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Briefing on How To Use the Federal Register
For information on a briefing in Dallas, TX, see announcement on the inside cover of this issue.

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

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2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
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.

DALLAS, TX

WHEN: September 25, at 9:00 a.m.
WHERE: Federal Office Building,
1100 Commerce Street,
Room 7A23–175,
Dallas, TX.
RESERVATIONS: 1–800–366–2998.

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 735]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona lemons that may be shipped to domestic markets during the period from September 16 through September 22, 1990. Consistent with program objectives, such action is needed to balance the supplies of fresh lemons with the demand for such lemons during the period specified. This action was recommended by the Lemon Administrative Committee (Committee), which is responsible for local administration of the lemon marketing order.

EFFECTIVE DATE: Regulation 735 (7 CFR 910.1035) is effective for the period from September 16 through September 22, 1990.

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

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 910 (7 CFR part 910), as amended, regulating the handling of lemons grown in California and Arizona. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

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

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 70 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,000 lemon producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

The California-Arizona lemon industry is characterized by a large number of growers located over a wide area. The Committee's estimate of 1990–91 production has been revised from 40,834 to 42,100 cars (one car equals 1,000 cartons at 38 pounds net weight each), as compared with 37,881 cars during the 1989–90 season. The production area is divided into three districts which span California and Arizona. The Committee estimates District 1, central California, 1990–91 production at 6,600 cars compared to the 4,158 cars produced in 1989–90. In District 2, southern California, the crop is expected to be 24,700 cars compared to the 24,292 cars produced last year. In District 3, the California desert and Arizona, the Committee estimates a production of 10,800 cars compared to the 9,436 cars produced last year. The National Agricultural Statistics Service will publish on October 11, 1990, an estimate of the 1990–91 lemon crop.

The three basic outlets for California-Arizona lemons are the domestic fresh, export, and processing markets. The domestic (regulated) fresh market is a preferred market for California-Arizona lemons. Based on its earlier crop estimate of 40,834 cars, the Committee estimates that about 44 percent of the 1990–91 crop will be utilized in fresh domestic channels (17,900 cars), compared with the 1989–90 total of 16,600 cars, about 44 percent of the total production of 37,881 cars in 1989–90. Fresh exports are projected at 22 percent of the total 1990–91 crop utilization compared with 22 percent in 1989–90. Processed and other uses would account for the residual 34 percent compared with 34 percent of the 1989–90 crop. Based on the September 12 revised crop estimate, the Committee is expected to revise its utilization schedule at its next meeting.

Volume regulations issued under the authority of the Act and Marketing Order No. 910 are intended to provide benefits to growers and consumers. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of lemons in the market throughout the marketing season and to avoid unreasonable fluctuations in supplies and prices.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the lemon marketing order are required by the Committee from handlers of lemons. However, handlers in turn may require individual growers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

The Committee submitted its marketing policy for the 1990–91 season to the Department on June 19. The marketing policy discussed, among other things, the potential use of volume and size regulations for the ensuing season. The Committee considered the use of volume regulation for the season. This marketing policy is available from the Committee or Ms. Rodriguez. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate.

The Committee met publicly on September 12, 1990, in Yuma, Arizona, to consider the current and prospective conditions of supply and demand and unanimously recommended that 310,000 cartons is the quantity of lemons deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations were compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, the preceding week's shipments and shipments to date, crop conditions, weather and transportation conditions, and a reevaluation of the prior week's recommendation in view of the above.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1990–91 marketing policy. This recommended amount is 21,000 cartons above the estimated projections in the Committee's current shipping schedule.

During the week ending on September 8, 1990, shipments of lemons to fresh domestic markets, including Canada, totaled 302,000 cartons compared with 271,000 cartons shipped during the week ending on September 9, 1989. Export shipments totaled 95,000 cartons compared with 107,000 cartons shipped during the week ending on September 9, 1989. Processing and other uses accounted for 177,000 cartons compared with 72,000 cartons shipped during the week ending on September 9, 1989.

Fresh domestic shipments to date for the 1990–91 season total 1,827,000 cartons compared with 1,765,000 cartons shipped by this time during the 1989–90 season. Export shipments total 782,000 cartons compared with 859,000 cartons shipped by this time during 1989–90. Processing and other use shipments total 1,430,000 cartons compared with 703,000 cartons shipped by this time during 1989–90.

For the week ending on September 8, 1990, regulated shipments of lemons to the fresh domestic market were 302,000 cartons on an adjusted allotment of 339,000 cartons which resulted in net undershipments of 37,000 cartons. Regulated shipments for the current week (September 9 through September 15, 1990) are estimated at 315,000 cartons on an adjusted allotment of 344,000 cartons. Thus, undershipments of 29,000 cartons could be carried over into the week ending on September 22, 1990.

The average f.o.b. shipping point price for the week ending on September 8, 1990, was $12.58 per carton based on a reported sales volume of 325,000 cartons compared with last week's average of $12.29 per carton on a reported sales volume of 323,000 cartons. The 1990–91 season average f.o.b. shipping point price to date is $12.65 per carton. The average f.o.b. shipping point price for the week ending on September 9, 1989, was $15.08 per carton; the season average f.o.b. shipping point price at this time during 1989–90 was $14.35 per carton.

The Department's Market News Service reported that, as of September 12, demand is good for first grade California-Arizona lemons size 140, and very good for all other grades and sizes of lemons. The market is lower for first grade lemons size 140, higher for choice fruit sizes 140 through 235, and "about steady" for all other grades and sizes of lemon. At the meeting, several Committee members commented that overall demand for lemons is good. One Committee member commented that movement of fruit is good in all regions of the domestic market. Comments from Committee members also were made indicating that volume regulation was needed to maintain market stability. Thus, the Committee unanimously recommended volume regulation for the period from September 16 through September 22, 1990.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the California-Arizona 1990–91 season average fresh on-tree price is estimated at $9.54 per carton, 116 percent of the projected season average fresh on-tree parity equivalent price of $8.20 per carton. The California-Arizona 1989–90 season average fresh on-tree price is estimated at $8.53, 114 percent of the projected season average fresh on-tree party equivalent price of $7.47 per carton.

Limiting the quantity of lemons that may be shipped during the period from September 16 through September 22, 1990, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of lemons to market.

Based on considerations of supply and market conditions, it is found that this action will tend to effectuate the declared policy of the Act.

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

Pursuant to 5 U.S.C. 533, it is further found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until September 12, 1990, and this action needs to be effective for the regulatory week which begins on September 16, 1990. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

List of Subjects in 7 CFR Part 910

Lemons, Marketing agreements, Reporting and recordkeeping requirements.

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

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

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

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

2. Section 910.1035 is added to read as follows:

[Note: This section will not appear in the Code of Federal Regulations.]

§ 910.1035 Lemon regulation 735.

The quantity of lemons grown in California and Arizona which may be handled during the period from September 16 through September 22, 1990, is established at 310,000 cartons.

Dated: September 13, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-22105 Filed 9-14-90; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 932

[Docket No. FV-90-195FR]

Increase in 1990 Budgeted Expenditures Under the California Olive Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes an increase in expenditures for the California Olive Committee (committee) established under Marketing Order No. 932 for the 1990 fiscal year. The committee's authorized expenses are increased from $2,067,940 to $2,073,440. The $5,500 increase is needed to cover the cost of upgrading the committee's office equipment. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: January 1, 1990, through December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone 202-475-3862.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 932 (7 CFR part 932) regulating the handling of olives grown in California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final 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 seven handlers of California olives regulated under this marketing order each season, and approximately 1,480 olive producers in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those having annual receipts of less than $3,500,000. Most, but not all, of the olive producers and none of the olive handlers may be classified as small entities.

The California olive marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable olives received by regulated handlers during the crop year. This fiscal year covers the period January 1 through December 31, and the crop year covers the period August 1 through July 31. An annual budget of expenses is prepared by the committee and submitted to the Department for approval. The members of the committee are olive producers and handlers. 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 appropriate budgets. The budgets are 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 the anticipated expenses by expected olive receipts (in tons). Because that rate is applied to actual receipts, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

A final rule establishing expenses in the amount of $2,067,940 for the committee for the fiscal year ending December 31, 1990, was published in the Federal Register on February 8, 1990 (55 FR 4398). That action also fixed an assessment rate of $20.68 per ton of assessable olives received by handlers under M.O. 932 during the 1990-91 crop year.

At its July 10, 1990, meeting, the committee voted unanimously to increase its budget of expenses from $2,067,940 to $2,073,440. The $5,500 increase is needed to cover the cost of upgrading the committee's office equipment. No change in the assessment rate was recommended. Adequate funds are available to cover the increase in expenses resulting from this action.

Notice of this action was published in the Federal Register on August 20, 1990 (55 FR 33914). The comment period ended August 30, 1990. No comments were received.

While this action will 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 will 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 will not have a significant economic impact on a substantial number of small entities.

After consideration of the information and the recommendation submitted by the committee, it is found that this final rule will tend to effectuate the declared policy of the Act.

This final rule should be expedited because the committee needs authority to pay the additional expenses for office equipment as soon as possible. Therefore, it is also found that good cause exist for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553).

List of Subjects 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 932 is amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 932 continues to read as follows:

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

2. Section 932.224 is amended as follows:

Note: This section does not appear in the annual Code of Federal Regulations.

§ 932.224 [Amended]

Section 932.224 is amended by changing "$2,067,940" to "$2,073,440".

Dated: September 13, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-22033 Filed 9-17-90; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R-0687]

Truth in Lending; Home Equity Disclosure and Substantive Rule

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is revising Regulation Z (Truth in Lending) to require that creditors wishing to freeze the credit line when the rate cap on a home equity line is reached must expressly provide for this event in their agreements. Creditors that currently include such a provision in their contracts will not be affected by this revision. The Board also is removing from the regulation the provision that would permit delaying the time for providing disclosures about any repayment phase set forth in an agreement. The rules in question relate to the Home Equity Loan Consumer Protection Act of 1988, which requires creditors to provide consumers with information for open-end credit plans secured by the consumer's dwelling, and imposes substantive limitations on these plans. Although the final regulations implementing the law were adopted in June 1989 and became effective in November 1989, in response to litigation, the Board in March 1990 published for comment a proposal dealing with the rate cap provision and the timing of disclosures for the repayment phase.

EFFECTIVE DATE: September 19, 1990, but compliance is optional until October 1, 1991.

FOR FURTHER INFORMATION CONTACT: Leonard Chanin, Senior Attorney, or Sharon Bowman, Staff Attorney, Division of Consumer and Community Affairs, at (202) 452-3667 or 452-2412; for the hearing impaired only, contact Earnestine Hill or Dorethea Thompson, Telecommunications Device for the Deaf, at (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background

The Home Equity Loan Consumer Protection Act was enacted in November 1988. On January 23, 1989, the Board published for comment a proposed rule to implement the statute (54 FR 3063) and on June 9, 1989, adopted a final rule (54 FR 24670). Compliance with the regulation was mandatory as of November 7, 1989.

On November 1, 1989, Consumers Union filed suit against the Board challenging certain aspects of the regulation. *Consumers Union* v. *Federal Reserve Board*, No. 89-3008 (U.S. District Court for the District of Columbia). Among other issues, Consumers Union challenged the provision in the regulation permitting creditors to suspend advances of credit during any period the rate cap is reached. Consumers Union also challenged the part of the regulation permitting creditors to give disclosures about any "repayment" period (that is, when advances are no longer made and the consumer is paying off the amount borrowed) at the time the repayment period begins, rather than at the time of application.

On March 21, 1990, the Board published a proposed rule to amend the regulation relating to the rate cap and delayed timing issues (55 FR 10465). The Board received over 200 comments on the proposal. Based on a review of the comments and further analysis the Board is revising the regulation.

The District Court issued a decision in favor of the Board on May 2, 1990, with regard to other challenged parts of the regulation, but in light of the Board's proposal deferred rendering a decision on the rate cap and delayed timing issues.

Amendments to Regulation Z

(i) Rate Cap Provision

Under section 137(c)(1) of the act, creditors are generally prohibited from unilaterally changing the terms of the plan after the account has been opened. Section 137(c)(2) sets forth certain circumstances in which the creditor may prohibit additional extensions of credit or reduce the credit limit for a plan.

Pursuant to the statute, the final regulation issued by the Board in June 1989 contains substantive limitations on the way home equity plans may be structured. The regulation incorporates the exceptions in section 137(c)(2) of the act limiting the ability of a creditor to change the terms of a plan after the account has been opened. The regulation adds an exception under which a creditor can freeze a line of credit or reduce the credit limit if the rate cap is reached. (Under section 105 of the Truth in Lending Act, the Board is authorized to provide for adjustments and exceptions for transactions that the Board believes are necessary or proper to effectuate the act, prevent circumvention or evasion, or facilitate compliance.) As issued, § 226.5b(f)(3)(vi)(G) permits a creditor to suspend additional advances or reduce the credit limit during any period in which the index value plus margin (the APR corresponding to the periodic rate) reaches the maximum APR (lifetime "cap") provided for in the agreement.[1] If the index and margin drop below the cap, credit privileges must be reinstated.

The regulation does not expressly require that the contract (as opposed to the disclosures) state that a creditor has the right to freeze a line of credit if the rate cap is reached. Creditors are specifically required to disclose if they retain the ability to freeze a line when the rate cap is reached, and this disclosure duty may be met by including it in the agreement. As a practical matter, the Board believes that creditors who wish to preserve this right do include the provision in their contracts.

In March 1990, the Board requested additional comment on whether to amend the regulation to prohibit lenders from freezing a line of credit if the rate cap is reached (as well as a second issue concerning the timing of disclosures about the repayment phase). Nearly all of the more than two hundred commenters on the proposal argued that the Board should permit lenders to freeze the line if the rate cap is reached.

The Board is retaining the provision that permits lenders to freeze a line of credit or reduce the credit limit if the rate cap is reached, but is adopting a technical amendment requiring creditors to include this event in their contracts.

Based on a review of the comment letters, the Board believes removal of this provision from the regulation could cause consumers to suffer adverse consequences such as the imposition of a higher rate cap and the shortening of the draw period for home equity plans. The Board believes that if creditors were prevented from stopping advances once the rate cap is reached, they would seek to maintain their spread and limit interest rate risk by changing the terms on which the credit is offered. A number of commenters stated that lenders would raise their rate cap, for example, from 18% to 24%, if they were required to make advances even if the cap were reached. In such a circumstance—

[1] Section 226.30 of the regulation, which implements section 1204 of the Competitive Equality Banking Act of 1987, requires creditors to include a maximum rate cap in their agreements for all variable-rate plans secured by a consumer's dwelling.

should the index value and margin rise to the cap—24%, rather than 18%, would apply to the entire outstanding balance. This could lead to the possibility of consumers facing higher periodic payments, or payments that pay off less principal. This could in turn result in greater debt problems or overextension. The Board also is mindful of the concern expressed by commenters that interest rate arbitrage could occur if lenders were required to loan funds if the cap is reached. In such a circumstance, lenders might be required to permit advances at below-market rates.

The Board believes that consumers who wish to ensure the ability to borrow funds without interruption, regardless of the rate charged, could negotiate a higher rate cap from the lender before entering into the plan. It is also worth recognizing that any inconvenience to consumers is minimized since the freeze is temporary and in effect only so long as the index value and margin reach or exceed the cap.

The Board also asked for comment on whether creditors should be required to state in their contracts that the line may be frozen if the rate cap is reached. The Board is amending the regulation to require that creditors so specify in the contract if they wish to retain the right to freeze the line of credit when the rate cap is reached. Many commenters noted that to enforce such a provision under state law, the contract must contain such a provision. In addition, several persons commented that to take advantage of the risk weight requirements relating to home equity lines in the risk-based capital guidelines, their contracts had to contain such a provision. Finally, creditors are specifically required to disclose this condition, and it appears that this duty is often met by including it in the agreement. Thus, it appears from the letters received on the proposal and other information that lenders already include such a provision in their contracts, and creditors would likely not be required to revise their contracts.

The Board believes amending the regulation to specify this requirement will ensure greater consistency with the legislative history of the act. That history supports the notion that the statute does not prohibit lenders from freezing the line of credit if the rate cap is reached as long as such a provision is in their contracts. In light of the legal challenge, requiring contracts to contain the freeze provision will ensure that this is a bilateral provision and not a unilateral change to the terms of the plan, which is generally prohibited by the statute.

The Board is deleting the rate cap provision in § 226.5b(f)(3)(vi) of the regulation. Section 226.5b(f)(3)(i) is amended to provide that a lender may prohibit additional extensions of credit or reduce the credit limit when the maximum annual percentage rate is reached, as long as that circumstance is set forth in the initial agreement.

The Board also is adopting a technical amendment to § 226.9(c)(3) of the regulation. That section requires creditors to provide a written notice to consumers if the creditor prohibits additional extensions of credit or reduces the credit limit pursuant to § 226.5b(f)(3)(vi). Because the Board is moving the rate cap provision from § 226.5b(f)(3)(vi) to § 226.5b(f)(3)(i), § 226.9(c)(3) is amended to reflect that a notice must be provided if a creditor freezes a line pursuant to § 226.5b(f)(3)(i) or § 226.5b(f)(3)(vi). This change does not alter any duty the creditor has under § 226.9(c)(3).

Sections 226.5b(d)(4)(iii) and 226.6(e)(1) require creditors to disclose the conditions that permit freezing or reducing the credit limit. Creditors, of course, must continue to disclose under those sections that they may freeze or reduce the credit limit if the maximum annual percentage rate is reached, if they retain this right. The amendments to the regulation do not alter the duty of creditors to disclose this circumstance. The Board will propose changes to comment 5b(d)(4)(iii)–1 and other provisions as needed to clarify this duty, when proposed amendments to the Official Staff Commentary are issued in the fall of 1990.

(ii) Delayed Timing Provision

Some home equity plans provide in the initial agreement for two distinct phases: A "draw" period during which advances may be taken and a "repayment" period during which the balance is paid off and no new funds are advanced. Under the regulation, creditors are required to provide complete disclosures about both the draw and the repayment phases of the plan.

In the supplemental information accompanying the final rule issued in June 1989, the Board stated that while full disclosure about the repayment phase must be provided, creditors have a choice with regard to when those disclosures must be given. Creditors can either provide the information at the time the other disclosures are given (that is, with the application) or defer the bulk of the disclosures until the repayment phase begins. A sample form, G–14C, was provided in the appendix to the regulation for creditors using the second alternative. The Board also stated that, even if a creditor chooses to give the bulk of the repayment disclosures at conversion, the basic information about the repayment phase—such as its length and how the minimum payment will be figures—must be provided with the other application disclosures.

In March 1990, the Board solicited comment on whether the regulation should be amended to require creditors to provide all of the disclosures about the repayment phase with the application, rather than allowing some to be delayed until the time of conversion. The Board is requiring that all disclosures be given at application, and eliminating sample form G–14C, which provides guidance to creditors that delay giving certain disclosures about the repayment phase.

The more flexible approach adopted in the final rule in June 1989 was premised on the notion that consumers might benefit by receiving disclosures later, and that creditors also would benefit by having options about when to provide the disclosures. The comment letters clearly show that creditors are not using this provision, and that consumers may be harmed by not receiving information early. Thus, the policies supporting the original rule are less persuasive. While consumers might benefit from receiving additional information at the later time, there is a strong argument that consumers need to know all the repayment terms early when shopping for a line. The Board also believes a uniform approach would better assist consumers in shopping for a plan and comparing lenders' products. Finally, all evidence indicates that no creditors currently utilize the delayed timing rule—likely due to the greater complexity of preparing two disclosure forms and potential civil liability concerns. The Board is deleting model form G–14C from the regulation, since that is the only provision in the regulation that relates to providing information about the repayment phase later in the plan.

In April 1990 the Board adopted revisions to the Official Staff Commentary relating to home equity lines of credit. In that publication, the Board deferred providing guidance on the issue of delayed disclosures for the repayment phase of a plan though the issue was raised in the proposed commentary issued in November 1989. In light of the Board's decision on this issue, there is no need to address the issue in the Official Staff Commentary.

Effective Date

Section 105(d) of the Truth in Lending Act provides that amendments to Regulation Z shall have an effective date of October 1, and must be promulgated at least six months before that date. Except in the case of complying with the finding of a court or to prevent an unfair or deceptive disclosure practice, the statute does not permit an earlier effective date. Thus, in the present case the Board believes an October 1 effective date is required by the statute. Therefore, the amendments apply to any home equity plan entered into on or after October 1, 1991. Creditors wishing to retain the right to freeze a line of credit if the rate cap is reached must include such a provision in their home equity agreements entered into on or after the effective date. As of October 1, 1991, creditors also must provide complete disclosures about the repayment phase with the other § 226.5b disclosures (given at the time an application form is provided to the consumer), and are not permitted to delay giving disclosures about that phase.

Economic Impact Statement

The changes to the regulation are likely to have an insignificant impact on creditors' costs, including small entities, since available evidence indicates that they currently operate in a manner consistent with the new rule. The Board's Division of Research and Statistics has prepared an economic impact statement on the revisions to Regulation Z. 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 226

Advertising; Banks; Banking; Consumer protection; Credit; Federal reserve system; Finance; Penalties; Rate limitations; Truth in lending.

Text of Proposed Revisions

Pursuant to authority granted in section 105 of the Truth in Lending Act (15 U.S.C. 1604 as amended), the Board is amending Regulation Z, 12 CFR part 226, as follows:

PART 226—[AMENDED]

1. The authority citation for part 226 continues to read:

Authority: Section 105, Truth in Lending Act, as amended by sec. 605, Pub. L. No. 96–221, 94 Stat. 170 [15 U.S.C. 1604 et seq.]; section 1204(c), Competitive Equality Banking Act, Pub. L. No. 100–86, 101 Stat. 552.

2. In § 226.5b, the introductory text to paragraphs (f), (f)(3), and (f)(3)(vi) is republished and paragraphs (f)(3)(i), (f)(3)(vi)(E), and (f)(3)(vi)(F) are revised and paragraph (f)(3)(vi)(G) is removed to read as follows:

Subpart B—Open-End Credit

§ 226.5b Requirements for home equity plans.

* * * * *

(f) *Limitations on home equity plans.* No creditor may, by contract or otherwise:

* * * * *

(3) Change any term, except that a creditor may:

(i) Provide in the initial agreement that it may prohibit additional extension of credit or reduce the credit limit during any period in which the maximum annual percentage rate is reached. A creditor also may provide in the initial agreement that specified changes will occur if a specified event takes place (for example, that the annual percentage rate will increase a specified amount if the consumer leaves the creditor's employment).

* * * * *

(vi) Prohibit additional extensions of credit or reduce the credit limit applicable to an agreement during any period in which:

* * * * *

(E) The priority of the creditor's security interest is adversely affected by government action to the extent that the value of the security interest is less than 120 percent of the credit line; or

(F) The creditor is notified by its regulatory agency that continued advances constitute an unsafe and unsound practice.

* * * * *

3. In § 226.9, paragraph (c)(3) is revised to read as follows:

§ 226.9 Subsequent disclosure requirements.

* * * * *

(c) *Change in terms.* * * *

(3) *Notice for home equity plans.* If a creditor prohibits additional extensions of credit or reduces the credit limit applicable to a home equity plan pursuant to § 226.5b(f)(3)(i) or § 226.5b(f)(3)(vi), the creditor shall mail or deliver written notice of the action to each consumer who will be affected. The notice must be provided not later than three business days after the actions is taken and shall contain specific reasons for the action. If the creditor requires the consumer to request reinstatement of credit privileges, the notice also shall state that fact.

* * * * *

Appendix G to Part 226 [Amended]

4. Appendix G to part 226 is amended by removing G–14C—Home Equity Sample (Repayment phase disclosed later).

* * * * *

By order of the Board of Governors of the Federal Reserve System, September 12, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90–21974 Filed 9–17–90; 8:45 am]

BILLING CODE 6210–01–M

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AA94

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Correction

AGENCY: Farm Credit Administration.

ACTION: Final rule; correction.

SUMMARY: The Farm Credit Administration (FCA) is correcting an error that appeared in the final rule that amended the regulation setting forth lending authorities and lending requirements for Farm Credit banks and associations, reconciling, where necessary the authorities of institutions created under the restructuring provisions of the Agricultural Credit Act of 1987. The final rule appeared in the Federal Register on June 19, 1990 (55 FR 24861).

EFFECTIVE DATE: July 30, 1990.

FOR FURTHER INFORMATION CONTACT: Cindy R. Nicholson, Paralegal Specialist, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: In preparing the final rule for publication in the Federal Register, one of the amendatory instructions on page 24887 was incorrectly stated.

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

Subpart E—Investments

1. On page 24887, third column, amendatory instruction #48, the words "revising the heading;" were inadvertently omitted. Amendatory

instruction #48 is revised to correctly read as follows:

48. Section 615.5160 is amended by revising the heading; removing existing paragraph (c); redesignating paragraph (d) as new paragraph (c) and paragraph (e) as new paragraph (d); and revising paragraph (a) and newly designated paragraph (c) to read as follows:

Dated: September 12, 1990.

Curtis M. Anderson,

Secretary, Farm Credit Administration.

[FR Doc. 90–21967 Filed 9–17–90; 8:45 am]

BILLING CODE 6705–01–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Regulations; Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice to waive the "nonmanufacturer rule" for warehouse and street sweepers.

SUMMARY: This notice advises the public that the Small Business Administration (SBA) is establishing a waiver of the "non-manufacturer rule" for warehouse sweepers and street sweepers. The basis for a waiver is that no small business manufacturer is supplying this class of products to the Federal government. The effect of a waiver is to allow an otherwise qualified regular dealer to supply the product of any domestic manufacturer on a Federal contract set aside for small business or awarded through the 8(a) program.

EFFECTIVE DATE: This waiver effective September 18, 1990.

ADDRESSES: Address Comments to: Mr. Robert J. Moffitt, Chairman, Size Policy Board, Small Business Administration, 1441 L Street NW., Room 600, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Catherine B. Thomas, Procurement Analyst, Tel: (202) 653–6588.

SUPPLEMENTARY INFORMATION: On November 15, 1988, the enactment of Public Law 100–656 incorporated into the Small Business Act the previously existing policy that recipients of contracts set-aside for small business shall provide the product of a small business manufacturer or processor. An exception was provided for waiver of this requirement by SBA for any class of products for which there are no small business manufacturers or processors in the Federal market. The requirement to provide the product of a small business in contracts set-aside for small business or under 8(a) contracts is already in SBA regulations. This requirement is commonly referred to as the "nonmanufacturer rule". The SBA regulations imposing this requirement are found in 13 CFR 121.906(b) and 121.1106(b).

Section 303(h) of the law provided for waiver of this requirement by SBA for any "class of products" for which there are no small business manufacturers or processors in the Federal Market. This notice proposes to waive the nonmanufacturer rule for warehouse and street sweepers. The issue of a lack of small business manufacturers of warehouse and street sweepers was recently brought to the attention of SBA by our Los Angeles District Office and the Defense Logistics Agency.

To be considered in the Federal market as a manufacturer, a small business must have been awarded a contract by the Federal government within the last three years. A class of products is considered to be a particular Product and Service Code (PSC) under the Federal Procurement Data System or an SBA recognized product line with in a PSC. In this case, the class of products is warehouse sweepers within PSC 3930 and street sweepers within PSC 3825. The definition of these terms is consistant with those used to establish a waiver of the nonmanufacturer rule for several types of construction equipment on December 28, 1989 (54 FR 53317) and dictionaries and thesauruses on August 3, 1990 (55 FR 31575).

SBA searched the Procurement Automated Source System (PASS) for any small business manufacturers of warehouse and street sweepers that sold to the Federal government. No small business manufacturers were identified within the Federal market.

The public is invited to submit comments on the basis of this waiver action. If evidence is received that a small manufacturer is in fact in the Federal market, as defined by receiving a Federal contract within the past three years, SBA will reevaluate its decision to waive the nonmanufacturer rule, and may terminate the waiver.

This waiver is being granted for warehouse and street sweepers under statutory authority prior to the promulgation of final regulatory procedures. Proposed procedures for issuance of waivers were published May 17, 1990. However, SBA has expedited the issuance of this waiver to ensure the responsiveness of the 8(a) program to the Department of Defense, because there is an immediate need for this product for operation Desert Shield. Final regulatory procedures may differ from those followed for this particular request.

A waiver of the nonmanufacturer rule is established for purposes of allowing an otherwise qualified small business regular dealer to supply the product of any domestic manufacturer on a contract set-aside for small business or awarded through the 8(a) program for the following class of products:

Warehouse Sweepers (PSC 3930) and Street Sweepers (PSC–3825).

Dated: September 13, 1990.

Sally B. Narey,

Acting Administrator.

[FR Doc. 90–22039 Filed 9–17–90; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Part 309

[Docket No. 91292–9292]

Electric and Gas Facilities

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Interim rule; correction.

SUMMARY: EDA is correcting an error in the amendatory language which appeared in the **Federal Register** on May 3, 1990 (55 FR 18594).

FOR FURTHER INFORMATION CONTACT: Joseph M. Levine, Chief Counsel, at (202) 377–4687.

SUPPLEMENTARY INFORMATION: This notice corrects amendatory language appearing in 55 FR 18594 which inadvertently deleted subparagraphs (A) and (B) from 13 CFR 309.4(b)(2)(ii). The correction is that only the introductory text at 13 CFR 309.4(b)(2)(ii) is amended.

The following correction is made to part 309—General Requirements for Financial Assistance published in the **Federal Register** on May 3, 1990 (55 FR 18594): The first paragraph in the first column on page 18595 which reads, "2. Section 309.4 is amended by revising paragraphs (a) introductory text, (a)(2)(ii) introductory text (b) introductory text, and (b)(2)(ii) to read as follows" is revised to read as follows:

§ 309.4 [Corrected]

"2. Section 309.4 is amended by revising paragraphs (a) introductory text, (a)(2)(ii) introductory text, (b) introductory text, and (b)(2)(ii) introductory text to read as follows:"

Dated: September 5, 1990.

L. Joyce Hampers,

Assistant Secretary for Economic Development.

[FR Doc. 90-21954 Filed 9-17-90; 8:45 am]

BILLING CODE 3510-24-M

Office of the Secretary

15 CFR Parts 4, 4b, 6, 7, 10, 16 & 19

National Institute of Standards and Technology

15 CFR Parts 200, 230, 255, 256, 265, 270 & 275

[Docket No. 91284-9284]

Organization and Functions; National Institute of Standards and Technology

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Final rule; nomenclature change.

SUMMARY: The Omnibus Trade and Competitiveness Act of 1988 (the "Act") (Pub. L. No. 100-418, enacted on August 23, 1988), section 5111(1)(b)(1), renamed the National Bureau of Standards as the National Institute of Standards and Technology. Further, section 5112(d) of the Act required the Director of NIST to submit to the Congress an Organization Plan, "establishing the major operating units of the Institute * * *". Pursuant to this directive, a reorganization of many of the Institute's functions and activities took place, in which, *inter alia*, the Office of Product Standards Policy (OPSP) was terminated, and its duties and responsibilities were assumed by the National Voluntary Laboratory Accreditation Program (NVLAP). Therefore, relevant sections of the Code of Federal Regulations must be revised to reflect these statutory changes. An amendment to part 7.7 is necessary to reflect the current OMB control number for the information collection requirements subject to the Paperwork Reduction Act contained in the NVLAP procedures.

EFFECTIVE DATE: August 23, 1988.

FOR FURTHER INFORMATION CONTACT: Philip J. Greene, (202) 377-5394.

SUPPLEMENTARY INFORMATION: Because this rulemaking document concerns agency organization and management, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that order.

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

This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612. This rule does not contain collections of information for purposes of the Paperwork Reduction Act. The change of name from the National Bureau of Standards to the National Institute of Standards and Technology in the chapter heading for 15 CFR chapter II was published July 24, 1990 at 55 FR 30145.

For the reasons set forth in the Preamble, 15 CFR subtitle A and chapter II are amended as follows:

15 CFR SUBTITLE A AND CHAPTER II [AMENDED]

1. In the list below, for each part or section indicated in the left column, remove the agency name (or abbreviation thereof), title or information indicated in the middle column from the headings and wherever it appears in that part or section, and add the name, title or information indicated in the right column, unless no addition is indicated:

In part or Section	Remove	Add
15 CFR Subtitle A:		
4, App. B	National Bureau of Standards	National Institute of Standards & Technology.
4, App. C	National Bureau of Standards	National Institute of Standards & Technology.
4b, App. A	National Bureau of Standards	National Institute of Standards & Technology.
6.2	National Bureau of Standards	National Institute of Standards & Technology.
6.7	National Bureau of Standards	National Institute of Standards & Technology.
6.8	National Bureau of Standards	National Institute of Standards & Technology.
7.2	National Bureau of Standards	National Institute of Standards & Technology.
7.2	NBS	NIST.
7.4	National Bureau of Standards	National Institute of Standards & Technology.
7.4	Director of OPSP means the Director of the NBS Office of Product Standards Policy or designee.	(No addition).
7.4	OPSP means the NBS Office of Product Standards Policy	(No addition).
7.4	NBS	NIST.
7.5	NBS	NIST.
7.5(e)	The Advisory Committee shall meet periodically as called upon by the Director of the NBS Office of Product Standards Policy (OPSP) or may be consulted through periodic mailings from the Director of OPSP.	The Advisory Committee shall meet periodically as called upon or may be consulted through periodic mailings.
7.6	The Director of OPSP	NVLAP.
7.7	0652-0003	0693-0003.
7.11	the Director of OPSP	NVLAP.
7.11	NBS	NIST
7.12	the Director of OPSP	NVLAP.
7.12	NBS	NIST.
7.13	The Director of OPSP	NVLAP.
7.13	NBS	NIST.
7.14	The Director of OPSP	NVLAP.
7.14	NBS	NIST.

In part or Section	Remove	Add
7.15	The Director of OPSP	NVLAP.
7.15	NBS	NIST.
7.16	the Director of OPSP	NVLAP.
7.17	The Director of OPSP	NVLAP.
7.18	The Director of OPSP	NVLAP.
7.19	the Director of OPSP	NVLAP.
7.19	NBS	NIST.
7.21	the Director of OPSP	NVLAP.
7.22	The Director of OPSP	NVLAP.
7.23	The Director of OPSP	NVLAP.
7.24	the Director of OPSP	NVLAP.
7.25	The Director of OPSP	NVLAP.
7.31	the Director of OPSP	NVLAP.
7.32	the Director of OPSP	NVLAP.
7.32	NBS	NIST.
7.33	the Director of OPSP	NVLAP.
10.0	National Bureau of Standards	National Institute of Standards & Technology.
10.0	NBS	NIST.
10.2	National Bureau of Standards	National Institute of Standards & Technology.
10.2	National Bureau of Standards	National Institute of Standards & Technology.
10.3	National Bureau of Standards	National Institute of Standards & Technology.
10.13	National Bureau of Standards	National Institute of Standards & Technology.
10.14	NBS	NIST.
10.15	NBS	NIST.
16.6	National Bureau of Standards	National Institute of Standards & Technology.
19.21	National Bureau of Standards	National Institute of Standards & Technology.
19.21	NBS	NIST.
15 CFR Chapter II:		
200.100	National Bureau of Standards	National Institute of Standards & Technology.
200.100	NBS	NIST.
200.101	NBS	NIST.
200.102	National Bureau of Standards	National Institute of Standards & Technology.
200.102	NBS	NIST.
200.103	National Bureau of Standards	National Institute of Standards & Technology.
200.103	NBS	NIST.
200.104	NBS	NIST.
200.105	NBS	NIST.
200.106	National Bureau of Standards	National Institute of Standards & Technology.
200.106	NBS	NIST.
200.107	National Bureau of Standards	National Institute of Standards & Technology.
200.107	NBS	NIST.
200.108	NBS	NIST.
200.109	National Bureau of Standards	National Institute of Standards & Technology.
200.109	NBS	NIST.
200.110	NBS	NIST.
200.111	NBS	NIST.
200.112	National Bureau of Standards	National Institute of Standards & Technology.
200.112	NBS	NIST.
200.113	NBS	NIST.
200.114	National Bureau of Standards	National Institute of Standards & Technology.
200.114	NBS	NIST.
200.115	National Bureau of Standards	National Institute of Standards & Technology.
200.115	NBS	NIST.
230.1	National Bureau of Standards	National Institute of Standards & Technology.
230.1	NBS	NIST.
230.4	National Bureau of Standards	National Institute of Standards & Technology.
230.7	National Bureau of Standards	National Institute of Standards & Technology.
230.7	NBS	NIST.
255.1	National Bureau of Standards	National Institute of Standards & Technology.
255.3	National Bureau of Standards	National Institute of Standards & Technology.

In part or Section	Remove	Add
255.5	National Bureau of Standards	National Institute of Standards & Technology.
255.6	National Bureau of Standards	National Institute of Standards & Technology.
255.7	National Bureau of Standards	National Institute of Standards & Technology.
256.1	National Bureau of Standards	National Institute of Standards & Technology.
256.1	NBS	NIST.
256.2	NBS	NIST.
256.3	NBS	NIST.
256.4	NBS	NIST.
256.5	NBS	NIST.
256.6	National Bureau of Standards	National Institute of Standards & Technology.
265 (heading)	National Bureau of Standards	National Institute of Standards & Technology.
265.1	National Bureau of Standards	National Institute of Standards & Technology.
265.2	National Bureau of Standards	National Institute of Standards & Technology.
265.42	National Bureau of Standards	National Institute of Standards & Technology.
265.42	NBS	NIST.
270.0	National Bureau of Standards	National Institute of Standards & Technology.
270.0	NBS	NIST.
270.2	National Bureau of Standards	National Institute of Standards & Technology.
270.3	NBS	NIST.
270.5	NBS	NIST.
270.7	NBS	NIST.
270.8	NBS	NIST.
275 (heading)	NBS	NIST.
275.1	National Bureau of Standards	National Institute of Standards & Technology.
275.1	NBS	NIST.
275.2	NBS	NIST.
275.3	National Bureau of Standards	National Institute of Standards & Technology.
275.3	NBS	NIST.
275.4	National Bureau of Standards	National Institute of Standards & Technology.
275.4	NBS	NIST.
275.5	NBS	NIST.

Dated: September 12, 1990.

Robert M. White,

Under Secretary of Commerce for Technology.

[FR Doc. 90-22009 Filed 9-17-90; 8:45 am]

BILLING CODE 3510-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 134

[T.D. 90-75]

RIN 1515-AA83

Country of Origin Marking of Native American-Style Arts and Crafts

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

ACTION: Final rule.

SUMMARY: This document amends the Customs regulations by adding Native American-style arts and crafts to those categories of articles which are subject to specific country of origin marking requirements. The regulations require, subject to certain exceptions, Native American-style arts and crafts to be indelibly marked with the country of origin by means of cutting, die-sinking, engraving, stamping, or some other equally permanent method.

EFFECTIVE DATE: October 18, 1990.

FOR FURTHER INFORMATION CONTACT: Robert Dinerstein, Value, Special Programs & Admissibility Branch, U.S. Customs Service (202) 566-5765.

SUPPLEMENTARY INFORMATION:

Background

Articles of foreign origin imported into the U.S. are required to be marked in a conspicuous place as legibly, indelibly, and as permanently as the nature of the article will permit in a manner indicating to the ultimate purchaser in the U.S. the country of origin in English, pursuant to section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304). Part 134, Customs Regulations (19 CFR part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304.

By a document published in the **Federal Register** on August 31, 1989 (54 FR 36039), comments were requested on a proposed amendment to 19 CFR part 134 to require indelible country of origin marking on Native American-style arts and crafts. The comment period was reopened for an additional 60 days by a document published in the **Federl Register** on January 19, 1990 (55 FR 1837).

Analysis of Comments

Comments were received from the U.S. Department of the Interior, Indian Arts and Crafts Board, the Tulalip Tribes, Maysville, Washington, the Navajo Nation, and the Hopi Tribe. The Indian Arts and Crafts Board supports the amendment but recommends three changes. The Board suggests that "beadwork" be added to the types of products mentioned as examples of Native American-style arts and crafts. According to the comments of the Board,

beadwork is a major category of products produced by Native American craftsmen, and because it is labor intensive, imitations are often produced in countries with low wage scales. The Board states that it is not aware of a significant production of blankets by Native Americans and believes the inclusion of blankets among the examples cited in § 134.43(d)(1) would result in confusion. The Board also recommends that in the definition of Native American-style arts and crafts in § 134.43(d)(1), the word "traditional" should be omitted and replaced by the word "typical".

Customs has incorporated the first two recommendations by adding "beadwork" to the list of examples provided in § 134.43(d)(1) and deleting "blankets" from the list. However, Customs has determined that it would be inappropriate to change "traditional" to "typical". The use of "typical" in defining Native American-style arts and crafts and the use of "traditional" in defining Native American-style jewelry would be inconsistent. Although the term "traditional" necessitates examination of past characteristics of Native American jewelry or arts and crafts, as those designs, materials and/or methods of construction change over time, the identification of those arts and crafts covered by the regulations will also change. Additionally, the use of "typical" would be unnecessarily vague due to difficulty in ascertaining design motifs, materials and/or methods of construction which are typical of those used by Native Americans at any given time.

The Tulalip Tribes request that the final regulation include a section on raw materials. The Tulalip Tribes noted that imported counterfeit "turquoise" stones are often incorporated into finished jewelry and sold as "Indian goods", and foreign raw materials are often repacked and sold as Indian made. The regulations governing country of origin marking of Native American-style arts and crafts cannot address every problem associated with the misrepresentation of articles sold in the U.S. as genuinely Native American. The manner of country of origin marking on imported raw materials used in finished jewelry is not within the scope of section 1907(c) of the Omnibus Trade and Competitiveness Act. Requiring indelible country of origin marking of all imported raw materials which could be used in the manufacture of Native American articles goes beyond statutory requirements. Inasmuch as the regulations cannot override the provisions of the statute, inclusion of raw materials in the regulation covering the Native American-style arts and crafts would be inappropriate.

The Navajo Nation generally supports the amendment as an appropriate method for protecting Native Americans who depend on the sale of their arts and crafts and consumers who purchase imported goods which they believe to be handmade by Native Americans. In that it may be difficult for Customs inspectors to recognize symbols or items which could be mistaken for Native American designs, the Navajo Nation suggests that guidelines be provided in order to determine items which can be sold as Native American designs. The Navajo Nation also seeks to have borderline cases fall within the requirements of this amendment.

Customs is of the opinion that drafting of guidelines at this time would be premature as that only through experience can the best methods for ensuring compliance be determined. If circumstances necessitate, Customs at a later date may consider establishing guidelines for administering the marking requirements of Native American-style arts and crafts. Additionally, the language of the proposed amendment is drafted to take account of borderline cases by including the phrase "could possible by mistaken for." Items that could possibly be mistaken for arts and crafts made by Native Americans will fall within the marking requirements of the proposed amendment.

The Hopi Tribe endorsed the concept of indelible marking on imported products that could be mistaken for arts and crafts made by Native Americans but expressed concern over imitation items produced in the U.S. which incorporate traditional design motifs, material or construction and could be mistaken for genuine arts and crafts made by Native Americans. The Hopi Tribe requests that Customs apply the provisions of 15 U.S.C. 45 regarding unfair methods of competition to imported imitation arts and crafts.

The concerns of the Hopi Tribe are beyond the scope of section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), the country of origin marking statute enforced by Customs, which pertains only to articles of foreign origin. The provisions of 15 U.S.C. 45 and its implementing regulations are within the jurisdiction of the Federal Trade Commission.

Section 134.43(d)(1) as set forth in the proposed rule (54 FR 36039) defined Native American-style arts and crafts as "arts and crafts * * * which incorporate traditional Native American design motifs, materials or construction and therefore look like, and could possibly be mistaken for, arts and crafts made by Native Americans." Because the imported articles covered by the regulation may incorporate one or more of traditional Native American design motifs, materials or construction, the "and/or" conjunction used in § 134.43(c)(1) is preferable to the "or" conjunction used in proposed § 134.43(d)(1). Accordingly, the "or" conjunction contained in the previously proposed addition of § 134.43(d)(1) is being replaced by the conjunction "and/or" in this final rule.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analyses has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the regulation amendment will not have a significant impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analyses or other requirements.

Drafting Information

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

List of Subjects in 19 CFR Part 134

Customs duties and inspection, Labeling, packaging and containers.

Amendment

Accordingly, part 134, Customs Regulations (19 CFR part 134), is amended as set forth below:

PART 134—COUNTRY OF ORIGIN MARKING

1. The authority citation for part 134 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, HTSUS), 1304, 1624.

2. Section 134.43 is amended by adding a new paragraph (d) to read as follows:

§ 134.43 Methods of marking specific articles.

* * * * *

(d) *Native American-style arts and crafts.*—(1) *Definition.* For the purpose of this provision, Native American-style arts and crafts are arts and crafts, such as pottery, rugs, kachina dolls, baskets and beadwork, which incorporate

traditional Native American design motifs, materials and/or construction and therefore look like, and could possibly be mistaken for, arts and crafts made by Native Americans.

(2) *Method of Marking.* Except as provided for in 19 U.S.C. 1304(a)(3) and § 134.32 of this part, Native American-style arts and crafts must be indelibly marked with the country of origin by means of cutting, die-sinking, engraving, stamping, or some other equally permanent method. On textile articles, such as rugs, a sewn in label is considered to be an equally permanent method.

(3) *Exception.* Where it is technically or commercially infeasible to mark in the manner specified in paragraph (d)(2) of this section, the article may be marked by means of a string tag or adhesive label securely affixed, or some other similar method.

Approved: August 22, 1990.

Carol Hallett,

Commissioner of Customs.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 90-21940 Filed 9-17-90; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 71

[Order No. 1444-90]

Department of Justice regulations implementing the Program Fraud Civil Remedies Act of 1986

AGENCY: Office of the Attorney General, Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice promulgated final rules implementing the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801–3812, on April 8, 1988 (53 FR 11645). These rules established administrative procedures for imposing statutorily authorized civil penalties against any person who makes, submits, or presents a false or fraudulent claim or written statement to the Department. The Inspector General Act Amendments of 1988, Pub. L. No. 100–504, 5 U.S.C. App. 3 section 11, necessitate amendment to the Department's Program Fraud Civil Remedies Act regulations.

EFFECTIVE DATE: September 18, 1990.

FOR FURTHER INFORMATION CONTACT: Janis A. Sposato, General Counsel, Justice Management Division. Telephone (202) 514–3452.

SUPPLEMENTARY INFORMATION: The Program Fraud Civil Remedies Act of 1986 requires specified Federal agencies to follow certain procedures to recover penalties and assessments against persons who file false claims or statements. The statute provides for designated investigative and reviewing officials, an administrative hearing process, and an agency appeal procedure with limited judicial review.

On April 14, 1989, the Department of Justice established an Office of the Inspector General pursuant to the Inspector General Act Amendments of 1988, Pub. L. No. 100–504, 5 U.S.C. App. 3, section 11. The Department's current Program Fraud Civil Remedies Act regulations identify the Counsel of the Department's Office of Professional Responsibility (OPR) as the "investigating official." The Program Fraud Civil Remedies Act provides that where an agency has an Inspector General, the Inspector General shall serve as "investigating official" (31 U.S.C. 3801(a)(4)). Part 71 is hereby amended to assign the role of "investigating official" to the Inspector General.

Part 71 is also being modified with respect to the definition of "reviewing official." The responsibilities of the "reviewing official" which are vested in the Associate Attorney General under the current regulations are being transferred to the Assistant Attorney General for Administration.

Because these amendments merely transfer responsibilities within the Department and do not affect the substantive rights of individuals or due process procedures contained in part 71, they are being published in final form, without public opportunity for notice and comment.

These rules do not constitute "major rules" within the meaning of Executive Order 12291. Nor do the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b), apply. These rules contain no information collection or recordkeeping requirements as defined by the Paperwork Reduction Act of 1978, and fall within the exceptions to coverage.

List of Subjects in 28 CFR Part 71

Claims, Fraud, Organization and function (government agencies), Penalties.

By virtue of the authority vested in me as Attorney General by 5 U.S.C. 301 and 28 U.S.C. 509 and 510, title 28 of the Code of Federal Regulations is hereby amended as follows:

PART 71—IMPLEMENTATION OF THE PROVISIONS OF THE PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

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

Authority: 5 U.S.C. 301, 28 U.S.C. 509, 510, 31 U.S.C. 3801–3812.

2. Section 71.2 is amended by revising the definitions of "Investigating Official" and "Reviewing Official" to read as follows:

§ 71.2 Definitions.

* * * * *

Investigating Official means the Inspector General.

* * * * *

Reviewing Official means the Assistant Attorney General for Administration. For purposes of § 71.5 of these rules, the Assistant Attorney General for Administration, personally or through his immediate staff, shall perform the functions of the reviewing official provided that such person is serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule. All other functions of the reviewing official, including administrative prosecution under these rules, shall be performed with respect to the components listed below by the individuals listed below acting on behalf of the Assistant Attorney General for Administration:

(a) For the offices, boards, divisions and any other components not covered below, the General Counsel, Justice Management Division;

(b) For the Bureau of Prisons (BOP), the General Counsel, BOP;

(c) For the Drug Enforcement Administration (DEA), the Chief Counsel, DEA;

(d) For the Federal Bureau of Investigation (FBI), the Assistant Director, Legal Counsel Division;

(e) For the Immigration and Naturalization Service (INS), the General Counsel, INS; and

(f) For the United States Marshals Service (USMS), the Associate Director for Administration.

* * * * *

Dated: September 12, 1990.

Dick Thornburgh,

Attorney General.

[FR Doc. 90-21991 Filed 9-17-90; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[Amdt. Number 39R]

Ohio Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval, with certain exceptions, of a proposed amendment to the Ohio regulatory program (hereinafter referred to as the Ohio program) approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment (Revised Program Amendment Number 39) modifies Ohio program rules concerning definitions, financial interests, subsidence, remining, threatened and endangered species, self-bonding, bond release notices, and individual civil penalties. The amendment is intended to revise the Ohio program to be consistent with the corresponding Federal requirements, and to implement the additional flexibility afforded by Federal regulatory revisions.

EFFECTIVE DATE: September 18, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, 2242 South Hamilton Road, Room 202, Columbus, Ohio 43232, Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION:

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

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Submission of Amendment

By letter dated November 3, 1988 (Administrative Record No. OH-1113), the Director of OSM notified the Ohio Department of Natural Resources, Division of Reclamation (Ohio) of a number of Federal regulations promulgated between October 1, 1983 and June 15, 1988 for which OSM had determined that the corresponding Ohio rules were now less effective than the new Federal counterparts.

Also, on December 22, 1988, the Director of OSM announced the approval, with certain exceptions, of Ohio Program Amendment No. 34 (53 FR 51543). In this announcement, the Director partially disapproved the definition of "property to be mined" at OAC 1501:13-1-02 (MMMM) as submitted by Ohio on May 24, 1988. The Director required that Ohio submit a proposed amendment to revise the definition of "property to be mined" so as to require that permit applications identify all owners of record of mineral estates to be removed or displaced by surface excavation activities during the proposed coal mining operations.

In response to the OSM requirements of November 3 and December 22, 1988, Ohio, submitted proposed Program Amendment No. 39 by letter dated March 1, 1989 (Administrative Record No. OH-1168). Ohio submitted further administrative record information in support of proposed Program Amendment No. 39 on March 20, 1989 (Administrative Record No. OH-1174). OSM announced receipt of the proposed amendment in the March 20, 1989, **Federal Register** (54 FR 11388) and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on April 19, 1989. The scheduled public hearing was not held as no one requested an opportunity to provide testimony.

By letter dated January 19, 1990 (Administrative Record No. OH-1264), OSM forwarded five questions to Ohio about proposed Program Amendment Number 39. In response to these OSM questions, Ohio submitted proposed Revised Program Amendment Number 39 (39R) by letter dated February 22, 1990 (Administrative Record No. OH-1284). The Revised Program Amendment Number 39R reiterates the revisions previously proposed in Program Amendment Number 39 to the Ohio program and also proposed additional amendments.

OSM announced receipt of the proposed amendment in the March 12, 1990, **Federal Register** (55 FR 9143) and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendments. The public comment period ended on April 11, 1990. The scheduled public hearing was not held as no one requested an opportunity to provide testimony.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.17, are the Director's findings concerning the proposed amendment. Any revisions not specifically discussed below are found to be no less stringent than SMCRA and no less effective than the Federal regulations. Revisions which are not discussed below concern nonsubstantive wording changes.

1. OAC 1501:13-1-02 Definitions

(a) *Coal mining operation.* Paragraph OAC 1501:13-1-02(S)(1) has been amended by changing punctuation to clarify the language and adding minor revisions to the language of the definition. As amended, the definition is substantively identical to and no less effective than the counterpart Federal definition at 30 CFR 700.5.

(b) *Previously mined area.* Paragraph OAC 1501:13-1-02(HHHH) has been amended to mean lands previously mined on which there were no surface coal mining operations subject to the standards of the Surface Mining Control and Reclamation Act of 1977. Amendment to this definition was required by the Director in a final rule concerning Ohio program amendment No. 34 published in the **Federal Register** on December 22, 1988 (53 FR 51544). In that notice, the Director found that the definition of "previously mined area," as amended by Ohio in Program Amendment No. 34, is less effective than the Federal rules and less stringent than SMCRA.

Ohio's proposed definition of "previously mined area" is substantively identical to the Federal definition at 30 CFR 701.5. However, in the case of *National Wildlife Federation* v. *Lujan*, Nos. 87-1051, 87-1814, and 88-2788 (D.D.C. February 12, 1990), the court addressed two concerns pertaining to the Federal definition. The first was whether "previously mined" means that mining occurred (1) before the date Congress enacted SMCRA (August 3, 1977), or (2) before the various dates that SMCRA's substantive requirements began to apply to specific mining operations or sites. This issue is important because pursuant to 30 CFR

816.106(b), 817.106(b), and 819.19(b) (which sections are substantively identical to rules at OAC 1501:13–9–14(L)(3)), operators remining previously mined areas do not need to completely eliminate reaffected or enlarged highwalls if there is not enough reasonably available spoil to do the job. Rather, in such situations, the operator's duty is to eliminate the highwalls only to the "maximum extent technically practical." Given this limited exception to the requirement to completely remove all highwalls, the second related concern was that the current definition might allow an operator to remine an area that had once been fully and satisfactorily reclaimed, and then to leave the area only partially reclaimed by not completely eliminating any remined or reaffected highwalls.

The court found that "a definition using the date of SMCRA's enactment more closely conforms to the Act and the court's earlier ruling on the issue" (*National Wildlife Federation*, Mem. Op. at 42, citing to *In re: Permanent Surface Mining Regulation Litigation II, Round I*, No. 79–1144, Mem. Op. (D.D.C. July 6, 1984, 21 Env't Rep. Cas. 1193)). Consequently, the court held that the date of enactment of SMCRA (August 3, 1977) "must be the time from which the temporal concepts of 'preexisting' and 'previous' are measured." (*Id.*, Mem. Op. at 50). With respect to the second issue, the court held that a "definition cannot stand that lets full reclamation be undone for a later partial effort. The definition must be rewritten to make this impossible." (*Id.*, Mem. Op. at 48). Accordingly, the court remanded "the definition of previously mined area to the Secretary to correct both of the flaws identified above." (*Id.*, Mem. Op. at 51).

OSM may not, because of the court's remand, use the existing Federal definition of "previously mined area" at 30 CFR 701.5 in evaluating the sufficiency of Ohio's proposed definition. Accordingly, OSM has evaluated the proposed amendment based upon its consistency with the appropriate provisions of SMCRA as interpreted by the court.

Based on the above and the court's remand of the Federal definition of "previously mined area" to "correct both of the flaws indentified" in the decision, the Director finds that to the extent Ohio's proposed definition of "previously mined area" (1) interprets or contemplates the temporal concept of "previously" as being any other date than August 3, 1977 (the date of enactment of SMCRA), or (2) allows lands which have once been fully and satisfactorily reclaimed to be remined and then only partially reclaimed, such definition is less stringent than the general provisions of SMCRA. The Director is, therefore, not approving Ohio's proposed definition of "previously mined area" at paragraph (HHHH) to the extent that the definition (1) interprets or contemplates the temporal concept of "previously" as being any other date than August 3, 1977, or (2) allows lands which have once been fully and satisfactorily reclaimed to be remined and then only partially reclaimed. In accordance with this Finding, the provisions at 30 CFR 935.12(a) and 935.16(a) are inconsistent with the recent court decision and should be deleted. The Director will, pursuant to 30 CFR 732.17(d), inform Ohio of regulatory changes needed to amend this definition.

(c) *Property to be mined.* Paragraph OAC 1501:13–1–02(MMMM) has been amended to mean the surface estates and mineral estates within the permit area. Also added to this definition is the statement that for areas covered by underground workings, property to be mined means the mineral estates to be mined and the surface estates. This language differs from the previous language in that the words "to be mined" have been deleted following the words "surface estates and mineral estates." The proposed revision clarifies that all surface and mineral estates within the permit area of a surface mine and the surface area covered by underground workings, will be included in the definition of "property to be mined."

Amendment to this definition was required by the Director in a final rule concerning Ohio program amendment No. 34 published in the Federal Register on December 22, 1988 (53 FR 51544). In that notice, the Director found that with the inclusion of the words "to be mined" the definition could be less effective than the counterpart Federal definition at 30 CFR 701.5 with respect to surface mines (and, possibly the face-up areas of underground mines) because the excavation involved in such operations may well have a significant adverse effect on other mineral estates. Accordingly, the Director required Ohio to amend this definition to include all mineral estates which may be affected by the surface excavation associated with coal mining operations. Also in that notice, the Director acknowledged that the previous definition is no less effective than the Federal definition with respect to areas overlying proposed underground workings because the only mineral estates removed or altered in nature or composition would be those being mined. Therefore, Ohio's added language concerning underground workings is consistent with the Federal definition.

The proposed amendment satisfies the requirement at 30 CFR 935.16(b). The Director finds that the proposed definition of "property to be mined" is substantively identical to and no less effective than the Federal regulations.

2. OAC 1501:13–1–03 Restrictions on Financial Interests of Employees

Reclamation Board of Review: A new paragraph OAC 1501:13–1–03(C) has been added to require that members of the Ohio Reclamation Board of Review (RBR) recuse themselves from proceedings which may affect their direct or indirect financial interests. Old paragraph (C) has been redesignated accordingly.

In the Regulatory Reform II letter dated November 3, 1988, OSM notified Ohio that the Federal rules have been revised to require that members of multiple interest boards and commissions who perform a function or duty under SMCRA file statements of employment and financial interests. In addition, the new Federal rule at 30 CFR 705.4(d) requires that members of such boards and commissions must recuse themselves from proceedings that may affect their financial interests. OSM informed Ohio that its program should be amended to clarify that the provisions of the Ohio Revised Code (ORC) 1513.04 and OAC 1501:13–1–13 apply to the RBR. The Ohio definition of employee currently excludes this board.

Ohio added definitive language to paragraphs OAC 1501:13–1–03(F)(1), (G)(1), and (H), and added a new paragraph (C) which requires RBR members to recuse themselves from proceedings which may affect their direct or indirect financial interests. Paragraph (F)(1) is amended to add that members of the RBR are required to file a statement of employment and financial interests. Paragraphs (G)(1) and (H) are amended to include RBR members in the provisions for "when to file" and "where to file."

By letter dated August 11, 1989 (Administrative Record Number OH–1199), Ohio submitted to OSM revisions to the Ohio Revised Code (ORC) section 1513.05 which alter the composition of the RBR. The Statutory revisions to ORC 1513.05 were contained in Amended Substituted House Bill 399 and were signed by the Governor of Ohio on July 25, 1989. The effective date of this bill was October 24, 1989. OSM has reviewed these statutory changes concerning the RBR (55 FR 22913, June 5, 1990) (Administrative Record Number OH–1319). OSM has determined that,

based on those changes, the RBR is a multiple-interest board.

The proposed amendments to OAC 1501:13–1–03(C), and (F)(1), (G)(1), and (H) clarify how the provisions of ORC 1513.4 concerning conflict of interest, and OAC 1501:13–1–03 concerning restrictions on financial interests apply to members of the RBR. The Director finds, therefore, that the proposed amendments are substantively identical to and no less effective than the Federal rules at 30 CFR 705.4(d), 705.11(a), 705.13(a), and 705.15, respectively.

3. OAC 1501:13–4–14 Underground Permit Application Requirements for Reclamation and Operations Plans

(a) *Subsidence control plan.* Subsection OAC 1501:13–4–14(M) has been amended by deleting paragraph (M)(2)(d)(v), adding a new paragraph (M)(2)(d) and relettering subsequent paragraphs accordingly, and adding a citation to paragraph (M)(2) referencing the new paragraph (M)(2)(d).

In the Regulatory Reform II letter sent to Ohio on November 3, 1988, OSM informed Ohio of an amendment to 30 CFR 784.20(d). The language in this subsection of the Federal rules, which clarifies that the regulatory authority may require monitoring as part of the subsidence control plan, was previously codified as subparagraph (5) of former subsection (d) (now subsection (e)) and could be interpreted as not applying to areas where mining methods involving planned subsidence are to be used. Reorganization of this section eliminates this interpretive possibility. The Director informed Ohio that the Ohio rules had similar language which needed to be revised or clarified to indicate that Ohio has the authority to require monitoring as part of any subsidence control plan regardless of the type of mining proposed. The proposed amendment to delete old paragraph (M)(2)(d)(v) and to add new paragraph (M)(2)(d) addresses this concern. New paragraph (M)(2)(d) requires a description of monitoring, if any, needed to determine the commencement and degree of subsidence so that, when appropriate, other measures can be taken to prevent, reduce, or correct material damage in accordance with paragraph (D) of rule 1501:13–12–03 of the Administrative Code. Paragraph (M)(2)(b) was also amended to reference the addition of new paragraph (M)(2)(d).

Subsequent to Ohio's submission of proposed Program Amendment 39, Ohio submitted Revised Program Amendment 38 (Administrative Record Number OH 1198). Amendments proposed for Revised Program Amendment 38 would modify the Ohio subsidence rules so that the requirements to correct damage to surface lands are separated from the requirements to repair or compensate for damage to surface structures. This separation would render the proposed rules at OAC 1501:13–4–14(M)(2)(d) less effective than the counterpart Federal rules which encompass reference to the correction of material damage to both surface lands and to surface structures. Therefore, if revised Program Amendment #38 is approved, Ohio may need to revise the citation in this proposed amendment.

The Director finds that the amendments to 1501:13–4–14(M)(2) clarify that Ohio has the authority to require monitoring as part of any subsidence control plan regardless of the type of mining proposed. The proposed language is substantively identical to the Federal rules at 30 CFR 784.20(d). Proposed paragraph (M)(2)(d), refers to OAC 1501:13–12–03(D), which is Ohio's counterpart to 30 CFR 817.121(c). In the recent court decision of *National Wildlife Federation* v. *Lujan*, Nos. 87–1051, 87–1814 and 88–2788 (D.D.C. February 12, 1990), the U.S. District Court for the District of Columbia remanded 30 CFR 817.121(c)(2) to the Secretary with instructions to remove all language limiting an operator's obligation to correct or fully compensate the owner for any subsidence-caused material damage to structures. The court stated that section 102(b) of SMCRA intended to give owners " 'full protection' from mining operations." *Id.* Mem. Op. at 15. The Director finds, therefore, that the proposed rule at OAC 1501:13–4–14(M)(2)(d) is no less effective than the Federal rule at 30 CFR 784.20(d) to the extent that Ohio's rule does not rely on state law, contractual or otherwise, that would limit an operator's responsibility to fully correct or compensate for material damage to structures caused by subsidence.

(b) *Fish and wildlife plan.* Paragraph OAC 1501:13–4–14(R)(1)(a) is amended to correct the cited reference from (P)(2) to (R)(2). The Director finds that with this reference correction the rule at (R)(1)(a) remains no less effective than the Federal rules at 30 CFR 784.21(a)(1).

4. OAC 1501:13–5–01(E) Criteria for Approval or Denial of an Application

(a) *Endangered or threatened species.* Paragraph OAC 1501:13–5–01(E)(14) has been amended to require that no permit application be approved unless the Chief finds, based on information provided in the application or documented in the approval, that: The operations are not likely to jeopardize the continued existence of endangered or threatened species or are not likely to result in the destruction or adverse modification of their critical habitats as determined under the Endangered Species Act of 1973, as amended.

The proposed language differs from the previous language in that the words "would not affect" are deleted and replaced by the words "are not likely to jeopardize," and the words "are not likely to" have been added following the words "endangered or threatened species or." In addition, the words "as amended" have been added following the words "Endangered Species Act of 1973." Prior to the proposed amendment, the language of this rule was substantively identical to the counterpart Federal rule at 30 CFR 773.15(c)(10).

In a final rule notice published in the **Federal Register** on December 11, 1987 (52 FR 47357), OSM amended the Federal rules at 30 CFR 816.97(b) concerning endangered and threatened species. The amended rule requires that no surface mining activity shall be conducted which is likely to jeopardize the continued existence of endangered or threatened species listed by the Secretary or which is likely to result in the destruction or adverse modification of designated critical habitats of such species in violation of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). The rule also requires operators to promptly report the existence of such species within the permit area of which the operator becomes aware, and requires the regulatory authority to act on that information in specified ways. The Director stated that the reporting provision of the rule enables the regulatory authority to ensure compliance with the Endangered Species Act and with the Bald Eagle Protection Act.

The proposed amendment at OAC 1501:13–5–01(E)(14) has adopted language similar to the amended Federal rule at 30 CFR 816.97(b). Specifically, the use of the phrases "are not likely to jeopardize" and "are not likely to" in the proposed rule are applied in similar language and with similar intent as the language of 30 CFR 816.97(b).

The Director finds, therefore, that the proposed language at OAC 1501:13–5–01(E)(14) is no less effective than the Federal rules.

