pressure indicator required by § 39.20-13 of this part to be continuously monitored during the loading operation.

In addition to the CTAC recommendations, the Coast Guard is proposing requirements that an inerted tank vessel must be tested for oxygen content, and that each high level and overflow alarm must be tested prior to each loading operation.

The CTAC recommendations did not address the size or the length of vapor hose which can be used. The proposed regulations assume that pressure drops through hoses will be minimal. The Coast Guard's position is that, in order for this to be a reasonable assumption, the length of vapor hose should be limited to 30 meters and the inside diameter to no less than that of a vessel's vapor collection system piping. Longer hose lengths may be used if provisions are made to account for the resistance of the additional vapor hose.

*Section 39.40-1 General Requirements for Vapor Balancing—TB/ALL*

The CTAC recommendations did not include provisions for lightering. A lightering working group developed draft standards for lightering, but they have not yet been approved by CTAC. The provisions of subpart 39.40 of this proposed rulemaking are drawn from that working group's draft standards. This section would require tank vessels which control vapor emissions while lightering to meet all requirements in this part for a vessel with a vapor control system. It also requires special

approval from the Commandant in order to use a method other than vapor balancing to control the vapors in a lightening operation.

*Section 39.40-3 Design and Equipment for Vapor Balancing—TB/ALL*

This section would give the design and equipment requirements for tank vessels which engage in vapor balancing during lightening operations. It would require a detonation arrester on at least one of the vessels. The working group recommended that a flame arrester could be used at this location. The Coast Guard's position is that a flame arrester would be inadequate because detonations are possible at this location. This section would also require that in order to have a device to assist the transfer or recovery of vapors, special approval must be received from the Commandant. This was not a part of the lightening working group's draft standards, because the working group assumed that no such device was necessary. The Coast Guard's position is that the Commandant's approval is necessary because vessels engaged in lightening normally would not have the same fire protection provisions as would be available at a facility.

This section would require a pressure indicator and high pressure alarm on the service vessel. This was not part of the lightening working group's draft standards. The Coast Guard's position is that this is necessary because the vessel will not have the overpressure protection it would have at a facility. This would only be a factor on tank barges, because § 39.20-13 of this chapter would require the indicator and alarm for tankships. Although not a part of the lightening working group's draft standards, the Coast Guard is proposing that, where the service vessel in a lightening operation is a tank barge which has an overflow control system in accordance with § 39.30-9(b) of this chapter, the vessel to be lightened must have an overflow control panel which meets 33 CFR 154.812.

When the service vessel or both vessels are inerted vessels, this section would require an oxygen sensor and alarm, normally located on the vessel to be lightened, which would alarm when the oxygen content in the vapor collection line exceeds 8 percent. It would also require provisions to be made to inert the vapor transfer hose between the vessels prior to the transfer of vapors. Although not part of the lightening working group's draft standards, it would require means to add span gas in order to test the oxygen sensors.

*Section 39.40-5 Operational Requirements for Vapor Balancing—TB/ALL*

This section would detail the operational requirements for tank vessels which engage in vapor balancing during lightening operations. It would require each cargo tank being loaded to be connected by the vapor collection system to a cargo tank which is being discharged. This was not part of the lightening working group's draft standards. The Coast Guard's position is that this is necessary because vessels which do not use a common vent line for the vapor collection system, or have a means of isolating individual tanks from the vapor collection system, could transfer vapors to a tank which is not being discharged and overpressurize the tank. It would also require that the pressure indicator be continuously monitored during the transfer operation. Although not a part of the lightening working group's draft standards, it would require that one of the vessel's provide an insulating flange at its vapor connection. This is similar to the requirement in 33 CFR 154.810(g) for a facility to provide an insulating flange.

If both vessels are inerted, this section would require all tanks on the service vessel to be tested for oxygen content prior to cargo transfer and to be continuously monitored during the transfer. It would require that the vessel to be lightened control the cargo transfer rate to ensure that the maximum allowable loading rate is not exceeded. Although not part of the lightening working group's draft standards, the Coast Guard is proposing that tank washing and cargo tank ballasting be prohibited during the loading operation.

If only the service vessel is inerted, this section would require the same operational requirements to be met as when both vessels are inerted. It would also require that the vapor collection system isolation valve on the service vessel not be opened until the pressure in the vapor collection system on the service vessel exceeds the pressure in the vapor collection system on the vessel to be lightened.

This section would require that, when neither vessel is inerted, the vessel to be lightened control the cargo transfer rate so that the maximum allowable loading rate is not exceeded.

This section would prohibit vapor balancing when only the vessel to be lightened is inerted. This requirement is consistent with the lightening working group draft standards, and was developed to prevent non-inerted vapors from entering an inerted tank.

**Regulatory Evaluation**

The proposed regulations are considered to be non-major under Executive Order 12291 and significant under Department of Transportation (DOT) regulatory policies and procedures (DOT Instruction 2100.5). A draft evaluation has been prepared and placed in the public docket. It may be inspected or copied at the Marine Safety Council, Room 3600, at the address listed above under "ADDRESSES." (Copies may also be obtained by contacting that office at (202) 267-1477.

The proposed rules, if adopted, would benefit industry by providing standards for the safe design and operation of vapor control systems. The rules would result in fewer vessels and facilities being damaged from fires and explosions, fewer vessels being damaged from overfilling and over- or underpressurization, fewer injuries/deaths from fires and explosions, and less oil spilled from overfilling or overpressurizing of tanks while loading with a vapor control system in use.

The proposed rules, if adopted, would also benefit the Federal and state governments. The standards promulgated would facilitate review and inspection of vapor control systems by the Coast Guard. State governments would not need to become involved in developing safety requirements when they impose vapor control requirements, and there will not be differing safety requirements between states.

Because the proposed rules would not require the installation of vapor control systems, the entire cost of installing vapor control systems should not be attributed to this rulemaking. The only costs which are properly attributable to this rulemaking are those which would be increased to meet standards in these rules which exceed normal industry practice. Since these rules have been developed in close cooperation with industry, the differences should be minimal. Estimated costs of installing vapor control systems were provided in the NRC Marine Board study. The study estimated that the cost to modify a typical 35,000 deadweight ton product tanker for vapor control would be \$831,250. It estimated that the cost to modify a typical inland river barge for vapor control would be about \$167,750. It also estimated that the cost to modify a typical product terminal for vapor control which serves ships and barges would be about \$7,502,160.

Small entities would be affected by this rulemaking only if the state or local governments require the use of vapor control systems. These costs should be

attributed to the state or local government rulemaking. Therefore, the Coast Guard certifies that, if adopted, the proposed regulations will not have a significant economic impact on a substantial number of small entities.

Differing state requirements to control hydrocarbon emissions could adversely impact competition between states. Since this rulemaking addresses safety requirements for vapor control systems, it will ease the impact on competition between states by providing for nationwide safety requirements. It is possible that some owners of foreign tank vessels will not install vapor control systems on their vessels and withdraw them from U.S. trade, however, it is not expected that the overall pattern of oil importation will be significantly affected. In addition, the Coast Guard is working with the International Maritime Organization (IMO) to develop international safety requirements for the design and operation of vapor control systems.

#### Environmental Impact

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.b.2.c & 1 of Commandant Instruction (COMDTINST) M16475.1B. The environmental impact associated with vapor control systems is the direct result of state or local action requiring the use of such systems. A Categorical Exclusion Determination statement has been prepared and is included as part of the rulemaking docket.

#### Paperwork Reduction Act

This rule contains information collection requirements in 33 CFR 154.310, 154.804, 154.806, 154.814, 155.750, 156.120, and 156.170 and 46 CFR 32.53-85, 32.35-30, 39.10-13, and 39.20-11. These have been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Persons desiring to comment on these information collection requirements should submit their comments to: Office of Regulatory Policy, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, Attn: Desk Officer, U.S. Coast Guard. Persons submitting comments to OMB are also requested to submit a copy of their comments to the Coast Guard as indicated under "ADDRESSES."

#### Federalism

Based on the information currently available, the Coast Guard is unable to

determine whether the proposed rule would have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The Coast Guard's position at this time is that once a state requires vapor control, the discretion available to the state to modify the requirements, as they pertain to shoreside facilities, may be limited. For example, all flexible hoses used in vapor control systems and the last 1.5 meters (4.9 feet) of fixed piping leading to the facility vapor connection flange must be color coded bright orange (international orange). The vapor connection flanges are also of unique design to prevent cross-connection with other piping systems. These requirements, and others like them, could not be modified. Some standardization of equipment and procedures is necessary since affected vessels move from port to port in the national marketplace and excessive modification of the requirements would be burdensome and potentially unsafe. The Coast Guard specifically seeks public comment on the federalism implications of this proposal.

#### Appendices

Three draft ASTM specifications have been referenced in this rulemaking document. The draft specifications address: (1) The testing of detonation flame arresters, (2) the testing of flame arresters, and (3) specifications for spill valves. Since the information in the draft specifications may be helpful to the public in commenting on the proposed regulations, and since this rulemaking has a relatively short comment period, the draft specifications have been reproduced, respectively, as appendices A, B, and C.

CTAC developed recommended guidelines for vessel and facility personnel. The Coast Guard would use these guidelines in developing criteria for approval of industry training courses, if it is determined that courses should require Coast Guard approval. The CTAC guidelines have been reproduced as appendix D.

#### List of Subjects

##### 33 CFR Part 154

Incorporation by reference, Oil pollution, Reporting and recordkeeping requirements, Vapor control.

##### 33 CFR Part 155

Oil pollution, Reporting and recordkeeping requirements.

##### 33 CFR Part 156

Hazardous materials transportation, Oil pollution, Reporting and

recordkeeping requirements, Water pollution control.

##### 46 CFR Part 32

Cargo vessels, Fire prevention, Marine safety, Navigation (water), Occupational safety and health, Seamen.

##### 46 CFR Part 35

Cargo vessels, Fire prevention, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

##### 46 CFR Part 39

Cargo vessels, Hazardous materials transportation, Incorporation by reference, Marine safety, Occupational safety and health, Vapor control.

For the reasons set out in the preamble, the Coast Guard proposes to amend title 33, chapter I, subchapter O, parts 154, 155, and 156, and title 46, chapter I, parts 32 and 35, and add new part 39 as set forth below.

#### TITLE 33—[AMENDED]

#### PART 154—[AMENDED]

1. The authority citation for part 154 is revised to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

2. Section 154.100 is revised to read as follows:

##### § 154.100 Applicability.

This part applies to each facility or marina that transfers, in bulk, to or from any vessel with a capacity of 250 barrels or more, oil or any material, other than liquefied gases, determined to be hazardous under 46 CFR 153.40 (a), (b), (c) or (e) except that §154.735 applies to each facility or marina that—

(a) Transfers in bulk any quantity of these producing; or

(b) Has storage tanks containing these products, mixtures that include these products, or their residues.

Note: A storage tank that is not gas free and safe for entry is considered to have residues of these products or mixtures of these products.

3. Section 154.105 is amended by revising the definition for the word "facility" to read as follows:

##### § 154.105 Definitions.

\* \* \* \* \*

"Facility" means any structure on or in the navigable waters of the United States or any land structure or shore area immediately adjacent to such waters, used or capable of being used to transfer oil or hazardous materials to or from a vessel.

\* \* \* \* \*

4. Section 154.106 is revised to read as follows:

§ 154.106 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than

the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street, NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials

Division (G-MTH), 2100 Second Street, SW., Washington, DC, 20593-0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part, and the section affected are:

American Petroleum Institute (API), 2101 L Street NW., Washington, DC 20037:	
API Standard 2000, Venting Atmospheric and Low-Pressure Storage Tanks (Nonrefrigerated and Refrigerated), January 1982.....	154.814
API Recommended Practice 550, Manual on Installation of Refinery Instruments and Control Systems, Part II—Process Stream Analyzers, Section 5—Oxygen Analyzers, Fourth Edition, August 1983.	154.810
American Society of Mechanical Engineers (ASME), United Engineering Center, 345 E. 47 Street, New York, NY 10017:	
ANSI B16.5—Steel Pipe Flanges and Flanged Fittings, 1981.....	154.500;
	154.810
ANSI B16.24—Brass or Bronze Pipe Flanges, 1979.....	154.500;
	154.810
ANSI B31.3—Chemical Plant and Petroleum Refinery Piping, 1987.....	154.510;
	154.808
American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103:	
ASTM _____—Standard Specification for Tank Vent Flame Arresters.....	154.820
ASTM _____—Standard Specification for Detonation Flame Arresters.....	154.820
National Fire Protection Association (NFPA), Batterymarch Park, Quincy, MA 02269:	
NFPA 70—National Electrical Code, 1987.....	154.735;
	154.820
NFPA 85A—Standard for Prevention of Furnace Explosions in Fuel Oil- and Natural Gas-Fired Single Burner Boiler-Furnaces, 1987.	154.820
Oil Companies International Marine Forum (OCIMF), 6th Floor, Portland House, Stag Place, London SW1E 5BH: International Safety Guide for Oil Tankers and Terminals, Third Edition, 1988.	154.735

5. Section 154.310 is amended by redesignating existing paragraphs (b) and (c) as (c) and (d), respectively, and adding new paragraph (b) to read as follows:

§ 154.310 Operations manual: Contents.

(b) If a facility collects vapors emitted from vessel cargo tanks for recovery, destruction, or dispersion, the operations manual must contain a description of the vapor collection system at the facility which includes:

- (1) A line diagram of the facility's vapor control system piping, including the location of each valve, control device, pressure/vacuum relieving device, pressure indicator, flame arrester, and detonation arrester; and
- (2) A description of, and procedures for operating, the vapor control system including the:
  - (i) Vapor line connection;
  - (ii) Startup and shutdown procedures;
  - (iii) Steady state operating procedures;
  - (iv) Provisions for dealing with pyrophoric sulfide (for facilities which handle inerted vapors);
  - (v) Alarms and shutdowns; and
  - (vi) Pre-transfer equipment inspection requirements.

6. Section 154.740 is amended by deleting the word "and" at the end of

paragraph (e) and adding new paragraphs (g), (h), and (i) to read as follows:

§ 154.740 Records.

- (g) A record of all repairs to any component, which is required by subpart E of this part, of the facility's vapor control system is to be kept for 3 years;
- (h) A record of all automatic shutdowns of the facility's vapor control system is to be kept for 3 years; and
- (i) Plans, calculations, and specifications of the facility's vapor control system certified under § 154.804 of this part.

7. A new subpart E is added to read as follows:

**Subpart E—Vapor Control Systems**

- 154.800 Applicability.
- 154.802 Definitions.
- 154.803 Other hazardous materials.
- 154.804 Review of system designs and initial inspection.
- 154.806 Application for acceptance as a certifying entity.
- 154.808 Vapor control system, general.
- 154.810 Vapor line connections.
- 154.812 Vessel liquid overflow protection.
- 154.814 Vessel vapor overpressure and vacuum protection.
- 154.820 Fire, explosion and detonation protection.
- 154.840 Personnel.
- 154.850 Operational requirements.

**Subpart E—Vapor Control Systems**

§ 154.800 Applicability.

(a) This subpart applies to the following:

- (1) Each facility which collects vapors of flammable or combustible liquids emitted from a tank vessel's cargo tanks for recovery, destruction, or dispersion, or other vapor control process.
- (2) A vessel that is not a tank vessel but which has a vapor processing unit located on board for recovery, destruction, or dispersion of vapor of flammable or combustible liquids from a tank vessel.

(b) This subpart does not apply to the collection of vapors of liquefied flammable gases as defined in 46 CFR 30.10-39.

§ 154.802 Definitions.

As used in this subpart:  
 "Existing vapor control system" means a vapor control system which was approved by the Coast Guard prior to October 6, 1989.  
 "Facility vapor connection" means the point in the facility's vapor collection system where it interconnects with the vessel's vapor collection system.  
 "Inerted" means the oxygen content of the vapor space in a tank vessel's cargo tank is reduced to 8 percent by volume or less in accordance with the

inert gas requirements of 46 CFR 32.53 or 46 CFR 153.500 or other inerting arrangements acceptable to the Commandant (G-MTH).

"Liquid knockout vessel" means a device to separate liquid out of the vapor stream.

"Maximum allowable loading rate" means the maximum volumetric rate at which a vessel may receive cargo or ballast. The criteria for determining this rate is given in 46 CFR 39.30-1(b).

"Means of protection" means a system or device which will prevent ignition from occurring or prevent flame propagation without human intervention.

"New vapor control system" means a vapor control system which is not an existing vapor control system.

"Vapor balancing" means the transfer of vapors displaced by incoming cargo from the tanks of the vessel receiving cargo into the tanks of the vessel or facility delivering cargo.

"Vapor collection system" means an arrangement of piping and hoses used to collect vapors emitted from a vessel's cargo tanks and transport the vapors to a vapor processing unit.

"Vapor control system" means an arrangement of piping and equipment used to control hydrocarbon vapor emissions collected from a vessel. It includes the vapor collection system and the vapor processing unit.

"Vapor dispersion system" means a vapor control system which releases vapors to the atmosphere through a venting system not located on the vessel which is collecting the vapors.

"Vapor processing unit" means the components of the vapor control system that recovers, destroys, or disperses vapors collected from the vessel.

"Vessel vapor connection" means the point in the vessel's fixed vapor collection system where it connects with the facility's vapor collection system or another vessel's vapor collection system (for lightering operations).

#### § 154.803 Other hazardous materials.

A facility which collects vapors of flammable or combustible cargoes listed in 46 CFR Table 151.01-10(b) or Table 1 of 46 CFR part 153, which are not hydrocarbon liquids, must meet the requirements of this subpart and any additional requirements that the Commandant (G-MTH) may prescribe.

#### § 154.804 Review of system designs and initial inspection.

(a) New vapor control system installation must be certified by an entity accepted under § 154.806 of this subpart as meeting the requirements of this subpart.

(b) Plans, calculations, and specifications for existing vapor control system installations must be submitted to an entity accepted under § 154.806 of this subpart within [insert date six (6) months after the effective date of these regulations]. Any modifications required to bring the installation into compliance shall be completed within twelve (12) months after receipt of notification by the approval entity of modifications to be required, but not later than [insert date twenty-four (24) months after the effective date of these regulations]. After completion of modifications and tests and inspections under paragraph (d) of this section, the installation must be certified by the certifying entity as meeting the requirements of this subpart. The certification and a copy of the plans, calculations, and specifications on which the system is based shall be maintained at the facility.

(c) Plans and information submitted to the certifying entity must include a qualitative failure analysis to demonstrate that the system's fire, explosion and detonation components provide the following:

(1) Two independent means of protection to prevent an ignition occurring anywhere in the facility's vapor control system from propagating to the tank vessel; and

(2) Two independent means of protection to prevent an ignition on the tank vessel from propagating into the facility's vapor control system.

(d) The certifying entity shall conduct all initial inspections and tests to demonstrate that the facility:

(1) Conforms to approved plans and specifications;

(2) Meets the requirements of this subpart; and

(3) Operates properly.

(e) Upon receipt of the certification required by paragraphs (a) and (b) of this section, the Captain of the Port shall endorse the letter of adequacy required by § 154.325 that the facility is acceptable for collecting vapors of flammable or combustible liquid.

(f) Any alteration involving any component required by this subpart must be reviewed by a certifying entity accepted under § 154.806 of this subpart. The certifying entity must conduct the tests and inspection in accordance with paragraph (d) of this section before certifying that the alteration meets the requirements of this subpart. A copy of the certification shall be submitted to the Captain of the Port.

#### § 154.806 Application for acceptance as a certifying entity.

(a) Any entity seeking acceptance to certify facility vapor control systems

shall apply in writing to the Commandant (G-MTH). Each application must be signed and certified to be correct by the applicant or, if the applicant is an organization, by an authorized officer or official representative of the organization, and must include a letter of intent from a facility owner or operator to use the services of the entity to approve a vapor control system installation. Any false statement or representation, or the knowing and willful concealment of a material fact may subject the applicant to prosecution under the provisions of 18 U.S.C. 1001, and denial or termination of acceptance.

(b) The applicant must possess the following minimum qualifications, and be able to demonstrate these qualifications to the satisfaction of the Commandant (G-MTH):

(1) The ability to review and evaluate design drawings, and qualitative failure analyses;

(2) A knowledge of the applicable regulations of this subpart, including the standards incorporated by reference in these regulations;

(3) The ability to conduct or monitor and evaluate test procedures and results;

(4) The ability to perform inspections and tests of bulk liquid cargo handling systems;

(5) Is not controlled by the owners or operators of the vessels or the facilities engaged in controlling vapor emission; and

(6) Is not dependent upon Coast Guard acceptance under this section to remain in business.

(c) Each application for acceptance must contain the following:

(1) The name and address of the applicant, including subsidiaries and divisions if applicable;

(2) A statement that the applicant is not controlled by the owners or operators of vessels or facilities engaged in controlling vapor emissions, or a full disclosure of any ownership or controlling interest held by such owners or operators;

(3) A description of the experience and qualifications of the person(s) who would be reviewing or testing the system;

(4) A statement that the person(s) who would be reviewing or testing the systems is/are familiar with the regulations in this subpart; and

(5) A statement that the Coast Guard may verify the information submitted in the application and may examine the person(s) who would be reviewing or testing the systems to determine their qualifications.

(d) The acceptance of an entity may be terminated by the Commandant if the entity fails to properly review or test systems in accordance with this subpart.

Note: A list of entities accepted to approve vapor control system installations is available from the Commandant (G-MTH).

**§ 154.808 Vapor control system, general.**

(a) The vapor control system design and installation must eliminate potential sources of ignition to the maximum practical extent. Each remaining ignition source which is not eliminated must be specifically addressed in the protection system design and operational requirements.

(b) The vapor collection system piping, valves, flanges, and fittings must be in accordance with ANSI Standard B31.3 and designed for a maximum allowable working pressure of at least 150 psig. This maximum allowable working pressure does not apply to the vapor processing unit equipment, loading arms, vapor hoses, compressors, blowers and liquid knockout vessels.

(c) A means must be provided to drain and collect any liquid condensate which may carry over from the vessel from each low point in the line.

(d) A liquid knockout vessel must be provided for compressor units to protect the compressor from liquid carryover, unless the manufacturer certifies that the compressor can safely handle flammable and combustible liquids. Any required liquid knockout vessel must have the following:

(1) Means to indicate the level of liquid in the device;

(2) Provisions to cause the automatic vapor shutoff valve required by § 154.810(b) of this subpart to automatically close prior to liquid carryover from the device to the compressor; and

(3) An audible and visible high level alarm which is activated at a liquid level lower than the level which will activate the automatic shutoff valve required by § 154.810(b) of this subpart.

**§ 154.810 Vapor line connections.**

(a) An isolation valve capable of manual operation must be provided at the facility vapor connection. The valve must have an indicator to show clearly whether the valve is in the open or closed position.

(b) In addition to the isolation valve required by paragraph (a) of this section, an automatically operated vapor shutoff valve must be installed which meets the following:

(1) The valve must close within five (5) seconds of detection of a shutdown condition by a component required by § 154.808(d)(2), 154.814(f), 154.814(g),

154.820(c)(3), 154.820(d)(4), 154.820(e)(3), 154.820(f)(5), or 154.820(k) of this subpart;

(2) An audible and visible alarm must warn the person in charge when a signal to shut down is received; and

(3) The valve must be located upstream of any device used to assist drawing vapors from the vessel, any liquid knockout vessel, and the point where inerting, enriching, or diluting gas is introduced into the vapor collection line.

(c) Vapor connection flanges and the last 1.5 meters (4.9 feet) of vapor piping from the facility vapor connection must be painted bright orange (international orange) and clearly marked with the words "VAPOR PIPING" in black letters 2½ inches high.

(d) Each facility vapor connection flange, vapor hose flange, vapor loading arm flange, and vapor line adapter flange must meet the following:

(1) Each flange must have a 0.5 inch diameter lug, which is at least 1.0 inch long, permanently attached to the flange;

(2) Each flange must have a 0.625 inch diameter hole in the flange located directly opposite the lug;

(3) The lug and hole must be located midway between bolt holes in line with the bolt hole pattern;

(4) The lug must be on the left hand side of the installed flange when looking at the open end of the flange; and

(5) Fixed flanges must be arranged such that the lug and hole line up horizontally.

(e) Each hose used for transferring vapors must:

(1) Have a design burst pressure of at least 100 psig;

(2) Have a maximum allowable working pressure of at least 25 psig;

(3) Be capable of withstanding at least 2.0 psi vacuum without collapsing or constricting;

(4) Have flanges that meet ANSI Standard B16.5 or B16.24;

(5) Be electrically continuous with a maximum resistance of one million ohms (1 Mohm);

(6) Where two or more hoses are connected in series, have a maximum resistance between points of bonding to the vessel of 1 Mohm.