(b) *Remining—elimination of highwalls.* Paragraph OAC 1501:13–5–01(E)(18) has been added to require that no permit application be approved unless the Chief finds, based on information provided in the application or documented in the approval that: For

a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of paragraph (L)(3) of rule 1501:13–9–14, the site of the operation is a previously mined area as defined in rule 1501:13–1–02. The proposed language is substantively identical to the Federal regulations at 30 CFR 773.15(c)(12). As discussed in Finding 1(b) above, the Director is not approving Ohio's proposed definition of "previously mined area" at OAC 1501:13–1–02(HHHH). The Director finds, therefore, that the proposed rule at OAC 1501:13–5–01(E)(18) is no less effective than the Federal regulations at 30 CFR 773.15(c)(12) to the extent that the rule does not: (1) Interpret or contemplate the temporal concept of "previously" as being any other date than August 3, 1977, or (2) allow lands which have once been fully and satisfactorily reclaimed to be remined and then only partially reclaimed. The Director will, pursuant to 30 CFR 732.17(d), inform Ohio of regulatory changes needed to amend the definition of previously mined area.

5. OAC 1501:13–7–04 Self-Bonding

Ohio proposed to add new language to the self-bonding rules to allow the Chief to accept written non-parent corporate guarantees. The proposed changes include adding a new paragraph (D) and relettering subsequent paragraphs accordingly, and incorporating new language in paragraphs (E), (F)(2), (F)(4), (G), and (H).

(a) *Non-parent corporate guarantee.* New paragraph OAC 1501:13–7–04(D) has been added to state that the Chief may accept a written guarantee for an applicant's self-bond from any corporate guarantor when certain specified conditions are met. The Director finds that the proposed rule is substantively identical to and no less effective than the counterpart Federal rule at 30 CFR 800.23(c)(2).

(b) *Acceptance of non-parent corporate guarantee.* Paragraph OAC 1501:13–7–04(E), formerly paragraph (D), has been amended to add that for the Chief to accept a non-parent corporate guarantee, the total amount of the non-parent corporate guarantor's present and proposed self-bonds and guaranteed self-bonds shall not exceed 25 percent of the guarantor's tangible net worth in the United States. The Director finds that the language of the amendment is virtually identical to and no less effective than that of the counterpart Federal rule at 30 CFR 800.23(d).

(c) *Indemnity agreements.* Paragraph OAC 1501:13–7–04(F)(2), formerly paragraph (E)(2), has been amended by adding the words "non-parent" to the language of the rule to apply the rule to non-parent corporate guarantors. In addition to providing a copy of the indemnity agreement to the Chief, corporations applying for a self-bond, and parent and non-parent corporations guaranteeing an applicant's self-bond shall also submit an affidavit certifying that such an agreement is valid under all applicable Federal and State laws. Language has also been added to state that the guarantor shall provide a copy of the corporate authorization demonstrating that the corporation may guarantee the self-bond and execute the indemnity agreement. Paragraph (F)(4) has been amended to add that the rule also applies to non-parent corporate guarantors. The Director finds that the proposed amendments render the paragraph (F)(2) and (F)(4) substantively identical to and no less effective than the Federal rules at 30 CFR 800.23(e) (2) and (4).

(d) *Updating information.* Paragraph OAC 1501:13–7–04(G), formerly (F), has been amended to add that the rule also applies to non-parent corporate guarantors. The Director finds that this rule is virtually identical to and no less effective than the Federal rules at 30 CFR 800.23(f).

(e) *Changes in financial condition.* Paragraph OAC 1501:13–7–04(H), formerly (G), has been amended to add that the rule also applies to non-parent corporate guarantors. The Director finds that the language added to this rule is identical to and no less effective than the language in the counterpart Federal rule at 30 CFR 800.23(g) and can be approved.

6. OAC 1501:13–7–05 Release of Performance Bond

In the Regulatory Reform II letter sent to Ohio on November 3, 1988, OSM informed Ohio that the revised Federal rule at 30 CFR 800.40(a)(2) requires that public notices of bond release applications include the permittee's name. OSM also informed Ohio that it must amend its bond release procedures to include this information to be no less effective than the Federal rules. The proposed amendment satisfies the Director's concerns. The Director finds that the proposed amendment at OAC 1501:13–7–05(A)(3) is substantively identical to and no less effective than the Federal rules.

7. OAC 1501:13–9–11 Protection of Fish and Wildlife and Related Environmental Values

The language of paragraph (B)(1) has been amended as follows: The word "will" has been deleted from the end of the sentence. In paragraph (B)(1)(a), the word "jeopardize" has been deleted and replaced by the words "is likely to jeopardize." In paragraph (B)(1)(b), the word "result" is deleted and replaced by the words "is likely to result." Also in paragraph (b), the words "as amended" have been added following reference to the Endangered Species Act of 1973. In paragraph (B)(1)(c), the word "result" has been deleted and replaced by the words "will result."

In the Regulatory Reform II letter sent to Ohio on November 3, 1988, OSM informed Ohio that the Federal rules at 30 CFR 816.97(b) have been revised to prohibit the conduct of mining activities which "are likely to" (rather than "will") jeopardize the continued existence of any Federally-listed endangered or threatened species, or which "are likely to" (rather than "will") result in the destruction or adverse modification of designated critical habitats for such species. OSM also informed Ohio that it must amend its program to be no less effective than the Federal rules. The proposed amendment satisfies the Director's concerns. The Director finds that the proposed amendments at OAC 1501:13–9–11(B)(1) and (B)(1) (a), (b), and (c) are substantively identical to and no less effective than the Federal rules.

8. OAC 1501:13–14–06 Individual Civil Penalties

In the Regulatory Reform II letter sent to Ohio on November 3, 1988, OSM noted that the Ohio rules do not contain a counterpart to the Federal rules concerning individual civil penalties. OSM also stated that Ohio would have to revise its program to be no less effective than the Federal rules. In response, Ohio added the proposed rules at OAC 1501:13–14–06 concerning individual civil penalties.

(a) *Definitions.* Subsection 1501:13–14–06(A) adds the definitions of "knowingly," "violation," "failure or refusal," and "willfully." In the Regulatory Reform II letter sent to Ohio, OSM stated that Ohio would need to adopt definitions of these terms that are no less effective than those in the Federal regulations at 30 CFR 846.5, or demonstrate that existing state provision are no less inclusive or effective than the Federal definitions. OSM also stated that the definition of "violation, failure or refusal" must include imminent harm cessation orders, notices of violations, failure-to-abate cessation orders, orders to show cause why a permit should not be suspended or revoked, and orders in connection with a civil action for relief. Ohio has adopted definitions which are

substantively identical to the counterpart Federal rules at 30 CFR 846.5. The Director finds that the proposed rules at 1501:13–14–06(A) are no less effective than the Federal rules.

(b) *When individual civil penalties may be assessed.* Ohio has added 1501:13–14–06(B) to state that the Chief may assess an individual civil penalty against any corporate director, officer, or agent of a corporate permittee who knowingly and willfully authorized, ordered or carried out a violation, failure or refusal. Ohio has added 1501:13–14–06(C) to state that the Chief shall not assess an individual civil penalty in situations resulting from a permit violation by a corporate permittee until a cessation order has been issued, and the order has remained unabated for 30 days. The Director finds that the rule is substantively identical to and no less effective than the Federal rules at 30 CFR 846.12.

(c) *Amount of penalty.* Ohio has added 1501:13–14–06(D) to require the Chief, when determining the amount of an individual civil penalty, to consider the criteria specified in division (F)(1) of section 1513.02 of the Revised Code, including the following: The individual's history of authorizing, ordering, or carrying out previous violations, failures or refusals at the particular surface coal mining operation; the seriousness of the violation, failure or refusal, including any irreparable harm to the environment and any hazard to the health or safety of the public; and the demonstrated good faith of the individual charged in attempting to achieve rapid compliance after receipt of the notice of the violation, failure or refusal. In administrative record information dated February 20, 1990, submitted in support of Program Amendment Number 39R, Ohio stated that, when determining the amount of an individual civil penalty, the seriousness of the violation will "be judged in terms of the degree of environmental harm and the extent of damage." The proposed rule also states that the penalty shall not exceed $5,000 for each violation, and that each day a violation remains unabated, another $5,000 violation may be assessed.

The proposed rule satisfies the OSM's concern as expressed in the November 3, 1988, Regulatory Reform II letter sent to Ohio. In that letter, OSM said Ohio would need to revise its rules to consider the criteria set forth in section 518(a) of SMCRA, and that Ohio must provide for a penalty of up to $5,000 for each violation and must be able to deem each day of a continuing violation a separate violation for which a separate individual civil penalty may be assessed. The Director finds that the proposed rule is substantively identical to and no less effective than the Federal rules at 30 CFR 846.14.

(d) *Procedure for assessment of civil penalty.* In the Regulatory Reform II letter OSM sent to Ohio on November 3, 1988, OSM stated that Ohio needs to revise its program to provide the same extent of notice to individuals concerning individual civil penalties as is provided for in 30 CFR 846.17(a). In addition, OSM said that Ohio needs to include effective dates for assessments and standards for service no less effective than those established in 30 CFR 846.17 (b) and (c).

The proposed amendment at 1501:13–14–06(E) has addressed these concerns by adopting the following rules. At paragraph 1501:13–14–06(E)(1), the rule requires that for every imminent harm cessation order or failure-to-abate cessation order issued by the Chief, the Chief shall immediately serve on each individual to be assessed an individual civil penalty, a notice of proposed individual civil penalty assessment, including a narrative explanation of the reasons for the penalty, the amount to be assessed, and a copy of any underlying notice of violation and cessation order. The Federal regulations concerning individual civil penalties were approved by the Secretary on February 8, 1988 (53 FR 3664–3676). In discussing the Federal regulations at 30 CFR 846.12 (a) and (b), the Secretary stated that the regulations clearly establish OSM's policy of assessing an individual civil penalty as an alternative enforcement mechanism which OSM will consider using when a cessation order has been issued to the corporate permittee for an underlying violation and the cessation order has remained unabated for 30 days (53 FR 3668). The Director finds that the proposed rule at 1501:13–14–06(E)(1) is substantively identical to and no less effective than the Federal rules at 30 CFR 846.17(a).

The proposed rule at 1501:13–14–06(E)(2) requires that the notice of proposed individual civil penalty assessment shall become a final order 30 days after service on the individual unless (1) the individual files within 30 days a notice of appeal to the Reclamation Road of Review, in accordance with § 1513.13 of the Revised Code; or (2) the Chief and the individual or responsible corporate permittee agree within 30 days of service to a schedule or plan for the abatement or correction of the violation, failure or refusal.

The Director finds that the proposed rule at 1501:13–14–06(E)(2) is substantively identical to and no less effective than the counterpart Federal rules at 30 CFR 846.17(b).

The proposed rule at 1501:13–14–06(E)(3) states that for purposes of paragraphs 1501.13–14–06 (E)(1) to (E)(2), service is sufficient if it would satisfy the requirements of 1501.13–14–02(D). The Director finds that the proposed rule is substantively identical to and no less effective than the Federal rules at 30 CFR 846.17(c).

(e) *Payment of penalty.* In the Regulatory Reform II letter OSM sent to Ohio on November 3, 1988, OSM stated that Ohio must revise its rules to include payment dates not less effective than the Federal rules at 30 CFR 846.18(a) through (c). Where an abatement agreement exists, OSM stated that Ohio should provide in its rules for withdrawal of the penalty if abatement or compliance is satisfactory. Ohio responded by submitting proposed rules 1501.13–14–06 (F), (G) and (H).

Paragraph 1501.13–14–06(F) states that if a notice of proposed individual civil penalty assessment becomes a final order in the absence of a petition for review or abatement agreement, the penalty shall be due upon issuance of the final order. The Director finds that this rule is identical to and no less effective than the counterpart Federal rules at 30 CFR 846.18(a).

Paragraph 1501.13–14–06(G) requires that if an individual named in a notice of proposed individual civil penalty assessment files a notice of appeal in accordance with § 1513.13 of the Revised Code, the penalty shall be due upon issuance of a final administrative order affirming, increasing, or decreasing the proposed penalty. The Director finds that the proposed rule is substantively identical to and no less effective than the counterpart Federal rule at 30 CFR 846.18(b).

Paragraph 1501.13–14–06(H) states that where the Chief and the corporate permittee or individual have agreed in writing on a plan for the abatement of or compliance with the unabated notice of violation or cessation order, an individual named in a notice of proposed civil penalty assessment may postpone payment until receiving either a final order from the Chief stating that the penalty is due on the date of such final order, or written notice that abatement or compliance is satisfactory and the penalty has been withdrawn. The Director finds that the proposed rule is substantively identical to and no less effective than the counterpart Federal rule at 30 CFR 846.18(c).

In the Regulatory Reform II letter of November 3, 1988, OSM noted that the new Federal rule adopted at 30 CFR

846.18(d) reflects requirements placed on OSM by the Debt Collection Act of 1982 and that Ohio need not adopt a counterpart to this rule. Ohio has proposed the rule at 1501.13–14–06(I) which requires that following the expiration of 45 days after the individual civil penalty is payable, any delinquent penalty shall be certified to the attorney general for collection. The Director finds that the proposed rule is not inconsistent with the Federal rules and can be approved.

9. OAC 1501:13–9–11 Protection of Fish, Wildlife, and Related Environmental Values

In the Regulatory Reform II letter dated November 3, 1988, OSM informed Ohio that a new Federal rule at 30 CFR 816.97(e)(4) requires all operators to fence, cover, or use other appropriate methods to exclude wildlife from ponds that contain hazardous concentrations of toxic-forming materials, and that Ohio will need to revise its program accordingly.

Ohio responded by submitting Administrative Record information in lieu of amending rule 1501.13–9–11 (Administrative Record No. OH–1174). Ohio submitted the documents to demonstrate that the Ohio program is no less effective than the Federal regulations without adopting language similar to that at 30 CFR 816.97(e)(4) which requires the fencing or covering of ponds containing hazardous concentrations of toxic-forming materials.

OSM's rule at 30 CFR 816.97(e)(4) was adopted on December 11, 1987 (52 FR 47352). The new rule was added in response to a ruling by the District Court for the District of Columbia on October 1, 1984, which found that the Secretary had not justified the deletion of the predecessor of the current rule. *In re: Permanent Surface Mining Regulation Litigation II, No. 79–1144 (D.D.C. 1984).* OSM had deleted the rule (816.97(d)(3)) on June 30, 1983 (48 FR 30312) on the basis that there is little evidence of specific damage to wildlife as a result of unprotected toxic ponds on the site of any mining operations. OSM reasoned that in the event that there is a local problem with fish and wildlife being adversely affected by toxic ponds, the regulatory authority will have the authority under 30 CFR 816.97(a) to require the operator to use whatever method is consistent with the requirement to use the best technology currently available to exclude wildlife from those ponds, including fencing.

In requiring OSM to reinstate the rule, the Court found that OSM did not address evidence put forth by public comment which asserted that wildlife, and people who consume that wildlife, could be injured by the deletion of the fencing requirement. The Court also found that 30 CFR 816.97(a), which OSM argued would provide the regulatory authority the authority to require fencing if it was needed, does nothing but restate the statutory standard contained in SMCRA at section 515(b)(24). The Court said that 30 CFR 816.97(a) does not provide the regulatory authority with any guidance as to how or in what situations this requirement should be implemented.

In justification of its position not to amend its program, Ohio submitted administrative record information that contains the following assertions: (1) There is no evidence to indicate that wildlife in Ohio have been harmed by drinking water in sedimentation ponds. This assertion is supported by the Ohio Division of Wildlife; (2) The potential for alkaline drainage resulting from coal mining operations in Ohio is virtually non-existent; (3) There are numerous sources of safe drinking water available for wildlife; and (4) The fencing around ponds may pose a greater hazard to wildlife than the water from which it is intended to be protected.

The administrative record information supplied by Ohio does not fully address the issue. Ohio asserts that there is no evidence to indicate that wildlife in Ohio have been harmed by drinking water in sedimentation ponds. The Court found, when considering a similar argument put forth by OSM, that this observation cannot justify deletion of the fencing requirements.

Ohio also asserted that, based on Ohio's geologic conditions and a review of monitoring data, that the potential for alkaline drainage resulting from coal mining operations in Ohio is virtually non-existent. Ohio has not submitted administrative record information, however, concerning the possibility of hazardous concentrations of toxic-forming materials from other sources such as acid mine drainage and the leaching of contaminants from waste piles. Ohio has also not addressed the potential threat to people who may consume wildlife which may have consumed water from a toxic pond.

Ohio has asserted that fencing around sedimentation ponds may pose a greater hazard to wildlife than the water from which it is intended to protect. It is true that fencing can pose a hazard to wildlife. The Federal rule, however, does not exclusively require fencing, but requires operators, to the extent possible using the best technology currently available, to fence, cover, or use other appropriate methods to exclude wildlife from the ponds.

The Court also found that 30 CFR 816.97(a) alone, which requires operators to minimize disturbances to fish and wildlife, by using the best technology currently available, does not provide the regulatory authority with any guidance as to how or in what situations this requirement should be implemented. The proposed Ohio rule has a similar deficiency. OAC 1501:13–9–11(A) requires operators to minimize disturbances to fish and wildlife by using the best technology currently available. Without the fencing rule, persons conducting coal mining operations in Ohio would not have any clear guidance as to how or in what situations this requirement should be implemented.

The Director finds, after a careful review of the administrative record information provided by Ohio on March 20, 1989, that the Ohio program at OAC 1501:13–9–11, without a counterpart to the Federal rules at 30 CFR 816.97(e)(4) is less effective than the Federal rules. Therefore, the Director is requiring that Ohio amend its program to be no less effective than the Federal rules at 30 CFR 816.97(e)(4).

IV. Disposition of Comments

Public Comments

The Public Comment period and opportunity to request a public hearing concerning Program Amendment Number 39 announced in the March 20, 1989, **Federal Register** ended on April 19, 1989. One public comment was received and is addressed below. The public comment period and opportunity to request a public hearing concerning Revised Program Amendment Number 39R announced in the March 12, 1990, **Federal Register** ended on April 11, 1990. No public comments were received. The scheduled public hearings were not held as no one requested an opportunity to provide testimony.

The Ohio Mining and Reclamation Association objected to the proposed amendment that would require members of Ohio's Reclamation Board of Review (RBR) to file statements of employment and financial interest annually. The comment stated that the RBR is a body with several members of the board having qualifications in specialties such as agronomy and earth moving. The commenter asserted that the RBR is not covered under the requirements of Federal law or regulations, or the Ohio law, that would require them to file financial disclosure and statements.

OSM disagrees. As discussed in Finding 2, OSM informed Ohio that the Federal rules have been revised to require that members of multiple interest boards and commissions who perform a function or duty under SMCRA file statements of employment and financial interests, and recuse themselves from proceedings that may affect their financial interests. Ohio's RBR is created under ORC section 1513.05, consists of seven members appointed by the governor, and has the duty of reviewing decisions concerning appeals filed by persons having an interest that is or may be adversely affected by a notice of violation, order, or decision by the Chief of the Division of Reclamation. As discussed in Finding 2, OSM has determined that the RBR is a multiple-interest board which has a function or duty under SMCRA, and its member should be required to file disclosures of financial interests and to recuse themselves from proceedings which may affect their financial interests.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Ohio program. No substantive comments were received.

V. Director's Decision

Based on the above findings, the Director is approving Program Amendment Number 39R, as originally submitted by Ohio as Program Amendment Number 39 on March 1, 1989, and revised and resubmitted as Program Amendment Number 39R on February 22, 1990, with the exceptions noted below. As discussed in Finding 1(b), the Director is not approving the proposed definition of "previously mined area" at OAC 1501:13–1–02(HHHH) to the extent that the definition is inconsistent with the court decision discussed in that finding. As discussed in Finding 4(b), the Director is approving Ohio's proposed rule at OAC 1501:13–5–01(E)(18) to the extent that the rule does not (1) interpret or contemplate the temporal concept of "previously" as being any other date than August 3, 1977, or allow lands which have once been fully and satisfactorily reclaimed to be remined and then only partially reclaimed. As discussed in Finding 3(a), the Director is approving Ohio's proposed rule at OAC 1501:13–4–14(M)(2)(d) to the extent that the rule does not rely on state law, contractual or otherwise, that would limit an operator's responsibility to fully correct or compensate for material damage to structures caused by subsidence. As discussed in Finding 9, the administrative record information submitted on March 20, 1989, which was intended to demonstrate that the Ohio program is no less effective than the Federal progam at 30 CFR 816.97(e)(4) is not approved. Also as discussed in Finding 9, the Director is requiring that Ohio amend its program to require that operators fence, cover, or use appropriate methods to exclude wildlife from ponds than contain hazardous concentrations of toxic forming materials.

As explained in Finding 1(c), this amendment satisfies the requirement at 30 CFR 935.16(b) (53 FR 51550, December 22, 1988). Also, as explained in Finding 1(b) the provisions at 30 CFR 935.12(a) and 935.16(a) are inconsistent with the court decision and should be deleted.

The Federal rules at 30 CFR part 935 codifying decisions concerning the Ohio program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs to the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Ohio program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Ohio of only such provisions.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no such provisions and that EPA concurrence is, therefore, unnecessary.

VI. Procedural Determinations

National Environmental Policy Act

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

Executive Order 12291 and the Regulatory Flexibility Act

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

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

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the OMB under 44 U.S.C. 3507.

List of Subject in 30 CFR Part 935

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

Dated: September 10, 1990.

Carl C. Close,

Assistant Director, Eastern Field Operations.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for part 935 continues to read as follows:

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

§ 935.12 [Removed and Reserved]

2. In § 935.12, paragraph (a) is removed and reserved.

3. In § 935.15, paragraph (ss) is added to read as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(ss) With the exception of the proposed amendment at OAC 1501:13–1–02(HHHH) concerning the definition of "previously mined area" which is less stringent than the general provisions of SMCRA, and the administrative record information submitted in lieu of a rule concerning excluding wildlife from toxic ponds which is less effective than the Federal regulations at 30 CFR 816.97(e)(4), the following amendment, as submitted to OSM on March 1, 1989, and revised and resubmitted on February 22, 1990, is approved effective September 18, 1990. Revised Program Amendment Number 39, which consists of revisions to the following rules of chapter 1501 of the Ohio Administrative Code (OAC): 13–1–02, 13–1–03, 13–4–14, 13–5–01, 13–7–04, 13–7–05, and 13–9–11, and adds a new rule at 13–14–06.

4. In § 935.16, paragraph (b) is removed and reserved and paragraph (a) is revised to read as follows:

§ 935.16 Required regulatory program amendments.

* * * * *

(a) By March 1, 1991, Ohio shall amend OAC 1501:13–9–11 to require that all operators fence, cover, or use other appropriate methods to exclude wildlife from ponds that contain hazardous concentrations of toxic-forming materials.

* * * * *

[FR Doc. 90–22013 Filed 9–17–90; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 515

Removal From List of Specially Designated Nationals (Cuba)

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

ACTION: Notice of removal from the list of specially designated nationals (Cuba).

SUMMARY: This notice removes Sergio Garcia Palacios and Corporacion Mexicana de Asesoria, both of Mexico, from the list of Specially Designated Nationals under the Treasury Department's Cuban Assets Control Regulations (31 CFR part 515). Deletion of Sergio Garcia Palacios and Corporacion Mexicana de Asesoria is based upon a determination that they are not specially designated nationals of Cuba.

EFFECTIVE DATE: September 18, 1990.

FOR FURTHER INFORMATION CONTACT: Richard J. Hollas, Chief, Enforcement Division, Office of Foreign Assets Control. Tel: (202) 566–5021. Copies of the list of Specially Designated Nationals are available upon request at the following location: Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

SUPPLEMENTARY INFORMATION: Pursuant to the Cuban Assets Control Regulations (31 CFR part 515), Corporation Mexicana de Asesoria, located at Reforma No. 116–805, Col. Juarez, Mexico, and Sergio Garcia Palacios, Mexico City, were listed in the **Federal Register** on November 29, 1989 (54 FR 49258). It has been determined that Corporacion Mexicana de Asesoria and Sergio Garcia Palacios are not "specially designated nationals" as defined in § 515.306 of the Regulations; and, therefore, they are removed from the list of Specially Designated Nationals.

Specially Designated Nationals of Cuba, Removals

The list of Specially Designated Nationals, December 10, 1986 (51 FR 44459), as amended on November 3, 1988 (53 FR 44397), January 24, 1989 (54 FR 3446), March 7, 1989 (54 FR 9431), April 10, 1989 (54 FR 32064), September 20, 1989 (54 FR 38810), October 31, 1989 (54 FR 45730), November 29, 1989 (54 FR 49258), January 26, 1990 (55 FR 2644), April 2, 1990 (55 FR 12172), June 18, 1990 (55 FR 24556) and August 1, 1990 (55 FR 31179) is amended by removing the names:

Corporacion Mexicana de Asesoria, Reforma No. 116–805, Col. Juarez, Mexico, D.F.

Garcia Palacios, Sergio, Mexico City

Dated: August 20, 1990.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: August 24, 1990.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 90–21987 Filed 9–13–90; 11:16 am]

BILLING CODE 4810–25–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–3832–1]

State Implementation Plans; Approval of Post-1987 Ozone and Carbon Monoxide Plan Revisions; Policy Clarification

AGENCY: Environmental Protection Agency.

ACTION: Final policy.

SUMMARY: In 1981 the Environmental Protection Agency (EPA) issued policy guidance on approval of ozone (O_3) and carbon monoxide (CO) State implementation plan (SIP) revisions under part D of the Clean Air Act (CAA). See 46 FR 7182 (January 22, 1981). In that notice, EPA included guidance requiring the use of "all possible control measures" in 1982 plans providing for long-term, post-1987 attainment. Taken out of context, it might appear that such guidance would now require post-1987 plans to include every conceivable control measure, including measures that would cause severe socioeconomic disruption. To clarify EPA's original intentions and to avoid any confusion relating to criteria for approving current State plans, today's notice revokes the provisions of the 1981 guidance requiring the use of all possible control measures.

EFFECTIVE DATE: This policy is effective September 18, 1990.

FOR FURTHER INFORMATION CONTACT: For additional information on this policy contact: John Silvasi, Office of Air Quality Planning and Standards, Environmental Protection Agency (MD–15), Research Triangle Park, North Carolina 27711, telephone (919) 541–5666.

SUPPLEMENTARY INFORMATION: The EPA's 1981 guidance described the contents of approvable plans for attainment of the O_3 and CO national ambient air quality standards (NAAQS) under section 172(a)(2) of the CAA. That section provides that areas that can show that they are unable to attain the relevant NAAQS by 1982, despite the implementation of all reasonably available measures, may submit plans demonstrating attainment of such standards by 1987.

In the 1981 guidance, EPA attempted to deal with areas with such severe air quality problems that, in SIP's that were to be submitted in 1982, States could not even demonstrate attainment of the relevant NAAQS by December 31, 1987,

the last date for attainment specified in the CAA. The EPA stated that in such cases, States should identify all "measures possible in a longer time frame that, together with the measures already evaluated, will result in attainment as quickly as possible after 1987." (Emphasis in original.) 46 FR 7188, col. 1. The EPA indicated that this would be preferable to preparing artificial SIP's that appeared to demonstrate attainment by 1987 through measures the State never really intended to implement.

As examples of the additional measures that States could employ to meet post-1987 attainment dates, EPA referred to the list of transportation control measures contained in section 108(f) of the CAA. The EPA indicated that States would have to meet a higher burden in SIP's designed for a post-1987 attainment date to demonstrate that any of the measures listed in section 108(f) were not reasonably available for implementation.

The EPA's 1981 guidance on planning for post-1987 attainment was intended to provide a framework for realistic planning that would produce attainment as quickly as realistically possible through implementation of reasonable control measures that could be developed over a six-year time period and implemented without undue socioeconomic disruption. However, the Court of Appeals for the Ninth Circuit recently relied upon this portion of EPA's 1981 guidance in concluding that after 1987 all O_3 and CO SIP's must provide for attainment "as soon as possible" using "every available control measure." See *Delaney* v. *EPA*, No. 88–7368, slip op. at 3644, April 11, 1990. The EPA has proposed an interpretation of this test that would not require measures with severely disruptive socioeconomic impacts, such as gas rationing and mandatory source shutdowns. However, the meaning of the Court's directive is not clear.

The EPA never intended that its 1981 guidance be interpreted to require the imposition of draconian control measures, nor to require immediate attainment after 1987 if only such measures could produce it. To avoid future misinterpretation of this guidance, EPA is today revoking those aspects of the 1981 guidance requiring the use of "all possible measures" after 1987.

The EPA instead believes that Federal and State post-1987 planning (pending enactment of new law on the subject) should attain the standard "as expeditiously as practicable," by a fixed date. Section 172(a)(2). The statute does not require measures that are absurd, unenforceable, or impracticable. Thus, after 1987, EPA equates its interpretation of the Ninth Circuit's standard in Delaney of attainment "as soon as possible" absent absurd, impossible, or unenforceable measures with the statutory test of attainment "as expeditiously as practicable."

Much of the general guidance in EPA's 1981 notice is still applicable to approval of current O_3 and CO SIP's. For example, until the CAA is amended as anticipated in light of current congressional consideration, O_3 and CO plans should continue to contain all reasonably available transportation control measures, including those listed in section 108(f), as necessary to provide for attainment as expeditiously as practicable. The EPA wishes to clarify only that its 1981 guidance should not be read as requiring nonattainment areas to impose severely disruptive measures calculated to produce immediate attainment. To this end, EPA is revoking those aspects of the guidance suggesting or stating that the plans for certain areas having difficulty attaining by 1987 "must demonstrate that all possible measures will be implemented . . ."

Specifically, EPA today revokes the following portions of its 1981 guidance: (1) 46 FR 7182, cols. 2–3, the section entitled "Attaining NAAQS After 1987"; (2) 46 FR 7185, col. 3, the final sentence beginning "If all measures * * *" through 7186, col. 1, the carryover paragraph ending "effective control measures"; and (3) 46 FR 7188, col. 1, the last full paragraph beginning "If implementation * * *" through col. 3, the carryover paragraph ending "attainment by 1987."

This policy action does not constitute rulemaking. The legal interpretations contained herein are not final, and hence are not subject to challenge as final action of the Administrator at this time. To the extent EPA relies on this policy guidance in taking any final action relating to State or Federal implementation plans in the future, EPA's interpretations of relevant law will be subject to legal challenge in the context of a challenge to the specific final action.

Dated: September 11, 1990.

William K. Reilly,

Administrator.

[FR Doc. 90–22048 Filed 9–17–90; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 81

[FRL–3829–3]

Designation of Areas for Air Quality Planning Purposes; Indiana

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: On March 3, 1988, (53 FR 6845) USEPA proposed to approve the redesignation of five townships in Marion County for sulfur dioxide (SO_2). Today, USEPA is taking final rulemaking action on the State's redesignation request for three of these townships; Lawrence, Warren, and Washington. USEPA's action is based upon a redesignation request which was submitted by the State.

EFFECTIVE DATE: This final rulemaking becomes effective on October 18, 1990.

ADDRESSES: Copies of the SIP revision, public comments on the notice of rulemaking, and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone E. Marie Huntoon at (312) 886–6034, before visiting the Region V Office.) U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Ms. E. Marie Huntoon, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION: Under section 107 of the Clean Air Act (Act), USEPA has designated certain areas in each State as not attaining National Ambient Air Quality Standards (NAAQS) for SO_2. For Indiana, see 43 FR 8962 (March 3, 1978), 43 FR 45993 (October 5, 1978), and 40 CFR 81.315. For these areas, Part D of the Act requires that the State revise its SIP to provide for attaining the primary NAAQS by December 31, 1982. These SIP revisions must also provide for attaining the secondary NAAQS as soon as practicable. The requirements for an approvable SIP are described in the "General Preamble" for part D rulemaking published at 44 FR 20372 (April 4, 1979), 44 FR 38583 (July 2, 1979), 44 FR 50371 (August 28, 1979), 44 FR 53761 (September 17, 1979), and 44 FR 67182 (November 23, 1979).

I. Background

On March 3, 1988, (53 FR 6845) USEPA proposed to approve the Indiana Sulfur Dioxide (SO_2) Plan for Marion County,

inter alia. This plan consisted of (1) The provisions and requirements in Indiana's general SO_2 rule 326 IAC 7–1 which had been approved or reinstated on January 19, 1988, (53 FR 1354), (2) the SO_2 emission limits in 326 IAC 7–1–2 applicable in Marion County, and (3) the site-specific SO_2 emission limits and other requirements in 326 IAC 7–1–9 (Marion County). On September 1, 1988, (53 FR 33808) USEPA took final rulemaking action to approve the Marion County SO_2 plan.

Background information for USEPA's previous rulemaking action is contained in the March 3, 1988, (53 FR 6845) and September 1, 1988, (53 FR 33808) Federal Register notices and will not be repeated here. The specific emission limitations and plan requirements for Marion County are also discussed in the March 3, 1988, notice.

II. Marion County Redesignation Request

In the March 3, 1988, proposal USEPA also proposed approval of Indiana's request to redesignate five townships (Franklin, Lawrence, Pike, Warren, and Washington Counties) in Marion County from nonattainment to attainment. USEPA proposed to approve the redesignation request provided the State submitted updated compliance information during the public comment period. USEPA stated that if the data was not submitted, or if the data showed that any source was out of compliance, then USEPA would disapprove the redesignation request without further proposal.

During the comment period, the Indiana Department of Environmental Management (IDEM) urged USEPA to approve the redesignation to attainment for Lawrence, Washington, and Warren Townships. Compliance data were submitted to support the redesignation of these three townships. IDEM also requested USEPA to withhold action on the redesignation of Pike and Franklin Townships until IDEM resolved all outstanding compliance issues. Once resolved, IDEM would then submit the needed compliance data to support redesignation of Pike and Franklin Townships.

III. USEPA Rulemaking Action

Based on the modeled attainment demonstration for Marion County which USEPA approved on September 1, 1988, ambient data which show no violations, and the compliance data submitted for Lawrence, Washington, and Warren Townships, USEPA hereby approves the redesignation of these three townships from nonattainment to attainment. USEPA concurs with the State's request to postpone the redesignation of Pike and Franklin Townships until such time as sufficient emission and compliance data to support the redesignation are available.

This redesignation today should not be interpreted as authorizing the State to delete, alter, or rescind any of the SO_2 emission limitations and restrictions contained in the approved SO_2 SIP. Any changes to the State's SO_2 regulations rendering them less stringent than those contained in the USEPA approved plan cannot become federally effective unless a revised plan for attainment and maintenance is submitted to and approved by USEPA. Unauthorized relaxations, deletions, and changes could result in both a finding of nonimplementation (section 173(b) of the Act) and in a SIP deficiency call made pursuant to section 110(a)(2)(H) of the Act.

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

This action has been classified as a Table Two action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989, (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table Two and Three SIP revisions (54 FR 2222) from the requirements of section 3 Executive Order 12291 for a period of 2 years.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 17, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas, Sulfur dioxide.

Dated: August 30, 1990.

Todd A. Cayer,

Acting Regional Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Title 40 of the Code of Federal Regulations, chapter I, part 81, is amended as follows:

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

Authority: 42 U.S.C. 7401–7642.

2. In § 81.315 the Indiana (SO_2) table is amended by revising the entry for "Marion County" to read as follows:

§ 81.315 Indiana.

* * * * *

INDIANA—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * *	*	*	*	*
Marion County:				
The area included within Lawrence, Washington, and Warren Townships..				X
The remainder of Marion County	X			
* * *	*	*	*	*

* * * * *

[FR Doc. 90-21384 Filed 9-17-90; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

46 CFR Part 503

[Docket No. 90-17]

Public Information

AGENCY: Federal Maritime Commission.
ACTION: Final rule.

SUMMARY: The Federal Maritime Commission ("Commission") amends its rules regarding public access to records of the Commission. These amendments update and clarify the Commission rules to reflect current agency organization and practice. The amendments also will serve to clarify when Freedom of Information Act procedures apply to record requests.

EFFECTIVE DATE: September 18, 1990.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Room 11101, Washington, DC 20573-0001, (202) 523-5725.

SUPPLEMENTARY INFORMATION: Part 503 of title 46 Code of Federal Regulations contains the Commission's rules and regulations regarding dissemination of public information. Included in these rules is a description of records of the Commission that are available to the public and the procedures for obtaining access to such records. The existing rules need to be made more current, particularly with respect to agency organization and practice, and to make clear when the Freedom of Information Act procedures apply. To this end the Commission published a notice of proposed rulemaking (55 FR 29071; July 17, 1990).

No comments were submitted to the Proposed Rule. The Commission, accordingly, has determined to adopt the Proposed Rule as final, with one minor clarification. A discussion of the rule changes follows.

Existing §§ 503.24 and 503.25 are consolidated into a single revised § 503.31. This amendment deletes any reference to the Commission's Communication Center which no longer exists and updates the list of records which are routinely available in the Office of the Secretary. It also clarifies that those listed records are available without any requirement for a written request, but that availability may be delayed for records which have been sent to archives. The proposed amendment is clarified to indicate that the provisions of this section do not apply to requests for docket materials which are the subject of a protective order. Requests for such materials must be pursuant to § 503.33.

Section 503.32 presently contains a list of records that are available through the Office of the Secretary upon written request. This rule clarifies that those records are available without resort to the Freedom of Information Act procedures.

Section 503.33 is revised to clarify that requests for any Commission records not covered in §§ 503.31 and 503.32 must be made pursuant to a Freedom of Information Act request. The present listing of categories of records subject to this provision is deleted. This listing is incomplete and, in some respects, outdated. Moreover, no purpose is served by attempting to list categories of records subject to this provision because it applies to all records not previously listed.

Part 503 also contains rules implementing the Government in the Sunshine Act. Amendment of these rules is necessary to reflect current Commission organization. To this end, § 503.74 is amended to include the Managing Director of the Commission in the listing of Commission personnel who may request the closure of a Commission meeting under the Sunshine Act. While the Managing Director was included in this listing when the rule was originally adopted in 1977 (42 FR 12047; March 2, 1977) the reference was removed in 1984 when the rule was republished (49 FR 44411; November 6, 1984). At that time the position of Managing Director did not exist.

The Federal Maritime Commission has determined that this Final Rule is not a "major rule" as defined in Executive Order 12291, 46 FR 12193, February 27, 1981, because it will not 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 effect on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Chairman of the Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, that this Final Rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental jurisdictions.

List of Subjects in 46 CFR Part 503

Classified information, Freedom of Information Act, Privacy, Sunshine Act.

Part 503 of 46 CFR is amended as follows:

PART 503—[AMENDED]

1. The authority citation for part 503 continues to read as follows:

Authority: 5 U.S.C. 552, 552a, 552b, 553; E.O. 12356, 47 FR 14874, 15557, 3 CFR 1982 Comp., p. 167.

§§ 503.24 and 503.25 [Removed]

2. Sections 503.24 and 503.25 are removed and the heading of subpart D, § 503.31, the introductory text of § 503.32, and § 503.33 are revised to read as follows:

Subpart D—Procedure Governing Availability of Commission Records—Freedom of Information Act

§ 503.31 Records available at the Office of the Secretary.

The following records are available for inspection and copying at the Federal Maritime Commission, Office of the Secretary, Washington, DC 20573, without the requirement of a written request. Access to requested records may be delayed if they have been sent to archives.

(a) Proposed and final rules and regulations of the Commission including general substantive rules and statements of policy and interpretations.

(b) Rules of Practice and Procedure.

(c) Reports of decisions (including concurring and dissenting opinions), orders and notices in all formal proceedings and pertinent correspondence.

(d) Official docket files (transcripts, exhibits, briefs, etc.) in all formal proceedings,[1] except for materials which are the subject of a protective order.

(e) Correspondence to or from the Commission or Administrative Law Judges concerning docketed proceedings.

(f) Press releases.

(g) Approved summary minutes of Commission actions showing final votes, except for minutes of closed Commission meetings which are not available until the Commission publicly

[1] Copies of transcripts may be purchased from the reporting company contracted for by the Commission. Contact the Office of the Secretary for the name and address of this company.

announces the results of such deliberations.

(h) Annual reports of the Commission.

§ 503.32 Records generally available.

The following Commission records are generally available for inspection and copying, without resort to Freedom of Information Act procedures, upon request in writing addressed to the Office of the Secretary:

* * * * *

§ 503.33 Other records available upon written request under the Freedom of Information Act.

(a) A member of the public who requests permission to inspect, copy or be provided with any Commission records not described in §§ 503.31 and 503.32 shall:

(1) Submit such request in writing to the Secretary, Federal Maritime Commission, Washington, DC 20573. Any such request shall be clearly marked on the exterior with the letters FOIA; and

(2) Reasonably describe the record or records sought.

(b) The Secretary shall evaluate each request in conjunction with the official having responsibility for the subject matter area and the General Counsel, and the Secretary shall determine whether or not to grant the request in accordance with the provisions of §§ 503.34 and 503.35.

§ 503.74 [Amended]

3. In § 503.74, paragraph (a) is amended by adding a comma after the phrase "any member of the agency" and inserting the words "the Managing Director."

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 90-21936 Filed 9-17-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-529; RM-6947]

Radio Broadcasting Services; Wynne, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 223C3 for Channel 224A at Wynne, Arkansas, and modifies the Class A license issued to East Arkansas Broadcasters, Inc. for Station KWYN-FM, as requested, to specify operation on the higher powered channel, thereby providing that community with its first expanded coverage FM service. See 54 FR 50002, December 4, 1989. Coordinates for Channel 223C3 at Wynne are 35-11-59 and 90-43-23. With this action, the proceeding is terminated.

EFFECTIVE DATE: October 29, 1990.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-529, adopted August 24, 1990, and released September 13, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Arkansas, is amended for Wynne, by removing Channel 224A and adding Channel 223C3.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-22052 Filed 9-17-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-424; RM-6868]

Radio Broadcasting Services; Holmes Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of 98.7 Partnership, substitutes Channel 254C3 for Channel 254A at Holmes Beach, Florida, and modifies the construction permit for Station WAPY-FM to specify operation on the higher powered channel. *See* 54 FR 41126, October 5, 1989. Channel 254C3 can be allotted to Holmes Beach in compliance with the minimum distance separation requirements of the Commission's Rules with a site restriction of 16.3 kilometers (10.1 miles) north. The site restriction is necessary to avoid a short-spacing to Station WKTK(FM), Channel 253C, Crystal River, Florida, and Station WKGR(FM), Channel 254C, Fort Pierce, Florida. The coordinates for this allotment are North Latitude 27-39-39 and West Longitude 82-42-34. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 29, 1990.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-424, adopted August 24, 1990, and released September 13, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by removing Channel 254A and adding Channel 254C3 at Holmes Beach, Florida.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-22053 Filed 9-17-90; 8:45 am]

BILLING CODE 6712-01-M

PANAMA CANAL COMMISSION

48 CFR Parts 3509, 3513, 3514, 3525, and 3528

RIN 3207-AA10

Acquisition Regulation; Establishment of Chapter; Correction

AGENCY: Panama Canal Commission.

ACTION: Final rule; correction.

SUMMARY: The Panama Canal Commission is correcting the final rule

published in the Federal Register on March 2, 1990 (55 FR 7634) to reflect revisions necessitated by Federal Acquisition Circular (FAC) 84–53, which redesignated FAR subsection 28.202–1 as new section 28.202 and also revised the heading of the new redesignated section to "Acceptability of corporate sureties." This action also makes several editorial corrections of a nonsubstantive nature. The changes will have no impact on the public.

EFFECTIVE DATES: March 2, 1990.

FOR FURTHER INFORMATION CONTACT: Barbara A. Fuller, Assistant to the Secretary for Commission Affairs, Panama Canal Commission, telephone number 202/634–6441, or Jim Doyle, Assistant Procurement Executive, telephone in Balboa, Republic of Panama, 011/507–52–7511.

In rule document 90–4360 beginning on page 7634 in the issue of Friday, March 2, 1990, make the following corrections:

3509.406–3 [Corrected]

1. On page 7643, in the third column, in section 3509.406–3(b)(1)(ii) introductory text, "Members" should read "members".

3513.201 [Corrected]

2. On page 7647, in the second column, in section 3513.201(a)(2), remove "and" following the semicolon at the end of the paragraph.

3514.201–6 [Corrected]

3. On page 7647, in the 3rd column, in section 3514.201–6(c), in the 10th line, after "other" insert a semicolon.

3525.102 [Corrected]

4. On page 7654, in the first column, in section 3525.102, in the second line, after "supplies" insert a comma.

3528.201 [Corrected]

5. On page 7657, in the first column, in section 3528.201(a), at the end of the paragraph, "3528.202–1(b)" is revised to read "3528.202(b).

3528.202 [Removed]

6. On the same page, in the same column, remove section 3528.202.

3528.202–1 [Redesignated as 3528.202 and Corrected]

7. On the same page, in the same column, section 3528.202–1 is redesignated as section 3528.202. In newly redesignated section 3528.202, the section heading is revised to read "3528.202 Acceptability of corporate sureties" and, in paragraph (b), in the second line, "28.202–1(b)" is revised to read "28.202(b)".

3537.206 [Corrected]

8. On page 7663, in the second column, in section 3537.206(c), in the ninth line, after "General Counsel;" insert "Chief Financial Officer;".

3552.236–76 [Corrected]

9. On page 7670, in the second column, in the clause to section 3552.236–76, remove paragraph (b) and redesignate existing paragraphs (c) through (h) as (b) through (g).

Dated: September 13, 1990.

Michael Rhode, Jr.,

Secretary.

[FR Doc. 90–22015 Filed 9–17–90; 8:45 am]

BILLING CODE 3640–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 91046–0006]

Groundfish of the Bering Sea and Aleutian Islands Subareas

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

ACTION: Notice of apportionment; request for comments.

SUMMARY: The Secretary of Commerce (Secretary) announces the apportionment of amounts of the reserve to domestic annual processing (DAP) operations for the Pacific Ocean perch complex (POP) in the Bering Sea (BS) subarea and to DAP operations for POP in the Aleutian Islands (AI) subarea. This action is necessary to promote optimum use of groundfish in the BSAI. It is intended to carry out the management objectives contained in the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands (FMP).

DATES: Effective from noon, Alaska local time (A.l.t.), September 12, 1990.

Comments are invited on or before September 27, 1990.

ADDRESSES: Comments should be mailed to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, or be delivered to room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: David R. Cormany, Resource Management Specialist, NMFS, 907–586–7229.

SUPPLEMENTARY INFORMATION: The FMP governs the groundfish fishery in the exclusive economic zone within the BSAI management area under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is implemented by regulations codified at 50 CFR 611.93 and part 675. Section 675.20(a)(1) of the implementing regulations establishes an optimum yield (OY) range of 1.4 to 2.0 million metric tons (mt) for all groundfish species in the BSAI management area. Total allowable catches (TACs) for target species and the "other species" category are specified annually within the OY range and apportioned by subarea under § 675.20(a)(2)(i). Under § 675.20(a)(3), 15 percent of the TAC for each target species and the "other species" category is placed in a reserve not designated by species or species group. Under § 675.20(b)(1)(i), the Secretary will apportion reserve amounts to a target species or to the "other species" category as needed, provided that the apportionments do not result in overfishing.

The initial 1990 TAC specified for POP in the BS subarea was 5,355 mt, all of which was apportioned to DAP (55 FR 1434, January 16, 1990). To date, no other apportionments have been made for DAP POP in the BS subarea, and the current TAC for management is 5,355 mt.

The initial 1990 TAC specified for POP in the AI subarea was 5,610 mt, all of which was apportioned to DAP (55 FR 1434, January 16, 1990). Later, an additional 3,000 mt from the reserve was apportioned to DAP (55 FR 32421, August 9, 1990) bringing the combined DAP POP TAC in the AI subarea to 8,610 mt.

Under § 675.20(b)(1)(i), the Secretary now finds that the DAP fisheries in the BS and AI subareas require an additional 4,945 mt of POP for the remainder of the year and apportions 945 mt from the reserve to DAP POP in the BS subarea and 4,000 mt from the reserve to DAP POP in the AI subarea. These apportionments result in a revised DAP POP TAC of 6,300 mt in the BS subarea and 12,610 mt in the AI subarea as listed in Table 1. These apportionments are consistent with § 675.20(a)(2)(i) and do not result in overfishing of POP because each revised TAC is less than or equal to the acceptable biological catch for POP in the respective subarea.

Classification

This action is taken under § 675.20 (b)(1)(i) and (a)(2)(i), and is in compliance with Executive Order 12291

The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and opportunity for comment or to delay the effective date of this notice. Immediate effectiveness of this notice is necessary to benefit U.S. fishermen participating in DAP POP operations who would otherwise be unnecessarily prohibited from fishing because of a premature closure. However, interested persons are invited to submit comments in writing to the previously cited address on or before September 27, 1990.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Recordkeeping and reporting requirements.

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

Dated: September 12, 1990.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

TABLE 1.—BEARING SEA/ALEUTIAN ISLANDS APPORTIONMENT OF TAC

[All values are in metric tons]

		Current	This action	Revised
Pacific Ocean perch complex (BS):				
ABC=6,300	DAP	5,355	+945	6,300
TAC=6,300	JVP	0	0	0
Pacific Ocean Perch complex (AI):				
ABC=16,000	DAP	8,610	+4,000	12,610
TAC=8,610	JVP	0	0	0
Total (BSAI):				
(TAC=2,000,000)	DAP	1,699,710	+4,945	1,704,655
	JVP	257,992	0	257,992
	RESERVES	42,298	−4,945	37,353

[FR Doc. 90–21947 Filed 9–12–90; 4:42 pm]
BILLING CODE 3510–22–M

50 CFR Part 675

[Docket No. 91046–0006]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Apportionment of reserve to DAP "Other Rockfish" and notice of closure to directed fishing in the Bering Sea subarea; request for comments.

SUMMARY: The Secretary of Commerce (Secretary) announces the apportionment of reserve to domestic annual processing (DAP) operations for "Other Rockfish" in the Bering Sea (BS) subarea. In addition, the Secretary is establishing a directed fishing allowance for "Other Rockfish" in the BS subarea and is prohibiting further directed fishing for "Other Rockfish" by vessels fishing in that area.

This action is necessary to ensure optimum use of groundfish while conserving "Other Rockfish" stocks. It is intended to carry out the management objectives contained in the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands (FMP).

DATES: Effective from 12 noon, Alaska Local Time (A.l.t.), September 12, 1990, through midnight, A.l.t., December 31, 1990.

Comments are invited on or before September 27, 1990.

ADDRESSES: Comments should be mailed to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. box 21668, Juneau, Alaska 99802, or be delivered to room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, NMFS, 907–586–7229.

SUPPLEMENTARY INFORMATION: The FMP governs the groundfish fishery in the exclusive economic zone within the Bering Sea and Aleutian Islands (BSAI) management area under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is implemented by regulations codified at 50 CFR 611.93 and part 675.

Section 675.20(a)(1) of the implementing regulations establishes an optimum yield (OY) range of 1.4 to 2.0 million metric tons (mt) for all groundfish species in the BSAI management area. Total allowable catches (TACs) for target species and the "other species" category are specified annually within the OY range and apportioned by subarea under § 675.20(a)(2).

Under § 675.20(a)(3), 15 percent of the TAC for each target species and the "other species" category is placed in a reserve, and the remaining 85 percent of the TAC for each target species and the "other species" category is apportioned between DAH and TALFF. The reserve is not designated by species or species group and any amount of the reserve may be apportioned to a target species or the "other species" category provided that such apportionments are consistent with § 675.20(a)(2)(i) and do not result in overfishing of a target species or the "other species" category.

Under § 675.20(b)(1)(i), the Secretary will apportion reserve amounts to a target species or to the "other species" category as needed, provided that the apportionments do not result in overfishing.

Under § 675.20(a)(8), if the Regional Director determines that the amount of a target species or "other species" category is likely to be reached, the Regional Director may establish a directed fishing allowance for that species or species group. In establishing a directed fishing allowance, the Regional Director shall consider the amount of that species or species group which will be taken as incidental catch in directed fishing for other species in the same subarea. If the Regional Director establishes a directed fishing allowance and that allowance is or will be reached, he will prohibit directed fishing for that species or species group in the specified subarea.

The initial 1990 TAC specified for "Other Rockfish" in the BS subarea is 425 mt (55 FR 1434, January 16, 1990), all of which was apportioned to DAP. Under § 675.20(b)(1)(i), the Secretary now finds that the DAP fishery in the BS subarea requires an additional 75 mt of "Other Rockfish" to continue operations. Therefore, the Secretary apportions 75 mt from the reserve to DAP "Other

Rockfish," resulting in a revised DAP "Other Rockfish" TAC of 500 mt in the BS subarea (see Table 1). This apportionment is consistent with § 675.20(a)(2)(i) and does not result in overfishing of "Other Rockfish," because the revised TAC is equal to the acceptable biological catch for "Other Rockfish" in the BS subarea.

The Regional Director is also establishing a directed fishing allowance of 450 mt for "Other Rockfish" in the BS subarea. The directed fishing allowance of 450 mt for "Other Rockfish" in the BS subarea will be reached on September 12.

Therefore, pursuant to § 675.20(a)(8), the Regional Director is prohibiting further directed fishing for "Other Rockfish" in the BS subarea effective 12 noon, A.l.t., September 12, 1990. After the effective date of this notice, in accordance with § 675.20(h)(2)(iii), amounts of "Other Rockfish" retained on board trawl vessels in the BS subarea at any time during the same trip must be less than 10 percent of the total amount of all sablefish and greenland turbot retained plus 1 percent of the total amount of other fish species. Under § 675.20(h)(5), any hook-and-line vessel in the BS subarea may only retain amounts of "Other Rockfish" at any time during a trip that are less than 20 percent of the amount of all other fish species retained at the same time on the vessel during the same trip.

Classification

This action is taken under §§ 675.20(a)(8), (b)(1)(i), (h)(2)(iii), and (h)(5), and is in compliance with Executive Order 12291.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment or to delay the effective date of this notice. Immediate effectiveness of this notice is necessary to benefit U.S. fishermen participating in DAP operations who would otherwise be prohibited from fishing unnecessarily due to a premature closure. However, interested persons are invited to submit comments in writing to the previously cited address on or before September 27, 1990.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Recordkeeping and reporting requirements.

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

Dated: September 12, 1990.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

TABLE 1.—BERING SEA/ALEUTIAN ISLANDS APPORTIONMENT OF TAC

[All values are in metric tons]

		Current	This action	Revised
"Other Rockfish"				
ABC=500;	(BS):			
TAC=425;	DAP	425	+75	500
Total (BSAI):	JVP	0	0	0
(TAC=2,000,000)	DAP	1,704,655	+75	1,704,730
	JVP	257,992	0	257,992
	Reserves	37,353	−75	37,278

[FR Doc. 90-21948 Filed 9-12-90; 4:42 pm]

BILLING CODE 3510-22-M

50 CFR Part 675

[Docket No. 91046-0006]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Notice of closure to directed fishing in the Bering Sea subarea; request for comments.

SUMMARY: The Secretary of Commerce (Secretary) announces the establishment of a directed fishing allowance for sablefish in the Bering Sea (BS) subarea and prohibits further directed fishing for sablefish by vessels using trawl gear in that area. This action is necessary to prevent the total allowable catch of sablefish in the Bering Sea from being exceeded before the end of the fishing year. The intent of this action is to ensure optimum use of groundfish while conserving sablefish stocks.

DATES: Effective from 12 noon, Alaska Local Time (A.l.t.), September 12, 1990, through midnight, A.l.t., December 31, 1990.

Comments are invited on or before September 27, 1990.

ADDRESSES: Comments should be mailed to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, or be delivered to room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Patsy A Bearden, Resource Management Specialist, NMFS, 907-586-7229.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Groundfish of the Bering Sea and Aleutian Islands Area (FMP) governs the groundfish fishery in the exclusive economic zone within the Bering Sea and Aleutian Islands (BSAI) management area under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and was implemented by regulations appearing at 50 CFR 611.93 and part 675.

Section 675.20(a)(1) of the implementing regulations establishes an optimum yield (OY) range of 1.4 to 2.0 million metric tons (mt) for all groundfish species in the BSAI management area. Total allowable catches (TACs) for target species and the "other species" category are specified annually within the OY range and apportioned by subarea under § 675.20(a)(2).

Under § 675.20(a)(8), if the Regional Director determines that the amount of a target species or "other species" category is likely to be reached, the Regional Director may establish a directed fishing allowance for that species or species group. In establishing a directed fishing allowance, the Regional Director shall consider the amount of that species or species group that will be taken as incidental catch in directed fishing for other species in the same subarea. If the Regional Director establishes a directed fishing allowance and that allowance is or will be reached, he will prohibit directed fishing for that species or species group in the specified subarea.

The initial 1990 TRAC for sablefish in the Bering Sea subarea was set at 2,295 metric tons (mt), of which the trawl-gear

share is 1,147 mt (55 FR 1435, January 16, 1990). All the sablefish in the Bering Sea subarea were apportioned to DAP.

With this action, the Regional Director is establishing a directed fishing allowance for trawl gear of 1,002 mt, effective September 12, 1990. The Regional Director has determined that this directed fishing allowance will be reached September 12, 1990. After the effective date of this notice, in accordance with § 675.20(h)(2)(i), amounts of sablefish retained on board trawl vessels in the Bering Sea subarea at any time during a trip must be less than 10 percent of the amount of all greenland turbot and rockfish retained at the same time on the vessel during the same trip; plus 1 percent of the total amount of other fish species retained at the same time by the vessel during the same trip.

Classification

This action is taken under §§ 675.20 (a)(8) and (h)(2)(i) and is in compliance with Executive Order 12291.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment on this notice or to delay its effective date. Immediate effectiveness of this notice is necessary to benefit U.S. fishermen participating in DAP operations who would otherwise be prohibited from fishing unnecessarily due to a premature closure. However, interested persons are invited to submit comments in writing to the previously cited address on or before September 27, 1990.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Recordkeeping and reporting requirements.

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

Dated: September 12, 1990.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-21949 Filed 9-12-90; 4:44 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 181
Tuesday, September 18, 1990

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

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2638

RIN 3209-AA07

Executive Agency Ethics Training Programs

AGENCY: Office of Government Ethics.

ACTION: Proposed rule.

SUMMARY: The Office of Government Ethics (OGE) is issuing a proposed new subpart G of 5 CFR part 2638 to require executive branch agencies to maintain a program of training designed to ensure that all their employees are aware of the Federal conflict of interest statutes and principles of ethical conduct in accordance with the training provisions of Executive Order 12674, Principles of Ethical Conduct for Government Officers and Employees. OGE, consistent with its authority under E.O. 12674 and the Ethics in Government Act, is issuing this proposed regulation to ensure uniformity of executive branch agency ethics training programs. As proposed, each agency's program would consist of initial ethics orientation for all of its employees coupled with an annual training requirement for specified employees in sensitive positions.

DATES: Comments must be submitted on or before November 17, 1990.

ADDRESSES: Comments should be sent to the Office of Government Ethics, Suite 500, 1201 New York Avenue NW., Washington, DC 20005-3917, Attention: Dr. Gilman.

FOR FURTHER INFORMATION CONTACT: Stuart Gilman or Ed Pratt, Office of Government Ethics, telephone (202/FTS) 523-5757; FAX (202/FTS) 523-6325.

SUPPLEMENTARY INFORMATION:

A. Substantive Discussion of the Proposed Executive Agency Ethics Training Programs Regulation

Section 301(b) of Executive Order 12674 of April 12, 1989 (3 CFR 1989 Compilation, at pp. 215-218), requires that executive branch agencies ensure that all of their employees review Executive Order 12674 and regulations promulgated thereunder. In addition, section 301(c) of that order requires that executive agencies coordinate with the Office of Government Ethics in developing annual agency ethics training plans. Annual training is to include mandatory annual briefings on ethics and standards of conduct for all employees appointed by the President, all employees in the Executive Office of the President, all officials required to file public or non-public (confindential) financial disclosure reports, all employees who are contracting officers and procurement officials, and any other appropriate agency employees as designated by the agency head.

An education program for agency employees concerning all ethics and standards of conduct matters has been required by title IV of the Ethics in Government Act of 1978, as amended (5 U.S.C. app. IV), as implemented by 5 CFR 2638.203(a)(3) and 2638.203(b)(6). However, this is a very general requirement which executive agencies generally have not implemented by regulation with any greater specificity. Accordingly, section 301(c) of Executive Order 12674 is designed to impose greater specificity as to how the training is to be administered by executive agencies by establishing a process by which agencies will develop annual ethics training plans in coordination with the Office of Government Ethics.

To carry out the ethics training provisions of the Executive order, OGE is issuing this proposed rule to be codified at a new subpart G of 5 CFR part 2638 of its regulations. A discussion of the four sections of this new subpart, as proposed, follows.

Section 2638.701 of this proposed regulation states that it is the responsibility of each executive branch agency to maintain a program of ethics training consisting of, as a minimum, initial ethics orientation for all of its employees and annual ethics training for specified categories of its employees in sensitive positions, as provided in E.O. 12674.

Proposed § 2638.702 of this new subpart details the ethics training responsibilities of each executive agency's designated agency ethics official, including furnishing each year to the Office of Government Ethics for its review a written plan for annual ethics training by the agency for the following calendar year and ensuring the availability of qualified individuals to provide annual ethics training.

Section 2638.703 of this subpart as proposed would require that within 60 days after the effective date of this subpart (once finally adopted), or within 60 days after each new employee enters on duty with the agency, whichever occurs later, each executive agency provide, as a minimum, each of its employees with one and a half hours of official duty time to review Part I of Executive Order 12674, Principles of Ethical Conduct for Government Officers and Employees; a copy of Employee Responsibilities and conduct, subparts A, B, and C of part 735 of 5 CFR, or part 2635 of 5 CFR (when that part 2635 eventually supersedes the specified subparts of part 735); and any supplementary regulation or addendum thereto of the concerned agency. OGE notes that it is working on future standards of ethical conduct for executive branch officers and employees to be issued under E.O. 12674 and codified at 5 CFR part 2635 which will supersede, with OPM's concurrence, the specified 5 CFR part 735 subparts in OPM's chapter of title 5 (OGE was previously a part of OPM). Furthermore, OGE is also working on a replacement regulation, future 5 CFR part 2633, to current subpart D of 5 CFR part 735 on confidential (non-public) financial reporting (see § 2638.704(b)(4) of this proposed subpart).

A minimum of one and a half official duty time hours for individual review by executive branch employees of the documents specified is reasonable, in light of the importance of having all employees familiarize themselves with ethics materials. Moreover, executive agencies may choose to offset the time devoted to individual review with ethics training and there is no requirement that the one and a half hours be contiguous.

After review, each employee will acknowledge in writing that he or she has received the materials and has spent the appropriate amount of official duty time reviewing them, or, in the alternative, an agency official may certify for the employee. Based on an OGE agreement with the Office of Workforce Information, U.S. Office of Personnel Management, the acknowledgements and certifications will be retained as temporary records on

the left hand side of each employee's Official Personnel Folder. See 5 CFR part 293, subpart C of OPM's regulations. Related instruction will be included by OPM in a future installment to the Federal Personnel Manual Supplement 293–31, Basic Personnel Records and File System.

Section 2638.704 of this proposed rule would require that, as a minimum, one and a half official duty time hours of annual ethics training be provided by each executive agency to the categories of its employees in sensitive positions as specified in section 301(c) of Executive Order 12674 beginning in the first calendar year after the calendar year in which each such employee received initial ethics orientation. The training is to be presented verbally, either in person or by recorded means, by a qualified individual and will include, as a minimum, a review of Part I of E.O. 12674; subparts A, B, and C of part 735 of 5 CFR, or, when those subparts are superseded, part 2635 of 5 CFR; any agency supplementary regulation or addendum thereto; examples relating to agency programs and operations and any ethics-related, agency-specific statute or regulatory restriction; and the conflict of interest statutes contained in chapter 11 of title 18 of the United States Code. Where it is impractical to provide training by a qualified individual, an exception can be made to allow a minimum of one and a half official duty time hours of training to be presented by means of visual or audio recording without the presence of a qualified individual, or by means of written materials.

A minimum of one and a half official duty time hours of annual training by a qualified individual is reasonable given the importance to the Government that the specified executive agency employees in sensitive positions be kept up-to-date on their ethical responsibilities. Moreover, the one and a half hours of training required annually need not be given all at once, and there is an exception, if justified, to the general requirement that there be a qualified individual providing the training.

B. Matters of Regulatory Procedure

Administrative Procedure Act

Interested persons are invited to submit written comments on this proposed regulation, to be received on or before November 17, 1990. The comments will be carefully considered and any appropriate changes will be made to the regulation as proposed before a final rule is adopted and published by OGE in the Federal Register.

Executive Order 12291

The Office of Government Ethics has determined that this is not a major rule as defined under section 1(b) of Executive Order 12291, Federal Regulation.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this proposed regulation will not have a significant economic impact on a substantial number of small entities because it affects only Federal executive branch employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this proposed regulation does not contain information collection requirements that require the approval of the Office of Management and Budget thereunder.

List of Subjects in 5 CFR Part 2638

Administrative practice and procedure, Conflict of interests, Government employees, Reporting and recordkeeping requirements.

Approved: August 24, 1990.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for reasons set forth in the preamble and pursuant to its authority under the Ethics in Government Act and E.O. 12674, the Office of Government Ethics proposes to amend 5 CFP part 2638 as follows:

PART 2638—OFFICE OF GOVERNMENT ETHICS AND EXECUTIVE AGENCY ETHICS PROGRAM RESPONSIBILITIES

1. The authority citation for part 2638 is revised as follows:

Authority: 5 U.S.C. appendixes III, IV; E.O. 12674, 55 FR 15159, 3 CFR 1989 Comp., p. 215.

2. A new subpart G of part 2638 is added to read as follows:

Subpart G—Executive Agency Ethics Training Programs

Sec.

§ 2638.701 Executive agency ethics training programs; generally.
2638.702 Responsibilities of the designated agency ethics official; review by the Office of Government Ethics.
2638.703 Initial agency ethics orientation.
2638.704 Annual agency ethics training.

Subpart G—Executive Agency Ethics Training Programs

§ 2638.701 Executive agency ethics training programs; generally.

Each executive branch agency shall maintain a program of training designed to ensure that all of its employees are aware of the Federal conflict of interest statutes and principles of ethical conduct. As a minimum, each agency program shall consist of the initial ethics orientation required by § 2638.703 of this subpart and the annual ethics training required by § 2638.704 of this subpart.

§ 2638.702 Responsibilities of the designated agency ethics official; review by the Office of Government Ethics.

(a) It shall be the responsibility of the designated agency ethics official of each executive agency or his or her designee to make any written determinations provided for in this subpart and to:

(1) Direct the agency ethics training program to ensure that it meets the requirements of this subpart and that the course content is legally correct;

(2) Ensure the availability of qualified individuals to provide the annual training required by § 2638.704 of this subpart;

(3) Furnish to the Office of Government Ethics (OGE) each year a written plan for annual ethics training by the agency for the following calendar year. The written plan shall be filed with OGE by August 31 of each year beginning in the first year in which initial ethics orientation is required by § 2638.703 of this subpart, or within 60 days after the effective date of this subpart, whichever occurs later, and shall include:

(i) An estimate of the total number of agency employees described in § 2638.704(b) of this subpart who must be provided annual ethics training;

(ii) An estimate of the number of agency employees to whom the annual ethics training course will be presented without the presence of a qualified individual as an exception to § 2638.704(d)(1) of this subpart pursuant to § 2638.704(d)(2) of this subpart, together with a description of the basis for allowing an exception;

(iii) An estimate of the number of training classes to be provided during the calendar year;

(iv) An estimate of the average class size; and

(v) Any other information that the designated agency ethics official believes will facilitate OGE's review of the agency's planned program of ethics training.

(b) Each agency's annual ethics training plan will be reviewed by OGE and any deficiencies shall be communicated in writing to the designated agency ethics official concerned by November 15, or 75 days after receipt of the agency plan, whichever occurs later.

§ 2638.703 Initial agency ethics orientation.

(a) Within 60 days after the effective date of this subpart, or within 60 days after entering on duty with the agency, whichever occurs later, each executive agency employee shall be provided by the agency with:

(1) A copy of Part I of Executive Order 12674, Principles of Ethical Conduct for Government Officers and Employees, dated April 12, 1989 (3 CFR 1989 Compilation, at pp. 215–216);

(2) A copy of Employee Responsibilities and Conduct, subparts A, B, and C of part 735 of this title, or part 2635 of this subchapter (when that part 2635 eventually supersedes the specified subparts of part 735), and any supplementary regulation or addendum thereto of the concerned agency;

(3) The names, titles, office addresses, and phone numbers of the designated agency ethics official and other agency ethics officials available to answer questions regarding the employee's ethical responsibilities; and

(4) A minimum of one and a half hours of official duty time for the purpose of permitting the employee's review of the written materials furnished pursuant to this section. Where the agency elects to provide a training course (during official duty time), the number of hours for individual review may be reduced by the time allocated to such training.

(b) Each employee, after reviewing the written materials, shall acknowledge in writing that he or she has received the materials and that a minimum of one and a half hours (or a lesser number of hours, as provided under paragraph (a)(4) of this section) of official duty time has been spent reviewing the materials. In the alternative, an agency official may certify that the employee has been provided the materials, including the appropriate amount of official duty time for reviewing them. These acknowledgements and certifications shall become temporary records in the employee's Official Personnel Folder.

§ 2638.704 Annual agency ethics training.

(a) *Annual ethics training.* Beginning the first calendar year after the calendar year in which he or she has received the initial training required by § 2638.703 of this subpart, each executive agency employee identified in paragraph (b) of this section shall be provided by his or her agency a minimum of one and a half official duty time hours of annual ethics training consisting of a course the content of which is described in paragraph (c) of this section and which is presented in accordance with the requirements of paragraph (d) of this section.

(b) *Employees covered.* Executive branch agency employees to whom this section applies include all of the following:

(1) Employees appointed by the President;

(2) Employees employed within the Executive Office of the President;

(3) Employees required to file public financial disclosure reports under part 2634 of this subchapter;

(4) Employees required to file confidential (non-public) financial disclosure reports under subpart D of part 735 of this title, or part 2633 of this subchapter (when that part 2633 eventually supersedes subpart D of part 735), and any implementing agency regulations;

(5) Contracting officers within the meaning of 41 U.S.C. 423(p)(4);

(6) Procurement officials within the meaning of 41 U.S.C. 423(p)(3); and

(7) Other employees designated by the head of the agency or his or her designee based on a determination that such training is desirable in view of their particular official duties.

(c) *Course content.* Although the emphasis and course content of annual executive agency ethics training courses may change from year to year, each training course shall include, as a minimum:

(1) A review of the employees' responsibilities under Part I of Executive Order 12674 and Employee Responsibilities and Conduct, subparts A, B, and C of part 735 of this title, or (when those subparts are superseded) part 2635 of this subchapter, together with any agency supplementary regulation or addendum thereto (examples that relate specifically to agency programs and operations and any ethics-related, agency-specific statute or regulatory restrictions of the particular agency shall be provided); and

(2) A review of the employees' responsibilities under the conflict of interest statutes contained in chapter 11 of title 18 of the United States Code.

(d) *Course presentation.* Course materials shall be presented in accordance with the following requirements:

(1) Except as provided in paragraph (d)(2) of this section, annual ethics training shall be presented verbally, either in person or by recorded means. A qualified individual who has sufficient familiarity with the agency ethics program to answer routine questions concerning course content shall be available during and immediately following the presentation; or

(2) Based on a written determination by the designated agency ethics official or his or her designee that circumstances make it impractical to provide training to a particular employee or group of employees in accordance with paragraph (d)(1) of this section, annual ethics training may be presented by means of visual or audio recording, without the presence of a qualified individual, or by means of written materials, provided that a minimum of one and a half hours of official duty time are set aside for employees to attend the presentation or review written materials.

[FR Doc. 90–22032 Filed 9–17–90; 8:45 am]

BILLING CODE 6345–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 955

[Docket No. FV–90–199]

Vidalia Onions Grown in Georgia; Expense 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 1990–91 fiscal period. Authorization of this budget would permit 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 September 28, 1990.

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. 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 rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

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 145 handlers and 250 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 receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Vidalia onion producers and handlers may be classified as small entities.

The budget of expenses for the 1990–91 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 16, 1990, and unanimously recommended a 1990–91 budget of $182,753. Last season's budget was $157,808. Major expense items include contract management fees in the amount of $40,000, (22 percent of budget), $85,832 for marketing development, and $30,000 for production research. Expenditures for marketing development and production research projects are up a combined $46,245 over last year.

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 shipments of 1.75 million 50-pound bags of onions, would yield $175,000 in assessment revenue. This amount when added to $4,500 from miscellaneous income (e.g., interest revenue) and $3,253 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 1990–91 fiscal period for the program begins on September 16, 1990, and the marketing order requires that the rate of assessment apply to all assessible 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 10 days is appropriate because the budget and assessment rate approval for this program needs to be expedited. The committee needs to have suffficient funds to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 955

Marketing agreements, Onions, reporting and recordkeeping requirements.

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 § 955.203 is added to read as follows:

§ 955.203 Expenses.

Expenses of $182,753 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, 1991. Unexpended funds may be carried over as a reserve.

Dated: September 13, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–22034 Filed 9–17–90; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90–410, RM–7354]

Radio Broadcasting Services; Pickford, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Leon B. Van Dam, proposing the allotment of FM Channel 288A to Pickford, Michigan, as Pickford's first local broadcast service. Canadian concurrence will be requested for this allotment at coordinates 46–09–30 and 84–21–30.

DATES: Comments must be filed on or before November 5, 1990, and reply comments on or before November 20, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

Leon B. Van Dam, P.O. Box 152, Newberry, Michigan 49868, (Petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–410, adopted August 24, 1990, and released September 13, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–22054 Filed 9–17–90; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 90–407, RM–7333]

Radio Broadcasting Services; Traverse City, MI.

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a proposal to add Channel 283A to Traverse City, Michigan, as that community's fourth FM broadcast service, in response to a petition filed by Contemporary Communications. There is a site restriction of 3.2 kilometers northwest of the community. Canadian concurrence for this allotment will be requested at coordinates 44–46–59 and 85–39–00.

DATES: Comments must be filed on or before November 5, 1990, and reply comments on or before November 20, 1990.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

Larry G. Fuss, President, Contemporary Communications, Post Office Box 159, Fayetteville, Georgia 30214, (Petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–407, adopted August 24, 1990, and released September 13, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–22055 Filed 9–17–90; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 90–408, RM–7211]

Radio Broadcasting Services; Lake City and Wabasha, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Interstate Communications, Inc., permittee of Station KWMB–FM, Channel 273A, Wabasha, Minnesota, seeking to change the community of license for Channel 273A, Wabasha to Lake City, Minnesota, and modify its permit to specify operation on Channel 273C3 at Lake City. The coordinates used for this proposal are 44–17–00 and 92–25–00.

DATES: Comments must be filed on or before November 5, 1990, and reply comments on or before November 20, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

Mark E. Fields, Miller & Fields, P.C., 1990 M Street, NW., Suite 760, Washington, DC 20036, Counsel for the petitioner).

Interstate Communications, Inc., 1224 Rustic Lane, Wabasha, Minnesota 55981, (Petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–408, adopted August 24, 1990, and released September 13, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in

Commission proceedings, such as this one, which involve channel allotments. See 47 CFR Section 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–22056 Filed 9–17–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–31; RM–7131]

Radio Broadcasting Services; West Point, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of proposal.

SUMMARY: This document dismisses a petition for rule making filled by Bob McRaney Enterprises, Inc., proposing the substitution of FM Channel 265C3 for 265A and modification of the license for Station WKBB, to specify operation on the higher class channel at West Point, Mississippi. The petition is dismissed because the petitioner did not file an expression of interest. See 55 FR 04884, February 12, 1990.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–31, adopted August 24, 1990, and released September 13, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–22057 Filed 9–17–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–409, RM–7344]

Radio Broadcasting Services; Otterville, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Otterville Broadcasting Company, proposing the allotment of FM Channel 299A to Otterville, Missouri, as that community's first local broadcast service. There is a site restriction of 8.2 kilometers east of the community. The coordinates for Channel 299A are 38–43–29 and 92–54–39.

DATES: Comments must be filed on or before November 5, 1990, and reply comments on or before November 20, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

Richard J. Hayes, Jr., 1359 Black Meadow Road, Spotsylvania, Virginia 22553, (Counsel to the petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–409, adopted August 24, 1990, and released September 13, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the pubic should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–22058 Filed 9–17–90; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Part 245

Acquisition Regulations; Use of Plant and Production Equipment, FMS

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory (DAR) Council is proposing changes to conform to the DoD Appropriations Act. Section 9104 of the Act repealed section 21(e)(1)(B) of the Arms Export Control Act which required DoD to establish and recover appropriate costs for use of government-owned production and research property used in connection with foreign military sales (FMS). This proposed rule revises the DFARS to permit rent free use of equipment used in connection with FMS.

DATES: Comments on the proposed rule should be submitted in writing at the address shown below on or before October 18, 1990, to be considered in the formulation of the final rule. Please cite DAR Case 89–331 in all correspondence related to this rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles Lloyd, Procurement Analyst, DAR Council, ODASD (P) /DARS, c/o OUSD (A) (M&RS) Room 3D139, The Pentagon, Washington, DC 20301–3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Lloyd, Procurement Analyst, DAR Council, (202) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

Since the Arms Export Control Act has been modified to no longer require rental charges for Foreign Military Sales (FMS), in certain instances, the DFARS is revised to reflect the intent of the Act. DFARS 245.401 and 245.405 have been revised to permit rent free usage of equipment in connection with FMS, in certain instances. The term "asset use charge" is deleted from the coverage as this term is only appropriate for use with the FMS program. Also, paragraph

(e) of 245.405 no longer carries a date pertaining to the U.S./Canada Understanding on Waiver of Rental Charges. This Understanding is renewed in five year increments and publishing its expiration date serves no purpose.

B. Regulatory Flexibility Act

The proposed change is not expected to have significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Therefore an initial regulatory flexibility analysis has not been performed.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the case proposes changes that do not impose any additional reporting or record-keeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 245

Government procurement.

Claudia L. Naugle,

Executive Editor, Defense Acquisition, Regulatory System.

Therefore, it is proposed that 48 CFR part 245 be amended as follows:

1. The authority citation for 48 CFR part 245 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and FAR subpart 1.3.

PART 245—GOVERNMENT PROPERTY

2. Section 245.401 is revised to read as follows:

245.401 Policy.

Government use includes use on contracts for foreign military sales. Use on contracts for foreign military sales shall be on a rent free basis.

3. Section 245.405 is amended by revising paragraph (b); by removing paragraph (c); by redesignating paragraphs (d), (e), and (f) as paragraphs (c), (d), and (e); and by revising newly designated paragraphs (c), (d), and (e) to read as follows:

245.405 Contracts with Foreign Governments or International Organizations.

* * * * *

(b) The Use and Charges clause is applicable on direct commercial sales to foreign governments or international organizations.

(c) When a particular foreign government or international organization has funded the acquisition of specific production and research property, no rental charges or nonrecurring recoupments shall be assessed that foreign government or international organization for the use of such property.

(d) Requests for waivers or reduction of charges for the use of Government facilities on work for foreign governments or international organizations shall be submitted to the contracting officer who shall refer the matter through contracting channels. In response to these requests, approvals may be granted only by the Director, Defense Security Assistance Agency for particular sales which are consistent with (a)(2) above.

(e) Rental charges for use of U.S. production and research property on commercial sales transactions to the Government of Canada are waived for all commercial contracts based on an understanding wherein the Government of Canada has agreed to waive its rental charges.

[FR Doc. 90-22094 Filed 9-17-90; 8:45 am]

BILLING CODE 3810-01-M

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48 CFR Parts 246 and 252

Acquisition Regulations; Product Quality Deficiences

AGENCY: Department of Defense (DOD).

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory (DAR) Council is proposing changes to the DoD FAR Supplement to amend part 246 by adding § 246.105, paragraph (S-70), § 246.371, and a clause at 252.246-7002. The text and clause address contractor responsibilities to investigate quality deficiencies after supplies have been inspected and accepted by the Government.

DATES: Comments on the proposed rule should be submitted in writing at the address shown below on or before October 18, 1990, to be considered in the formulation of the final rule. Please cite DAR Case 89-073 in all correspondence related to this issue.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Ms. Valorie Lee, Procurement Analyst, DAR Council, ODASD(P), c/o OUSD(A)(M&RS), Room 3D139, The Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Ms. Valorie Lee, Procurement Analyst, DAR Council, (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

DoD logistics activities have implemented a Product Quality Deficiency Reporting system to track quality problems that are discovered in supplies which have been accepted and are in the DoD inventory. Product Quality Deficiency Reports (PQDR) are the standard means by which defects or nonconforming conditions of products provided under contract are recorded and reported. Notwithstanding previous Government inspection and acceptance, after final delivery of items under the contract, there is a need for contractors to help investigate defects and nonconforming conditions found by the Government in items delivered, as recorded on the PQDR. The proposed coverage and clause are intended to specify what contractors are responsible for under these conditions.

B. Regulatory Flexibility Act

An initial Regulatory Flexibility Analysis has not been performed because the proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Most contracts awarded to small entities for supplies or rework and repair of supplies either do not exceed the small purchase threshold or do not contain higher-level quality requirements. Comments from small entities concerning the affected DFARS subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DAR case 90-610 in all correspondence.

C. Paperwork Reduction Act

The proposed rule does impose reporting or recordkeeping requirements on those companies that comply with the voluntary requirements of the clause, which requires the approval of OMB under 44 U.S.C. 3501, *et seq.* A request for approval of information collection has been sent to the Office of Management and Budget for its review and approval.

List of Subjects in 48 CFR Parts 246 and 252

Government procurement.

Claudia L. Naugle,

Executive Editor, Defense Acquisition, Regulatory System.

Therefore, it is proposed that 48 CFR parts 246 and 252 be amended as follows:

PART 246—QUALITY ASSURANCE

1. The authority citation for 48 CFR parts 246 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, U.S.C. 2202, DoD Directive 5000.35, FAR Subpart 1.3.

2. Section 246.105 is added to read as follows:

246.105 Contractor responsibilities.

(S–70) The contractor may be required to investigate reports of Product Quality Deficiencies (*see* 246.371 .

3. Section 246.371 is added to read as follows:

246.371 Product quality deficiency investigation.

The contracting officer may insert the clause at 252.246–7002, Product Quality Deficiency Investigation, in solicitations and contracts if—

(a) The contract is for supplies or rework and repair of supplies; and,

(b) the contract contains a hgher-level quality requirement (*see* 246.202–3); and,

(c) The supplies being procured are not covered by a warranty.

PART 252—CONTRACT CLAUSES AND SOLICITATION PROVISIONS

4. Section 252.246–7002 is added to read as follows:

252.246 Product Quality deficiency investigation.

As prescribed at 246.371, insert the following clause:

Product Quality Deficiency Investigation (XXX 1990)

(a) As used in this clause:

Product quality deficiency means a defect or nonconforming condition. This includes deficiencies in design, specification, material, manufacturing, and workmanship.

Product quality deficiency report (PQDR), means the Standard Form (SF) 368 or message format which is used to record and transmit product quality deficiency data.

(b) The contractor agrees to:

(1) Investigate, and determine the cause of, product quality deficiencies found by the Government in items delivered under this contract.

(2) Provide the results of the investigation to the Government.

(3) Make the investigation at any time until 4 years after delivery of the last item under this contract, notwithstanding previous Government inspection and acceptance.

(4) Permit the Government's Quality Assurance Representative to witness the conduct of the investigation.

(c) The contractor further agrees:

(1) In making the investigation, to review PQDRs provided by the Government.

(2) To review examples of deficient items provided by the Government if a determination cannot be made by reviewing the PQDRs.

(d) Within 7 days of receipt of a PQDR, the contractor shall notify the contracting officer whether the investigation and determination can be made from a review of the PQDR, or whether a review of examples of deficient items is necessary. Within 30 days of the receipt of the PQDR or, if required, a deficient item, the contractor will provide the contracting officer an estimate of the date by which the investigation and determination will be completed, and when the results of the investigation will be available.

(e) The contractor's report on the investigation will contain the following information:

(1) A description of the cause of the deficiency, if any.

(2) Any corrective actions the contractor has taken or intends to take if the same item is still being delivered to the Government under this or another contract.

(f) This clause does not require the contractor to retain any records or data beyond that otherwise required by this contract.

(g) Contractor reports provided under this clause may be used to supplement the contractor's total quality history. Failure to comply with the requirements herein will be noted in the contractor's total quality history record and may influence the Government's assessment of contractor overall past performance.

(End of clause)

[FR Doc. 90–22037 Filed 9–17–90; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Findings on a Petition To List the Jemez Mountains Salamander as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to amend the List of Endangered and Threatened Wildlife and Plants. The petition has been found to present substantial information indicating that listing the Jemez Mountains salamander (*Plethodon neomexicanus*) as a threatened or endangered species may be warranted. A status review was initiated on December 30, 1982, and the Service seeks information until December 13, 1990.

DATES: The finding announced in this notice was made on July 30, 1990. Comments and information should be submitted by December 13, 1990, in order to be incorporated into the 12-month finding.

ADDRESSES: Information, comments, or questions should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, 3530 Pan American Highway, NE., suite D, Albuquerque, New Mexico 87107. The petition, findings, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John Peterson, Field Supervisor, at the above address (505/883–7877 or FTS 474–7877).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the finding is positive, the Service is also required to promptly commence a status review of the species. In the case of the Jemez Mountains salamander, a status review was initiated by a Notice of Review published December 30, 1982 (47 FR 58454).

The Service has received and made a 90-day finding on the following petition:

Dr. James R. Dixon submitted a petition to the Service to list the Jamez Mountains salamander (*Plethodon neomexicanus*) as a threatened or endangered species. The petition was dated February 13, 1990, and was received by the Service on February 21, 1990.

The Jemez Mountains salamander occurs only in the Jemez Mountains of northcentral New Mexico. It is found primarily within the Santa Fe National Forest. Required habitat for the salamander includes densely wooded, shady canyons on north-facing slopes at elevations of about 2190–2800 meters (7200–9200 feet). These areas are typically vegetated with conifers,

including white fir, Engelmann spruce, blue spruce and Douglas fir, and have the following characteristics: Multi-storied stands, moderately closed canopy, large trees and stand decadence as indicated by the presence of standing dead trees and falling logs. The total range of the species is estimated to be approximately 1,640 square kilometers (630 square miles). Within its range populations of the species are fragmented by elevation, soil type, and vegetation. Most lands where the salamander is found are part of the Santa Fe National Forest. The salamander is also found on Los Alamos National Laboratory, Santa Clara Pueblo, Bandelier National Monument and private lands.

Within the Jemez Mountains the species is known to occur at approximately 23 locations, and it is never abundant. Between 1986 and 1989, 130 sites likely to have salamanders were visited. Of these sites, only 16 were found to have 5 or more salamanders. For the last three years, the U.S. Forest Service has funded distributional and research studies on the salamander. These studies have been conducted by the New Mexico Department of Game and Fish and to date have not provided any indication that the salamander population in the Jemez Mountains is larger than previously assumed.

The petition stated that the Jemez Mountains salamander merits listing under the Act for the following reasons: Its current population numbers are low; the intensity and frequency of logging within its range is increasing; and the effects on the salamander of the soil disturbance, erosion, dessication, and decrease in the number of large downed logs associated with logging are not known. In addition to these threats, salamander populations and habitat are being threatened by the proposed expansion of a pumice mine.

After a review of the petition, and information otherwise available to the Service, the Service has found that the petition presented substantial information that listing the Jemez Mountains salamander as a threatened or endangered species may be warranted. Within one year from the date the petition was received, the Service is required under section 4(b)(3)(B) of the Act to make a finding as to whether the petitioned action is warranted.

The Service would appreciate any additional date, information, or comments from the public, government agencies, the scientific community, industry, or any other interested party concerning the status of the Jemez Mountains salamander.

Author

The notice was prepared by Gerald L. Burton, Albuquerque Ecological Services Field Office, at the above address, and Sonja Jahrsdoerfer, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, and Transportation.

Dated: August 28, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90–21969 Filed 9–17–90; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 17

RIN 1018–AB42

Endangered and Threatened Wildlife and Plants; Proposed Rule To List the Alamosa Springsnail and the Socorro Springsnail as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to list the Alamosa springsnail (*Tryonia alamosae*) and the Socorro springsnail (*Pyrgulopsis neomexicana*) as endangered species, under the authority contained in the Endangered Species Act of 1973 (Act), as amended. These snails occur in thermal springs in Socorro County, central New Mexico. The Alamosa springsnail is found in a single complex of five thermal springs, and the Socorro springsnail is found in only one spring. Because of their dependence on continuous surface flows, these species are threatened by any change in conditions that would lessen the flow of water from the springs. Other potential threats include the introduction of non-native competing or predaceous organisms into the springs and loss of organic film or other natural elements from their habitat.

DATES: Comments from all interested parties must be received by November 17, 1990. Public hearing requests must be received by November 2, 1990.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, 3530 Pan American Highway NE., suite D, Albuquerque, New Nexico 87107. Comments and materials received will be available for public inspection, by appointment, during normal buiness hours at the above adress.

FOR FURTHER INFORMATION CONTACT: Jerry Burton (see **ADDRESSES**) at (505) 883–7877 or FTS 474–7877.

SUPPLEMENTARY INFORMATION:

Background

Both *Tryonia alamosae* and *Pyrgulopsis neomexicana* are members of the family Hydrobiidae, which is separated from all but two other New Mexico families of gastropods (snails and allies) by the presence of gills (rather than a lunglike breathing device) and a lidlike structure (operculum) on the foot (New Mexico Department of Game and Fish (NMDGF) 1985).

The Socorro springsnail was described originally from warm springs in Socorro, New Mexico. The collector and date of the unique first sample are unknown (Taylor 1983). The specimens came from the C.M. Wheatley collection and are likely to have been collected in the 19th century (Taylor *in litt.*). The species was formally described and named *Amnicola neomexicana* by Pilsbry in 1916. In 1982, Burch reclassified it as *Fontelicella neomexicana*. Hershler and Thompson (1987) assigned members of the genus *Fontelicella*, including *F. neomexicana*, to *Pyrgulopsis*.

The Alamosa springsnail was discovered in 1979 by Taylor, and placed in the genus *Tryonia*. The species was described as *Tryonia alamosae* in 1987 (Taylor 1987).

Pyrgulopsis neomexicana has an elongate-ovate shell that is light tan in color, short-spired, and up to 2.5 millimeters (mm) (0.1 inch) in length (NMDGF 1985). Females attain a larger size than males. The penis has a long glandular strip on the terminal lobe, a long penial gland, and three shorter dorsal glandular strips (Taylor 1987). The body and head are dark gray to black. The internal callus is reddish brown to amber, and the operculum is pale. Tentacles range from black or dark gray at the base to pale gray at the tips (Taylor 1987).

Tyronia alamosae is a relatively small and broadly conical species with females larger than males by a factor of almost 50 percent (NMDGF 1985, Taylor

1987). Length of shells range up to 3.0 mm (0.1 inch). The conical sheel has up to 5/½, regularly convex whorls that are separated by well-impressed sutures (NMDGF 1985). The penis bears a single, broadly conical glandular papilla on the distal left side. The body varies from opaque black to gray. The thin shell is translucent and permits observation of some internal structures except where coated by algae or rendered opaque by wear. The operculum is thin, ovate, and transparent. Tentacles are lightly dusted with melanin (Taylor 1987).

Both snails are totally equatic, gilled species that occur in slow-velocity water near spring sources in their thermal habitat (NMDGF 1985). Both species occur on stones and among aquatic plants. *Pyrgulopsis neomexicana* is also found in the uppermost layer of organic muck substrate. *Tyronia alamosae* and *P. neomexicana* are herbivorous, and browse on algae and other items in the organic film of their habitat. *Pyrgulopsis neomexicana* is oviparous, and probably lays its eggs in spring and summer. *Tyronia alamosae* is ovoviviparous, and contains a series of embryos in various stages of development. Because *T. alamosae* lives in a thermally cosntant environment, reproduction is probably not seasonal, and population size very likely remains relativey stable (NMDGF 1985).

Tyronia alamosae is endemic to central New Mexico. The species is known only from a thermal spring complex in Socorro County. The spring complex consists of five individual springheads that flow together. The Alamosa springsnail is fairly abundant in the springs from which it is known (NMDGF 1985), although there are no estimates of population size. In the largest thermal spring, which is about 2×3 meters (6×10 feet) across and 0.3—0.6 meters (1—2 feet) deep, Taylor (1987) found *T. alamosae* to be abundant in minor rivulets out of the main channel in the canyon where the springs arise. There was a mat of watercress and filamentous green algae over water 1—2 inches (2.5—5 cm) deep, flowing over fine gravel and sand among angular rhyolitic cobbles and boulders. Snails were found in slow current on gravel as well as among vegetation. Associated molluscs were *Lymnaea parva* and *Physa mexicana*. The highest temperature of any of the immediate sources was 27° C.

Several of the other group of smaller thermal springs that contain *T. alamosae* have been dug out and impounded in the past. Taylor (1987) found that *T. alamosae* was abundant in the slower current of the source area on rhylitic pebbles and cobbles with organic film. *Physa mexicana* was also abundant, but usually in swifter current. The outflow of the springs forms a brook 0.6—1.0 meters (2—4 feet) wide, in which *Physa mexicana* is common, but *T. alamosae* becomes s scarcer and then absent as one leaves the source area and current increases. The highest measured temperature was 28° C.

The original specimen of *P. neomexicana* reportedly came from one of the thermal springs near Socorro, New Mexico. The species is now extinct at the type locality, but the date and cause of the extinction are uncertain (Taylor 1987). The species has been reported from other springs in Socorro County (Landye 1981), although there is some disagreement on whether or not the species occurred there (Taylor 1987).

Currenty, *P. mexicana* is known from only one spring in Socorro County, where it was found in 1979. The principal spring source has been impounded, which reduced the flowing - water habitat to almost nothing. One tiny spring source remained, with an improved source pool less than 1 m^2 in area with a temperature of 17° C. *Pyrgulopsis neomexicana* was abundant on rootlets in this pool, but was not found in the ditches and ponds irrigating the area. Other molluscs found in the vicinity were *Physa mexicana*, *Lymnaea modicella*, and *Pisidium casertanum*. In 1981, the colony was found to occupy not ony the source but also the outflow tributary about 2.5 meters (8 feet) long to an irrigation ditch. No snails were in the irrigation flow. Total population of *P. neomexicana* was estimated at 5,000 individuals.

The Socorro springsnail, then known as the Socorro snail (*Amnicola neomexicana*), was proposed as an endangered species on April 28, 1976 (41 FR 17742). The basis for the proposal was a report by Landye (1973), that listed the species as presumably extinct because of capping of springs to supply the city of Socorro, New Mexico, with water. The proposal was withdrawn on December 10, 1979 (44 FR 70796), under a provision of the 1978 amendments to the Endangered Species Act of 1973, which required withdrawal of all pending proposals if they were not finalized within two years of the proposal.

In the May 22, 1984, Review of Invertebrate Wildlife for Listing as Endangered or Threatened Species (49 FR 21664), both the Socorro Springsnail (*Fontelicella* [= *Amnicola*] *neomexicana*) and the Alamosa springsnail (*Tryonia* sp.) were included as Category 1 species. Category 1 comprises taxa for which the Service currently has substantial information on hand to support the biological appropriateness of proposing to list as endangered or threatened. In the January 6, 1989, Animal Notice of Review (54 FR 554), both the Socorro springsnail (*Pyrgulopsis neomexicana*, then called *'Fontelicella' neomexicana*) and Alamosa springsnail (*Tryonia alamosae*) were retained in Category 1.

A petition from the New Mexico Department of Game and Fish was received by the Service on November 22, 1985. It requested that 11 taxa of New Mexico molluscs be added to the List of Endangered and Threatened Wildlife, including *T. alamosae* and *P. neomexicana*. The Service made a 90-day finding that the petition presented substantial information that the requested action may be warranted, and announced the finding in the Federal Register on August 20, 1986 (51 FR 29671). The 12-month finding for this petition was published on July 1, 1987 (52 FR 24465), and stated that the action requested by the petitioner was warranted, but precluded by work on other species having higher priority for listing. On October 4, 1988 (53 FR 38969), and April 25, 1990 (55 FR 17475), a Notice of Findings on petitions was published. The required one-year finding on the action to list. *T. alamosae* and *P. neomexicana* continued to be warranted, but precluded by work on species with higher priority for listing. The proposal constitutes the final one-year finding for these species.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Socorro springsnail (*Pyrgulopsis neomexicana*) and Alamosa springsnail (*Trysonia alamosae*) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. The limited range of these species makes them extremely vulnerable to loss or alteration of their specialized habitat. *Pyrgulopsis neomexicana* is limited to a single pool less than 1 m^2 in area, and an outflow ditch about 2.5 meters (8 feet) long.

Tryonia alamosae is found in several springs, the largest of which is 2×3 meters (6×10 feet) across and 0.3–0.6 meters (1–2 feet) deep. The speciese also is found in four smaller springs and an outflow that is 0.6–1.0 meters (2–4 feet) wide. Any conditions that would lessen the flow of water from the springs would threaten the species, which are dependent upon continuous surface flows.

Under the present system of use in the spring complex that contains *T. alamosae*, water is allowed to flow from the springs through a canyon and then diverted for irrigation use. The snail populations are secure under this system of use. However, should changes occur to this system, and as a result the flow from the springs diminish, or be stopped, the snails would suffer. These springs are the water supply for agriculture and villages downstream near Monticello, New Mexico. Possible future development of the springs to maximize water supply is a potential threat.

The springs that contain *P. neomexicana* have been impounded, eliminating the critical flowing-water habitat of the principal sources. One free-running spring remains, with an imporved source pool less than one meter in diameter and an outflow stream less than 2.5 meters (8 feet) long that includes the only known population of this species, with about 5,000 individuals (Taylor 1983). Loss of flow caused by pumping, and pollution of the spring are additional threats to this habitat.

B. Overutilization for commercial, recreational, scientific, or educational purposes. The springs in which *T. alamosae* occurs are used by people for bathing. Channel modifications to make pools have destroyed snail habitat and caused erosion.

Because of their rarity, *T. alamosae* and *P. neomexicana* are of interest to biologists and collectors. Therefore, collection of the animals is a minor but present threat.

C. Disease or predation. Cattle grazing and roiling of the water by cattle may have a negative impact on *P. neomexicana*. Grazing of the area in which *T. alamosae* occurs does not appear to harm the habitat of the snail.

The introduction of non-native competing or predaceous organisms (including fishes) into the springs is a potential threat to *T. alamosae*.

D. The inadequacy of existing regulatory mechanisms. Both *T. alamosae* and *P. neomexicana* are protected by State law. Under State law, there are prohibitions against destruction of the snails and excessive collecting, but the ability to protect habitat is limited. Listing these species under the Act would provide additional protection and encourage active management through the "Available Conservation Measures" discussed below.

E. Other natural or manmade factors affecting its continued existence. Vandalism to the springs, both intentional and inadvertent, is a threat to these two species. Loss of the organic film or other natural elements in the springs that support *T. alamosae* and *P. neomexicana* would have detrimental effects on both species. Both species are restricted to such small habitats that they are extremely vulnerable to extinction from any of the factors discussed above.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Pyrgulopsis neomexicana* and *Tryonia alamosae* as endangered without critical habitat. Threatened status would not be appropriate for these species because they both are extremely restricted in distribution and are vulnerable to the threats described above. The present situation of both species is precarious. Even minor improvement of one tiny spring could wipe out one of the species entirely. Critical habitat is not being proposed for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for these species. Survival of the Socorro springsnail and the Alamosa springsnail is completely dependent upon the protection of the springs and the outflows that the species now occupy. Vandalism to the springs could extirpate the species. Collection for scientific purposes is a potential threat to these species. Publication of critical habitat descriptions and maps would increase the vulnerability of both species to collection and vandalism without significantly increasing protection. No benefit from critical habitat designation has been identified that outweighs the threat of vandalism and collection. All involved parties and principal landowners have been notified of the location and importance of protecting these species' habitats. The landowners have no objections to the proposed listing of these species. Protection of these species' habitats will be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it would not now be prudent to determine critical habitat for *P. neomexicana* and *T. alamosae*.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The Service has not identified any ongoing or proposed projects with Federal involvement that could affect these species.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt,

shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listsed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these species;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

Final promulgation of the regulation on these species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Ecological Services Field Office, Albuquerque, New Mexico (see ADDRESSES).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

Hershler, R. and F.G. Thompson. 1987. North American Hydrobiidae (Gastropoda: Rissoacea): Redescription and systematic relationships of *Tryonia* Stimpson, 1865 and *Pyrgulopsis* Call and Pilsbry, 1886. The Nautilus 101(1): 25–32.

Landye, J.J. 1973. Status of the inland aquatic and semi-aquatic mollusks of the American southwest. U.S. Department of Interior, Bureau of Sport Fisheries and Wildlife (now U.S. Fish and Wildlife Service), Washington, DC.

Landye, J.J. 1981. Current status of endangered, threatened, and/or rare mollusks of New Mexico and Arizona. U.S. Fish and Wildlife Service, Albuquerque, NM.

New Mexico Department of Game and Fish. 1985. Handbook of species endangered in New Mexico. Santa Fe, NM.

Pilsbry, H.A. 1916. New species of *Amnicola* from New Mexico and Utah. The Nautilus 29: 111–112.

Taylor, D.W. 1987. Fresh water mollusks from New Mexico and vicinity. New Mexico Bureau of Mines and Mineral Resources. Socorro, NM. Bulletin 116.

Taylor, D.W. 1983. Report to the state of New Mexico on a status investigation of molluscs in New Mexico. New Mexico Department of Game and Fish, Santa Fe, NM.

Author

The primary author of this proposed rule is Sonja Jahrsdoerfer, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766–3972 or FTS 474–3972).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, and Transportation.

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under "Snails," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Snails							
*	*	*	*	*	*	*	
Springsnail, Alamosa	Tryonia alamosae	U.S.A. (NM)	NA	E		NA	NA
Springsnail, Socorro	Pyrgulopsis neomexicana	U.S.A. (NM)	NA	E		NA	NA
*	*	*	*	*	*	*	

Dated: August 23,1990.
Richard N. Smith,
Acting Director, Fish and Wildlife Service.
[FR Doc. 90-21970 Filed 9-17-90; 8:45 am]
BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611, 672, and 675

[Docket No. 900833-0233]

RIN 0648-AD18

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

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

ACTION: Proposed rule; request for comments.

SUMMARY: NOAA proposes a rule that would implement Amendment 16 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) and Amendment 21 to the FMP for Groundfish of the Gulf of Alaska (GOA). These regulations are proposed to address the following management problems in both the BSAI and GOA: (1) Prohibited-species bycatch management, (2) procedures for specifying total allowable catch (TACs), and (3) gear restrictions. Regulations specific to the GOA are proposed to address management of demersal shelf rockfish. In addition, definitions of *overfishing* are amended for both FMPs and discussed in the supplementary information of this proposed rulemaking. It is not intended that these definitions be codified, therefore they do not appear in the regulatory text. These actions are necessary to promote management and conservation of groundfish and other fish resources. They are intended to further the goals and objectives contained in both FMPs that govern these fisheries.

DATES: Comments are invited on or before October 27, 1990.

ADDRESSES: Comments may be sent to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802. Individual copies of the proposed Amendments 16 and 21 and the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510. Comments on the environmental assessment are particularly requested.

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson or Ronald J. Berg (Fishery Management Biologists, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the Exclusive Economic Zone (EEZ) of the GOA and BSAI areas are managed by the Secretary according to FMPs prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMPs are implemented by regulations for the foreign fishery at 50 CFR part 611 and for the U.S. fishery at 50 CFR parts 672 and 675. General regulations that also pertain to the U.S. fishery are implemented at 50 CFR part 620.

The Council annually solicits management proposals from the public and state and Federal agencies. The Council set a deadline of October 1, 1989, for receiving proposals for inclusion in Amendments 16 and 21. At its January 16-20, 1990 meeting, the Council reviewed proposals that were received. It selected for further consideration measures that would amend either or both FMPs. The Council's GOA dn BSAI Plan Teams prepared draft EA/RIR/IRFAs to discuss and analyze the need for the proposals relating to each FMP under guidance of the National Environmental Policy Act of 1969, Executive Order 12291, and NOAA policy. The Council reviewed these documents at its meeting on April 24-27, 1990, and decided to send the analyses to the interested public for review. These documents are dated May 15, 1990.

At its June 25-30, 1990 meeting, the Council considered the testimony and recommendations of its Advisory Panel (AP), Scientific and Statistical Committee (SSC), Plan Teams, fishing industry representatives, and the general public on each amendment proposal and the EA/RIR/IRFA documents. It then adopted the following measures for inclusion into Amendments 16 and 21 for review by the Secretary under section 304(b) of the Magnuson Act:

(1) Implement management measures to reduce prohibited species bycatches in the BSAI and in the GOA,

(2) Establish procedures for interim TAC specifications in both the BSAI and GOA.

(3) Change fishing gear restrictions in both the BSAI and GOA,

(4) Authorize the State of Alaska to manage demersal shelf rockfish with Council oversight in the Eastern Regulatory Area, and

(5) Define overfishing of groundfish stocks in both the BSAI and GOA.

A description of, and the reasons for, each measure follow:

(1) Implement Management Measures to Reduce Prohibited-Species Bycatches in the Gulf of Alaska and in the Bering Sea and Aleutian Islands Area

The use of trawl, hook-and-line, and pot gear in the groundfish fisheries are to varying degrees non-selective harvesting techniques in that incidental (bycatch) species, including crabs and halibut, are taken in addition to target groundfish species. A conflict occurs when the bycatch in one fishery measurably or potentially impacts the level of resource available to another fishery. Bycatch management is an attempt to balance the effects of various fisheries on each other. It is a particularly contentious allocation issue because groundfish fishermen value the use of crabs or halibut very differently then do crab and halibut fishermen. The incidental catch of red king crabs, *C. bairdi* Tanner crabs, and Pacific halibut in trawl fisheries targeting groundifsh has been of particular concern and is addressed under Amendments 16 and 21.

With the exception of the prohibition on the retention of crabs and halibut taken as bycatch in the groundfish fisheries, the management measures that control the bycatch of crabs and halibut in the domestic and joint venture groundfish fisheries in the BSAI were implemented as the result of Amendment 12a (54 FR 32642, August 9, 1989). These management measures expire at the end of 1990. In the Gulf of Alaska, halibut prohibited-species catch (PSC) limits for trawl and fixed gear are established on an annual basis. Other measures, to control the bycatch of halibut under emergency interim rulemaking, will expire during 1990.

The prohibition on retention of prohibited species or the establishment of PSC limits eliminates the incentive that the groundfish fleets might otherwise have to target on crabs and halibut, but this prohibition does not provide a substantial incentive for them to avoid or control bycatch. Therefore, at its January 1990 meeting, the Council instructed the Plan Team to develop a bycatch management amendment package evaluating other alternatives for prohibited-species bycatch management.

Based on the analyses presented in the EA/RIR/IRFA prepared for Amendments 16 and 21, the Council, at its June 1990 meeting, adopted the following bycatch management measures to control the bycatch of crabs and halibut in the BSAI trawl fisheries and in the GOA trawl and hook-and-line and pot gear (fixed gear) fisheries for groundfish.

Proposed bycatch measures specific to the BSAI:

(1) Extend Amendment 12a bycatch zones, PSC limits, and associated closures beyond December 31, 1990; and

(2) Provide authority to establish, by regulatory amendment, fishery categories that have separate apportionments of PSC limits.

Proposed bycatch management measures common to the GOA and BSAI:

(1) Provide authority to allocate fishery or gear apportionments of PSC limits on a seasonal basis, and

(2) Establish a program that provides incentives to individual vessels to avoid fishing practices that result in excessive bycatch rates of crabs and halibut and to maintain bycatch rates within acceptable performance standards.

Proposed bycatch measures specific to the GOA:

Provide authority to annually establish a halibut PSC limit for groundfish pot gear.

At its April 1990 meeting, the Council instructed its Plan Team to prepare a second prohibited-species bycatch amendment package, Amendment 16a, on which the Council would take final action during its September meeting. This action was taken because there was insufficient time to consider additional bycatch management measures under Amendment 16. The preferred alternative from Amendment 16a could be in place by the second quarter of the 1991 fishing year. With respect to crabs and halibut bycatch measures, Amendment 16a includes alternatives that would: (1) Provide the Regional Director the in-season authority to temporarily close areas that exhibit high bycatch rates of crabs or halibut, (2) permit the Regional Director to set a limit on the amount of the pollock TACs that can be taken in other than the mid-water pollock fisheries, and (3) set PSC limits for BSAI red king crab, *C. bairdi* Tanner crab, and halibut at 50%, 100%, or 150% of the levels established under Amendment 12a.

Finally, the Council instructed its Ad Hoc Bycatch Committee and the Plan Team to develop more effective and comprehensive solutions to the bycatch problem. This work began after the June 1990 Council meeting. The approaches to be considered include incentives for individual vessels and vessel pools and other fundamental changes to the existing management measures to control bycatch. The preferred alternative among such solutions could possibly be in place for the beginning of the 1992 fishing year.

BSAI PSC Limits, Bycatch Zones, and Closures

In the BSAI, the PSC limits and bycatch zones established for Pacific halibut, *C. bairdi* Tanner crabs, and red king crabs under Amendment 12a will expire December 31, 1990 (54 FR 32642). Regulations implementing Amendment 16 would extend and modify bycatch management provisions set forth under Amendment 12a beyond 1990, although PSC limits would be reviewed each year to determine whether changes in prohibited-species stock abundance or other factors justify consideration of alternative PSC limits. Specific PSC limits and associated bycatch zone closures for *C. bairdi* Tanner crab, red king crab, and Pacific halibut that were established for trawl fisheries under Amendment 12a and that would be retained as part of Amendment 16 are as follows:

C. bairdi:
1,000,000 crabs in Zone 1 for Zone 1 closure
Tanner crab:
3,000,000 crabs in Zone 2 for Zone 2 closure

Red king crab: 200,000 crabs in Zone 1 for Zone 1 closure

Halibut:
4,400 mt catch in BSAI for Zones 1 and 2H closure
5,333 mt catch in BSAI for BSAI closure

Also established under Amendment 12a were the Crab and Halibut Protection Zone (that area south of 58° N and north of the Alaska peninsula from 160° to 162° W., and west to 163° from March 15 to June 15), and the association exemption for domestic trawling for Pacific cod shoreward of the line approximating the 25-fathom depth contour. These measures, as well as existing requirements for approved data gathering programs and a 12,000 PSC limit for red king crabs in this cod fishery would also continue under Amendment 16a.

When PSC limits established under Amendment 12a were recommended and approved to limit bycatch of crabs and halibut in the 1990 fisheries, the Secretary assumed that the groundfish fleets would reduce their bycatch rates sufficiently to fully harvest the groundfish TACs. Fishing results since Janaury 1990 indicate that this did not occur.

To date, the 1990 closures for domestic annual processing (DAP) and joint venture processing (JVP) have been as follows:

(1) JVP flatfish—Zone 1 on January 25 due to red king crab bycatch;
(2) JVP flatfish—Zones 1 and 2H on February 27 due to halibut bycatch;
(3) JVP flatfish—all of BSAI on March 5 due to halibut bycatch;
(4) DAP flatfish—Zones 1 and 2H on March 14 due to halibut bycatch;
(5) DAP flatfish—all of BSAI on March 19 due to halibut bycatch;
(6) DAP Pacific cod and pollock bottom trawl—Zones 1 and 2H on May 30;
(7) DAP Pacific cod and pollock bottom trawl—all of BSAI on June 30;
(8) JVP flatfish—reopened June 25-July 1 supported by remaining 22 mt of halibut PSC.

Despite the bottom trawl closures during 1990, NMFS anticipates that groundfish harvests in the BSAI will approach 90 percent of the combined total allowable groundfish catch. All of the remaining pollock TAC amounts could be harvested with pelagic trawl gear. Fishing effort using hook-and-line and pot gear for Pacific cod is expected to take a significant portion of the remaining TAC for this species. The potential impact that existing bycatch management measures have on individual pollock and Pacific cod bottom-trawl operations and the associated market implications are difficult to estimate.

Furthermore, it is not known to what extent the closure of the BSAI to the Pacific cod bottom-trawl fishery will benefit hook-and-line and pot-gear fisheries for this species or to what extent trawl gear will be modified to allow for its continued use in the Pacific cod fishery under existing regulations.

Fishery Apportionments of PSC Limits in the BSAI

Prohibited-species catch limits would be apportioned into prohibited-species bycatch allowances that would be assigned to DAP and JVP trawl fisheries. The number and definition of fisheries eligible for separate prohibited-species bycatch allowances would be subject to review and revision by the Secretary of Commerce, after consultation with the Council, through the regulatory amendment process. Proposed regulations to implement Amendment 16 would authorize the apportionment of PSC limits to the five fishery categories defined below (fishery definitions are based on round-weight equivalents of fish or fish products on board a vessel):

(1) "DAP turbot fishery" means DAP fishing with trawl gear that results in retained amounts of Greenland turbot and arrowtooth flounder, in the aggregate, that are 20 percent or more of the total amount of other groundfish or groundfish products retained during a weekly reporting period.

(2) "DAP rock sole fishery" means DAP fishing with trawl gear that (a) results in retained amounts of rock sole that are 20 percent or more of the total amount of other groundfish or groundfish products retained during a weekly reporting period and (b) does not qualify as a "DAP turbot fishery".

(3) "DAP flatfish fishery" means DAP fishing with trawl gear that (a) results in retained amounts of yellowfin sole and "other flatfish," in the aggregate, that are 20 percent or more of the total amount of other groundfish or groundfish products retained during a weekly reporting period, and (b) does not qualify as a "DAP turbot" or "DAP rock sole" fishery.

(4) "DAP other fishery" means DAP fishing with trawl gear that results in retained amounts of any other combination of groundfish species during a weekly reporting period that would not qualify as a "DAP turbot", "DAP rock sole," or "DAP flatfish" fishery.

(5) "JVP flatfish fishery" means JVP fishing with trawl gear which results in deliveries to foreign vessels of amounts of yellowfin sole, rock sole, and "other flatfish," in aggregate amounts, that are 20 percent or more of the total amount of groundfish delivered during a weekly reporting period.

Foreign directed fishing would not be affected by this rule. Existing PSC limits specified in the foreign fishing regulations (§ 611.93) would apply to foreign fishing if any allocation of groundfish in the BSAI area is made to foreign directed fishing during the effective period of this rule.

The apportionment of PSC limits to trawl fishery categories would be determined annually by the Secretary, after consultation with the Council, based on an assessment of fishery bycatch needs and the best available information concerning optimal distribution of PSC limits for the purpose of maximizing groundfish harvests. Proposed prohibited-species bycatch allowances for each fishery would be made available for public comment concurrently with the notice of preliminary initial specification of harvestable amounts of groundfish required to be published in the Federal Register under § 675.20(a)(7). A final notice of PSC limit apportionments also would be published in the Federal Register concurrent with the final notice of initial specifications.

Authority to make inseason adjustments to PSC allowances under regulations implementing Amendment 12a is also extended. This authority is intended to allow correction of a PSC allowance that was initially incorrectly specified due to a calculation error or wrong assumption in predicting a fishery's bycatch.

A description of how crabs and halibut PSC limits and associated prohibited-species bycatch allowances would be monitored is contained in the preamble to the final rule implementing Amendment 12a (54 FR 32642, August 9, 1989). Similarly, observed or estimated bycatches of crabs and halibut caught with groundfish will be counted and totals estimated using standard statistical procedures. A vessel's bycatch of crabs and halibut reported or estimated for any one weekly reporting period (Sunday through Saturday) will be credited to the prohibited-species bycatch allowance set forth for the DAP or JVP fishery previously listed that defines the species composition of the total amount of groundfish retained or delivered by the vessel during that weekly reporting period. In the absence of observers on some DAP fishing vessels, crabs and halibut bycatches in the DAP fisheries will be calculated from estimated bycatch rates, based on the best available information.

For bycatch accounting purposes, discriminating between the different DAP fisheries will be based on a blend of data from weekly observer reports and from weekly production reports required of groundfish processors under § 675.5(c)(2). For purposes of determining when a PSC allowance for a DAP or JVP fishery will be attained, the Regional Director may forecast bycatches of crabs and halibut based on observer reports and weekly production reports for a DAP fishery and observer reports for a JVP fishery.

Any catch of groundfish by U.S. fishermen during a weekly reporting period will be attributed to one of the five specified fisheries as previously defined, and bycatches during the same weekly reporting period will be counted against the prohibited-species bycatch allowance of the respective fishery. The PSC limits, theoretically, will not be exceeded because attainment of a fishery's prohibited-species bycatch allowance in a bycatch limitation zone or area will trigger closure of that fishery in that zone or area. Experience to date under Amendment 12a, however, indicates that prohibited-species bycatch allowances may be exceeded, particularly in fast-paced fisheries that exhibit high bycatch rates of one or more prohibited species or when fishing effort increases unexpectedly during a week. Although exceeding established bycatch allowances is undesirable, this situation may be unavoidable until technical improvements are made to routine communication procedures, improvements that would enable more timely transmittal of fishery data between vessels and management agencies. The NMFS is researching alternatives that would enable more timely transmission of fishery information. At a minimum, regulatory changes to existing reporting requirements will be proposed that would require more timely submission of catch and production information.

When the "JVP flatfish fishery" or the DAP turbot, rock sole, or flatfish fisheries attain a prohibited-species bycatch allowance for either *C. bairdi* Tanner crabs, red king crabs, or halibut, the associated bycatch zone(s) are closed to that fishery, as previously defined. Attainment of a PSC allowance of the "DAP other fishery," however, would restrict the directed trawl fisheries for Pacific cod and pollock to pelagic trawl gear. Bottom-trawl fishing for other species in the "DAP other fishery" category could continue. Under Amendment 12a, the bottom-trawl restrictions in the "DAP other fishery" category were based on the assumption that bottom-trawl effort for Pacific cod and pollock account for most of the prohibited-species bycatch. Observer data collected during 1990 and beyond may indicate that catches of target species other than Pacific cod and pollock within the "DAP other fishery" category have significant bycatch of prohibited species. If this is the case, the Council may consider recommending regulatory amendments to restrict additional target fisheries within the "DAP other fishery" category to pelagic trawl gear in a bycatch zone once a prohibited-species bycatch allowance for that zone is reached.

Apportionments of the Halibut PSC Limits in the Gulf of Alaska

The GOA FMP currently gives the Secretary authority to annually establish a halibut PSC limit and apportion that limit to specific gear types. Regulations implementing Amendment 18 to the FMP (54 FR 50386, December 6, 1989) established separate halibut PSC apportionments to (1) trawl gear and (2) hook-and-line and pot gear combined through December 31, 1990. After implementation of Amendment 18, an emergency interim rule was implemented (55 FR 5994, February 21,

1990) that exempted groundfish pot gear from halibut PSC restrictions and closures because this gear type accounts for such a small amount of halibut bycatch mortality relative to hook-and-line gear. A separate emergency interim rule (55 FR 33715; August 17, 1990) required that pot: gear be modified to exclude further the entry of halibut and that pot gear, modified in this manner, would be exempt from the hook-and-line closure in the GOA. The emergency interim rule was partially based on the need to collect additional observer data during 1990 on halibut bycatch rates and mortality for pot gear used to target for groundfish that is reconfigured to exclude large halibut.

Given the significant difference in halibut bycatch mortality observed for trawl, hook-and-line, and pot-gear operations, the Council adopted proposed regulations that would allow for the annual establishment of separate halibut PSC apportionments for these gear types. Proposed halibut PSC limit apportionments for trawl, hook-and-line, and groundfish pot fisheries would be published in the **Federal Register** for public comment under § 672.20(f)(2) with the notice of preliminary specification of initial harvestable amounts of groundfish required under § 672.20(c). Subsequently, initial halibut PSC limit apportionments for a fishing year would be published in the **Federal Register** with the final notice of specifications of initial harvest amounts for groundfish.

The Council also adopted proposed gear restrictions for pelagic trawl and pot gear to further reduce halibut bycatch mortality. These restrictions are discussed below under "Fishing gear restrictions."

Seasonal Allocation of Prohibited Species Catch (PSC) Allowances in the BSAI and GOA

Seasonal allocations of PSC allowances established for *C. bairdi*, red king crab, and Pacific halibut in the BSAI and for halibut in the GOA would be determined annually, if necessary, by the Secretary of Commerce, after consultation with the Council. The proposed authority to seasonally allocate fishery or gear PSC allowances is intended to promote equity and efficiency. With respect to equity, seasonal allocations of PSC allowances could assure that a fishery is not precluded just because it operates late in the year after other fisheries have exhausted the PSC allowance for a fishery category. Seasonal apportionments can also be used to enhance efficient management of fishery resources by providing an opportunity for profitable fisheries to operate later in the year when prohibited-species bycatch rates may be lower.

Seasonal allocations of PSC allowances will reduce one source of uncertainty for those planning fishing operations because the potential for an early fishery to take all of a fishery category's PSC allowance and preclude a later fishery can be reduced or eliminated.

Proposed seasonal allocations of PSC allowances would be made available for public comment in the notice of preliminary specification of initial harvestable amounts of groundfish published in the **Federal Register** under § 675.20 (a)(6) and § 672.20(f)(2). A final notice of seasonal allocations of PSC allowances also would be published in the **Federal Register** with the final notice of specifications of initial harvestable amounts of groundfish.

The Secretary would consider the best available information when determining seasonal allocations of PSC allowances, including that contained in the preliminary and final Stock Assessment and Fishery Evaluation (SAFE) reports prepared by Council's groundfish Plan Teams. Types of information that the Secretary would consider relevant to seasonal allocations of PSC allowances include:

(1) Seasonal distribution of prohibited species;

(2) Seasonal distribution of target groundfish species relative to prohibited-species distribution;

(3) Expected prohibited-species bycatch needs on a seasonal basis relevant to changes in prohibited-species biomass and expected catches of target groundfish species;

(4) Expected variations in bycatch rates throughout the fishing year;

(5) Expected changes in directed groundfish fishing seasons;

(6) Expected start of fishing effort; and

(7) Economic effects of establishing seasonal prohibited-species allocations on segments of the target groundfish industry.

Vessel Incentive Program to Avoid Excessive Bycatch Rates of Prohibited Species in the BSAI and GOA

Observer information on prohibited-species bycatch during 1990 indicates that a relatively small number of vessels can take a large share of prohibited-species bycatch allowances established for the trawl fisheries in the BSAI and for halibut bycatch allowances established for the trawl and longline fisheries in the GOA. In response to this finding and the desire to maximize groundfish harvests for a given PSC limit, the Council adopted the "penalty box" incentive program for management of prohibited-species bycatch in the BSAI and halibut bycatch in the GOA.

This program is intended as an interim measure to sanction those vessels with excessive bycatch rates during the period that a more comprehensive vessel by vessel incentive program is analyzed and developed to reduce prohibited-species bycatch rates. As such, the penalty box program is not intended to provide a comprehensive response to the issue of prohibited-species bycatch in groundfish fisheries. This program is, however, directed at vessels which demonstrate excessive bycatch rates when judged against a system of acceptable performance standards. It is intended to increase the opportunity to harvest groundfish TACs before established PSC limits are reached by encouraging vessels to maintain average bycatch rates within acceptable performance standards and discourage fishing practices that result in excessive bycatch rates.

The Council had originally developed the penalty box program to address excessive bycatch rates of *C. bairdi* Tanner crabs, red king crabs, and halibut in up to 10 different groundfish bottomtrawl fisheries in the BSAI. The Council subsequently expanded this program to GOA halibut bycatch in the trawl fisheries and in the hook-and-line fishery for Pacific cod. The penalty box program, as adopted by th Council, would require that individual vessel bycatch rates be analyzed for excessive bycatch rates within 38 separate prohibited-species/target-fishery groups or cells each week.

The NMFS Regional Director, Alaska Region, would be responsible for the implementation of the penalty box program. This program is viewed by NMFS as a trial program from which more comprehensive and effective incentive programs may develop. As such, the Regional Director recommends that the scope of the proposed penalty box program be reduced to a level that can be practically managed given available personnel, budgetary, and technical constraints. Specifically, the Regional Director recommends that the penalty box program be restricted to address only halibut bycatch by trawl gear other than pelagic trawls in the BSAI and GOA trawl fisheries and in the GOA hook-and-line fishery for Pacific cod. The Regional Director made this recommendation for several reasons: (1) The number of prohibited-species/targetfishery cells that must be analyzed each week for excessive bycatch rates would be reduced from 38 to 17 cells; (2) red king crabs, and to

some extent *C. bairdi* Tanner crabs, bycatch rates show high random variability which would frustrate the effectiveness of the penalty box program as applied to crab bycatch; (3) closure of Zone 1 due to red king crab bycatch should not have a significant impact on the ability of trawl fisheries to harvest groundfish TACs; (4) *C. bairdi* Tanner crab bycatch does not appear to be a constraining factor in the BSAI groundfish fishery's ability to harvest groundfish TACs and could be included within the penalty box program once the program is tested and judged effective in terms of reducing excessive bycatch rates of halibut, and (5) the Council may recommend in a subsequent amendment that the Regional Director be given authority to close areas where high rates of prohibited species, including red king crabs and Tanner crabs, are encountered. If such authority is proposed and approved, it would provide an additional management tool to reduce crab bycatch.

Vessel applicability. Trawl vessels that use gear other than pelagic trawl gear to harvest groundfish in the BSAI or GOA would participate in the penalty box program each week that the vessel had two or more days of observed catch. In the GOA, vessels using hook-and-line gear in the directed fishery for Pacific cod would also participate in the penalty box program each week such vessels had two or more days of observed catch.

For purposes of this discussion "observed" means reported by certified NMFS Observers participating in the NMFS Observer Program (see §§ 672.27 and 675.25).

The observed bycatch rates of all eligible vessels would be judged at the end of each weekly reporting period (defined as Sunday through Saturday) as to whether their average observed bycatch rate of halibut was within acceptable performance standards.

Acceptable performance standards. Target Fishery Categories. Each week, a vessel's observed groundfish catch composition would be used to determine which target fishery category that vessel fished in during that week. The Council recommended that BSAI target fishery categories would be determined annually by the Secretary, after Council consultation. The Council also recommended distinct target fisheries categories for the GOA, which could only be changed by a regulatory amendment, rather than determined annually as for the BSAI. The Secretary is proposing that GOA target fisheries be determined annually also, as the Council recommended for the BSAI. Unless other issues prevail, consistency between procedures for implementing new management measures in the Bering Sea and the Gulf of Alaska is in the public interest because it reduces confusion and uncertainty.

Target fishery categories would be based on (1) intrinsic bycatch rates associated with different target fisheries, (2) NMFS' ability to monitor individual vessels within different target fishery categories, and (3) the extent to which target fisheries compete for bycatch quota. The number and definitions of target fishery categories would be reviewed prior to the beginning of each fishing year. Proposed target fishery categories would be made available for public comment in the notice of preliminary initial specification of harvestable amounts of groundfish required to be published in the **Federal Register** under § 675.20(a)(7). Final target fishery categories would be published in the **Federal Register** with the final notice of initial specifications.

For 1991, the following definitions for target fishery categories are proposed and listed in order, numerically, for each area and gear type. The numerical order from smallest to largest for a given area and gear type determines which target fishery the vessel is assigned to during the evaluation period. These definitions are based on the percent composition that target species or species groups comprise of a vessel's total observed groundfish catch during the evaluation period.

BSAI—TRAWL (EXCLUDING PELAGIC TRAWL)

	Percent
(1) DAP rock sole	35
(2) DAP deep water turbot (only Greenland turbot and arrowtooth flounder catch would be used to identify this fishery)	35
(3) DAP Pacific cod	45
(4) DAP rockfish	20
(5) DAP bottom trawl pollock	50
(6) DAP sablefish	20
(7) DAP yellowfin sole/other flatfish	20
(8) DAP all other bottom-trawl fisheries	
(9) JVP flatfish	

GOA—BOTTOM TRAWL (EXCLUDING PELAGIC TRAWL)

	Percent
(1) Bottom trawl pollock:	50
(2) Pacific cod	50
(3) Rockfish:	35
(4) Deep water flatfish:	35
(5) Shallow water flatfish:	35
(6) Arrowtooth flounder	35
(7) All other trawl fisheries using other than pelagic trawl gear	35

GOA—HOOK-AND-LINE

	Percent
Pacific cod	35

At the end of a weekly reporting period, a vessel would be assigned to the first fishery appearing in numerical order for a given area and gear type, for which it meets the minimum catch requirement. Both the minimum catch composition rule and the order of the rules are important in identifying a vessel's target fishery category during each weekly reporting period. Two examples in the BSAI illustrate this concept. Example one, if a vessel at the end of a weekly reporting period retained 35 percent rock sole and 35 percent Greenland turbot, the vessel would be assigned to the rock sole fishery, because the rock sole fishery is before deep water turbot in the listed order. Example two, if a vessel at the end of a weekly reporting period retained 35 percent deep water turbot and 45 percent Pacific cod, the vessel would be assigned to the deep water turbot fishery. This assignment occurs even though the proportion of deep water turbot is less than the proportion of Pacific cod, because the deep water turbot fishery is before Pacific cod in the listed order.

Weekly Checkpoints. At the end of each weekly reporting period, a vessel's observed catch composition would be used to determine the appropriate target fishery category for that vessel. An individual vessel's observed performance in a target fishery would be based on the vessel's average observed halibut-bycatch rate calculated for up to four of the most recent weeks that the vessel fished in that target fishery to the extent that data is available. A vessel's average bycatch rate for up to four weeks would be calculated as the observed bycatch of halibut (kilograms) divided by the total observed catch (metric tons) of allocated groundfish species.

These rates would be judged against the average halibut bycatch rate observed for all vessels in the same target fishery calculated for up to four of the most recent weeks. If a vessel's average bycatch rate for a prohibited species is more than two times the target fishery average, the vessel would be preliminarily determined to have excessive bycatch rates.

Fleet averages for a particular fishery would be calculated for all vessels fishing within a target fishery category in the entire BSAI or GOA management

area, rather than for each federal reporting area. For example, a vessel fishing for rock sole in Area 511 would be judged against the average bycatch rate for all vessels fishing rock sole anywhere in the BSAI management area during the past 4-week period.

Excessive bycatch rates and subsequent vessel suspensions. During each weekly checkpoint, those vessels that have bycatch rates in excess of acceptable performance standards, e.g., more than two times a target fishery's average bycatch rate, would be identified. The time period to identify such vessels would be the time between the weekly checkpoint and the time that the best available observer data for a particular vessel and the fleet are obtained by the Regional Director.

The above procedure varies from that recommended by the Council. In the Council's recommendation, a vessel operator would be required to provide for an opportunity for debriefing the observer, including returning to a designated port, upon notification by the Regional Director that the vessel's bycatch rate appeared to have exceeded the performance standard. The Secretary, however, proposes to suspend a vessel once the best available observer data show that a vessel has indeed exceeded the performance standard, subject to review by the Regional Director. The Secretary has made this change, because observer data must be verified before being used in a manner that imposes costs on an individual vessel operation. Once verified and determined to be the best data available, the data should then be used as intended, i.e., to suspend the individual vessel.

Accordingly, upon notification by the Regional Director, the vessel operator would have the opportunity to petition NMFS officials for relief from suspension. Upon petition of the operator, the Regional Director would review the observer data upon which a suspension action was based. If the Regional Director maintains that suspension action is warranted based on observer data, the vessel operator will be notified that all directed fishing for groundfish by that vessel is prohibited for a specific suspension period, starting with the time the vessel operator had been notified that his average bycatch rate had exceeded the performance standard.

A vessel's first failure to meet acceptable bycatch performance standards for halibut during the most recent 12-month period would result in a 5-day suspension period. During this period, the vessel must cease all directed fishing for groundfish in all federally managed waters off Alaska and adjacent State waters. If a vessel fails to meet acceptable performance standards for halibut a second time during a 12-month period, the vessel would be suspended from the groundfish fishery for a 2-week period and would be required to carry an observer at all times for the next 2 weeks of fishing following the 2-week suspension. If a vessel fails to meet acceptable bycatch performance standards for halibut three or more times during a 12-month period, the vessel would be suspended from the groundfish fishery for a period of 6 weeks and would be required to carry an observer onboard at all times for the next 4 weeks of fishing following the 6-week suspension.