(7) Have an exterior coating which is bright orange (international orange) in color; and

(8) Be stenciled with the words "VAPOR HOSE" in black letters 2½ inches high.

(f) Fixed vapor loading arms must:

(1) Meet the requirements of § 154.810(e)(1) through (5) of this part;

(2) Have the last 1.5 meters (4.9 feet) of the arm painted bright orange (international orange); and

(3) Be clearly marked with the words "VAPOR RETURN LINE" in black letters 2½ inches high.

(g) An electrical insulating flange must be provided at the facility vapor connection.

**§ 154.812 Vessel liquid overflow protection.**

Each facility which serves a tank barge fitted with overflow protection in accordance with 46 CFR 39.20-9(b) must:

(a) Have an overflow control panel installed on the dock capable of receiving a shutdown signal from an intrinsically safe system aboard the tank barge;

(b) Have cargo pumps and cargo shutdown valves which automatically shut down upon receiving a shutdown signal from the tank barge without causing piping design pressure limits to be exceeded and without causing the barge tanks to become 100 percent liquid full;

(c) Have an alarm on the overflow protection control panel which:

(1) Is activated by the shutdown signal from the tank barge or by a high level signal set at a liquid level below the shutdown level, and

(2) Is visible and audible to vessel as well as facility personnel;

(d) Have means to electrically and mechanically test alarm and shutdown systems prior to each loading operation; and

(e) Have the shutdown system activate upon loss of continuity of the tank barge's overflow control system circuitry.

**§ 154.814 Vessel vapor overpressure and vacuum protection.**

(a) A facility's vapor collection system must have the capacity for collecting vapors at a rate not less than 1.25 times the facility's maximum design liquid loading rate.

(b) A facility's vapor collection system must be capable of maintaining the pressure at the facility vapor connection between 0.3 psi vacuum and 0.3 psig for a non-inerted tank vessel and between 0.2 psig and 1.0 psig for an inerted tank vessel. The specified pressures must be maintained at any loading rate less than or equal to the facility's maximum design loading rate.

(c) A pressure sensing device must be provided which actuates an alarm when the pressure at the facility vapor connection exceeds either the maximum pressure given in paragraph (b) of this section or a lower pressure agreed upon

at the pre-transfer conference required by § 156.120(w) of this chapter.

(d) A pressure sensing device must be provided which actuates an alarm when the pressure at the facility vapor connection falls below either the minimum pressure given in paragraph (b) of this section or a higher level agreed upon at the pre-transfer conference.

(e) The pressure alarms required by paragraphs (c) and (d) of this section must be audible and visible at the facility at the place where cargo loading is controlled and from any point in the cargo deck area of the vessel as defined in 46 CFR 39.10-3.

(f) A pressure sensing device must be provided which causes automatic shutdown of the cargo transfer and closure of the automatic vapor shutoff valve required by § 154.810(b) of this subpart when the pressure exceeds the maximum level given in paragraph (b) of this section by 0.25 psi. The sensing device must be independent of the device used to activate the alarms referred to in paragraphs (c) and (d) of this section.

(g) A pressure sensing device must be provided which causes automatic shutdown of the cargo transfer and closure of the automatic vapor shutoff valve required by § 154.810(b) of this subpart when the pressure falls below the minimum level given in paragraph (b) of this section by 0.25 psi. The sensing device must be independent of the device used to activate the alarms referred to in paragraphs (c) and (d) of this section.

(h) The pressure sensing devices required by paragraphs (c), (d) (f), and (g) of this section must be located in the vapor collection line such that there are no valves between the facility vapor connection and the sensing devices.

(i) A pressure indicating device must be provided at the location where the cargo transfer and vapor control system are controlled which indicates the vapor pressure in the vapor collection line.

(j) If a device is installed to assist drawing vapors from the vessel (e.g. compressor or blower), a liquid vacuum breaker must be installed in the vapor collection line between the device and the facility vapor connection, which meets the following:

(1) The capacity of the liquid vacuum breaker must not be less than the capacity of the vapor assist device;

(2) The liquid vacuum breaker must relieve at a pressure such that the pressure in the vapor collection system at the facility vapor connection does not exceed 1.0 psi vacuum when the liquid vacuum breaker is venting at the capacity of the vapor assist device; and

(3) Each liquid vacuum breaker must be tested for venting capacity in accordance with paragraph 1.5.1.3 of API Standard 2000.

(k) A pressure relieving device must be installed which meets the following:

(1) The relieving capacity of the device must not be less than the greater of 1.25 times the facility's maximum design liquid loading rate or the maximum capacity of any inerting, enriching, or diluting gas source;

(2) The device must relieve at a pressure such that the pressure in the vapor collection system at the facility vapor connection when the device is venting at 1.25 times the facility's maximum loading rate or the capacity of the gas source, whichever is greater, does not exceed 2.0 psig.

(3) Each device must be tested for venting capacity in accordance with paragraph 1.5.1.3 of API Standard 2000; and

(4) The device must be located upstream of the detonation arrester required by § 154.820(a) of this subpart and the location where inerting, enriching, or diluting gas is introduced into the vapor collection line.

(1) Means must be provided to determine that the cargo loading rate does not exceed the maximum allowable loading rate given in the vessel's oil transfer procedures in accordance with § 155.750(e) of this chapter.

#### § 154.820 Fire, explosion and detonation protection.

(a) Each facility vapor connection must be fitted with a detonation arrester which:

(1) Meets ASTM \_\_\_\_\_;

(2) Is capable of arresting a detonation from either side of the device; and

(3) Is installed within 6.0 meters (19.7 feet) of the facility vapor connection.

(b) Except as provided for in paragraph (g) of this section, the vapor control system must be fitted with a system which maintains the concentration of the vapor mixture outside the flammable range by one or a combination of the following methods:

(1) *Air dilution:* A system which meets paragraphs (c) and (f) of this section and supplies additional air to the vapor stream in sufficient quantities to insure that the hydrocarbon concentration of the vapor in the vapor control system is maintained below 30 percent by volume of the lower flammable limit;

(2) *Enrichment:* A system which meets paragraphs (d) and (f) of this section and supplies a compatible hydrocarbon gas to the vapor stream in sufficient quantities to insure that the

hydrocarbon concentration of the vapor in the vapor control system is maintained above 170 percent by volume of the upper flammable limit; or

(3) *Inerting:* A system which meets paragraphs (e) and (f) of this section and supplies an inerting gas to the vapor stream in sufficient quantities to insure that the oxygen concentration of the vapor in the vapor control system is maintained below 8.0 percent by volume.

(c) An air dilution system must meet the following requirements:

(1) Have at least two sets of independent hydrocarbon analyzers with independent sensor taps;

(2) An alarm must be activated when the flammable vapor concentration exceeds 30 percent of the lower flammable limit; and

(3) The automatic vapor shutoff valve required by § 154.810(b) of this subpart must automatically close when the flammable vapor concentration exceeds 50 percent of the lower flammable limit.

(d) An enrichment system must meet the following requirements:

(1) Have at least two sets of independent hydrocarbon analyzers with independent sensor taps;

(2) In lieu of the hydrocarbon analyzers, two independent oxygen analyzers with independent sensor taps may be provided if the upper flammable limit for the enriching gas does not vary by more than 5 percent by volume;

(3) An alarm must be activated when the flammable vapor concentration falls below 170 percent of the upper flammable limit;

(4) The automatic vapor shutoff valve required by § 154.810(b) of this subpart must automatically close when the flammable vapor concentration falls below 150 percent of the upper flammable limit; and

(5) If oxygen sensors are utilized, the alarm and shutdown set points must be calculated for an equivalent upper flammable limit based upon the enriching gas.

An inerting system must meet the following:

(1) The system must have at least two sets of independent oxygen analyzers with independent sensor taps;

(2) An alarm must be activated when the oxygen concentration exceeds 8.0 percent by volume;

(3) The automatic vapor shutoff valve required by § 154.810(b) of this subpart must automatically close when the oxygen concentration exceeds 9.0 percent by volume; and

(4) When a combustion device is used to produce the inerting gas, the flow of gas from the vapor collection system

into the inert gas line must be prevented by a hydraulic seal and a non-return valve.

(f) An air dilution, enrichment, or inerting system, installed to meet the requirements of paragraph (b) of this section, must meet the following:

(1) The appropriate gas must be injected into the vapor control system at a point within 6.0 meters (19.7 feet) of the facility vapor connection;

(2) The design must provide for complete mixing of the gases within 20 pipe diameters of the injection point;

(3) Analyzers must have response times of no more than 30 seconds;

(4) Analyzers must sample the vapor concentration at a point where the vapor mixture is homogeneous, at least 20 but no more than 50 pipe diameters downstream from the point of gas injection;

(5) Analyzers must be designed such that the more severe concentration reading must be used to activate the required alarms and shutdowns;

(6) If a mixing device is installed between the injection point and the sampling point, the analyzers may be installed closer than 20 pipe diameters from the injection point, but must be after the point where a homogeneous mix of the vapor is achieved;

(7) Analyzers must be in accordance with API Recommended Practice 550;

(8) Oxygen analyzers of the zirconia electrochemical or thermomagnetic type must not be used;

(9) At least one connection for injecting zero gas and a span gas of known concentration into the system must be provided for testing and calibration of the analyzers;

(10) Systems must have the capability to dilute, enrich, or inert the shore vapor collection line prior to receiving vapors from a vessel;

(11) An indicator must be provided which indicates the oxygen or hydrocarbon (as appropriate) content and is located where the cargo transfer and vapor control systems are controlled; and

(12) For enrichment and inerting systems, the vapor collection piping must be operated at a positive gauge pressure after the injection point unless a means acceptable to Commandant (G-MTH) is provided which ensures that air is not drawn into the system.

(g) If a terminal serves only vessels whose cargo tanks are inerted, the following is applicable:

(1) An additional supply of inerting gas is not required, except for the provision to be capable of inerting the vapor line prior to the transfer in accordance with paragraph (f)(10) of this section;

(2) Paragraph (e) of this section must be met; and

(3) The analyzers required by paragraph (e) of this section must sample the vapor concentration within 3 meters (9.8 feet) of the facility vapor connection.

(h) Any alarm condition specified in this part must activate an audible and visible alarm which can be seen and heard where the cargo transfer and vapor control system are controlled, and from anywhere the operator may be reasonably expected to be located.

(i) If a vapor control system interconnects with more than one vapor collection system, it must meet the following:

(1) Only one of the methods of controlling the vapor mixture (air dilution, enrichment, or inerting) required by paragraph (b) of this section may be used at any one time;

(2) Each branch must be fitted with a detonation arrester that meets paragraph (a) of this section at the points of intersection; and

(3) Any branch shut down after loading ceases for that branch must be isolated near the junction point with other branches by double block and bleed valves, double shutoff valves, or a blind acceptable to the Commandant (G-MTH).

(j) The vapor control system must be separated or insulated from external heat sources to limit vapor control system piping surface temperature to 177 °C (350 °F) during normal operation.

(k) An incinerator or flare in the vapor control system must:

(1) Have two automatic quick acting stop valves installed in the vapor collection line upstream of the incinerator or flare which automatically close whenever the incinerator or flare shuts down or has a flameout condition;

(2) Be designed such that actuation of the automatic quick acting stop valves must also cause the automatic vapor shutoff valve required by § 154.810(b) of this subpart to close and cargo transfer to stop;

(3) Have a flame arrester that meets ASTM \_\_\_\_\_ installed in accordance with the manufacturer's instructions;

(4) Have a liquid seal flame arrester installed;

(5) Have a means of detecting a flame on the flame arrester which is closest to the incinerator or flare which will actuate the automatic quick acting stop valves, actuate the automatic vapor shutoff valve, and cause cargo transfer to stop; and

(6) Not be located within 30 meters (98.4 feet) of any tank vessel moored at the facility.

(l) An incinerator in the vapor control system must be designed in accordance with NFPA 85A.

(m) If a reciprocating or screw-type compressor is used to assist movement of vapors in the vapor collection system, it must be provided with indicators and audible and visible alarms to warn against the following conditions:

(1) Excessive discharge gas temperatures at each compressor chamber or cylinder;

(2) Excessive cooling water temperature;

(3) Excessive vibration;

(4) Low lube oil level;

(5) Low lube oil pressure; and

(6) Excessive shaft bearing temperatures.

(n) If a centrifugal compressor or fan is used to assist movement of vapors in the vapor collection system, it must meet the following:

(1) Construction of the blades and/or housing must meet one of the following:

(i) Blades or housing of nonmetallic construction;

(ii) Blades and housing of nonferrous material;

(iii) Blades and housing of corrosion resistant steel;

(iv) Ferrous blades and housing with one-half inch or more design tip clearance; or

(v) Blades of aluminum or magnesium alloy and a ferrous housing with a nonferrous insert ring at the periphery of the impeller;

(2) Any combination of an aluminum alloy or a magnesium alloy component and a ferrous component is prohibited, regardless of the material that is used as the fixed or rotating component; and

(3) All metal parts must be electrically bonded and grounded.

(o) If the facility handles inerted vapors, provisions must be made to control heating from pyrophoric iron sulphide deposits in the vapor collection line.

(p) All outlets of the vapor control system to atmosphere must have a flame arresting device located at the outlet. The device must meet ASTM \_\_\_\_\_ and be installed in accordance with the manufacturer's instructions.

(q) All electrical equipment used in the vapor control system must comply with NFPA 70.

#### § 154.840 Personnel.

(a) The person in charge of the transfer operation utilizing a vapor control system must have completed a training program covering the particular system installed at the facility. For persons who have not previously received training under this section,

there must be at least 40 hours of training with a minimum of 8 hours of drills or demonstrations, using the installed vapor control system, covering normal operations and emergency procedures. For persons who have previously received training under this section or training for vessel personnel under 46 CFR 39.10-11, there must be at least 24 hours of training with a minimum of 8 hours of drills or demonstration, using the installed vapor control system, covering normal operations and emergency procedures.

(b) The training course must cover the following subjects:

- (1) Purpose of a vapor control system;
- (2) Coast Guard regulations in this subpart;
- (3) Principles of vapor control systems;
- (4) Hazards of vapor control systems;
- (5) Components of a vapor control system;
- (6) Operating procedures:
  - (i) Testing and inspection requirements,
  - (ii) Pre-transfer procedures,
  - (iii) Connection sequence,
  - (iv) Start-up procedures, and
  - (v) Normal operations; and
- (7) Emergency procedures.

#### § 154.850 Operational requirements.

(a) A facility shall receive vapors only from a vessel which has its certificate of inspection or certificate of compliance endorsed in accordance with 46 CFR 39.10-13(e).

(b) Whenever a condition results in a shutdown of the vapor control system, the person in charge shall immediately terminate cargo loading.

(c) Loading rate must not exceed the maximum allowable loading rate for the vessel.

(d) Loading rate must not exceed the facility's maximum design loading rate.

(e) The person in charge shall test all alarms, automatic shutdowns, and sensing devices required by § 154.820 (c), (d), and (e) of this subpart not more than 24 hours prior to each loading operation.

(f) If one of the oxygen or hydrocarbon analyzers required by § 154.820 of this subpart becomes inoperable during a loading operation, the operation may continue provided the remaining analyzer remains operational; however, no further loading operations may be started until the inoperable analyzer is replaced or repaired.

(g) The person in charge shall verify that all necessary valves in the vapor line between the vessel's tanks and the shore system are open prior to starting of the loading.

(h) The initial loading rate to each cargo tank shall be limited to one meter per second (3.28 feet per second) linear velocity until cargo level has exceeded one meter (3.28 feet) in height.

(i) The person in charge shall verify that normal vapor flow has been established once vapors are generated from loading.

(j) When vapors are being received from an inerted vessel, prior to opening the isolation valve the person in charge shall verify that the vessel side of the isolation valve is at a higher pressure than the shore side.

(k) No more than 30 meters (98.4 feet) of vapor hose may be used unless provisions are made to reduce the maximum allowable loading rate to account for the resistance of the additional vapor hose.

(l) The inside diameter of all vapor hoses connected to a tank vessel must not be less than the inside diameter of the vessel's vapor collection system piping.

(m) Line clearing of a cargo loading line is prohibited while transferring cargo to a vessel.

(n) If a flare in the vapor control system is suspected of having a flare-back, or a flame is detected on the flame arrester by the detection means required by § 154.820(k)(5) of this subpart, the transfer operation shall not be continued until the flame arrester has been inspected internally and found to be in satisfactory condition.

#### PART 155—[AMENDED]

8. The authority citation for part 155 is revised to read as follows and all other authority citations in the part are removed:

Authority: 33 U.S.C. 1321 (j)(1)(C), 1902(c) and 1903(b), E.O. 11735, 49 CFR 1.46.

9. Section 155.750 is amended by adding paragraph (d) to read as follows:

#### § 155.750 Contents of oil transfer procedures.

(d) If a vessel is fitted with a vapor control system, the oil transfer procedures must contain a description of the vapor collection system on the vessel which includes:

(1) A line diagram of the vessel's vapor collection system piping, including the location of each valve, control device, pressure/vacuum relieving device, pressure indicator, and device to prevent the passage of flame;

(2) The location of spill valves and rupture disks if fitted;

(3) The maximum allowable loading rates as described in 46 CFR 39.30-1(b);

(4) A description of, and procedures for operating, the vapor collection system including the:

- (i) Vapor line connection;
- (ii) Closed gauging system;
- (iii) High level alarm system;
- (iv) Independent automatic shutdown system; and

(v) Pre-transfer equipment inspection requirements; and

(5) The relief settings of all spill valves, rupture disks, and pressure/vacuum relieving devices.

#### PART 156—[AMENDED]

10. The authority citation for part 156 is revised to read as follows:

Authority: 33 U.S.C. 1321 (j)(1) (C) and (D); 46 U.S.C. 3715; E.O. 11735, 3 CFR, 1971-1975 COMP., p. 793; 49 CFR 1.46.

11. Section 156.120 is amended by adding paragraph (aa) to read as follows:

#### § 156.120 Requirements for oil transfer.

(aa) A transfer operation which includes collection of the vapors emitted from the vessel's cargo tanks for recovery, destruction, or dispersion through a venting system not located on the vessel must have the following verified by the person in charge:

(1) Each part of the vapor collection system is aligned to allow the flow of vapor to shore;

(2) Vapor recovery hoses or loading arms are connected to the vessel's vapor collection connection;

(3) The electrical insulating flange required by § 154.810(g) of this chapter or 46 CFR 39.40-5(c) is installed at the vapor connection;

(4) Maximum loading rate for the transfer is identified;

(5) Maximum and minimum operating pressures at the vessel/shore connection are identified;

(6) If installed, the overflow control system on a tank barge is properly connected to the facility and operating;

(7) All alarms and automatic shutdowns required by § 154.820 (c), (d) and (e) of this chapter and 46 CFR 39.20-7, 39.20-9, and 39.40-3(d) have been tested not more than 24 hours prior to the start of the transfer operation and are operating properly;

(8) Each vapor recovery hose has no unrepaired loose covers, kinks, bulges, soft spots, or any other defect which would permit the discharge of vapors through the hose material, and no external gouges, cuts, or slashes that penetrate the first layer of hose reinforcement.

12. Section 156.170 is amended by adding new paragraph (g) to read as follows:

**§ 156.170 Equipment tests and inspections.**

(g) If a facility or vessel collects vapors emitted from vessel cargo tanks for recovery, destruction, or dispersion, no person may use any equipment in this paragraph for vapor control operations unless the vessel or facility operator, as appropriate, tests and inspects the equipment as follows:

- (1) Each vapor hose, loading arm, pressure or vacuum relief device, and pressure gauge is tested and inspected in accordance with paragraphs (b), (c), and (f) of this section;
- (2) Each remote operating or indicating equipment is tested for proper operation in accordance with paragraph (f) of this section; and
- (3) Each detonation arrester required by § 154.820(a) of this chapter or 46 CFR 39.40-3(a), and each flame arrester required by § 154.820 (j) and (o) of this chapter, is inspected internally at least annually, or more frequently if operational shows frequent clogging or rapid deterioration.
- (4) Each hydrocarbon and oxygen analyzer required by § 154.820 (c), (d) and (e) of this chapter and 46 CFR 39.40-3(d), is calibrated weekly.

**TITLE 46—[AMENDED]**

**PART 32—[AMENDED]**

13. The authority citation for part 32 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

14. Section 32.53-85 is amended by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

**§ 32.53-85 Instruction manual—T/ALL.**

(b) If the tankship is fitted with a vapor control system to which part 39 of this subchapter is applicable, the instruction manual must include procedures relating to vapor control operations.

**PART 35—[AMENDED]**

15. The authority citation for part 35 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3706, 3703, 6101; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR 1971-1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

16. Section 35.35-20 is amended by adding paragraph (m) to read as follows:

**§ 35.35-20 Inspection prior to transfer of cargo—TB/ALL.**

(m) When the transfer operation includes collection of the vapors emitted from the vessel's cargo tanks for recovery, destruction, or dispersion through a system other than the vessel's approved venting system:

- (1) Each part of the vapor collection system is aligned to allow the flow of vapor to shore or, if lightering, to the other vessel;
- (2) Vapor recovery hoses or loading arms are connected to the vessel's vapor collection connection;
- (3) An electrical insulating flange is installed as required by 33 CFR 154.810(g) or § 39.40-5(c) of this subchapter as appropriate;
- (4) Maximum loading rate for the transfer is identified;
- (5) Maximum and minimum operating pressures at the vessel/shore connection are identified;
- (6) An overflow control system on a tank barge is properly connected to the facility and operating;
- (7) All alarms required by §§ 39.20-7, 39.20-9 and 39.40-3(d) of this subchapter prior to the start of the transfer operation and are operating properly; and
- (8) Each vapor recovery hose has no unrepaired loose covers, kinks, bulges, soft spots, or any other defect which would permit the discharge of vapors through the hose material, and no gouges, cuts, or slashes that penetrate the first layer of hose reinforcement.

17. Section 35.35-30 is amended by adding paragraph (c) to read as follows:

**§ 35.35-30 "Declaration of Inspection" for tankships—T/ALL.**

(c) In addition to the requirements in paragraph (b) of this section, if the transfer operation includes collection of the vapors emitted from the vessel's cargo tanks for recovery, destruction, or dispersion through a vapor control system not located on the vessel, the Declaration of Inspection must include the following as an appendix:

- (1) Is each part of the vapor collection system aligned to allow the flow of vapor to shore or, if lightering, to the other vessel?
- (2) Are the vapor recovery hoses or loading arms connected to the vessel's vapor collection connection?
- (3) Is an electrical insulating flange installed as required by 33 CFR

154.810(g) or § 39.40-5(c) of this subchapter as appropriate;

- (4) Has the maximum loading rate for the transfer been identified?
- (5) Have the maximum and minimum operating pressures at the vessel/shore connection been identified?
- (6) Is the overflow control system on a tank barge properly connected and operating?
- (7) Have all alarms required by §§ 39.20-7, 39.20-9 and 39.40-3(d) of this subchapter been tested not more than 24 hours prior to the start of the transfer operation and found to be operating properly?
- (8) Is each vapor recovery hose free of unrepaired loose covers, kinks, bulges, soft spots, or any other defect which would permit the discharge of vapors through the hose material, and gouges, cuts, or slashes that penetrate the first layer of hose reinforcement?

18. A new part 39 is added to read as follows:

**PART 39—VAPOR CONTROL SYSTEMS**

**Subpart 39.10—General**

Sec.

- 39.10-1 Applicability—TB/ALL.  
 39.10-3 Definitions—TB/ALL.  
 39.10-5 Incorporation by reference—TB/ALL.  
 39.10-7 Other hazardous materials—TB/ALL.  
 39.10-9 Vessel vapor processing unit—TB/ALL.  
 39.10-11 Personnel—TB/ALL.  
 39.10-13 Submission of vapor control system designs—TB/ALL.

**Subpart 39.20—Design and Equipment**

- 39.20-1 Vapor collection system—TB/ALL.  
 39.20-3 Cargo gauging system—TB/ALL.  
 39.20-7 Tankship liquid overflow protection—TB/ALL.  
 39.20-9 Tank barge liquid overflow protection—B/ALL.  
 39.20-11 Vapor overpressure and vacuum protection—TB/ALL.  
 39.20-13 High and low vapor pressure protection for tankships—T/ALL.

**Subpart 39.30—Operations**

- 39.30-1 Operational requirements—TB/ALL.

**Subpart 39.40—Lightering Operations With Vapor Balancing**

- 39.40-1 General requirements for vapor balancing—TB/ALL.  
 39.40-3 Design and equipment for vapor balancing—TB/ALL.  
 39.40-5 Operational requirements for vapor balancing—TB/ALL.