Appeal procedures. A vessel operator whose vessel is suspended from participating in directed groundfish fisheries under a system of prohibited-species-bycatch performance standards could appeal the suspension to the Assistant Administrator for Fisheries, NOAA (Assistant Administrator) or a designee. The appeal would be presented at the option of the operator at a hearing before a person appointed by the Assistant Administrator to hear the appeal. The Assistant Administrator would determine, based upon the record and any record developed at a hearing, whether or not the suspension is supported by the criteria set forth under published performance standards.

With respect to procedures used to suspend vessels, NOAA is proposing that only verified observer data be used. Comments are particularly requested on the proposed vessel incentive programs for the BSAI and GOA.

(2) Establish Procedures for Specifying Interim TACs and Applicable Prohibited-Species Bycatch Amounts

Annual specifications and apportionments of groundfish TACs and applicable prohibited-species bycatch amounts among user groups are based on the January 1—December 31 calendar year. User groups may include DPA, JVP, and foreign fishermen catching or delivering to foreign processors (TALFF). Procedures for establishing annual specifications of TACs are found in section 4.2.1.1 of the GOA FMP and section 11.3 of the BSAI FMP. Procedures in the GOA FMP differ from those in the BSAI FMP. The GOA FMP stipulates that annual TACs take effect for a fishing year on a date published in the Federal Register. The BSAI FMP is silent about an effective date for establishing annual TACs. FMP requirements notwithstanding, regulations implementing the GOA FMP stipulate that final TACs be published in the Federal Register on or about January 1 of each year. Regulations implementing the BSAI FMP stipulate that final TACs be published as soon as practicable after December 15 of each year.

Procedures for establishing annual specifications of PSC limits are found in section 4.2.3.1 of the GOA FMP and section 14.5.2.F of the BSAI FMP.

The fishing year is the same as the January 1—December 31 calendar year. Each specification expires when the fishing year terminates. During the fishing year, inseason management measures are implemented on the basis of current annual specifications for a calendar year.

Existing procedures require the Secretary to consider the record on which the Council has based its recommendations for establishing TACs and appropriate PSC amounts, draft a final notice of initial specifications, obtain legal and policy review, and file the notice all during the period after the end of the December Council meeting, which is about 10 days.

There is insufficient time available between the end of the December Council meeting and January 1 of a new fishing year for the NMFS, Alaska Region, to prepare and the Secretary to review and implement final TACs and appropriate PSC amounts by publishing them in the Federal Register. For example, TACs and appropriate PSC amounts were published in the Federal Register on the following dates in recent years:

GOA January 4, 1985.
BSAI—March 21, 1985.
GOA—January 9, 1986.
BSAI—January 9, 1986.
GOA—January 9, 1987.
BSAI—January 9, 1987.
GOA January 14, 1988.
BSAI—January 14, 1988.
GOA February 13, 1989.
BSAI—January 25, 1989.
GOA—January 31, 1990.
BSAI—January 16, 1990.

These examples show that TACs and PSCs are not made effective on January 1. To ensure that TACs and the appropriate PSC amounts and their specifications are effective for the fishing year on January 1, the Council has proposed procedures for implementation of interim TACs and specifications.

The Council approved FMP amendments that would require the Secretary to implement one-fourth of the preliminary TACs and appropriate PSC amounts adopted by the Council at its annual September meeting on an interim

basis on January 1 of a new fishing year. The purpose of allocating only a portion of the TAC and PSC specifications is to avoid establishing an interim specification for a particular species that might be much larger than that which the Secretary might eventually implement as the final specification. This measure would prevent larger DAP or JVP apportionments being available on January 1 than intended by the Council.

In another action, the Council has recommended that pollock be allocated quarterly for 1991 in the GOA Central and Western Regulatory Areas (proposed amendment 19 to the GOA FMP). Should this action be approved and implemented by the Secretary, the first quarterly allowance of the pollock TAC recommended by the Council at its September meeting would be the same numerical amount under this proposed action to allocate one-fourth of the preliminary TAC on an interim basis.

(3) Change Fishing Gear Restrictions

Both the GOA and BSAI FMPs contain sections pertaining to gear restrictions. Gear development, however, is dynamic. Some gear development is directed at reducing bycatches of prohibited species, such as halibut, crabs, salmon, and herring. Some of this development has resulted from closures in the BSAI and the GOA required by existing regulations as a result of reaching specified PSC limits of prohibited species. Some gear development is also directed at reducing catches of groundfish of unmarketable size.

The current structure of the FMPs include specific sections on gear as follows:

In the GOA FMP, § 4.3.1.3 *Gear restrictions* contains (1) restrictions on legal gear for harvesting sablefish and (2) time/area closures and reference to gear restrictions to protect king crabs in the vicinity of Kodiak Island.

This FMP section also includes obsolete text that requires biodegradable panels on sablefish pots, which are not a legal gear type for sablefish in the Gulf of Alaska.

In the BSAI FMP, § 14.4.4 *Gear restrictions.* simply states "None".

Any substantive changes to gear definitions or other restrictions must be accomplished by amending the FMPs. Plan amendments generally require a year or more to develop and implement. The Council desires more flexibility to define and implement gear restrictions and consequently respond more rapidly to changes in the fishery. The Council recommends, therefore, that the FMPs be amended in such a way that future gear definitions or restrictions would be accomplished by regulatory amendments consistent with general gear standards and criteria in the FMPs.

The GOA and BSAI FMPs are proposed to be amended by retaining current section headings that relate to gear. General guidance and Council policy with respect to gear restrictions would be included in the FMP text. Gear types authorized by the FMP are trawls, hook-and-line, pots, jigs, and other gear types that are considered effective in harvesting groundfish stocks. Further restrictions on gear that are necessary for conservation and management of the fishery resources and which are consistent with the goals and objectives of the FMP are found in implementing regulations. Future changes to regulations with respect to gear restrictions would be accomplished as necessary by regulatory amendments accompanied with necessary environmental and socioeconomic analyses.

In making recommendations for FMP amendments with respect to gear, the Council also reviewed current gear restrictions now in effect. It recommended three changes to regulations as follows:

(1) Biodegradable panels on groundfish pots would be required;

(2) Halibut exclusion devices on groundfish pots would be required; and

(3) Pelagic trawls would be redefined.

A description of, and need for, each of the three changes to regulations pertaining to gear restrictions follows.

Biodeoradable Panels on Grounfish Pots

The NMFS database of groundfish permits shows that 50 groundfish vessels are permitted in 1990 to use pot gear in the GOA and BSAI groundfish fisheries and each vessel has about 70 pots. Pots that are lost at sea continue to "ghost" fish, i.e., fish continue to enter pots. Once in a pot, fish seldom escape. They die and decompose. Dead and live fish will attract other fish which will then enter the pot. Dead and live fish will also attract scavengers such as crabs, which will enter the pot. This cycle continues indefinitely unless an escape mechanism (e.g., port, vent, or biodegradable panel) allows trapped fish and crabs to leave the pots. Such fishing mortality is unknown, which introduces uncertainty in the estimates of abundance of fish stocks. It also is a potential waste of economically valuable resources that otherwise might have been harvested. The potential for ghost fishing is illustrated by Alaska Department of Fish and Game (ADF&G) findings with respect to crab pots. For example, crab pots left unchecked in Cook Inlet for 75 days during 1988 yielded 15,000 dead Tanner crabs.

The ADF&G is currently recommending that crab pots be furnished with a panel of at least 18 inches in length that is parallel to, and within 6 inches, of the bottom of the pot. Each panel would be laced with #30 cotton twine. The ADF&G studies indicate that biodegradable panels on king crab pots using this twine weight degrade within 50–100 days.

To prevent groundfish waste, the Council recommended that the Secretary require biodegradable panels on all pots used to fish for groundfish in the GOA and BSAI. Biodegradable panels would be constructed according to ADF&G regulations for crab pots.

Halibut Exclusion Devises on Groundfish Pots

Halibut are caught as bycatch in groundfish pots. As more fishermen fish for Pacific cod, bycatch problems could increase. Some fishermen are currently using pots that have restricted tunnel openings to reduce the bycatch of halibut. Reduced halibut bycatch would foster the Council's objective to develop management measures that encourage the use of gear that reduces the discard of fish, including prohibited species such as halibut, which are caught as bycatch in groundfish fisheries. Discussions with management personnel in the ADF&G suggest that merely partitioning the pot opening into smaller openings may accomplish this objective. Narrow openings impede entry by halibut but do not impede entry by groundfish species targeted with pot gear, such as Pacific cod, except when the fish are particularly large. Partitioning the pot opening might be accomplished by tying strong cords vertically across the vertical plane of a pot opening in such a way that either side of the partitioned opening would be no more than 9 inches. Or, it might be accomplished by constructing a pot opening that has a width and a height of no more than 9 inches.

Use of pots was not common in the groundfish fisheries off Alaska prior to 1990. Pot catches of groundfish in 1989 totaled about 100 metric tons of groundfish, most of which was Pacific cod. In 1990, however, over 2,800 mt of Pacific cod have been caught with pots through June 26, 1990. Given current closures to bottom trawling for Pacific cod in the BSAI and an exemption for pot gear in the GOA from halibut PSC accountability for 1990, the use of pots is expected to increase markedly.

Recent information is available from the NMFS 1990 observer program

through June 16, 1990. Nine records of observations show that 3.3 mt of halibut were caught while harvesting 273.7 mt of Pacific cod with pots, which results in a halibut bycatch rate of 1.2 percent (metric tons of halibut for each metric ton of Pacific cod). This fishery has been conducted by the Kodiak fleet, most of which are already using nine-inch openings in the pots, which serve as halibut exclusion devices.

The Council, upon reviewing comments received from the industry, recommended that the Secretary change regulations to require openings in groundfish pots that are no wider or higher than 9 inches. A narrowed pot opening serves as a halibut exclusion device.

Public testimony suggests that a narrowed pot opening works best on the modified crab pots used in the Gulf of Alaska that are now being used for groundfish pots. These pots formerly had 36-inch wide openings constructed of a rigid metal frame. In the BSAI, however, some pots are used that were constructed initially to be used as groundfish pots. They may have fabric tunnel openings that terminate inside the pots as 12-inch wide slits, through which Pacific cod move as they enter the pots.

At this time, NOAA is proposing that the openings in these pots also be no wider than 9 inches in any dimension. No information is available to show whether significantly more halibut would be caught by pots with 12-inch wide openings or with 9-inch wide openings. To facilitate enforcement, however, a standard required opening is necessary for both the GOA and BSAI regulations.

Modified Definition of a Pelagic Trawl Gear

The current definition of a pelagic trawl at 50 CFR parts 672.2 and 675.2 reads as follows:

> *Pelagic trawl* means a trawl on which neither the net nor the trawl doors (or other trawl-spreading device) operates in contact with the seabed, and which does not have attached to it protective devices, such as rollers or bobbins, that would make it suitable for fishing in contact with the seabed.

The above restrictions about parts of the trawl not contacting the seabed were intended to minimize the bycatches of halibut and crabs. Prohibitions on parts of the pelagic trawl contacting the seabed, however, are not enforceable.

A modified definition of pelagic trawl is proposed, which includes a modification that promotes the escape of halibut and crabs that might be caught. Although pelagic trawl gear is generally assumed to catch minimal amounts of prohibited species, this gear is often fished on the bottom. If, however, pelagic trawl gear is fished on the bottom but catches insignificant amounts of halibut and crabs, then contact with the bottom becomes less important.

Pelagic trawls are used to fish for pollock during certain times of the year in the BSAI and in the GOA. Pollock move in schools off the bottom, which allows their capture by pelagic trawls. Other groundfish, e.g., flatfish, Pacific cod, and demersal species of rockfish, are found on or in close proximity to the bottom, and cannot be fished effectively with pelagic trawls. Bottom trawls are used for these species. Pacific cod occur within 1.5 fathoms off the bottom but dive toward the bottom when crowded by a moving trawl, diving under the foot rope of a pelagic trawl. Pollock in the BSAI behave like Pacific cod from October through the end of the fishing year. They tend to dive under the foot rope of a pelagic trawl, and, therefore can only be fished effectively with a bottom trawl. Pollock in the GOA behave differently late in the year and are found off bottom where pelagic trawls continue to be effective.

The NMFS staff met with industry representatives to determine how pelagic gear ought to be defined such that Council objectives of reducing bycatch of prohibited species might be promoted. The industry emphasized that pelagic trawls are currently constructed with large-mesh openings or parallel lines behind the trawl opening. This construction reduces drag while the trawl is fishing. Mesh openings of at least one meter (3.3 feet) or parallel lines that are at least 1 meter apart accomplish the objective of reducing drag but also result in reduced bycatch of halibut and crabs. These animals, upon passing over the foot rope and into the trawl, are believed to escape through the large meshes or between the parallel lines. The proposed definition for pelagic trawl is as follows:

Pelagic trawl means: (1) A trawl that has (a) stretched mesh sizes of at least 1 meter, as measured between knots, starting at the fishing line and extending aft for a distance of at least 10 meshes and going around the entire circumference of the trawl, and (b) webbing that is tied to the fishing line with no less than 0.3 meter (12 inches) between knots around the circumference of the net; or (2) a trawl whose forward portions comprise parallel lines spaced no closer than 1 meter, starting at the fishing line and extending aft for a distance of at least 10 meters and going around the entire circumference of the trawl.

The large mesh sizes or parallel lines in back of the fishing line provide escape panel for halibut and crabs in case the pelagic trawl contacts or comes near the seabed and result in reduced bycatches of halibut and crabs. Historical joint venture data provide evidence that halibut and crab bycatches are minimal when using trawls of this type because these animals escape the pelagic trawl through the large meshes. Requiring 1-meter meshes around the net circumference instead of just the belly panel would prevent a fisherman from circumventing the purpose of the proposed rule by fishing a net up-side down. When bycatch PSC allowances of halibut or crabs are reached, closure notices would stipulate that further trawling with trawls other than pelagic trawls would be prohibited.

Industry sources indicate that most pelagic trawls purchased within the last 10 years for use in the BSAI probably conform to this definition. Trawl fishermen have been using these trawls for off-bottom trawling because the larger meshes reduce drag for the towing vessel.

The Secretary is deleting the Council's proposed requirement that bobbins and rollers be removed. In practice, these devices could actually reduce bycatch if halibut and crabs were to pass under the trawl, avoiding capture. Fishermen, however, likely will remove these devices anyway, because when taken up on reels onboard the vessel they would protrude through the large meshes, preventing unwinding the trawl. This rule proposes that the definition of bottom trawl in §§ 672.2 and 675.2 be deleted. Fishery trawl closures are expected to stipulate fishing with trawl other than pelagic trawls be prohibited. If types of trawls other than pelagic trawls are not important, then the definition of a bottom trawl serves no purpose. The NOAA recognizes that other trawl configurations may exist or might be developed which would also be effective in reducing bycatch. The Secretary wishes to solicit input from the industry in this respect.

(4) Authorize the State of Alaska to Manage Demersal Shelf Rockfish With Council Oversight in the Eastern Regulatory Area of the Gulf of Alaska

The demersal shelf rockfish fishery is a low-volume hook-and-line fishery conducted largely by small vessels operating out of small coastal communities in southeast Alaska. The current GOA FMP provides for limited

management by the State of Alaska of the demersal shelf rockfish fishery in the Gulf of Alaska. State management is limited to closures of areas smaller than the areas described in the FMP and imposition of overall harvest levels smaller than the TAC established by the Council. The State can apply this management regime in the EEZ only to State registered vessels.

To date, a TAC for demersal shelf rockfish has only been established in the Southeast Outside District, and State management has only been applied, therefore, in this district. In 1990, the specified TAC is 470 mt. About half the harvest of demersal shelf rockfish comes from the EEZ and the other half from State waters inside 3 miles from the baseline from which territorial sea is measured. Fishermen move freely between State and Federal waters and at times even deploy fishing gear directly across that boundary. Consistency between State and Federal regulations is necessary for coherent management of this fishery.

State management has included intensive dockside monitoring to determine effort data for projecting closures as well as collecting other information to manage this species assemblage. Much of this management is more detailed and labor intensive than NMFS can perform under priorities established by current budgeting and staff constraints.

The State implemented a rockfish fishery management plan in 1989 that manages demersal shelf rockfish in State waters adjacent to the Southeast Outside District. The management plan includes regulations that pertain to inseason adjustments, seasons, seasonal apportionments of quotas, gear specifications, trip limits, directed fishing quotas (within the TAC), and management areas. These regulations provide measures to effectively manage this fishery. As a result, however, certain State regulations are inconsistent with Federal regulations. In recognition of the management and enforcement problems that likely will result from regulatory inconsistencies, the Council adopted a management policy in the Eastern Regulatory Area as follows:

> The State of Alaska will manage State registered vessels fishing for demersal shelf rockfish in the Eastern Regulatory Area with Council oversight. Under this oversight, the State's management regime for demersal shelf rockfish in the Eastern Regulatory Area will be directed at managing these rockfish stocks within the TAC specified by the Council. Such State regulations are in addition to and stricter than Federal regulations. State regulations are not in conflict with the FMP as long as they are (1) consistent with specific provisions of the goals and objectives of the FMP, and (2) result in a total harvest of demersal shelf rockfish in the Eastern Regulatory Area at a level no greater than that provided by the FMP. Such State regulations will apply only to vessels registered under the laws of the State of Alaska.
>
> Regulatory changes proposed by the Alaska Board of Fisheries that are related to the management of demersal shelf rockfish, will be reviewed by NOAA and the Council prior to their adoption to assure that any such proposed changes are consistent with the goals and objectives of the FMP.

Under Council oversight, the State may impose any of the following categories of regulations to State registered vessels in the demersal shelf rockfish fishery conducted in the Eastern Regulatory Area:

> The directed fishing standard for demersal shelf rockfish, inseason adjustments, seasons, seasonal apportionments of quotas, gear specifications, trip limits, directed fishing quotas, and management areas.

The following categories of regulations at 50 CFR part 672 will be maintained as Federal regulations unless specifically exempted by the Secretary, and must be complied with by all vessels in this fishery:

> Notices establishing preliminary and final TACs, definitions (except the directed fishing standard for demersal shelf rockfish), relation to other laws, permits, recordkeeping and reporting, general prohibitions, penalties, harvest limits, prohibited-species catch limits, measures to manage designated prohibited species, and observer requirement.

(5) Define Overfishing of Groundfish Stocks

The national standard guidelines at 50 CFR part 602 published on July 24, 1989 (54 FR 30833) require each FMP to (1) specify, to the maximum extent possible, an objective and measurable definition of overfishing for each stock or stock complex covered by the FMP and (2) provide an analysis of how the definition was determined and how it relates to reproductive potential. Current GOA and BSAI FMPs do not contain a definition of overfishing that is consistent with the national standard guidelines. To comply with the guidelines, the Council directed the plan teams to develop alternative definitions that would be consistent with the national standard guidelines. The Council selected a definition among seven alternatives developed by the plan teams in both FMPs as best suiting Alaska groundfish management. The preferred definition of overfishing contained in text for both proposed amendments (Alternative 4—section 3.3.3) and available from the Council address at the above address, would replace existing definitions in both FMPs.

The Secretary will review the proposed definition with respect to national policy and intent of 50 CFR part 602. Should the definition be approved, it would be incorporated into both FMPs. No regulations will be promulgated.

(6) Other Regulatory Changes in Addition to Those Contained in the Proposed FMP Amendments

In addition to the above measures under proposed FMP amendments 16 and 21, NOAA proposes certain other measures. These measures are described below. Comments are invited on these measures as well as the above measures implementing Amendments 16 and 21.

One, in §§ 672.2 and 675.2, definitions for *fishing line, foot rope, jig, pot-and-line, and pot-and-longline* gear are proposed. These gear types may be subject to new regulations in the future, and definitions need to be established for purposes of developing new regulations.

Two, in § 675.22, the coordinates of Cape Peirce are proposed to be changed to 58°33′ N. latitude and 161°43′ W. longitude. Current coordinates 58°40′ N. latitude and 160°10′ W. longitude are misspecified.

Classification

Section 304(a)(1)(C) of the Magnuson Act, as amended by Public Law 99–659, requires the Secretary to publish regulations proposed by a Council within 15 days of receipt of the FMP amendment and regulations. At this time the Secretary has not determined that the FMP amendments these regulations would implement are 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 Council prepared an environmental assessment (EA) for these FMP amendments that discusses the impact on the environment as a result of this rule. A copy of the EA may be obtained from the Council at the address previously cited, and comments on it are requested.

The Assistant Administrator for Fisheries, NOAA, has initially determined that the proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The Council prepared a regulatory impact review that concludes that none of the proposed measures in this rule would cause impacts considered significant for purposes of

this Executive Order. A copy of this review is available from the Council at the address previously cited.

The Council prepared an initial regulatory flexibility analysis as part of the regulatory impact review which concludes that this proposed rule, if adopted, would have significant effects on small entities. A copy of this analysis is available from the Council at the address previously cited.

This proposed rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

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

The Department of Commerce's Federalism Officer has determined that Amendment 21 and this proposed rule regarding the authorization of the State of Alaska to manage demersal shelf rockfish with Council oversight in the Eastern Regulatory Area of the Gulf of Alaska have sufficient federalism implications to warrant preparation of a federalism assessment (FA) under E.O. 12612. Because section 304(a)(1)(D)(ii) of the Magnuson Act requires the Secretary to publish regulations proposed by the Council within 15 days of receipt, there is insufficient time to prepare an FA prior to publication. However, an FA is being prepared and will be available, upon request, at the above address. Based on preliminary analysis, there are no provisions or elements of Amendment 21 or this proposed rule regarding demersal shelf rockfish that are inconsistent with the principles, criteria, and requirements set forth in sections 2 through 5 of E.O. 12612. Further, Amendment 21 and the proposed rule regarding the demersal shelf rockfish would not appear to affect Alaska's ability to discharge traditional state governmental functions, or other aspects of state sovereignty. The FA will address these preliminary determinations as well as the extent to which Amendment 21 and this proposed rule regarding demersal shelf rockfish will impose costs or burdens on Alaska and Alaska's ability to carry out its responsibilities under Amendment 21 and this proposed rule.

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

Foreign fishing, Fisheries, Fishing vessels.

Dated: September 11, 1990.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 611, 672 and 675 are proposed to be amended as follows:

PART 611—FOREIGN FISHING

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

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 971 *et seq.*, 22 U.S.C. 1971 *et seq.*, and 16 U.S.C. 1361 *et seq.*

2. Section 611.93 is amended by revising paragraph (b)(5) to read as follows:

§ 611.93 Bering Sea and Aleutian Islands groundfish fishery.

* * * * *

(b) * * *

(5) *Receiving groundfish prohibited.* Whether or not a nation receives a notice under paragraph (b)(3)(ii) of this section, receipts of U.S.-harvested groundfish that are composed of yellowfin sole, rock sole, and "other flatfish" in the aggregate in any amount greater than or equal to 20 percent of the total amount of other groundfish received as described under § 675.2l(b)(4)(v) is prohibited in any bycatch limitation zone or area defined in § 675.2 of this Title when the JVP bycatch allowance pertaining to such bycatch limitation zone or area, as specified under § 675.21(c)(1) of this Title, has been attained.

* * * * *

PART 672—GROUNDFISH OF THE GULF OF ALASKA

3. The authority citation for 50 CFR part 672 continues to read as follows:

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

4. In § 672.1, a new paragraph (d) is added to read as follows:

§ 672.1 Purpose and scope.

* * * * *

(d) The following State of Alaska regulations are not preempted by this part for vessels regulated under this part fishing for demersal shelf rockfish in the Eastern Regulatory Area, and which are registered under the laws of the State of Alaska:

5 AAC 28.110. Fishing seasons.
5 AAC 28.130. Gear.
5 AAC 28.160. Harvest guidelines.
5 AAC 28.170. Possession and landing requirements.
5 AAC 28.190. Harvest of bait by commercial permit holders.

5. In § 672.2, the definition of *Bottom trawl* is removed. The definitions of *Fishing line, Foot rope. Hook-and-line, Jig. Pelagic trawl* and *Pot-and-line* are revised and the definition for *Pot-and-longline* is added alphabetically to read as follows:

§ 672.2 Definitions.

* * * * *

Fishing line means a length of chain or wire rope in the bottom front end of a trawl to which the webbing or lead ropes are attached.

Foot rope means a chain or wire rope attached to the bottom front end of a trawl and is attached to the fishing line.

* * * * *

Hook-and-line means a stationary, buoyed, and anchored line with hooks attached, or the taking of fish by means of such a device.

Jig means a single non-buoyed, non-anchored line with hooks attached, or the taking of fish by means of such a device.

* * * * *

Pelagic trawl means (1) a trawl which has stretched mesh sizes of at least 1 meter, as measured between knots, starting at the fishing line and extending aft for a distance of at least 10 meshes and going around the entire circumference of the trawl, and which webbing is tied to the fishing line with no less than 0.3 meter (12 inches) between knots around the circumference of the net; or (2) a trawl whose forward portions comprise parallel lines spaced no closer than 1 meter, starting at the fishing line and extending aft for a distance of at least 10 meters and going around the entire circumference of the trawl.

Pot-and-line means a stationary, buoyed line with a single pot attached, or the taking of fish by means of such a device.

Pot-and-longline means a stationary, buoyed, and anchored line with two or more pots attached, or the taking of fish by means of such a device.

* * * * *

6. In § 672.20, paragraph (c)(1) is revised, a heading for paragraph (f)(2) is added, paragraphs (f)(2) (i) and (ii) are revised, paragraphs (f)(2)(iii) and (f)(2)(iv) are redesignated as (f)(2)(iv) and (f)(2)(v), and a new paragraph (f)(2)(iii) is added to read as follows:

§ 672.20 General limitations.

(c) * * *

(1) *Notices of proposed and interim harvest specifications.* (i) After consultation with the Council, the Secretary will publish a notice in the **Federal Register** proposing specifications of annual TAC, DAH, DAP, JVP, TALFF, and reserves for each

target species and the "other species" category, and applicable prohibited species catch amounts. These specifications will reflect as accurately as possible the projected changes in U.S. processing and harvesting capacity and the extent to which U.S. processing and harvesting will occur during the coming year. Public comment on these amounts will be accepted by the Secretary for 30 days after the notice is filed for public inspection with the Office of the Federal Register. One-fourth of preliminary specifications and apportionments will be in effect on January 1 on an interim basis and will remain in effect until superseded by a Federal Register notice of final specifications.

(ii) *Notices of final specifications.* The Secretary will consider comments received on the proposed specifications during the comment period and, after consultation with the Council, will publish a notice in the Federal Register specifying the final specification for each target species and the "other species" category and apportionments thereof among DAH, DAP, JVP, TALFF, and reserves. These final specifications will supersede the interim specifications.

* * * * *

(f) * * *

(2) *Halibut PSC limits.*—(i) *Notices of proposed halibut PSC limits and target fishery categories.* After consultation with the Council, the Secretary will publish a notice in the Federal Register specifying the proposed halibut PSC limits for JVP vessels and DAP vessels using trawl, hook-and-line, and pot gear. Each halibut PSC limit may be apportioned among the regulatory areas and districts of the Gulf of Alaska, and may be allocated by season under paragraph (f)(2)(iii) of this section. Target fishery categories for purposes of § 672.26 of this part may also be proposed. Public comments on these proposals will be accepted by the Secretary for 30 days after the notice is filed for public inspection with the Office of the Federal Register.

(ii) *Notices of final halibut PSC limits and target fishery categories.* The Secretary will consider comments received on proposed halibut PSC limits and target fishery categories and, after consultation with the Council, will publish a notice in the Federal Register specifying the final halibut PSC limits and seasonal allocations thereof, as well as target fishery categories for the next year. A notice of these determinations will be published in the Federal Register on, or as soon as practicable after, January 1 of the new fishing year and will also be made available to the public by the Regional Director through other suitable means.

(iii) The Secretary will base any seasonal allocations of the halibut PSC limits on the following types of information:

(A) Seasonal distribution of halibut,

(B) Seasonal distribution of target groundfish species relative to halibut distribution,

(C) Expected halibut bycatch needs on a seasonal basis relevant to changes in halibut biomass and expected catches of target groundfish species,

(D) Expected variations in bycatch rates throughout the fishing year,

(E) Expected changes in directed groundfish fishing seasons,

(F) Expected start of fishing effort, and

(G) Economic effects of establishing seasonal halibut allocations on segments of the target groundfish industry.

7. Amendments to § 672.24 which were published August 7, 1990 (55 FR 33715) and which would expire on November 10, 1990 would continue in effect as permanent amendments and paragraph (b) would be revised as follows:

§ 672.24 Gear limitations.

* * * * *

(b) *Gear restrictions.* (1) Each pot used to fish for groundfish must be equipped with a biodegradable panel at least 18 inches in length that is parallel to, and within 6 inches of, the bottom of the pot, and which is sewn up with untreated cotton thread of no larger size than #30.

(2) Each pot used to fish for groundfish must be equipped with rigid tunnel openings that are no wider than 9 inches and no higher than 9 inches, or soft tunnel openings with dimensions that are no wider than 9 inches.

* * * * *

8. A new § 672.26 is added as follows:

§ 672.26. Vessel incentive program to reduce prohibited-species bycatch rates.

(a) *General.* No person may engage in directed fishing for groundfish from a particular vessel in any Federal reporting area off Alaska for the applicable suspension period specified in paragraph (d)(2) of this section if that vessel's average observed bycatch rate of Pacific halibut while engaged in fishing for groundfish in a specified target fishery category has exceeded minimum halibut bycatch performance standards specified under paragraph (c) of this section. For purposes of this section, only data collected by observers certified under the NMFS Observer Program (see § 672.27) will be used to determine prohibited-species bycatch rates for individual vessels. "Observed" refers to data collected by NMFS certified observers.

(b) *Target fishery categories.* (1) For purposes of this section, the species composition of a vessel's total observed groundfish catch during a weekly reporting period will determine what target fishery category the vessel will be placed in for purposes of judging the vessel's halibut bycatch rate against the minimum halibut bycatch performance standards specified under paragraph (c) of this section.

(2) The Secretary, after consultation with the Council, will annually publish preliminary target fishery categories for the next calendar year that will be used to judge individual vessels' halibut bycatch rates in the notices required under § 672.20(f)(2) of this part. Public comment on these categories will be accepted by the Secretary for a period of 30 days after the categories have been filed for publication in the Federal Register. The Secretary will consider all timely comments when determining, after consultation with the Council, the final target fishery categories for the next year.

(c) *Halibut bycatch performance standards.* (1) The Regional Director will use observed bycatch rates of halibut for vessels with two or more observed fishing days during a weekly reporting period to calculate each vessel's average bycatch rate for that reporting week.

(2) After each weekly reporting period, the Regional Director will compare the average observed halibut bycatch rate for each vessel calculated from the best available observer data for the four most recent weeks, or a lesser number of weeks if constrained by data availability, that a vessel fished in a target fishery, as defined under paragraph (b) of this section, against the average bycatch rate calculated from the best available observer data for all vessels in the same target fishery category for the four most recent weeks, or a lesser number of weeks if constrained by data availability.

(3) Based on the observer's bycatch rates calculated under paragraph (c)(2) of this section, the Regional Director may determine that a vessel has exceeded halibut bycatch performance standards if it exhibits an average observed halibut bycatch rate in a target fishery category that is more than two times the average bycatch rate calculated from observer data for all vessels fishing contemporaneously in that target fishery category.

(d) *Vessel suspension*—(1) *Determinations.* (i) If the Regional

Director determines that a vessel has exceeded halibut bycatch performance standards in a target fishery, the Regional Director will notify the vessel operator and owner that the vessel is suspended for the duration of the suspension period specified in paragraph (d)(2) of this section. Such suspension shall be effective upon notification by the Regional Director.

(ii) An operator or owner of a vessel subject to suspension under this section may petition the Regional Director to review the observer data upon which the determination was based. The Regional Director will revoke the vessel suspension if the review demonstrates that the vessel did not exceed minimum halibut bycatch performance standards.

(2) *Duration of vessel suspensions.* The suspension periods for a vessel's failure to meet minimum halibut bycatch performance standards will be:

(i) 5 days for the first failure during any period within the preceding consecutive 12 months;

(ii) 14 days for the second failure during any period within the preceding consecutive 12 months; and

(iii) 42 days for the third and each successive failure during any period within the preceding consecutive 12 months.

(3) *Subsequent observer coverage.* If not otherwise required to do so under § 672.27, a vessel must carry an observer on board during the first two weeks of fishing activity following a 14-day suspension period and during the first four weeks of fishing activity following a 42-day suspension period.

(e) *Appeal procedures.* A vessel operator or owner may appeal a notice of suspension under paragraph (d) of this section to the Assistant Administrator. Appeals must be filed in writing within 7 days of suspension and must contain a statement setting forth the basis for the appeal. Appeals must be filed with the Regional Director, Alaska Region, NMFS. The appeal may be presented at the option of the vessel operator or owner at a hearing before a person designated by the Assistant Administrator to hear the appeal. The Assistant Administrator or a designee will determine, based upon the record, including any record developed at a hearing, if the suspension is supported under the criteria set forth in these regulations. The decision of the Assistant Administrator will be the final decision of the Department of Commerce.

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

9. The authority citation for 50 CFR Part 675 continues to read as follows:

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

10. In § 675.2, the definition of *Bottom trawl* is removed; the definitions of *Bycatch Limitation Zone 1, Bycatch Limitation Zone 2, Bycatch Limitation Zone 2H, Fishing line, Foot rope and Pelagic trawl* are revised and the definitions of *Hook-and-line, Jig, Pot-and-line,* and *Pot-and-longline* are added alphabetically. The amendments to the definition of *statistical area* which were published on August 9, 1989 (54 FR 32642) and would expire on December 31, 1990, would continue in effect as permanent amendments.

§ 675.2 Definitions.

* * * * *

Bycatch Limitation Zone 1 (Zone 1) means that part of the Bering Sea Subarea that is south of 58°00′ N. latitude and east of 165°00′ W. longitude (Figure 2).

Bycatch Limitation Zone 2 (Zone 2) means that part of the Bering Sea Subarea bounded by straight lines connecting the following coordinates in the order listed (Figure 2):

North latitude	*West longitude*
54° 30′	165° 00′
58° 00′	165° 00′
58° 00′	171° 00′
60° 00′	179° 20′
59° 25′	179° 20′
54° 30′	167° 00′
54° 30′	165° 00′

Bycatch Limitation Zone 2H means that part of the Bering Sea Subarea bounded by straight lines connecting the following coordinates (Figure 2):

North latitude	*West longitude*
54° 30′	165° 00′
56° 30′	165° 00′
56° 30′	170° 00′
55° 42′	170° 00′
54° 30′	167° 00′
54° 30′	165° 00′

* * * * *

Fishing line means a length of chain or wire rope in the bottom front end of a trawl to which the webbing or lead ropes are attached.

* * * * *

Foot rope means a chain or wire rope attached to the bottom front end of a trawl and is attached to the fishing line.

* * * * *

Hook-and-line means a stationary, buoyed, and anchored line with hooks attached, or the taking of fish by means of such a device.

Jig means a single non-buoyed, non-anchored line with hooks attached, or the taking of fish by means of such a device.

* * * * *

Pelagic trawl means (a) a trawl which has stretched mesh sizes of at least 1 meter, as measured between knots, starting at the fishing line and extending aft for a distance of at least 10 meshes and going around the entire circumference of the trawl, and which webbing is tied to the fishing line with no less than 0.3 meter (12 inches) between knots around the circumference of the net; or (b) a trawl whose forward portions comprise parallel lines spaced no closer than 1 meter, starting at the fishing line and extending aft for a distance of at least 10 meters and going around the entire circumference of the trawl.

Pot-and-line means a stationary, buoyed line with a single pot attached, or the taking of fish by means of such a device.

Pot-and-longline means a stationary, buoyed, and anchored line with two or more pots attached, or the taking of fish by means of such a device.

* * * * *

11. The amendments to § 675.7, published on August 9, 1989 (54 FR 32642) hich would expire December 31, 1990, would continue in effect and paragraph (d) would be revised to read as follows:

§ 675.7 Prohibitions.

* * * * *

(d) Conduct any fishing contrary to a notice issued under §§ 675.21 or 675.26.

* * * * *

12. The amendments to § 675.20 for paragraphs (e)(1)(iii) and (e)(2)(ii), which were published August 9, 1989 (54 FR 32642) and would expire December 31, 1990, would continue in effect as permanent regulations.

13. In § 675.20, paragraph (a)(7) and paragraph (e)(4) are revised, to read as follows:

§ 675.20 General limitations.

* * * * *

(a) * * *

(7) *Notices of proposed and interim harvest specifications and target fishery categories.* (i) After consultation with the Council, the Secretary will publish a notice in the **Federal Register** proposing specifications of initial TAC, and apportionments thereof among DAH, DAP, JVP, TALFF, and reserves, for each target species and the "other species" category, and applicable prohibited species amounts. These specifications will reflect as accurately as possible the projected changes in U.S. processing and harvesting capacity and the extent

to which U.S. processing and harvesting will occur during the coming year. The Secretary will also propose, after consultation with the Council, target fishery categories for purposes of § 675.26 of this part. Public comment on these proposals will be accepted by the Secretary for 30 days after the notice is filed for public inspection with the Office of the Federal Register. One-fourth of the amount of each preliminary specification and apportionment will be in effect on January 1 on an interim basis and will remain in effect until superseded by final specifications.

(ii) *Notices of final specifications and target fishery categories.* The Secretary will consider comments received on the proposed specifications during the comment period and, after consultation with the Council, will publish a notice in the **Federal Register** specifying the initial TAC for each target species and the "other species" category and apportionments thereof among DAP, JVP, TALFF, and reserves. These final specifications will supersede the interim specifications. The notice will also include final target fishery categories.

* * * * *

(e) * * *

(4) The adjustment of a TAC or PSC limit or PSC allowance for any species under paragraph (e)(1)(iii) of this section must be based on the available scientific information concerning the biological stock status and harvest of the species in question and on the Regional Director's determination that the currently specified TAC or PSC limit or PSC allowance is incorrect. Any adjustment to a TAC or PSC limit or PSC allowance must be reasonably related to a change in biological stock status, except that a PSC limit or PSC allowance may be adjusted if it was incorrectly specified due to a calculation error or to allow redistribution of uncaught PSC allowances among fisheries.

14. Section 675.21 is revised to read as follows:

§ 675.21 Prohibited species catch (PSC) limitations.

(a) *PSC limits.* (1) The PSC limit of red king crab caught while conducting any DAH trawl fishery for groundfish in Zone 1 during any fishing year is 200,000 red king crabs.

(2) The PSC limit of Tanner crabs (*C. bairdi*) caught while conducting any DAH trawl fishery for groundfish in Zone 1 during any fishing year is 1 million animals.

(3) The PSC limit of Tanner crabs (*C. bairdi*) caught while conducting any DAH trawl fishery for groundfish in Zone 2 during any fishing year is 3 million animals.

(4) The primary PSC limit of Pacific halibut caught while conducting any DAH trawl fishery for groundfish in the Bering Sea and Aleutian Islands Management Area during any fishing year is an amount of Pacific halibut equivalent to 4,400 metric tons.

(5) The secondary PSC limit of Pacific halibut caught while conducting any DAH trawl fishery for groundfish in the Bering Sea and Aleutian Islands Management Area during any fishing year is an amount of Pacific halibut equivalent to 5,333 metric tons.

(b) *Apportionment of PSC limits*—(1) *Apportionment to fishery categories.* The Secretary, after consultation with the Council, will apportion each PSC limit into bycatch allowances that will be assigned to the target fishery categories specified in paragraph (b)(3) of this section, based on each fishery's proportional share of the anticipated incidental catch during a fishing year of prohibited species for which a PSC limit is specified and the need to optimize the amount of total groundfish harvested under established PSC limits. The sum of all bycatch allowances of any prohibited species will equal its PSC limit.

(2) *Seasonal apportionments of bycatch allowances.* The Secretary, after consultation with the Council, may apportion fishery bycatch allowances on a seasonal basis. The Secretary will base any seasonal apportionment of a bycatch allowance on the following types of information:

(i) Seasonal distribution of prohibited species;

(ii) Seasonal distribution of target groundfish species relative to prohibited-species distribution;

(iii) Expected prohibited-species bycatch needs on a seasonal basis relevant to changes in prohibited-species biomass and expected catches of target groundfish species;

(iv) Expected variations in bycatch rates throughout the fishing year;

(v) Expected changes in directed groundfish fishing seasons;

(vi) Expected start of fishing effort; and

(vii) Economic effects of establishing seasonal prohibited-species apportionments on segments of the target groundfish industry.

(3) The Secretary will publish annually in the **Federal Register** proposed and final bycatch allowances and seasonal apportionments in the notices required under § 675.20(a)(7) of this part. Public comment will be accepted by the Secretary on the proposed bycatch allowances and seasonal apportionments for a period of 30 days after the notice of them is filed for public inspection in the Office of the **Federal Register**.

(4) For purposes of this section, five domestic fisheries are defined as follows:

(i) *DAP flatfish fishery* means DAP fishing, which results in retention during any weekly reporting period of yellowfin sole and "other flatfish" in the aggregate in an amount greater than or equal to 20 percent of the total amount of other groundfish retained, calculated in round weight equivalents.

(ii) *DAP rock sole fishery* means DAP fishing, which results in retention during any weekly reporting period of rock sole in an amount greater than or equal to 20 percent of the total amount of other groundfish retained, calculated in round weight equivalents.

(iii) *DAP turbot* means DAP trawl fishing, which results in retention during a weekly reporting period of Greenland turbot and arrowtooth flounder in the aggregate in an amount greater than or equal to 20 percent of the total amount of other groundfish retained, calculated in round weight equivalents.

(iv) *DAP other fishery* means DAP trawl fishing, which results in retention during any weekly reporting period of any combination of groundfish species which does not qualify the fishery as a "flatfish, rock sole, or turbot fishery."

(v) *JVP flatfish fishery* means the receipt by foreign vessels of groundfish that, during any weekly reporting period, is composed of 20 percent or more of yellowfin sole, rock sole, and "other flatfish" in the aggregate, calculated in round weight equivalents.

(c) *Attainment of a PSC allowance.*—(1) *By the DAP flatfish, rock sole, or turbot fisheries or the JVP flatfish fishery.* (i) If, during the fishing year, the Regional Director determines that U.S. fishing vessels using trawl gear will catch either of the PSC allowances of red king crabs or *C. bairdi* in Zone 1 while participating in either the DAP flatfish, DAP rock sole, DAP turbot, or JVP flatfish fisheries as defined in paragraph (b)(4) of this section, the Secretary will publish a notice in the **Federal Register** closing Zone 1 to vessels engaging in that directed fishery for the remainder of the fishing year.

(ii) If, during the fishing year, the Regional Director determines that U.S. fishing vessels using trawl gear will catch the PSC allowance of *C. bairdi* in Zone 2 while participating in either the DAP flatfish, DAP rock sole, DAP turbot, or JVP flatfish fisheries as defined in paragraph (b)(4) of this section, the Secretary will publish a notice in the

Federal Register closing Zone 2 to vessels engaging in that directed fishery for the remainder of the fishing year.

(iii) If, during the fishing year, the Regional Director determines that U.S. fishing vessels using trawl gear will catch the primary PSC allowance of Pacific halibut in the Bering Sea and Aleutian Islands Management Area while participating in either the DAP flatfish, DAP rock sole, DAP turbot, or JVP flatfish fisheries as defined in paragraph (b)(4) of this section, the Secretary will publish a notice in the Federal Register closing Zones 1 and 2H to vessels engaging in that directed fishery for the remainder of the fishing year.

(iv) If, during the fishing year, the Regional Director determines that U.S. fishing vessels using trawl gear will catch the secondary PSC allowance of Pacific halibut in the Bering Sea and Aleutian Islands Management Area while participating in either the DAP flatfish, DAP rock sole, DAP turbot, or JVP flatfish fisheries as defined in paragraph (b)(4) of this section, the Secretary will publish a notice in the Federal Register closing the entire Bering Sea and Aleutian Islands Management Area to vessels engaging in that directed fishery for the remainder of the fishing year.

(2) *By the "DAP other fisheries".* (i) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch either of the PSC allowances of red king crabs or *C. bairdi* in Zone 1 while participating in the "DAP other fishery" as defined in paragraph (b)(4) of this section, the Secretary will publish a notice in the Federal Register closing Zone 1 for the remainder of the year to DAP trawl vessels using other than pelagic trawl gear in the combined directed fishery for pollock and Pacific cod, such that these two species must comprise less than 20 percent of the aggregate amount of the other groundfish or groundfish products retained by the vessel during a weekly reporting period.

(ii) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the PSC allowance of *C. bairdi* in Zone 2 while participating in the "DAP other fishery," the Secretary will publish a notice in the Federal Register closing Zone 2 for the remainder of the year to DAP trawl vessels using other than pelagic trawl gear in the combined directed fishery for pollock and Pacific cod, such that these two species must comprise less than 20 percent of the other groundfish or groundfish products retained by the vessel during a weekly reporting period.

(iii) If, during the fishing year, the Regional Director determines that U.S. fishing vessels using trawl gear will catch the primary PSC allowance of Pacific halibut in the Bering Sea and Aleutian Islands Management Area while participating in the "DAP other fishery," the Secretary will publish a notice in the Federal Register closing Zones 1 and 2H for the remainder of the fishing year to DAP trawl vessels using other than pelagic trawl gear in the combined directed fishery for pollock and Pacific cod, such that these two species must comprise less than 20 percent of the aggregate amount of the other groundfish or groundfish products retained by the vessel during a weekly reporting period.

(iv) If, during the fishing year, the Regional Director determines that U.S. fishing vessels using trawl gear will catch the secondary PSC allowance of Pacific halibut in the Bering Sea and Aleutian Islands Management Area while participating in the "DAP other fishery," the Secretary will publish a notice in the Federal Register closing the Bering Sea and Aleutian Islands Management area for the remainder of the year to DAP trawl vessels using other than pelagic trawl gear in the combined directed fishery for pollock and Pacific cod, such that these two species must comprise less than 20 percent of the aggregate amount of the other groundfish or groundfish products retained by the vessel during a weekly reporting period.

15. Section 675.22 consisting of paragraphs (a) through (e), which was added August 9, 1989, and which would expire December 31, 1990, would continue in effect as a permanent regulation and paragraph (e) would be revised to read as follows:

§ 675.22 Time and area closures.

* * * * *

(e) If the Regional Director determines that vessels fishing with trawl gear in the areas described in paragraphs (c) and (d) of this section will catch the PSC limit of 12,000 red king crabs, he will immediately prohibit all fishing with trawl gear in those areas by notice in the Federal Register.

* * * * *

§ 675.22 [Amended]

16. Section 675.22(f) which was added December 6, 1989 (54 FR 50386) is amended by revising the coordinates of Cape Peirce to read: "(58°33'N. latitude, 161°43'W. longitude)."

17. Section 675.24 is amended, by redesignating paragraphs (a) and (b) as (c)(1) and (c)(2), redesignating paragraph (d) as paragraph (a), redesignating paragraph (c) as (d), and adding new paragraph (b) and a heading for redesignated paragraph (c) to read as follows:

§ 675.24 Gear limitations.

* * * * *

(b) *Gear restrictions.* (1) Each pot used in groundfish fisheries must have a biodegradable panel at least 18 inches in length that is parallel to, and within 6 inches of, the bottom of the pot, and which is sewn up with untreated cotton thread of no larger size than #30.

(2) All pots used in the groundfish fisheries must have rigid tunnel openings that are no wider than 9 inches and no higher than 9 inches, or soft tunnel openings that are no wider than 9 inches in diameter.

(c) Gear allocations * * *.

* * * * *

18. A new § 675.26 is added as follows:

§ 675.26 Vessel incentive program to reduce prohibited-species bycatch rates.

(a) *General.* No person may engage in directed fishing for groundfish from any particular vessel in any Federal reporting area off Alaska for the applicable suspension period specified in paragraph (d)(2) of this section if that vessel's average observed bycatch rate of Pacific halibut while engaged in fishing for groundfish in a specified target fishery category has exceeded minimum halibut bycatch performance standards specified under paragraph (c) of this section. For the purposes of this section, only data collected by observers certified under the NMFS Observer program (see § 675.27) will be used to determine prohibited-species bycatch rates for individual vessels. "Observed" refers to data collected by NMFS certified observers.

(b) *Target fishery categories.* (1) For purposes of this section, the species composition of a vessel's total observed groundfish catch during a weekly reporting period will determine what target fishery category the vessel will be placed in for purposes of judging the vessel's halibut bycatch rate against the minimum halibut bycatch performance standards specified under paragraph (c) of this section.

(2) The Secretary, after consultation with the Council, will annually publish preliminary target fishery categories for the next calendar year that will be used to judge individual vessel's halibut bycatch rates in the notices required under § 675.20(a)(7). Public comment on these categories will be accepted by the Secretary for a period of 30 days after the categories have been filed for

publication in the **Federal Register**. The Secretary will consider all timely comments when determining, after consultation with the Council, the final target fishery categories for the next year.

(c) *Halibut bycatch performance standards.* (1) The Regional Director will use observed bycatch rates of halibut for vessels with two or more observed fishing days during a weekly reporting period to calculate each vessel's average bycatch rate for that reporting week. Observed catch will be based on retained catch rather than total catch.

(2) After each weekly reporting period, the Regional Director will compare the average observed halibut bycatch rate for each vessel calculated from the best available observer data for the four most recent weeks, or a lesser number of weeks if constrained by data availability, that a vessel fished in a target fishery, as defined under paragraph (b) of this section, against the average bycatch rate calculated from the best available observer data for all vessels in the same target fishery category for the four most recent weeks, or a lesser number of weeks if constrained by data availability.

(3) Based on the observer's bycatch rates calculated under paragraph (c)(2) of this section, the Regional Director may determine that a vessel has exceeded halibut bycatch performance standards if the vessel exhibits an average observed halibut bycatch rate in a target fishery category that is more than two times the average bycatch rate calculated from observer data for all vessels fishing contemporaneously in that target fishery category.

(d) *Vessel suspension*—(1) *Determinations.* (i) If the Regional Director determines that a vessel has exceeded minimum halibut bycatch performance standards in a target fishery, the Regional Director will noify the vessel operator or owner that the vessel is suspended for the duration of the suspension period specified in paragraph (d)(2) of this section. Such suspension shall be effective upon notification by the Regional Director.

(ii) An operator or owner of a vessel subject to suspension under this section may petition the Regional Director to review the observer data upon which the determination was based. The Regional Director will revoke the vessel suspension if the review demonstrates that the vessel did not exceed minimum halibut bycatch performance standards.

(2) *Duration of vessel suspensions.* The suspension periods for a vessel's failure to meet minimum halibut bycatch performance standards will be:

(i) 5 days for the first failure during any period within the preceding consecutive 12 months;

(ii) 14 days for the second failure during any period within the preceding consecutive 12 months; and

(iii) 42 days for the third and each successive failure during any period within the preceding consecutive 12 months.

(3) *Subsequent observer coverage.* If not otherwise required to do so under § 672.21 of this chapter, a vessel must carry an observer on board during the first two weeks of fishing activity following a 14-day suspension period and during the first four weeks of fishing activity following a 42-day suspension period.

(e) *Appeal Procedures.* A vessel operator or owner may appeal a notice of suspension under paragraph (d) of this section to the Assistant Administrator. Appeals must be filed in writing within 7 days of suspension and must contain a statement setting forth the basis for the appeal. Appeals must be filed with the Regional Director, Alaska Region, NMFS. The appeal may be presented at the option of the vessel operator or owner at a hearing before a person designated by the Assistant Administrator to hear the appeal. The Assistant Administrator or a designee will determine, based upon the record, including any record developed at a hearing, if the suspension is supported under the criteria set forth in these regulations. The decision of the Assistant Administrator will be the final decision of the Department of Commerce.

19. Figure 2 to part 675, which was revised in a rule pblished August 9, 1989 (54 FR 32652) and which would expire on December 31, 1990, would continue in effect as a permanent regulation.

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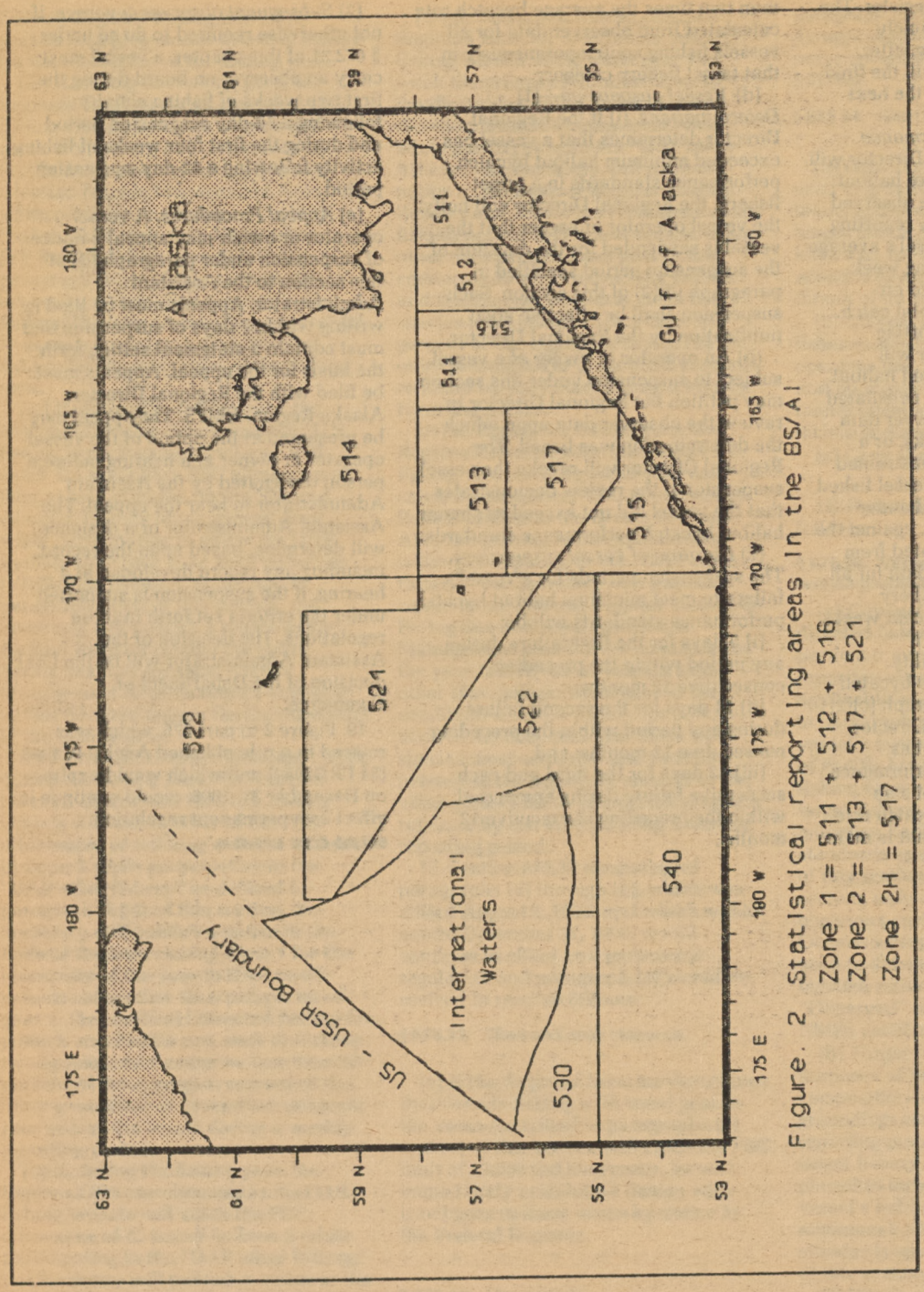


Figure. 2 Statistical reporting areas in the BS/AI
Zone 1 = 511 + 512 + 516
Zone 2 = 513 + 517 + 521
Zone 2H = 517

[FR Doc. 90–21950 Filed 9–12–90; 5:01 pm]

BILLING CODE 3510–22–C

50 CFR Part 655

[Docket No. 900832-0232]

Atlantic Mackerel, Squid, and Butterfish Fisheries

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

ACTION: Notice of preliminary initial specifications for 1991 and request for comments.

SUMMARY: NOAA issues this notice to propose preliminary initial specifications for the 1991 fishing year for Atlantic mackerel, squid and butterfish. Regulations governing these fisheries require the Secretary of Commerce (Secretary) to publish preliminary initial specifications for the upcoming fishing year. This action provides information and requests comments on NOAA's determination of the initial specifications for 1991.

DATES: Comments must be received on or before October 15, 1990.

ADDRESSES: Send comments to Kathi L. Rodrigues, Northeast Region, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments-Specifications."

FOR FURTHER INFORMATION CONTACT: Kathi L. Rodrigues, 508-281-9324.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) (51 FR 10547, March 27, 1986) as amended, stipulate at 50 CFR 655.22(b) that the Secretary will publish a notice specifying the preliminary initial annual amounts of the maximum optimum yield (Max OY); initial optimum yield (IOY) as well as the amounts for allowable biological catch (ABC); domestic annual harvest (DAH); domestic annual processing (DAP); joint venture processing (JVP); and total allowable levels of foreign fishing (TALFF) for the species managed under the FMP. No reserves are permitted under the FMP for any of these species. Procedures for determining the allowable levels of harvest are found in § 655.21.

The Secretary is required to publish this notice on or about November 1 of each year and to provide a 30-day comment period on the preliminary specifications. U.S. businesses involved in the industry have expressed dissatisfaction with this schedule because it does not afford sufficient time for formulating business plans, arranging contracts, and other preparations necessary to engage in foreign joint ventures beginning on January 1. Therefore, the Mid-Atlantic Fishery Management Council (Council) and the involved offices of NOAA have agreed to publish the proposed specifications for Atlantic mackerel, squid, and butterfish earlier than required by the regulations.

The proposed specifications are based on recommendations submitted by the Council, which is the lead Council for the FMP. These recommendations and supporting analysis are available for inspection at the NMFS Regional Office at the above address during the comment period.

The following table lists the preliminary initial specifications in metric tons (mt) for Atlantic mackerel, *Loligo* and *Illex* squid, and butterfish. These initial specifications are the amounts that the Director, Northeast Region, NMFS, (Regional Director) is proposing for the 1991 fishing year beginning January 1.

TABLE.—PRELIMINARY INITIAL ANNUAL SPECIFICATIONS FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE 1991 FISHING YEAR, JANUARY 1 THROUGH DECEMBER 31, 1991

[In metric tons (mt)]

Specifications	Squid		Atlantic	
	Loligo	Illex	Mackerel	Butterfish
Max OY [a]	44,000	30,000	[b] N/A	16,000
ABC [c]	37,000	22,500	330,000	16,000
IOY	31,010	18,000	114,000	10,019
DAH	31,000	18,000	[d] 90,000	10,000
DAP	31,000	15,000	24,000	10,000
JVP	0	3,000	54,000	0
TALFF	10	0	[e] 24,000	19

a Max IOY as stated in the FMP.
b Not applicable; see the FMP.
c IOY can rise to this amount.
d Includes 2,000 mt projected recreational catch based on the formula contained in the regulations (50 CFR 655.21).
e Foreign partner is required to purchase JVP and U.S. processed product in the ratio 8 mt TALFF to 3 mt JVP and 1 mt U.S. product. The ratio may also be expressed as 8 to 0 and 2, (8 to 6 and 0 is not permitted). Export declaration forms are acceptable as proof of purchase.

Atlantic Squid

The Max OY for *Loligo* and *Illex* squid contained in the table (44,000 mt and 30,000 mt respectively) are the amounts set by the FMP. After considering the available scientific information, the Council has recommended setting the ABC for *Loligo* and *Illex* squid at the same levels set for 1986 through 1990.

The proposed IOY's for *Loligo* and *Illex* squids are derived from ABC and modified based on the analysis of nine economic factors contained in the regulations (§ 655.21(b)(2)(ii)). U.S. processors have indicated the intent to process 35,000 mt of *Loligo*. The 1989 domestic *Loligo* catch attained the highest level ever recorded, 22,998 mt. The Council has recommended an increase in *Loligo* DAH and DAP over last year based on the high landings of 1988 and 1989 and on the capacity and intent of the U.S. industry to process the full IOY. The proposed *Loligo* JVP is zero. A TALFF is proposed to accommodate *Loligo* squid caught incidentally in the foreign Atlantic mackerel fishery, according to the formula contained in the FMP.

U.S. processors intend to process 15,647 mt of *Illex* in 1991; however, this level of production for *Illex* has yet to be achieved. The Council believes that world market conditions are responsible for low U.S. production to date and that the U.S. industry has the capacity to process this amount. Recent developments in the world market picture are expected to improve demand for U.S. product. Increased demand is already evident in the 1990 fishery, which will involve foreign joint ventures for *Illex* for the first time in several years.

Based on the Council's assessment of U.S. harvesting and processing capacity, particularly in view of improving market

conditions, the Council has proposed setting the DAP at 15,000 mt. The Council's analysis of economic factors resulted in a recommended IOY of 18,000 mt. Therefore, 3,000 mt remains for JVP or TALFF. Since JVP provides greater benefits to the domestic industry than TALFF, the 3,000 mt amount is recommended entirely for JVP.

Illex is caught incidentally in the hake fisheries. In the event that a directed foreign hake fishery takes place, an appropriate Illex TALFF will be specified for bycatch.

Atlantic Mackerel

The proposed 1990 Atlantic mackerel ABC, calculated according to the formula at § 655.21(b)(2)(ii), is 330,000 mt. An Atlantic mackerel IOY is proposed at a level that allows amounts for TALFF and JVP of 24,000 mt and 54,000 mt, respectively. These amounts are unchanged from the 1990 specifications. They reflect the Council's intent to Americanize the fishery and provide maximum benefits to the U.S. industry.

The Council's recommendations for the mackerel IOY were made after reviewing the nine economic factors specified in the FMP and contained at § 655.21(b)(2)(ii) and after consideration of public testimony from industry members. The Council's policy for development of U.S. fisheries has been to stimulate growth and investment on the domestic side with a concurrent phasing-out of foreign participation. The primary mechanism for this development has been to predicate directed foreign fishing allocations on the purchase of U.S. over-the-side and shore-produced product originating in the United States. This strategy is meeting with steady success as U.S. commercial catches have increased over the past several years.

In proposing the IOY, the Regional Director has taken into consideration economic, resource, and social factors which include information concerning the recreational fishery, market analysis, the capacity and intent of domestic processors, investment in new equipment, etc. U.S. harvesting and processing capacity is expanding both on shore and in at-sea processing under the Council's program. This is evident in the landings statistics that show the U.S. commercial catch increased every year for the past several years.

The Regional Director also has considered the status of the resource in proposing the IOY. The current stock biomass estimate for the Northwest Atlantic mackerel stock is in excess of 1 million metric tons. Northeast Fishery Center biologists conducted a risk analysis of various levels of harvest that shows the proposed IOY could be harvested every year for the next 5 years with little effect on stock size.

The Regional Director believes that the IOY level proposed for 1991 will promote the continued growth of the domestic industry, thereby providing the greatest overall benefit to the United States. This level is proposed to encourage continued growth in both the harvesting (commercial and recreational) and processing sectors of the U.S. fishing industry in accordance with the purposes of the Magnuson Fishery Conservation and Management Act.

Based on consideration of all of the above factors, the Regional Director believes that the proposed specifications recommended by the Council will stimulate the development of all sectors of the U.S. mackerel industry, leading to increased benefits to the Nation.

Butterfish

The Council's recommendation for butterfish specifications are identical to those approved for 1990. Butterfish harvests have fallen short of projections in recent years due to world market factors and difficulty in locating schools of marketable sized individuals. In addition, prices have dropped substantially since 1987. Given the conditions in this fishery, the Council has recommended no change to the butterfish specifications from last year.

Special Conditions

The Council has recommended that several conditions be placed on allocations of TALFF. These conditions are essentially the same as those employed in 1990. These recommendations are intended to ensure that purchase obligations are met, minimize harvesting conflicts among users, and minimize impacts on other regional resources. The following are the recommended conditions that the Regional Director is proposing for the 1991 calendar year and on which he is seeking comment:

1. Directed foreign fishing for Atlantic mackerel is prohibited south of 37°30'N. latitude. Joint ventures are allowed, but river herring bycatch south of that latitude may not exceed 0.25 percent of the over-the-side transfers of Atlantic mackerel; directed foreign fishing for Atlantic mackerel (allowed north of 37°30'N. latitude and seaward of a line 20 nautical miles from the shore) is limited to a 1 percent river herring bycatch; river herring TALFF is 100 mt with the possibility of an increase to 200 mt.

2. Purchase requirements for foreign nations that request TALFF are set at a ratio of 8 mt TALFF to 3 mt JVP and 1 mt U.S. processed product. The ratio 8 to 0 and 2 may be substituted to fulfill the purchase requirement, but 8 to 6 and 0 is not permitted.

3. The Regional Director, in consultation with the Council, will use the following formula for recommending allocation releases:

a. When the Regional Director has determined that the 1990 (or 1989, if appropriate) requirements for purchases of U.S. harvested and/or processed mackerel have been met, he will request allocation of 25 percent of the foreign nation's cap TALFF;

b. When the allocation is officially released, directed fishing may begin and continue until the allocation is taken;

c. It will be necessary to purchase 25 percent of the JVP and U.S. processed mackerel requirements before additional TALFF allocation will be made; and

d. When the 25 percent requirement has been met an additional 25 percent of TALFF will be allocated, with further TALFF allocations contingent upon continued performance in the purchase of JVP and U.S. processed mackerel.

4. Foreign nations participating in the 1991 Atlantic mackerel fishery will be required to dedicate a vessel to receive JVP from U.S. vessels exclusively. This dedicated vessel will not be permitted to conduct directed fishing operations until all commitments to purchase are fulfilled.

5. The Regional Director will do everything within his power to reduce impacts on marine mammals in prosecuting the Atlantic mackerel fisheries.

6. Increases in Atlantic mackerel IOY during the year will not exceed 200,000 mt.

7. Atlantic mackerel TALFF will not exceed 24,000 mt, unless the Regional Director, with the concurrence of the Council, determines that it is appropriate under § 655.21(b)(2)(v).

8. Applications for joint ventures and directed foreign fishing for 1991 from a particular nation will not be approved until the Regional Director determines, based on an evaluation of performances, that that nation's purchase obligations for 1990 (or 1989, if appropriate) have been fulfilled.

9. *Illex* joint ventures will not begin prior to July 15.

The Regional Director is seeking comment on the above conditions, as well as the specifications contained in the table. The Council's recommendations, recommendations forthcoming from the New England

Fishery Management Council, and all public comments on the annual specifications and conditions will be considered in the final determination. A notice of final determination of the initial amounts and responses to public comments is expected to be published in the **Federal Register** on or about September 1, 1990.

Classification

This action is authorized by 50 CFR part 655 and complies with Executive Order 12291.

Authority: 16 U.S.C. 181 *et seq.*

List of Subjects in 50 CFR Part 655

Fisheries, Reporting and recordkeeping requirements.

Dated: September 12, 1990.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 90-22059 Filed 9-13-90; 2:33 pm]

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50 CFR Part 695

[Docket No. 900821-0221]

RIN 0648-AD31

Vessels of the United States Fishing in Colombian Treaty Waters

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

ACTION: Proposed rule.

SUMMARY: NOAA is proposing regulations to govern fishing by vessels of the United States in certain waters of the Caribbean Sea covered by a treaty between the United States and the Government of Colombia (GOC). These regulations would require owners and operators of vessels fishing in treaty waters to (1) obtain certificates and permits, (2) report, by radio, entry into and departure from treaty waters, (3) report catch and effort information, and (4) identify their vessels by displaying the official number. In addition, these regulations would (1) prohibit the use in treaty waters of factory vessels, monofilament gillnets, tanks and air hoses, poisons, and explosives; (2) close the treaty waters of Quita Sueno to the harvest or possession of conch year round; (3) close the treaty waters of Serrana and Roncador to the harvest or possession of conch from July 1 through September 30 each year; (4) establish a minimum size limit for conch; (5) prohibit the removal of eggs from, or the retention of, berried lobsters; (6) establish a minimum size limit for spiny and smoothtail lobsters; and (7) require lobster or fish traps to have biodegradable escape panels. The intended effects of this rule are to (1) implement the conservation and management measures applicable to treaty waters agreed to in consultations between the United States and the GOC; (2) establish a means to obtain catch and effort data for treaty waters sufficient to monitor the necessity for and appropriateness of any further proposed management measures, thus protecting the interests of owners and operators of vessels of the United States who desire to fish in treaty waters; and (3) apply to vessels of the United States fishing in treaty waters certain other conservation and management measures that are applicable to those vessels when they are fishing in the Exclusive Economic Zone (EEZ) of the United States in the Gulf of Mexico and the Caribbean Sea.

DATES: Written comments must be received on or before October 18, 1990.

ADDRESSES: Documents supporting this action may be obtained from and comments on the proposed rule should be sent to: W. Perry Allen, Southeast Region, NMFS, 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, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for NOAA.

FOR FURTHER INFORMATION CONTACT: W. Perry Allen, 813-893-3722.

SUPPLEMENTARY INFORMATION:

Background

In 1972, the United States and the GOC signed the Treaty Between the Government of the United States of America and the Government of the Republic of Colombia Concerning the Status of Quita Sueno, Roncador and Serrana (treaty). Under the terms of the treaty, which entered into force in 1981, vessels of the United States may fish in the waters of Quita Sueno, Roncador, and Serrana (treaty waters), but are subject to reasonable conservation measures applied by the GOC, provided that such measures are nondiscriminatory and no more restrictive than those applied to Colombian or other fishermen.

The initial requirements for a vessel of the United States to operate in treaty waters were minimal—each vessel was required to carry on board a certificate issued by the GOC, a vessel's entry into and departure from treaty waters were required to be reported by radio to GOC authorities, and the quantity and species of catch were required to be included in each departure report. In 1987, the United States and the GOC agreed on a temporary ban on conch fishing in the treaty waters of Quita Sueno.

In October, 1989, the two parties held consultations that resulted in two fishery agreements, the "Agreed Minutes" and a "Joint Statement" (Agreements), which, together, listed conservation measures to be applied to treaty waters. The measures contained in the Agreements are (1) to continue the entry and departure reports, (2) to continue the ban on conch fishing on Quita Sueno, (3) to add conservation measures for conch and lobster, (4) to prohibit certain gear and vessels in treaty waters, (5) to require more specific catch and effort data to be reported, and (6) to establish appropriate penalties for violations of the conservation and management measures.

The United States and the GOC jointly recognize that conch and lobster are organisms of slow growth and late sexual maturity. They are subject to overexploitation as a result of their high economic value in the Caribbean region. To avoid a collapse of these fisheries, the two parties adopted the following additional conservation and management measures, to be applied on a nondiscriminatory basis as of January 1, 1990:

(1) A closed season for conch on Serrana and Roncador of July 1 through September 30 of each year;

(2) A minimum size limit for the possession of conch of 7.94 ounces (225 grams) for an uncleaned meat and 3.53 ounces (100 grams) for a cleaned meat;

(3) A prohibition on possession of berried (egg-bearing) spiny or smoothtail lobsters or the removal of eggs from such lobsters;

(4) A minimum size limit for the possession of spiny or smoothtail lobsters of 5.5 inches (13.97 centimeters), tail length;

(5) A prohibition on the use in treaty waters of factory vessels, monofilament gillnets, tanks, and air hoses; and

(6) Catch and effort reports to be submitted on fishing by vessels of the United States in treaty waters.

Conservation Measures on Conch

The 1987 ban on conch harvesting from the treaty waters of Quita Sueno was in response to the danger of depletion of the conch stocks on that bank as evidenced by reduced yields. Continuation of that ban is necessary to facilitate recovery of the conch resource in that location. The proposed closed season for conch in the treaty waters of Serrana and Roncador of July 1 through

September 30 would protect the resource during a period of high spawning activity. Reduction of fishing mortality at that time would materially contribute to maintaining conch as a viable fishery.

The minimum size limit on conch would be an initial step designed to allow conch to grow to sexual maturity before being harvested. The minimum weights of 225 grams for an uncleaned meat or 100 grams for a cleaned meat may, in fact, be too low for an effective correlation with sexual maturity. In addition, individual meat weights can not be directly determined when conch are being harvested. As additional scientific data become available, size/weight criteria better correlated to sexual maturity and directly measurable at the time of harvest would be developed and implemented. In the interim, fishermen harvesting conch would be expected to take a conservative approach in their selection of conch to ensure the size limits of this proposed rule are met.

The ban in treaty waters on the use of autonomous or semi-autonomous diving equipment (tanks or air hoses) would, in effect, limit the depth at which conch could be harvested. Conch in waters too deep for free diving would then constitute an unharvested source for spawning and replenishment of the fishery.

Conservation Measures on Lobster

The minimum size limit for spiny and smoothtail lobster of 5.5 inches (13.97 centimeters) would reduce the harvest of juvenile spiny and smoothtail lobsters, thus increasing the number that reach sexual maturity and spawn. The efficacy of the size limit of 5.5 inches and alternative measurements, such as the carapace length or the width of the first tail somite, would be evaluated as additional scientific data become available. The ban on possession of, and removal of eggs from, berried spiny and smoothtail lobsters would aid recruitment to the fishery by providing additional protection to the spawning stock.

General Measures Applicable to Treaty Waters

The ban on the use in treaty waters of factory vessels; *i.e.*, vessels that process, transform, and package aquatic biological resources on board; would protect the fishery resources from excessive fishing pressures and maintain those resources for the fishermen currently harvesting them. This would be a preventive measure. Only one factory vessel is known to have operated briefly in treaty waters.

Monofilament gillnets are relatively indiscriminate in their catch, that is, they capture and kill both target and nontarget species; and, if abandoned, they continue to catch and kill fish indefinitely. Accordingly, their use in treaty waters would be prohibited. Monofilament gillnets are not known to have been used in treaty waters.

Catch and effort data provide vital information for proper conservation and management of fishery resources. Accordingly, the reporting of such information would be required by this proposed rule. Information derived from such reports would be forwarded to the appropriate GOC authorities for their use in management and would also be used by NMFS to monitor the status of the fishery stocks. Their use by NMFS would enable the United States to evaluate the need for, and appropriateness of, any modification of or addition to conservation and management measures that may be proposed for treaty waters. The goal of NMFS would be to preserve the long-term viability of the fishery resources in treaty waters, thus ensuring their continued availability to fishermen aboard vessels of the United States. The proposed form for reporting catch and effort data, which would be provided to the operators of vessels permitted to fish in treaty waters, is published as an appendix to this proposed rule, but would not be published in the Code of Federal Regulations.

The requirement that the owner of each vessel must apply to the Regional Director, Southeast Region, NMFS, for an annual permit to fish in treaty waters would enable NMFS to obtain the required certificate from the GOC and to enforce the other provisions of this proposed rule. Historically, it has taken several months to obtain certificates from the GOC. Accordingly, applications for permits/certificates should be submitted at least 90 days before they are needed. Otherwise, the permit provisions of this proposed rule are not significantly different from the permit provisions applicable to vessels of the United States in other fisheries of the Gulf of Mexico and the Caribbean Sea. Although other penalty provisions would also apply, NMFS would make full use of the permit sanction provisions of this proposed rule for non-compliance with the reporting and other requirements. Thus, an owner or operator who fails to submit required reports for a vessel that operates in treaty waters would not have his permit renewed and could have his permit revoked.

It is proposed that the full range of penalties and procedures of the Magnuson Fishery Conservation and Management Act (Magnuson Act) would apply to violations. In general, fishery violations would be subject to civil administrative procedures with penalties of up to $25,000 for each violation or each day of a continuing violation. A fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) may be liable for forfeiture. In addition, GOC authorities may require a vessel involved in a violation to leave treaty waters.

The long-standing requirement that vessels of the United States report by radio their arrivals in and departures from treaty waters would be continued. Such reports would enhance enforcement and provide information for cross-checking against subsequent written catch and effort reports. Catch reports by radio, as part of the departure reports, would no longer be required.

Additional Measures Proposed by NOAA

In addition to the conservation and management measures contained in the Agreements, NOAA proposes to (1) require biodegradable panels on any nonwooden traps used in treaty waters; (2) prohibit the use of poisons or explosives, other than explosives in powerheads, to take aquatic biological resources in treaty waters; (3) prohibit the possession of any dynamite or similar explosive substance aboard a vessel in treaty waters; (4) extend the ban on possession of and removal of eggs from berried spiny and smoothtail lobsters to other species of lobster that may be harvested from treaty waters; and (5) require that a vessel prominently display its official number.

Fish traps and lobster traps that are lost continue to attract and kill fish and lobsters. To reduce this source of fishing mortality, this proposed rule would require biodegradable panels on nonwooden traps, thus providing escape windows. Wooden traps degrade and do not require escape windows.

Poisons and explosives, other than explosives in powerheads, indiscriminately kill fishery resources and destroy the benthic habitat necessary to support demersal species. Their use is contrary to basic conservation ethics. Therefore, their use would be prohibited in treaty waters by this proposed rule. Exception is made for powerheads so that divers may protect themselves from predatory fish.

To enforce effectively the prohibition on use of explosives, this proposed rule would prohibit the possession of

dynamite or a similar explosive substance aboard a vessel of the United States. NOAA is not aware of any legitimate use of dynamite or a similar explosive substance aboard a fishing vessel in treaty waters.

The protection of spawning lobsters is important to all species. Accordingly, the ban on possession of and removal of eggs from berried spiny and smoothtail lobsters would be extended to other species of lobster that may be harvested from treaty waters.

The requirement that a vessel operating in treaty waters display prominently its official number would enhance enforcement by allowing easier identification of vessels and could obviate the necessity for frequent boardings.

NOAA considers application in treaty waters of each of the additional measures discussed above to be necessary for conservation and management. In addition, most of the measures apply to fisheries in the EEZ in the Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea. Non-applicability to a vessel of the United States in treaty waters, and, thus, to a vessel in transit to or from treaty waters, could provide a means for evasion of the requirements in the EEZ. Before publication of a final rule, these additional measures will be discussed with the GOC. They may be added to the Agreements by an exchange of notes between the United States and the GOC or they may be modified.

Classification

This proposed rule is authorized under the Magnuson Act, specifically, sections 202(a)(5) and 305(g). Section 202(a)(5) authorizes the Secretary of State to enter into negotiations to further the purposes, policy, and provisions of the Magnuson Act. One of the policies of the Magnuson Act is to support and encourage active United States efforts to obtain internationally acceptable agreements that provide for effective conservation and management of fishery resources (section 2(c)(5)). By its definition in the Magnuson Act, the term "fishery resource" means any fishery, any stock of fish, any species of fish, and any habitat of fish (section 3(9)). Section 305(g) authorizes the Secretary of Commerce (Secretary) to promulgate such regulations as may be necessary to carry out any provision of the Magnuson Act. The Secretary has found that this proposed rule is necessary to implement the fishery Agreements between the United States and the GOC and to implement conservation and management measures of general applicability to fishing vessels of the United States.

Because these regulations are issued with respect to a foreign affairs function of the United States, this action is exempt from the provisions of E.O. 12291.

This rule is exempt from the requirements of the Regulatory Flexibility Act for preparation of a regulatory flexibility analysis because no general notice of proposed rulemaking for this rule is required by law.

The Regional Diector, Southeast Region, NMFS, prepared an environmental assessment (EA) for this proposed rule. Based on the EA, the Assistant Administrator for Fisheries, NOAA, (Assistant Administrator) found that there will be no significant impact on the human environment as a result of this rule and that an environmental impact statement is not required. A copy of the EA is available upon request (see **ADDRESSES**).

This proposed rule does not directly affect the coastal zone of any state with an approved coastal zone management program.

This proposed rule contains two collection-of-information requirements subject to the Paperwork Reduction Act. A request to collect this information has been submitted to the Office of Management and Budget (OMB) for approval. The requirements are (1) an annual vessel permitting system and (2) a catch and effort reporting system. The public reporting burdens for these collections of information are estimated to average 15 and 18 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, including 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.

The normal notice and opportunity to comment requirements of the Administrative Procedure Act (APA) do not apply to this action because implementation of this rule is a foreign affairs function under section 553(a)(1) of the APA. However, the Assistant Administrator is soliciting public comments on this rule, and will consider them to the extent discretion exists to modify the regulations consistent with the Agreements and any further diplomatic exchange with GOC prior to issuance of a final rule.

List of Subjects in 50 CFR Part 695

Fisheries, Fishing, Reporting and recordkeeping requirements, Republic of Colombia, Treaties.

Dated: September 11, 1990.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR is proposed to be amended by adding a new part 695 to read as follows:

PART 695—VESSELS OF THE UNITED STATES FISHING IN COLOMBIAN TREATY WATERS

Subpart A—General Provisions

Sec.
695.1 Purpose and scope.
695.2 Definitions.
695.3 Relation to other laws.
695.4 Certificates and permits.
695.5 Recordkeeping and reporting.
695.6 Vessel identification.
695.7 Prohibitions.
695.8 Facilitation of enforcement.
695.9 Penalties.

Subpart B—Management Measures

695.20 Fishing year.
695.21 Vessel and gear restrictions.
695.22 Conch harvest limitations.
695.23 Lobster harvest limitations.

Authority: I6 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§ 695.1 Purpose and scope.

(a) The purpose of this part is to implement in certain waters of the Caribbean Sea fishery conservation and management measures—

(1) As provided in fishery agreements pursuant to the Treaty Between the Government of the United States of America and the Government of the Republic of Colombia Concerning the Status of Quita Sueno, Roncador and Serrana (TIAS 10120), or

(2) That are necessary adjuncts to conservation and management measures generally applicable to vessels of the United States fishing in or transiting the EEZ in the Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea.

(b) This part governs fishing by vessels of the United States in treaty waters.

§ 695.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Conch means *Strombus gigas.*

Lobster means one or more of the following:

(a) *Slipper (Spanish) lobster,* Scyllaridae, all species.

(b) *Smoothtail lobster, Panulirus laevicauda.*

(c) *Spiny lobster, Panulirus argus.*

(d) *Spotted lobster, Panulirus guttatus.*

Powerhead means a spear, pole, or stick with an attached explosive charge that fires a projectile upon contact.

Regional Director means the Director, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702, telephone, 813–893–3141, or a designee.

Science and Research Director means the Science and Research Director, Southeast Fisheries Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149, telephone 305–361–5761, or a designee.

Treaty waters means the waters of one or more of the following:

(a) *Quita Sueno,* enclosed by latitudes 13°55′N. and 14°43′N. between longitudes 80°55′W. and 81°28′W.

(b) *Serrana,* enclosed by arcs 12 nautical miles from the low water line of the cays and islands in the general area of 14°22′N. latitude, 80°20′W. longitude.

(c) *Roncador,* enclosed by arcs 12 nautical miles from the low water line of Roncador Cay, in approximate position 13°35′N. latitude, 80°05′W. longitude.

§ 695.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraph (b) of this section. Particular note should be made to the reference in § 620.3 to the applicability of title 46, U.S.C., under which a Certificate of Documentation is invalid when the vessel is placed under the command of a person who is not a citizen of the United States.

(b) Minimum size limitations for certain species, such as reef fish in the Gulf of Mexico, may apply to vessels transiting the EEZ with such species aboard.

§ 695.4 Certificates and permits.

(a) *Applicability.* An owner of a vessel of the United States that fishes in treaty waters is required to obtain an annual certificate issued by the Republic of Colombia and an annual vessel permit issued by the Regional Director.

(b) *Application for certificate/permit.* (1) An application for a permit must be submitted and signed by the vessel's owner. An application may be submitted at any time but should be submitted to the Regional Director not less than 90 days in advance of its need. Applications for the ensuing calendar year should be submitted to the Regional Director by October 1.

(2) An applicant must provide the following information:

(i) A copy of the vessel's U.S. Coast Guard certificate of documentation or state registration certificate;

(ii) The vessel's name, official number, gross tonnage, length, home port, and radio call sign;

(iii) Name, mailing address including zip code, telephone number, date of birth, and social security number of the owner or, if the owner is a corporation or partnership, the responsible corporate officer or general partner;

(iv) Principal port of landing of fish taken from treaty waters;

(v) Type of fishing to be conducted in treaty waters; and

(vi) Any other information concerning the vessel, fishing gear, or fishing area requested by the Regional Director.

(c) *Issuance.* (1) The Regional Director will request a certificate from the Republic of Colombia if:

(i) The application is complete; and

(ii) The applicant has complied with all applicable reporting requirements of § 695.5 during the year immediately preceding the application.

(2) Upon receipt of an incomplete application, or an application from a person who has not complied with all applicable reporting requirements of § 695.5 during the year immediately preceding the application, the Regional Director will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the Regional Director's notification, the application will be considered abandoned.

(3) The Regional Director will issue a permit as soon as the certificate is received from the Republic of Colombia.

(d) *Duration.* A certificate and permit are valid for the calendar year for which they are issued unless the permit is revoked, suspended, or modified under subpart D of 15 CFR part 904.

(e) *Transfer.* A certificate and permit issued under this section are not transferable or assignable. They are valid only for the fishing vessel and owner for which they are issued.

(f) *Display.* A certificate and permit issued under this section must be carried aboard the fishing vessel while it is in treaty waters. The operator of a fishing vessel must present the certificate and permit for inspection upon request of an authorized officer or an enforcement officer of the Republic of Colombia.

(g) *Sanctions and Denials.* Procedures governing enforcement-related permit sanctions and denials are found at subpart D of 15 CFR part 904.

(h) *Alteration.* A certificate or permit that is altered, erased, or mutilated is invalid.

(i) *Replacement.* A replacement certificate or permit may be issued upon request. Such request must clearly state the reason for a replacement certificate or permit.

(j) *Change in application information.* The owner of a vessel with a permit must notify the Regional Director within 30 days after any change in the application information required by paragraph (b)(2) of this section.

§ 695.5 Recordkeeping and reporting.

(a) *Arrival and departure reports.* The operator of each vessel of the United States for which a certificate and permit have been issued under § 695.4 must report by radio to the Port Captain, San Andres Island, voice radio call sign "Capitania de San Andres," the vessel's arrival in and departure from treaty waters. Radio reports must be made on 8222.0 kHz or 8276.5 kHz between 8 a.m. and 12 noon, local time (1300–1700, Greenwich mean time), Monday through Friday.

(b) *Catch and effort reports.* Each vessel of the United States must report its catch and effort on each trip into treaty waters to the Science and Research Director 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 7 days after the end of each fishing trip.

§ 695.6 Vessel identification.

(a) *Official number.* A vessel engaged in fishing in treaty waters must display its official number—

(1) On the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from an enforcement vessel or aircraft;

(2) In block arabic numerals in contrasting color to the background;

(3) At least 18 inches (45.7 cm) in height for fishing vessels over 65 feet (19.8 m) in length and at least 10 inches (25.4 cm) in height for all other vessels; and

(4) Permanently affixed to or painted on the vessel.

(b) Duties of operator. The operator of each fishing vessel must—

(1) Keep the official number clearly legible and in good repair; and

(2) Ensure that no part of the fishing vessel, its rigging, fishing gear, or any other material aboard obstructs the view of the official number from an enforcement vessel or aircraft.

§ 695.7 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) Fish in treaty waters without the certificate and permit aboard, or fail to display the certificate and permit, as specified in § 695.4 (a) and (f).

(b) Falsify information specified in § 695.4(b)(2) on an application for a vessel permit.

(c) Fail to notify the Regional Director of a change in application information, as specified in § 695.4(j).

(d) Fail to report a vessel's arrival in and departure from treaty waters, as required by § 695.5(a).

(e) Falsify or fail to provide information required to be submitted or reported, as required by § 695.5(b).

(f) Falsify or fail to display and maintain vessel identification, as required by § 695.6.

(g) Fail to comply immediately with instructions and signals issued by an enforcement officer of the Republic of Colombia, as specified in § 695.8.

(h) Operate a factory vessel in treaty waters, as specified in § 695.21(a).

(i) Use a monofilament gillnet in treaty waters, as specified in § 695.21(b).

(j) Use autonomous or semi-autonomous diving equipment in treaty waters, as specified in § 695.21(c).

(k) Use or possess in treaty waters a lobster trap or fish trap without a degradable panel, as specified in § 695.2l(d).

(l) Fish with poisons or explosives or possess on board a fishing vessel any dynamite or similar explosive substance, as specified in § 695.21(e).

(m) Possess conch smaller than the minimum size limit, as specified in § 695.22(a).

(n) Fish for or possess conch in the closed area or during the closed season, as specified in § 695.22(b) and (c).

(o) Retain on board a berried lobster or strip eggs from or otherwise molest a berried lobster, as specified in § 695.23(a).

(p) Possess a spiny or smoothtail lobster smaller than the minimum size, as specified in § 695.23(b).

(q) Fail to return immediately to the water unharmed a berried or undersized lobster, as specified in § 695.23 (a) and (b).

(r) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

§ 695.8 Facilitation of enforcement.

(a) The provisions of § 620.8 of this chapter and paragraph (b) of this section apply to vessels of the United States fishing in treaty waters.

(b) The operator of, or any other person aboard, any vessel of the United States fishing in treaty waters must immediately comply with instructions and signals issued by an enforcement officer of the Republic of Colombia to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record, and catch for purposes of enforcing this part.

§ 695.9 Penalties.

Any person committing or fishing vessel used in the commission of a violation of the Magnuson Act or any regulation issued under the Magnuson Act, is subject to the civil and criminal penalty provisions and civil forfeiture provisions of the Magnuson Act, to part 620 of this chapter, to 15 CFR part 904 (Civil Procedures), and to other applicable law. In addition, Colombian authorities may require a vessel involved in a violation of this part to leave treaty waters.

Subpart B—Management Measures

§ 695.20 Fishing year.

The fishing year for fishing in treaty waters begins on January 1 and ends on December 31.

§ 695.21 Vessel and gear restrictions.

(a) *Factory vessels.* No factory vessel, that is, a vessel that processes, transforms, and packages aquatic biological resources on board, may operate in treaty waters.

(b) *Monofilament gillnets.* A monofilament gillnet made from nylon or similar synthetic material may not be used in treaty waters.

(c) *Tanks and air hoses.* Autonomous or semiautonomous diving equipment (tanks or air hoses) may not be used to take aquatic biological resources in treaty waters.

(d) *Trap requirements.* A lobster or fish trap used or possessed in treaty waters that is constructed of material other than wood must have an escape panel constructed of wood, cotton, or other degradable material located in the upper half of the sides or on top of the trap that, when removed, will leave an opening no smaller than the throat or entrance of the trap.

(e) *Poisons and explosives.* Poisons or explosives, other than explosives in a powerhead, may not be used to take aquatic biological resources in treaty waters. A vessel of the United States may not possess on board any dynamite or similar explosive substance in treaty waters.

§ 695.22 Conch harvest limitations.

(a) *Size limit.* The minimum size limit for possession of conch in or from treaty waters is 7.94 ounces (225 grams) for an uncleaned meat and 3.53 ounces (100 grams) for a cleaned meat.

(b) *Closed area.* The treaty waters of Quita Sueno are closed to the harvest or possession of conch.

(c) *Closed season.* During the period of July 1 through September 30 of each year the treaty waters of Serrana and Roncador are closed to the harvest or possession of conch.

§ 695.23 Lobster harvest limitations.

(a) *Berried lobsters.* A berried (egg-bearing) lobster in treaty waters may not be retained on board. A berried lobster must be returned immediately to the water unharmed. A berried lobster may not be stripped, scraped, shaved, clipped, or in any other manner molested to remove the eggs.

(b) *Size limit.* The minimum size limit for possession of spiny or smoothtail lobster in or from treaty waters is 5.5 inches (13.97 centimeters), tail length. Tail length means the measurement, with the tail in a straight, flat position, from the anterior upper edge of the first abdominal (tail) segment to the tip of the closed tail. A spiny or smoothtail lobster smaller than the minimum size limit must be returned immediately to the water unharmed.

Appendix—Catch Report Form—Colombian Treaty Waters and Instructions

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

BILLING CODE 3510-22-M

NOAA Form _____ (6-90) - OMB Number 0648-_____ - Expires 12/31/93

CATCH REPORT FORM - COLOMBIAN TREATY WATERS

AREA FISHED (check only one) QUITA SUENO _____ RONCADOR _____ SERRANA _____

(Use a separate form for each area fished)

Vessel Name	Official Number

	Year	Month	Day
Date Entered Area:	199___		
Date Departed Area:	199___		

Gear: Check Box to Indicate Gear Used

☐ Traps		☐ Longline		☐ Hook & Line		☐ Diving	
% of Total Catch		% of Total Catch		% of Total Catch		% of Total Catch	
No. Traps Fished		No. Sets Made		No. Lines Fished		No. Divers	
No. Trap Hauls		Av. No. Hooks per Set		Av. No. Hooks per Line		Total No. Days Diving	
Av. Soak Time Between Hauls (hr)		Av. Line Length per Set		Total Hours Fished		Man-hours Worked per Day	
Mesh Sizes	___x___	Av. Time Sets Fished (hr)				Check if Targeted: Conch	
	___x___					if Targeted: Lobster	
	___x___					if Targeted: Reef Fish	

Species name	In Spanish	Pounds	Species Name	In Spanish	Pounds	
GROUPER	Mero		SNAPPER	Pargo		
Black	Mero Negron		Lane	Manchego		
Gag			Mangrove (Gray)	Pargo Dienton		
Red Hind	Mero Colorado		Mutton	Pargo Cebadal		
Rock Hind	Mero Cabrilla		Queen	Pargo Rojo-		
Jewfish	Mero Grande		Red	Pargo Rojo		
Misty	Guasa		Silk	Ojo Amarillo		
Nassau	Cherna		Vermillion	Buchona		
Red	Mero Para-Camo		Yellowtail	Rabirrubia		
Scamp			Other Snapper	Pargo		
Snowy	Cherna Pintada		TRIGGERFISHES	Puercos		
Warsaw	Mero Negro		LOBSTER	Langosta	Whole	Cleaned
Yellowedge			Spiny			
Yellowfin	Cuna de Piedra		Smooth Tailed			
Yellowmouth			Spotted			
Other Grouper			Slipper			
AMBERJACK	Medregal-coronado		CONCH			
GRUNTS	Roncos		OTHER SPECIES:			
HOGFISH	Capitan					
PORGY	Plumas					

SIGNATURE _____

NAME (Printed)_____ Date of Report - Year 199____ Month_____ Day_____

INSTRUCTIONS
C/ CH REPORT FORM - COLOMBIAN TREATY WATERS

Print clearly all information.

Use a separate log sheet for each entry into each area fished (Quito Sueno, Roncador, Serrana).

Each vessel of the U.S. must report its catch and effort on each trip into treaty waters. Mail completed forms so as to be received not later than 7 days after the end of each fishing trip to:

Science and Research Director
Southeast Fisheries Center
NMFS
75 Virginia Beach Drive
Miami, FL 33149

Vessel Name - Enter the vesse' name as it appears on the permit.

Official No. - Enter the U .. Coast Guard documentation number of the vessel or the state registration number, if the vessel is not documented.

Area Fished - Check on one on each form submitted.

Date entered/departe area - Enter appropriate dates for each fishing trip into the area checked.

Gear - Check o.e o more boxes to indicate the fishing gear or method employed in the area checked during the period covered by the report. F r each gear/method checked, (1) indicate the percentage of the total catch during the period covered by the report that was .aken by each gear and (2) complete the effort data as follows:

Traps:

No. Traps Fished - Total number of traps used during the period covered by the report.
No. Trap Hauls - The total number of hauls made during the period covered by the report, including hauls with no catch. Ten traps each pulled 3 times would equal 30 hauls.
Av. Soak Time Between Hauls - The average time in hours the traps were in the water between hauls.
Mesh Sizes - Record the mesh sizes in inches. For example, 1 x 2 for rectangular meshes 1" by 2"; 1.5 x 1.5 for rectangular meshes 1 1/2" by 1 1/2"; or 1.5 x hex for hexagonal meshes 1 1/2" on each side.

Longline:

No. Sets Made - Total number of times a longline was set during the period covered by the report.
Av. No. Hooks per Set - The average number of hooks on the longline.
Av. Line Length per Set - The average length of the line in feet.
Av. Time Sets Fished - The average time in hours the longlines were in the water from start of set to start of pickup.

Hook & Line (includes bandit gear, rod and reel and hand line):

No. Lines Fished - Total number of lines used during the period covered by the report.
Av. No. Hooks per Line - The average number of hooks on each line.
Total Hours Fished - Total time in hours this gear was used during the period covered by the report.

Diving:

No. Divers - Total number of divers used during the period covered by the report.
Total No. Days Diving - The number of days during the period that diving was conducted.
Man-hours Worked per Day - For the days worked, the average number of man-hours spent diving. For example, 5 divers who average 6 hours diving per day would yield 30 man-hours worked/day.
Check if Targeted - Indicate the primary species harvested by diving.

Catch - Record the catch in pounds of each species during the period covered by the report. For lobster and conch, record the weight in the appropriate column either as whole or cleaned weight.

Operator's signature - The operator is the master or other individual on board and in charge of the vessel. Type or print the name below the signature and indicate the date signed.

Public reporting burden for this collection of information is estimated to average 18 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702; and to the Office of Management and Budget, Paperwork Reduction Project (0648-), Washington, D.C. 20503.

[FR Doc. 90-21951 Filed 9-17-90; 8:45 am]
BILLING CODE 3510-22-C

Notices

Federal Register
Vol. 55, No. 181
Tuesday, September 18, 1990

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

Rural Electrification Administration

Eastern Iowa Light and Power Cooperative; Finding of No Significant Impact

AGENCY: Rural Electrification Administration; Agriculture.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), and REA Environmental Policies and Procedures (7 CFR part 1794), has made a Finding of No Significant Impact (FONSI) with respect to a project proposed by Eastern Iowa Light and Power Cooperative (EILPC) under the Rural Economic Development Loan and Grant Program. The project consists of purchasing and developing a 12 hectare industrial park in Muscatine County, Iowa. EILPC of Wilton, Iowa, has requested approval of financing assistance from REA.

FOR FURTHER INFORMATION CONTACT: REA's FONSI and EILPC's Borrower's Environmental Report (BER) may be reviewed at and copies obtained from the office of the Director, Northwest Area—Electric, REA, room 0230, South Agriculture Building, Washington, DC 20250, telephone (202) 382–1400, or at the office of Eastern Iowa Light and Power Cooperative, P.O. Box 869, Wilton, Iowa 52778, telephone (319) 732–2211, during regular business hours. Copies of the above documents can be obtained from either of the contacts listed above. Questions or comments on the proposed project should be sent to the REA contact.

SUPPLEMENTARY INFORMATION: REA has reviewed the BER submitted by EILPC and has determined that it represents an accurate assessment of the scope and level of environmental impacts of the proposed project. The BER, which includes input from certain State and Federal agencies, has been adopted by REA to serve as its Environmental Assessment (EA). The project consists of purchasing and developing a 12 hectare industrial park in Muscatine County, Iowa.

REA has determined that the BER adequately considered the potential impacts of the proposed project and concluded that approval of the project would not result in a major Federal action significantly affecting the quality of the human environment. REA determined that the proposed project will have no effect on cultural resources, important farmland, floodplains, wetlands, water quality or threatened or endangered species or critical habitat. REA has identified no other matters of potential environmental concern related to the proposed project.

Alternatives examined for the proposed project include no action and alternative sites. REA determined that the proposed project is an environmentally acceptable alternative that meets EILPC's need with a minimum of adverse environmental impact. REA has concluded that project approval would not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, the preparation of an environmental impact statement is not necessary.

In accordance with REA Environmental Policies and Procedures, 7 CFR part 1794, EILPC published notices in a newspaper of general circulation in the area and requested comments on the proposed project. The public was given 30 days to respond to the notice. No responses to the notices were received by EILPC or REA.

Dated: September 5, 1990.

John H. Arnesen,

Assistant Administrator—Electric.

[FR Doc. 90–22050 Filed 9–17–90; 8:45 am]

BILLING CODE 3410–15–M

COMMISSION ON CIVIL RIGHTS

Membership of the USCCR Performance Review Board

AGENCY: Commission on Civil Rights.

ACTION: Notice of membership of the USCCR Performance Review Board.

SUMMARY: This notice announces the appointment of the Performance Review Board (PRB) of the United States Commission on Civil Rights. Publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The PRB provides fair and impartial review of the U.S. Commission on Civil Rights' Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance awards to the Staff Director, U.S. Commission on Civil Rights for the FY 1990 rating year.

FOR FURTHER INFORMATION CONTACT: Ms. Marcia Tyler, Personnel and EEO Division, Office of the Assistant Staff Director for Management, U.S. Commission on Civil Rights, 1121 Vermont Avenue, NW., Washington, DC 20425, (202) 376–8364.

Members

Richard L. Osbourn, Chairman of PRB, Director of Personnel, Small Business Administration

Carol McCabe Booker, General Counsel, U.S. Commission on Civil Rights

Godfrey D. Dudley, Director, Field Management Programs-East, Equal Employment Opportunity Commission

Dated: September 12, 1990.

Emma Gonzalez-Joy,

Solicitor.

[FR Doc. 90–21955 Filed 9–17–90; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Housing Vacancy Survey.

Form Number(s): HVS–1.

Agency Approval Number: 0607–0179.

Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Burden: 3,700 hours.

Number of Respondents: 6,000.
Avg Hours Per Response: 3 minutes.
Needs and Uses: The Bureau of the Census uses the Housing Vacancy Survey (HVS) to provide quarterly estimates of national, regional, and state vacancy rates by various characteristics and homeownership rates. HVS data are collected from a sample of vacant housing units in the Current Population Survey (CPS). Information is collected from homeowners, realtors, and other knowledgeable persons. Government agencies, national associations, and business firms use the HVS data to gauge the housing inventory over time.
Affected Public: Individuals or households.
Frequency: Monthly.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377–3271, Department of Commerce, room H5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 12, 1990.

Edward Michals,

Departmental Clearance Officer, Information Collection Analysis Division.

[FR Doc. 90–21953 Filed 9–17–90; 8:45 am]

BILLING CODE 3510–07–M

Foreign-Trade Zones Board

[Docket No. 38–90]

Foreign-Trade Zone—Fort Wayne, Indiana Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Fort Wayne, Indiana, requesting authority to establish a general-purpose foreign-trade zone in Fort Wayne, Indiana. The Fort Wayne/Allen County Airport (Baer Field) was recently designated a "user fee" facility by the U.S. Customs Service. 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 4, 1990. The applicant is authorized to make the proposal under Indiana Code 8–10–3–2.

The proposed foreign-trade zone would consist of two warehouse facilities and an industrial park site in Fort Wayne. Site 1 would consist of 9,600 sq. ft. of a 321,600 sq. ft. public warehouse located at 3402 Meyer Road, owned by Commercial Warehouse & Cartage, Inc. Site 2 consists of 10,000 sq. ft. of a 41,500 sq. ft. public warehouse located at 2122 Bremer Road, owned by North American Moving & Storage, Inc. Site 3 would be located on a 50 acre tract of land at Baer Field, owned by the Fort Wayne/Allen County Airport Authority.

The application contains evidence of the need for zone services in the Fort Wayne area. Several firms have indicated an interest in using zone procedures for the warehousing/distribution of such items as gaskets, acrylic giftware, roller and hammer mills, seed cleaners, plastic injecting and molding machines, O-rings, seals, light truck axles, electric motors, formed tubular products, and electronic products, including thermistor components and assemblies. No specific manufacturing approval is being sought at this time. Such requests would be made to the Board on a case-by-case basis.

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; John F. Nelson, District Director, U.S. Customs Service, North Central Region, 6th Floor, Plaza Nine Building, 55 Erieview Plaza, Cleveland, Ohio 44114; and Colonel John D. Glass, District Engineer, U.S. Army Engineer District, Detroit, P.O. Box 1027, Detroit, Michigan 48231–1027.

As part of its investigation, the examiners committee will hold a public hearing on October 12, 1990 beginning at 9:00 a.m. in Room 128, City-County Building, One Main Street, Fort Wayne, Indiana 46802.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377–2862) by October 5, 1990. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through November 14, 1990.

A copy of the application is available for public inspection at each of the following locations:

Department of Economic Development, 840 City-County Building, One Main Street, Fort Wayne, Indiana 46802
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 4213, 14th & Pennsylvania Avenue, NW., Washington, DC 20230

Dated: September 12, 1990.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 90–22004 Filed 9–17–90; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

Determination Regarding Short-Supply Request for Reconsideration; Certain Type 430 Stainless Steel Wire Rod

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice of determination on short-supply request for reconsideration.

SHORT-SUPPLY REVIEW NUMBER: 19.

SUMMARY: The Secretary of Commerce ("Secretary") hereby upholds the short-supply decision of June 13, 1990 to grant a short-supply allowance for only 750 metric tons of the request 1,650 metric tons of certain Type 430 stainless steel wire rod for July–December 1990 under the U.S.–Brazil, U.S.–EC, U.S.–Japan, and U.S.–Korea steel arrangements.

EFFECTIVE DATE: September 11, 1990.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 377–0159.

SUPPLEMENTARY INFORMATION: On May 29, 1990, the Secretary received an adequate short-supply petition from the American Wire Producers Association ("AWPA"), on behalf of four members of the Stainless Committee, requesting a short-supply allowance for 1,650 metric tons of various sizes of certain Type 430 stainless steel wire rod with a carbon level not exceeding 0.04 percent, under Paragraph 8 of the Arrangement Between the Government of Japan and the Government of the United States of America Concerning Trade in Certain Steel Products, Article 8 of the Arrangement Between the Government of Brazil and the Government of the United States of America Concerning Trade in Certain Steel Products, Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community,

and the Government of the United States of America Concerning Trade in Certain Steel Products, and Article 8 of the Arrangement Between the Government of Korea and the Government of the United States of America Concerning Trade in Certain Steel Products. The Secretary conducted this short-supply review pursuant to section 4(b)(4)(A) of the Steel Trade Liberalization Program Implementation Act, Pub. L. No. 101–221, 103 Stat. 1886 (1989) ("the Act") and § 357.102 of the Department of Commerce's Short-Supply Regulations, published in the **Federal Register** on January 12, 1990 (55 FR 1348) ("Commerce's Short-Supply Regulations").

Because Baltimore Specialty Steels Corporation ("BSSC"), a potential domestic supplier of Type 430 stainless steel wire rod, demonstrated the ability to produce two sizes of the requested Type 430 stainless steel wire rod and the willingness to supply 900 metric tons of this product, partially meeting the needs of members of the AWPA, the Secretary determined on Jun 13, 1990, that short supply exists only for the remaining 750 metric tons of this product. Pursuant to section 4(b)(4)(A) of the Act, and § 357.102 of Commerce's Short-Supply Regulations, the Secretary granted a short-supply allowance for 750 metric tons of the requested Type 430 stainless steel wire rod for the second half of 1990. A notice of this decision was published in the **Federal Register** on June 21, 1990 (55 FR 25353).

On June 21, 1990, the AWPA filed a timely request for reconsideration under § 357.109 of Commerce's Short-Supply Regulations for the remaining 900 metric tons of its third and fourth quarter needs, alleging that the statutory and regulatory standards governing short-supply reviews were misapplied, and information included in this review indicating that a condition of short supply exists in the domestic market was overlooked or ignored. The Secretary granted the AWPA's request for reconsideration and published a notice announcing the reconsideration in the **Federal Register** on July 11, 1990 (55 FR 28426).

The AWPA based its reconsideration request on three factors:

(1) The price of Type 430 rod offered by BSSC was not at the prevailing market price;

(2) BSSC has limited experience producing this product and supplied unacceptable material to AWPA members;

(3) BSSC has experienced problems meeting delivery schedules in other stainless grades, which will carry into this product.

On July 13, 1990, the Secretary sent a questionnaire to BSSC in connection with this request for reconsideraion. The Secretary focused the questionnaire on the three noted issues.

Analysis

The Secretary analyzed each of the noted factors in relation to BSSC. Regarding price, the Secretary has determined that BSSC is making this product available in the U.S. market at a price that is not an aberration from the prevailing market price. The price offered by BSSC is within the range of prevailing domestic market prices.

Regarding limited experience and unacceptable material by BSSC, the Secretary has concluded that BSSC has sufficient experience producing this product and the material it has supplied has been acceptable quality. BSSC has a history of producing Type 430 rod. With the closing of its rod mill in 1987, it has relied on outside converters to roll the billets it melts into rod for all stainless grades it produces. This experience in melter/converter relationships has carried into producing Type 430 rod, as evidenced by virtually all trial material supplied to AWPA members being of acceptable quality. Material alleged to be unacceptable could not be attributed to the production or delivery by BSSC, or was attributed to specifications outside the scope of this review.

Regarding deliveries, the Secretary is obligated to determine only whether the requested product is supplied within a normal order-to-delivery period. Of the Type 430 rod ordered, virtually all of the material was delivered on the promised date. The small amount not delivered as promised was delivered well within BSSC's normal delivery time of 10–12 weeks.

Conclusion:

Pursuant to § 357.109 of Commerce's Short-Supply regulations, the Secretary hereby upholds the June 13, 1990 short-supply determination to deny the entire 900 metric tons of the AWPA's request for 1,650 metric tons of certain Type 430 stainless steel wire rod. The price of Type 430 rod offered by BSSC is not an aberration from the prevailing domestic market price, and BSSC has demonstrated that it is supplying acceptable material within a reasonable time frame to meet the AWPA members' short-supply needs.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90–22005 Filed 9–17–90; 8:45 am]

BILLING CODE 3510–DS–M

Short-Supply Review: Certain Steel Plate

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of Short-Supply Review and Request for Comments: Certain Steel Plate.

SUMMARY: The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 38,238.2 net tons of certain steel plate for the balance of 1990 under Article 8 of the U.S. -EC Steel arrangement.

SHORT-SUPPLY REVIEW NUMBER: 23.

SUPPLEMENTARY INFORMATION:

Pursuant to Section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Pub. L. No. 101–221, 103 Stat. 1886 (1989) ("The Act"), and Section 357.104(b) of the Department of Commerce's Short-Supply Regulations, published in the **Federal Register** on January 12, 1990, 55 FR 1348 ("Commerce's Short-Supply Regulations"), the Secretary hereby announces that a short-supply determination is under review with respect to certain steel plate for use in the manufacture of large diameter pipe (LDP). On September 13, 1990, Berg Steel Pipe Corporation submitted an adequate petition to the Secretary requesting a short-supply allowance under Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community, and the Government of the United States of America Concerning Trade in Certain Steel Products, for 38,238.2 net tons of American Petroleum Institute grade X–70 steel plate 130.297–131.216 inches in width and 0.417–0.630 inch in thickness, to be delivered during the balance of 1990.

Section 4(b)(4)(B)(ii) of the Act and Section 357.106(b)(2) of Commerce's Short-Supply Regulations require the Secretary to make a determination with respect to a short-supply petition not later than the 30th day after the petition is filed, unless the Secretary finds that one of the following conditions exist: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary finds that none of these conditions exist with respect to the requested product, and therefore, the Secretary will determine

whether this product is in short supply not later than October 12, 1990.

Comments: Interested parties wishing to comment upon this review must send written comments not later than September 25, 1990 to the Secretary of Commerce, Attention: Import Administration, Room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. Interested parties may file replies to any comments submitted. All replies must be filed not later than 5 days after (Insert date 7 days after date of publication in the **Federal Register**). All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information is connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above noted short-supply review number.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible or Norbert Gannon, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 377–0159 or (202) 377–4037.

Dated: September 14, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90–22218 Filed 9–17–90; 8:45 am]

BILLING CODE 3510–DS–M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Decision of Panel

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Decision of Panel in binational panel review of the final affirmative determination of threat of material injury made by the U.S. International Trade Commission (USITC), respecting Fresh, Chilled or Frozen Pork from Canada, Secretariat File No. USA–89–1904–11.

SUMMARY: By a decision dated August 24, 1990, the Binational Panel remanded the U.S. International Trade Commission's final affirmative determination of threat of material injury for reconsideration. A copy of the complete Panel decision is available from the FTA Binational Secretariat.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, Suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The panel review in this matter was conducted in accordance with these Rules.

Background

On September 13, 1989, the USITC issued its final affirmative determination of threat of material injury respecting Fresh, Chilled or Frozen Pork from Canada, ITC file number 701–TA–298, which was published in 54 FR 37838. On October 13, 1989, the Canadian Pork Council and its Members and Moose Jaw Packers (1974) Ltd. filed a Request for Panel Review with the United States Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Requests for Panel Review were also filed by the Canadian Meat Council and its members and Canada Packers, Inc., the Government of the Province of Alberta and the Gouvernement du Quebec.

On January 9, 1990, following motions by the USITC, the Gouvernement du Quebec and the Canadian Pork Council were dismissed from the review for lack of standing, with separate opinions issued explaining the Panel's reasons. The Panel also reviewed a motion by the USITC requesting a voluntary remand of its determination, which motion was denied by the Panel by order dated April 9, 1990.

Panel Decision

Upon examination of the administrative record and after full consideration of the arguments presented by the parties in their briefs and at oral argument held in Washington, DC on May 23, 1990, the Panel remanded the USITC's final determination for reconsideration because the Panel found that the USITC relied heavily throughout on statistics which the Panel found questionable and which they found colored the USITC's assessment of much of the other evidence. The Panel instructed the USITC to reconsider the evidence on the record, and more particularly the figures on Canadian pork production, for action consistent with the Panel's decision. The USITC was given 60 days (until October 23, 1990) to prepare its results of this remand and each other party was given 15 days thereafter to provide the Panel with any comments on the remand results.

Dated: September 7, 1990.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 90–22206 Filed 9–17–90; 8:45 am]

BILLING CODE 3510–GT–M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews: Decision of Panel

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Decision of Panel in the binational panel review of the final determination of sales at less than fair value made by the Department of

Commerce, International Trade Administration, Import Administration, respecting New Steel Rail, Except Light Rail, from Canada, Secretariat File No: USA–89–1904–08.

SUMMARY: By a decision dated August 30, 1990, the Binational Panel affirmed the Department of Commerce's final determination of sales at less than fair value. A copy of the complete Panel decision is available from the FTA Binational Secretariat.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, Suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countevailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

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Background

On September 1, 1989, the Algoma Steel Corporation, Limited, "Algoma" filed a Request for Panel Review to contest the final determination of sales at less than fair value made by the Department of Commerce, International Trade Administration, Import Administration, "Commerce", in the investigation of New Steel Rail, Except Light Rail, from Canada, Import Administration file number C–122–804, published in 54 FR 31984 on August 3, 1989. In its complaint, Algoma contended that Commerce's rejection of Algoma's cost data and its use of best information available was unsupported by substantial evidence on the record and otherwise not in accordance with law. Algoma later amended its complaint to also contest Commerce's choice of cost data supplied by the U.S. petitioner, Bethlehem Steel Corporation, as the best information available.

Opinion of the Panel

On the basis of an examination of the administrative record, review of the applicable United States law, and consideration of the arguments of the parties, the Panel, in a 4–1 majority decision, affirmed Commerce's determination as supported by substantial evidence on the record and otherwise in accordance with law.

Dated: September 7, 1990.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 90–22008 Filed 9–17–90; 8:45 am]

BILLING CODE 3510–GT–M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews: Completion of Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of Panel Review of the final affirmative countervailing duty determination made by the Department of Commerce, International Trade Administration, Import Administration, respecting New Steel Rail, Except Light Rail, from Canada, Secretariat File No. USA–89–1904–07.

SUMMARY: Pursuant to Rule 82 of the Article 1904 Panel Rules ("Rules"), the Panel Review of the final determination described above has been completed, effective August 27, 1990.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, Suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377–5438.

SUPPLEMENTARY INFORMATION: By decision dated June 8, 1990, the Panel affirmed in part and remanded in part the final determination of the Department of Commerce. Notice of the panel decision was published in the **Federal Register** on June 22, 1990 (55 FR 25684). In its decision, the Panel ordered that Commerce provide the results of the remand within 30 days of the date of the panel decision. On July 12, 1990, Commerce filed its Determination on Remand, pursuant to Rule 75 of the Rules.

No Notice of Motion for review of the Determination on Remand and no request for an extraordinary challenge committee has been filed with the responsible Secretary. Accordingly, pursuant to Rule 82, this Notice of Completion of Panel Review shall be effective on August 27, 1990, the 46th day following the filing of the Determination on Remand. Pursuant to Rule 85, the panelists are discharged from their duties effective August 27, 1990.

Dated: September 7, 1990.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 90–22007 Filed 9–17–90; 8:45 am]

BILLING CODE 3510–GT–M

National Oceanic and Atmospheric Administration

[Docket No. 900658–0158]

Foreign Fishing Permits; Transshipment of "Donut Hole" Fish in the Exclusive Economic Zone

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

ACTION: Notice; request for comments.

SUMMARY: NOAA provides an opportunity for public comments regarding 1991 applications for foreign fishing permits in the event that such applications are received to transship certain fish production in the Exclusive Economic Zone (EEZ) and whether U.S. observers should be placed aboard vessels fishing seaward but transhipping their catch within the EEZ. This action will allow the North Pacific Fishery Management Council and NOAA to consider relevant information bearing on the approval of such applications.

DATES: Comments must be received by November 2, 1990.

ADDRESSES: Comments should be sent to the Operations Support and Analysis Division, F/CM1, National Marine Fisheries Service (NMFS), 1335 East-West Highway, Silver Spring, MD 20910. Please print "Transshipment comments" on envelope.

FOR FURTHER INFORMATION CONTACT: Alfred J. Bilik, 301–427–2337, or telex 467856 US COMM FISH CI.

SUPPLEMENTARY INFORMATION: Permit applications for fishing in the EEZ in 1990 were submitted by foreign fishing nations. Certain applications requested permits to allow the foreign vessels to

tranship in the EEZ fish production derived from catches in waters of the Central Bering Sea seaward of the EEZ, *i.e.*, the "donut hole.".

The permit applications were reviewed by the North Pacific Fishery Management Council (Council) under the provisions of section 204(b)(5) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). The Council recommended that permits be issued only for those foreign vessels involved in joint ventures in the EEZ. The Council viewed its recommendation as an effective means to reduce the foreign vessels' fishing effort in the "donut hole", particularly on stocks believed to occur in both the "donut hole" and in the EEZ. NOAA considered the Council's recommendation but decided to approve the applications for a 6-month period, January 1 to June 30, 1990, pending further study of the effects of denying such permits on U.S. interests and determination of whether disapproval would be an effective means of significantly reducing the extent of foreign fishing in the "donut hole."

NOAA considered all available information bearing on this issue and completed its considerations on May 3, 1990. Based on the available information, the Assistant Administrator for Fisheries decided to extend permits authorizing transshipment of fish taken seaward of the EEZ from their current expiration date of June 30, 1990, through December 31, 1990. (55 FR 22943, June 5, 1990).

The decision was restricted to permits issued for such transshipments this year in the BSA and GOA fisheries and any similar 1990 applications that may be received before the end of the year. However, NOAA anticipates requests for similar permits for the 1991 season. Consequently, NOAA is providing this opportunity for public comment as to whether such permits should be approved in 1991, and, if so, whether special conditions should be attached, such as requiring the placement of U.S. observers on foreign fishing and processing vessels while operating in the "donut hole" and the method for assessing costs for such observers.

A similar condition was considered in an Advance Notice of Proposed Rulemaking (ANPR), published on April 25, 1988. (53 FR 13422). No decision was announced after the conclusion of the comment period provided for in the ANPR because there was no clear consensus. However, in light of the experience gained since 1988, NOAA believes it appropriate to again consider this condition in relation to transfers of "donut hole" production in the EEZ. Forty-five days are provided from the date of publication of this notice for such comments.

Dated: September 12, 1990.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–22024 Filed 9–17–90; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Department of the Navy

CNO Executive Panel, Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Technology Surprise Task Force will meet September 26–28, 1990 from 9 a.m. to 5 p.m., at Naval Ocean Systems Center, 271 Catalina Boulevard, San Diego, CA. This session will be closed to the public.

The purpose of this meeting is to discuss the possibility of unexpected technological breakthroughs that vastly change warfighting capabilities. The entire agenda for the meeting will consist of discussions of key issues regarding the potential for technology enigmas. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

This Notice is being published late due to the requirement for additional information regarding the security classification of the various topics forming the agenda. Operational necessity constitutes an exceptional circumstances not allowing Notice to be published in the **Federal Register** at least 15 days before the date of this meeting.

For further information concerning this meeting, contact: Lelia V. Carnevale, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, room 601, Alexandria, Virginia 22302–0268, Phone (703) 756–1205.

Dated: September 12, 1990.

Jane M. Virga,

Lieutenant, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 90–21983 Filed 9–17–90; 8:45 am]

BILLING CODE 3810–AE–M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearings

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, September 26, 1990 beginning at 10:30 a.m. in Cannon Lab room 104 of the University of Delaware's Marine Studies Complex on Pilottown Road in Lewes, Delaware.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at 9 a.m. at the same location and will include a presentation on oyster production in Delaware Bay and discussions on Commission landfill review policy; the upper Delaware ice jam project; middle and upper Delaware water quality protection strategies and a status report from the Commission's Water Conservation Advisory Committee.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact:

1. *Merrill Creek Owners Group (MCOG) D–77–110 CP Amendment 2).* A Resolution to include an additional designated unit (Unit 4, a steam turbine generating unit which is part of the Hay Road Power Plant project sponsored by Delmarva Power & Light Company) to the list of designated units which is incorporated in the MCOG docket. Table A (Revision 2), attached to the Resolution, replaces Table A (Revised).

2. *City of Coatesville Authority D–86–82 CP.* An application for expansion of the City of Coatesville Authority (CCA) water supply system by the acquisition of the Octoraro Water Company (OWC). In requesting the withdrawal rights formerly held by the OWC, the CCA has obtained Pennsylvania approval to withdraw up to 2.0 million gallons per day (mgd) from West Branch Octoraro Creek, in the Susquehanna River Basin (SRB). The OWC had supplied water to customers in both the Susquehanna and Delaware Basins. Interconnection with the existing CCA system will allow interbasin transfers. The CCA plans to implement a drought emergency plan to

conserve water and meet demand on a priority basis. The CCA will transfer water either to the Delaware River Basin (DRB) or to the SRB depending on the relative drought severity in each basin, the flow conditions in Octoraro Creek, and available storage in the DRB. The proposed combined system will be used to meet the demands throughout the combined service area in both Lancaster and Chester Counties, Pennsylvania.

3. *Portside Investors, L.P. D–87–84 (incorporates Regalleon Associates D–87–83).* An application to dredge 103,750 cubic yards of sediment from a 5.36-acre area between and surrounding Philadelphia Piers 28, 30, 34, 35 and 36 on the Delaware River for the mooring of a 445-foot long hotel/ship and construction of three marinas providing 246 slips. A commercial waterfront complex consisting of a high-rise building (condominiums), offices, a restaurant, public walkways and a fishing area, will be constructed atop the piers after the placement of new pilings and the renovation of existing pilings. Approximately 0.9 acres of new pier-decking will be required. A 2.65-acre tidal wetland will be created at the mouth of Pennypack Creek (R.M. 109.7) to mitigate the impacts of dredging and shading on intertidal and shallow water habitat.

4. *Concord Township Sewer Authority D–89–61 CP.* An application to construct a 0.6 mgd central Sewage Treatment Plant (STP) to provide tertiary treatment to existing and proposed developments within the Concord Township service area. Treated effluent will discharge to the South Fork of the West Branch Chester Creek. Approximately 5.3 miles of interceptor sewer will also be constructed. The STP will be located near the intersection of Conchester Road (Rt. 322) and Baltimore Pike (Rt. 1) in Concord Township, Delaware County, Pennsylvania.

5. *Doylestown Township Municipal Authority D–89–67 CP.* An application for approval of a ground water withdrawal project to supply up to 2.95 million gallons (mg)/30 days of water to the applicant's distribution system from new Well No. NT–1. The project is located in Doylestown Township, Bucks County, in the Southeastern Pennsylvania Ground Water Protected Area.

6. *Delaware Valley Utilities, Inc. D–89–81.* An application to upgrade and expand the treatment capacity of an existing sewage treatment plant (STP) from 0.045 mgd to 0.095 mgd to serve the Hunt Motel complex and the Milford Landing residential development. The existing STP has a secondary treatment system that was designed to handle the increased capacity. However, the STP will be upgraded by the addition of dechlorination, and the addition of filtration facilities to prevent an increase in BOD or suspended solids due to the expansion. Treated effluent will continue to discharge to the existing outfall on the Delaware River. The STP is located adjacent to the Delaware River just south of the Route 209 and I–84 Interchange in Westfall Township, Pike County, Pennsylvania.

7. *Collegeville-Trappe Joint Water System D–90–12 CP.* A revised application for approval of a ground water withdrawal project to supply up to 13.37 mg/30 days of water to the applicant's distribution system from new Well Nos. 8, 12, and 14, and increase the existing withdrawal limit from all wells to 24 mg/30 days. The project is located in the Borough of Collegeville and the Borough of Trappe, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

8. *Citizens Utilities Home Water Company D–90–26 CP.* A water transfer project to provide water to the applicant's proposed expansion of service area within Upper Providence Township, Montgomery County and East Pikeland Township, Chester County, Pennsylvania. The applicant will purchase 30 mg/30 days of finished water from the Borough of Phoenixville, Chester County, which owns and operates a 6.0 mgd water treatment facility supplied by its Schuylkill River withdrawal at Phoenixville. The applicant will accomplish the water transfer via a proposed interconnection located at Sowers Avenue booster station near State Route 29, in Mont Clare, Upper Providence Township, Montgomery County, Pennsylvania.

9. *Citizens Utilities Home Water Company D–90–27 CP.* A 3.0 mgd surface water withdrawal increase to serve the applicant's distribution system throughout Royersford Borough, Limerick Township and a portion of Upper Providence Township, Montgomery County; and its distribution system throughout Spring City Borough, East Vincent Township and a portion of East Pikeland Township, Chester County, all in Pennsylvania. The applicant proposed to increase its existing 2.0 mgd withdrawal from the Schuylkill River to 5.0 mgd in order to accommodate projected expansion and demand in its existing service area and a proposed service area in West Vincent Township. The intake is located in East Vincent Township, Chester County, Pennsylvania, approximately one mile upstream from the Vincent Dam.

10. *Womelsdorf-Robesonia Joint Authority D–90–43 CP.* An application for approval of a ground water withdrawal project to supply up to 4.32mg/30 days of water to the applicant's distribution system from new Well No. 2, and to increase the existing withdrawal limit of 10.5 mg/30 days from all wells to 15.0 mg/30 days. The project is located in Heidelberg Township, Berks County, Pennsylvania.

11. *Delmarva Power & Light Company D–90–45 CP.* An electric power generation project that proposes a new 100 MW single cycle combusion turbine (Unit 3) which, after installation, will be converted along with two existing 100 MW single cycle units (Units 1 and 2) to a combined cycle system which will provide steam for a proposed 150 MW steam turbine (Unit 4). The total increase of power from the existing single cycle (Units 1 & 2) to the combined cycle system (Units 1, 2, 3 and 4) will be from 200 MW to 450 MW at the applicant's Hay Road power plant. Unit 4 is proposed for inclusion in the Comprehensive Plan as a designated unit of the Merrill Creek Reservoir project. Makeup cooling water will be supplied by recycling up to 6.9 mgd of one-through cooling water that currently discharges to the Delaware River from the applicant's Edge Moor Power Plant adjacent to the proposed facilities. Water not consumed will be discharged back to the Delaware River via cooling tower blowdown. No increase in water withdrawal and discharge or change in effluent limits is proposed. The project is located just east of Hay Road in northeastern New Castle County, Delaware, adjacent to the Delaware River and straddles the northeastern boundary of the City of Wilmington.

12. *Technical Steering Committee for the Henderson Road Site/IWOU D–90–51.* An application for approval of a ground water withdrawal of up to 13 mg/30 days of water from the applicant's Henderson Road decontamination system from new Well Nos. HR–IW, HR–RE–205, HR–2–175, HR–3–295 and HR–BI, and to limit the withdrawal from all wells to 13 mg/30 days. The project is located in Upper Merion Township, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

13. *Mahoning Valley Country Club D–90–56.* A surface water withdrawal project to provide 0.2 mgd of water from the Mahoning Creek for a golf course irrigation system. The project withdrawal and site is located between Routes 902 and 443 on Mahoning Creek, in Mahoning Township, Carbon County, Pennsylvania.

14. *Woodloch Properties, Inc. D–90–58.* A sewage treatment plant (STP) project to construct a 0.15 mgd plant with outfall to discharge treated effluent to Teedyuskung Creek, a tributary of the Lackawaxen River, downstream of an existing man-made pond. The STP will provide tertiary level treatment to serve the applicant's proposed 402-unit residential development located just east of State Route 590 on the Teedyuskung Creek in Lackawaxen Township, Pike County, Pennsylvania.

15. *South Whitehall Township Authority D–90–67 CP.* An application for approval of a ground water withdrawal project to supply up to 2.0 mg/30 days of water to the applicant's distribution system from new Well No. 13, and to retain the existing withdrawal limit from all wells of 60 mg/30 days. The project is located in South Whitehall Township, Lehigh County, Pennsylvania.

16. *Public Service Electric and Gas Company D–90–71.* An application for the combined approval of two previously approved ground water withdrawal projects to supply up to 50 mg/30 days of water to the applicant's Salem and Hope Creek Nuclear Generating Stations from existing Well Nos. PW–1 through 6, and HC–1 and 2, and to limit the withdrawal from all wells to 50 mg/30 days. The project is located in Lower Alloways Creed Township, Salem County, New Jersey.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

* * * * *

Proposed Amendment of Comprehensive Plan and Basin Regulations: Water Code and Administrative Manual—Part III Water Quality Regulations. As noticed in the July 5, 1990 **Federal Register**, Vol. 55, No. 129, page 27669, the Commission will conduct public hearings on October 2 and October 3, 1990 to receive comments on proposed amendments to its Comprehensive Plan to upgrade water quality standards for portions of the tidal Delaware River.

The public hearings are scheduled as follows: October 2, 1990 from 2:00 p.m. to 5 p.m., resuming a 7 p.m. at the Quality Inn, 1083 Route 206, Bordentown, New Jersey; and October 3, 1990 from 2 p.m. to 5 p.m. at the Holiday Inn, 4th and Arch Streets, Philadelphia, Pennsylvania.

The Commission has prepared a Basis and Background Document which discusses the proposed upgrading of water uses to meet the federal goals for the swimmability and fishability, and the bacterial and dissolved oxygen criteria to achieve those goals. More stringent fecal coliform bacterial criteria are proposed for the Delaware River for parts of Zones 2, 4 and 5 and new enterococcus criteria are proposed for all of Zones 2, 3, 4, 5 and 6 of the Delaware River and Delaware Bay.

Higher proposed dissolved oxygen criteria include either a minimum of 4 mg/1 or a minimum of 5 mg/1 in Zone 2, a minimum of 4 mg/1 in Zone 3 and the upper part of Zone 4, and a minimum of 5 mg/1 in the remainder of Zone 4 and all of Zone 5. The Document also indicates that significant upgrading of wastewater treatment may be required to attain the higher dissolved oxygen levels.

The Basis and Background Document reviewing the rationale for the proposed water quality standards modifications, and other relevant reports, may be obtained by contacting Seymour Gross at the Commission at (609) 883–9500.

Persons wishing to testify at the October 2 or October 3, 1990 hearings are requested to register with the Secretary by October 1, 1990. The comment closing date will be determined at the hearing.

Dated: September 11, 1990.

Susan M. Weisman,

Secretary.

[FR Doc. 90–21988 Filed 9–17–90; 8:45 am]

BILLING CODE 6360–01–M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

[CFDA No. 84.094B]

Technical Assistance Workshops

AGENCY: Department of Education.

ACTION: Notice of Technical Assistance Workshops.

SUMMARY: The Department of Education will conduct Application Preparation Workshops to assist prospective applicants in developing applications for The Patricia Roberts Harris Graduate and Professional Study Fellowship Program for fiscal year 1991. The scheduled dates and locations are as follows:

September 18 at the University of Colorado, Boulder, Colorado, in the Cires Auditorium, from 8 a.m.–3 p.m.