Authority: 33 U.S.C. 1231; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**Subpart 39.10—General****§ 39.10-1 Applicability—TB/ALL.**

(a) This part applies to all U.S. flag tank vessels, and foreign flag tank vessels operating in the navigable waters of the United States, when collecting vapors of a flammable or combustible liquid emitted from a vessel's cargo tanks for recovery, destruction, or dispersion through a venting system not located on the vessel, or other vapor control process.

(b) This part does not apply to the collection of vapors of liquefied flammable gases as defined in § 30.10-39 of this subchapter.

**§ 39.10-3 Definitions—TB/ALL.**

As used in this part:

*"Cargo deck area"* means that part of the weather deck that is directly over the cargo tanks.

*"Existing vapor collection system"* means a vapor collection system approved by the Coast Guard prior to [insert effective date of these rules].

*"Facility vapor connection"* means the point in a facility's vapor collection system where it connects with a vessel's collection system.

*"Independent"* as applied to two systems means that one system will operate with a failure of any part of the other system except power sources and electrical feeder panels. The electrical wiring for several independent systems may be carried in a single conduit or tray (for special requirements applicable to intrinsically safe systems, see § 111.105-15 of this chapter).

*"Inerted"* means the oxygen content of the vapor space in a cargo tank is reduced to 8 percent by volume or less in accordance with the inert gas requirements of § 32.53 or § 153.500 of this chapter, or other inerting arrangements acceptable to the Commandant (G-MTH).

*"Lightering" or "lightering operation"* means the transfer of a flammable or combustible liquid from one vessel to another, except when that liquid is intended only for use as fuel or lubricant aboard the receiving vessel.

*"Marine Safety Center"* means Commanding Officer, U.S. Coast Guard Marine Safety Center, 400 Seventh Street, SW., Washington, DC 20590.

*"Maximum allowable loading rate"* means the maximum volumetric rate at which a vessel may receive cargo or ballast. The criteria for determining this rate is given in § 39.30-1(b) of this chapter.

*"New vapor collection system"* means a vapor collection system which is not an existing vapor collection system.

*"Service vessel"* means a vessel which receives a flammable or combustible cargo from another vessel in a lightering operation.

*"Vapor balancing"* means the transfer of vapors displaced from the tanks of the service vessel by incoming cargo into the tanks of the vessel to be lightered or the facility delivering cargo via a vapor collection system.

*"Vapor collection system"* means an arrangement of piping and hoses used to collect vapors emitted from a vessel's cargo tanks and to transport the vapors to a vapor processing unit.

*"Vapor control system"* means an arrangement of piping and equipment used to control vapor emissions collected from a vessel. It includes the vapor collection system and vapor processing unit.

*"Vapor dispersion system"* means a type of vapor control system which releases vapors to the atmosphere through a venting system not located on the vessel.

*"Vapor processing unit"* means the components of a vapor control system that processes, destroys, or disperses vapors collected from a vessel.

*"Vessel to be lightered"* means a vessel which transfers a flammable or combustible liquid to another vessel in a lightering operation.

*"Vessel vapor connection"* means the point in a vessel's vapor collection system where it connects with a facility's vapor collection system or, for lightering operations, to another vessel's vapor collection system.

**§ 39.1-5 Incorporation by reference—TB/ALL.**

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, 100 L Street, NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G-MTH), 2100 Second Street, SW., Washington, DC, 20593-0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part, and the sections affected are:

<i>American Petroleum Institute (API), 2101 L Street, NW., Washington, DC 20037:</i>	
API Standard 2000—Venting Atmospheric and Low-Pressure Storage Tanks (Nonrefrigerated and Refrigerated), January 1982.....	39.20-11
<i>American Society of Mechanical Engineers, United Engineering Center, 345 E. 47 Street, New York, NY 10017:</i>	
ANSI B16.5—Steel Pipe Flanges and Flanged Fittings, 1981.....	39.20-1
ANSI B16.24—Brass or Bronze Pipe Flanges, 1979.....	39.20-1
<i>American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103:</i>	
ASTM —Standard Specification for Spill Valves for Use in Marine Tank Liquid Overpressure Protection Applications.....	39.20-9
ASTM —Standard Specification for Detonation Flame Arresters.....	39.40-3

**§ 39.10-7 Other hazardous material—TB/ALL.**

A tank vessel which collects vapors of flammable or combustible cargoes listed in Table 151.01-10(b) or Table 1 of part 153 of this chapter, which are not hydrocarbon liquids, must meet the requirements of this part and any additional requirements that the Commandant (G-MTH) may prescribe.

**§ 39.10-9 Vessel vapor processing unit—TB/ALL.**

Each vessel which has a vapor processing unit located on board must submit plans, calculations, and specifications to the Marine Safety Center and meet the intent of 33 CFR 154, subpart E.

**§ 39.10-11 Personnel—TB/ALL.**

(a) The person in charge of the transfer operation utilizing a vapor collection system must have completed a training program covering the particular system installed on the vessel. For persons who have not previously received training under this section, there must be at least 40 hours of training with a minimum of 8 hours of drills or demonstrations, using the installed vapor control system, covering normal operations and emergency procedures. For persons who have previously received training under this section or training for facility personnel under 33 CFR 154.840, there must be at least 24 hours of training with a minimum of 8 hours of drills or demonstration, using the installed vapor

collections system, covering normal operations and emergency procedures.

(b) The training course must cover the following subjects:

- (1) Purpose of a vapor control system;
- (2) Coast Guard regulations in this part;
- (3) Principles of vapor control systems;
- (4) Hazards of vapor control systems;
- (5) Components of a vapor control system;
- (6) Operating procedures:
  - (i) Testing and inspection requirements,
  - (ii) Pre-transfer procedures,
  - (iii) Connection sequence,
  - (iv) Start-up procedures, and
  - (v) Normal operations; and
- (7) Emergency procedures.

**§ 39.10-13 Submission of vapor control system designs—TB/ALL.**

(a) Plans, calculations, and specifications for each new vapor collection system must be submitted in accordance with § 31.10-5(a) of this subchapter.

(b) Except as provided for in paragraph (c) of this section, existing vapor collection system installations must have plans, calculations, and specifications submitted in accordance with § 31.10-5(a) of this subchapter by April 6, 1990. In addition, modifications required to bring the installation into compliance must be completed within twelve (12) months after receipt of notification by the Coast Guard of modifications to be required, but not later than October 7, 1991.

(c) A tank vessel with an existing vapor collection system which will operate the system at a facility other than the facility for which it was originally approved to operate will be treated as a vessel with a new vapor collection system and must meet paragraph (a) of this section. The vapor collection system may not be operated at a facility other than the facility for which it was approved until approval to do so has been obtained.

(d) The owners/operators of a foreign flag vessel may submit certification by the classification society which classes the vessel that the vessel meets the requirements of this part as an alternative to meeting the requirements in paragraph (a) of this section.

(e) Upon satisfactory completion of plan review and inspection of the vapor collection system or receipt of the certification provided for in paragraph (d) of this section, the Officer in Charge, Marine Inspection, shall endorse the Certificate of Inspection for U.S. flag vessels, or the Certificate of Compliance for foreign flag vessels, that the vessel is

acceptable for collecting vapors of flammable or combustible liquids.

**Subpart 39.20—Design and Equipment**

**§ 39.20-1 Vapor collection system—TB/ALL.**

(a) Each vapor collection system must meet the following requirements:

- (1) Piping must be permanently installed, except as allowed by the Commandant (G-MTH);
- (2) A means must be provided to drain and collect condensate from each low point in the vapor collection system;
- (3) Vapor collection piping must be electrically bonded to the hull and must be electrically continuous; and
- (4) An inerted tankship must have a stop valve installed in the cargo deck area to isolate the inert gas supply from the vapor collection system.

(b) A vapor collection system must not interfere with the proper operation of any cargo tank pressure relief device.

(c) An isolation valve capable of manual operation must be provided at the vessel vapor connection. The valve must have an indicator to show clearly whether the valve is in the open or closed position.

(d) The last 1.5 meters (4.9 feet) of the vessel's vapor piping before the vessel vapor connection must be painted bright orange (international orange) and clearly marked with the words "VAPOR PIPING" in black letters 2½ inches high.

(e) Each vessel vapor connection flange, vapor hose flange, and vapor line adapter flange must meet the following:

- (1) Each flange must have a 0.5 inch diameter lug, which is at least 1.0 inch long, permanently attached to the flange;
- (2) Each flange must have a 0.625 inch diameter hole in the flange located directly opposite the lug;
- (3) The lug and hole must be located midway between bolt holes in line with the bolt hole circle;
- (4) The lug must be on the left hand side of the installed flange when looking at the open end of the flange; and
- (5) On the vessel vapor connection, the lug and hole must line up horizontally.

(f) Each hose used for transferring vapors must:

- (1) Have a design burst pressure of at least 100 psig;
- (2) Have a maximum allowable working pressure of at least 25 psig;
- (3) Be capable of withstanding at least 2.0 psi vacuum without collapsing or constricting;
- (4) Have flanges that meet ANSI Standard B16.5 or B16.24;

(5) Be electrically continuous with a maximum resistance of one million ohms (1 Mohm);

(6) Where two or more hoses are connected in series, have a maximum resistance between points of bonding to the vessel of 1 Mohm.

(7) Have an exterior coating which is colored bright orange (international orange); and

(8) Be stenciled with the words "VAPOR HOSE" in black letters 2½ inches high.

**§ 39.20-3 Cargo gauging system—TB/ALL**

(a) Each cargo tank of a tank vessel which is connected to a vapor collection system must be equipped with a permanently installed cargo gauging system which:

(1) Allows determination of the liquid level in the tank without opening the tank to the atmosphere (closed gauging system);

(2) Allows the operator to determine the liquid level in the tank for the full range of liquid levels in the tank;

(3) Indicates the liquid level in the tank at the cargo tank and, if the cargo loading is controlled at some point other than at the cargo tank, at the point where the cargo loading is controlled; and

(4) For a tank barge, has the maximum liquid level permitted under § 39.30-1(c) of this part at even keel conditions conspicuously and permanently marked on the cargo gauging system at each tank.

(b) Except when a tank barge complies with § 39.20-9(a) of this part, each cargo tank of a barge must have a device giving a visual indication of the liquid level in the cargo tank within 1.5 meters (4.9 feet) of the tank top. The indication must be visible from all points in the cargo deck area.

**§ 39.20-7 Tankship liquid overflow protection—T/ALL.**

(a) Each cargo tank of a tankship must be equipped with a high level alarm and a tank overflow alarm.

(b) The high level alarm and tank overflow alarm must:

- (1) Be independent of one-another;
- (2) Alarm in the event of loss of power to the alarm system or failure of electrical circuitry to the tank level sensor;
- (3) Be able to be checked at the tank for proper operation prior to each loading;
- (4) Have audible and visible alarm indications that can be seen and heard where cargo transfer is controlled and in the cargo deck area; and

(5) For components of alarms located within cargo tanks, use only non-conductive material or conductive material bonded to the tank structure.

(c) The high level alarm must:

(1) Alarm before the tank overflow alarm, but no higher than 97 percent of tank capacity; and

(2) Be identified with the legend "HIGH LEVEL ALARM" in lettering as specified for the warning sign in § 153.955 of this chapter.

(d) The tank overflow alarm must:

(1) Be independent of the cargo gauging system;

(2) At the maximum allowable loading rate, alarm early enough to allow the person in charge to:

(i) Stop the loading operation before the cargo tank overflows, and

(ii) Avoid surge pressures that exceed the cargo piping's maximum working pressure; and

(3) Be identified with the legend "TANK OVERFLOW ALARM" in lettering as specified for the warning sign in § 153.955 of this chapter.

(e) If spill valves are fitted, they must meet § 39.20-9(c) of this part.

(f) Rupture disk installations must meet § 39.20-9(d) of this part.

#### § 39.20-9 Tank barge liquid overflow protection—B/ALL

Each cargo tank of a tank barge must have one of the following liquid overflow protection arrangements:

(a) A system meeting the requirements of § 39.20-7 of this part;

(b) An overflow control system which:

(1) Is independent of the cargo gauging system required by § 39.20-3(a) of this part,

(2) Actuates a system onshore, or on the vessel to be lightered if a lightering operation, which automatically stops the flow of cargo to the tank barge before the tank becomes 100 percent liquid full; and

(3) Is able to be checked at the tank for proper operation prior to each loading;

(c) A spill valve which meets the following requirements:

(1) Relieves at a pressure higher than the pressure reached in the tank which the pressure relief device operates at the maximum anticipated loading rate, assuming a vapor rate of 1.25 times the liquid loading rate;

(2) Limits the maximum pressure at the cargo tank top during liquid overflow at the maximum anticipated loading rate to not more than 3.0 psig for tankships or 2.0 psig for tank barges;

(3) Is in accordance with ASTM Specification \_\_\_\_\_; and

(4) If the vessel is in ocean or coastwise service, has provisions to

prevent opening of the spill valve due to sloshing loads; or

(d) A rupture disk arrangement which meets paragraphs (c) (1), (2) and (4) of this section and is approved by the Commandant (G-MTH).

#### § 39.20-11 Vapor overpressure and vacuum protection—TB/ALL

(a) Each cargo tank must be protected by a pressure relief device which meets the following:

(1) Is capable of discharging saturated cargo vapors at 1.25 times the maximum anticipated loading rate such that the pressure in the cargo tank vapor space does not exceed 3.0 psig for tankships or 2.0 psig for tank barges, or if a spill valve is fitted, the pressure at which the spill valve will relieve; and

(2) Must not relieve at a pressure in the cargo tank vapor space of less than 1.5 psig.

(b) Each cargo tank must be protected by a vacuum relief device which meets the following:

(1) Prevents a vacuum in the cargo tank vapor space, whether generated by withdrawal of cargo or vapor at maximum rates, that exceeds 1.0 psi vacuum; and

(2) Relieves at not less than 0.5 psi below atmospheric pressure (0.5 psi vacuum) in the cargo tank vapor space.

(c) Each pressure/vacuum relief device must:

(1) Be tested for venting capacity in accordance with paragraph 1.5.1.3 of API Standard 2000; and

(2) Have mechanical means to check that it is operating freely if installed after [insert effective date of these rules].

#### § 39.20-13 High and low vapor pressure protection for tankships—T/ALL

Each tankship vapor collection system must be fitted with a pressure sensing device which:

(a) Has a pressure indicator located where the cargo loading is controlled; and

(b) Has a high pressure and low pressure alarm that:

(1) Is audible and visible where cargo transfer is controlled and in the cargo deck area;

(2) Alarms at a high pressure of not more than 50 percent of the lowest pressure relief device setting in the vapor collection system;

(3) Alarms at a low pressure of not less than four inches water gauge (0.144 psig) for inerted tankships, or 0.5 psi vacuum for non-inerted tankships;

(4) If cargo tanks connected to the vapor collection system are located only forward of the vessel vapor connection, senses the pressure in the vapor

collection line at the forwardmost cargo tank connected to the vapor collection system;

(5) If cargo tanks connected to the vapor collection system are located only aft of the vessel vapor connection, senses the pressure in the vapor collection line at the aftermost cargo tank connected to the vapor collection system;

(6) If cargo tanks connected to the vapor collection system are located forward and aft of the vessel vapor connection, senses the pressure in the vapor collection line at the forwardmost and the aftermost cargo tanks connected to the vapor collection system; and

(7) If only one cargo tank is connected to the vapor collection system, senses the pressure in the vapor collection line at the cargo tank.

#### Subpart 39.30—Operations

##### § 39.30-1 Operational requirements—TB/ALL

(a) Vapors from a tank vessel may not be transferred to:

(1) A facility which does not have its letter of adequacy endorsed as meeting the requirements of 33 CFR 154, subpart E; or

(2) In the case of lightering operations, a vessel which does not have its certificate of inspection endorsed as meeting the requirements of subpart 39.40 of this part.

(b) The rate of cargo transfer must not exceed the maximum allowable loading rate specified in the oil transfer procedures required by 33 CFR 155.720. This rate is the lesser of the following:

(1) The rate at which the pressure relief devices in the vapor collection system or on any tank connected to the system are capable of venting vapors to atmosphere at 1.25 times the loading rate such that no cargo tank pressure exceeds 3.0 psig for tankships or 2.0 psig for tank barges, or if a spill valve or rupture disk is fitted, the pressure at which the spill valve or rupture disk will relieve; or

(2) The rate based on calculation at which, for a given pressure at the vessel vapor connection, the pressure in any cargo tank connected to the vapor collection system is no more than 50 percent of any pressure relief device setting on any tank connected to the system, assuming a vapor flow rate of 1.25 times the loading rate.

**Note:** The maximum allowable loading rate will normally be given as a table or graph in the vessel's oil transfer procedures showing the maximum allowable loading rate versus the pressure at the vessel's vapor connection.

(c) Unless exempted by the Commandant (G-MTH), a cargo tank must not be filled higher than the lesser of:

(1) 97 percent of the cargo tank volume; or

(2) The level at which the high level alarm complying with § 39.20-7 of this part is set.

(d) A cargo tank must not be opened to the atmosphere during cargo loading operations except as provided in paragraph (e) of this section.

(e) A cargo tank may be opened to the atmosphere for gauging or sampling while the tank vessel is connected to a vapor control system if the following conditions are met:

(1) The tank is not being filled;

(2) Except if the tank is inerted, any pressure in the cargo tank vapor space is first reduced to atmospheric pressure by the vapor control system;

(3) The cargo is not required to be closed or restricted gauged by Table 151.05 or Table 1 in part 153 of this chapter; and

(4) All metallic equipment used in sampling or gauging is electrically bonded to the vessel before it is put into the tank, remains bonded to the vessel until it is removed from the tank, and a period of 30 minutes has elapsed since loading of the tank was completed.

(f) The initial loading rate to each cargo tank must not exceed one meter per second (3.28 feet per second) average linear velocity through the cargo fill line until the cargo level in the tank exceeds one meter (3.28 feet) in height.

(g) If the emitted vapors are collected by a facility which requires the vapors from the vessel to be inerted in accordance with 33 CFR 154.820(g), the master shall ensure by measurement before loading or ballasting begins that the oxygen content in the vapor space of each cargo tank connected to the vapor collection system does not exceed 8 percent by volume. The oxygen content of each tank must be measured at a point one meter (3.28 feet) below the tanktop and in the center of the ullage space. Where tanks have partial bulkheads, the oxygen content of each area of that tank formed by each partial bulkhead must be measured at a point one meter (3.28 feet) below the tanktop and in the center of the area.

(h) If the vessel is equipped with an inert gas system, the stop valve required by § 39.20-1(a)(4) of this part must remain closed during vapor control operations.

(i) Each high level alarm and tank overflow alarm on all cargo tanks being loaded must be tested at the tank for

proper operation prior to each loading operation.

(j) The pressure indicator required by § 39.20-13(a) of this part must be continuously monitored during the loading operation.

(k) No more than 30 meters (98.4 feet) of vapor hose may be used unless provisions are made to reduce the maximum allowable loading rate to account for the resistance of the additional vapor hose.

(l) The inside diameter of all vapor hoses must not be less than the inside diameter of the vessel's vapor collection system piping.

#### Subpart 39.40—Lightering Operations with Vapor Balancing

##### § 39.40-1 General requirements for vapor balancing—TB/ALL.

(a) Except as provided in paragraph (b) of this section, each vessel which engages in a lightering operation while collecting flammable or combustible vapors emitted from a cargo tank for retention on the vessel to be lightered must be fitted with vapor balancing equipment that meets the requirements of this subpart in addition to the requirements of subparts 39.10, 39.20, and 39.30 of this part.

(b) An arrangement to control vapor emissions during lightering operations which does not use vapor balancing must receive specific approval from the Commandant (G-MTH).

##### § 39.40-3 Design and equipment for vapor balancing—TB/ALL.

(a) A detonation arrester must be installed in the vapor collection system which:

(1) Meets ASTM \_\_\_\_\_;

(2) Is capable of arresting a detonation from either side of the device; and

(3) Is installed not more than 1.0 meter (3.28 feet) from the vessel vapor connection on at least one of the vessels involved in the lightering.

(b) A vapor collection system must not use a device to assist the transfer or recovery of vapors (e.g. a compressor or blower) without specific approval by the Commandant (G-MTH).

(c) If a tank barge which is the service vessel has a means of liquid overflow protection in accordance with § 39.20-9(b) of this part, the vessel to be lightered must have a power supply and overflow control panel which meets the requirements of 33 CFR 154.812.

(d) If the service vessel or both vessels involved in a lightering operation are inerted tank vessels, the following requirements must be met:

(1) An oxygen sensor and an oxygen alarm must be provided which meets the following:

(i) Are located at the vessel vapor connection on the vessel to be lightered, unless the Commandant (G-MTH) has approved alternative arrangements with the oxygen sensor and oxygen alarm on the service vessel;

(ii) Produce an audible and visible signal when the oxygen content in the vapor collection system exceeds 8 percent by volume;

(iii) Have a connection for injecting a span gas of known concentration for testing and calibration of the oxygen sensor; and

(iv) Have an indicator located where the cargo transfer is controlled which indicates the oxygen content.

(2) The vessel to be lightered must have a means to inert the vapor transfer hose between vessels prior to admitting any vapors into its vapor collection system.

##### § 39.40-5 Operational requirements for vapor balancing—TB/ALL.

(a) During lightering operations, each cargo tank being loaded must be connected by the vapor collection system to a cargo tank which is being discharged.

(b) During lightering operations, the pressure indicator required by § 39.40-3(c) of this part on the service vessel must be continuously monitored.

(c) During lightering operations, an electrical insulating flange must be provided at the vessel vapor connection on either the vessel to be lightered or the service vessel.

(d) If both vessels involved in a lightering operation are inerted tankships, the following requirements must be met.

(1) All tanks on the service vessel which are connected to the vapor collection system must be tested prior to cargo transfer to ensure that the oxygen content in the vapor space is not more than 8 percent by volume. The oxygen content of each tank must be measured at a point one meter (3.28 feet) below the tanktop and in the center of the ullage space. Where tanks have partial bulkheads, the oxygen content of each area of that tank formed by each partial bulkhead must be measured at a point one meter (3.28 feet) below the tanktop and in the center of the area;

(2) The oxygen sensor must be tested for proper operation prior to the start of each transfer operation. The oxygen content of vapors being transferred must be continuously monitored during the transfer operation. Transfer of cargo must be terminated if the oxygen

content exceeds 8 percent by volume and must not be restarted until the oxygen content is reduced to 8 percent by volume or less.

(3) The rate of cargo transfer must be controlled from the vessel to be lightered, and must not exceed the maximum allowable loading rate for either vessel.

(4) Tank washing on a vessel to be lightered shall not be conducted on any tank connected to the vapor collection system unless the isolation valve required by § 39.20-1 of this part is closed.

(5) Cargo tanks must not be ballasted during cargo transfer operations.

(e) If only the service vessel in a lightering operation is an inerted tankship:

(1) All requirements in paragraph (d) of this section must be met; and

(2) The service vessel isolation valve required by § 39.20-1(c) of this part must not be opened until the pressure in the vapor collection system on the service vessel exceeds the pressure in the vapor collection system on the vessel to be lightered.

(f) When neither vessel is an inerted tankship in a lightering operation, the rate of cargo transfer must be controlled from the vessel to be lightered, and must not exceed the maximum allowable loading rate for either vessel.

(g) Vapor balancing must not be utilized when only the vessel to be lightered is an inerted tankship.

Dated: July 21, 1989.

J.D. Sipes,

Chief, Office of Marine Safety, Security and Environmental Protection.

Note: The following Appendices will not appear in the Code of Federal Regulations.

#### Appendix A—Standard Specification for Detonation Flame Arresters

##### 1. Scope

1.1 This standard provides the minimum requirements for design, construction, performance and testing of detonation flame arresters.

##### 2. Intent

2.1 This standard is intended for detonation flame arresters protecting systems containing vapors of flammable or combustible liquids where vapor temperatures do not exceed 60 °C. For all tests, the test media defined in 14.1.1 can be used except where detonation flame arresters protect systems handling vapors with a maximum experimental safe gap (MESG) below 0.9 millimeters. Detonation flame arresters protecting such systems must be tested with appropriate media (the same vapor or a media having a MESG no greater than the vapor). Various gases and their respective MESG are listed in attachment 1 to Appendix A.

2.2 The tests in this standard are intended to qualify detonation flame arresters for all in-line applications independent of piping configuration provided the operating pressure is equal to or less than the maximum operating pressure limit specified in the manufacturer's certification and the diameter of the piping system in which the detonation arrester is to be installed is equal to or less than the piping diameter used in the testing.