September 19 at the University of Chicago, Chicago, Illinois, in the Kent Building, Room 120, 1020—24 East 58th Street, from 8 a.m.–3 p.m.

September 25 at the GSA Auditorium located at 7th & D Streets SW., Washington, DC, from 8:30 a.m.–3 p.m.

FOR FURTHER INFORMATION CONTACT: Charles H. Miller, Senior Education Specialist, Division of Higher Education Incentive Programs, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3514, Regional Office Building 3, Washington, DC 20202–5251. Telephone: (202) 708–8395.

Program Authority: 20 U.S.C. 1134D–1134f.

Dated: September 13, 1990.

Leonard L. Haynes III,

Assistant Secretary for Postsecondary Education.

[FR Doc. 90–22223 Filed 9–17–90; 8:45 am]

BILLING CODE 4000–01–M

Office of Special Education and Rehabilitative Services

Soliciting Suggestions for Priorities for Training and Public Awareness Projects in the Technology-Related Assistance for Individuals With Disabilities Program

AGENCY: Department of Education.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Secretary of Education expects to fund Training and Public Awareness Projects in the Technology-Related Assistance for Individuals With Disabilities Program for the first time in fiscal year 1991. The Secretary announces a public meeting regarding the establishment of priorities for this program, which is authorized by part C of title II of Public Law 100–407—the Technology Related Assistance for Individuals with Disabilities Act of 1988. Subsequent to the meeting, a Notice of Proposed Rulemaking will be published containing proposed priorities as well as other regulatory provisions needed to govern the program.

Meeting Information: The public meeting is scheduled to be held from 9:30 a.m. to 3:30 p.m. on Friday, September 28, 1990 at the Wilbur J. Cohen Building, First Floor Auditorium, 330 Independence Avenue, SW., Washington, DC 20202.

The Secretary encourages interested parties to attend the public meeting and requests that those parties participating provide a written copy of their suggested priorities.

Comments: The Secretary also invites written comments concerning priorities for this program from interested parties who do not attend the meeting.

ADDRESSES: Written comments should be addressed to Betty Jo Berland, Planning Officer, Division of Program Development, National Institute on Disability and Rehabilitation Research, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, Room 3422), Washington, DC 20202–2601.

FOR FURTHER INFORMATION CONTACT: Persons desiring to participate or seeking additional information should contact Carol G. Cohen, Technical Assistance Program Officer, Division of Research Sciences, National Institute on Disability and Rehabilitation Research, Office of Special Education and Rehabilitative Services, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, Room 3420), Washington, DC 20202–2645. Telephone: (202) 732–5066; deaf and hearing-impaired persons may call (202) 732–5316 for TDD services.

Dated: September 12, 1990.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 90–21966 Filed 9–17–90; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC90–19–000, et al.]

Union Electric Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

September 10, 1990.

Take notice that the following filings have been made with the Commission:

1. Union Electric Co.

[Docket No. EC90–19–000]

Take notice that on August 28, 1990, Union Electric Company (UE) filed an Application pursuant to Section 203 of the Federal Power Act seeking an order authorizing it to purchase from Arkansas Power & Light Company (AP&L) certain transmission facilities with a value in excess of $50,000.

The proposed sale of the transmission facilities is one part of an agreement whereby AP&L would sell to UE virtually all of the facilities currently used by AP&L to provide retail electric service within the state of Missouri, and UE would thereafter provide the retail electric service to those customers.

As an ancillary part of the proposed sales agreement, UE would waive the collection from AP&L of the current balance of the rate phase-in deferrals owned by AP&L to UE as a result of UE's last wholesale rate case. UE is also seeking Commission approval of that waiver in this case.

UE is a Missouri corporation with its principal business office in St. Louis, Missouri and is engaged primarily in the electric utility business in Missouri, Illinois and Iowa.

AP&L is an Arkansas corporation with its principal business office in Little Rock, Arkansas and is engaged primarily in the electric utility business in Arkansas, Missouri and Tennessee.

It is proposed that the closing of the sale take place on or about January 31, 1991.

Comment date: September 27, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. Gulf States Utilities Co.

[Docket No. ER90–574–000]

Take notice that Gulf States Utilities Company (Gulf States) on September 5, 1990, tendered for filing rate schedule changes applicable to (1) The City of Newton, Texas, (2) the City of Kirbyville, Texas, (3) the City of Caldwell, Texas, (4) the City of Gueydan, Louisiana, (5) the City of Erath, Louisiana, and (6) the City of Kaplan, Louisiana (collectively referred to as the "Customers").

The rate schedule changes consist of Letters of Amendment which modify the existing Amended Agreements For Wholesale Electric Service for the Customers by (1) Providing each Customer an option to extend the agreement for an additional ten years commencing April 1, 2000, upon terms and conditions to be negotiated prior to April 1, 1990, as provided in the Amendment to Article I (Term); (2) providing that the rates for service set forth in Rate Schedule WPS to each Agreement shall not be subject to change before December 31, 1996, through a unilateral filing by the Company under Section 205 of the Federal Power Act or through a complaint filed by the Customer under section 206 of the Federal Power Act; and (3) providing that if the Commission requires the Company to increase the rates set forth in Rate schedule WPS before January 1, 1997, despite the Company and Customer's support of the continuation of the rates through December 31, 1996, then the Customer may terminate the Agreement on 60 days' notice.

Gulf States states that the rate schedule changes are the product of negotiations between Gulf States and the Customers regarding the wholesale service which Gulf States provides.

Gulf States requests an effective date for the Letters of Amendment of November 4, 1990.

Copies of the filing were served on all of Gulf States' customers purchasing wholesale electric service and the Louisiana Public Service Commission and the Public Utility Commission of Texas.

Comment date: September 25, 1990, in accordance with Standard Paragraph E end of this notice.

3. Ohio Power Co.

[Docket No. ER90–572–000]

Take notice that American Electric Power Service Corporation (AEP) on September 4, 1990, tendered for filing on behalf of its affiliate Ohio Power Company (OPCO), Supplemental Schedules XII, dated June 1, 1990, under the Agreement, dated April 1, 1974 (1974 Agreement), between American Municipal Power Ohio, Inc. (AMP-Ohio) and OPCO, OPCO's Rate Schedule FERC No. 74.

Supplemental Schedule XII defines an Interconnection Point and a Delivery Point that is required by Service Schedule A so that AMP-Ohio can avail itself of the Transmission Service provided for in Service Schedule A of the 1974 Agreement. This schedule has been proposed to become effective August 1, 1990.

Copies of this filing were served upon the Public Utilities Commission of Ohio and AMP-Ohio.

Comment date: September 25, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Power and Light Co.

[Docket No. ER–90–573–000]

Take notice that on September 4, 1990, Wisconsin Power and Light Company (WPL) tendered for filing a Wholesale Power Agreement dated August 14, 1990, between the City of Princeton and WPL. WPL states that this new Wholesale Power Agreement revises the previous agreement between the two parties which was dated June 6, 1978, and designated Rate Schedule No. 121 by the Commission.

The purpose of this new agreement is to revise the terms of service. Terms of service for this customer will be on a similar basis to the terms of service for other W–3 wholesale customers.

WPL requests that an effective date concurrent with the contract effective date be assigned. WPL states that copies of the agreement and the filing have been provided to the City of Princeton and the Wisconsin Public Service Commission.

Comment date: September 25, 1990, in accordance with Standard Paragraph E at the end of this notice.

5. Iowa Power Inc.

[Docket No. ER90–571–000]

Take notice that Iowa Power Inc. (Iowa Power) on September 4, 1990, tendered for filing a proposed Amendment to its Rate Schedule FPC No. 28 with the Nebraska Public Power Commission (NPPD) dated February 23, 1990.

The Amendment is an agreement which extends the term, redefines Iowa Power's operations and maintenance responsibility and Iowa Power's switchyard rights at the Cooper Nuclear Station, Brownville, Nebraska, before and after Iowa Power's obligation to Cooper Nuclear Station terminates as defined in the Power Sales Contract with NPPD.

Copies of the Amendment have been sent to NPPD and the State of Iowa Utilities Board.

Comment date: September 25, 1990, in accordance with Standard Paragraph E at the end of this notice.

6. Iowa Power, Inc.

[Docket No. ER90–570–000]

Take notice that on September 4, 1990, Iowa Power, Inc. (Iowa Power) tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 73.

Iowa Power requests an effective date of December 31, 1988, and therefore requests waiver of the Commission's notice requirements.

Comment date: September 25, 1990, in accordance with Standard Paragraph E at the end of this notice.

7. Utah Power & Light Co.

[Docket Nos. ER84–571–009 and ER85–486–004 and ER86–300–004]

Take notice that on August 30, 1990, Utah Power & Light Company (Utah) submitted for filing its refund report in the above referenced dockets.

Comment date: September 25, 1990, in accordance with Standard Paragraph E at the end of this notice.

8. PSI Energy, Inc.

[Docket No. ER90–474–000]

Take notice that PSI Energy, Inc., on September 4, 1990, tendered for filing: (i) A revised First Supplemental Agreement, dated May 1, 1990, to the Interim Scheduled Power Agreement (1989 Agreement), dated May 24, 1989, between PSI Energy, Inc. (PSI), formerly named Public Service Company of Indiana, Inc., and Wabash Valley Power Association, Inc. (Wabash Valley); and (ii) cost of service information. Such filing amends PSI's initial filing in this docket. The 1989 Agreement has been designated as PSI's Rate Schedule No. 241.

The revised First Supplemental Agreement amends the Energy Charge for Inadvertent Excess Power. The cost of service information relates to the Demand Charge for Inadvertent Excess Power.

Copies of the amended filing were served on Wabash Valley and the Indiana Utility Regulatory Commission.

The parties have requested a waiver of the Commission's Rules and Regulations to permit the proposed services to become effective June 1, 1990.

Comment date: September 25, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–21956 Filed 9–17–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP90–2131–000, et al.]

El Paso Natural Gas Co., et al.; Natural Gas Certificate Filings

September 10, 1990.

Take notice that the following filings have been made with the Commission:

1. El Paso Natural Gas Co.

[Docket No. CP90–2131]

Take notice that on September 5, 1990, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed a request with the Commission in Docket No. CP90–2131–000, pursuant to § 157.216(b) of the Commission's Regulations under the Natural Gas Act (NGA), for authorization to abandon in place a segment of a sales lateral pipeline, with appurtenances, in Gila County, Arizona, under its blanket certificate issued in Docket No. CP82–435–000, all as more fully set forth in the request which is open for public inspection.

El Paso proposes to abandon in place the segment of the Hayden Line, consisting of 2,068 feet of 6" O.D. pipeline, in Gila County, Arizona. It is stated that no interruption of service will occur.

Comment date: October 25, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. Transcontinental Gas Pipe Line Corp.

[Docket No. CP90–2113–000]

Take notice that on August 31, 1990, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP90–2113–000, an application pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon certain firm gas transportation services to Southern Natural Gas Company (Southern) and authority to provide firm transportation service to Southern at the reduced level of 600 Mcf per day of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco alleges that it entered into a service agreement with Southern dated September 5, 1978 (Transco's Rate Schedule X–206), providing for the transportation of up to 4,900 Mcf per day of natural gas produced from South Marsh Island Area, Blocks 149 and 150, Offshore Louisiana, for Southern. Transco receives such gas at South Marsh Island Block 132 and delivers a thermally equivalent quantity to Florida Gas Transmission Company (Florida) at existing authorized points of exchange between Transco and Florida located at the point of interconnection between Transco's Southeast Louisiana Gathering System and Florida's facility in St. Helena Parish, Louisiana. It is averred that such service for Southern under Transco's Rate Schedule X–206 was authorized by the Commission in an order issued May 23, 1979, at Docket No. CP79–152 (7 FERC ¶ 61,192).

Transco contends that Article II of the September 5, 1978, service agreement provides that such agreement shall be in force and effect for a primary term of eight years from the date of initial receipt of gas for transportation, which occurred July 6, 1979, and from year to year thereafter until terminated by either party by one year prior written notice to the other party.

It is stated that by letter dated October 14, 1987, and on March 6, 1980, Southern provided Transco with written notice of its desire to terminate the September 5, 1978, service agreement and request abandonment of Rate Schedule X–206. It is further stated that the letter of March 6, 1990, also requested Transco to provide replacement firm transportation service at the reduced level of 600 Mcf per day at the same receipt and delivery points contained in Rate Schedule X–206. Transco contends that Southern's request for termination was prompted by a declining need for transportation of the full 4,900 Mcf of gas per day. Transco now seeks authorization to abandon Rate Schedule X–206, effective November 1, 1990, conditioned upon the Commission granting Transco authority to provide firm transportation to Southern under Transco's Rate Schedule FT of 600 Mcf per day from South Marsh Island Block 132 to St. Helena Parish.

It is stated that section 9.1 of Transco's Rate Schedule FT requires that Transco treat all requests for service received during a period of 21 days after Transco announces availability of firm capacity (21-day window) as if those requests were received on the same day. Application of the 21-day window procedure to the capacity to be made available pursuant to the instant request for abandonment could be unfair to Southern. It is alleged that since Southern is currently entitled to service under Transco's Rate Schedule X–206, a waiver of the 21-day window would allow transportation to continue, under Transco's Rate Schedule FT, through a portion of that capacity which has been reserved for Southern for Service under Transco's Rate Schedule X–206. Transco contends that because the transportation requested by Southern pursuant to Rate Schedule FT requires no additional capacity and is merely a reduction in existing service, Transco submits that waiver of the 21-day window would result in neither preferential nor unduly discriminatory treatment of any of Transco's customers or potential customers, as contemplated by the Commission in Order Nos. 436 and 500.

Comment date: October 1, 1990, in accordance with Standard Paragraph F at the end of this notice.

3. Transcontinental Gas Pipe Line Corp.

[Docket No. CP90–2115–000]

Take notice that on August 31, 1990, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP90–2115–000, an application pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon certain firm gas transportation services to Southern Natural Gas Company (Southern), all as more fully set forth in the application which is on filed with the Commission and open to public inspection.

Transco alleges that n July 26, 1978, it entered into a service agreement with Southern (Transco's Rate Schedule X–180) whereby Transco transports on a firm basis up to 12,500 Mcf per day of natural gas produced from Vermilion Area, Block 84, Offshore Louisiana, for Southern. Transco receives such gas at Vermilion Area, Block 77 and delivers a thermally equivalent quantity to Florida Gas Transmission Company (Florida) at existing authorized point of interconnection between Transco and Florida and Vermilion Parish, Louisiana. It is averred that such service for Southern under Transco's Rate Schedule X–180 was authorized by the Commission in order issued January 25, 1979, at Docket No. CP78–456 (6 FERC ¶ 61,068).

Transco contends that Article II of the July 26, 1979, service agreement provides that such agreement shall be in force and effect for a primary term of eight years from the date of initial delivery, which occurred January 26, 1979, and from year to year thereafter until terminated by either party by one year prior written notice to the other party, which termination may be made effective at the end of the primary term or at the end of any year thereafter. On January 5, 1989, Southern tendered written notice to Transco requesting that Transco terminate the service agreement and request abandonment of Rate Schedule X–180.

Transco alleges that southern has requested the abandonment of transportation service because Southern is no longer obligated to receive service from Transco under Rate Schedule X–180. Transco contends that pursuant to Southern's January 5, 1989, notice, it has not provided service to Southern under Rate Schedule X–180, since January 25, 1990. Transco requests that the authorization to abandon Rate Schedule X–180, be made effective January 25, 1990.

Comment date: October 1, 1990, in accordance with Standard Paragraph F at the end of this notice.

4. Transcontinental Gas Pipe Line Corp.

[Docket No. CP90–2114–000]

Take notice that on August 31, 1990, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP90–2114–000, an application pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon certain firm gas transportation services to Southern Natural Gas Company (Southern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco alleges that it entered into a service agreement with Southern dated December 7, 1981, (Transco's Rate Schedule X–243) as amended March 4, 1982, providing for the transportation on a firm basis of up to 15,000 Dt per day of natural gas produced from Ship Shoal Area, Block 232, Offshore Louisiana, for Southern. Transco receives such gas at an interconnection between the facilities of Transco and facilities which are jointly owned by Southern, United Gas Pipe Line Company, and Transco in Ship Shoal Block 232. It is averred that such service for Southern under Transco's Rate Schedule X–243 was authorized by the Commission in order issued November 23, 1982, at Docket No. CP82–360 (21 FERC ¶ 62,288).

Transco contends that Article II of the December 7, 1981, service agreement provides that such agreement shall be in force and effect for a primary term of five years from the date of initial delivery, which occurred December 15, 1982, and from year to year thereafter until terminated by either party by one year prior written notice to the other party, which termination may be made effective at the end of the primary term or at the end of any year thereafter. On January 20, 1989, Southern tendered written notice to Transco requesting that Transco terminate the service agreement effective May 20, 1990, and request abandonment of Rate Schedule X–243.

Transco alleges that Southern has requested the abandonment of transportation service because Southern no longer has a purchase obligation pursuant to the service agreement. Transco contends that it has not provided service to Southern under Rate Schedule X–243 since May 20, 1990. Transco requestes that the authorization to abandon Rate Schedule X–243, be made effective May 20, 1990.

Comment date: October 1, 1990, in accordance with Standard Paragraph F at the end of this notice.

5. Arkla Energy Resources, a division of Arkla, Inc.

[Docket No. CP90–2128–000]

Take notice that on September 4, 1990, Arkla Energy Resources, a Division of Arkla, Inc. (AER), 525 Milam Street, Shreveport, Louisiana 71151, filed in Docket No. CP90–2128–000 a request

pursuant to §§ 157.205, 157.212 and 284.223(b) of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on an interruptible basis on behalf of PSI, Inc. (PSI) under its blanket certificate issued in Docket No. CP88–820–000 pursuant to section 7 of the Natural Gas Act, and to operate an existing pipeline interconnect under its blanket construction certificate issued in Docket Nos. CP82–384–000 and CP82–384–001, to provide jurisdictional services, all as more fully set forth in the request on file with the Commission and open to public inspection.

AER states that the maximum daily, average daily and annual quantities that it would transport on behalf of PSI would be 10,000 MMBtu equivalent of natural gas, 10,000 MMBtu equivalent of natural gas and 3,650,000 MMBtu equivalent of natural gas, respectively.

AER indicates that in Docket ST90–4160–000, filed with the Commission, it reported that transportation service on behalf of PSI commenced on July 1, 1990 under the 120-day automatic authorization provisions of § 284.223(a).

AER requests authorization to operate an existing pipeline interconnect with Enogex, Inc. (Enogex) as a jurisdictional facility. AER states that PSI has requested to utilize this facility as an additional delivery point. AER represents that the facilities have been used solely to provide services pursuant to section 311(a)(1) of the Natural Gas Policy Act of 1978 and subaprt B of part 284 of the Commission's Regulations, and that the operation of these facilities had and will have no impact on AER's peak day or annual deliveries.

Comment date: October 25, 1990, in accordance with Standard Paragraph G at the end of this notice.

6. Columbia Gas Transmission Corp.

[Docket No. CP90–2144–000]

Take notice that on September 5, 1990, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 35314, filed in Docket No. CP90–2144–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon seventeen (17) points of delivery to Columbia Gas of Ohio, Inc. (COH), which consist of two (2) town border stations and fifteen (15) points of delivery [1] to COH for mainline taps as a result of the sale to Cameron Drilling Company, Inc. (Cameron) of certain nonjurisdictional facilities located in Muskingum County, Ohio, under Columbia's blanket certificate issued in Docket No. CP83–76–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia states that the jurisdictional facilities it proposes to abandon by sale consist of two (2) existing town border stations which are the only outlets for production on Gathering Systems C and D, which feed COH's Zanesville Distribution System. Columbia further states that it would continue to sever the Zanesville Distribution System from other existing town border stations. In addition, Columbia indicates that it proposes to abandon fifteen (15) points of delivery for mainline tap consumers located on, and served directly from, Columbia's existing gathering facilities to be sold. It is further indicated that the abandonment by sale would not result in the abandonment of service to any customer. Columbia states that Natural Gas and Oil Corporation (National) would become responsible for providing and maintaining all necessary natural gas supplies and deliveries to the mainline customers of COH.

Comment date: October 25, 1990, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commisison, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90–21957 Filed 9–17–90; 8:45 am]

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[1] It is stated that the fifteen (15) points of delivery serve a total of eighteen (18) mainline customers as a result of three (3) manifold settings.

Office of Hearings and Appeals

Issuance of Decisions and Orders During the Week of June 18 Through June 22, 1990

During the week of June 18 through June 22, 1990, 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.

Appeal

Cowles Publishing Co., 6/22/90, LFA–0045

The Cowles Publishing Company (Cowles) filed an Appeal from a partial denial by the DOE's Executive Secretariat (ES) of a Request for Information which the firm had submitted under the Freedom of

Information Act (FOIA). In considering the Appeal, the DOE found that the information withheld by the ES was properly shielded from disclosure by FOIA Exemption 6. Important issues that were considered in the Decision and Order were (i) the adequacy of the ES's justification for withholding the names and addresses of doctors and three patients deleted from correspondence pertaining to radiation claims filed by the patients, and (ii) the public and privacy interest implicated by the release of the names.

Supplemental Order

Economic Regulatory Administration, 6/21/90, LRX-0004

On May 30, 1990, the Economic Regulatory Administration (ERA) filed a Motion for a Technical Correction of a Remedial Order (RO), issued on June 21, 1990, to J.W. Akin and Engineered Operating Company. In its motion, the ERA sought to have the RO modified by correcting two inadvertent clerical errors that appeared in the text of the Decision and Order. OHA granted the ERA's motion because the corrections sought by the ERA would not affect any of the legal determinations made in the RO.

Motions for Discovery

Mt. Airy Refining Co., et al., Economic Regulatory Administration, 6/21/90, KRD-0322, KRD-0321

Mt. Airy Refining Co., *et al.* (Mt. Airy) filed a Motion for Discovery in connection with its Statement of Objections to the Proposed Remedial Order (PRO) which the Economic Regulatory Administration (ERA) issued to the firm and six shareholders on July 25, 1986. The PRO alleges violations of the Mandatory Petroleum Allocation Regulations, 10 CFR part 211, and the Administrative Procedures and Sanctions, 10 CFR part 205, resulting from Mt. Airy's improper reporting of its crude oil receipts on its Refiners Monthly Reports for the period July 1977 through November 1977. The DOE granted limited discovery to Mt. Airy regarding the ERA's practice of granting start-up inventory adjustments to new refiners in 1977. The DOE also granted in part a Motion for Discovery filed by the ERA.

Implementation of Special Refund Procedures

Agway, Inc., 6/21/90, KEF-0102

The DOE issued a Decision and Order implementing a plan for the distribution of $1,041,715.42 received pursuant to a Consent Order executed on March 20, 1987. The DOE determined that 69 percent of the consent order fund (or $718,783.64 plus accrued interest) should be made available for distribution to purchasers of Agway refined petroleum products that were not Agway members or affiliates and who demonstrate that they were injured as a result of Agway's alleged regulatory violations. Furthermore, the remaining portion of the consent order fund will be set aside as a pool for crude oil overcharge funds available for disbursement. The specific information to be included in Applications for Refund is set forth in the Decision.

Petrol Products, Inc., 6/20/90, LEF-0004

The Office of Hearings and Appeals announces the final procedures for disbursement of $35,410.56 in principal, plus accrued interest, in alleged crude oil violation amounts obtained by the DOE from Petrol Products, Inc. The OHA determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986). Applications for Refund must be filed by March 31, 1991.

Thomas P. Reidy, Inc., 6/20/90, KEF-0137

The DOE issued a Decision and Order implementing a plan for the distribution of $5,377,578 (plus accrued interest) obtained as a result of a DOE consent order with Thomas P. Reidy, Inc. (Reidy) on January 13, 1989. The DOE determined that the consent order funds should be distributed to customers that purchased refined petroleum products from Reidy during the period from June 13, 1973, through January 27, 1981. The specific information required in an Application for Refund is set forth in the Decision and Order.

Refund Applications

Atlantic Richfield Company/Peter Kozuck, 6/22/90, RF304-7693, RF 304-11883

The DOE issued a Supplemental Decision and Order concerning a June 7,1990 determination issued to Ivan's Arco Service, *et al.* in the Atlantic Richfield Company special refund proceeding. The DOE determined that the refund granted to Peter Kozuck did not reflect his total ARCO purchases during the refund period. Accordingly, the prior refund was rescinded and the correct refund was granted.

Atlantic Richfield Co./Publix Oil Co., Inc., 6/22/90, RF304-11885

The DOE issued a Supplemental Decision and Order concerning an Application for Refund filed by a reseller of motor gasoline covered by a Consent Order that the DOE entered into with Atlantic Richfield Company. In that Decision, we rescinded the portion of *Atlantic Richfield Co./Shirley Oil & Supply Co.*, Case No. FR304-6743, *et al.* (April 4, 1990) (Unpublished Decision), which pertained to Publix Oil Company, Inc., Case No. RF304-7061, because the claimant had previously been granted a refund in the ARCO proceeding based upon the same purchase volume of motor gasoline.

Brewer-Titchener, 6/19/90, RF272-441

The DOE issued a Decision and Order dismissing the Application for Refund filed in the subpart V crude oil special refund proceeding by Brewer-Titchener. In the Decision, it was determined that the applicant had previously received a refund from the Surface Transporters Escrow in the Stripper Well proceedings. By receiving a refund from this escrow, Brewer-Titchener waived its rights to reveive a subpart V crude oil refund. Thus, Brewer-Titchener's Application for Refund was dismissed.

City of South Lyon, et al., 6/19/90, RF272-34866, et al.

The DOE issued a Decision and Order granting refunds form crude oil overcharge funds to four claimants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. The applicants demonstrated the volume of their claims either by consulting actual records or by using a resonable estimate of their purchases. Each of the four claims, however, was based in part on the Applicants' purchases of bituminous concrete. The DOE has previously determined that applicants are not eligible to receive refunds based on the purchase of bituminous concrete. Consequently, the DOE reduced the total purchases claimed by the applicants by the ineligible purchases. The DOE concluded that each applicant was an end-user of the remaining products claimed and was therefore presumed injured. The total volume for which refunds were approved was 30,444,255 gallons, and the sum of the refunds granted was $24,355.

Coastal Industries, Schneider Transport, Inc., 6/19/90, RF272-44276, RF272-44276, RF272-47655, RF272-47655

The DOE issued a Decision and Order denying two Applications for Refund filed in the Subpart V crude oil special refund proceeding. Each claimant previously submitted a Stripper Well Surface Transporters Claim, in which it released its rights to other crude oil refunds by signing the Waiver and

Release required for the Stripper Well Claim. In an earlier Proposed Decision and Order, the DOE tentatively determined that Coastal Industries (Coastal) and Schneider Transport, Inc. (Schneider) were not eligible for any refunds in this proceeding and allowed the claimants to submit comments regarding the preliminary findings. Since Coastal filed no comments and Schneider's comments did not provide any reason to question the validity of its Stripper Well Waiver, the DOE adopted the findings of the Proposed Decision and denied the refund Applications. For this reason, the Motions for Discovery filed with respect to these claims by a consortium of States and U.S. Territories were dismissed.

Equity Cooperative Exchange, 6/21/90, RF272–43972

The DOE issued a Decision and Order granting an Application for Refund filed in the crude oil special refund proceeding. The applicant was an agricultural cooperative which sold 9,666,072 gallons of petroleum products to its members. The applicant was granted a refund equal to its full allocable share plus a proportionate share of interest that has accrued on the crude escrow account. The Decision granted the cooperative a $7,733 refund.

Exxon Corp./Edward S. Zelley, 6/20/90, RF307–10126

The DOE issued a Supplemental Order regarding Edward S. Zelley, an applicant who was granted a refund of $152 in *Exxon Corp./John S. McCarthy Oil Service,* Case Nos. RF307–4674, *et al.* (April 4, 1990). The DOE was unable to locate the applicant and, therefore, rescinded the $152 refund.

Exxon Corp./Pacific Petroleum Co., Fraedrick-Skillern Oil Co., Tosco Corp., Lyon Oil Co., 6/21/90, RF307–7911, RF307–7912, RF307–9008, RF307–9009

The DOE issued a Decision and Order in response to four Applications for Refund filed in the Exxon Corporation special refund proceeding. Two of the applicants, the Fraedrick-Skillern Oil Co. and the Pacific Petroleum Co., were under common ownership during the consent order period and were therefore treated as a single firm. Similarly, Tosco Corp. (Tosco) owned the Lion Oil Company (Lion) during the consent order period and, while it subsequently sold all of Lion's assets, Tosco retained all of the entity's common stock. As a result, Tosco is the proper recipient of any refund based upon Lion's eligible Exxon purchases, and the DOE therefore consolidated these Applications as well. In view of the volume of Exxon purchases involved in these claims and the fact that the applicants did not provide detailed demonstrations of injury, the mid-range presumption of injury adopted in the Exxon proceeding was utilized in evaluating these claims. The sum of the refunds granted in the Decision was $13,456, including $3,162 of accrued interest.

Exxon Corp./Sabine Towing & Transportation, 6/21/90, RD307–3234

The DOE issued a Decision and Order concerning an Application for Refund filed by Sabine Towing & Transportation (Sabine) in the Exxon Corporation special refund proceeding. Sabine, an end-user, purchased products directly and indirectly from Exxon and was found to be eligible to receive a refund equal to its full allocable share. The sum of the refund granted in this Decision is $1,969, including $462 in accrued interest.

Exxon Corp. Valley Ice & Fuel Co., 6/18/90, RF307–6435

The DOE issued a Decision and Order in the Exxon Corporation special refund proceeding concerning an Application for Refund filed by Valley Ice & Fuel Co. (Valley). During the Exxon consent order period, the applicant was a cooperative that sold petroleum products primarily to member-owners of the cooperative. The DOE held that the present claimant, a privately held corporation that had purchased all of Valley's stock, was entitled to the refund. The amount of the refund granted in the present case was $342.

Gulf Oil Corp./Saxon Oil Co., Inc. 6/18/90, RF300–9370

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding. The amount of the refund granted in this Decision, which includes both principal and interest, is $3,214.

IBM Corporation, 6/18/90, RF272–27786, RD272–27786

IBM Corporation filed an Application for Refund in the Subpart V crude oil special refund proceeding. The applicant certified, based on available records and reasonable estimates, that it purchased 252,231,000 gallons of petroleum products during the crude oil price control period. Rejecting the generalized economic objections filed by a group of States, the DOE found that the end-user presumption of injury should be applied to IBM. The refund approved was $201,785. A Motion for Discovery filed by the States was denied.

Johnson & Johnson, 6/20/90, RF272–09906

Johnson & Johnson, a manufacturer of pharmaceuticals as well as professional health care and consumer products, filed an Application for Refund in the subpart V crude oil special refund proceeding. The applicant certified, based on available records and reasonable estimates, that it purchased 46,622,204 gallons of petroleum products during the crude oil price control period. Rejecting the generalized economic objections filed by a group of States, the DOE found that the end-user presumption of injury should be applied to Johnson & Johnson. The refund approved was $37,298.

Jones Oil Co, et al., 6/18/90, RF272–60249, et al.

The DOE issued a Decision and Order concerning 45 Applications for Refund filed in the subpart V crude oil special refund proceeding. Each applicant was either a reseller or a retailer during the period August 19, 1973, through January 27, 1981. Because none of the applicants demonstrated that they were injured due to crude oil overcharges, they were ineligible for crude oil refund monies. Accordingly, the 45 Applications for Refund considered in this Decision were denied.

Massachusetts Municipal Wholesale Electric Co, 6/22/90, RF272–31186

The DOE issued a Decision and Order denying an Application for Refund filed by Massachusetts Municipal Wholesale Electric Company (MMWEC) in the subpart V crude oil special refund proceeding. MMWEC's refund Application was based on its ownership interest in an electric generating facility (Wyman Unit) operated by Central Maine Power (Central). The DOE found that Central had received a refund from the Stripper Well Utilities Escrow for alleged crude oil overcharges based on its purchases for the Wyman Unit. Therefore, the DOE determined that MMWEC is precluded from receiving a refund under subpart V for its portion of those same purchases.

Murphy Oil Corp./Ergon, Inc., 6/22/90, RF309–793

The DOE issued a Decision and Order denying a refund to Ergon, Inc., a claimant in the Murphy Oil Corporation special refund proceeding. The applicant had been tentatively identified as a spot purchaser of Murphy products after an examination of its purchase volume schedule. Although Ergon was notified of this determination and offered an opportunity to respond, it did not do so.

Accordingly, the Application was denied.

Shell Oil Co./Central Park Shell, et al., 6/20/90, RF315–2425, et al.

The DOE issued a Decision and Order granting 13 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the applicants purchased indirectly from Shell and was a reseller whose allocable share was less than $5,000. As none of the suppliers of the applicants had filed for a Shell refund based on disproportionate injury, 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 $13,127, including $2,790 of accrued interest.

Shell Oil Co./Russell's Shell Davison Oil & Gas Co. Herdrich Petroleum Corp. Beck Oil, Inc., 6/22/90, RF314–9484, et al.

The DOE issued a Decision and Order granting refunds to four applicants in the Shell Oil Corporation special refund proceeding. Each of the applicants was a reseller who purchased directly from Shell and was entitled to and chose to elect the $5,000 presumption of injury for mid-sized claims. Each applicant was therefore granted $5,000, plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision and Order was $25,400 ($20,000 principal plus $5,400 interest).

Standard Oil Co. (Indiana)/Indiana, 6/22/90, RM21–210

The DOE issued a Decision and Order allowing the State of Indiana to use $76,400 in unspent Amoco I funds, which were disbursed to fund a Fuel Saver Van Program, to extend the program for an additional two years. We found that the Fuel Saver Van Program will continue to achieve the Restitutionary goal for which the funds had originally been granted. The program will allow motorists to improve the efficienty of their engines and will aid in fuel conservation.

Total Petroleum/Shaw Oil Co., 6/18/90, RF310–349

The DOE issued a Decision and Order concerning an Application for Refund filed by Shaw Oil Company (Shaw), a petroleum products reseller located in Valley Center, Kansas. Shaw sought a portion of the settlement fund obtained by the DOE through a consent order entered into with Total Petroleum, Inc. Shaw's allocable share of the consent order funds was less than $5,000. Under the criteria established in *Total Petroleum, Inc.*, 17 DOE ¶ 85,542 (1988), Shaw was not required to demonstrate injury in order to qualify for a refund. Applying the proper volumetric factor to the firm's motor gasoline and No. 2 oils purchases, the DOE granted Shaw a refund of $5,046 ($4,046 principal and $1,002 interest).

Refund Applications

The Office of Hearings and Appeals granted refunds to refund applicants in the following Decisions and Orders:

Name	Case No.	Date
Atlantic Richfield Co./ Amherst Arco, Inc. *et al*	RF304–7970	6/22/90
Atlantic Richfield Co./St. Johns Arco & Mini Market, *et al*	RF304–7105	6/22/90
Exxon Corp./County of Dallas.	RF307–9924	6/19/90
Diaz Exxon	RF307–9934	
Gulf Oil Corp./Ford's Gulf Service, *et al*	RF300–8848	6/22/90

Dismissals

The following submissions were dismissed:

Name	Case No.
Calhoun Asphalt Company, Inc	RF272–20944
David Markee	RF304–9864
Elks Service Center	RF307–9911
Fillipi's Auto Service	RF300–10952
General Dynamics—Electric Boat Division.	RF321–5519
Genuine Hardware Company	RF307–9587
Hampson's Service Station	RF300–10928
Landino's Service Station	RF304–7640
Nick's Causeway Exxon	RF307–9978
Quality Roofing Co	RF307–9967
Ranco Roofing, Inc.	RF272–68565
Rick's Arco	RF304–11327
Troy Love Exxon	RF307–9927

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 11, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90–22012 Filed 9–17–90; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3831–9]

Office of Research and Development; Ambient Air Monitoring Reference and Equivalent Methods; Equivalent Method Designation

Notice is hereby given that EPA, in accordance with 40 CFR part 53, has designated another equivalent method for the measurement of ambient concentrations of ozone. The new equivalent method is an automated method (analyzer) which utilizes the measurement principle based on the absorption of ultraviolet radiation by ozone at a wavelength of 254 nm. The new designated method is identified as follows:

EQOA–0990–078, "Environics Series 300 Computerized Ozone Analyzer," operated on the 0–0.5 ppm range, with the following parameters entered into the analyzer's computer system:

Absorption coefficient	308 ±4
Offset adjustment	0.025 ppm
Signal factor	0
Integration factor	1
Flush time	3
Ozone average time	4
Temperature/pressurization correction	On

The analyzer may be operated with or without the RS–232 Serial Data Interface.

This method is available from Environics, Inc., 165 River Road, West Willington, Connecticut 06279. A notice of receipt of application for this method appeared in the **Federal Register**, Volume 54, October 31, 1989, page 45800.

A test analyzer representative of this method has been tested by the applicant, in accordance with the test procedures specified in 40 CFR part 53. After reviewing the results of these tests and other information submitted by the applicant, EPA has determined, in accordance with part 53, that this method should be designated as an equivalent method. The information submitted by the applicant will be kept on file at EPA's Atmospheric Research and Exposure Assessment Laboratory, Research Triangle Park, North Carolina 27711, and will be available for inspection to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated equivalent method, this method is accepted for use by States and other air monitoring agencies under requirements of 40 CFR part 58,

Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any limitations (e.g., operating range) specified in the applicable designation (see description of the method above). Vendor modifications of a designated method used for purposes of part 58 are permitted only with prior approval of EPA, as provided in part 53. Provisions concerning modification of such methods by users are specified under § 2.8 of appendix C to 40 CFR part 58 (Modifications of Methods by Users).

In general, this designation applies to any analyzer which is identical to the analyzer described in the designation. In many cases, similar analyzers manufactured prior to the designation may be upgraded (e.g., by minor modification or by substitution of a new operation or instruction manual) so as to be identical to the designated method and thus achieve designated status at a modest cost. The manufacturer should be consulted to determine the feasibility of such upgrading.

Part 53 requires that sellers of designated methods comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below:

(1) A copy of the approved operation or instruction manual must accompany the analyzer when it is delivered to the ultimate purchaser.

(2) The analyzer must not generate any unreasonable hazard to operators or to the environment.

(3) The analyzer must function within the limits of the performance specifications given in Table B–1 of part 53 for at least one year after delivery when maintained and operated in accordance with the operation manual.

(4) Any analyzer offered for sale as a reference or equivalent method must bear a label or sticker indicating that it has been designated as a reference or equivalent method in accordance with part 53.

(5) If such an analyzer has one or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(6) An applicant who offers analyzers for sale as reference or equivalent methods is required to maintain a list of ultimate purchasers of such analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the analyzer has been cancelled or if adjustment of the analyzers is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(7) An applicant who modifies an analyzer previously designated as a reference or equivalent method is not permitted to sell the analyzer (as modified) as a reference or equivalent method (although he may choose to sell it without such representation), nor to attach a label or stricker to the analyzer (as modified) under the provisions described above, until he has received notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified or until he has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the analyzer as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Atmospheric Research and Exposure Assessment Laboratory, Department E (MD–77), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this equivalent method will provide assistance to the States in establishing and operating their air quality surveillance systems under part 58. Technical questions concerning the method should be directed to the manufacturer. Additional information concerning this action may be obtained from Frank F. McElroy, Quality Assurance Division (MD–77), Atmospheric Research and Exposure Assessment Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–2622.

John H. Skinner,

Acting Assistant Administrator, for Research and Development.

[FR Doc. 90–22046 Filed 9–17–90; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3831–8]

Office of Research and Development, Ambient Air Monitoring Reference and Equivalent Methods, Equivalent Method Designation

Notice is hereby given that EPA, in accordance with 40 CFR part 53, has designated an equivalent method for the determination of ambient concentrations of particulate matter measured as FM_{10}. The new equivalent method is an automated method which utilizes a measurement principle based on beta-ray attenuation. The new designated method is identified as follows:

EQPM–0990–076, "Andersen Instruments Model FH62I–N PM_{10} Beta Attenuation Monitor", consisting of the following components:

FH62I Beta Attenuation 19-inch Control Module
SA246b PM10 Inlet (16.7 liter/min)
FH101 Vaccuum Pump Assembly
FH102 Accessory Kit
FH107 Roof Flange Kit
FH125 Zero and Span PM10 Mass Foil Calibration Kit

operated for 24-hour average measurements, with an observing time of 60 minutes, the calibration factor set to 2400, a glass fiber filter tape, an automatic filter advance after each 24-hour sample period, and with or without either of the following options:

FH0P1 Indoor Cabinet
FH0P2 Outdoor Shelter Assembly.

This method is available from Andersen Instruments Incorporated, 4801 Fulton Industrial Blvd., Atlanta, Georgia 30336. A notice of receipt of application for this method appeared in the **Federal Register**, Volume 55, March 26, 1990, page 11053.

Test monitors representative of this method have been tested by the applicant, in accordance with the test procedures specified in 40 CFR part 53. After reviewing the results of these tests and other information submitted by the applicant, EPA has determined, in accordance with part 53, that this method should be designated as an equivalent method. The information submitted by the applicant will be kept on file at EPA's Atmospheric Research and Exposure Assessment Laboratory, Research Triangle Park, North Carolina 27711, and will be available for inspection to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated equivalent method, this method is acceptable for use by states and other air monitoring agencies under requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any limitations (e.g., observing time) specified in the applicable designation (see description of the method above). Users of this method should note that its equivalent method designation applies only to 24-hour average PM_{10} concentration measurements. The Model FH62I–N can also provide average PM_{10} measurements over other, shorter averaging periods, including one-half-hour averages. However, such shorter

average concentration measurements may be less precise than the 24-hour measurements. Average measurements over periods shorter than 24 hours are not required for use in determining attainment under the air quality surveillance requirements of part 58 (although they may be useful for other purposes) and should not be reported under § 58.35 (NAMS data submittal).

Vendor modifications of a designated method used for purposes of part 58 are permitted only with prior approval of EPA, as provided in part 53. Provisions concerning modification of such methods by users are specified under § 2.8 of appendix C to 40 CFR part 58 (Modifications of Methods by Users).

Part 53 requires that sellers of designated methods comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below:

(1) A copy of the approved operation or instruction manual must accompany the PM_{10} monitor when it is delivered to the ultimate purchaser.

(2) The PM_{10} monitor must not generate any unreasonable hazard to operators or to the environment.

(3) The PM_{10} monitor must function within the limits of the performance specifications given in Table D–1 of part 53 for at least one year after delivery when maintained and operated in accordance with the operation manual.

(4) Any PM_{10} monitor offered for sale as an equivalent method must bear a label or sticker indicating that it has been designated as an equivalent method in accordance with part 53.

(5) An applicant who offers PM_{10} monitors for sale as equivalent methods is required to maintain a list of ultimate purchasers of such monitors and to notify them within 30 days if an equivalent method designation applicable to the monitor has been cancelled or if adjustment of the monitors is necessary under 40 CFR part 53.11(b) to avoid a cancellation.

(6) An applicant who modifies a PM_{10} monitor previously designated as an equivalent method is not permitted to sell the monitor (as modified) as an equivalent method (although he may choose to sell it without such representation), nor to attach a label or sticker to the monitor (as modified) under the provisions described above, until he has received notice under 40 CFR part 53.14(c) that the original designation or a new designation applies to the method as modified or until he has applied for and received notice under 40 CFR 53.8(b) of a new equivalent method determination for the monitor as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: director, Atmospheric Research and Exposure Assessment Laboratory, Department E (MD–77), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this equivalent method will provide assistance to the states in establishing and operating their air quality surveillance systems under part 58. Technical questions concerning the method should be directed to the manufacturer. Additional information concerning this action may be obtained from Frank F. McElroy, Quality Assurance Division (MD–77), Atmospheric Research and Exposure Assessment Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Telephone (919) 541–2622.

John H. Skinner,

Acting Assistant Administrator for Research and Development.

[FR Doc. 90–22047 Filed 9–17–90; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

September 11, 1990.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on these information collections should contact Tricia Gallagher, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–3785.

OMB number: 3060–0213.

Title: Section 73.3525, Agreements for removing application conflicts.

Action: Extension.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of response: On occasion.

Estimated annual burden: 300 responses; 600 hours total annual burden; 2 hours average burden per response.

Needs and uses: Section 73.3525 requires that applicants for broadcast stations who enter into agreements to procure the removal of conflict between applications pending before the FCC, to file a joint request for approval of agreement and an affidavit. The data is used by FCC staff to assure that the agreement is in compliance with section 311 of the Communications Act of 1934, as amended.

OMB number: 3060–0309.

Title: Section 74.1281, Station records.

Action: Extension.

Respondents: State or local governments, non-profit institutions, and businesses or other for-profit (including small businesses).

Frequency of response: Recordkeeping requirement.

Estimated annual burden: 2,000 recordkeepers; 2,000 hours total annual burden; 1 hour average burden per recordkeeper.

Needs and uses: Section 74.1281 requires licensees of FM translator/booster stations to maintain adequate station records. These records include the current instrument of authorization, official correspondence with FCC, maintenance records, contracts, permission for rebroadcasts and other pertinent documents. The data is used by FCC staff in investigations to assure that the licensee is operating in accordance with the FCC rules and regulations and its station authorization.

OMB number: 3060–0311.

Title: Section 76.54, Significantly viewed signals; method to be followed for special showings.

Action: Revision.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of response: On occasion.

Estimated annual burden: 60 responses; 120 hours total annual burden; 2 hours average burden per response.

Needs and uses: Section 76.54 requires that notification be made to television broadcasting stations, system community units, franchisees, franchise applicants, and franchise authorities in survey area when an audience survey is conducted for significantly viewed signal/signal availability purposes. This notification allows interested parties an opportunity to file objections to the methodology.

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 90–21939 Filed 9–17–90; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

September 12, 1990.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822)

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7340)

Final Approval Under OMB Delegated Authority of the Extension, Without Revision, of the Following Reports

1. Report Title: Consumer Satisfaction Questionnaire

Agency form number: FR 1379
OMB docket number: 7100–0135
Frequency: On occasion
Reporters: Consumers who have filed complaints against state member banks
Annual reporting hours: 9
Estimated average hours per response: 0.25 (15 minutes)
Number of respondents: 34
Small businesses are affected.
General description of report: This information collection is voluntary (15 U.S.C. 57(a)(f)(1)) and is not given confidential treatment.

The Federal Reserve Board sends this questionnaire to consumers whose complaints against state member banks were received by the Board and referred to Federal Reserve Banks for resolution, and to a sample of consumers whose complaints were received directly by the Federal Reserve Banks. Complainants are requested to answer the questions voluntarily about the effectiveness of the Reserve Bank's efforts in handling the consumer complaint.

2. Report Title: OTC Margin Stock Report

Agency form number: FR 2048
OMB Docket number: 7100–0004
Frequency: Quarterly
Reporters: Certain corporations with over-the-counter stock
Annual reporting hours: 50
Estimated average hours per response: 0.25 (15 minutes)
Number of respondents: 50
Small businesses are not affected.
General description of report: This information collection is voluntary (15 U.S.C. 78g, w) and is not given confidential treatment.

This report is used to gather stock information on certain corporations that have stock trading over-the-counter and that are being considered for inclusion on the Federal Reserve Board's List of Marginable OTC Stocks.

3. Report Title: Officer's Question

Agency form number: FR 2410
OMB docket number: 7100–0050
Frequency: On occasion
Reporters: State member banks
Annual reporting hours: 150
Estimated average hours per response: 0.25 (15 minutes)
Number of respondents: 600
Small businesses are affected.
General description of report: This information collection is mandatory (12 U.S.C. 325) and is given confidential treatment (5 U.S.C. 552(b)(8)).

During a comprehensive consumer affairs compliance examination of a state member bank, the Federal Reserve requires the bank to have a senior bank officer complete this questionnaire, which provides information regarding past, present, and potential lawsuits in which the bank has been or may become involved concerning consumer credit compliance.

4. Report Title: Notice Claiming Status as an Exempt Transfer Agent

Agency form number: FR 4013
OMB docket number: 7100–0137
Frequency: On occasion
Reporters: State member banks, bank holding companies, and trust company subsidiaries of bank holding companies that are subject to supervision by the Federal Reserve Board
Annual reporting hours: 12
Estimated average hours per response: 2
Number of respondents: 6
Small businesses are not affected.
General description of report: This information collection is voluntary (15 U.S.C. 78c(a)(34)(B)(ii), 78q–1(c)(1)) and is not given confidential treatment.

This voluntary notice provides a method for state member banks, bank holding companies, and trust companies that are subject to Federal Reserve supervision and that are engaged as a transfer agent on behalf of an issuer of securities to claim exemption from several of the Securities and Exchange Commission's rules applicable to registered transfer agents.

Board of Governors of the Federal Reserve System, September 12, 1990.
William W. Wiles,
Secretary of the Board.
[FR Doc. 90–21975 Filed 9–17–90; 8:45 am]
BILLING CODE 6210-01-M

Banc One Corporation; Request for Exemption From Tying Provisions

Banc One Corporation, Columbus, Ohio ("Banc One"), with consolidated assets totaling $41 billion on June 30, 1990, operates 52 subsidiary banks and engages directly and indirectly in numerous nonbanking activities. It is requesting the Board to grant an exemption from the anti-tying provisions of Section 106 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1970 *et seq.*), in order to permit its banking subsidiary, Banc One, Columbus, N.A., ("National Bank"), to offer reduced annual fees and periodic interest rates on credit card accounts. Although section 106 permits a bank to fix or to vary the consideration for extending credit or furnishing services on condition that a customer also obtain a traditional banking service (loan, discount, deposit or trust service) from that bank, it prohibits a bank from engaging in these same activities on condition that the customer obtain any additional credit or services from any other subsidiary of the bank's parent bank holding company. The Board may grant, however, an exception that is not contrary to the purposes of this provision.

Banc One's commercial bank subsidiaries currently offer reduced interest rates and annual fees on credit cards for those customers who maintain a specified minimum balance in their deposit accounts. In conjunction with this request, Banc One proposes to consolidate all affiliate credit card operations into National Bank and retain the reduced rate and fee program. The variation in consideration afforded by National Bank under the special reduced-rate credit card program would be conditioned upon a customer maintaining a minimum balance in a deposit account at a Banc One bank subsidiary, and would, therefore, be

barred by the literal terms of section 106 without an exemption from the Board.

In support of its request for an exemption, Banc One cites the precedents of (a) the Board's June 20, 1990, order approving requests by Norwest Corporation and NCNB Corporation for an exemption to permit their banks to offer a credit card at lower cost in conjunction with traditional banking services provided by their other subsidiary banks; and (b) the notice of proposed rulemaking issued by the Board on June 22, 1990, proposing to amend § 225.4(d) of the Board's Regulation Y (12 CFR 225.4(d)) to permit a bank owned by a bank holding company to vary the consideration (including the interest rates and fees) charged in connection with extensions of credit pursuant to a credit card offered by the bank on the basis of the condition or requirement that a customer also obtain a traditional banking service from another bank subsidiary of the card-issuing bank's holding company.

The customers of Banc One's subsidiary banks will at all times be able to obtain both banking services and credit cards separately, and banking services will be available to customers without a credit card on the same terms as with a credit card. Banc One concludes that the Board's grant of a limited exemption from section 106 to Banc One will not lead to a lessening of competition or unfair competitive practices.

Notice of the request is published solely in order to seek the views of interested persons on the issues presented by the request and does not represent a determination by the Board that the request meets or is likely to meet the standards of section 106. Any request for a hearing on this issue must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why 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 request for exemption.

The request may be inspected at the offices of the Board of Governors. Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary of the Board of Governors of the Federal Reserve System, Washington, DC 20551 not later than October 18, 1990.

Board of Governors of the Federal Reserve System, September 12, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–21976 Filed 9–17–90; 8:45 am]

BILLING CODE 6210–01–M

Caisse Nationale de Credit Agricole, S.A.; Acquisition of Company Engaged In Permissible Nonbanking Activities

The organization listed in this notice has 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.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 9, 1990.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Caisse Nationale de Credit Agricole, S.A.*, Paris, France; to acquire 49.9 percent of the voting shares of Locasuez America, Inc., New York, New York, and thereby engage in leasing activities pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 12, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–21977 Filed 9–17–90; 8:45 am]

BILLING CODE 6210–01–M

The Dai-Ichi Kangyo Bank, Ltd.

Application To Engage de Novo in Permissible Nonbanking Activities

The Dai-Ichi Kangyo Bank, Limited, Tokyo, Japan ("Applicant") has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (the "BHC Act"), and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for prior approval to engage through its subsidiary, DKB Securities Corporation, New York, New York ("Company"), in the following activities: (1) Acting as agent in the private placement of all types of securities, including providing related advisory services; (2) underwriting and dealing in, to a limited extent, municipal revenue bonds, 1–4 family mortgage-related securities, commercial paper and consumer-receivable-related securities ("ineligible securities"); (3) providing investment advisory and brokerage services on a combined basis ("full-service brokerage") to institutional customers, including exercising discretion in buying and selling securities on behalf of institutional customers; (4) investment advisory activities pursuant to 12 CFR 225.25(b)(4); (5) providing financial and transaction advice to financial and nonfinancial institutions, including (i) Providing advice and assistance in connection with the structuring, financing and negotiating of domestic and international merger, acquisition, divestiture, joint venture, leveraged buyout, recapitalization, capital structuring, financing and other corporate transactions, including private and public financings, (ii) providing feasibility studies, principally in the context of determining the financial attractiveness and feasibility of particular corporate transactions and financing transactions, (iii) providing valuation services, (iv) rendering fairness opinions in connection with domestica dn international merger, acquisition, divestiture, joint venture, leveraged buyout, recapitalization, financing and other corporate transactions, (v) providing advice regarding the structuring of, and

arranging, loan syndications and similar transactions, (vi) providing advice regarding the structuring of, and arranging, swaps, caps and similar transactions relating to factors such as interest rates, currency exchange rates, prices and economic and financial indices, and (vii) providing ancillary services or functions incidental to the foregoing activities; and (6) purchasing and selling all types of securities on the order of investors as a "riskless principal."

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." Applicant has applied to conduct these activities as set forth in Regulation Y and in the Board's Orders approving those activities for a number of bank holding companies. *See e.g.*, J.P. Morgan & Co., Inc., 76 Federal Reserve Bulletin 26 (1990), and Bankers Trust New York Corp., 75 Federal Reserve Bulletin 829 (1989) (private placement transactions as agent and riskless principal transactions); Stichting Amro and Amsterdam-Rotterdam Bank, N.V., 76 Federal Reserve Bulletin 682 (1990), The Toronto-Dominion Bank, 76 Federal Reserve Bulletin 573 (1990) ("Toronto-Dominion"), The Sanwa Bank, Limited, 76 Federal Reserve Bulletin 568 (1990), and Bankers Trust/Citicorp/Morgan, 73 Federal Reserve Bulletin 473 (1987) (underwriting and dealing in permitted ineligible securities); The Chase Manhattan Corporation, 74 Federal Reserve Bulletin 704 (1988), Bank of New England Corporation, 74 Federal Reserve Bulletin 700 (1988), and Bankers Trust New York Corporation, 74 Federal Reserve Bulletin 695 (1988) (full-service brokerage); and Toronto-Dominion, Citicorp, 76 Federal Reserve Bulletin 666 (1990) and Signet Banking Corporation, 73 Federal Reserve Bulletin 59 (1987) (financial and transaction advice).

In determining whether an activity is a proper incident to banking, the Board must consider whether the proposal may "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Applicant contends that permitting Applicant to engage in the proposed activities to customers, and increased efficiency in the provision of financial services.

Applicant contends that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377). Section 20 of the Glass-Steagall Act prohibits the affiliation of a member bank with a firm that is "engaged principally" in the "underwriting, public sale or distribution" of securities. With regard to the proposed private placement activity, full-service brokerage activity and riskless principal activity, Applicant states that these activities as previously approved by the Board do not constitute the underwriting, public sale or distribution of securities within the meaning of section 20 of the Glass-Steagall Act, and therefore are consistent with the Act.

Any request for a hearing on this application must comply with § 262.3(e) of the Board's Rules of Procedures (12 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of San Francisco.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than October 9, 1990.

Board of Governors of the Federal Reserve System, September 12, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–21978 Filed 9–17–90; 8:45 am]

BILLING CODE 6210–01–M

First Marengo Financial Corporation, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 9, 1990.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Marengo Financial Corporation,* Marengo, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Marengo, Marengo, Illinois.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Owatonna Bancshares, Inc.,* Owatonna, Minnesota; to acquire 26 percent of the voting shares of Farmers State Bank, Hope, Minnesota.

C. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Jones Holding Company, Ltd.,* Albany, Texas; to become a bank holding company by acquiring 51 percent of the voting shares of Albany Bancshares, Inc., Albany, Texas, and thereby indirectly acquire First National Bank of Albany, Albany, Texas.

Board of Governors of the Federal Reserve System, September 12, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–21979 Filed 9–17–90; 8:45 am]

BILLING CODE 6210–01–M

Lowndes Bancshares, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 9, 1990.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President), 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Lowndes Bancshares, Inc.*, Hahira, Georgia; to engage *de novo* through its subsidiary, Goldleaf Technologies, Inc., Hahira, Georgia, in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 12, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-21980 Filed 9-17-90; 8:45 am]

BILLING CODE 6210-01-M

Michael M. Vlahos, et al.; 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 2, 1990.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President), 701 East Byrd Street, Richmond, Virginia 23261:

1. *Michael M. Vlahos*, Vienna, Virginia; to acquire up to 17.79 percent of the voting shares of Community Bank & Trust Company of Virginia, Sterling Virginia.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First State Bancorp of Monticello, Inc. Employee Stock Ownership Plan and Trust*, Monticello, Illinois; to acquire an additional 1.09 percent of the voting shares of First State Bancorp of Monticello, Inc., Monticello, Illinois, as the result of a stock redemption, for a total of 22.15 percent, and thereby indirectly acquire First State Bank of Monticello, Monticello, Illinois; State Bank of Hammond, Hammond, Illinois; Prairie State Bank of Bloomington, Bloomington, Illinois; and First State Bank of Heyworth, Heyworth, Illinois.

2. *Douglas K. Van Dyke*, Grand Junction, Iowa; Sam F. Scheidler, Des Moines, Iowa; Marvin D. and Margaret J. Walters, Ackley, Iowa; Jack R. Jenkins, Clarion, Iowa; Willard J., Donald E. and Thomas P. Latham of Alexander, Iowa; and Robert J. Latham, Cedar Rapids, Iowa; to acquire 100 percent of the voting shares of Loof Investment Co., Grand Junction, Iowa, and thereby indirectly acquire Peoples Trust & Savings Bank, Grand Junction, Iowa.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President), 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *L.A. Amundson*, A.R. Mixner, and Edina Southdale Physical Therapy, Inc.; to acquire 100 percent of the voting shares of D.B. Holding Company, Inc., Buelah, North Dakota, and thereby indirectly acquire Bank of Beulah, Beulah, North Dakota.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. *David C. Doll*, Wauneta, Nebraska; to acquire an additional 48.60 percent for a total of 51.61 percent; and Darlene G. Doll, Wauneta, Nebraska, to acquire an additional 45.50 percent for a total of 48.39 percent of the voting shares of Wauneta Falls Bancorp, Inc., Wauneta, Nebraska, and thereby indirectly acquire Wauneta Falls Bank, Wauneta, Nebraska.

E. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President), 400 South Akard Street, Dallas, Texas 75222:

1. *Aaron Lee Speck*, Brownwood, Texas, to acquire 12.09 percent; Denny Ray Speck, Eden, Texas, to acquire 12.09 percent; and Richard Terry Sharpe, Brownwood, Texas, to acquire an additional 1.89 percent for a total of 3.45 percent of the voting shares of Brownwood Bancshares, Inc., Brownwood, Texas, and thereby indirectly acquire Citizens National Bank at Brownwood, Brownwood, Texas.

F. **Federal Reserve Bank of San Francisco** (Kenneth R. Binning, Assistant Vice President), 101 Market Street, San Francisco, California 94105:

1. *Philip J. Rocco*, Santa Ana, California; to acquire up to 26 percent of the voting shares of Orange Bancorp, Fountain Valley, California, and thereby indirectly acquire The Bank of Orange County, Fountain Valley, California.

Board of Governors of the Federal Reserve System, September 12, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-21981 Filed 9-17-90; 8:45 am]

BILLING CODE 6210-01-M

Young Americans Education Foundation; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The 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 "reasonable be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 9, 1990.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Young Americans Education Foundation,* Denver, Colorado; to become a bank holding company by acquiring Young Americans Bank, Denver, Colorado. Applicant, a nonprofit educational foundation, has applied for permission to continue its activities classified as community development activities under § 225.25(b)(6) and classified as consumer financial counseling under § 225.25(b)(2) of Regulation Y. The specific activities to be conducted are designed to promote economic education for young persons. The activities include offering educational programs and seminars, fund raising activities and sponsoring a free youth magazine. The educational services are provided for a fee and revenues will be generated from the youth magazine in the form of licensing fees for the use of Applicant's name logo and trademarks by the magazine publisher.

Board of Governors of the Federal Reserve System, September 12, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-21982 Filed 9-17-90; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

[Docket No. C-3299]

Bellingham-Whatcom County Multiple Listing Bureau; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Washington state multiple listing service from refusing to publish exclusive agency or conditional listings or listings containing reserve clauses; from restricting the solicitation of homeowners with current listings for future business; and from suggesting or fixing any commission split or other fees between any listing broker and any selling broker. In addition, the order requires respondent to distribute a statement describing the provisions of the order to all its members.

DATES: Complaint and Order issued August 2, 1990.[1]

FOR FURTHER INFORMATION CONTACT: Randall Brook, Seattle Regional Office, Federal Trade Commission, 2806 Federal Bldg., 915 Second Ave., Seattle, WA. 98174, (206) 442-4656.

SUPPLEMENTARY INFORMATION: On Wednesday, March 21, 1990, there was published in the **Federal Register**, 55 FR 10498, a proposed consent agreement with analysis In the Matter of Bellingham-Whatcom County Multiple Listing Bureau, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist in disposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.

Donald S. Clark,

Secretary.

[FR Doc. 90-22010 Filed 9-17-90; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[Dkt. C-3300]

Puget Sound Multiple Listing Association; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Washington state multiple listing service from refusing to publish exclusive agency listings or listings containing reserve clauses; from restricting the solicitation of homeowners with current listings for future business; and from suggesting or fixing any commission split or other fees between any listing broker and any selling broker. In addition, the order requires respondent to distribute a statement describing the provisions of the order to all its members.

DATES: Complaint and Order issued August 2, 1990.[1]

FOR FURTHER INFORMATION CONTACT: Randall Brook, Seattle Regional Office, Federal Trade Commission, 2806 Federal Bldg., 915 Second Ave., Seattle, WA. 98174. (206) 442-4656.

SUPPLEMENTARY INFORMATION: On Wednesday, March 21, 1990, there was published in the **Federal Register**, 55 FR 10501, a proposed consent agreement with analysis In the Matter of Puget Sound Multiple Listing Association, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist in disposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.

Donald S. Clark,

Secretary.

[FR Doc. 90-22011 Filed 9-17-90; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Mental Health Statistics; Meeting

Pursuant to Public Law 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control, announces the following committee meeting.

Name: NCVHS Subcommittee on Mental Health Statistics.

Time and date: 9 a.m.–5 p.m., October 11, 1990.

Place: Room 303A–305A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The subcommittee will hear a presentation from the office of the Assistant Secretary for Planning and Evaluation on disability efforts and a status report of mental health data from the Health Care Financing Administration. The subcommittee will be briefed on data issues surrounding mental health coverage and the current status of depression measures used in national health surveys.

Contact person for more information: Substantive program information as well as summaries of the meeting and a roster of Committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone number (301) 436–7050.

Dated: September 11, 1990.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 90–22045 Filed 9–17–90; 8:45 am]

BILLING CODE 4160–18–M

Health Care Financing Administration

Statement of Organization, Functions and Delegations of Authority

Part F. of the statement of organization, functions and delegations of authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (Federal Register), Vol. 54, No. 107, pg. 24265–24266, dated Tuesday, June 6, 1989) is amended to reflect a change within the Office of the Associate Administrator for Management, Office of the Actuary (OACT). The change recognizes the offices and subordinate components within OACT. Specifically, the functions performed by the Office of Medicare Cost Estimates and the Office of Medicaid Cost Estimates are combined into a single Office which is titled the Office of Medicare and Medicaid Cost Estimates. A new Division of Medicaid Cost Estimates is established to assume responsibility for the Medicaid activities previously performed in the Office of Medicaid Cost Estimates. The Division of Catastrophic Drug Insurance is abolished. The Office of National Cost Estimates is restructured with two divisions titled the Division of Health Projections and Surveys and the Division of Health Cost Analysis. The Office is retitled the Office of National Health Statistics.

The specific amendments to Part F. are described below:

• Section FH.20.B.1., Office of Medicare Cost Estimates (FHG1) and Section FH.20.B.2., Office of Medicaid Cost Estimates (FHG2) are deleted in their entirety and replaced with the following new Section FH.20.B.1., Office of Medicare and Medicaid Cost Estimates (FHG1):

1. Office of Medicare and Medicaid Cost Estimates (FHG1)

• Prepares cost estimates for the Hospital Insurance (HI) program, the Supplementary Medical Insurance (SMI) program, and the Medicaid program for use in the President's budget.

• Evaluates the operations of the Medicare trust funds particularly relating to outlays and program solvency.

• Develops such variables as the Part B premium rates, the inpatient hospital deductible, the Part A premium rate for voluntary enrollees, and the physicians' economic index applicable to prevailing fees.

• Develops the payment rates for the annual update of the adjusted average per capita cost (AAPCC) ratebook, which is used to pay health maintenance organizations that enter into a risk contract with HFCA to provide benefits to Medicare enrollees.

• Provides cost estimates for the Medicaid program, including the development of cost estimates for proposed changes in Medicaid or in programs affecting Medicaid, and overall Medicaid program costs for years after the current budget year.