Note: Detonation flame arresters meeting this standard as Type I devices, which are certified to be effective below 0 °C and which can sustain three stable detonations without being damaged or permanently deformed, also comply with the minimum requirements of the International Maritime Organization, Maritime Safety Committee Circular No. 373 (MSC/Circ. 373/Rev. 1).

##### 3. Applicable Documents

3.1 ASTM Standards<sup>1</sup>: A395 Ferritic Ductile Iron Pressure-Retaining Castings For Use at Elevated Temperatures; F722 Welded Joints for Shipboard Piping Systems; F1155 Standard Practice for Selection and Application of Piping System Materials.

3.2 ANSI Standards<sup>2</sup>: B16.5 Pipe Flanges and Flanged Fittings.

##### 3.3 Other Documents

3.3.1 ASME Boiler and Pressure Vessel Code<sup>3</sup>: Section VIII, Division 1, Pressure Vessels; Section IX, Welding and Brazing Qualifications.

3.3.2 International Maritime Organization, Maritime Safety Committee<sup>3</sup> MSC/Circ. 373/Rev. 1—Revised Standards for the Design, Testing and Locating of Devices to Prevent the Passage of Flame into Cargo Tanks in Tankers.

3.3.3 International Electrotechnical Commission<sup>4</sup> Publication 79-1—Electrical Apparatus for Explosive Gas Atmospheres.

##### 4. Terminology

4.1  $\Delta P/P_0$ —The dimensionless ratio, for any deflagration and detonation test of 14.3, of the maximum pressure increase (the maximum pressure minus the initial pressure), as measured in the piping system on the side of the arrester where ignition begins by the device described in paragraph 14.3.3, to the initial absolute pressure in the piping system. The initial pressure should be greater than or equal to the maximum operating pressure specified in paragraph 11.1.7.

4.2 Deflagration—A combustion wave that propagates subsonically (as measured at the pressure and temperature of the flame front) by the

transfer of heat and active chemical species to the unburned gas ahead of the flame front.

4.3 Detonation—A reaction in a combustion wave propagating at sonic or supersonic (as measured at the pressure and temperature of the flame front) velocity. A detonation is stable when it has a velocity equal to the speed of sound in the burnt gas or may be unstable (overdriven) with a higher velocity and pressure.

4.4 Detonation flame arrester—A device which prevents the transmission of a detonation and a deflagration.

4.5 Flame speed—The speed at which a flame propagates along a pipe or other system.

4.6 Flame Passage—The transmission of a flame through a device.

4.7 Gasoline Vapors—A non-leaded petroleum distillate consisting essentially of aliphatic hydrocarbon compounds with a boiling range approximating 65 °C/75 °C.

##### 5. Classification

5.1 The two types of detonation flame arresters covered in this specification are classified as follows:

5.1.1 Type I—Detonation flame arresters acceptable for applications where stationary flames may rest on the device.

5.1.2 Type II—Detonation flame arresters acceptable for applications where stationary flames are unlikely to rest on the device, and further methods are provided to prevent flame passage when a stationary flame occurs. One example of "further methods" is a temperature monitor and an automatic shutoff valve.

##### 6. Ordering Information

6.1 Orders for detonation flame arresters under this specification shall include the following information as applicable:

6.1.1 Type (I or II).

6.1.2 Nominal pipe size.

6.1.3 Each gas or vapor in the system and the corresponding MESG.

6.1.4 Inspection and tests other than specified by this standard.

6.1.5 Anticipated ambient air temperature range.

6.1.6 Purchaser's inspection requirements (see section 10.1).

6.1.7 Description of installation.

6.1.8 Materials of construction (see section 7).

6.1.9 Maximum flow rate and the maximum design pressure drop for that maximum flow rate.

6.1.10 Maximum operating pressure.

##### 7. Materials

7.1 The detonation flame arrester housing, and other parts or bolting used for pressure retention, shall be constructed of materials listed in ASTM F1155, or section VIII, Division 1 of the ASME Boiler and Pressure Vessel Code. Cast and malleable iron shall not be used; however, ductile cast iron in accordance with ASTM A395 may be used.

7.1.1 Arresters, elements, gaskets, and seals must be made of materials resistant to attack by seawater and the liquids

<sup>1</sup> Available from the American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103.

<sup>2</sup> Available from the American Society of Mechanical Engineers, 345 E. 47th St., New York, NY 10017.

<sup>3</sup> Available from the International Maritime Organization, 4 Albert Embankment, London SE1 7SR, England.

<sup>4</sup> Available from the International Electrotechnical Commission, 1 rue de Varembe, Geneva, Switzerland.

- and vapors contained in the system being protected [see section 6.1.3].
- 7.2 Nonmetallic materials, other than gaskets and seals, shall not be used in the construction of pressure retaining components of the detonation flame arrester.
- 7.2.1 Nonmetallic gaskets and seals shall be non-combustible and suitable for the service intended.
- 7.3 Bolting materials, other than that of section 7.1, shall be at least equal to those listed in Table 1 of ANSI B16.5.
- 7.4 The possibility of galvanic corrosion shall be considered in the selection of materials.
- 7.5 All other parts shall be constructed of materials suitable for the service intended.
8. Other Requirements
- 8.1 Detonation flame arrester housings shall be gas tight to prevent the escape of vapors.
- 8.2 Detonation flame arrester elements shall fit in the housing in a manner that will insure tightness of metal-to-metal contacts in such a way that flame cannot pass between the element and the housing.
- 8.2.1 The net free area through detonation flame arrester elements shall be at least 1.5 times the cross-sectional area of the arrester inlet.
- 8.3 Housings, elements, and seal gasket materials shall be capable of withstanding the maximum and minimum pressures and temperatures to which the device may be exposed under both normal and the specified fire test conditions in section 14, and shall be capable of withstanding the hydrostatic pressure test of section 9.2.3.
- 8.4 Threaded or flanged pipe connections shall comply with the applicable B16 standards in ASTM F1155. Welded joints shall comply with ASTM F722.
- 8.5 All flat joints of the housing shall be machined true and shall provide for a joint having adequate metal-to-metal contact.
- 8.6 Where welded construction is used for pressure retaining components, welded joint design details, welding and non-destructive testing shall be in accordance with section VIII, Division 1, of the ASME Code and ASTM F722. Welders and weld procedures shall be qualified in accordance with section IX of the ASME Code.
- 8.7 The design of detonation flame arresters shall allow for ease of inspection and removal of internal elements for replacement, cleaning or repair without removal of the entire device from the system.
- 8.8 Detonation flame arresters shall allow for efficient drainage of condensate without impairing their efficiency to prevent the passage of flame. The housing may be fitted with one or more drain plugs for this purpose.
- 8.9 All fastenings shall be protected against loosening.
- 8.10 Detonation flame arresters shall be designed and constructed to minimize the effect of fouling under normal operating conditions.
- 8.11 Detonation flame arresters shall be capable of operating over the full range of ambient air temperatures anticipated.
- 8.12 Detonation flame arresters shall be of first class workmanship and free from imperfections which may affect their intended purpose.
- 8.13 Detonation flame arresters shall be tested in accordance with section 9.
9. Tests
- 9.1 Tests shall be conducted by an independent laboratory capable of performing the tests. The manufacturer, in choosing a laboratory, accepts that it is a qualified independent laboratory by determining that it has (or has access to) the apparatus, facilities, personnel, and calibrated instruments that are necessary to test detonation flame arresters in accordance with this standard.
- 9.1.1 A test report shall be prepared by the laboratory which shall include:
- 9.1.1.1 Detailed drawings of the detonation flame arrester and its components (including a parts list identifying the materials of construction).
- 9.1.1.2 Types of tests conducted and results obtained. This shall include the maximum temperature reached and the length of testing time in section 14.2 in the case of Type II detonation flame arresters.
- 9.1.1.3 Description of approved attachments (reference 9.2.6).
- 9.1.1.4 Types of gases or vapors for which the detonation flame arrester is approved.
- 9.1.1.5 Drawings of the test rig.
- 9.1.1.6 Record of all markings found on the tested detonation flame arrester.
- 9.1.1.7 A report number.
- 9.2 One of each model Type I and Type II detonation flame arrester shall be tested. Where approval of more than one size of a detonation flame arrester model is desired, only the largest and smallest sizes need be tested provided it is demonstrated by calculation and/or other testing that intermediate size devices have equal or greater strength to withstand the force of a detonation and have equivalent detonation arresting characteristics. A change of design, material, or construction which may affect the corrosion resistance, or ability to resist endurance burning, deflagrations or detonations shall be considered a change of model for the purpose of this paragraph.
- 9.2.1 The detonation flame arrester shall have the same dimensions, configuration, and most unfavorable clearances expected in production units.
- 9.2.2 A corrosion test shall be conducted. In this test, a complete detonation flame arrester, including a section of pipe similar to that to which it will be fitted, shall be exposed to a 20% sodium chloride solution spray at a temperature of 25 °C for a period of 240 hours, and allowed to dry for 48 hours. Following this exposure, all movable parts shall operate properly and there shall be no corrosion deposits which cannot be washed off.
- 9.2.3 The detonation flame arrester shall be subjected to a hydrostatic pressure test of at least 350 psig for ten minutes without rupturing, leaking, or showing permanent distortion.
- 9.2.4 Flow characteristics as declared by the manufacturer, shall be demonstrated by appropriate tests.
- 9.2.5 Detonation flame arresters shall be tested for endurance burn and deflagration/detonation in accordance with the test procedures in section 14. Type I detonation flame arresters shall show no flame passage when subjected to both tests. Type II detonation flame arresters shall show no evidence of flame passage during the detonation/deflagration tests in section 14.3. Type II detonation flame arresters shall be tested for endurance burn in accordance with section 14.2. From the endurance burn test of a Type II detonation flame arrester, the maximum temperature reached and the test duration shall be recorded and provided as part of the laboratory test report.
- 9.2.6 Where a detonation flame arrester is provided with cowls, weather hoods and deflectors, etc., it shall be tested in each configuration in which it is provided.
- 9.2.7 Detonation flame arresters which are provided with a heating arrangement designed to maintain the surface temperature of the device above 85 °C shall pass the required tests at the maximum heated operating temperature.
- 9.2.8 Each finished detonation arrester shall be pneumatically tested at 10 psig to ensure there are no defects or leakage.
10. Inspection
- 10.1 The manufacturer shall afford the purchaser's inspector all reasonable facilities necessary to assure that the device is being furnished in accordance with this standard. All examinations and inspections shall be made at the place of manufacture, unless otherwise agreed upon.
- 10.2 Each finished detonation arrester shall be visually and dimensionally checked to ensure that the device corresponds to this standard, is certified in accordance with section 11 and is marked in accordance with section 12. Special attention shall be given to the checking of welds and the proper fit-ups of joints (see sections 8.5 and 8.6).
11. Certification
- 11.1 Manufacturer's certification that a detonation flame arrester meets this standard shall be provided in an instruction manual. The manual shall include as applicable:
- 11.1.1 Installation instructions and a description of all configurations tested (reference paragraph 9.2.6). Installation instructions to include the device's limitations.
- 11.1.2 Operating instructions.
- 11.1.3 Maintenance requirements.
- 11.1.3.1 Instructions on how to determine when arrester cleaning is required and the method of cleaning.
- 11.1.4 Copy of test report (see section 9.1.1).
- 11.1.5 Flow test data, maximum temperature and time tested (Type II).

- 11.1.6 The ambient air temperature range over which the device will effectively prevent the passage of flame.
- Note:** Other factors such as condensation and freezing of vapors should be evaluated at the time of equipment specification.
- 11.1.7 The maximum operating pressure for which the device is suitable.
12. *Marking*
- 12.1 Each detonation flame arrester shall be permanently marked indicating:
- 12.1.1 Manufacturer's name or trademark.
- 12.1.2 Style, type, model or other manufacturer's designation for the detonation flame arrester.
- 12.1.3 Size of the inlet and outlet.
- 12.1.4 Type of device (Type I or II).
- 12.1.5 Direction of flow through the detonation flame arrester.
- 12.1.6 Test laboratory and report number.
- 12.1.7 Lowest MESH of gases that the detonation flame arrester is suitable for.
- 12.1.8 ASTM designation of this standard.
- 12.1.9 Ambient air operating temperature range.
- 12.1.10 Maximum operating pressure.
13. *Quality Assurance*
- 13.1 Detonation flame arresters shall be designed, manufactured and tested in a manner that ensures they meet the characteristics of the unit tested in accordance with this standard.
- 13.2 The detonation flame arrester manufacturer shall maintain the quality of the arresters that are designed, tested and marked in accordance with this standard. At no time shall a detonation flame arrester be sold with this standard designation that does not meet the requirements herein.
14. *Test Procedures for Detonation Arresters*
- 14.1 *Media/Air Mixtures*
- 14.1.1 For vapors from flammable or combustible liquids with a MESH greater than or equal to 0.9 mm, technical grade hexane or gasoline vapors shall be used for all tests in this section except technical grade propane may be used for the deflagration/detonation tests in section 14.3 For vapors with a MESH less than 0.9 mm, the specific vapor (or alternatively, a media with a MESH less than or equal to the MESH of the vapor) must be used as the test medium in all section 14 tests.
- 14.1.2 Hexane, propane, gasoline and other test vapors shall be mixed with air to form the most easily ignitable mixture.<sup>6</sup>
- 14.2 *Endurance Burn Test Procedure*
- 14.2.1 An endurance burning test shall be carried out as follows:
- 14.2.1.1 The test rig shall consist of an apparatus producing an explosive mixture, a small tank with a diaphragm, a prototype of the detonation flame arrester and a firing source in close proximity to the test device (see Figure 1). The detonation flame arrester shall be installed so that the mixture emission is vertically upwards, or installed in the position for which it is designed and which will cause the most severe heating of the device under the prescribed endurance burn conditions. In this position the mixture shall be ignited.
- 14.2.1.2 Endurance burn test shall start by using the most easily ignitable test vapor/air mixture with the aid of a pilot flame or a spark igniter at the outlet. The flammable mixture may be reignited as necessary in the course of the endurance burn.
- 14.2.1.3 Temperature measurement will be performed on the surface of the arrester element half way between the center and its edge.
- 14.2.1.4 By varying the proportions of the flammable mixture and the flow rate, the detonation flame arrester shall be heated by a stable flame on the surface of the arrester until the highest obtainable temperature is reached on the ignited side or until the temperature on the side which was not ignited (protected side) rises 100 °C.
- 14.2.1.5 The flammable mixture proportions will then be varied again until the conditions which result in the highest temperature on the protected side are achieved. This temperature shall be maintained for a period of ten minutes, after which the flow shall be stopped and the conditions observed. The highest attainable temperature is considered to have been reached when any subsequent rise of temperature does not exceed 0.5 °C per minute over a ten minute period.
- 14.2.1.6 If difficulty arises in establishing the highest attainable temperature on the protected side, the following criteria shall apply. When the increase in temperature on the protected side occurs so slowly that its temperature does not rise 100 °C, the conditions which produced the highest temperature on the ignited side of the arrester will be maintained for two hours. For the condition in which the temperature on the protected side continues to rise at a rate in excess of 0.5 °C per minute for a 10 minute period, endurance burning shall be continued, using the most severe conditions of flammable mixtures and flow rate, for a period of two hours. In either of these cases, at the end of the two hour period, the flow shall be stopped and the conditions observed. The two hour interval shall be measured commencing with the setting of the conditions which produced the most severe conditions of mixture and flow rate. For Type I detonation flame arresters, flame passage shall not occur during this test. For Type II detonation flame arresters, the maximum temperature obtained, and the time elapsed from the time when the most severe conditions are set to when flame passage occurs, shall be recorded. However, for Type II detonation flame arresters the test may be terminated 15 minutes after setting the most severe conditions on the protected side.
- 14.3 *Deflagration/Detonation Test Procedure*
- 14.3.1 A detonation flame arrester shall be installed at one end of a pipe of the same diameter as the inlet of the detonation flame arrester (see Figure 2). The length and configuration of the test pipe shall develop a stable detonation<sup>6</sup> at the device and shall be capable, by change in its length or configuration, of developing deflagrations and unstable (overdriven) detonations as measured on the side of the pipe where ignition occurs (run-up side). For deflagration testing, two test piping arrangements shall be used on the outlet side of the detonation flame arrester (the side which is not ignited). In both of the following end arrangements, the outlet side pipe diameter shall be equal to that on the run-up side. In one arrangement, the outlet side pipe shall be at least 10 pipe diameters long with a plastic bag over the free end. (Alternate end of pipe closures are also acceptable provided they easily give way during the course of the test, and the closure allows the required gas concentration to be maintained throughout the test piping arrangement.) In the other arrangement the outlet side pipe shall be fitted with a restriction located 0.6 meter from the outlet side arrester flange. The size of the restriction for each nominal size detonation flame arrester shall be as follows:

Nominal pipe diameter	Restriction diameter
3".....	1/2"
4".....	1/2"
6".....	1"
8".....	1 1/2"
10".....	1 1/2"
12".....	2"
18".....	2"
24".....	2"

The entire pipe shall be filled with the most easily ignitable vapor/air mixture to a pressure corresponding to or greater than the upper limit of the device's maximum operating pressure (see 11.1.7). The concentration of the mixture should be verified by appropriate testing of the gas composition in the plastic bag. The vapor/air mixture shall then be ignited.

- 14.3.2 Flame speeds shall be measured by optical devices capable of providing accuracy of +/− 5%. These devices shall be situated no more than 11.75 inches apart with one device no more than 4 inches from the end of the test pipe to which the detonation flame arrester is attached. In addition, each outlet arrangement described in paragraph 14.3.1 shall be fitted with an optical device located no more than 6 inches from the detonation flame arrester outlet.<sup>7</sup>

<sup>6</sup> Some data are available for the estimation of flame speeds in horizontal pipes without detonation flame arresters. Some data indicate that the presence of small obstacles, fittings or bends in the test pipe can accelerate the flame speeds appreciably.

<sup>7</sup> Other pressure and/or flame speed measuring techniques may be used if effective.

<sup>8</sup> See IEC Publication 79-1.

14.3.3 Explosion pressures within the pipe shall be measured by a high frequency transducer situated in the test pipe no more than 4 inches from the run-up side of the housing of the detonation flame arrester.

14.3.4 Using the first end arrangement (10 pipe diameter outlet) described in paragraph 14.3.1, a series of tests shall be conducted to determine the test pipe length and configuration that results in the maximum unstable (overdriven) detonation having the maximum measured flame speed at the detonation flame arrester. (These tests may also be carried out using a single length of pipe with igniters spaced at varying distances from the arrester.) The flame speeds, explosion pressures and test pipe configurations shall be recorded for each of these tests. The piping configuration that resulted in the highest recorded unstable (overdriven) detonation flame

speed shall be used, and the device shall be subjected to at least four additional unstable (overdriven) detonations. In the course of testing, the device shall also demonstrate its ability to withstand five stable detonations, five deflagrations (as determined by flame speed) where  $\Delta P/P_0$  was less than 1 and five deflagrations (as determined by flame speed) where  $\Delta P/P_0$  was greater than 1 but less than 10. Deflagration tests using the restricted outlet arrangement described in paragraph 14.3.1 shall then be conducted. In these tests the device shall demonstrate its ability to stop five deflagrations (as determined by flame speed) generated by the same configurations which resulted in  $\Delta P/P_0$  being less than 1 during the deflagration tests which were conducted without the restricted end arrangements, and five deflagrations (as determined by flame speed) generated by the same

configurations which resulted in  $\Delta P/P_0$  being greater than 1 but less than 10 during the deflagration tests which were conducted without the restricted end arrangements. No evidence of flame passage shall occur during these tests. The flame speeds and explosion pressures for each of these tests shall be recorded.

14.3.5 A device that successfully passes the tests of 14.3.4 shall be considered to be directional (suitable for arresting a detonation advancing only from the direction as tested) except;

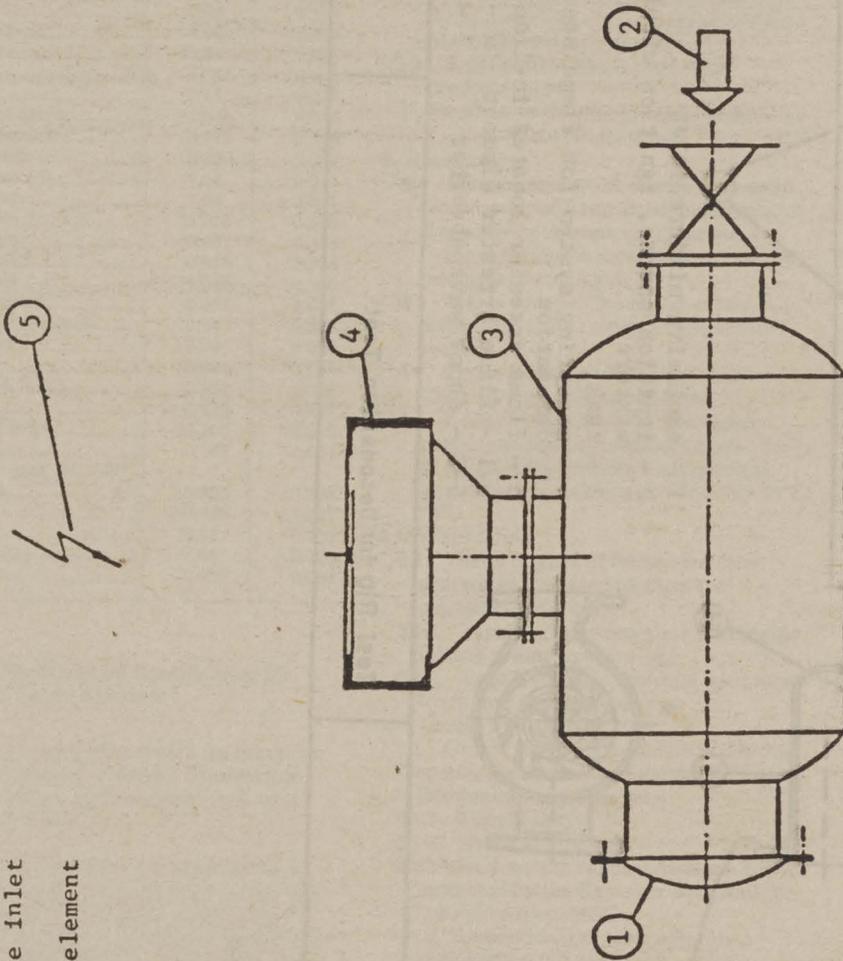
14.3.5.1 A device may be tested according to 14.3.4 for detonations approaching from either direction, or

14.3.5.2 The design of the device is symmetrical where each end may be considered to be identical when approached by a detonation from either direction.

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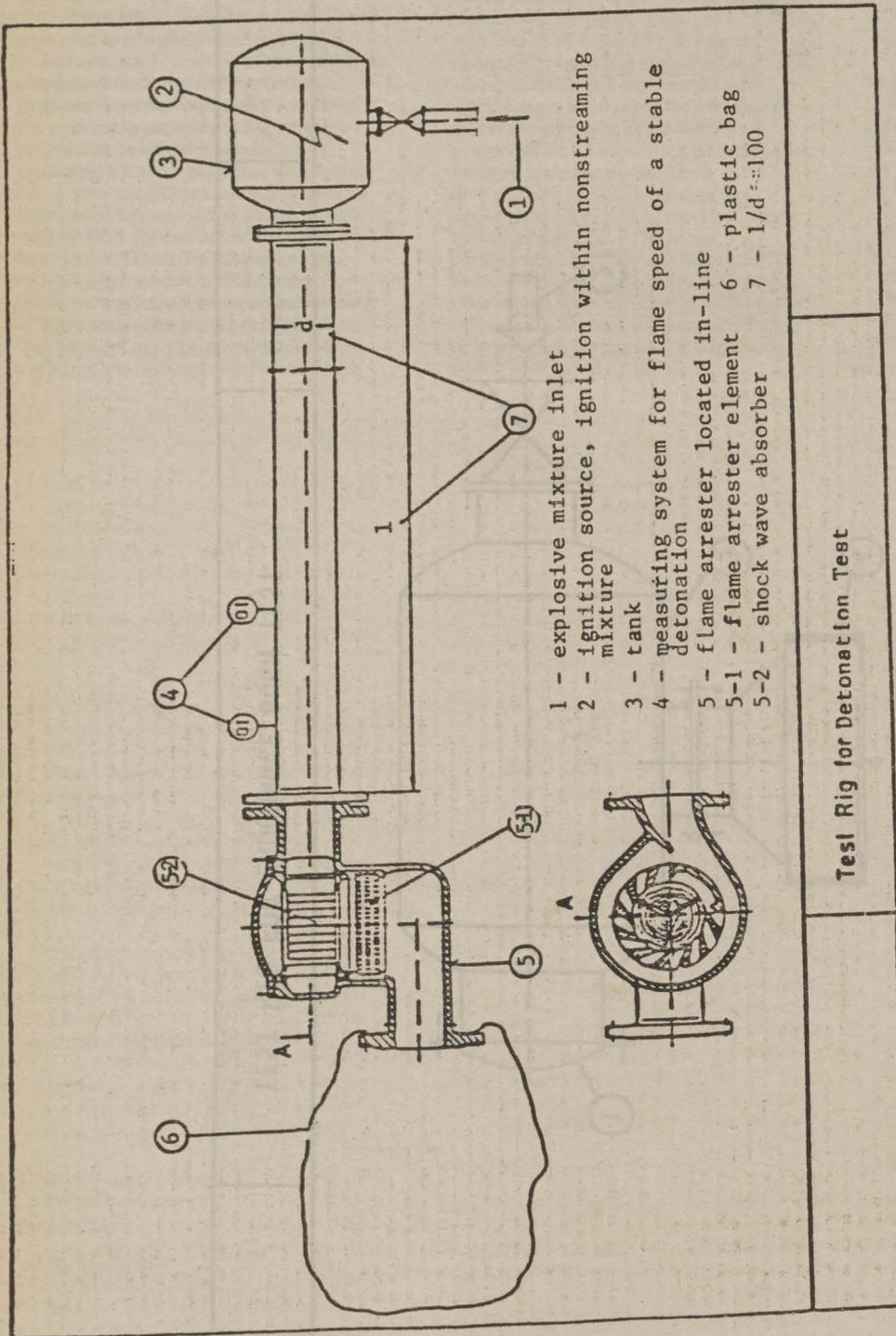
FIGURE 1

- 1 - bursting diaphragm (plastic)
- 2 - explosive mixture inlet
- 3 - tank
- 4 - flame arresting element
- 5 - ignition source



TEST RIG FOR ENDURANCE BURN TEST

Figure 2



BILLING CODE 4910-14-C

## Attachment 1 to Appendix A

Inflammable gas or vapour	Experimental maximum safe gap	
	mm	in.
Methane	1.170	0.046
Blast furnace gas	1.193	0.047
Propane	0.965	0.038
Butane	1.066	0.042
Pentane	1.016	0.040
Hexane	0.965	0.038
Heptane	0.965	0.038
Iso-octane	1.040	0.041
Decane	1.016	0.040
Benzene	0.99	0.039
Xylene	1.066	0.042
Cyclohexane	0.94	0.037
Acetone	1.016	0.040
Ethylene	0.71	0.028
Methyl-ethyl-ketone	1.016	0.040
Carbon monoxide	0.915	0.036
Methyl-acetate	0.990	0.039
Ethyl-acetate	1.04	0.041
Propyl-acetate	1.04	0.041
Butyl-acetate	1.016	0.040
Amyl-acetate	0.99	0.039
Methyl alcohol	0.915	0.036
Ethyl alcohol	1.016	0.040
Iso-butyl-alcohol	0.965	0.038
Butyl-alcohol (Normal)	0.94	0.037
Amyl-alcohol	0.99	0.039
Ethyl-ether	0.864	0.034
Coal gas (H <sub>2</sub> 57%)	0.482	0.019
Acetylene	<0.025	<0.001
Carbon disulphide	0.203	0.008
Hydrogen	0.102	0.004
Blue water gas (H <sub>2</sub> 53% CO 47%)	0.203	0.008
Ethyl nitrate	<0.025	<0.001
Ammonia	3.33	0.133
Ethylene oxide	1.65	0.026
Ethyl nitrite	0.922	0.038

<sup>1</sup> Approx.

## Appendix B—Standard Specification for Tank Vent Flame Arresters

## 1. Scope

1.1 This standard provides the minimum requirements for design, construction, performance and testing of tank vent flame arresters.

## 2. Intent

2.1 This standard is intended for flame arresters protecting systems containing vapors of flammable or combustible liquids where vapor temperatures do not exceed 60°C. The text media defined in 14.1.1 can be used except where arresters protect systems handling vapors with a maximum experimental safe gap (MESG) below 0.9 millimeters. Flame arresters protecting such systems must be tested with appropriate media (the same vapor or a media having a MESG no greater than the vapor). Various gases and their respective MESG are listed in Attachment 1 to Appendix B.

**Note:** Flame arresters meeting this standard also comply with the minimum requirements of the International Maritime Organization, Maritime Safety Committee Circular No. 373 (MSC/Circ. 373/Rev.1).

## 3. Applicable Documents

3.1 ASTM Standards<sup>1</sup>

F722 Welded Joints for Shipboard Piping Systems

F1155 Standard Practice for Selection and Application of Piping System Materials

3.2 ANSI Standards<sup>2</sup>

B16.5 Pipe Flanges and Flanged Fittings.

## 3.3 Other Documents

3.3.1 ASME Boiler and Pressure Vessel Code<sup>3</sup>

Section VIII, Division 1, Pressure Vessels

Section IX, Welding and Brazing

Qualifications.

3.3.2 International Maritime Organization,

Maritime Safety Committee<sup>3</sup>

MSC/Circ. 373/Rev. 1—Revised Standards for the Design, Testing and Locating of Devices to Prevent the Passage of Flame into Cargo Tanks in Tankers.

3.3.3 International Electrotechnical

Commission<sup>(4)</sup>

Publication 79-1—Electrical Apparatus for Explosive Gas Atmospheres.

## 4. Terminology

4.1 Flame arrester—A device to prevent the passage of flame in accordance with a specified performance standard. Its flame arresting element is based on the principle of quenching.

4.2 Flame speed—The speed at which a flame propagates along a pipe or other system.

4.3 Flame passage—The transmission of a flame through a flame arrester.

4.4 Gasoline Vapors—A non-leaded petroleum distillate consisting essentially of aliphatic hydrocarbon compounds with a boiling range approximately 65°C/75°C.

## 5. Classification

5.1 The two types of flame arresters covered in this specification are classified as follows:

5.1.1 Type I—Flame arresters acceptable for end-of-line applications

5.1.2 Type II—Flame arresters acceptable for in-line applications.

## 6. Ordering Information

6.1 Orders for flame arresters under this specification shall include the following information as applicable:

6.1.1 Type (I or II).

6.1.2 Nominal pipe size.

6.1.3 Each gas or vapor in the tank being protected by the flame arrester, and the corresponding MESG.

6.1.4 Inspection and tests other than specified by this standard.

6.1.5 Anticipated ambient air temperature range.

6.1.6 Purchaser's inspection requirements (see section 10.1).

6.1.7 Description of installation (distance and configuration of pipe between the

<sup>1</sup> Available from the American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103

<sup>2</sup> Available from the American Society of Mechanical Engineers, 345 E. 47th St., New York, NY 10017.

<sup>3</sup> Available from the International Maritime Organization, 4 Albert Embankment, London SE1 7SR, England.

<sup>4</sup> Available from the International Electrotechnical Commission, 1 rue de Varembe, Geneva, Switzerland

arrester, and the atmosphere or potential ignition source) (see section 9.2.4.2).

6.1.8 Materials of construction (see section 7).

6.1.9 Maximum flow rate and the design pressure drop for that maximum flow rate.

## 7. Materials

7.1 The flame arrester housing, and other parts or bolting used for pressure retention, shall be constructed of materials listed in ASTM F1155, or section VIII, Division 1 of the ASME Boiler and Pressure Vessel Code.

7.1.1 Arresters, elements, gaskets, and seals must be of materials resistant to attack by seawater and the liquids and vapors contained in the tank being protected (see section 6.1.3).

7.2 Nonmetallic materials, other than gaskets and seals, shall not be used in the construction of pressure retaining components of the flame arrester.

7.2.1 Nonmetallic gaskets and seals shall be non-combustible and suitable for the service intended.

7.3 Bolting materials, other than that of section 7.1, shall be at least equal to those listed in Table 1 of ANSI B16.5.

7.4 The possibility of galvanic corrosion shall be considered in the selection of materials.

7.5 All other parts shall be constructed of materials suitable for the service intended.

## 8. Other Requirements

8.1 Flame arrester housings shall be gas tight to prevent the escape of vapors.

8.2 Flame arrester elements shall fit in the housing in a manner that will insure tightness of metal-to-metal contacts in such a way that flame cannot pass between the elements and the housing.

8.2.1 The net free area through flame arrester elements shall be at least 1.5 times the cross-sectional area of the arrester inlet.

8.3 Housings and elements shall be of substantial construction and designed for the mechanical and other loads intended during service. In addition, they shall be capable of withstanding the maximum and minimum pressures and temperatures to which the device may be exposed under both normal and the specified fire test conditions in section 14.

8.4 Threaded or flanged pipe connections shall comply with the applicable B16 standards in ASTM F1155. Welded joints shall comply with ASTM F722.

8.5 All flat joints of the housing shall be machined true and shall provide for a joint having adequate metal-to-metal contact.

8.6 Where welded construction is used for pressure retaining components, welded joint design details, welding and non-destructive testing shall be in accordance with section VIII, Division 1, of the ASME Code and ASTM F722. Welders and weld procedures shall be qualified in accordance with section IX of the ASME Code.

- 8.7 The design of flame arresters shall allow for ease of inspection and removal of internal elements for replacement, cleaning or repair without removal of the entire device from the system.
- 8.8 Flame arresters shall allow for efficient drainage of condensate without impairing their efficiency to prevent the passage of flame.
- 8.8.1 Where the design does not permit complete drainage of condensate through its connection to the tank, the housing shall be fitted with a plugged drain opening on the side of the atmospheric outlet of not less than 1/2 inch nominal pipe size (NPS 1/2).
- 8.9 All fastenings shall be protected against loosening.
- 8.10 Flame arresters shall be designed and constructed to minimize the effect of fouling under normal operating conditions.
- 8.11 Flame arresters shall be capable of operating over the full range of ambient air temperatures anticipated.
- 8.12 End-of-line flame arresters shall be so constructed as to direct the efflux vertically upward.
- 8.13 Flame arresters shall be of first class workmanship and free from imperfections which may affect their intended purpose.
- 8.14 Tank vent flame arresters shall show no flame passage when subjected to the tests in 9.2.4.
9. *Prototype Tests*
- 9.1 Tests shall be conducted by an independent laboratory capable of performing the tests. The manufacturer, in choosing a laboratory accepts that it is a qualified independent laboratory by determining that it has (or has access to) the apparatus, facilities, personnel, and calibrated instruments that are necessary to test flame arresters in accordance with this standard.
- 9.1.1 A test report shall be prepared by the laboratory which shall include:
- 9.1.1.1 Detailed drawings of the flame arrester and its components (including a parts list identifying the materials of construction).
- 9.1.1.2 Types of tests conducted and results obtained.
- 9.1.1.3 Specific advice on approved attachments (see section 9.2.4.1).
- 9.1.1.4 Types of gases or vapors for which the flame arrester is approved (see section 6.1.3).
- 9.1.1.5 Drawings of the test rig.
- 9.1.1.6 Record of all markings found on the tested flame arrester.
- 9.1.1.7 A report number.
- 9.2 One of each model Type I and Type II flame arrester shall be tested. Where approval of more than one size of a flame arrester model is desired, the largest and smallest sizes shall be tested. A change of design, material, or construction which may affect the corrosion resistance, endurance burn, or flashback capabilities of the flame arrester shall be considered a change of model for the purpose of this paragraph.
- 9.2.1 The flame arrester shall have the same dimensions, configuration, and the most unfavorable clearances expected in production units.
- 9.2.2 A corrosion test shall be conducted. In this test, a complete arrester, including a section of pipe similar to that to which it will be fitted, shall be exposed to a 20% sodium chloride solution spray at a temperature of 25 degrees C for a period of 240 hours, and allowed to dry for 48 hours. Following this exposure, all movable parts shall operate properly and there shall be no corrosion deposits which cannot be washed off.
- 9.2.3 Performance characteristics as declared by the manufacturer, such as flow rates under both positive and negative pressure, operating sensitivity, flow resistance, and velocity, shall be demonstrated by appropriate tests.
- 9.2.4 Tank vent flame arresters shall be tested for endurance burn and flashback in accordance with the test procedures in section 14. The following constraints apply:
- 9.2.4.1 Where a Type I flame arrester is provided with cowls, weather hoods and deflectors, etc., it shall be tested in each configuration in which it is provided.
- 9.2.4.2 Type II arresters shall be specifically tested with the inclusion of all pipes, tees, bends, cowls, weather hoods, etc., which may be fitted between the arrester and the atmosphere.
- 9.2.5 Devices which are provided with a heating arrangement shall pass the required tests at the heated temperature.
- 9.2.6 After all tests are completed, the device shall be disassembled and examined, and no part of the device shall be damaged or show permanent deformation.
10. *Inspection*
- 10.1 The manufacturer shall afford the purchaser's inspector all reasonable facilities necessary to assure that the material is being furnished in accordance with this standard. All examinations and inspections shall be made at the place of manufacture, unless otherwise agreed upon.
- 10.2 Each finished flame arrester shall be visually and dimensionally checked to ensure that the device corresponds to this standard, is certified in accordance with section 11 and is marked in accordance with section 12. Special attention shall be given to checking the proper fit-up of joints (see sections 8.5 and 8.6).
11. *Certification*
- 11.1 Manufacturer's certification that a flame arrester has been constructed in accordance with this standard shall be provided in an instruction manual. The manual shall include as applicable:
- 11.1.1 Installation instructions and a description of all configurations tested (reference paragraph 9.2.4.1 and 9.2.4.2). Installation instructions to include manufacturer's recommended limitations based on all configurations tested.
- 11.1.2 Operating instructions.
- 11.1.3 Maintenance requirements.
- 11.1.3.1 Instructions on how to determine when flame arrester cleaning is required and the method of cleaning.
- 11.1.4 Copy of test report (see section 9.1.1).
- 11.1.5 Flow test data, including flow rates under both positive and negative pressures, operating sensitivity, flow resistance, and velocity.
- 11.1.6 The ambient air temperature range over which the device will effectively prevent the passage of flame.
- Note:** Other factors such as condensation and freezing of vapors should be evaluated at the time of equipment specification.
12. *Marking*
- 12.1 Each flame arrester shall be permanently marked indicating:
- 12.1.1 Manufacturer's name or trademark.
- 12.1.2 Style, type, model or other manufacturer's designation for the flame arrester.
- 12.1.3 Size of the inlet and outlet.
- 12.1.4 Type of device (Type I or II).
- 12.1.5 Direction of flow through the flame arrester.
- 12.1.6 Test laboratory and report number.
- 12.1.7 Lowest MESH of gases for which the flame arrester is suitable for.
- 12.1.8 Ambient air operating temperature range.
- 12.1.9 ASTM designation of this standard.
13. *Quality Assurance*
- 13.1 Flame arresters shall be designed, manufactured and tested in a manner that ensures they meet the characteristics of the unit tested in accordance with this standard.
- 13.2 The flame arrester manufacturer shall maintain the quality of the flame arresters that are designed, tested and marked in accordance with this standard. At no time shall a flame arrester be sold with this standard designation that does not meet the requirements herein.
14. *Test Procedures for Flame Arresters*
- 14.1 *Media/Air Mixtures*
- 14.1.1 For vapors from flammable or combustible liquids with a MESH greater than or equal to 0.9 mm, technical grade hexane or gasoline vapors shall be used for all tests in this section except technical grade propane may be used for the flashback test in section 14.2. For vapors with a MESH less than 0.9 mm, the specific vapor (or alternatively, a media with a MESH less than or equal to the MESH of the vapor) must be used as the test medium in all section 14 tests.
- 14.1.2 Hexane, propane, gasoline and chemical vapors shall be mixed with air to form the most easily ignitable mixture.<sup>5</sup>
- 14.2 *Flashback Test*
- 14.2.1 A flashback test shall be carried out as follows:
- 14.2.1.1 The test rig shall consist of an apparatus producing an explosive mixture, a small tank with a diaphragm, a prototype of the flame arrester, a

<sup>5</sup> See IEC Publication 79-1

plastic bag<sup>6</sup> and a firing source in three positions (see Figure 1).<sup>7</sup>

14.2.1.2 The tank, flame arrester assembly and the plastic bag enveloping the prototype flame arrester shall be filled so that this volume contains the most easily ignitable vapor/air mixture.<sup>8</sup> The concentration of the mixture should be verified by appropriate testing of the gas composition in the plastic bag. Three ignition sources shall be installed along the axis of the bag, one close to the flame arrester, another as far away as possible

<sup>6</sup> The dimensions of the plastic bag are dependent on those of the flame arrester. The plastic bag may have a circumference of 2 m, a length of 2.5 m and a wall thickness of .05 m.

<sup>7</sup> In order to avoid remnants of the plastic bag from falling back on to the flame arrester being tested after ignition of the fuel/air mixture, it may be useful to mount a coarse wire frame across the flame arrester within the plastic bag. The frame should be constructed so as not to interfere with the test result.

<sup>8</sup> See IEC Publication 79-1

therefrom, and the third at the midpoint between these two. These three sources shall be fired in succession, one during each of the three tests. Flame passage shall not occur during this test.

14.2.1.3 If flame passage occurs, the tank diaphragm will burst and this will be audible and visible to the operator by the emission of a flame. Flame, heat and pressure sensors may be used as an alternative to a bursting diaphragm.

#### 14.3 Endurance Burn Test

14.3.1 An endurance burning test shall be carried out as follows:

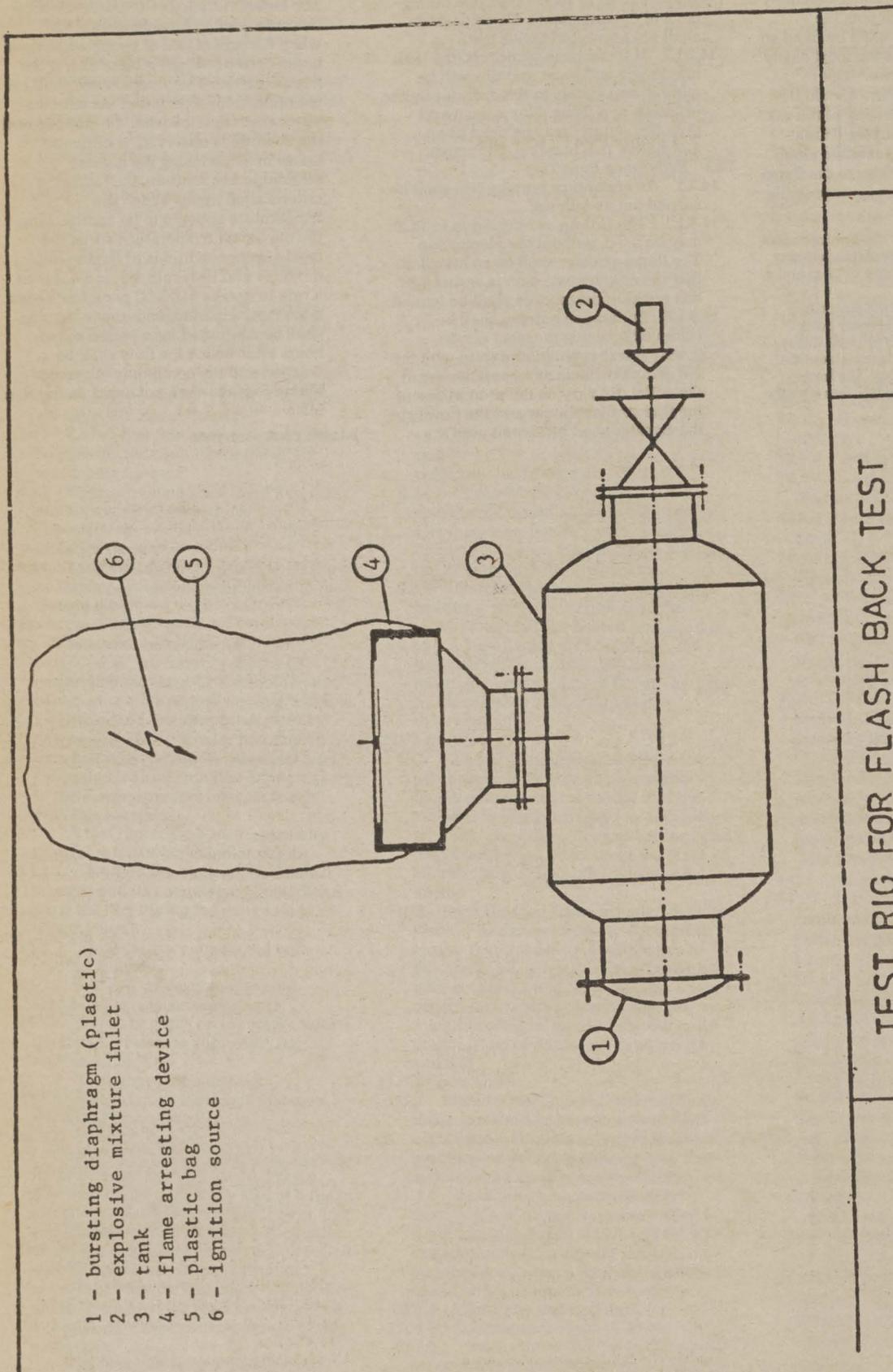
14.3.1.1 The test rig as referred to in 14.2 may be used, without the plastic bag. The flame arrester shall be so installed that the mixture emission is vertical. In this position the mixture shall be ignited.

14.3.1.2 Endurance burning shall be achieved by using the most easily ignitable test vapor/air mixture with the aid of a pilot flame or a spark igniter at the outlet. By varying the proportions of the flammable mixture and the flow rate, the arrester shall be heated until the

highest obtainable temperature on the cargo tank side of the arrester is reached. The highest attainable temperature may be considered to have been reached when the rate of rise of temperature does not exceed 0.5 °C per minute over a ten minute period. This temperature shall be maintained for a period of ten minutes, after which the flow shall be stopped and the conditions observed. If difficulty arises in establishing the highest attainable temperature, the following criteria shall apply. When the temperature appears to be approaching the maximum temperature, using the most severe conditions of flammable mixtures and flow rate, but increases at a rate in excess of 0.5 °C per minute over a ten minute period, endurance burning shall be continued for a period of two hours after which the flow shall be stopped and the conditions observed. Flame passage shall not occur during this test.

BILLING CODE 4910-14-M

FIGURE 1



## Attachment 1 to Appendix B

Inflammable gas or vapour	Experimental maximum safe gap	
	mm	in.
Methane	1.170	0.046
Blast furnace gas	1.193	0.047
Propane	0.965	0.038
Butane	1.066	0.042
Pentane	1.016	0.040
Hexane	0.965	0.038
heptane	0.965	0.038
Iso-octane	1.040	0.041
Decane	1.016	0.040
Benzene	0.99	0.039
Xylene	1.066	0.042
Cyclohexane	0.94	0.037
Acetone	1.016	0.040
Ethylene	0.71	0.028
Methyl-ethyl-ketone	1.016	0.040
Carbon monoxide	0.915	0.036
Methyl-acetate	0.990	0.039
Ethyl-acetate	1.04	0.041
Propyl-acetate	1.04	0.041
Butyl-acetate	1.016	0.040
Amyl-acetate	0.99	0.039
Methyl alcohol	0.915	0.036
Ethyl alcohol	1.016	0.040
Iso-butyl-alcohol	0.965	0.038
Butyl-alcohol (Normal)	0.94	0.037
Amyl-alcohol	0.99	0.039
Ethyl-ether	0.864	0.034
Coal gas (H <sub>2</sub> 57%)	0.482	0.019
Acetylene	<0.025	<0.001
Carbon disulphide	0.203	0.008
Hydrogen	0.102	0.004
Blue water gas (H <sub>2</sub> 53% CO 47%)	0.203	0.008
Ethyl nitrate	<0.025	<0.001
Ammonia	3.33	0.133
Ethylene oxide	1.65	0.026
Ethyl nitrite	0.922	0.038

<sup>1</sup> Approx.

### Appendix C—Standard Specification for Spill Valves for Use in Marine Tank Liquid Overpressure Protection Applications

#### 1. Scope

1.1 This standard provides the minimum requirements for design, construction, performance and testing of devices to prevent marine tank liquid overpressurization (hereafter called spill valves).

1.2 The spill valves provided to this standard will satisfy Regulation 11-2/59.1.6 of the 1981 and 1983 Amendments to the International Convention for the Safety of Life at Sea, 1974 (SOLAS) which states: "Provision shall be made to guard against liquid rising in the venting system to a height which would exceed the design head of the cargo tank. This shall be accomplished by high level alarms or overflow control systems or other equivalent means, together with gauging devices and cargo tank filling procedures."