• Serves as technical consultant throughout the Government on Medicare and Medicaid cost estimate issues.

a. Division of Hospital Insurance (FHG11)

• Prepares cost estimates for the Hospital Insurance (HI) program for use in the President's budget.

• Evaluates operations of the Medicare HI trust fund concerning income and outgo, and the necessary tax rates for program solvency.

• Develops such variables as Part A inpatient hospital deductible and the Part A premium rate for voluntary enrollees.

• Computes estimates of the impact of modifications in program benefits and financing.

• Serves as technical consultant throughout the Government on Medicare HI cost estimate issues.

b. Division of Supplementary Medical Insurance (FHG12)

• Prepares cost estimates for the Supplementary Medical Insurance (SMI) progam for use in the President's budget.

• Evaluates operations of the Medicare SMI trust fund concerning income and outgo, the necessary premium, and actuarial rates for program solvency.

• Develops such variables as the Part B premium rate and the physician's economic index applicable to prevailing fees.

• Computes estimates of the impact of modifications in program benefits and financing.

• Serves as technical consultant throughout the Government on Medicare SMI cost estimate issues.

c. Division of Medicaid Cost Estimates (FHG14)

• Provides cost estimates for the Medicaid program, including the development of cost estimates for proposed changes in Medicaid or in programs affecting Medicaid, and overall Medicaid program costs for years after the current budget year.

• Develops forecasts of Medicaid expenditures for incorporation into the HCFA budget development process.

• Provides actuarial consultation to other components of HCFA concerning various proposals and programs affecting the future of the Medicaid program.

• Studies actuarial approaches and techniques, and develops data to assist in the development of program forecasts.

• Serves as technical consultant throughout the Government on Medicaid cost estimates issues.

• Section FH.20.B.3., Office of National Cost Estimates (FHG3) is deleted in its entirety and replaced with the following new Section FH.20.B.2., Office of National Health Statistics (FHG4).

2. Office of National Health Statistics (FHG4)

- Develops, maintains and makes analytical use of the National Health Accounts (NHA) which include annual estimates and publication of National Health Expenditures (NHE) and periodic estimates and publication of NHE by age groupings or by region.
- Provides technical support for HCFA regulatory processes, especially those related to payment systems or reform.
- Develops, analyzes and publishes, health sector models and associated estimates which allow assessments of historical relationships and projections of current law or evaluation of the impact of proposed changes to the current system.
- Conducts and evaluates surveys containing information relevant to the health care system.

a. Division of Health Projections and Surveys (FHG41)

- Develops, analyzes and publishes, health sector models and associated estimates which allow assessments of historical relationships and projections of current law or evaluation of the impact of proposed changes to the current system.
- Conducts the Current Beneficiary Survey. Provides all the in-house activities needed for survey management, coordination and information dissemination.
- Conducts and evaluates surveys containing information relevant to the health care system, with particular emphasis on private health insurance and related issues.
- Provides technical analysis and data for Agency, Department, or Administration initiatives.
- Responds to requests for information and analysis on the health sector and its relationship to the general economy.

b. Division of Health Cost Analysis (FHG42)

- Maintains the National Health Accounts. Provides an interdisciplinary approach to data collection, manipulation and analysis, and interpretation of national, age groupings related, and regional health use, costs and payment sources.
- Estimates and disseminates annual national health expenditures by age groupings or State, and produces quarterly "health indicators" measures.
- Provides technical support for HCFA regulatory processes, especially those related to payment systems or reform.
- Provides technical analysis and data for Agency, Department, or Administration initiatives.
- Responds to requests for information and analysis on the health sector and its relationship to the general economy.

Dated: September 11, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 90-22038 Filed 9-17-90; 8:45 am]

BILLING CODE 4120-03-M

National Institutes of Health

National Heart, Lung and Blood Institute; Meeting of the Arteriosclerosis, Hypertension and Lipid Metabolism Advisory Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Arteriosclerosis, Hypertension and Lipid Metabolism Advisory Committee, National Heart, Lung and Blood Institute, November 1-2, 1990, Building 31, Conference Room 10, C-Wing, National Institutes of Health, Bethesda, Maryland 20892.

The entire meeting will be open to the public from approximately 11 a.m. to 5 p.m. on Thursday, November 1, and from 8:30 a.m. to adjournment on Friday, November 2, to evaluate program support in arteriosclerosis, hypertension and lipid metabolism. Attendance by the public will be limited on a space available basis.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4235, will provide a summary of the meeting and a roster of the committee members.

Dr. G. C. McMillan, Associate Director, Arteriosclerosis, Hypertension and Lipid Metabolism Program, NHLBI, Room 4C12, Federal Building, National Institutes of Health, Bethesda, MD 20892, (301) 496-1613, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health).

Dated: September 12, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-22019 Filed 9-17-90; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting of Blood Diseases and Resources Advisory Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Blood Diseases and Resources Advisory Committee, National Heart, Lung, and Blood Institute, November 1-2, 1990, Building 31C, Conference Room 6, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 12 noon on November 1 to adjournment November 2, to discuss the status of the Blood Diseases and Resources program needs and opportunities. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Fann Harding, Assistant to the Director, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, Federal Building Room 5A08, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-1817, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: September 12, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-22020 Filed 9-17-90; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting of the Cardiology Advisory Committee

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the Cardiology Advisory Committee, National Heart, Lung, and Blood Institute, November 1-2, 1990, Building 1, Wilson Hall, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 1 p.m. on November 1, to adjournment on November 2. Attendance by the public will be limited to space available. Topics for discussion will include a review of the research programs relevant to the Cardiology area and consideration of future needs and opportunities.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Room 4A21, Building 31, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the committee members.

Michael J. Horan, M.D., Associate Director for Cardiology, Division of Heart and Vascular Diseases; National Heart, Lung, and Blood Institute; Room 320, Federal Building, Bethesda, Maryland 20892, (301) 496–5421, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health).

Dated: September 12, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–22017 Filed 9–17–90; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of the Clinical Applications and Prevention Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Clinical Applications and Prevention Advisory Committee, Division of Epidemiology and Clinical Applications, National Heart, Lung, and Blood Institute, National Institutes of Health, on October 31-November 1, 1990. The meeting will be held on October 31 in Conference Room 10, Building 31, and on November 1 in Wilson Hall, Building 1, both at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public. It will begin at 8:30 a.m. on October 31 through recess on that day in Building 31, and resume in Wilson Hall, Building 1 on November 1 at 1 p.m. until adjournment. This second portion of the meeting is being held in conjunction with the Cardiology Advisory Committee. Attendance by the public will be limited to space available. Topics for discussion will include new initiatives, program policies, and issues.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Insitutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will furnish substantive program information.

Dr. William R. Harlan, Director, Division of Epidemiology and Clinical Applications, Federal Building, Room 212, Bethesda, Maryland 20892, (301) 496–2533, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health.)

Dated: September 12, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–22022 Filed 9–17–90; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; National Cholesterol Education Program Coordinating Committee; Meeting

Notice is hereby given of the meeting of the National Cholesterol Education Program Coordinating Committee, sponsored by the National Heart, Lung, and Blood Institute on Tuesday, October 2, 1990, from 9 a.m. to 3 p.m. at the Quality Hotel, 8727 Colesville Road, Silver Spring, Maryland, 20910 (301) 589–5200.

The entire meeting is open to the public. The Coordinating Committee is meeting to define the priorities, activities, and needs of the participating groups in the National Cholesterol Education Program. Attendance by the public will be limited to space available.

For detailed program information, agenda, list of participants, and meeting summary, contact: Dr. James I. Cleeman, Coordinator, National Cholesterol Education Program, Office of Prevention, Education and Control, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, room 4A–05, Bethesda, Maryland 20892, (301) 496–0554.

Dated: September 11, 1990.

William F. Raub,

Acting Director, NIH.

[FR Doc. 90–22018 Filed 9–17–90; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of Pulmonary Diseases Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Pulmonary Diseases Advisory Committee, National Heart, Lung, and Blood Institute, October 30–31, 1990, at the National Institutes of Health, Building 31, C wing, conference room 8, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting, from 1 p.m. on Tuesday, October 30 to adjournment on October 31 will be open to the public. The Committee will discuss the current status of the Division of Lung Diseases' programs and Committee plans for fiscal year 1991. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A–21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Suzanne S. Hurd, Executive Secretary of the Committee, Westwood Building, Room 6A16, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–7208, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.838, Lung Diseases Research. National Institutes of Health.)

Dated: September 12, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–22021 Filed 9–17–90; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of the Sickle Cell Disease Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee, National Heart, Lung, and Blood Institute, October 5, 1990. The meeting will be held at the National Institutes of Health, Building 31, Conference Room 7, C-Wing, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9 a.m. to adjuornment to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, Room 4A21, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Clarice D. Reid, Chief, Sickle Cell Disease Branch, Division of Blood Diseases and Resources, NHLBI, Federal Building, Room 508, Bethesda, Maryland 20892, (301) 496–6931, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and

Resources Research, National Institutes of Health)

Dated: September 12, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-22023 Filed 9-17-90; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Etiology on October 25-26, 1990. The meeting will be held in Building 31, C Wing, Conference room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public from 1 p.m. to recess on October 25 and from 9 a.m. to adjournment on October 26 for discussion and review of the Division budget and review of concepts for grants and contracts. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the meeting will be closed to the public from 9 a.m. to approximately 12 noon on October 25 for the review, discussion and evaluation of individual programs and projects conducted by the Division of Cancer Etiology. These programs, projects, and discussions could reveal personal information concerning individuals associated with the programs and projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Committee Management Office, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. David McB. Howell, Executive Secretary of the Board of Scientific Counselors, Division of Cancer Etiology, National Cancer Institute, Building 31, room 11A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-6927) will furnish substantive program information.

Dated: September 7, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-21942 Filed 9-17-90; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Notice of Meeting—Board of Scientific Counselors, Division of Cancer Biology, Diagnosis, and Centers

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Biology, Diagnosis, and Centers, National Cancer Institute, October 22, 1990. The meeting will be held in Building 31C, Conference room 10, National Institutes of Health, Bethesda, Maryland 20892.

This meeting will be open to the public on October 22 from 8:30 a.m. to 4:30 p.m. for concept review of proposed research projects and review of ongoing programs. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public on October 22, from 4:30 p.m. to 6 p.m. for the review and discussion of previous site visit reports and responses, including consideration, of personnel qualifications and performance, the competence of individual investigators, medical files of individual research subjects, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Committee Management Office, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summary minutes of the meeting and rosters of committee members.

Dr. Ihor J. Masnyk, Deputy Director, Division of Cancer Biology, Diagnosis, and Centers, National Cancer Institute, Building 31, room 3A03, National Institutes of Health, Bethesda, Maryland 20892 (301/496-3251) will provide substantive program information.

Dated: September 7, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-21943 Filed 9-17-90; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Meetings

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Cancer Advisory Board, National Cancer Institute, October 1-2, 1990, Building 31C, Conference room 6, 6th floor, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. Meetings of the Subcommittees of the Board will be held at the times and places listed below. Except as noted below, the meetings of the Board and its Subcommittees will be open to the public to discuss issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

A portion of the Board meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Committee Management Office, National Cancer Institute, 9000 Rockville Pike, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide a summary of the meeting and roster of the Board members, upon request.

Name of Committee: National Cancer Advisory Board.

Executive Secretary: Mrs. Barbara Bynum, Building 31, room 10A03 Bethesda, MD 20892 (301) 496-5147.

Date of Meeting: October 1-2, 1990.

Place of Meeting: Building 31C, Conference room 6.

Open: October 1-approximately 1 p.m. to recess. October 2-8 a.m. to adjournment.

Agenda: Reports on activities of the President's Cancer Panel; the Director's Report on the National Cancer Institute; Remarks by the Acting Director, National Institutes of Health; Scientific Presentations; Subcommittee Reports; and New Business.

Name of Committee: Subcommittee on Special Actions for Grants.

Executive Secretary: Mr. Barbara Bynum, Building 31, room 10A03, Bethesda, MD 20892 (301) 496-5147.

Date of Meeting: October 1.

Place of Meeting: Building 31C, Conference room 6.

Closed: 8 a.m. to approximately 1 p.m.

Agenda: Review and discussion of individual grant applications.

Name of Committee: AIDS Subcommittee.

Executive Secretary: Dr. Judith Karp, Building 31, room 11A25, Bethesda, MD 20892 (301) 496-3505.

Date of Meeting: October 1.

Place of Meeting: Building 31C, Conference room 9.

Open: Immediately following the recess of the NCAB meeting until adjournment.

Agenda: Update on Clinical Trials with DDI.

Name of Committee: Subcommittee on Information and Cancer Control for Year 2000.

Executive Secretary: Mr. Paul Van Nevel, Building 31, room 10A31, Bethesda, MD 20892 (301) 496–6631.
Date of meeting: October 1.
Place of meeting: Building 31C, Conference room 8.
Open: Immediately following the recess of the NCAB meeting until adjournment.
Agenda: Contract concept review for the office of the Director.
Name of Committee: Subcommittee on Planning and Budget.
Executive Secretary: Ms. Judith Whalen, Building 31, room 11A23, Bethesda, MD 20892 (301) 496–5515.
Date of meeting: October 1.
Place of Meeting: Building 31C, Conference room 7.
Open: 6 p.m. to adjournment.
Agenda: To discuss 1991 budget.

Catalog of Federal Domestic Assistance Program Numbers: (13.392, Project grants in cancer construction; 13.393, Project grants in cancer cause and prevention; 13.394, Project grants in cancer detection and diagnosis; 13.395, Project grants in cancer treatment; 13.396, Project grants in cancer biology; 13.397, Project grants in cancer centers support; 13.398, Project grants in cancer research manpower; and 13.399, Project grants and contracts in cancer control.)

Dated: September 7, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–21944 Filed 9–17–90; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Meeting of the Communication Disorders Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Communication Disorders Review Committee of the National Institute on Deafness and Other Communication Disorders, October 18 and 19, 1990 at the Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

The meeting will be open to the public on October 18 from 8:30 a.m. to 9 a.m. to discuss program planning, program accomplishments, and special reports or other issues relating to committee business. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

The meeting will be closed to the public on October 18 from 9 a.m. to adjournment on October 19 in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

A summary of the meeting, roster of committee members, and other information concerning this meeting may be obtained from Dr. Marilyn Semmes, Executive Secretary of the Communication Disorders Review Committee, National Institute on Deafness and Other Communication Disorders, Federal Building, room 9C14, National Institutes of Health, Bethesda, Maryland 20892, 301–496–9223, upon request.

(Catalog of Federal Domestic Assistance Program No. 13.173 Biological Research Related to Deafness and Communicative Disorders)

Dated: September 7, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–21945 Filed 9–17–90; 8:45 am]

BILLING CODE 4140–01–M

Social Security Administration

Social Security Acquiescence Ruling 90–6(1)—Cassas v. Secretary of Health and Human Services, 893 F.2d 454 (1st Cir. 1990), reh'g denied April 9, 1990—Assessment of Residual Functional Capacity in Disabled Widows' Cases

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(2) published January 11, 1990 (55 FR 1012), the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 90–6(1).

EFFECTIVE DATE: September 18, 1990.

FOR FURTHER INFORMATION CONTACT: Bob Young, Litigation Staff, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (301) 965–1634.

SUPPLEMENTARY INFORMATION: Although not required to do so pursuant to 5 U.S.C. 552 (a)(1) and (a)(2), we are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 422.406(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals decision as explained in this Social Security Acquiescence Ruling to claims at all levels of administrative adjudication within the First Circuit. This Social Security Acquiescence Ruling will apply to all determinations and decisions made on or after September 18, 1990. If we made a determination or decision on your application for benefits between January 11, 1990, the date of the Court of Appeals' decision and September 18, 1990, the effective date of this Social Security Acquiescence Ruling, you may request application of the Social Security Acquiescence Ruling to your claim if you first demonstrate, pursuant to 20 CFR 404.985(b), that application of the Ruling could change our prior determination or decision.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided for in 20 CFR 404.985(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided for by 20 CFR 404.985(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802 Social Security—Disability Insurance; 13.803 Social Security—Retirement Insurance; 13.805 Social Security—Survivor's Insurance; 13.806—Special Benefits for Disabled Coal Miners; 13.807—Supplemental Security Income.)

Dated: August 30, 1990.

Gwendolyn S. King,

Commissioner of Social Security.

Acquiescence Ruling 90–6(1)

Cassas v. *Secretary of Health and Human Services*, 893 F.2d 454 (1st Cir. 1990), reh'g denied April 9, 1990—Assessment of Residual Functional Capacity in Disabled Widows' [1] Cases—Title II of the Social Security Act.

Issue

Whether in determining if a widow is capable of performing any gainful activity for purposes of entitlement to widows' insurance benefits based on disability, the Secretary must consider a widow's residual functional capacity.

[1] This ruling also applies to widowers and surviving divorced spouses who apply for benefits based on disability.

Statute/Regulation/Ruling Citation

Section 223(d)(2)(B) of the Social Security Act (42 U.S.C. 423(d)(2)(B); 20 CFR 404.1511(b), 404.1525, 404.1526, 404.1545, 404.1546, 404.1572(b), 404.1577, 404.1578.

Circuit

First (Maine, New Hampshire, Massachusetts, Rhode Island, Puerto Rico) *Cassas* v. *Secretary of Health and Human Services,* 893 F.2d 454 (1st Cir. 1990), reh'g denied April 9, 1990.

Applicability of Ruling

This Ruling applies to determinations or decisions at all administrative levels (i.e., initial, reconsideration, Administrative Law Judge hearing and Appeals Council).

Description of Case

The plaintiff, Mrs. Cassas, filed an application for widow's benefits based on disability, claiming that she had been totally disabled since 1981. An Administrative Law Judge (ALJ) concluded that the plaintiff's impairment met the criteria of Listing 9.08A as of August 4, 1987, but not before. The ALJ's decision became the final decision of the Secretary. The plaintiff then filed a civil action. In her appeal of the district court's decision, which affirmed the final decision of the Secretary, the plaintiff argued that the Secretary may not deny widow's benefits based on disability without first determining that the claimant's residual functional capacity enables her to perform any gainful activity.

Holding

The First Circuit adopted the approach taken by the Second Circuit in *Kier* v. *Sullivan,* 888 F.2d 244 (1989). In so doing the First Circuit stated that: "The informing principle underlying the listings would seem to be that, in the generality of cases, persons with a listed impairment lack the ability to work. In other words, their RFC for gainful activity is relatively nil. But, as the Second Circuit pointed out in *Kier,* the listings do not exhaust the entire universe of incapacities. Consequently, in determining medical equivalence, it seems sensible to keep in mind basic principles, focusing the inquiry on whether the impaired individual has the capacity to perform gainful activity." In describing the nature of the plaintiff's challenge to the Secretary's policy, the court stated: "It does not necessarily attack the facial validity of the regulatory requirement that a claimant must have a listed impairment or one medically equivalent thereto, but rather, implicates the manner in which medical equivalence is to be determined." In adopting the Second Circuit approach established in *Kier,* the court held that "residual functional capacity cannot be ignored in considering medical equivalence and, ultimately, disability."

In denying the Secretary's petition for rehearing, the First Circuit rejected the Secretary's approach embodied in Social Security Ruling 83–19 [2] and stated that it followed the Second Circuit's opinion in *Kier* that Social Security Ruling 83–19, which provided that residual functional capacity should not be considered in assessing medical equivalency, conflicts with the language of 42 U.S.C. 423(d)(1)(A) and (d)(2)(B). The court further stated that "in determining medical equivalence, the Secretary may not ignore whether the claimant has the physical and mental capacity to do any gainful activity."

Statement as to How Cassas Differs from SSA Policy

In determining disability for widows, SSA does not use the sequential evaluation process set forth in 20 CFR 404.1520 to determine whether the claimant retains the residual functional capacity to engage in gainful activity. Rather, under SSA policy and regulations, neither the sequential evaluation process nor consideration of residual functional capacity forms a part of the evaluation of a claim for widow's benefits based on disability.

The procedure used for determining disability for widows is contained in 20 CFR 404.1577 and 404.1578. These regulatory sections indicate that only the claimant's physical and mental impairment(s) are considered. Section 404.1578 states:

(a) We will find that you are disabled and pay you widow's or widower's benefits as a widow, widower, or surviving divorced spouse if—

(1) Your impairment(s) has specific clinical findings that are the same as those for any impairment in the Listing of Impairments in Appendix 1 or are medically equivalent to those for any impairment shown there;

(2) Your impairment(s) meets the duration requirement.

(b) However, even if you meet the requirements in paragraphs (a) (1) and (2) of this section, we will not find you disabled if you are doing substantial gainful activity.

As noted above, the Court of Appeals for the First Circuit held in *Cassas* that, in adjudicating a claim for widow's benefits based on disability, the Secretary must consider the claimant's residual functional capacity in determining whether she is capable of performing any gainful activity.

Explanation of How SSA Will Apply This Decision Within the Circuit

This Ruling applies only to cases involving claimants seeking widows' or widowers' benefits based on disability who reside in Maine, New Hampshire, Massachusetts, Rhode Island, or Puerto Rico at the time of the determination or decision at any administrative level, i.e., initial, reconsideration, Administrative Law Judge hearing or Appeals Council.

As required by the court in *Cassas,* in cases where an adjudicator determines that a widow's impairment(s) does not meet the requirements of, or is not equal in medical severity to, an impairment found in the Listing of Impairments, appendix 1, subpart P, Social Security Administration Regulations part 404, the adjudicator will determine whether the claimant's residual functional capacity prevents her from engaging in any gainful activity.

Although the court required the Secretary to assess a widow's residual functional capacity, it did not specify the procedure by which a benefit entitlement determination could be made. The court found objectionable SSA's sole reliance on the medical aspects of the listings, without regard to resulting functional limitations, as the comparison point for determining equivalency, because the listings do not comprise the entire universe of medical conditions but only establish the level of severity deemed sufficient to preclude a claimant from engaging in any gainful activity.

The court of appeals in *Cassas* recognized that the Secretary is authorized under the Social Security Act to promulgate listings which establish the level of severity deemed sufficient to preclude any gainful activity. Thus, the listings are the standard against which determinations of inability to perform gainful work are made. For purposes of following the *Cassas* decision, any widow with an impairment(s) that causes disabling functional consequences comparable to those caused by a listed impairment will be found disabled.

The widow's impairment(s) first is to be compared to the regulatory standard. In contrast to the procedures that were at issue in *Cassas,* if the widow's impairment(s) is not of comparable medical severity to a listed impairment, the adjudicator must go beyond the medical evaluation and must compare the functional consequences of the widow's impairment(s)—not the mdical

[2] SSR 83–19 was rescinded effective April 25, 1990.

findings associated with the impairment(s)—with the disabling functional consequences of the impairments in the listings. The adjudicator shall consider all relevant evidence, including the functional effects of the widow's physical and mental symptoms and any side effects of medication on her functioning. If function is affected in a manner set forth in, or comparable to, any listed impairment, even if the listed impairment is not medically related to any of the impairment(s) the widow has, she shall be deemed unable to do any gainful activity. For example, if a widow has a combination of physical impairments which would result in the same disabling functional limitations as are specified in the mental listing as being sufficient to preclude any gainful activity, such physical impairments will be considered disabling even if no mental impairment is present.

Finally, although we believe that the approach outlined above is sufficient to encompass all functional limitations that preclude any gainful activity, in order to fully comply with *Cassas*, under this ruling, any widow who can demonstrate that she has a disabling functional limitation not covered by the listings may still show that her residual functional capacity precludes any gainful activity without use of the listings. A widow making such a showing shall be deemed to have an impairment(s) of disabling severity.

SSA intends to clarify the regulations at issue in this case through the rulemaking process. SSA will continue to apply this Ruling until such clarification is made. At that time, pursuant to 20 CFR 404.985(e)(4), SSA may rescind this Ruling.

[FR Doc. 90-22061 Filed 9-17-89; 8:45 am]
BILLING CODE 4190-11-M

Social Security Acquiescence Ruling 90-5(2)—Kier v. Sullivan, 888 F.2d 244 (2d Cir. 1989), reh'g denied, January 22, 1990—Assessment of Residual Functional Capacity in Disabled Widows' Cases.

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(2) published January 11, 1990 (55 FR 1012), the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 90-5(2).

EFFECTIVE DATE: September 18, 1990.

FOR FURTHER INFORMATION CONTACT: Bob Young, Litigation Staff, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (301) 965-1634.

SUPPLEMENTARY INFORMATION: Although not required to do so pursuant to 5 U.S.C. 552 (a)(1) and (a)(2), we are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 422.406(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals decision as explained in this Social Security Acquiescence Ruling to claims at all levels of administrative adjudication within the Second Circuit. This Social Security Acquiescence Ruling will apply to all determinations and decisions made on or after September 18, 1990. If we made a determination or decision on your application for benefits between October 23, 1989, the date of the Court of Appeals' decision and September 18, 1990, the effective date of this Social Security Acquiescence Ruling, you may request application of the Social Security Acquiescence Ruling to your claim if you first demonstrate, pursuant to 20 CFR 404.985(b), that application of the Ruling could change our prior determination or decision.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided for in 20 CFR 404.985(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided for by 20 CFR 404.985(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802 Social Security—Disability Insurance; 13.803 Social Security—Retirement Insurance; 13.805 Social Security—Survivor's Insurance; 13.806—Special Benefits for Disabled Coal Miners; 13.807—Supplemental Security Income)

Gwendolyn S. King,

Commissioner of Social Security.

Acquiescence Ruling 90-5(2)

Kier v. *Sullivan*, 888 F.2d 244 (2d Cir. 1989), reh'g denied, January 23, 1990—Assessment of Residual Functional Capacity in Disabled Widows'[1] Cases—title II of the Social Security Act

Issue

Whether in determining if a widow is capable of performing any gainful activity for purposes of entitlement to widow's insurance benefits based on disability, the Secretary must consider a widow's residual functional capacity.

Statute/Regulation/Ruling Citation

Section 223(d)(2)(B) of the Social Security Act (42 U.S.C. 423(d)(2)(B)), 20 CFR 404.1511(b), 404.1520, 404.1525, 404.1526, 404.1545, 404.1546, 404.1572(b), 404.1577, 404.1578.

Circuit

Second (Connecticut, New York, Vermont)

Kier v. *Sullivan*, 888 F.2d 244 (2d Cir. 1989), reh'g denied January 22, 1990.

Applicability of Ruling

This Ruling applies to determinations or decisions at all administrative levels (i.e., initial, reconsideration, Administrative Law Judge hearing and Appeals Council).

Description of Case

On May 14, 1984, the plaintiff filed an application for widow's benefits based on disability. Following denials of her application initially and on reconsideration, an Administrative Law Judge (ALJ) also denied her application. The Appeals Council (AC) declined review and the ALJ's decision became the final decision of the Secretary.

The plaintiff sought judicial review of the Secretary's final decision. In October 1986, the district court remanded the case to the Secretary for a determination of the plaintiff's residual functional capacity.

On remand, a different ALJ issued a recommended decision finding the plaintiff not entitled to benefits because of her failure to appear for scheduled consultative examinations. In April 1988, the AC issued a decision finding that the plaintiff did not have an impairment of the level of severity to merit widow's benefits based on disability. In compliance with the court order to consider the plaintiff's residual functional capacity, the AC also found that the plaintiff retained the residual functional capacity to engage in gainful activity.

Reviewing the case for a second time, the district court held that the plaintiff

[1] This ruling also applies to widowers and surviving divorced spouses who apply for benefits based on disability.

did not have the capacity to engage in any gainful activity and that she was entitled to benefits. The Secretary appealed the decision to the United States Court of Appeals for the Second Circuit.

Holding

The Second Circuit held that in adjudicating a claim for widow's insurance benefits based on disability the Secretary must consider a claimant's residual functional capacity in determining whether she is capable of performing any gainful activity. Reaching this conclusion, the court stated that there are important intersections between the Secretary's five-step sequential evaluation set forth in 20 CFR 404.1520 and the procedures for determining entitlement to widow's benefits based on disability outlined in 20 CFR 404.1577 and 404.1578. The court noted that:

> [T]he two procedures adopt most of the same provisions with the exception of section 404.1577's exclusion of age, education, and work experience in the consideration of widow benefits claims. The very exclusion of these factors mentioned in step five of the sequential evaluation process strongly suggests that the other factor listed in step five—residual functional capacity—is to be considered. Indeed, under the regulations there is no way to decide whether a widow's impairment is medically equivalent to a listed impairment without assessing her residual functional capacity.

The court observed that, under the Social Security Act, the Secretary is authorized to promulgate a Listing of Impairments to establish the level of severity deemed sufficient to preclude an individual from engaging in gainful activity (hereafter referred to as "listings"). However, the court characterized the listings as an underinclusive catalog of impairments that only establishes the level of severity necessary to demonstrate disability, rather than comprising the entire universe of available claims. The court concluded that if a widow's residual functional capacity leaves her unable to perform any gainful activity, her impairments, even if unlisted, must be at the level of severity of an impairment included in the Secretary's listings.

Statement as to How KIER Differs From SSA Policy

In determining disability for widows, SSA does not use the sequential evaluation process set forth in 20 CFR 404.1520 to determine whether the claimant retains the residual functional capacity to engage in gainful activity. Rather, under SSA policy and regulations, neither the sequential evaluation process nor consideration of residual functional capacity forms a part of the evaluation of a claim for widow's benefits based on disability.

The procedure used for determining disability for widows is contained in 20 CFR 404.1577 and 404.1578. These regulatory sections indicate that only the claimant's physical and mental impairment(s) are considered. Section 404.1578 states:

> (a) We will find that you are disabled and pay you widow's or widower's benefits as a widow, widower, or surviving divorced spouse if—
>
> (1) Your impairment(s) has specific clinical findings that are the same as those for any impairment in the Listing of Impairments in Appendix 1 or are medically equivalent to those for any impairment shown there;
>
> (2) Your impairment(s) meets the duration requirement.
>
> (b) However, even if you meet the requirements in paragraphs (a)(1) and (2) of this section, we will not find you disabled if you are doing substantial gainful activity.

As noted above, the Court of Appeals for the Second Circuit held in Kier that, in adjudicating a claim for widow's benefits based on disability, the Secretary must consider the claimant's residual functional capacity in determining whether she is capable of performing any gainful activity.

Explanation of How SSA Will Apply This Decision Within the Circuit

This Ruling applies only to cases involving claimants seeking widow's or widower's benefits based on disability who reside in Connecticut, New York or Vermont at the time of the determination or decision at any administrative level, i.e., initial, reconsideration, Administrative Law Judge hearing or Appeals Council.

As required by the court in Kier, in cases where an adjudicator determines that a widow's impairment(s) does not meet the requirements of, or is not equal in medical severity to, an impairment found in the Listing of Impairments, appendix 1, subpart P, Social Security Administration Regulations part 404, the adjudicator will determine whether the claimant's residual functional capacity prevents her from engaging in any gainful activity.

Although the court required the Secretary to assess a widow's residual functional capacity, it did not specify the procedure by which a benefit entitlement determination could be made. The court found objectionable SSA's sole reliance on the medical aspects of the listings, without regard to resulting functional limitations, as the comparison point for determining equivalency, because the listings do not comprise the entire universe of medical conditions but only establish the level of severity deemed sufficient to preclude a claimant from engaging in any gainful activity.

The court of appeals in Kier explicitly recognized that the Secretary is authorized under the Social Security Act to promulgate listings which establish the level of severity deemed sufficient to preclude any gainful activity. Thus, the listings are the standard against which determinations of inability to perform gainful work are made. For purposes of following the Kier decision, any widow with an impairment(s) that causes disabling functional consequences comparable to those caused by a listed impairment will be found disabled.

The widow's impairment(s) first is to be compared to the regulatory standard. In contrast to the procedures that were at issue in Kier, if the widow's impairment(s) is not of comparable medical severity to a listed impairment, the adjudicator must go beyond the medical evaluation and must compare the functional consequences of the widow's impairment(s)—not the medical findings associated with the impairment(s)—with the disabling functional consequences of the impairments in the listings. The adjudicator shall consider all relevant evidence, including the functional effects of the widow's physical and mental symptoms and any side effects of medication on her functioning. If function is affected in a manner set forth in, or comparable to, any listed impairment, even if the listed impairment is not medically related to any of the impairment(s) the widow has, she shall be deemed unable to do any gainful activity. For example, if a widow has a combination of physical impairments which would result in the same disabling functional limitations as are specified in the mental listing as being sufficient to preclude any gainful activity, such physical impairments will be considered disabling even if no mental impairment is present.

Finally, although we believe that the approach outlined above is sufficient to encompass all functional limitations that preclude any gainful activity, in order to fully comply with Kier, under this ruling, any widow who can demonstrate that she has a disabling functional limitation not covered by the listings may still show that her residual functional capacity precludes any gainful activity without use of the listings. A widow making such a showing shall be deemed to have an impairment(s) of disabling severity.

SSA intends to clarify the regulations at issue in this case through the rulemaking process. SSA will continue to apply this Ruling until such clarification is made. At that time, pursuant to 20 CFR 404.985(e)(4), SSA may rescind this Ruling.

[FR Doc. 90-22060 Filed 9-17-90; 8:45 am]
BILLING CODE 4190-11-M

Social Security Acquiescence Ruling 90-7(9) Ruff v. Sullivan, Dkt. No. 89-35042 (9th Cir. 1990)—Assessment of Residual Functional Capacity in Disabled Widows' Cases

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(2) published January 11, 1990 (55 FR 1012), the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 90-7(9).

EFFECTIVE DATE: September 18, 1990.

FOR FURTHER INFORMATION CONTACT: Bob Young, Litigation Staff, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (301) 965-1634.

SUPPLEMENTARY INFORMATION: Although not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 422.406(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals decision as explained in this Social Security Acquiescence Ruling to claims at all levels of administrative adjudication within the Ninth Circuit. This Social Security Acquiescence Ruling will apply to all determinations and decisions made on or after September 18, 1990. If we made a determination or decision on your application for benefits between July 9, 1990, the date of the Court of Appeals' decision and September 18, 1990, the effective date of this Social Security Acquiescence Ruling, you may request application of the Social Security Acquiescence Ruling to your claim if you first demonstrate, pursuant to 20 CFR 404.985(b), that application of the Ruling could change our prior determination or decision.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided for in 20 CFR 404.985(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided for by 20 CFR 404.985(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802 Social Security—Disability Insurance; 13.803 Social Security—Retirement Insurance; 13.805 Social Security—Survivor's Insurance; 13.806—Special Benefits for Disabled Coal Miners; 13.807—Supplemental Security Income)

Dated: August 30, 1990.

Gwendolyn S. King,

Commissioner of Social Security.

Acquiescence Ruling 90-7(9)

Ruff v. *Sullivan*, Dkt. No. 89-35402 (9th Cir. 1990)—Assessment of Residual Functional Capacity in Disabled Widows'[1] Cases—Title II of the Social Security Act

Issue

Whether, in determining if a widow is capable of performing any gainful activity for purposes of entitlement to widows' insurance benefits based on disability, the Secretary must consider the widow's residual functional capacity.

Statute/Regulation/Ruling Citation

Section 223(d)(2)(B) of the Social Security Act (42 U.S.C. 423(d)(2)(B)), 20 CFR 404.1511(b), 404.1520, 404.1525, 404.1526, 404.1545, 404.1546, 404.1572(b), 404.1577, 404.1578.

Circuit

Ninth (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon, Washington)

Ruff v. *Sullivan*, Dkt. No. 89-35402 (9th Cir. 1990)

Applicability of Ruling

This Ruling applies to determinations or decisions at all administrative levels (i.e., initial, reconsideration, Administrative Law Judge hearing and Appeals Council).

[1] This ruling also applies to widowers and surviving divorced spouses who apply for benefits based on disability.

Description of Case

The plaintiff, Mrs. Ruff, began receiving disability insurance benefits in November 1979, after the Secretary concluded that she was unable to do past relevant work as a sorter and trimmer in the fruit packing industry due to severe degenerative arthritis of the spine. On September 15, 1986, she applied for surviving spouse's benefits based on disability.

The plaintiff's application was denied initially and upon reconsideration. She then requested an administrative hearing. The Administrative Law Judge (ALJ) determined that the plaintiff's physical condition was not expressly described in the Listing of Impairments and that it was not medically equivalent to any listed impairment. The Appeals Council upheld the ALJ's decision. The district court affirmed the Secretary's decision to deny surviving spouse's benefits. The plaintiff filed an appeal to the United States Court of Appeals for the Ninth Circuit.

Holding

The Ninth Circuit held "that residual functional capacity must be considered in determining whether a disabling physical or mental condition is medically equivalent of a listed impairment." In reaching this conclusion, the court stated that it was persuaded, by the reasoning of the First Circuit in *Cassas* v. *Secretary of HHS*, 893 F.2d 454 (1st Cir. 1990) and the Second Circuit in *Kier* v. *Sullivan*, 888 F.2d 244 (2d Cir. 1989), "that residual functional capacity must be considered in determining entitlement to a surviving spouse's benefits under section 402 (e) and (f)." The court also indicated its agreement with the Second Circuit's conclusion that "[i]f a claimant's residual functional capacity leaves her unable to perform any gainful activity, her impairments, even if unlisted, must be at the level of severity of an impairment included in the Secretary's Listing."

Statement as to How Ruff Differs From SSA Policy

In determining disability for widows, SSA does not use the sequential evaluation process set forth in 20 CFR 404.1520 to determine whether the claimant retains the residual functional capacity to engage in gainful activity. Rather, under SSA policy and regulations, neither the sequential evaluation process nor consideration of residual functional capacity forms a part of the evaluation of a claim for widow's benefits based on disability.

The procedure used for determining disability for widows is contained in 20 CFR 404.1577 and 404.1578. These regulatory sections indicate that only the claimant's physical and mental impairment(s) are considered. Section 404.1578 states:

(a) We will find that you are disabled and pay you widow's or widower's benefits as a widow, widower, or surviving divorced spouse if—

(1) Your impairment(s) has specific clinical findings that are the same as those for any impairment in the Listing of Impairments in appendix 1 or are medically equivalent to those for any impairment shown there;

(2) Your impairment(s) meets the duration requirement.

(b) However, even if you meet the requirements in paragraphs (a) (1) and (2) of this section, we will not find you disabled if you are doing substantial gainful activity.

As noted above, the Court of Appeals for the Ninth Circuit held in *Ruff* that, in adjudicating a claim for widow's benefits based on disability, the Secretary must consider the claimant's residual functional capacity in determining whether she is capable of performing any gainful activity.

Explanation of How SSA Will Apply This Decision Within the Circuit

This Ruling applies only to cases involving claimants seeking widows' or widowers' benefits based on disability who reside in Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon, or Washington at the time of the determination or decision at any administrative level, i.e., initial, reconsideration, Administrative Law Judge hearing or Appeals Council.

As required by the court in *Ruff*, in cases where an adjudicator determines that a widow's impairment(s) does not meet the requirements of, or is not equal in medical severity to, an impairment found in the listing of Impairments, appendix 1, subpart P, Social Security Administration Regulations part 404, the adjudicator will determine whether the claimant's residual functional capacity prevents her from engaging in any gainful activity.

Although the court required the Secretary to assess a widow's residual functional capacity, it did not specify the procedure by which a benefit entitlement determination could be made. The court found objectionable SSA's sole reliance on the medical aspects of the listings, without regard to resulting functional limitations, as the comparison point for determining equivalency, because the listings do not comprise the entire universe of medical conditions but only establish the level of severity deemed sufficient to preclude a claimant from engaging in any gainful activity.

The court of appeals in *Ruff* recognized that the Secretary is authorized under the Social Security Act to promulgate listings which establish the level of severity deemed sufficient to preclude any gainful activity. Thus, the listings are the standard against which determinations of inability to perform gainful work are made. For purposes of following the *Ruff* decision, any widow with an impairment(s) that causes disabling functional consequencs comparable to those caused by a listed impairment will be found disabled.

The widow's impairment(s) first is to be compared to the regulatory standard. In contrast to the procedures that were at issue in *Ruff*, if the widow's impairment(s) is not of comparable medical severity to a listed impairment, the adjudicator must go beyond the medical evaluation and must compair the *functional* consequences of the widow's impairment(s)—not the medical findings associated with the impairment(s)—with the disabling functional consequences of the impairments in the listings. The adjudicator shall consider all relevant evidence, including the functional effects of the widow's physical and mental symptoms and any side effect of medication on her functioning. If function is affected in a manner set forth in, or comparable to, any listed impairment, even if the listed impairment is not medically related to any of the impairment(s) the widow has, she shall be deemed unable to do any gainful activity. For example, if a widow has a combination of physical impairments which would result in the same disabling functional limitations as are specified in the mental listing as being sufficient to preclude any gainful activity, such physical impairments will be considered disabling even if no mental impairment is present.

Finally, although we believe that the approach outlined above is sufficient to encompass all functional limitations that preclude any gainful activity, in order to fully comply with *Ruff*, under this ruling, any widow who can demonstrate that she has a disabling functional limitation not covered by the listings may still show that her residual functional capacity precludes any gainful activity without use of the listings. A widow making such a showing shall be deemed to have an impairment(s) of disabling severity.

SSA intends to clarify the regulations at issue in this case through the rulemaking process. SSA will continue to apply this Ruling until such clarification is made. At that time, pursuant to 20 CFR 404.985(e)(4), SSA may rescind this Ruling.

[FR Doc. 90–22062 Filed 9–17–90; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Preliminary Notice of Adverse Impact on Shenandoah National Park

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of preliminary determination under section 165(d)(2)(C)(ii) of the Clean Air Act.

SUMMARY: This notice announces the preliminary determination by the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, as the Federal Land Manager of Shenandoah National Park (NP) that, in accordance with the Prevention of Significant Deterioration (PSD) air quality requirements of the Clean Air Act, the air pollution emissions from a proposed major emitting facility (Multitrade Limited) in the vicinity of the park will contribute to the exacerbate adverse impacts on the air quality related values of this PSD class I area. This notice also announces the Federal Land Manager's intent to examine the individual and cumulative impacts on park resources of the other proposed electric generating facilities in the vicinity of Shenandoah NP. At this time, the Federal Land Manager is recommending that the Virginia Department of Air Pollution Control not issue a permit to Multitrade Limited unless measures are taken to ensure that this proposed source would not contribute to adverse impacts on park resources. In addition, the Federal Land Manager is considering making this same recommendation with regard to the other pending sources. By this notice, the Department of the Interior invites public discussion of these decisions during a 30-day comment period, after which time the Federal Land Manager will make a final determination on the basis of the best available information. The intent of this notice is to solicit comments on the preliminary determination and to alert interested parties to the availability of supporting documentation.

DATE: Comments must be received on or before October 18, 1990.

ADDRESSES:

Comments

Comments should be submitted (in duplicate, if possible) to: Chief, Policy, Planning, and Permit Review Branch, National Park Service-Air, P.O. Box 25287, Denver, Colorado 80225.

Supporting Documentation

Copies of the technical support document entitled, "Technical Support Document Regarding Adverse Impact Determination for Shenandoah National Park", including references, are available for public inspection and copying between the hours of 8 a.m. and 4 p.m., Monday through Friday, at the following locations: National Park Service, Main Interior Building, room 3229, 18th and C Streets, NW., Washington, DC; Air Quality Division, 12795 West Alameda Parkway, Lakewood, Colorado, Room 215; and Shenandoah National Park Headquarters, Luray, Virginia. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT:

Christine L. Shaver, Policy, Planning, and Permit Review Branch, National Park Service-Air, P.O. Box 25287, Denver, Colorado 80225, telephone number (303) 969–2071.

SUPPLEMENTARY INFORMATION:

Background

Purposes and Values of Shenandoah National Park

Shenandoah NP, established in 1926, consists of 195,382 acres that lie along the crest of the Blue Ridge Mountains in northern Virginia. As a unit of the National Park System, Shenandoah NP is managed consistent with the general mandates of the Organic Act of 1916 which states that the National Park Servcie (NPS) shall:

> Promote and regulate the use of * * * national parks * * * by such means and measures as conform to the fundamental purpose of the said parks, * * * which purpose is to conserve the scenery and the natural and historic objects and wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations. 16 U.S.C. 1.

The 1978 amendments to the Organic Act further clarify the importance Congress placed on protection of park resources, as follows:

> The authorization of activities shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by the Congress, 16 U.S.C. 1a–1.

In addition to the mandates of the Organic Act, the protection of Shenandoah NP is guided by the Wilderness Act of 1964 with respect to over 80,000 acres of the park designated as wilderness, the largest concentration of such land in the eastern United States. The Wilderness Act defines wilderness as:

> An area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain * * * an area of undeveloped Federal Land retaining its primeval character and influence * * * which is protected and managed so as to preserve its natural conditions. 16 U.S.C. 1131(c).

The Wilderness Act also states that wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use.

In addition to the general mandates of the NPS Organic Act and Wilderness Act, the legislative history specific to Shenandoah NP indicates that Congress intended the park to be a natural place, existing as an example of the Southern Appalachian portion of primitive America. It also intended for the park's natural, scenic, and historic resources to be used and enjoyed, without degradation, by great numbers of vistors each year. In underscoring this latter point, Congress appropriated funds in 1931 to begin construction of Shenandoah NP's most famous visitor facility, the Skyline Drive, which provides spectacular views of the Shenandoah Valley and the Piedmont.

In furtherance of the foregoing park purposes, resource management objectives for Shenandoah NP include the following: (1) Vistas from the Skyline Drive, developed areas, and trails will provide clear views of natural and cultural environments; and (2) native, rare, endangered, and relict species, habitats, and communities will be protected and perpetuated.

Clean Air Act Requirements

In 1970, Congress passed the Clean Air Act (the Act), establishing national policy toward protecting and enhancing air quality. In 1977, Congress enacted the Clean Air Act Amendments that designate all national parks, established as of August 7, 1977, that exceeded 6,000 acres in size, as mandatory class I areas to receive the greatest degree of air quality protection. There are 48 national parks, including Shenandoah, designated as class I. The Clean Air Act Amendments also contain a section that specifically requires visibility protection for mandatory Federal class I areas. Section 169A sets, as a national goal, the prevention of any future, and remedying of any existing, manmade visibility impairment in mandatory class I areas. The Act requires that reasonable progress be made toward this national goal.

Under the Prevention of Significant Deterioration (PSD) program of the Act, major sources of air polluton that propose to build new or significantly modify existing facilities in relatively unpolluted areas of the country ("clean air regions"), are subject to certain requirements generally designed to minimize air quality deterioration. Where emissions from new or modified facilities might affect class I areas, like Shenandoah NP, set aside by Congress for their pristine air quality or other natural, scenic, recreational, or historic values potentially vulnerable to air pollution, the Act imposes special requirements to ensure that the pollution will not adversely affect such values. In addition, the Act gives the Federal Land Manager and the Federal official charged with direct responsibility for management of class I areas an affirmative responsibility to protect air quality related values, and to consider in consultation with the permitting authority whether a proposed major emitting facility will have an adverse impact on such values.

The Clean Air Act establishes several tests for judging a proposed facility's impact on the clean air regions in general, and on the class I areas in particular. One such test is the "class I increment" test. The class I increments represent the extremely small amount of additional pollution that Congress thought, as a general rule, should be allowed in class I areas.

Congress realized, however, that in certain instances sensitive air quality related resources could be adversely affected at air pollution levels below the class I increments. Therefore, the Act establishes the "adverse impact" test, which requires a determination of whether proposed emissions will have an "adverse impact" on the air quality related values, including visibility, of the class I area. If the Federal Land Manager demonstrates to the satisfaction of the permitting authority that proposed emissions will adversely affect the air quality related values of the class I area, even though they will not cause or contribute to concentrations which exceed the class I increments, then the permitting authority may not authorize the proposed project. Thus, the adverse impact test is critical for proposed

facilities with the potential to affect a class I area.

Adverse Impact Considerations

The legislative history of the Clean Air Act provides direction to the Federal Land Manager on how to comply with the affirmative responsibility to protect air quality related values in class I areas:

> The Federal land manager holds a powerful tool. He is required to protect Federal lands from deterioration of an established value, even when class I numbers are not exceeded. * * * While the general scope of the Federal Government's activities in preventing significant deterioration has been carefully limited, the Federal land manager should assume an aggressive role in protecting the air quality values of land areas under this jurisdiction. * * * In cases of doubt the land manager should err on the side of protecting the air quality-related values for future generations. Sen. Report No. 95–127, 95th Cong., 1st Sess. (1977).

The Assistant Secretary for Fish and Wildlife and Parks, as Federal Land Manager for class I areas managed by the National Park Service and U.S. Fish and Wildlife Service, has stated that air pollution effects on resources in class I areas constitute an unacceptable adverse impact if such effects:

1. Diminish the national significance of the area; and/or
2. Impair the quality of the visitor experience; and/or
3. Impair the structure and functioning of ecosystems. (*See, e.g.*, 47 FR 30223, July 12, 1982).

Factors that are considered in the determination of whether an effect is unacceptable, and therefore adverse, include the projected frequency, magnitude, duration, location, and reversibility of the impact. In addition, the Federal visibility protection regulations, 40 CFR 51.300, *et seq.*, 52.27, define "adverse impact on visibility" as:

> * * * visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the Federal class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with: (1) Times of visitor use of the Federal class I area, and (2) the frequency and timing of natural conditions that reduce visibility. Id. 51.301(a).

Summary of Proposed Action

The action which is the subject of this notice concerns the Federal Land Manager's preliminary determination that the increase in emissions resulting from Multitrade Limited and other proposed PSD facilities in the Commonwealth of Virginia will, together with current and permitted emissions, have an unacceptable, adverse impact on visibility and other air quality related values in Shenandoah NP. Therefore, the Federal Land Manager would recommend that the Virginia Department of Air Pollution Control not issue a permit for this proposed facility unless measures are taken to ensure that the proposed source would not contribute to adverse impacts on park resources.

Prevention of Significant Deterioration New Source Applications

Fifteen permit applications for the construction and operation of electric generating facilities in the Commonwealth of Virginia have been submitted recently, and more are expected. The Virginia Department of Air Pollution Control has granted construction permits for four of these facilities, while the other projects are at various stages in the permit review process. These proposed and permitted facilities are primarily significant emitters of sulfur dioxide (SO_2), nitrogen oxides (NO_x), and volatile organic compounds (VOC). These projects, their estimated emissions, and their current status are listed in Table 1.

Because many of the listed projects are still under review, the actual emissions allowed in the final permit for any one facility may be lower than those in the permit application. However, since additional facilities will be seeking permits in the near future, the figures used here for total amounts of the various types of air pollutants are conservative and reasonable for the purposes of this analysis.

The Commonwealth's comment period on one of the listed facilities, Multitrade Limited, has just ended. The Department of the Interior has notified the Commonwealth of its preliminary determination that emissions from Multitrade Limited will contribute to the adverse impacts on resources at Shenandoah NP. The comment periods on certain additional sources will end soon.

Table 1 shows that emissions in the vicinity of Shenandoah NP would increase significantly if the pending permit applications are approved by the Commonwealth of Virginia. Moreover, the Environmental Protection Agency (EPA) projects future growth in sulfur dioxide and nitrogen oxides in the Commonwealth of Virginia regardless of whether acid deposition legislation is enacted by Congress. (ICF, 1990).

Potential Impacts of Proposed New Air Pollution Sources

In order to assess the potential impacts of these proposed emissions, the Federal Land Manager first performed a comprehensive assessment of the current air quality conditions at Shenandoah NP. As summarized below and discussed in detail in the Technical Support Document, this assessment shows that the air quality related values at Shenandoah NP are currently being adversely affected by air pollution.

TABLE 1.—RECENTLY PROPOSED/PERMITTED ELECTRIC GENERATING STATIONS IN VIRGINIA

Source name	Distance/direction from Shenandoah NP(km)	SO_2 emissions (TPY)*	NO_x emissions (TPY)*	VOC emissions (TPY)*	Project status
Hadson Power (Altavista)	103 S	599	961	97	Permitted.
Hadson Power (Hopewell)	155 SE	519	956	97	Under review.
Hadson Power (Southampton)	200 SE	799	1,602	97	Permitted.
Hadson Power (Buena Vista)	62 SW	358	957	97	Under review.
Virginia Turbo Power (Orange County)	35 E	841	1,130	27	Under review.
Doswell Limited	110 SE	2,600	2,389	231	Permitted.
Old Dominion Electric	115 SE	4,479	10,764	360	Under review.
Mecklenburg Cogen	135 SE	1,990	4,560	50	Permitted.
Multitrade Limited	110 SW	937	850	344	Under review.
Cogentrix Inc. (Dinwiddie)	150 SE	2,102	3,942	39	Under review.
VA Power (Gravel Neck)	190 SE	1,200	1,204	20	Under review.
Cogentrix Inc. (Richmond)	110 SE	1,708	3,942	39	Under review.
Bear Island	130 SE	575	155	0	Under review.
Bermuda Hundred Energy	150 SE	387	612	110	Under review.
Commonwealth Cogen	120 SW	995	2,280	25	Under review.

TABLE 1.—RECENTLY PROPOSED/PERMITTED ELECTRIC GENERATING STATIONS IN VIRGINIA—Continued

Source name	Distance/direction from Shenandoah NP(km)	SO_2 emissions (TPY)*	NO_x emissions (TPY)*	VOC emissions (TPY)*	Project status
Total		20,089	36,304	1,633	

*Tons per year.

Visibility Is Currently Seriously Degraded at Shenandoah NP

Through a 1979 **Federal Register** process, the Department of the Interior found, and the Environmental Protection Agency (EPA) agreed, that visibility is an important value in Shenandoah NP. See 44 FR 69122 (November 30, 1979). In a November 14, 1985, letter, the Department of the Interior informed the EPA that, with respect to uniform haze, the NPS visibility monitoring program has shown that scenic views at Shenandoah NP (and other class I areas) are impaired by anthropogenic pollution more than 90 percent of the time.

The Department of the Interior's finding of significant existing visibility impairment at Shenandoah NP is substantially supported by studies of historic and current visibility conditions. Under natural conditions, without the influence of air pollution, the State-of-Science/Technology report published by the National Acid Precipitation and Assessment Program (NAPAP), *Visibility: Existing and Historical Conditions—Causes and Effects,* states that visual range in the eastern United States is estimated to be 150 km (+/− 45 km). (Trijonis, *et al.,* 1990). Visibility is strongly affected by light scattering and absorption by fine particulate matter (<2.5 microns in diameter). The NAPAP report estimates that under natural conditions, fine particulate matter concentrations in the eastern U.S. would be about 3.3 micrograms per cubic meter ($\mu g/m^3$). As explained further below, among the constituents of the fine particulate matter, fine sulfate particles (which result from the atmospheric conversion of gaseous sulfur dioxide emissions) are currently responsible for most of the visibility impairment throughout the East. Natural levels of sulfate have been estimated to be about 0.2 $\mu g/m^3$.

Studies examining historic visibility trends in the East show that annual average visibility in the southeastern United States declined 60 percent between 1948 and 1983, with an 80 percent decrease in summer months and a 40 percent decrease in winter months. Visual range in rural areas of the East currently averages 20–35 km, substantially lower than the estimated 150 km natural condition. Many of the constituents of the haze that degrades visibility are not emitted directly but are formed by chemical reactions in the atmosphere. Gaseous "precursor" emissions from a source are converted through very complex reactions into "secondary" aerosols. Sulfur oxides convert into sulfuric acid and ammonium sulfate, nitrogen oxides convert to nitric acid and ammonium nitrate, and hydrocarbons become organic aerosols (Malm *et al.,* 1989). Haziness over the eastern U.S. since the late 1940's has been dominated by sulfur. Declining visibility is well correlated with increasing emissions of sulfur dioxide. (Husar, 1989).

The National Park Service of the Department of the Interior has been monitoring visibility at Shenandoah NP since 1980. The analysis of fine particle data collected at Shenandoah NP in 1988 and 1989 indicate that monthly average fine particle concentrations have ranged from 19.5–28.9 $\mu g/m^3$ during the summer (*i.e.,* June–September), or six to nine times higher than the estimated annual average natuaral background concentration. The summer average of fine particle mass concentrations measured at Shenandoah NP during the period June 1982 to May 1986 was 16 $\mu g/m^3$, whereas the average for the entire sampling period was 10 $\mu g/m^3$. Thus, from 1982 to 1986 summer and annual average fine particle mass concentrations were 5 and 3 times, respectively, the estimated natural background.

Recent analyses of data collected at Shenandoah NP have shown that sulfates are responsible for 70–85 percent of the visibility impairment (Malm, *et al,* 1987; Trijonis, *et al.,* 1990). The summer average sulfate concentration between 1982 and 1984 ranged from 8.5–10.2 $\mu g/m^3$, a forty to fifty-fold increase from natural background. Similarly, the annual average sulfate concentration of 5.8 $\mu g/m^3$ during the 1982–1986 time period has constitutes an almost thirty-fold increase from natural background. The most recent data available show a summer 1989 average sulfate of 11.2 $\mu g/m^3$ and a 12-month average (Dec. 1988–Nov 1989) of 6.4$\mu g/m^3$.

On the average, organics are responsible for most of the remaining visibility impairment. (Malm, *et al.,* 1987). Nitrate aerosols (resulting from atmospheric conversion of nitrogen oxide emissions) are generally responsible for only one percent of the visibility impairment and average less than 2 $\mu g/m^3$. However, at times, nitrates comprise 10–20 percent of the fine mass and could significantly affect visibility during some episodes. Based on the above information, one can reasonably conclude that the existing poor visibility conditions at Shenandoah NP are likely a result of the dramatic increases in sulfate concentrations, primarily the result of increases in man-made sulfur oxide emissions in the region.

From the data collected at Shenandoah NP using both teleradiometer (1980–1987) and transmissometer (1989–Present), one can describe the effect of the increased fine particulate and sulfate concentration on visibility at Shenandoah NP. Median visual range at Shenandoah NP ranges from 10–113 km, with an annual geometric mean (1987) of 65 km. In other words, the "average" visibility day at Shenandoah NP has experienced a degradation through time to one-tenth to three-forths of estimated natural conditions, averaging approximately 40% of natural conditions on an annual basis. This degradation is likely attributable to increases in man-made sulfur oxide emissions. Visibility conditions at the park show a strong seasonal pattern, with the worst visibility occurring during the summer when visitation at Shenandoah NP is highest. During summer months the avarage visibility ranges from 10–36 km, or less than one-quarter the estimated natural visual range.

The chronic visibility impairment at Shenandoah NP typically manifests itself as a uniform haze. Such impairment is a homogeneous haze that reduces visibility in every direction from an observer. It appears as though the observer were peering through a grey or white transparent curtain placed in front of the scene. Colors appear washed out and less vivid, and geologic features

become less discernible or may disappear.

Estimated Impact of New Air Pollution Sources on Visibility

As noted in the Introduction, the Federal visibility protection regulations, 40 CFR 51.301(a), 52.27(b), define "adverse impact on visibility" as visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the Federal class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with: (1) Times of visitor use of the Federal class I area, and (2) the frequency and timing of natural conditions that reduce visibility. Based on this general definition and the data summarized above, manmade pollution clearly causes adverse impacts on visibility at Shenandoah NP. Although the extent of the problem varies in magnitude, visibility at Shenandoah NP is substantially impaired most of the time.

In a recent study conducted by the National Park Service and the EPA, over 1,800 citizens across the country responded to a questionnaire in which they were asked to rate the importance of visibility in national parks. Between 70 and 80 percent of the respondents stated that they were concerned about decreasing visibility; and 70 percent said that they were willing to pay a significant amount to prevent further degradation. Based on visitor surveys, poor visibility is the single most frequent complaint made by visitors to Shanandoah NP.

Given the specific distances of the proposed air pollution sources from Shanandoah NP, it is unlikely that the proposed emissions would be visible in the park as distinct, coherent plumes. These sources are likely, however, to contribute to uniform haze, the more pervasive visibility problem in Shenandoah NP. In fact, NPS research has shown that both local (*e.g.*, within 200 km) and long-distant sources contribute to such visibility impairment at Shenandoah NP (Gebhart and Malm, 1989). In addition to Virginia, source areas in the states of Ohio, Kentucky, West Virginia, Indiana, Michigan, and Illinois were estimated to contribute to the park's haze under some conditions.

Given the existing impacts on the visibility at Shenandoah NP, any significant increase in emissions which contributes to visibility impairment at Shenandoah NP would adversely affect this class I resource. In addition, the cumulative impact of the emissions from the fifteen sources listed in Table 1 will cause a further perceptible degradation in visibility from existing conditions. More specifically, based on research on human perception of visual air quality, the NPS believes that a five percent change in extinction (or standard visual range) constitutes a lower-bound threshold which should be noticeable by a sensitive observer. A fifteen percent change in extinction represents an upper-bound threshold, i.e., the change would be noticeable to a casual observer. (Pitchford, *et al.*, 1990; EPA, 1979; Trijonis, *et al.*, 1990).

As indicated above, sulfur dioxide and nitrogen oxide emissions in the vicinity of Shenandoah NP will increase significantly if the proposed new sources listed in Table 1 are constructed and operated. On a Statewide basis, the SO_2 and NO_x emission levels would increase by 7 and 22%, respectively, and the percentage increase in emissions in the vicinity of Shenandoah NP would be even greater. Based on emissions totals provided by the Virginia Department of Air Pollution Control, the proposed increases would represent a 37% and 113% increase in SO_2 and NO_x emissions, respectively, for all point sources located within approximately 100 km of the park boundary. The Federal Land Manager believes it is reasonable to assume that the relationship between sulfur dioxide emissions and sulfate levels is linear (i.e., 1:1). In fact, models used by EPA in past visibility studies have assumed such linearity (*see, e.g.*, EPA (1985)). Even if the relationship were not entirely linear, the percentage increase in areawide sulfur dioxide and nitrogen oxide emissions can reasonably be assumed to perceptibly further degrade visibility at Shenandoah NP and would severely hinder any future efforts in making reasonable progress towards the elimination of this existing impairment.

In sum with respect to visibility, the Federal Land Manager believes that the cumulative increase in emissions from the proposed sources will contribute to existing adverse impacts on visibility at Shenandoah NP, and is likely to cause additional perceptible visibility degradation from current conditions at the park. The Federal Land Manager further believes that the significant sulfur and nitrogen oxide emission increases proposed for each listed source individually would contribute to existing adverse visibility impacts at the park. For both these reasons, allowing such significant increase in visibility-impairing pollutants would frustrate—rather than promote—achievement of the national visibility goal and the need to make reasonable progress toward that goal.

The EPA estimates that by the year 2010, sulfur dioxide emissions in the Commonwealth of Virginia will more than double. If pending amendments to the Clean Air Act are enacted, EPA estimates that sulfur dioxide emissions in the eastern United States will be reduced by almost 50 percent; however, EPA also estimates that, despite the overall reduction in the East, the emissions within the Commonwealth of Virginia will increase, particularly between now and 2005 (ICF, 1990). Thus, additional efforts are needed to limit projected and proposed increases in atmospheric loadings of emissions likely to contribute to visibility degradation at Shenandoah NP, where visibility is such as important value.

Sensitive Streams and Watersheds Are Being Acidified

The same sulfates and nitrates that are responsible for visibility impairment also contribute to acidic deposition. Over a decade of scientific research clearly shows that serious impacts are occurring on aquatic ecosystems in Shenandoah NP. Deep Run is one of several streams in the park which has been intensively monitored since 1980, and in which chronic acidification has been documented. The Shenandoah NP research indicates a poor prognosis for aquatic ecosystems in large areas of the park due to a combination of watershed sensitivity and elevated acidic deposition. Even assuming no change in the present-day level of acidic deposition, large changes in both the chemical and biological composition of Shenandoah NP streams are expected.

Ozone and Sulfur Dioxide Levels Are High Enough To Cause Injury to Park Vegetation

The Federal Land Manager is also concerned with existing ozone effects on sensitive park resources. Anthropogenic ozone (O_3) is formed in the atmosphere as a result of chemical reactions of precursor compounds such as nitrogen dioxide and volatile organic compounds. Since 1983, the National Park Service has monitored ambient O_3 levels at three different locations in Shenandoah NP. During 1988, an exceptionally bad year for O_3 in the eastern United States, all three stations recorded exceedance of the ozone National Ambient Air Quality Standard. It has been found that foliar injury and significant growth and yield reductions in sensitive species results from ozone concentrations below the national standard. Studies conducted at Shenandoah NP show that

foliar injury to sensitive species exists at the park.

Sulfur loadings currently occurring at Shenandoah NP (2600 ppm) are well above background levels (1000 ppm) and in a range known to cause morphological changes in some species of lichens. Ambient SO_2 levels being recorded at the Dickey Ridge monitoring station in Shenandoah NP (13–21 $\mu g/m^3$ annual average) are within the range known to have contributed to the absence of the lichen species *Ramalina americana* in Canada. A literature search conducted by NPS biologists found that of the 1136 vascular plants species known to exist in Shenandoah NP, ozone sensitivity studies had been done on 79 species and sulfur dioxide sensitivity studies had been done on 96 species. Twenty-three vascular plant species were shown to be ozone sensitive, and 21 were shown to be sulfur dioxide sensitive.

Impacts of Proposed Emission Increase on AQRVs

The Federal Land Manager believes that, because of the significant and widespread existing air pollution effects occurring within Shenandoah NP, any significant increases in SO_2, NO_x, or VOC emissions could potentially cause or contribute to adverse impacts. Indeed, the proposed substantial increase in SO_2 and NO_x emissions associated with the pending permit applications is highly likely to: (1) Exacerbate existing adverse visibility conditions at Shenandoah NP and cause a perceptible further degradation in park visibility; (2) hasten the acidification of sensitive streams within the park with resulting effects on aquatic life; and (3) threaten sensitive park vegetation. The proposed increases in VOC and NO_x emissions will contribute to already high ozone levels, at times already higher than the national standard, and impacts on ozone sensitive vegetation.

Proposed Finding and Recommendation

Based on the above information, the Federal Land Manager preliminarily finds that existing air pollution effects interfere with the management, protection, and preservation of park resources and values, and diminish visitor enjoyment, and, therefore, are adverse. The Federal Land Manager also preliminarily finds that the effects of the additional SO_2, NO_x, and VOC emissions associated with the electric generating station proposed for the area by Multitrade Limited would contribute to and exacerbate the existing adverse effects and is, therefore, unacceptable.