1.3 The spill valves are not intended for the venting of vapors or the relief of vapor overpressurization or underpressurization of marine tanks.

#### 2. Applicable Documents

##### 2.1 ANSI Standards (1)

##### B2.1 Pipe Threads

B16.1 Cast Iron Pipe Flanges and Flanged Fittings.

B16.3 Malleable Iron Threaded Fittings.

B16.4 Cast Iron Threaded Fittings.

B16.5 Steel Pipe Flanges and Flanged Fittings.

B16.11 Forged Steel Fittings, Socket-Welding & Threaded.

B16.15 Cast Bronze Threaded Fittings.

B16.24 Bronze Pipe Flanges and Flanged Fittings.

B31.1 Power Piping.

B117 Standard Method of Salt Spray (Fog) Testing.

#### 2.2 Other Documents

ASME Boiler and Pressure Vessel Code <sup>1</sup>  
Section VIII, Division 1, Pressure Vessels.  
Section IX, Welding and Brazing Qualifications.

#### 3. Terminology

3.1 Spill Valve—An independent device that automatically prevents liquid overpressurization of a tank by relieving liquid at a predetermined pressure set higher than the pressure reached in the tank when the tank vapor relieving device operates at its maximum design venting rate (based on a volumetric vapor volume 1.25 times the maximum design loading rate).

#### 4. Ordering Information

4.1 Orders for spill valves under this specification shall include the following information as applicable:

4.1.1 Nominal pipe size and end connections.

4.1.2 Product(s) in tank being protected by the spill valve.

4.1.3 Inspection and tests other than specified by this standard.

4.1.4 Required relieving pressure at maximum tank loading flow rate.

4.1.5 Set (opening) pressure.

4.1.6 Maximum tank design loading flow rate.

4.1.7 Inlet pressure drop resulting from the maximum tank design loading flow rate.

4.1.8 Back pressure of the spill valve discharge lines resulting from maximum tank design loading flow rate.

4.1.9 Purchaser's inspection requirements (see section 9.1).

4.1.10 Installation inclinations in excess of 2½ degrees (see section 6.6).

4.1.11 Purchaser's specifications for preventing the valve from leaking due to cargo sloshing.

4.1.12 Additional requirements or testing as contracted by the manufacturer and purchasers.

#### 5. Materials

5.1 All parts shall be constructed of materials suitable for the service intended. Table I of 46 CFR 153 specifies materials that may not be used in components that contact liquid or vapor of each hazardous liquid cargo.

5.2 Housing of spill valves, and all other parts and/or bolting used for pressure retention, shall be constructed of materials having a solidus melting point of greater than 1700 °F and be listed in

ANSI-B31.1, Power Piping, or Section VIII Division 1 of the ASME Boiler and Pressure Vessel Code, except as noted in section 5.5.

5.3 Materials in contact with the liquid or the liquid's vapor shall be suitable for the service and resistant to attack by the liquid carried in the tank being protected (see section 4.1.2).

5.4 Corrosion resistant materials shall be used for the following:

5.4.1 Housings, discs, spindles and seats of valves.

5.4.2 Springs that actuate discs of valves. Springs plated with corrosion resistant material are not acceptable.

5.5 Nonmetallic materials shall not be permitted except for gaskets, seals, bushings in way of moving parts, and valve diaphragms.

5.6 Bolting materials shall be at least equal to those listed in Table 1 of ANSI B16.5. Bolts, screws, and fasteners in contact with interior liquid shall be compatible with the liquid (see section 4.1.2).

#### 6. Other Requirements

6.1 Pressure retaining housings shall be designed to withstand a hydrostatic pressure of at least 125 pounds per square inch without rupturing or showing permanent distortion.

6.2 Housing shall have suitable pipe connections for the removal, maintenance, and testing of the spill valve.

6.2.1 Pipe and connections shall be in accordance with one of the standards listed in paragraph 2.1 or as agreed by the manufacturer and user (see 4.1.12).

6.3 The design of spill valves shall allow for ease of inspection and removal of internal elements for replacement, cleaning or repair without removal of the spill valve.

6.4 All flat joints of the housing shall be machined true and shall provide for a joint having adequate metal-to-metal contact.

6.5 Where welded construction is used, welded joint design details, welding and non-destructive testing shall be in accordance with Section VIII, Division 1, of the ASME Code. Welders and weld procedures shall be qualified in accordance with section IX of the ASME Code.

6.6 The spill valve shall be fully operable at static inclinations up to 2½ degrees unless otherwise specified by the ordering information of section 4.

6.7 Spill valves shall allow for efficient drainage of moisture without impairing their proper operation.

6.7.1 Where the design does not permit complete drainage of condensate through its connection to the tank, the housing shall be fitted with a plugged drain opening on the side of the atmospheric outlet of not less than nominal pipe size ½ (12mm).

6.8 Housing, elements, and seal gasket materials shall be capable of withstanding the highest pressure and

<sup>1</sup> Available from the American Society of Mechanical Engineers, 345 E. 47th St., New York, NY 10017.

temperature to which the spill valve may be exposed under normal conditions.

6.9 Spill valves shall be vapor tight at pressures below the rated liquid relieving pressure.

6.10 Fastenings essential to the operation of the spill valve shall be protected against loosening.

6.11 Spill valves shall be designed and constructed to minimize the effect of fouling under normal conditions.

6.12 The spill valve shall not be provided with a means of positive closure. In installations where cargo sloshing is expected, the spill valve installation must be designed to preclude premature opening of the valve due to cargo sloshing. Also, spill valves shall be designed so that they comply with applicable Loadline and Subdivision requirements.

6.13 Spill valves shall be capable of operating in freezing conditions.

6.14 Each of the free areas through the valve seat and through the valve discharge at maximum lift shall not be less than the cross-sectional area of the valve inlet connection.

6.15 Means shall be provided to check that any valve opens freely and does not remain in the open position.

6.16 Valves discs.

6.16.1 Valve discs shall be guided by a ribbed cage or other suitable means to prevent binding and insure proper seating. Where valve stems are guided by bushings suitably designed to prevent binding and to insure proper seating, the valves need not be fitted with ribbed cages.

6.16.2 Valve discs shall close tight against the valve seat by metal to metal contact; however, resilient seating seals may be provided if the design is such that the disc closes tight against the seat in case the seals are destroyed or in case they carry away.

6.16.3 Valve discs may be solid or hollow. The pressure at which the valve discs open fully at maximum flow rating shall not exceed 120 percent of the set (opening) pressure.

6.17 Valves may be actuated by nonmetallic diaphragms.

6.17.1 Nonmetallic diaphragms are not allowed where failure results in unrestricted flow of flammable or toxic tank vapors to the atmosphere or in an increase in the pressure at which the valve normally releases.

6.18 Relief pressure adjusting mechanisms shall be permanently secured by lockwire, locknuts or other suitable means.

6.18.1 Hollow portions of the valve used to vary the relieving pressure by adding or removing weight shall be watertight.

6.1.19 Spill valves shall not permit entrance of water when exposed to boarding seas.

## 7. Tests

### 7.1 Prototype Tests

7.1.1 A prototype of the largest and smallest spill valve of each design, based on valve inlet connection size, shall be tested as specified below in 7.1.5 through 7.1.10.

7.1.2 The spill valve shall have the dimensions of and most unfavorable clearances expected in production units.

7.1.3 Tests shall be conducted by a laboratory capable or performing the tests.

7.1.4 A test report shall be prepared by the laboratory which shall include:

7.1.4.1 Detailed drawings of the spill valve.

7.1.4.2 Types of tests conducted and results obtained.

7.1.4.3 Specific advice on approved attachments.

7.1.4.4 Types of liquid for which the spill valve is approved.

7.1.4.5 Drawings of the test rig.

7.1.4.6 The pressures at which the spill valve opens and closes and the efflux flow rate at various inlet pressures.

7.1.4.7 Record of all markings found on the prototype spill valve.

7.1.4.8 A traceable report number.

7.1.5 *Corrosion Test:* A corrosion test shall be conducted in accordance with ANSI B117. The valve shall be subjected to the test for a period of 240 hours and allowed to dry for 48 hours. There shall be no corrosion deposits which cannot be washed off.

7.1.6 *Hydrostatic Test:* A hydrostatic pressure test shall be conducted to show compliance with section 6.1 The test shall be made with water or other liquid having a maximum viscosity of 40 SSU at 125 °F (52 °C) with a maximum pressure test temperature of 125 °F (52 °C). Minimum duration of test shall be one minute.

7.1.7 *Performance Tests:* Performance characteristics, including flow rates under various positive pressures, operating sensitivity, flow resistance and velocity, shall be demonstrated by appropriate tests with a representative fluid.

7.1.8 *Freeze Test:* Simulate water sloshing on deck by spraying a prototype spill valve completely with water from all sides and below using a fully pressurized fire hose. Allow 3 minutes to drain off. Immediately immerse it in a freeze chamber prechilled to 20°F. Hold in chamber for two hours at this temperature. Immediately test the valve as in 7.1.7 to determine opening pressure while frozen. The unit passes the test if it opens within 10% of its previously measured set (opening) pressure.

7.1.9 *Vapor Tightness Test:* Compliance with 6.9 shall be demonstrated by testing the spill valve with compressed air at 90% of the spill valve set (opening) pressure. The test apparatus shall have a total volume of air (in cubic feet) equal to 5 X D, where D is the seat diameter of the spill valve, in inches (test volume may vary by plus or minus 10%). The valve design shall be deemed satisfactory if the air leakage rate is such that the pressure drop is not more than 2% in two hours.

7.1.10 *Seaworthiness Test:* In a simulated installation, immerse the spill valve in 2.0 feet of water. Spray it for 10 minutes with a 2½ inch fire hose with a fully open ¾

inch diameter nozzle at a pitot pressure of 80 psig measured at the open nozzle. Spray all parts of the valve, both immersed and non-immersed, from all angles. The hose nozzle shall not be located further than 10 feet from the spill valve during the course of this test. The valve design is sufficient if leakage through the housing and/or past the disk is no more than 1 ounce.

## 7.2 Production Tests

7.2.1 Each finished spill valve is to be tested by a hydrostatic test conducted at 1½ times the rate relieving pressure of the spill valve, with the closure device secured. The test shall be made with water or other liquid having a maximum viscosity of 40 SSU at 125 °F (52 °C) with a maximum pressure test temperature of 125 °F (52 °C). Minimum duration of test shall be 1 minute. The purpose of this test is to detect leaks and structural imperfections. No visible leakage is permitted.

7.2.2 Before being shipped, each unit shall be tested as necessary to verify it will function at its set (opening) pressure and that the disc moves freely and fully.

## 8. Workmanship, Finish, and Appearance

8.1 Spill valves shall be of first class workmanship and free from imperfections which may affect their intended purpose.

8.2 Each finished spill valve shall be visually and dimensionally checked to ensure that the spill valve corresponds to this standard, is certified in accordance with Section 10 and is marked in accordance with Section 11.

## 9. Inspection

9.1 The manufacturer shall afford the purchaser's inspector all reasonable facilities necessary to satisfy him that the material is being furnished in accordance with this standard. Inspection by the purchaser shall not interfere unnecessarily with the manufacturer's operations. All examinations and inspections shall be made at the place of manufacture, unless otherwise agreed upon.

## 10. Certification

10.1 Manufacturer's certification that a spill valve has been constructed in accordance with this standard shall be provided in an instruction manual. The manual shall include:

10.1.1 Installation instructions, including size of the inlet and outlet, approved location for installation, and maximum or minimum length of pipe if any between the spill valve and the atmosphere.

10.1.2 Operating instructions.

10.1.3 Maintenance requirements.

10.1.3.1 Instructions on how to determine when spill valve cleaning is required and the method of cleaning.

10.1.4 Copy of prototype test report (see section 7.1).

10.1.5 Product(s) which the valve is designed for and/or restricted to.

## 11. Marking

11.1 Each spill valve shall be permanently marked indicating:

- 11.1.1 Manufacturer's name or trademark.
- 11.1.2 Style, type, model or other manufacturer's designation for the spill valve.
- 11.1.3 Direction of flow through the spill valve.
- 11.1.4 Maximum rated flow.
- 11.1.5 ASTM designation of this standard.
- 11.1.6 Relief pressure setting at full flow rating.
- 11.1.7 Set (opening) pressure.
- 11.1.8 Indication of proper orientation of valve, if critical.
- 12. *Quality Assurance*
  - 12.1 Spill valves shall be designed, manufactured and tested in a manner that ensures they meet the characteristics of the prototype tested in accordance with this standard.
  - 12.2 The spill valve manufacturer shall maintain the quality of the spill valves that are designed, tested and marked in accordance with this standard. At no time shall a spill valve be sold with this standard designation that does not meet the requirements herein.

#### Appendix D

##### *Waterfront Facility Vapor Control Training Guidelines*

- A. Purpose
  - 1. Air Pollution
    - a. State/Federal Requirements
  - 2. Toxicity
    - a. OSHA/USCG Standards
- B. Coast Guard Regulations
- C. Vapor Collection and Processing System
  - 1. Explanation of the System
  - 2. Waterfront Facility Systems
  - 3. Waterfront Facility Interface
- D. Hazards
  - 1. Explosion/Detonation/Fire
  - 2. Over/Under Pressurization
  - 3. Improper Shutdown
  - 4. Misconnection of Liquid and Vapor Lines
  - 5. Liquid/Condensation in Vapor Lines
  - 6. Static Electricity Discharge
  - 7. Auto-ignition

- 8. Pyrophoric Iron Sulfide Deposits
- E. Active Components
  - 1. Processing Unit
  - 2. Compressor/Blower (If Installed)
  - 3. Inerting/Dilution/Enrichment System and Analyzers
  - 4. Vapor Pressure Gauges and Alarms
  - 5. Automatic Shutdown (If Installed)
- F. Passive Components
  - 1. Explosion Suppression System
  - 2. Detonation Arrestor
  - 3. P/V Valves
  - 4. Piping
- G. Operating Procedures
  - 1. Testing and Inspection Requirements
  - 2. Additional Pre-transfer Conference Topics
    - a. Maximum Cargo Transfer Rates
    - b. Vapor Recovery Pressures
    - c. Emergency Shutdown
  - 3. Hose Connection Sequence
  - 4. Start-up
    - a. Proper Valve Alignment
    - b. Check Operating Pressure During Initial Start-up
  - c. Check That Vapor Processing Unit is Operating
  - d. Check That Inerting/Dilution/Enrichment System is Operating
  - 5. Normal Operations
    - a. Check Operating Pressures
    - b. Check Processing Unit Operation
    - c. Check Inerting/Dilution/Enrichment System Operation
- H. Emergency Procedures
  - 1. Explosion/Detonation/Fire
  - 2. Over/Under Pressure
  - 3. Spill
  - 4. Ship/Barge Emergencies

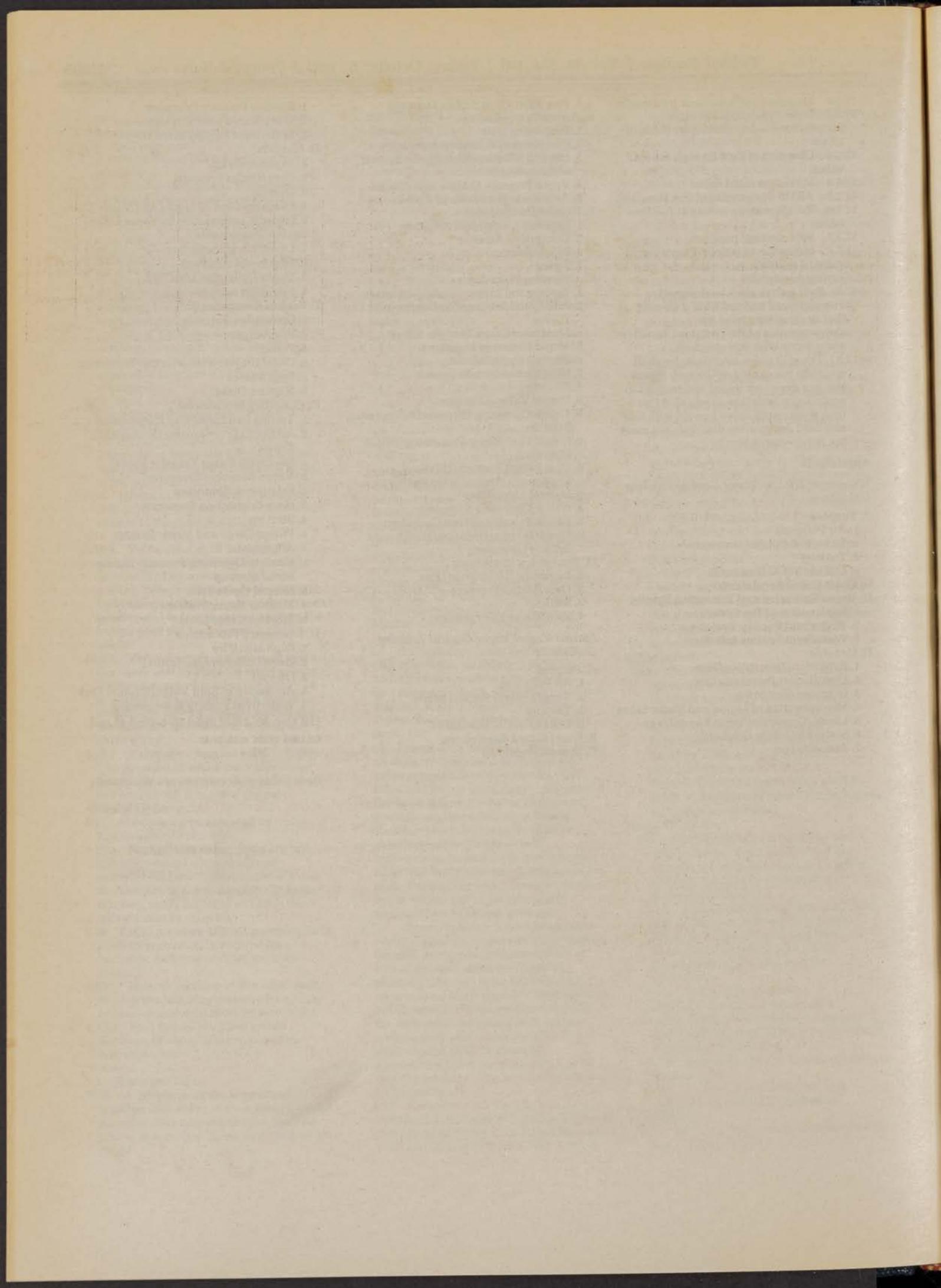
##### *Marine Vessel Vapor Control Training Guidelines*

- A. Purpose
  - 1. Air Pollution
    - a. State/Federal Requirements
  - 2. Toxicity
    - a. OSHA/USCG Standards
- B. Coast Guard Regulations
- C. System Principles

- 1. Positive Pressure/Vacuum
- 2. Waterfront Facility Systems
- 3. Waterfront Facility Interface
- D. Hazards
  - 1. Explosion/Fire
  - 2. Over/Under Pressure
  - 3. Overfill
  - 4. Misconnection of Liquid and Vapor Lines
  - 5. Liquid/Condensation in Vapor Lines
- E. Active Components
  - 1. Liquid Level Indicators
  - 2. High Level Alarm(s)
  - 3. Vapor Collection Manifold
  - 4. Vapor Pressure Gauges
- F. Passive Components
  - 1. Detonation Arrestor
  - 2. P/V Valves
  - 3. Piping
  - 4. Overfill/Overpressurization Protection
  - a. Spill Valves
  - b. Rupture Disks
- G. Operating Procedures
  - 1. Testing and Inspection Requirements
  - 2. Additional Pre-transfer Conference Topics
    - a. Maximum Cargo Transfer Rates
    - b. Vapor Recovery Pressures
    - c. Emergency Shutdown
  - 3. Hose Connection Sequence
  - 4. Start-up
    - a. Proper Cargo and Vapor System Alignment
    - b. Confirm Operating Pressure During Initial Start-up
  - 5. Normal Operations
    - a. Monitor Vapor Pressure
    - b. Monitor Cargo Level
- H. Emergency Procedures
  - 1. Explosion/Fire
  - 2. Over/Under Pressurization
  - 3. Overfill
  - 4. Activation of Spill Valve/Rupture Disk
  - 5. Waterfront Facility Emergencies

[FR Doc. 89-23431 Filed 10-5-89; 8:45 am]

BILLING CODE 4910-14-M



# Federal Register

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Friday  
October 6, 1989

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## Part III

### Environmental Protection Agency

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40 CFR Parts 261, 271, and 302  
Hazardous Waste Management System:  
Identification and Listing of Hazardous  
Waste and CERCLA Hazardous  
Substance Designation; Reportable  
Quantity Adjustment Methyl Bromide  
Production Wastes; Final Rule

**ENVIRONMENTAL PROTECTION  
AGENCY**
**40 CFR Parts 261, 271, and 302**
**[SWH-FRL-3626-5; EPA/OSW-FR-89-018]**
**RIN 2050-AC60**
**Hazardous Waste Management  
System: Identification and Listing of  
Hazardous Waste and CERCLA  
Hazardous Substance Designation;  
Reportable Quantity Adjustment  
Methyl Bromide Production Wastes**
**AGENCY:** Environmental Protection  
Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) today is amending the regulations for hazardous waste management under the Resource Conservation and Recovery Act (RCRA) by listing as hazardous two wastes generated during the production of methyl bromide. The effect of this regulation is that these wastes will be subject to regulation under 40 CFR parts 262 through 266, and parts 270, 271, and 124.

In addition, the Agency also is making final amendments to regulations promulgated under the Comprehensive Environmental Response and Liability Act (CERCLA) in 40 CFR part 302 that are related to today's hazardous waste listings. In particular, EPA is making final the designation as hazardous substances under sections 101(14) and 102 of CERCLA all of the wastes made final in today's rule, and designating under section 102(a) the final reportable quantities that would be applicable to those wastes.

**EFFECTIVE DATE:** This regulation becomes effective on April 6, 1990.

**ADDRESSES:** The official record for this rulemaking is identified as Docket Number F-89-LMBF-FFFFF and is located in the EPA RCRA docket, room 2427, 401 M Street SW., Washington, DC 20460. The docket is open from 9:00 to 4:00, Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (202) 475-9327. Copies of the non-CBI version of the listing background document, the Health and Environmental Effects Profiles, and not readily available references are available for viewing and copying only in the OSW docket. Copies of materials relevant to the CERCLA portions of this rulemaking are contained in room 2427, U.S. EPA, 401 M Street SW., Washington, DC 20460. Both dockets are available for inspection from 9:00 a.m. to 4:00 p.m., Monday through Friday. The

public may copy 100 pages from the docket at no charge; additional copies are available at \$0.15 per page.

**FOR FURTHER INFORMATION CONTACT:** The RCRA/Superfund Hotline at (800) 424-9346 or at (202) 382-3000. For technical information, contact Dr. Cate Jenkins, Office of Solid Waste (OS-332), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4786. For technical information on the CERCLA final rule, contact: Ms. Ivette Vega, Response Standards and Criteria Branch, Emergency Response Division (OS-210), U.S. EPA, 401 M St. SW., Washington, DC 20460, (202) 382-2463.

**SUPPLEMENTARY INFORMATION:** The contents of today's preamble are listed in the following outline:

- I. Background
- II. Response to Comments
  - A. Comments on the Description of Manufacturing Processes
  - B. Comments on Individual Waste Streams
    1. Wastewater from the reactor
      - a. Generation source of wastewater
      - b. Effective treatment of wastewater
      - c. Reuse of wastewater after treatment in another process
    2. Spent sulfuric acid
      - a. Exemption of reclaimed sulfuric acid
      - b. Concentrations of dimethyl sulfate and methyl hydrogen sulfate
    3. Spent alumina adsorbent
  - C. Mismanagement
- III. Relation to Other Regulations
- IV. Test Methods for New Appendix VII Compounds
- V. CERCLA Designation and Adjustment
- VI. State Authority
  - A. Applicability of Rules in Authorized States
  - B. Effect on State Authorizations
- VII. Compliance Dates
  - A. Notification
  - B. Interim Status
- VIII. Regulatory Impact Analysis
- IX. Regulatory Flexibility Act
- X. Paperwork Reduction Act

**I. Background**

On April 25, 1985, EPA proposed to amend the regulations for hazardous waste management under RCRA by listing as hazardous two wastes generated during the production of methyl bromide.<sup>1</sup> (See 50 FR 16432-16436.) These wastes were proposed as: (1) Wastewater from the reactor and acid dryer from the production of methyl bromide (EPA Hazardous Waste No. K131), and (2) spent adsorbent and wastewater separator solids from the

<sup>1</sup> It should be noted that the Hazardous and Solid Waste Amendments of 1984 require the Agency to make a determination as to whether wastes from organobromine manufacturing should be listed as hazardous. This regulation is promulgated in accordance with that requirement.

production of methyl bromide (EPA Hazardous Waste No. K132).

The hazardous constituents of concern in these wastes are methyl bromide and dimethyl sulfate. Methyl bromide causes numerous acute and chronic effects. Acute effects include convulsions and seizures in humans, central nervous system depression, human fatalities due to pulmonary edema, and psychic, motor, and gastrointestinal disturbances. Chronic effects include hyperplasia of the forestomach of rats, direct damage to the brain cortex and peripheral axons of humans, and pathological changes in animal kidneys, parathyroid glands, and thyroid glands. Dimethyl sulfate is toxic and has been demonstrated to be carcinogenic in a variety of test animals.

Methyl bromide is found at levels up to 5% in waste K131 and at levels up to 1.5% in waste K132. Dimethyl sulfate is found at levels up to 0.5% in waste K131. Because of their moderate solubilities in water and high solubilities in organic solvents, these constituents are expected to migrate from the wastes and to be mobile in the environment. In addition, data are available which indicate that methyl bromide and dimethyl sulfate may persist in the environment and reach environmental receptors in harmful concentrations, thereby posing a significant hazard if these wastes are mismanaged. Furthermore, waste K131 is corrosive. (See the preamble to the proposed rule at 50 FR 16432-36 for a more detailed explanation of our basis for listing these wastes.)

After evaluating these wastes against the criteria for listing hazardous wastes (40 CFR 261.11(a)(3)), and for the reasons stated in the preamble to the proposed rule, EPA has determined that these wastes are hazardous because they are capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

The Agency received several comments on these proposed waste listings. We have evaluated these comments carefully, and conclude that they do not refute our justification for listing these wastes as hazardous. This notice makes final the regulation proposed on April 25, 1985, and provides EPA's response to the comments received on that proposal.

**II. Response to Comments**

This section presents the comments received on the proposed rule, as well as the Agency's response. Comments were

received from a manufacturer of methyl bromide.

#### A. Comments on the Description of the Manufacturing Process

The commenter stated that the process described in the listing background document does not address the process they employ to produce methyl bromide. In particular, they argue that methyl bromide is produced at their plant as a co-product in the tetrabromobisphenol-A (TBBPA) process. In the commenter's process, hydrobromic acid (HBr) is produced as a co-product in TBBPA production and subsequently methylated to produce methyl bromide. They state that the hydrobromic acid is not produced *in situ* by reacting with either sulfur or sulfur dioxide as described in the listing background document.

The Agency disagrees with the commenter that their process is not described in the listing background document. The listing background document describes two typical production processes for methyl bromide. The first process described involves the reaction of methanol with hydrobromic acid. This is, in fact, the process used at the production facility of the commenter, where hydrobromic acid is produced as a by-product from the manufacture of another chemical, and then methylated to produce methyl bromide.

The Agency never intended to exclude from the listing wastes that are generated from methyl bromide production where it is produced along with another product, namely TBBPA. In fact, the listing background document clearly states, "Hydrobromic acid is often produced as a by-product of a different process at a plant so it can be added directly as feedstock to the reactor." We believe that the production of co-products along with methyl bromide does not alter the fact that the wastes generated by the process will still contain the toxic constituents at levels of concern. Analytical data submitted by this commenter and others who produce methyl bromide along with a co-product also supports our contention that these wastes contain significant concentrations of methyl bromide.

The background document has been revised to more clearly describe the different manufacturing processes for methyl bromide that are subject to the hazardous waste listing.

#### B. Comments on Individual Waste Streams

##### 1. Wastewater From the Reactor

The commenter provided several rationales to support their claim that the wastewaters generated from their methyl bromide-TBBPA co-production process would not be covered by the K131 listing description. "Wastewater from the reactor \* \* \* from the production of methyl bromide." The Agency's response to these comments is provided below.

a. *Generation source of wastewater.* The commenter claimed that their process wastewater is not discharged directly from the methyl bromide process reactor. Instead, their reactor wastewater is carried along through a precipitation and filtration step before it is removed from the process and sent to the distillation column for treatment. The commenter argued that the source of this wastewater, therefore, was not the methyl bromide reactor.

The Agency disagrees with the interpretation that the wastewater generated by the commenter's facility does not meet the listing description for "reactor wastewater." In the commenter's process, wastewater is generated in the methyl bromide production reactor. This wastewater, therefore, is properly designated as wastewater *from* the methyl bromide reactor. The additional product recovery steps described by the commenter through which this wastewater is carried does not alter the fact that the original source of the wastewater is the methyl bromide reactor. Furthermore, the commenter supplied information that this wastewater is removed from the process line prior to the production of any other product, such as the commenter's subsequent manufacture of TBBPA. As a result, the source of this wastewater cannot be claimed to be from a production process other than the methyl bromide process. The wastewater leaving the commenter's precipitation and treatment steps clearly meets the listing description, and full notice of this fact was provided.

b. *Effective treatment of wastewater.* The commenter further stated that they have a patented treatment process to remove hazardous constituents from their wastewater stream discussed above. In support of their position, the commenter provided a copy of an inter-office memorandum which stated that the wastewater stream after this treatment process contained 5 ppm or less methyl bromide, the detection limit of the analytical method used. As a result, the commenter contends that the wastewater no longer contained

significant concentrations of toxic constituents, and suggests that their wastewater should be excluded from regulation as a hazardous waste.

The Agency does not consider the information submitted by the commenter to be adequate as a basis for excluding this waste, after such treatment, from the listing description. First, the actual concentration of methyl bromide remaining in the wastewater after treatment could have been as high as the detection limit, 5 ppm. Without more definitive analytical characterization of this waste, the Agency cannot make a determination as to whether or not it would present a potential hazard to human health and the environment. In addition, the Agency has inadequate information on the commenter's test methods, how the samples were collected, or the QA/QC used. If the commenter wishes to provide further evidence to demonstrate that their treated wastewater should be excluded from regulation, they should submit a delisting petition pursuant to 40 CFR 260.20 and 260.22. (See "Petitions to Delist Hazardous Wastes: A Guidance Manual," NTIS PB-85-194488, available from: NTIS, 5285 Port Royal Road, Springfield, VA 22161 (request by telephone at (703) 487-4650) for a detailed discussion on the type of information and data that should be included in the petition.)

c. *Reuse of wastewater after treatment in another process.* The commenter further argued that their methyl bromide process wastewater would be exempt from the K131 listing description since, after wastewater treatment, the wastewater is "recycled to process." In fact, the wastewater is injected into the ground to extract brine.

The Agency does not consider the reuse of the wastewater described by the commenter to be a reclamation or reuse activity subject to the exemption from regulation as a solid waste. The Agency notes that this form of "recycling" is use constituting disposal, and therefore not subject to the exemption from the definition of a solid waste. (See 40 CFR 261.2(c)(1)(A).)

##### 2. Spent Sulfuric Acid

a. *Exemption of reclaimed sulfuric acid.* The commenter stated that their process does not produce a waste sulfuric acid stream as described in the listing background document. Instead, the acid is first stripped to remove methyl bromide, and then returned to the supplier to be used to produce virgin sulfuric acid. They argue, therefore, that this stream is not a solid waste by virtue of 40 CFR 261.4(a)(7), which excludes

spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively.

Although the Agency agrees that the spent acid, after stripping, meets the description of 40 CFR 261.4(a)(7), the Agency notes that the commenter's spent sulfuric acid, which meets the K131 listing description as generated, is not used to produce virgin sulfuric acid until after treatment to remove methyl bromide. The Agency believes that such reclamation is treatment of a hazardous waste (*i.e.*, the spent sulfuric acid as generated).

The specific exemption for spent sulfuric acid was meant to apply only to spent sulfuric acid that is used as a feedstock ingredient in the production of virgin sulfuric acid, by introduction into the original sulfuric acid production process. (A discussion of the types of sulfuric acid reclamation processes intended for the exemption may be found in paragraph 6, column 1, of 50 FR 642.) In this case, the spent sulfuric acid is not exempt as generated since it is not suitable for feedstock in sulfuric acid production, *i.e.*, it must be stripped of methyl bromide prior to being suitable for introduction into the sulfuric acid production process. Thus, any time the spent sulfuric acid stream is generated, it is a hazardous waste until stripped to produce feedstock for virgin sulfuric acid production.

Also, the Agency clarifies that waste K131, as defined in the proposal, includes both the reactor wastewater stream and the acid dryer stream, either as separate wastes or combined. In order to clarify this point (*i.e.*, that waste K131 includes the sulfuric acid stream), however, we have modified EPA Hazardous Waste No. K131 to read, "Wastewater from the reactor and spent sulfuric acid from the acid dryer from the production of methyl bromide."

b. *Concentrations of dimethyl sulfate and methyl hydrogen sulfate.* In addition, the commenter states that this waste stream does not contain significant amounts of dimethyl sulfate, the hazardous constituent of this waste; it does, however, contain methyl hydrogen sulfate, which the commenter states is non-toxic, and is destroyed in the reclamation furnace.

The Agency does not believe that the commenter has supplied any evidence to substantiate the contention that the sulfuric acid stream prior to stripping contains dimethyl sulfate at concentrations that would not be significant in terms of potential hazards to human health and the environment. If the commenter wishes to provide further evidence to demonstrate that their waste should be excluded from

regulation, they should submit a delisting petition pursuant to 40 CFR 260.20 and 260.22.

Regarding the commenter's point about methyl hydrogen sulfate, the Agency agrees that there is insufficient evidence at this time to indicate that it is toxic. Therefore, it was not included as a constituent of concern for this waste. As we stated in the proposed rule, however, the waste does contain considerable amounts of methyl hydrogen sulfate (up to 25%). Since methyl hydrogen sulfate is an acid similar to sulfuric acid, this waste is expected to exhibit the corrosivity characteristic specified in 40 CFR 261.22.

### 3. Spent Alumina Adsorbent

The commenter stated that their spent alumina is steam-stripped to remove methyl bromide before the adsorbent is removed from the purification column. The spent alumina was analyzed after stripping and before landfilling, and no methyl bromide was detected (at a detection limit of 5 ppm). The commenter cited as evidence the same inter-office memorandum as was cited in their comment on wastewater from the reactor.

The Agency has reviewed the evidence submitted by the comments and has concluded that the spent alumina contains significant amounts of methyl bromide before steam-stripping. Insufficient data was provided to determine whether this procedure sufficiently cleans the alumina so that the waste leaving the column would contain insignificant concentrations of hazardous constituents so as to allow an exclusion of the stripped (derived from) waste from the regulation. In particular, the Agency has inadequate information on the commenter's test methods, how the samples were collected, or the QA/QC used. If the commenter wishes to provide further evidence to demonstrate that their waste should be excluded from regulation, they should submit a delisting petition pursuant to 40 CFR 260.20 and 260.22. (See "Petitions to Delist Hazardous Wastes: A Guidance Manual," NTIS #PB-85-194488, available from: NTIS, 5285 Port Royal Road, Springfield, VA 22161 (request by telephone at (703) 487-4650) for a detailed discussion of the type of information and data that should be included in the petition.) Because the stripped adsorbents are landfilled, there is no question that the adsorbents before such treatment (stripping) are solid wastes.

### C. Mismanagement

The commenter believes that the listing background document is

misleading, and that it implies that they mismanaged their methyl bromide wastes, resulting in air pollution incidents around its plant in Magnolia, Arkansas. The commenter stated that it did not begin producing methyl bromide at the Magnolia, Arkansas plant until December, 1983.

EPA had no intention of implying that mismanagement of methyl bromide wastes by the commenter resulted in air pollution incidents. It was stated that methyl bromide was found in trace quantities around several plants, one of which was the commenter's plant in Magnolia, Arkansas. In fact, the listing background document specifically states that the data cannot be directly correlated with industrial practices. Moreover, the Agency has concluded that the source of the methyl bromide could not be determined. To further clarify this point, however, we have moved this discussion from the mismanagement section to the environmental fate and transport section of the listing background document to show the persistence of methyl bromide.

## III. Relation to Other Regulations

### A. Proposed Toxicity Characteristic

As one of the mandates of HSWA, the Agency proposed to expand the toxicity characteristic (TC) by including additional chemicals. Once promulgated, the TC might capture wastes generated by the methyl bromide industry that are not covered by wastes K131 and K132. Such wastes could include wastewaters and wastewater treatment sludges.

### B. Land Disposal Restrictions

HSWA mandated the land disposal restrictions for waste listed prior to the enactment of HSWA under a specific schedule (see 3004(g)(4)(c)). If the Agency failed to prohibit the wastes within the period specified, the wastes were restricted from land disposal. HSWA also requires the Agency to make a land disposal prohibition determination for any hazardous waste that is newly identified or listed in 40 CFR part 261 after November 8, 1984 within six months of the date of identification or listing (RCRC section 3004(g)(4), 42 U.S.C. 6924(g)(4)). However, the statute does not provide for an automatic prohibition of the land disposal of such wastes if EPA fails to meet this deadline. The Agency is evaluating treatment standards for newly listed wastes K131 and K132 and will propose such standard in the future.

#### IV. Test Methods for New Appendix VII Compounds

Appendix III of 40 CFR part 261 is a list of test methods that are approved for use in demonstrating that the constituents of concern in listed wastes are not present at concentrations of concern. The approved methods for methyl bromide are 8010, 8240, and 8260.

The proposed listing (50 FR 16432) suggested use of Method 8250 for the analysis of dimethyl sulfate in Hazardous Waste No. K131. Because most commercial laboratories now prefer to use capillary column chromatography to improve the chromatographic resolution, we are also adding Method 8270 to the list of those suitable for analyzing dimethyl sulfate. The difference between these two methods is the use of a capillary column gas chromatography technique instead of a packed column technique.

Persons wishing to submit delisting petitions must use these methods to demonstrate the concentration of methyl bromide and/or dimethyl sulfate in their wastes.<sup>2</sup> (See 40 CFR 260.22(d)(1).) As part of their petitions, petitioners shall submit quality control data demonstrating that the methods they have used yield acceptable recoveries (i.e., >80% recovery at concentrations above 1 ug/g) on spiked aliquots of their waste.

The above methods are in "Test Methods for Evaluating Solid Waste: Physical/Chemical Methods," SW-846, 3rd Ed., available from: Superintendent of Documents, Government Printing Office, Washington, DC 20402, (202) 783-3238, Document Number: 055-002-81001-2.

#### V. CERCLA Designation and Adjustment

All hazardous wastes regulated under a RCRA hazardous waste number are hazardous substances under section 101(14)(C) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). Under section 103(a) of CERCLA, notification must be made to the Federal government of a release of any CERCLA hazardous substance in an amount equal to or greater than the reportable quantity (RQ) assigned to that substance.<sup>3</sup>

<sup>2</sup> Petitioners may use other test methods to analyze for methyl bromide or dimethyl sulfate if, among other things, they demonstrate the equivalency of these methods by submitting their quality control and assurance information along with their analysis data. (See 40 CFR 260.21.)

<sup>3</sup> See 40 CFR part 302 for the list of CERCLA hazardous substances and their RQs, as amended August 14, 1989, 54 FR 33418 and 54 FR 33426.

Pursuant to section 102(b) of CERCLA, all hazardous wastes newly listed under RCRA will have a statutorily imposed RQ of one pound unless and until adjusted by regulation.

If the person in charge of a vessel or facility from which a RCRA hazardous waste containing CERCLA hazardous substances is released knows the percentage composition of the waste, then the "mixture rule" (40 CFR 302.6(b)) may be applied. Under the mixture rule, releases of mixtures and solutions are subject to CERCLA reporting requirements only where a component hazardous substance of the mixture or solution is released in a quantity equal to or greater than its RQ (40 CFR 302.6(b)). If the concentrations of all of the hazardous constituents present in the mixture are not known, reporting is required if the total quantity released equals or exceeds the lowest RQ of any of the hazardous constituents.

Adjustments from the statutory RQs established under section 102 are based upon an adjustment methodology described in the final rule adjusting the RQs of 340 hazardous substances. (See 54 FR 33426 (August 14, 1989).) The adjusted RQs for newly listed wastes are based upon the RQs of the "hazardous constituents" identified under RCRA with respect to the new hazardous waste. Thus, if a newly listed hazardous waste has only one constituent of concern, the waste will have the same RQ as that of the constituent. If the waste has more than one constituent of concern, the lowest RQ assigned to any one of the constituents present in the waste stream is the RQ assigned to the waste.

Under section 102 of CERCLA, all hazardous wastes newly designated under RCRA will have a statutorily-imposed RQ of one pound unless and until adjusted by regulation under CERCLA. In order to coordinate the RCRA and CERCLA rulemaking with respect to new waste listings, the Agency proposed regulatory amendments under CERCLA authority in connection with listing to: (1) Designate wastes K131 and K132 as hazardous substances under section 102 of CERCLA; and (2) adjust the RQs of waste K131 to one pound (1 lb.) and waste K132 to one thousand pounds (1,000 lbs.), based on the application of the RQ adjustment methodology under section 102(a).

The RQs for each waste and for each of the hazardous constituents are identified in the table below. One of the constituents of concern, dimethyl sulfate, has an RQ that has now

undergone adjustment since the April 25, 1985 proposed listing of methyl bromide production wastes, and was finalized in the August 14, 1989 final rulemaking (54 FR 33426). The final RQ of waste K131 has thus been changed based on the outcome of this rulemaking from one pound to 100 pounds.

The adjustment of the RQs of wastes K131 and K132 from the statutory one-pound level is based on the current RQs of the constituents in these listings. Because the constituent in waste K131 with the lowest RQ is dimethyl sulfate, with an RQ of 100 pounds, the RQ of waste K131 is 100 pounds. Because the constituent in waste K132 with the lowest RQ is methyl bromide, with an RQ of 1,000 pounds, the RQ of waste K132 is 1,000 pounds. These RQs will become effective on the effective date of today's action, when the wastes simultaneously become hazardous substances under CERCLA.

Hazardous substance	Constituent	RQ
Waste No. K131	.....	100 lbs.
	Dimethyl sulfate .....	100 lbs.
Waste No. K132	Methyl bromide .....	1,000 lbs.
	Methyl bromide .....	1,000 lbs.

Finally, although each listed hazardous waste automatically becomes a hazardous substance under CERCLA section 101(14), the Agency also has authority to independently designate hazardous substances under section 102. In order to eliminate confusion over whether a released substance in a particular form is subject to CERCLA authority, the Agency designates under section 102 all hazardous substances designated under the other statutes listed in section 101(14). Accordingly, the Agency in today's rule also is designating wastes K131 and K132 as "hazardous substances" under CERCLA section 102.

#### VI. State Authority

##### A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains inspection and enforcement authority under sections 3007, 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to implement those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

Today's rule is promulgated pursuant to section 3001(e)(2) of RCRA, a provision added by the HSWA. Therefore, it has been added to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to the HSWA, and that take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions identified in Table 1, as discussed in the following section of this preamble. Because EPA promulgated rules regarding the timing for HSWA listings after this rule was proposed, the existing regulatory time frames supercede the discussions in the preamble to the proposed rule.

#### B. Effect on State Authorizations

As noted above, EPA will implement today's rule in authorized States until they modify their programs to adopt these rules, and the modification is approved by EPA. Because the rule is promulgated pursuant to the HSWA, a State submitting a program modification may apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of regulations that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications under section 3006(b) are described in 40 CFR

271.21. The same procedures should be followed for section 3006(g)(2).

Section 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes and must subsequently submit the modification to EPA for approval. State program modifications to conform to today's rule must be made by July 1, 1991, if only regulatory changes are necessary, or by July 1, 1992, if statutory changes are necessary. See 40 CFR 271.21(e)(2)(iv) and 271.21(e)(2)(v). These deadlines can be extended in exceptional cases. See 40 CFR 271.21(e)(3).

States with authorized RCRA programs already may have regulations similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being promulgated today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these regulations in lieu of EPA until the State program modification is approved. Of course, States with existing regulations may continue to administer and enforce their regulations as a matter of State law. In implementing the Federal program, EPA will work with States under cooperative agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to the States in their efforts to implement their programs, rather than take separate actions under Federal authority.

States that submit official applications for final authorization less than 12 months after the effective date of these regulations are not required to include standards equivalent to these standards in their applications. However, the State must modify its program by the deadlines set forth in 40 CFR 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these standards must include standards in their application. Section 271.3 sets forth the requirements a State must meet when submitting its final authorization application.

### VII. Compliance Dates

#### A. Notification

Under the Solid Waste Disposal Amendments of 1980, (Pub. L. 96-452) EPA was given the option of waiving the notification requirement under section 3010 of RCRA following revision of the section 3001 regulations, at the discretion of the Administrator.

The Agency has decided not to require persons who generate, transport, treat, store, or dispose of these hazardous wastes to notify the Agency

within 90 days of promulgation that they are managing these wastes. The Agency views the notification requirement to be unnecessary in this case since we believe that most, if not all, persons who manage these wastes have already notified EPA and received an EPA identification number. In the event that any person who generates, transports, treats, stores, or disposes of these wastes has not previously notified and received an identification number, that person must get an identification number pursuant to 40 CFR 262.12 before he can generate, transport, treat, store, or dispose of these wastes.

#### B. Interim Status

Because HSWA requirements are applicable in authorized States at the same time as in unauthorized States, EPA will regulate K131 and K132 until States are authorized to regulate these wastes. Thus, once this regulation becomes effective, EPA will apply Federal regulations to these wastes and to their management in both authorized and unauthorized States. Facilities that treat, store, or dispose of K131 and K132 but that have not received a permit pursuant to section 3005 of RCRA and are not operating pursuant to interim status, might be eligible for interim status under HSWA (see section 3005(e)(1)(A)(ii) of RCRA, as amended). In order to operate pursuant to interim status, the eligible facilities are required to possess an EPA ID number pursuant to 40 CFR 270.70(a), and will be required to submit a part A permit application by April 6, 1990.

Under section 3005(e)(3), by April 6, 1991, land disposal facilities qualifying for interim status under section 3005(e)(1)(A)(ii) also are required to submit a part B permit application and certify that the facility is in compliance with all applicable ground water monitoring and financial responsibility requirements. If the facility fails to do so, interim status will terminate on that date.

All existing hazardous waste management facilities (as defined in 40 CFR 270.2) that treat, store, or dispose of K131 and K132 and that are currently operating pursuant to interim status under section 3005(e) of RCRA, will be required to file with EPA an amended part A permit application by April 6, 1990.

Under current regulations, a hazardous waste management facility that has received a permit pursuant to section 3005 is not able to treat, store, or dispose of K131 or K132 until a permit modification allowing such activity is approved in accordance with § 270.42.

Note that EPA has recently amended the permit modification requirements for newly listed or identified wastes. See 53 FR 37912 et seq. (September 28, 1988.)

**VIII. Regulatory Impact Analysis**

Under Executive Order 12291, EPA must determine whether a regulation is "major" and, therefore, subject to the requirements of a Regulatory Impact Analysis. In the proposed listing, EPA addressed this issue by citing the results of an economic analysis; the total additional incurred cost for managing these wastes as hazardous by the industry was estimated to be approximately \$23,000. The Agency received no comments on this figure. Since that time, the Agency has re-evaluated the total additional costs that would be incurred for managing these wastes as hazardous by the industry as approximately \$43,500.

Since EPA does not expect that the amendments promulgated here will have an annual effect on the economy of \$100 million or more, will result in a measurable increase in costs or prices, or have an adverse impact on the ability of U.S.-based enterprises to compete in either domestic or foreign markets, these amendments are not considered to constitute a major action. As such, a Regulatory Impact Analysis is not required.

**IX. Regulatory Flexibility Act**

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the agency certifies that the rule will not have a significant impact on a substantial number of small entities.

The hazardous wastes listed here are not generated by small entities (as defined by the Regulatory Flexibility Act), and the Agency received no comments that small entities will dispose of them in significant quantities. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

**X. Paperwork Reduction Act**

This rule does not contain any information collection requirements subject to OMB review under the

Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

**List of Subjects**

40 CFR Part 261

Hazardous waste, Recycling.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 302

Air pollution control, Chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Intergovernmental relations, Natural resources, Nuclear materials, Pesticides and pests, Radioactive materials, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control.

Dated: September 29, 1989.