Based on these findings and the Department's legal responsibilities and management objectives for Shenandoah NP, the Federal Land Manager would recommend that the Virginia Department of Air Pollution Control not permit additional major air pollution sources with the potential to affect Shenandoah NP's resources (*e.g.*, Multitrade Limited) unless the State can ensure that such sources would not contribute adverse impacts. The Federal Land Manager would further suggest that the State develop a Statewide emissions control strategy to protect the air quality related values of Shenandoah NP. This strategy might include: (1) An offset program requiring a greater than one-for-one emission reduction elsewhere in the State to offset proposed emission increases associated with major new or modified sources; and (2) a provision setting a timeframe for determining maximum allowable levels of air pollutants in the State (*e.g.*, Statewide emission caps). The Federal Land Manager would further suggest that the Statewide emissions control strategy reflect a level of allowable pollution that will provide long term protection for critical natural resources throughout the Commonwealth of Virginia.

Public Comments

Interested parties are invited to comment on this preliminary determination. Comments should specifically address the following issues: (1) Whether the existing air quality effects at Shenandoah NP are adverse; and (2) given the Congressional mandates related to Shenandoah NP and the Federal Land Manager's responsibilities, whether it is reasonable to conclude that the proposed increases in emissions—as well as any further increases in emissions in the area without offsetting decreases—would contribute to adverse impacts on park resources. Finally, the Federal Land Manager would welcome comments and recommendations as to possible emission control strategies that would address the air quality concerns at Shenandoah NP. Comments on other permitting aspects of the proposed sources should be directed to the State when the State announces a public comment period on the approvability of these projects.

Dated: September 12, 1990.

Scott Sewell,

Deputy Assistant Secretary for Fish and Wildlife and Parks, and Federal Land Manager for Areas under the Jurisdiction of the National Park Service.

[FR Doc. 90–21903 Filed 9–17–90; 8:45 am]

BILLING CODE 4310–01–M

Availability of the 1990 State/Federal Natural Resource Damage Assessment and Restoration Plan for the Exxon Valdez Oil Spill

AGENCY: Department of the Interior.

ACTION: The 1990 State/Federal Natural Resource Damage Assessment and Restoration Plan for the *Exxon Valdez* Oil Spill; availability and establishment of comment period to November 1, 1990.

SUMMARY: This Notice announces the availability of the 1990 State/Federal Natural Resource Damage Assessment and Restoration Plan and establishes a comment period through November 1, 1990. This joint State/Federal plan has been prepared by the Trustee Council and will be made available to the public on September 15, 1990.

DATES: All comments concerning the plan must be written and submitted to the following address by November 1, 1990: Trustee Council, P.O. Box 20792, Juneau, Alaska 99802.

ADDRESSES: A copy of the 1990 assessment and restoration plan may be obtained by contacting the Trustee Council at one of the following addresses: Trustee Council, c/o U.S. Forest Service Public Affairs (telephone (907) 586–8806), P.O. Box 20792, Juneau, Alaska 99802 or Trustee Council, c/o Deputy Director, U.S. Fish and Wildlife Service, Room 3340, 1849 C Street, NW., Washington, DC 20240 (telephone (202) 208–6286).

FOR FURTHER INFORMATION CONTACT: U.S. Forest Service Public Affairs Office (907) 586–8806.

SUPPLEMENTARY INFORMATION: The March 24, 1989 grounding of the tanker *Exxon Valdez* resulted in the discharge of approximately 11 million gallons of North Slope crude oil into Alaska's Prince William Sound. The oil moved through the southwestern portion of the Sound and along the coast of the western Gulf of Alaska, affecting natural resources.

The natural resources Trustees (the State of Alaska, U.S. Departments of Agriculture and the Interior and the National Oceanic and Atmospheric Administration) instituted a natural resource damage assessment process to estimate the damages for injury, loss or destruction of trustee resources as a result of the tanker accident, as authorized under section 311 of the Clean Water Act (CWA) and section 107 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). To accomplish this task, the Trustees established a Trustee Council, based in Alaska, to manage the

assessment process. The Environmental Protection Agency (EPA) is an advisor to the Trustees and Trustee Council and has been designated by the President to coordinate the overall long-term restoration of the affected area on behalf of the Federal Trustees. The Trustees, through the Trustee Council, prepared a Draft Natural Resource Damage Assessment Plan and Restoration Strategy and made the plan available for public review on August 18, 1989, with a comment period through September 30, 1989 (54 FR 33618, August 15, 1989). That comment period was extended to October 30, 1989 (54 FR 39586, September 27, 1989). In addition, an opportunity was given for reviewers to elaborate upon their written comments in an oral presentation in Anchorage, Alaska or Washington, DC (54 FR 47413, November 14, 1989).

The Trustees have reviewed the comments concerning the Draft plan and the results from the 1989 field season and, through the Trustee Council, have prepared the 1990 State/Federal Natural Resource Damage Assessment and Restoration Plan for the *Exxon Valdez* Oil Spill. The studies in the 1990 plan build upon the 1989 damage assessment studies. These studies are designed to identify the nature and extent of the injury to, loss of, or destruction of natural resources and will lead to a determination of damages as compensation for that injury, loss or destruction. The plan also includes several restoration feasibility projects.

The natural resource damage assessment process considers (1) the nature of the resources at risk, (2) the nature of the oil in the aquatic environment, (3) the exposure of the resources to the oil, and (4) oil-related harm to resources. These data provide a base for development of a restoration plan. All damages received, excluding reasonable costs related to the assessment, must be used to restore, replace or acquire the equivalent of the affected resources.

The 1990 studies are grouped into ten categories: (1) Coastal Habitat, (2) Air/Water, (3) Fish/Shellfish, (4) Marine Mammals, (5) Terrestrial Mammals, (6) Birds, (7) Technical Services to support the resource studies, (8) Restoration, (9) Historic Properties and Archaeological Resources, and (10) Economic Studies. A synopsis of comments received regarding the 1989 Draft Damage Assessment Plan and responses to those comments are also included.

Written comments concerning the scope, methodologies and cost of the 1990 plan will be accepted by the Trustees at the above address until November 1, 1990.

Martin J. Suuberg,

Deputy Solicitor.

[FR Doc. 90-22165 Filed 9-14-90; 12:14 pm]

BILLING CODE 4310-10-M

Bureau of Land Management

[CO-920-00-4120-11; COC-51751]

Colorado: Invitation for Coal Exploration License Application; Consolidation Coal Co.

Pursuant to the Mineral Leasing Act of February 25, 1920, as amended, and to title 43, Code of Federal Regulations, subpart 3410, members of the public are hereby invited to participate with Consolidation Coal Company, in a program for the exploration of unleased coal deposits owned by the United States of America in the following described lands located in Gunnison County, Colorado:

T. 13 S., R. 89 W., 6th P.M.
Sec. 16, SW¼;
Sec. 17, All;
Sec. 18, Lots 1–4, E½W½, E½;
Sec. 19, Lots 1–4, E½W½, E½;
Sec. 20, All;
Sec. 21, W½;
Sec. 28, W½;
Sec. 29, All;
Sec. 30, Lots 1–4, E½W½, E½;
Sec. 31, Lots 3–6, E½W½, E½;
Sec. 32, All;
Sec. 33, W½.
T. 14 S., R. 89 W., 6th P.M.
Sec. 4, Lots 7, 8, S½NW¼, SW¼;
Sec. 5, Ltos 3–6, S½N½, S½;
Sec. 6, Lots 4–10, S½NE¼, SE¼NW¼, W½SW¼, SE¼.
T. 13 S., R. 90 W., 6th P.M.
Sec. 13, Lots 1–16;
Sec. 14, Lots 1, 2, 7–10, 15, 16;
Sec. 23, Lots 1–16;
Sec. 24, Lots 1–16;
Sec. 25, All;
Sec. 26, Lots 1–16;
Sec. 35, Lots 1–16;
Sec. 36, All.
T. 14 S., R. 90 W., 6th P.M.
Sec. 1, Lots 1–4, S½N½, S½;
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 11, N¼N½;
Sec. 12, N½N½.

The areas described contain approximately 13,836.96 acres, more or less.

The application for coal exploration license is available for public inspection during normal business hours under serial number COC51751 at the BLM Colorado State Office, Public Room, 2850 Youngfield Street, Lakewood, Colorado 80215 and at the BLM Montrose District Office, 2465 So. Townsend Avenue., Montrose, Colorado 81401.

Any party electing to participate in this program must share all costs on a pro rata basis with the applicant and with any other party or parties who elect to participate. Written Notice to Intent to participate should be addressed to the following and shall be made within 30 days after the publication of this Notice of Invitation in the **Federal Register:**

Richard D. Tate, Chief, Mining Law and Solid Minerals Adjudication Section, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street Lakewood, Colorado 80215, and
Randy Stockdale, Resident Manager, Consolidation Coal Company 2 Inverness Drive East, Englewood, Colorado 80112.

Richard D. Tate,

Chief, Mining Law and Solid Minerals Adjudication Section.

[FR Doc. 90-21989 Filed 9-17-90; 8:45 am]

BILLING CODE 4310-JB-M

[Alaska AA-48579-DO]

Proposed Reinstatement of a Terminated Oil and Gas Lease

In accordance with title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48579-DO has been received covering the following lands:

Copper River Meridian, Alaska

T. 8 S., R. 1 W.,
Sec. 9, NW¼SE¼ (40 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from May 1, 1990, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-48579-DO as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective May 1, 1990, subject to the terms and conditions cited above.

Dated: September 6, 1990.

Nell Alloway,

Acting Chief, Branch of Mineral Adjudication.

[FR Doc. 90-21990 Filed 9-17-90; 8:45 am]

BILLING CODE 4310-JA-M

Fish and Wildlife Service

Record of Decision on Eight Year Experimental Program To Control Sea Lamprey in Lake Champlain

AGENCY: Fish and Wildlife Service (FWS), Interior.

ACTION: Notice.

SUMMARY: Pursuant to the Council on Environmental Quality Regulations (40 CFR part 1505) for Implementing Procedural Provisions of the National Environmental Policy Act (NEPA), the Service issues this Record of Decision upon consideration of the Final Environmental Statement for this project. The Service has evaluated and considered the alternatives presented in the FEIS to reduce sea lamprey abundance in Lake Champlain for an eight year period and has reviewed the public comments on the Draft Environmental Impact Statement (DEIS) as well as the FEIS. Based on that evaluation and review, the Service has selected the Proposed Action Alternative described in the FEIS for implementation. This determination was based on a thorough analysis of environmental, social, economic and other essential considerations.

Background

Lake Champlain supported indigenous populations of landlocked and/or sea run Atlantic salmon and lake trout during early settlement and development of the Lake Champlain Valley. Atlantic salmon were abundant in the northern part of the lake and in some of the larger tributaries including the Great Chazy, Little Chazy, Saranac, Salmon, Little Ausable, Ausable, Boquet Rivers in New York and the Winooski, Lamoille, Missisquoi Rivers and Otter Creek in Vermont. Lake trout catch records as far back as 1817 indicate that this species was present in the lake, but these fish were apparently much less abundant than salmon.

Both species were rapidly depleted as development in the area progressed during the 1800's. Excessive harvests of spawning stocks by a variety of highly effective methods made damaging inroads into both species. Salmon suffered additional setbacks as their stream spawning habitats were altered by developmental activities within watersheds. Dam construction along lower reaches of some rivers blocked upstream movement of salmon to previously accessible spawning areas. Native salmon were probably extirpated by about 1850 and native lake trout may have been extinct or nearly so by 1900. Restorative stocking efforts for both species were attempted sporadically during the late 1800's following the development of techniques for propagating trout and salmon. An attempt was also made to introduce Pacific salmon during this period. These plantings failed and further efforts to stock lake trout or salmon in the lake were discontinued until the mid-1900's.

In 1958, New York and Vermont began annually stocking moderate numbers of lake trout. By 1968, several hundred lake trout caught by anglers in the vicinity of Willsboro Point, New York, were traced back to New York stockings made in 1960 and 1961. During the 1960's New York also created a limited Atlantic salmon fishery in the lower reaches of the Boquet and Saranac Rivers. These salmon runs resulted from plantings of Atlantic salmon fingerlings in suitable upstream nursery areas. Upon smoltification, these young salmon migrated downstream to Lake Champlain.

Encouraged by these limited, but successful stocking efforts, New York, Vermont, and the U.S. Fish and Wildlife Service began joint planning efforts for development of salmonid fisheries. This led to the formation of the Lake Champlain Fish and Wildlife Management Cooperative in 1973. The Cooperative is composed of a Policy Committee and a Technical Committee. Under cooperative agreement, the New York Department of Environmental Conservation (DEC), the Vermont Department of Fish and Wildlife (VFW), and the U.S. Fish and Wildlife Service (USFWS) developed a unified approach to protect and manage the fish and wildlife resources of interstate significance in Lake Champlain.

A major goal of the Cooperative's program was to develop and maintain a diverse salmonid fishery to supplement the existing fisheries. Among the potential problems foreseen by the Cooperative which could hamper successful development of the salmonid fishery in Lake Champlain was the presence of the sea lamprey. As the program progressed and larger numbers of salmonids were caught, anglers and the management agencies became increasingly concerned over the occurrence of sea lamprey attacks on these as well as other fishes.

Cognizant of the need for a more aggressive approach to investigating the impact of sea lampreys on salmonid populations and fisheries, a "Lake Champlain Salmonid Assessment Program" was developed and implemented in 1982. The sea lamprey assessment study led to the conclusion that sea lamprey are abundant in Lake Champlain. Significant sea lamprey ammocoete production areas include 15 streams and 5 delta areas. Major ammocoete infestations occur in 8 streams. Seven are in New York including the Great Chazy, Saranac, Salmon, Little Ausable, Ausable and Boquet River deltas. Ammocoete distribution within delta areas covers approximately 850 areas.

The salmonid assessment studies concluded that landlocked Atlantic salmon, steelhead and brown trout are present at relatively low abundance levels. Angling success is moderate, with success for salmon being better than for steelhead or brown trout. Experience with these 3 species has been disappointing, far below agency expectations both for numbers and sizes of fish available to or harvested by anglers. This is viewed with concern given the apparent high productivity of the lake as indicated by superior growth rates for each species.

Lake trout are also heavily attacked by sea lamprey, but survival is sufficient to provide a moderately good fishery.

Lake Champlain populations are characterized by a scarcity of large, old-age fish, a condition that would not be expected given the superior growth rates and relatively light exploitation unless total annual mortality rates were high. The implication is that relatively few fish are surviving to trophy size. Lamprey predation is the most likely explanation since salmonids are a preferred prey.

Sea lamprey attacks also occur on some other Lake Champlain gamefish species and are of particular concern for walleye. Here, attack rates are highest on larger, older fish, a high proportion of which are adult females. This may be of special significance with the Great Chazy River walleye subpopulation which appears to have declined substantially since the 1960's.

The Lake Champlain Salmonid/Sea Lamprey Subcommittee concluded that sea lamprey are having a major impact upon salmon, brown trout and steelhead and a substantial impact on lake trout in Lake Champlain.

The public participation process on this proposal began in 1985. The Notice of Intent to prepare the DEIS was published in the September 6, 1985 **Federal Register**. The Notice of Availability of the DEIS was published in November 1987. The comment period on the DEIS ended December 1, 1989. The Notice of Availability of the FEIS appeared in the August 9, 1990 **Federal Register**. Four scoping meetings and two public meetings on the DEIS were held, divided equally between Vermont and New York.

Permits have been issued for the proposed treatments by the New York Department of Environmental Conservation, the Adirondack Park Agency and the Vermont Agency of Natural Resources.

The Selected Alternative

The selected alternative is the Proposed Action described in the FEIS.

1. Achieve maximum practical short-term reduction of parasitic phase sea lamprey via 2 applications of chemical lampricides to 13 tributaries and 5 delta areas. The first application would include all significant lamprey producing tributary and delta areas. Timing and scope of the second application would be based on post treatment ammocoete recovery surveys but would be planned to occur 4 years after the first treatment, and would likely be as extensive.

2. Continue planting lake trout, landlocked salmon, steelhead and brown trout at present stocking level of about 690,000 yearlings/smolts annually.

3. Construct a temporary sea lamprey barrier dam on Trout Brook if the Commissioner of Vermont's Department of Environmental Conservation determines that this is feasible and its construction can be completed before the first scheduled TFM treatment of Trout Brook in the fall of 1991, or as soon as possible thereafter.

4. Determine economic and infrastructure impacts, changes in the salmonid populations and sportfisheries, and forage fish (smelt) and sea lamprey population changes resulting from the sea lamprey control program. Details of the evaluation program are given in the FEIS. Intensive monitoring would commence during the year of first treatment and end 3 years after the second for a total commitment of about 8 years. A reduced assessment program would be conducted in the interim in order to evaluate ongoing management. Determine lampricide impacts on macroinvertebrates and fish as required by Vermont and New York state agency permits.

5. Upon completion of these studies, formulate a long-term management plan, policy and strategy to mitigate the adverse effects of sea lamprey in Lake Champlain.

Ammocoetes are sufficiently abundant in 78 miles of 13 United States tributaries and 5 delta areas to require treatment. Treatments are required in 9 New York streams including: The Great Chazy, Saranac, Salmon, Little Ausable, Ausable, and Boquet Rivers; Beaver and Putman Creeks; and Mt. Hope Brook. In Vermont, 3 streams including Lewis Creek, Trout Brook and Stone Bridge Brook will be treated. Indian Brook was initially recommended for TFM treatment. However, it has now been withdrawn to completely protect the endangered northern brook lamprey in the Indian Brook—Malletts Creek System. The 13th stream, the Poultney River, is shared by both states as an interstate boundary. In-lake delta areas to be treated with Bayer 73 (5% granular) encompass 850 acres. All are located in New York waters of the Main Lake.

Sea lamprey control is planned to begin in September 1990 after Labor Day. TFM and Bayer 73 control treatments are planned to be phased in over a three year period as outlined below and conducted in conformance with all conditions of the Vermont permit and New York permits (New York DEC and Adirondack Park Agency.) Bayer 73 surveys will be conducted in accordance with conditions in the N.Y. Department of Environmental Conservation's Bayer 73 and wetlands permits, the Adirondack Park Agency wetland permit and the Vermont Department of Environmental Conservation's aquatic nuisance control permit.

1990 & 1994 TFM only—Salmon, Little Ausable, Ausable, Boquet, Putnam, Beaver and Lewis.

1991 & 1995 TFM—Great Chazy, Poultney/Hubbardton, Mt. Hope, Trout and Stonebridge.

Bayer 73—Deltas of Saranac, Salmon, Little Ausable, Ausable and Boquet.

1992 & 1996 TFM only—Saranac.

Post-Labor Day scheduling of control treatments will minimize potential for human exposure to lampricides since the main summer tourist season will have ended. This timing will also minimize exposure of wetlands to the lampricides since lake levels and stream discharges will be lower than in late spring. The treatment scheduling noted above could be changed depending upon treatment conditions and/or completion of essential mitigation for industrial (Saranac River) or municipal (Great Chazy River) water supplies.

Other Alternatives Considered

Four alternatives, including the proposed action, were considered in the FEIS.

Alternative II. This alternative involves implementation of a permanent sea lamprey control program using lampricides as the primary control method, supplemented with selective development of sea lamprey barriers. Long-term fine tuning would lead to the most cost-efficient and environmentally compatible program, incorporating new sea lamprey control methods as they became available. While this alternative would not provide a comprehensive evaluation of program impacts, information available from the Great Lake and Finger Lakes suggest that this approach would probably be correct since a reduction in sea lamprey abundance would lead to dramatic improvements in salmonid abundance and size, fisheries quality and recreational and economic benefits.

Costs for this alternative are estimated at $8,141,000 for an 11-year period (to complete barrier dam construction) or $740,125 annually. Average annual costs would be reduced to $662,125 if barrier dam costs are amortized over a 35-year period. Included in these estimates are costs for lampricide treatments, barrier dam construction, salmonid propagation and stocking, and monitoring and assessment.

Excluding benefits from the comprehensive evaluation incorporated into the Proposed Action, other benefits are similar to those expected from the preferred alternative and would continue long term. This is an advantage to businesses, etc., because it would allow for planned expansion of support facilities to accommodate increased use without fear of economic contraction should control be discontinued after 8-years.

Adverse impacts from use of lampricides would be the same as those noted for the Proposed Action. In addition, there would be significant adverse impacts associated with development of sea lamprey barrier dams.

Alternative III. This alternative abandons all efforts to control sea lamprey and a substantial cutback in annual salmonid stocking levels resulting from termination of federal involvement in the program.

Costs for this alternative would be limited to salmonid propagation and stocking or about $206,000 annually. Benefits to the salmonid fishery from this alternative would be less than those presently obtained without sea lamprey control as a result of the reduction in stocking and increased predation by sea lamprey. Environmental impacts and concerns associated with use of lampricides and barrier dams are eliminated as is the need for funding to support sea lamprey control/evaluation efforts.

The major adverse impact is that it would never be possible to achieve the maximum projected harvest, recreational and economic benefits which are possible with effective control of sea lamprey. Annual deficits under this alternative are as follows: unmet

catch—20,800 salmonids or 105,200 pounds; unmet angler trips—67,000; unmet economic benefits from angler expenditures—$2,486,000; unmet economic impact using a multiplier of 2—$4,972,000. Other adverse impacts such as relatively poor survival of salmonids, high sea lamprey attack rates, etc., would continue at increased levels.

Alternative IV. This alternative would lead to suspension of the salmonid program by terminating stocking and abandons any effort to control sea lamprey.

Costs associated with those activities would be eliminated. The major benefits from implementing this alternative include the avoidance of all adverse environmental impacts associated with a salmonid/sea lamprey management program, and the ability of the resource management agencies to redirect funds to other high priority programs.

The major adverse impacts are that all benefits associated with a salmonid fishery would be eliminated because salmonid populations are driven to virtual extinction; the opportunity to restore two native salmonids, landlocked Atlantic salmon and lake trout, would be lost forever, and the large sea lamprey population would likely reduce populations of other game and pan fihes by increased predation.

Annual benefits foregone under this alternative include potential harvests of 36,300 salmonids weighing 163,200 pounds, 117,000 angler trips generating about $4,309,000 in angling-related expenditures.

Other program alternatives. Those considered but dismissed because they would be ineffective include the following:

1. Partial sea lamprey control using only barrier dams (no lampricides).

2. Partial sea lamprey control treating one major sea lamprey inhabited basin with lampricides and holding a second basin as an untreated control.

Alternative methods. Twelve methods for sea lamprey control were examined as possible alternatives to the use of lampricides. These include trapping, fishing, electrofishing, parasites and pathogens, natural predators, sterile male releases, attractants and repellents, competitive displacement by nonparasitic lamprey, modification of stream habitat, increased stocking of salmonids, stocking of sea lamprey resistant strains of salmonids and a reduction in salmonid stocking. It was concluded that none would be effective in the control of sea lamprey in Lake Champlain.

The Minimization of Impacts and Public Concerns

The Proposed Alternative incorporates a variety of measures to minimize the adverse environmental, social and economic impacts as much as practicable. The permits which were issued by NYDEC, Vermont Agency of Natural Resources and the Adirondack Park Agency contain numerous conditions which relate to mitigation of project related impacts. These permits were included by reference in the Proposed Action Alternative in the FEIS. In addition to the studies included in the DEIS, several permit-related studies will be done. These include: a study of the effects of TFM on macroinvertebrate populations and nontarget fish populations in Lewis Creek, the effectiveness of a temporary sea lamprey barrier dam on Trout Brook, a four year study to determine the impact of Bayer 73 and incidental exposure to TFM on macroinvertebrates at selected delta sites and studies on the Eastern sand darter. Specific measures to minimize impacts of and public concerns about the proposed action are identified in the Findings and Decision section of this document.

Findings and Decisions

Having reviewed and considered the FEIS for the Eight Year Experimental Program to Control Sea Lamprey in Lake Champlain and the public comments thereon, the Service finds as follows:

1. The requirements of NEPA and implementing regulations have been satisfied; and

2. Statutory authority for the Service's funding of the project exists under the Dingell-Johnson Act, 16 U.S.C. 777–777k.

3. Consistent with social, economic, programmatic and environmental considerations from among the reasonable alternatives thereto, the Proposed Action alternative is one which minimizes or avoids adverse environmental effects to the maximum extent practicable, including the effects discussed in the FEIS; and,

4. Consistent with the social, economic and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the environmental impact statement process will be minimized or avoided by incorporating as conditions those mitigative measures identified in the Proposed Action in the FEIS and its supporting appendices.

Having made the above findings, the Service has decided to proceed with implementation of the Proposed Action alternatives.

The decision to implement this alternative is subject to the following conditions:

a. All applicable regulatory requirements and approvals will be satisfied or obtained.

b. All state permit conditions (DEC, APA and ANR) are hereby adopted as part of this finding and will be met.

c. All studies and other conditions contained in the FEIS Proposed Action alternative are adopted by the Service.

d. Conditions b. and c. will be incorporated into the all Federal Aid agreements for this project.

This Record of Decision will serve as the written facts and conclusions relied on in reaching this decision. This Record of Decision was approved by the Regional Director of the Service on September 11, 1990.

Dated: September 11, 1990.

James E. Weaver,

Acting Regional Director.

[FR Doc. 90–22035 Filed 9–14–90; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

[FES 90–26]

Gulf of Mexico Region; Availability of the Final Environmental Impact Statement Regarding Proposed Central, Western, and Eastern Gulf of Mexico Sales 131/135/137

The Minerals Management Service has prepared a final Environmental Impact Statement (EIS) relating to the proposed 1991 Outer Continental Shelf (OCS) oil and gas lease sales in the Central, Western, and Eastern Gulf of Mexico (GOM). The proposed Centeral Gulf Sale 131 will offer for lease approximately 28.1 million acres, the Western Gulf Sale 135 will offer approximately 26.3 million acres, and the Eastern Gulf Sale 137 will offer approximately 47.5 million acres. Single copies of the final EIS can be obtained from the Minerals Management Service, Gulf of Mexico Region, Attention: Public Information Office, 1201 Elmwood Park Boulevard, room 114, New Orleans, Louisiana 70123.

Copies of the final EIS will be available for review by the public in the following libraries:

Austin Public Library, 402 West Ninth Street, Austin, Texas;
Houston Public Library, 500 McKinney Street, Houston, Texas;
Dallas Public Library, 1513 Young Street, Dallas, Texas;
Brazoria County Library, 410 Brazoport Boulevard, Freeport, Texas;

LaRatama Library, 505 Mesquite Street, Corpus Christi, Texas;
Texas Southmost College Library, 1825 May Street, Brownsville, Texas;
Rosenberg Library, 2310 Sealy Street, Galveston, Texas;
Texas State Library, 1200 Brazos Street, Austin, Texas;
Texas A & M University, Evans Library, Spence and Lubbock Streets, College Station, Texas;
University of Texas, Lyndon B. Johnson School of Public Affairs Library, 2313 Red River Street, Austin, Texas;
The University of Texas at Dallas Library, 2601 North Floyd Road, Richardson, Texas;
Lamar University, Gray Library, Virginia Avenue, Beaumont, Texas;
East Texas State University Library, 2600 Neal Street, Commerce, Texas;
Stephen F. Austin State University, Steen Library, Wilson Drive, Nacogdoches, Texas;
University of Texas, 21st and Speedway Streets, Austin, Texas;
University of Texas Law School, Tarlton Law Library, 727 East 26th Street, Austin, Texas;
Baylor University Library, 13125 Third Street, Waco, Texas;
University of Texas at Arlington, 701 South Cooper Street, Arlington, Texas;
University of Houston-University Park, 4800 Calhoun Boulevard, Houston, Texas;
University of Texas at El Paso, Wiggins Road and University Avenue, El Paso, Texas;
Abilene Christian University, Margaret and Herman Brown Library, 1600 Campus Court, Abilene, Texas;
Texas Tech University Library, 18th and Boston Street, Lubbock, Texas;
University of Texas at San Antonio, John Peach Boulevard, San Antonio, Texas;
Tulane University, Howard Tilton Memorial Library, 7001 Freret Street, New Orleans, Louisiana;
Louisiana Tech University, Prescott Memorial Library, Everet Street, Ruston, Louisiana;
New Orleans Public Library, 219 Loyola Avenue, New Orleans, Louisiana;
University of New Orleans Library, Lakeshore Drive, New Orleans, Louisiana;
Louisiana State Library, 760 Riverside Road, Baton Rouge, Louisiana;
Lafayette Public Library, 301 W. Congress Street, Lafayette, Louisiana;
Calcasieu Parish Library, 411 Pujo Street, Lake Charles, Louisiana;
McNeese State University, Luther E. Frazar Memorial Library, Ryan Street, Lake Charles, Louisiana;
Nicholls State University, Nicholls State Library, Leighton Drive, Thibodaux, Louisiana;
University of Southwestern Louisiana, Dupre Library, 302 East St. Mary Boulevard, Lafayette, Louisiana;
LUMCOM, Library, Star Route 541, Chauvin, Louisiana;
Harrison County Library, 14th and 21st Avenues, Gulfport, Mississippi;
Gulf Coast Research Laboratory, Gunter Library, 703 East Beach Drive, Ocean Springs, Mississippi;
Auburn University at Montgomery, Library, Taylor Road, Montgomery, Alabama;
University of Alabama Libraries, 809 University Boulevard East, Tuscaloosa, Alabama;
Mobile Public Library, 701 Government Street, Mobile, Alabama;
Montgomery Public Library, 445 South Lawrence Street, Montgomery, Alabama;
Gulf Shores Public Library, Municipal Complex, Route 3, Gulf Shores, Alabama;
Dauphin Island Sea Lab, Marine Environmental Science Consortium, Library, Bienville Boulevard, Dauphin Island, Alabama;
University of South Alabama, University Boulevard, Mobile, Alabama;
University of Florida Libraries, University Avenue, Gainesville, Florida;
Florida A & M University, Coleman Memorial Library, Martin Luther King Boulevard, Tallahassee, Florida;
Florida State University, Strozier Library, Call Street and Copeland Avenue, Tallahassee, Florida;
Florida Atlantic University, Library, 20th Street, Boca Raton, Florida;
University of Miami Library, 4600 Rickenbacker Causeway, Miami, Florida;
University of Florida, Holland Law Center Library, Southwest 25th Street and 2nd Avenue, Gainesville, Florida;
St. Petersburg Public Library, 3745 Ninth Avenue North, St. Petersburg, Florida;
West Florida Regional Library, 200 West Gregory Street, Pensacola, Florida;
Florida Northest Regional Library System, 25 West Government Street, Panama City, Florida;
Leon County Public Library, 127 North Monroe Street, Tallahassee, Florida;
Lee County Library, 3355 Fowler Street, Fort Myers, Florida;
Charlotte-Glades Regional Library System, 2280 NW. Aaron Street, Port Charlotte, Florida;
Tampa-Hillsborough County Public Library System, 800 North Ashley Street, Tampa, Florida;
Key Largo Public Library, 99551 No. 3 Overseas Highway, Key Largo, Florida;
Selby Public Library, 1001 Boulevard of the Arts, Sarasota, Florida;
Collier County Public Library, 650 Central Avenue, Naples, Florida;
Marathon Public Library, 3152 Overseas Highway, Marathon, Florida;
Monroe County Public Library, 700 Fleming Street, Key West, Florida.

Dated: September 13, 1990.

Carolita Kallaur,

Acting Deputy Director, Minerals Management Service.

Approved:

Jonathan P. Deason,

Director, Office of Environmental Affairs.

[FR Doc. 90–22003 Filed 9–17–90; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Cape Cod National Seashore, South Wellfleet, MA, Cape Cod National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held Friday, September 28, 1990.

The Commission was reestablished pursuant to Public Law 99–349, Amendment 24. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The commission members will meet at Headquarters, Marconi Station, South Wellfleet, Massachusetts at 10 a.m. for a two-hour field trip to North Truro Air Force Station. This is open to the public, however, no transportation will be provided them. The public may follow the vehicles transporting the Commission and listen to discussions at North Truro.

The regular business meeting will convene at Park Headquarters, Marconi Station, South Wellfleet, Massachusetts at 1 p.m. for the following reasons:

1. Reports of Officers;
2. Superintendent's Report;
3. Review of Issues discussed in touring North Truro Air Force Station;
4. Review of redrafted purpose and significance section of the Draft Statement for Management for Cape Cod National Seashore;
5. Review of Subcommittee reports for Advisory Commission's Review of Draft Statement for Management;
6. Opportunity for Public Comment; and
7. Other Business.

The business meeting is open to the public. It is expected that 15 persons will be able to attend the session in addition to the Commission members. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning this meeting may be obtained from the Superintendent, Cape Cod National Seashore, South Wellfleet, MA 02663.

Dated: September 11, 1990.

Gerald D. Patten,

Regional Director.

[FR Doc. 90–21958 Filed 9–17–90; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 8, 1990 Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by October 3, 1990.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Shelby County

University of Montevallo Historic District (Boundary Increase), Roughly bounded by Bloch St., Farmer St., Flowerhill Dr., King St., Valley St., and Middle St., Montevallo, 90001529.

ARIZONA

Maricopa County

McClintock, James H., House, 323 E. Willetta St., Phoenix, 90001525.

Pima County

Men's Gymnasium, University of Arizona, E. Fourth St., Unversity of Arizona campus, Tucson, 90001526.

Pinal County

Coolidge Woman's Club, 240 W. Pinkley Ave., Coolidge, 90001524.

MARYLAND

Charles County

Spye Park, N of jct. of MD 227 and US 301, White Plains vicinity, 90001523.

MICHIGAN

Ottawa County

Holland Downtown Historic District, Roughly, Eighth St. from just E of College Ave. to River Ave. and River Ave. from Ninth St. to just N of Eighth St., Holland, 90001534.

NEW MEXICO

Lincoln County

Mesa Ranger Station Site (Lincoln Phase Sites in the Sierra Blanca Region MPS), Address Restricted, Nogal vicinity 90001533.

Nogal Mesa Kiva Site (Lincoln Phase Sites in the Sierra Blanca Region MPS), Address Restricted, Nogal vicinity 90001532.

Nogal Mesa Site (Lincoln Phase Sites in the Sierra Blanca Region MPS), Address Restricted, Nogal vicinity 90001531.

NEW YORK

New York County

Verdi, Giuseppe, Monument, Verdi Square Park, New York, 90001528.

NORTH CAROLINA

Wake County

East Raleigh—South Park Historic District, Roughly bounded by Bragg, East, E. Lenois, Alston, Camden, Hargett, Swain, Davis, and S. Blount Sts., Raleigh, 90001527.

OREGON

Douglas County

Laurelwood Historic District, Roughly bounded by the S. Umpqua R., Laurelwood Ct., and Bowden Ave., Roseburg, 90001521.

Lincoln County

St. John's Episcopal Church (Architecture of Ellis F. Lawrence MPS), 110 NE. Alder St., Toledo, 90001510.

Multnomah County

Cumberland Apartments (Architecture of Ellis F. Lawrence MPS), 1405 SW. Park Ave., Portland, 90001509.

Heintz, Albert, Oscar, and Linda, House (Architecture of Ellis F. Lawrence MPS), 2556 SW. Vista Ave., Portland, 90001508.

Hickey, James, House (Architecture of Ellis F. Lawrence MPS), 6719 SE. 29th Ave., Portland, 90001514.

Irvington Tennis Club (Architecture of Ellis F. Lawrence MPS), 2131 NE. Thompson St., Portland, 90001513.

Kenton Hotel, 8303—8319 N. Denver Ave., Portland, 90001522.

Neuberger, Isaac, House (Architecture of Ellis F. Lawrence MPS), 630 NW. Alpine Terrace, Portland, 90001512.

Nicolai, Harry T., House (Architecture of Ellis F. Lawrence MPS), 2621 NW. Westover Rd., Portland, 90001511.

Posey, John V. G., House (Architecture of Ellis F. Lawrence MPS), 02107 SW. Greenwood Rd., Portland vicinity, 90001517.

Reed, Samuel G., House (Architecture of Ellis F. Lawrence MPS), 2615 SW. Vista Ave., Portland, 90001516.

Seitz, Maurice, House (Architecture of Ellis F. Lawrence MPS), 1495 SW. Clifton St., Portland, 90001515.

Strong, Alice Henderson, House (Architecture of Ellis F. Lawrence MPS), 2241 SW. Montgomery Dr., Portland, 90001520.

Taylor, Fred E., House (Architecture of Ellis F. Lawrence MPS), 2873 NW. Shenandoah Terrace, Portland, 90001519.

Wheeler, James E., House (Architecture of Ellis F. Lawrence MPS), 2417 SW. 16th Ave., Portland, 90001518.

TEXAS

Limestone County

Vinson Site, Address Restricted, Tehuacana vicinity, 90001530.

Travis County

Horton—Porter, Goldie, House, 2402 Windsor Rd., Austin, 90001535.

The following property was erroneously listed as pending on the list dated Aug. 7, 1990:

NEW YORK

Jefferson Co.

Angell Farm (Lyme MRA), S. Shore Rd., Chaumont vicinity, 90001321.

[FR Doc. 90–21959 Filed, 9–17–90; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–339X]

Port of Tillamook Bay—Discontinuance of Trackage Rights Exemption—in Washington and Tillamook Counties, OR

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 discontinuance of trackage rights by the Port of Tillamook Bay between milepost 770.5, at or near Schefflin, OR, and milepost 856.08, at or near Tillamook, OR, subject to standard labor protective conditions.

DATES: This exemption will be effective on October 18, 1990. Petitions to stay must be filed by October 3, 1990, and petitions for reconsideration must be filed by October 15, 1990.

ADDRESSES: Send pleadings referring to Docket No. AB–339X to: Commission, Washington, DC 20423,

and

(2) Petitioner's representative: Mark P. Trinchero, Lindsay, Hart, Neil & Weigler, 222 S.W. Columbia, suite 1800, Portland, OR 97201.

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 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 service (202) 275–1721.]

Decided: September 10, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90–22016 Filed 9–17–90; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree

In accordance with the policy of the Department of Justice, 28 CFR 50.7, and pursuant to section 122(d)(2) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(d)(2), notice is hereby given that a proposed Consent Decree in *Allied-Signal, Inc.,* was lodged with the United States District Court for the Northern District of California on September 10, 1990. This action was brought pursuant to section 107 of CERCLA, 42 U.S.C. 9607.

Under the proposed Consent Decree, Joseph and Wilda Sobotka, through their insurers, agree to pay $250,000 to the Defense Environmental Response Account. The funds are being paid to reimburse the United States for environmental response actions taken and to be undertaken at the United States Naval Weapons Station, Concord, California.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, 10th and Pennsylvania Ave., Washington, DC 20530. All comments should refer to *Allied-Signal Inc.*, D.J. Ref. 90–11–3–26.

The proposed Consent Decree may be examined at the office of the United States Attorney, 450 Golden Gate Ave., room 16201, San Francisco, California 94102. A copy of the proposed Consent Decree may also be examined at the Environmental Enforcement Section, Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004, (202) 347–7829. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. Any request for a copy of the proposed Consent Decree should be accompanied by a check in the amount of $3.25 for copying costs ($0.25 per page) payable to "Aspen Systems Corporation."

Richard B. Stewart,I04Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90–21992 Filed 9–17–90; 8:45 am]

BILLING CODE 4410–01–M

Consent Judgment in Action To Enjoin Violation of the Clean Water Act (CWA)

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent Decree in *United States* v. *City of Hoboken, et al.* (D.N.J.), civil Action No. 79–2030, was lodged with the United States District Court for the District of New Jersey on 9–4–90. The Consent Decree requires the City of Hoboken to expand and upgrade its sewage treatment plant to provide secondary treatment by January 8, 1993. The Consent Decree further requires Hoboken to pay a civil penalty in the amount of $225,000, to comply with interim effluent limitations, and to implement interim operating improvements at the plant. The Consent Decree also contains a limitation on new sewage flows to the plant, including a contingent ban should Hoboken fail to meet its compliance schedule or violate any interim effluent limitation for two consecutive months.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *City Of Hoboken, et al.* D.O.J. Ref. No. *90–5–1–1–1160A.*

The Consent Decree may be examined at the Office of the United States Attorney, District of New Jersey, 970 Broad Street, Newark, New Jersey, 07102 at the Region II office of the Environmental Protection Agency, Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice, room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $4.30 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

George W. Van Cleve,

Deputy Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90–21993 Filed 9–17–90; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Under SDWA and RCRA

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on September 6, 1990, a proposed consent decree in *United States* v. *Jobgen and Norris,* Civil Action No. CV 88–5104, was lodged with the United States District Court for the District of South Dakota. The proposed consent decree resolves a judicial enforcement action brought by the United States against Mr. Eugene Jobgen and Dr. James Norris under section 1423(a)(2) and (b) of the Safe Drinking Water Act ("SDWA"), and sections 3005 and 3008(a)(1) and (g) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6925 and 6928(a)(1) and (g).

In this action filed on August 24, 1988, the United States sought injunctive relief and civil penalties against an owner and an operator of a facility which, during 1985, resulted in the disposal of hazardous waste in a drainfield and injection well near the facility. The complaint alleged that defendants did not obtain a RCRA permit or qualify for interim status for the disposal of the waste, and did not comply with the applicable Underground Injection Control requirements under the SDWA. The proposed consent decree requires that each of the defendants pay a civil penalty of $8,000.00, for a total penalty amount of $16,000.00. No injunctive relief is deemed necessary.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Jobgen and Norris,* D.J. Ref. 90–5–1–1–3007.

The proposed consent decree may be examined at the office of the United States Attorney, 317 Federal Building and U.S. Courthouse, 515 9th Street, Rapid City, South Dakota 57701, and at the Region VIII office of the United States Environmental Protection Agency, 999 18th Street, Denver, Colorado 80202. The decree may also be examined at the Environmental Enforcement Section, Environment and

Natural Resources Division of the Department of Justice, room 1647, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

George W. Van Cleve,

Deputy Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90-21994 Filed 9-17-90; 8:45 am]

BILLING CODE 4410-01-M

Lodging of a Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on September 6, 1990, a proposed consent decree in *United States* v. *Town of Kearny, New Jersey, et al.*, Civil Action No. 88-2938, was lodged with the United States District Court for the District of New Jersey. The decree resolves claims of the United States against the Town of Kearny, the Kearny Municipal Utilities Authority, and the State of New Jersey (the "defendants") for violations of the Clean Water Act, 33 U.S.C. 1251, *et seq.* The violations arose out of the operation of a sewage treatment plant by the Town of Kearny.

In the proposed consent decree, the defendants agree to pay the United States a civil penalty in the amount of $85,000. In addition, the defendants have agreed to shut down their treatment plant and divert their sewage flows to the Passaic Valley Sewerage Commissioners treatment facility in Newark, New Jersey.

The proposed decree may be examined at the office of the United States Attorney for the District of New Jersey, 970 Broad Street, Newark, New Jersey 07102; at the Region II Office of Regional Counsel, Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278, contact: Nina Dale, Esq.; and at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004, (202) 347-7829. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $5.75 (25 cents per page reproduction charge) payable to the Consent Decree Library. The Department of Justice will receive written comments relating to the proposed consent decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Town of Kearny, New Jersey, et al.*, Civil Action No. 88-2938 (D.N.J.), D.J. Reference No. 90-5-1-1-3088.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90-21995 Filed 9-17-90; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on August 17, 1990, a proposed consent decree in *United States* v. *City of Terre Haute*, Civil Action No. TH-87-207-C, was lodged with the United States District Court for the Southern District of Indiana. The proposed consent decree resolves a judicial enforcement action brought by the United States against the City of Terre Haute for violations of the Clean Water Act (the "Act").

The consent decree requires Terre Haute to attain and, thereafter, maintain compliance with section 301(a) of the Clean Water Act, 33 U.S.C. 1311(a), and to comply with its NPDES permit. Specifically, the consent decree requires that Terre Haute make a variety of improvements to its wastewater treatment plant, including rehabilitation of the anaerobic digestion system, installation of ceramic fine bubble diffusers, installation of a sulfur dioxide gas dechlorination system and installation of an equalization basin. In addition to these structural improvements, the consent decree requires that Terre Haute implement a long-term solids management plan and combined sewer operating plan. The consent decree also requires that Terre Haute pay to the United States a civil penalty of $1,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Terre Haute* D.J. 90-5-1-1-2401A.

The proposed consent decree may be examined at the office of United States Attorney, 46 East Ohio Street, Indianapolis, Indiana and at the office of Regional Counsel, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois.

The proposed consent decree may be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600 Washington, DC 20004, 202-347-7829. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $4.50 (25 cents per page reproduction costs) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90-21996 Filed 9-17-90; 8:45 am]

BILLING CODE 4410-01-M

Consent Judgment in Action To Enjoin Violation of the Clean Water Act (CWA)

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent Decree in *United States* v. *Town of West New York, et al.* (D.N.J.), civil Action No. 79-2030, was lodged with the United States District Court for the District of New Jersey on 9-6-90. The Consent Decree requires the Town of West New York to expand and upgrade its sewage treatment plant to provide secondary treatment by January 8, 1993. The Consent Decree further requires West New York to pay a civil penalty in the amount of $160,000, to comply with interim effluent limitations, and to implement interim operating improvements at the plant. The Consent Decree also contains a limitation on new sewage flows to the plant, including a contingent ban should West New York fail to meet its compliance schedule or violate any interim effluent limitation for two consecutive months.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of West New York, et al.* D.O.J. Ref. No. 90-5-1-1-2528.

The Consent Decree may be examined at the Office of the United States

Attorney, District of New Jersey, Federal Building, 970 Broad Street, room 502, Newark, New Jersey, 07102; at the Region II office of the Environmental Protection Agency, Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice, room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 1333 F Street, suite 600, NW., Washington, DC 20004, Telephone Number (202) 347–2072. In requesting a copy, please enclose a check in the amount of $10.75 (25 cents per page reproduction charge) payable to Consent Decree Library.

Barry Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90–21997 Filed 9–17–90; 8:45 am]

BILLING CODE 4410–01–M

Extension of Public Comment Period on Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622(i), notice of the lodging of a proposed Consent Decree in *United States* v. *Yount, et al.,* with the United States District Court for the Northern District of Indiana was published in the **Federal Register** on August 8, 1990. That notice provided that the Department of Justice would receive comments relating to the proposed Decree for a period of thirty days from the date of the publication of the notice. The Department has received a number of requests for an extension of the thirty day comment period and has determined that the public comment period will be extended for thirty days. The Department will consider any comments received prior to October 8, 1990. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Yount, et al.,* D.J. Ref. 90–11–3–251.

Barry M. Hartman,

Deputy Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90–21998 Filed 9–17–90; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Bell Communications Research, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") on August 21, 1990 has filed a written notification on behalf of Bellcore and VLSI Technology, Inc. ("VLSI") simultaneously with the Attorney General and the Federal Trade Commisison disclosing (1) the identities of the parties to the venture and (2) the nature and objective of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business at 290 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039.

VLSI is a Delaware corporation having a place of business at 1101 McKay Drive, San Jose, California 95131.

On June 26, 1990 Bellcore and VLSI entered into two agreements both effective as of May 1, 1990 to engage in cooperative studies of the application of advanced CMOS VLSI technology to emerging telecommunications application and for exchange and exchange access services. The first agreement is directed to demonstrating the capability and applicability of this technology and to developing a better understanding of its performance limits, and covers, among other things, the fabrication of test chips to carry out experiments and demonstrations. The second agreement is directed to digital high definition television coding and its transport on broadband transmission systems, including prototype fabrication of integrated circuits for the demonstration of such technology.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 90–21999 Filed 9–17–90; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984—CAD Framework Initiative, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), CAD Framework Initiative, Inc. ("CFI") on August 16, 1990, has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the membership of CFI. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act, limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On December 30, 1988, CFI filed its original notification pursuant to section 6(a) of the Act. That filing was amended on February 7, 1989. The Department of Justice pulbished a notice concerning the amended filing in the **Federal Register** pursuant to section 6(b) of the Act on March 13, 1989 (54 FR 10456). A correction to this notice was published on April 20, 1989 (54 FR 16013). On May 17, 1989, CFI filed an additional written notification. The Department published a notice in response to this additional notification on June 22, 1989 (54 FR 26265). A correction to the June 22, 1989 notice was published on August 4, 1989 (54 FR 32141); a further correction was published on August 23, 1989 (54 FR 35091). On August 16, 1989, CFI filed an additional written notification. The Department published a notice in response to this additional notification on September 21, 1989 (54 FR 38912). CFI filed a further additional notification on November 15, 1989. The Department published a notice in response to the further additional notification on January 10, 1990 (55 FR 925). On February 15, 1990, CFI filed an additional written notification. The Department published a notice in

response to the further additional notification on April 23, 1990 (55 FR 15295).

CFI filed an additional notification on May 15, 1990. The Department published a notice in response to the additional notification on June 29, 1990 (55 FR 26792).

The purpose of this notification is to disclose changes in the membership of CFI. The changes consist of the following: (1) The addition of corporate member: Teamone Systems, Inc.; (2) the addition of associate members: CPQD-Telebras, William Adams, Gordon Adshead, Goodwin Chin, Read Fleming, Denis Gagnon, Kelly Gomes, Tamio Hoshino, Thomas Lupfer, Frits Nolet, Detlev Ruland, Wolfgang Wilkes, Alexander Wong, James Wu, and Eli Zukovsky; (3) Control Data Corp., Fujitsu Microelectronics, Inc., International Computers Ltd., Robert Bosch GmbH, Toshiba Corporation, VLSI Technology, Timothy Andrews, Kenneth Bakalar, Forrest Brewer, Carol Daane, Daniel Daly, Alan ford, Bill Harding, Monique Hyvernard, David Jakopac, Hilary Kahn, Marlene Kasmir, Mitch Morey, Jack Warecki, and Dyson Wilkes have not renewed their memberships in CFI; (4) General Motors/Delco Electronics is now listed as General Motors/Hughes Aircraft; (5) corporate member Object Sciences Corp. has changed its name to Versant Object Technology; (6) three spelling corrections have been made for associate members Yu-i Hsieh (previously Yui-Hsieh), Eskil Kjelkerud (previously Eskil Khelkerud), and Albert Klosterman (previously Albert Kloslterman).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 90-22000 Filed 9-17-90; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF JUSTICE

Notice Pursuant to the National Cooperative Research Act of 1984—Climatology and Simulation of Eddies Joint Industry Project

Notice is hereby given that, on August 21, 1990, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Exxon Production Research Company filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to a joint venture to study deepwater circulation characteristics in the Gulf of Mexico and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the venture and its general areas of planned activity are given below:

Amoco Production Company, P.O. Box 3385, Tulsa, OK 74102

Arco Oil and Gas Company, 1601 Bryan Street, Dallas, TX 75201

BP Exploration Incorporated, P.O. Box 4587, Houston, TX 77210

Chevron Oil Field Research Company, P.O. Box 446, La Habra, CA 90633-0446

Conoco Incorporated, P.O. Box 2197, Houston, TX 77252

Exxon Production Research Company, Offshore Division, P.O. Box 2189, Houston, TX 77252-2189

Marathon Oil Company, P.O. Box 3128, Houston, TX 77253

Mobil Research and Development Corporation, P.O. Box 819047, Dallas, TX 75381-9047

Shell Development Company, P.O. Box 481, Houston, TX 77001-0481

Texaco Incorporated, P.O. Box 60252, New Orleans, LA 70160

Information regarding participation in the venture may be obtained by contacting Exxon Production Research Company.

The Gulf of Mexico's deepwater circulation is dominated by the "Loop Current" which enters the Gulf near the Yucatan Peninsula, circulates through the center of the Gulf, and exits near the Florida Straits. Depending on physical processes which are not well understood, the Loop Current can penetrate far to the north and impact deepwater oil and gas drilling operations near the Texas-Louisiana Shelf or can shed eddies which may also impact deepwater drilling. The primary objectives of the venture are to use existing data (1) to develop improved deepwater design criteria for both exploration and production drilling operations, (2) to develop a statistical tool which will permit development of a longer term simulated data base for hindcasting Loop Current and eddy events, and (3) to develop a numerical model for forecasting the occurrence of Loop Current and eddy events. The venture became effective on June 1, 1990 and is scheduled to be completed within thirty months following its effective date.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 90-22001 Filed 9-17-90; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Advisory Council on Employee Welfare and Pension Benefit Plans; Extension of Announcement of Vacancies to October 15, 1990, Request for Nominations

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA) 88 Stat. 895, 29 U.S.C. 1142, provides for the establishment of an "Advisory Council on Employee Welfare and Pension Benefit Plans" (The Council) which is to consist of 15 members to be appointed by the Secretary of Labor (the Secretary) as follows: Three representatives of employee organizations (at least one of whom shall be representative of an organization whose members are participants in a multiemployer plan); three representatives of employers (at least one of whom shall be representative of employers maintaining or contributing to multiemployer plans); one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management, and accounting; and three representatives from the general public (one of whom shall be a person representing those receiving benefits from a pension plan). Not more than eight members of the Council shall be members of the same political party.

Members shall be persons qualified to appraise the programs instituted under ERISA. Appointments are for terms of three years.

The prescribed duties of the Council are to advise the Secretary with respect to the carrying out of her functions under ERISA, and to submit to the Secretary, or their designee, recommendations with respect thereto. The Council will meet at least four times each year, and recommendations of the Council to the Secretary will be included in the Secretary's annual report to the Congress on ERISA.

The terms of five members of the Council expire on Wednesday, November 14, 1990. The groups or fields represented are as follows: employee organizations, corporate trust, investment management, employers (multiemployer plans), and the general public.

Accordingly, notice is hereby given that any person or organization desiring to recommend one or more individuals for appointment to the ERISA Advisory Council on Employee Welfare and Pension Benefit plans to represent any

of the groups or fields specified in the preceding paragraph, may submit recommendations to, Attention: William E. Morrow, Executive Secretary, ERISA Advisory Council, Frances Perking Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Suite N–5677, Washington, DC 20210. Recommendations must be delivered or mailed on or before October 15, 1990. Recommendations may be in the form of a letter, resolution or petition, signed by the person making the recommendation or, in the case of a recommendation by an organization, by an authorized representative of the organization. Each recommendation should identify the candidate by name, occupation or position, telephone number and address. It should also include a brief description of the candidate's qualifications, the group or field which he or she would represent for the purposes of section 512 of ERISA, the candidates' political party affiliation, and whether the candidate is available and would accept.

David George Ball,

Assistant Secretary of Labor for Pension and Welfare Benefit Programs.

[FR Doc. 90–21964 Filed 9–17–90; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (90–76)]

Government-owned Inventions; Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government and are available for domestic, and possibly foreign, licensing.

Copies of patent applications cited are available from the National Technical Information Service, Springfield, VA 22161. Request for copies of patent applications must include the patent application serial number. Claims are deleted from the patent applications sold to avoid premature disclosure.

DATES: September 18, 1990.

FOR FURTHER INFORMATION CONTACT: National Aeronautics and Space Administration, Harry Lupuloff, Director of Patent Licensing, Code GP, Washington, DC 20546, Telephone (202) 453–2430, FAX (202) 755–2371.

Patent Application 07/430,470: A Tough High Performance Simultaneous Semi-Interpenetrating Polymer Network; filed November 2, 1989

Patent Application 07/433,876: Discrete Dynode Microchannel Plate Device; filed November 9, 1989

Patent Application 07/433,812: Polyimides with Carbonyl and Ether Connecting Groups Between the Aromatic Rings; filed November 9, 1989

Patent Application 07/433,804: A Two-Stage Earth-to-Orbit Transport with Translating Oblique Wings for Booster Recovery; filed November 9, 1989

Patent Application 07/433,063: Improved Process for Hip Canning of Composites; filed November 9, 1989

Patent Application 07/433,881: Mechanized Fluid Connector and Assembly Tool System; filed November 9, 1989

Patent Application 07/434,195: Tough High Performance Addition-Type Thermaplastic; filed November 13, 1989

Patent Application 07/439,317: Imide/Arylene Ether Copolymers; filed November 21, 1989

Patent Application 07/441,673: Mechanical Strain Isolator Mount; filed November 27, 1989

Patent Application 07/441,671: Method and Apparatus for Applying a Mechanical Force to a Surface; filed November 27, 1989

Patent Application 07/441,672: High Temperature, Flexible, Thermal Barrier Seal; filed November 27, 1989

Patent Application 07/443,406: Catalyst for Carbon Monoxide Oxidation; filed November 30, 1989

Patent Application 07/443,289: Brominated Graphitized Carbon Fibers; filed November 30, 1989

Patent Application 07/443,523: Extended Temperature Range Rocket Injector; filed November 30, 1989

Patent Application 07/443,414: Polycarbonate Article with Chemical Resistant Coating; filed November 30, 1989

Patent Application 07/443,286: Rain Rejecting System; filed November 30, 1989

Patent Application 07/443,522: Electrorepulsive Actuator; filed November 30, 1989

Patent Application 07/443,297: Improved High Power/High Frequency Inductor; filed November 30, 1989

Patent Application 07/443,539: Phase Ambiguity Resolution for Offset QPSK Modulation Systems; filed November 30, 1989

Patent Application 07/444,248: Apparatus for Imaging Deep Arterial and Coronary Lesions; filed December 1, 1989

Patent Application 07/449,209: Method and Apparatus for Non-Destructive Testing of Temper Embrittlement in Steels; filed December 12, 1989

Patent Application 07/449,211: Method and Apparatus for Non-Destructive Testing of Temper Embrittlement in Steels; filed December 12, 1989

Patent Application 07/449,210: Aromatic Polyimides Containing a Dimethylsilane-Linked Dianhydride; filed December 12, 1989

Patent Application 07/450,188: High Q Qassi-Optical Tunable Resonator; filed December 13, 1989

Patent Application 07/454,820: Polphenylquinaxalines Via Aromatic Nucleophilic Displacement; filed December 22, 1989

Patent Application 07/458,214: Method of Forming a Multiple Layer Dielectric and a Hot Film Sensor Therewith; filed December 28, 1989

Patent Application 07/458,467: Low Cost, Formable, High TC Superconducting Wire; filed December 28, 1989

Patent Application 07/458,274: Fully Articulated Four Point Bend Loading Fixture; filed December 28, 1989

Patent Application 07/458,062: Cantilever Clamp Fitting; filed December 28, 1989

Patent Application 07/458,258: Volumetric Measurement of Tank Volume; filed December 28, 1989

Patent Application 07/458,476: Assured Crew Return Vehicle; filed December 28, 1989

Patent Application 07/458,280: Special Purpose Parallel Computer for Real-Time Control and Simulation in Robotic Application; filed December 28, 1989

Patent Application 07/463,720: Analog Hardware for Learning Neural Networks; filed December 28, 1989

Patent Application 07/459,029: Configuration Control of Redundant Robots; filed December 28, 1989

Patent Application 07/461,592: Dexterous Programmable Robot and Control System; filed January 5, 1990

Patent Application 07/473,030: Suspension Mechanism and Method; filed January 13, 1990

Patent Application 07/473,064: Cryogenic Anti-Friction Bearing with Reinforced Inner Race; filed January 13, 1990

Patent Application 07/470,663: Alignment Positioning Mechanism; filed January 26, 1990

Patent Application 07/470,480: Method and Apparatus for Providing Real-Time Control of a Gaseous Propellant Rocket Propulsion System; filed January 26, 1990

Patent Application 07/470,664: Electronic Neural Network for Solving

"Traveling Salesman" and Similar Global Optimization Problems; filed January 26, 1990

Patent Application 07/470,665: Method for Detecting Surface Motions and Mapping Small Terrestrial or Planetary Surface Deformations With Synthetic Aperture Radar; filed January 26, 1990

Patent Application 07/479,939: Matching Optics for Gaussian Beams; filed January 31, 1990

Patent Application 07/731,065: Heat Tube Device; filed January 31, 1990

Patent Application 07/473,242: Fluid-Loop Reaction System; filed January 31, 1990

Patent Application 07/473,024: Neural Network With Dynamically Adaptable Neurons; filed January 31, 1990

Dated: September 10, 1990.

Gary L. Tesch,

Deputy General Counsel.

[FR Doc. 90-21985 Filed 9-17-90; 8:45 am]

BILLING CODE 7510-01-M

[Notice (90-75)]

Government-owned Inventions; Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government and are available for domestic, and possibly foreign, licensing.

Copies of patent applications cited are available from the National Technical Information Service, Springfield, VA 22161. Request for copies of patent applications must include the patent application serial number. Claims are deleted from the patent applications sold to avoid premature disclosure.

DATE: September 18, 1990.

FOR FURTHER INFORMATION CONTACT: National Aeronautics and Space Administration, Harry Lupuloff, Director of Patent Licensing, Code GP, Washington, DC 20546, Telephone (202) 453-2430, FAX (202) 755-2371.

Patent Application 07/387,928: Edge Geometry Superconducting Tunnel Junctions Utilizing an NbN/MgO/NbN Thin Film Structure; filed August 1, 1989

Patent Application 07/388,264: Mechanical End Joint System for Connecting Structural Column Elements; filed August 8, 1989

Patent Application 07/391,896: Generation of Topographic Terrain Models Utilizing Synthetic Aperture Radar and Surface Level Data; filed August 10, 1989

Patent Application 07/392,165: Sound Attenuation Apparatus; filed August 10, 1989

Patent Application 07/392,239: Universal Nondestructive MM-Wave Integrated Circuit Test Fixture; filed August 10, 1989

Patent Application 07/392,174: Improved Method and Apparatus for Waste Collection and Storage; filed August 10, 1989

Patent Application 07/392,235: Method and Apparatus for Positioning a Robotic End Effector; filed August 10, 1989

Patent Application 07/392,166: Fabrication of Nanometer Single Crystal Metallic CoSi2 Structures on Si; filed August 10, 1989

Patent Application 07/393,176: Molecular Implementation of Molecular Shift Register Memories; filed August 14, 1989

Patent Application 07/396,726: Tank Gauging Apparatus and Method; filed August 18, 1989

Patent Application 07/396,262: Electrostatically Suspended Rotor and Angular Encoder; filed August 21, 1989

Patent Application 07/404,291: Fiber Optic Sensing System; filed September 7, 1989

Patent Application 07/404,289: Directional Solidification of Superalloys; filed September 7, 1989

Patent Application 07/404,290: Low-Noise Nozzle Valve; filed September 7, 1989

Patent Application 07/404,293: Stripline Feed for a Microstrip Array of Patch Elements; filed September 7, 1989

Patent Application 07/404,288: Organic Cathode for a Secondary Battery; filed September 7, 1989

Patent Application 07/405,168: Flux Feedback Magnetic Suspension Actuator; filed September 11, 1989

Patent Application 07/405,154: Single Element Magnetic Suspension Actuator with Bidirectional Force Capability; filed September 11, 1989

Patent Application 07/405,169: Copper Chloride Cathode for a Secondary Battery; filed September 11, 1989

Patent Application 07/410,572: Wet Spinning of Solid Polyamic Acid Fibers; filed September 21, 1989

Patent Application 07/410,576: Composite Flexible Blanket Insulation; filed September 21, 1989

Patent Application 07/414,815: Synchronous Demodulator; filed September 19, 1989

Patent Application 07/414,817: Remote Maintenance Monitoring System; filed September 29, 1989

Patent Application 07/414,816: Post Clamp; filed September 29, 1989

Patent Application 07/414,811: Analog Hardware for Delta-Backpropagation Neural Networks; filed September 29, 1989

Patent Application 07/414,820: Non-Volatile Solid State Bistable Electrical Switch; filed September 29, 1989

Patent Application 07/418,374: Multiple Axis Reticle; filed October 6, 1989

Patent Application 07/418,320: Airborne Rescue System; filed October 6, 1989

Patent Application 07/418,373: Differential Current Source; filed October 6, 1989

Patent Application 07/418,364: Computerized Tomography Calibrator; filed October 6, 1989

Patent Application 07/418,372: Tissue Simulating Gel for Medical Research; filed October 6, 1989

Patent Application 07/418,612: Digitized Synchronous Demodulator; filed October 10, 1989

Patent Application 07/419,554: Substituted 1,1,1-Triaryl-2,2,2-Trifluoroethanes and Processes for Their Synthesis; filed October 10, 1989

Patent Application 07/418,611: Molecules with Enhanced Electronic Polarizabilities Based on "Defect"-Like State in Conjugated Polymers; filed October 10, 1989

Patent Application 07/422,720: Method and Apparatus for Characterizing Reflected Ultrasonic Pulses; filed October 16, 1989

Patent Application 07/423,089: Braided Composite Fasteners and Method for Producing Same; filed October 18, 1989

Patent Application 07/425,904: Superalloy for High-Temperature Hydrogen Environmental Applications; filed October 24, 1989

Patent Application 07/426,345: Ignitability Test Method and Apparatus; filed October 25, 1989

Patent Application 07/429,516: Serrated Trailing Edges for Improving Lift and Drag Characteristics of Lifting Surfaces; filed October 31, 1989

Patent Application 07/429,737: Hydrodynamic Skin-Friction Reduction; filed October 31, 1989

Patent Application 07/429,574: Polyimides Prepared from 3,5-Diaminobenzotrifluoride; filed October 31, 1989

Patent Application 07/429,514: A Tough High Performance Composite Matrix; filed October 31, 1989

Patent Application 07/429,515: Electromagnetic Meissner Effect Launcher; filed October 31, 1989

Patent Application 07/429,739: Microporous Structure with Layered

Interstitial Surface Treatment, and Method and Apparatus for Preparation; filed October 31, 1989

Patent Application 07/429,734: Efficient Detection and Signal Parameter Estimation with Application to High Dynamic GPS Receiver; filed October 31, 1989

Dated: September 10, 1990.

Gary L. Tesch,

Deputy General Counsel.

[FR Doc. 90-21984 Filed 9-17-90; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings; Humanities Panel

AGENCY: National Endowment for the Humanities, Arts.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786-0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of title 5, United States Code.

1. *Date:* October 5, 1990.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review Texts/Editions applications in History, submitted to the Division of Research Programs, for projects beginning after April 1, 1991.

2. *Date:* October 9, 1990.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review Texts/Editions applications in Literature and Religion, submitted to the Division of Research Programs, for projects beginning after April 1, 1991.

3. *Date:* October 11, 1990.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review Texts/Editions applications in Philosophy, Medieval Studies, Music and