William K. Reilly,  
Administrator.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations is amended as follows:

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

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

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In § 261.32, add the following waste streams to the subgroup "Pesticides":

**§ 261.32 Hazardous wastes from specific resources.**

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
K131.....	Wastewater from the reactor and spent sulfuric acid from the acid dryer from the production of methyl bromide.	(C, T)
K132.....	Spent absorbent and wastewater separator solids from the production of methyl bromide.	(T)

**Appendix VII to Part 261 [Amended]**

3. Add the following entries in numerical order to Appendix VII of part 261:

Industry and EPA hazardous waste No.	Hazardous constituents for which listed
K131.....	Dimethyl sulfate, Methyl bromide.
K132.....	Methyl bromide.

**Appendix III to Part 261 [Amended]**

4. Add the following compounds and analysis methods in alphabetical order to Table 1 of Appendix III of part 261:

Compound	Method numbers
Dimethyl sulfate.....	8250, 8270
Methyl bromide.....	8010, 8240, 8260

**PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS**

5. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6926, and 6937.

**§ 271.1 [Amended]**

6. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication:  
(j) \* \* \*

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
October 6, 1989.	Listing Wastes from the Production of Methyl Bromide.	[Insert Federal Register page numbers].	April 6, 1990.

**PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION**

7. The authority citation for part 302 continues to read as follows:

Authority: Section 102 of the Comprehensive Environmental Response,

Compensation, and Liability Act of 1980, 42 U.S.C. 9602; Sections 311 and 501(a) of the Federal Water Pollution Control Act, 33 U.S.C. 1321 and 1361.

§ 302.4 [Amended]

8. Table 302.4 of 40 CFR 302.4 is amended by adding the following entries in numerical order:

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code	Waste number	Category	Pounds (kg)
K131 Wastewater from the reactor and spent sulfuric acid from the acid dryer in the production of methyl bromide.			100	4	K131	X	100 (45.4)
K132 Spent absorbent and wastewater solids from the production of methyl bromide.			1000	4	K132	X	1000 (454)

[FR Doc. 89-23584 Filed 10-5-89; 8:45 am]

BILLING CODE 8560-50-M

# Register Federal Register

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Friday  
October 6, 1989

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Part IV

## Office of Management and Budget

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Budget Rescissions and Deferrals; Notice

**OFFICE OF MANAGEMENT AND  
BUDGET****Budget Rescissions and Deferrals**

*To The Congress of The United States:*

In accordance with the Impoundment Control Act of 1974, I herewith report seven deferrals of budget authority totalling \$1,380,399,855.

The deferrals affect the International Security Assistance program, as well as programs of the Departments of Agriculture, Defense, Health and Human Services, State, and Transportation.

The details of these deferrals are contained in the attached report.

Dated: October 2, 1989.

**George Bush,**  
*The White House.*

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE  
(in thousands of dollars)

<u>DEFERRAL NO.</u>	<u>ITEM</u>	<u>BUDGET AUTHORITY*</u>
	<b>Funds Appropriated to the President:</b>	
	<b>International Security Assistance:</b>	
D90-1	Economic support fund.....	271,000
	<b>Department of Agriculture:</b>	
	<b>Forest Service:</b>	
D90-2	Expenses, brush disposal.....	188,680
D90-3	Cooperative work.....	410,189
	<b>Department of Defense, Civil:</b>	
D90-4	Wildlife conservation.....	1,047
	<b>Department of Health and Human Services:</b>	
	<b>Social Security Administration:</b>	
D90-5	Limitation on administrative expenses (construction).....	7,078
	<b>Department of State:</b>	
	<b>Bureau for Refugee Programs:</b>	
D90-6	United States emergency refugee and migration assistance fund.....	44
	<b>Department of Transportation:</b>	
	<b>Federal Aviation Administration:</b>	
D90-7	Facilities and Equipment, Airport and Airway Trust Fund.....	502,361
	<b>Total, deferrals.....</b>	<b>1,380,400</b>

\* Detail does not add to totals due to rounding.

SUMMARY OF SPECIAL MESSAGES  
FOR FY 1990  
(in thousands of dollars)

	<u>RESCISSIONS</u>	<u>DEFERRALS</u>
First special message:		
New items.....	---	1,380,400
Revisions to previous special messages..	---	---
	-----	-----
Effects of first special message.....	---	1,380,400
Amounts from previous special messages that are changed by this message (changes noted above).....	---	---
	-----	-----
Subtotal, rescissions and deferrals.....	---	1,380,400
Amounts from previous special messages that are not changed by this message....	---	---
	=====	=====
Total amount proposed to date in all special messages.....	---	1,380,400







Deferral No: D90-3

**DEFERRAL OF BUDGET AUTHORITY**  
Report Pursuant to Section 1013 of P.L. 93-344

<b>AGENCY:</b>	
Department of Agriculture	New budget authority..... \$ <u>315,117,000</u> (16 U.S.C. 576b)
Bureau:	Other budgetary resources.. <u>422,872,092</u>
Forest Service	Total budgetary resources.. <u>737,989,092</u>
Appropriation title and symbol:	
Cooperative work <sup>1</sup>	<b>Amount to be deferred:</b>
	Part of year..... \$ _____
12X8028	Entire year..... <u>410,189,092</u>
<b>OMB identification code:</b>	<b>Legal authority (in addition to sec. 1013):</b>
12-8028-0-7-302	<input checked="" type="checkbox"/> Antideficiency Act
Grant program: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Other _____
<b>Type of account or fund:</b>	<b>Type of budget authority:</b>
<input type="checkbox"/> Annual	<input checked="" type="checkbox"/> Appropriation
<input type="checkbox"/> Multiple-year _____ (expiration date)	<input type="checkbox"/> Contract authority
<input checked="" type="checkbox"/> No-Year	<input type="checkbox"/> Other _____

**Justification:** Funds are received from States, counties, timber sale operators, individuals, associations, and others. These funds are expended by the Forest Service as authorized by law and the terms of the applicable trust agreements. The work consists of protection and improvement of the National Forest System. The work benefits the national forest users, research investigations, reforestation, and administration of private forest lands. Much of the work for which deposits have been made cannot be done, or is not planned to be done, during the same year that the collections are being realized. Examples include areas where the timber operators have not completed all of the contract obligations during the year funds are deposited. As a result restoration efforts cannot begin, and the funds cannot be obligated this year. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

**Estimated Program Effect:** None

**Outlay Effect:** None

<sup>1</sup> This account was the subject of a similar deferral in 1989 (D89-4A).

Deferral No: D90-4

DEFERRAL OF BUDGET AUTHORITY  
Report Pursuant to Section 1013 of P.L. 93-344

<p><b>AGENCY:</b> Department of Defense - Civil Bureau: Wildlife Conservation, Military Reservations <sup>1</sup> Appropriation title and symbol: Wildlife Conservation, Army 21X5095 Wildlife Conservation, Navy 17X5095 Wildlife Conservation, Air Force 57X5095</p> <hr/> <p>OMB identification code: 97-5095-0-2-303 Grant program: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <hr/> <p>Type of account or fund: <input type="checkbox"/> Annual <input type="checkbox"/> Multiple-year _____ (expiration date) <input checked="" type="checkbox"/> No-Year</p>	<p>New budget authority..... \$ 2,100,000 (16 U.S.C. 670f) Other budgetary resources. \$ 1,417,000 Total budgetary resources. \$ 3,517,000</p> <hr/> <p>Amount to be deferred: Part of year..... \$ _____ Entire year..... \$ 1,047,000</p> <hr/> <p>Legal authority (in addition to sec. 1013): <input checked="" type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other _____</p> <hr/> <p>Type of budget authority: <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____</p>
--	--

Coverage:

Appropriation	Account Symbol	OMB Identification Code	Amount Deferred
Wildlife Conservation, Army.....	21X5095	21-5095-0-2-303	\$638,000
Wildlife Conservation, Navy.....	17X5095	17-5095-0-2-303	129,000
Wildlife Conservation, Air Force....	57X5095	57-5095-0-2-303	280,000
			1,047,000

**Justification:** These are permanent appropriations of receipts generated from hunting and fishing fees in accordance with the purpose of the law -- to carry out a program of natural resource conservation. These programs are carried out through cooperative plans agreed upon by the local representatives of the Secretary of Defense, the Secretary of the Interior, and the appropriate agency of the State in which the reservation is located. These funds are being

<sup>1</sup> These accounts were the subject of a similar deferral in 1989 (D89-5A).

deferred (1) until, pursuant to the authorizing legislation (16 U.S.C. 670f(a)), installations have accumulated funds over a period of time sufficient to fund a major project; (2) until individual installations have designed and obtained approval for the project; and (3) because there is a seasonal relationship between the collection of fees and their subsequent expenditure since most of the fees are collected during the winter and spring months. Funds collected in a prior year are deferred in order to be available to finance the program during summer and fall months or in subsequent years. Additional amounts will be apportioned when projects are identified and project approval is obtained. This deferral is made under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

Deferral No: D90-5

**DEFERRAL OF BUDGET AUTHORITY**  
Report Pursuant to Section 1013 of P.L. 93-344

<b>AGENCY:</b> Department of Health and Human Services	<b>New budget authority.....</b> \$ _____ (P.L. _____)
<b>Bureau:</b> Social Security Administration	<b>Other budgetary resources..</b> \$ <u>7,456,461</u>
<b>Appropriation title and symbol:</b>	<b>Total budgetary resources..</b> \$ <u>7,456,461</u>
<b>Limitation on administrative expenses (construction)</b> <sup>1</sup> 75X8704	<b>Amount to be deferred:</b>
	<b>Part of year.....</b> \$ _____
	<b>Entire year.....</b> \$ <u>7,078,261</u>
<b>OMB identification code:</b>	<b>Legal authority (in addition to sec. 1013):</b>
20-8007-0-6-651	<input checked="" type="checkbox"/> Antideficiency Act
<b>Grant program:</b>	<input type="checkbox"/> Other _____
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>Type of account or fund:</b>	<b>Type of budget authority:</b>
<input type="checkbox"/> Annual	<input checked="" type="checkbox"/> Appropriation
<input type="checkbox"/> Multiple-year _____ (expiration date)	<input type="checkbox"/> Contract authority
<input checked="" type="checkbox"/> No-Year	<input type="checkbox"/> Other _____

**Justification:** This account provides funding for construction and renovation of the Social Security Administration's (SSA) headquarters and field office buildings. The only costs in fiscal year 1990 are for roof repair and replacement projects. It has been determined that obligational authority in the amount of this deferral is not needed at the present time. Some additional obligations will occur in fiscal year 1991 for roof repair and replacement. Should new requirements arise, subsequent apportionments will reduce this deferral. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

**Estimated Program Effect:** None

**Outlay Effect:** None

<sup>1</sup> This account was the subject of a similar deferral in 1989 (D90-7A).

Deferral No: D90-6

**DEFERRAL OF BUDGET AUTHORITY**  
Report Pursuant to Section 1013 of P.L. 93-344

<b>AGENCY:</b>	
Department of State	New budget authority..... \$ _____ (P.L. _____)
Bureau:	Other budgetary resources. _____ 44,000
Bureau for Refugee Programs	
Appropriation title and symbol:	Total budgetary resources. _____ 44,000
United States emergency refugee and migration assistance fund <sup>1</sup>	<b>Amount to be deferred:</b>
11X0040	Part of year..... \$ _____ 44,000
	Entire year..... _____
<b>OMB identification code:</b>	<b>Legal authority (in addition to sec. 1013):</b>
11-0040-0-1-151	<input checked="" type="checkbox"/> Antideficiency Act
Grant program: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Other <u>Executive Order</u> 11922
<b>Type of account or fund:</b>	<b>Type of budget authority:</b>
<input type="checkbox"/> Annual	<input checked="" type="checkbox"/> Appropriation
<input type="checkbox"/> Multiple-year _____ (expiration date)	<input type="checkbox"/> Contract authority
<input checked="" type="checkbox"/> No-Year	<input type="checkbox"/> Other _____

**Justification:** Section 501(a) of the Foreign Relations Authorization Act, 1976 (Public Law 94-141) and Section 414(b)(1) of the Refugee Act of 1980 (Public Law 96-212) amended Section 2(c) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2601) by authorizing a fund not to exceed \$50,000,000 to enable the President to provide emergency assistance for unexpected urgent refugee and migration needs.

Executive Order No. 11922 of June 16, 1976, allocated all funds appropriated to the President for the Emergency Fund to the Secretary of State but reserved for the President the determination of assistance to be furnished and the designation of refugees to be assisted by the Fund.

These funds have been deferred pending Presidential decisions required by Executive Order No. 11922. Funds will be released as the President determines assistance to be furnished and designates refugees to be assisted by the Fund. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

<sup>1</sup> This account was the subject of a similar deferral in 1989 (D89-9A).



Deferral No: D90-7

DEFERRAL OF BUDGET AUTHORITY  
Report Pursuant to Section 1013 of P.L. 93-344

<p><b>AGENCY:</b></p> <p><u>Department of Transportation</u></p> <p><b>Bureau:</b></p> <p><u>Federal Aviation Administration</u></p> <p><b>Appropriation title and symbol:</b></p> <p>Facilities and equipment (Airport and airway trust fund) <sup>1</sup></p> <p>69X8107 699/38107</p> <p>697/18107 698/28107 696/08107</p> <p><b>OMB identification code:</b></p> <p>69-8107-0-7-402</p> <p><b>Grant program:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Type of account or fund:</b></p> <p><input type="checkbox"/> Annual Sept. 30, 1990</p> <p><input type="checkbox"/> Annual Sept. 30, 1991</p> <p><input checked="" type="checkbox"/> Multiple-year Sept. 30, 1992 (expiration date)</p> <p><input checked="" type="checkbox"/> No-Year Sept. 30, 1993</p>	<p>New budget authority..... \$ _____</p> <p>(P.L. )</p> <p>Other budgetary resources. <u>1,297,197,198</u></p> <p><b>Total budgetary resources. <u>1,297,197,198</u></b></p> <hr/> <p><b>Amount to be deferred:</b></p> <p>Part of year..... \$ _____</p> <p>Entire year..... <u>502,361,204</u></p> <hr/> <p><b>Legal authority (in addition to sec. 1013):</b></p> <p><input checked="" type="checkbox"/> Antideficiency Act</p> <p><input type="checkbox"/> Other _____</p> <hr/> <p><b>Type of budget authority:</b></p> <p><input checked="" type="checkbox"/> Appropriation</p> <p><input type="checkbox"/> Contract authority</p> <p><input type="checkbox"/> Other _____</p>
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**Justification:** Funds from this account are used to procure specific Congressionally-approved facilities and equipment for the expansion and modernization of the National Airspace System. The projects financed from this account include construction of buildings and the purchase of new equipment for new or improved air traffic control towers, automation of the en route airway control system, and expansion and improvement of navigational and landing aid systems. Funds to continue these activities were justified and provided for in the Department's regular budget submissions and were appropriated by Congress.

Because of the lengthy procurement and construction time for these interrelated facilities and complex equipment systems, it is not possible to obligate all the funds necessary to complete each project in the year funds are appropriated. Therefore, it is necessary to apportion funds so that sufficient resources will be available in future periods to complete these

<sup>1</sup> This account was the subject of a similar deferral in FY 1988 (D88-12A).

Deferral No: D90-7

projects. This deferral action is consistent with FAA's full funding approach and Congressional intent to provide resources for a project's total cost, and is taken under provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

[FR Doc. 89-23729 Filed 10-5-89; 8:45 am]

BILLING CODE 3110-01-C



# **Federal Register**

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Friday  
October 6, 1989

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**Part V**

## **Commission on Civil Rights**

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**Notice of Meeting**



# Sunshine Act Meetings

Federal Register

Vol. 54, No. 193

Friday, October 6, 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).

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**U.S. COMMISSION ON CIVIL RIGHTS****FEDERAL REGISTER CITATION OF**

**PREVIOUS ANNOUNCEMENT:** 54 FR 40238  
(September 29, 1989).

**TIME AND DATE:** Friday, October 6, 1989,  
8:00 a.m.—9:30 a.m. E.D.T.

**CHANGES IN THE MEETING:** Personnel  
evaluation.

**CONTACT PERSON FOR MORE**

**INFORMATION:** Barbara Brooks, Press  
and Communications Division, (202)  
376-8312

Jeffrey P. O'Connell,

*Acting Solicitor.*

October 5, 1989.

[FR Doc. 89-23938 Filed 10-5-89; 12:16 pm]

**BILLING CODE 6335-01-M**

# Seminars & Meetings

1984-1985  
Vol. 14, No. 1  
Spring 1985

The purpose of this journal is to provide a forum for the publication of research and reports on the activities of the Society for the Study of the History of Psychology.

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1984-1985  
Vol. 14, No. 1  
Spring 1985

# Reader Aids

Federal Register

Vol. 54, No. 193

Friday, October 6, 1989

## INFORMATION AND ASSISTANCE

<b>Federal Register</b>	
Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237
<b>Code of Federal Regulations</b>	
Index, finding aids & general information	523-5227
Printing schedules	523-3419
<b>Laws</b>	
Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230
<b>Presidential Documents</b>	
Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230
<b>The United States Government Manual</b>	
General information	523-5230
<b>Other Services</b>	
Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

## FEDERAL REGISTER PAGES AND DATES, OCTOBER

40369-40626.....	2
40627-40856.....	3
40857-41038.....	4
41039-41236.....	5
41237-41428.....	6

## CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

<b>1 CFR</b>	1427.....	41237
<b>Proposed Rules:</b>	1435.....	41043
Ch. III.....	1446.....	40858
	1477.....	40369
<b>3 CFR</b>	<b>Proposed Rules:</b>	
<b>Proclamations:</b>	401.....	41246, 41248
6030.....	403.....	41249
6031.....	906.....	41249
6032.....	926.....	41251
6033.....	955.....	41252
6034.....	966.....	41253
6035.....	1139.....	41254
<b>Executive Orders:</b>		
11145 (Continued by		
EO 12692).....		
40627		
11183 (Continued by		
EO 12692).....		
40627		
11287 (Continued by		
EO 12692).....		
40627		
11776 (Continued by		
EO 12692).....		
40627		
12131 (Continued by		
EO 12692).....		
40627		
12171 (Amended by		
EO 12693).....		
40629		
12190 (Continued by		
EO 12692).....		
40627		
12196 (Continued by		
EO 12692).....		
40627		
12216 (Continued by		
EO 12692).....		
40627		
12296 (Revoked by		
EO 12692).....		
40627		
12345 (Continued by		
EO 12692).....		
40627		
12367 (Continued by		
EO 12692).....		
40627		
12382 (Continued by		
EO 12692).....		
40627		
12462 (Revoked by		
EO 12692).....		
40627		
12528 (Revoked by		
EO 12692).....		
40627		
12592 (Revoked by		
EO 12692).....		
40627		
12601 (Revoked by		
EO 12692).....		
40627		
12607 (Revoked by		
EO 12692).....		
40627		
12610 (Superseded by		
EO 12692).....		
40627		
12668 (Revoked by		
EO 12692).....		
40627		
12692.....		
40627		
12693.....		
40629		
<b>7 CFR</b>		
26.....		41237
301.....		40570
910.....		40369
1065.....		41240
1079.....		40857, 41241
<b>9 CFR</b>		
319.....		40631
327.....		41045
381.....		41045
<b>10 CFR</b>		
11.....		40859
25.....		40859
95.....		40859
<b>Proposed Rules:</b>		
2.....		40780
<b>12 CFR</b>		
312.....		40377
<b>Proposed Rules:</b>		
203.....		41255
<b>14 CFR</b>		
39.....		40381, 40382, 40632,
		40633, 40635, 40636-40639,
		41051-41054
61.....		41234
91.....		40624, 41211
<b>Proposed Rules:</b>		
Ch. I.....		40672
39.....		40672, 40673, 40675-
		40678, 40680, 41103-41106
71.....		41109, 41110
<b>15 CFR</b>		
770.....		40861
771.....		40861
776.....		40640
779.....		40643, 41055
799.....		40861, 41055
<b>Proposed Rules:</b>		
771.....		40681
772.....		40681
773.....		40681
774.....		40681
786.....		40681
799.....		40681
806.....		41275
<b>16 CFR</b>		
305.....		41242
<b>17 CFR</b>		
1.....		41068

3	41068
31	41068
145	41068
147	41068
200	40862
211	41084
<b>Proposed Rules:</b>	
240	40395
<b>18 CFR</b>	
154	41085
294	41086
<b>19 CFR</b>	
171	41364
<b>Proposed Rules:</b>	
12	40882
24	40882
132	40887
133	40882
142	40887
<b>20 CFR</b>	
404	40779
416	40779
<b>Proposed Rules:</b>	
404	40570
<b>21 CFR</b>	
Ch. I	41363
177	40883
442	40651, 40653
453	40654
455	40384
510	40656
522	40656
558	40657
<b>Proposed Rules:</b>	
310	40618
341	40412
347	40808
348	40808
1316	40888
<b>22 CFR</b>	
514	40386
<b>23 CFR</b>	
<b>Proposed Rules:</b>	
658	41278
<b>24 CFR</b>	
1710	40863
<b>26 CFR</b>	
1	41087
5h	41243, 41364
602	41087, 41243
<b>29 CFR</b>	
1601	40657
1910	41364
1926	41088
<b>30 CFR</b>	
<b>Proposed Rules:</b>	
7	40950, 40995
70	40950
75	40950
917	40413
925	40414
943	41281
<b>31 CFR</b>	
317	40830

<b>33 CFR</b>	
100	41088
165	40868, 40869
241	40578
<b>Proposed Rules:</b>	
154	41366
155	41366
156	41366
334	40572
<b>34 CFR</b>	
600	40388
<b>36 CFR</b>	
292	41089
<b>38 CFR</b>	
1	40388, 40870
21	40871
<b>Proposed Rules:</b>	
3	40684, 40686, 41110
21	40687, 40688, 41110
<b>40 CFR</b>	
35	40798
52	40657, 40659, 40660, 41094
60	40662
61	40662
81	41094
123	40664
180	41098
261	41402
271	41402
300	41000, 41015
302	41402
403	40664
<b>Proposed Rules:</b>	
51	41218
52	40689, 40889, 41218
61	40779, 41113
81	41218
228	40415
261	41114
300	40889
<b>41 CFR</b>	
Ch. 101	41244
101-6	41214
101-47	41099, 41244
<b>43 CFR</b>	
<b>Proposed Rules:</b>	
11	41363
<b>44 CFR</b>	
64	40872
<b>Proposed Rules:</b>	
67	40890
<b>46 CFR</b>	
50	40590
56	40590
61	40590
<b>Proposed Rules:</b>	
30	41124
31	41124
32	41366
33	41124
35	41124, 41366
39	41366
70	41124
71	41124
75	41124
78	41124

90	41124
91	41124
94	41124
97	41124
107	41124
108	41124
109	41124
112	41124
154	41124
160	41124
161	41124
167	41124
168	41124
188	41124
189	41124
192	41124
196	41124
199	41124
580	40891
581	40891
<b>47 CFR</b>	
1	40392
73	40393, 40873-40875, 41100
<b>Proposed Rules:</b>	
15	41125
73	40419, 40420, 40893-40896, 41125-41128
<b>48 CFR</b>	
1532	40876
1552	40876
2801	40877
2813	40877
2819	40877
<b>Proposed Rules:</b>	
20	40420
<b>49 CFR</b>	
191	40878
195	40878
219	40879
363	40782
391	40782
531	40665
<b>Proposed Rules:</b>	
217	40856
219	40856
225	40856
531	40689
571	40896
<b>50 CFR</b>	
380	40668
672	40394, 41101
675	40716, 41101
<b>Proposed Rules:</b>	
17	40444-40458
23	41282
24	41295
265	41296
641	41297
650	40463
651	40466
222	40699
228	40703
264	40779
611	40716
672	40716

session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

**S.J. Res. 146/Pub. L. 101-104**

Designating the week of September 24, 1989, as "Religious Freedom Week". (Oct. 2, 1989; 103 Stat. 673; 2 pages) Price: \$1.00

**H.R. 419/Pub. L. 101-105**

To provide for the addition of certain parcels to the Harry S Truman National Historic Site in the State of Missouri. (Oct. 2, 1989; 103 Stat. 675; 2 pages) Price: \$1.00

**H.R. 1529/Pub. L. 101-106**

To provide for the establishing of the Ulysses S. Grant National Historic Site in the State of Missouri, and for other purposes. (Oct. 2, 1989; 103 Stat. 677; 2 pages) Price: \$1.00

**S.J. Res. 118/Pub. L. 101-107**

Designating October 6, 1989, as "German-American Day". (Oct. 3, 1989; 103 Stat. 679; 1 page) Price: \$1.00

**LIST OF PUBLIC LAWS**

Last List October 4, 1989  
This is a continuing list of public bills from the current

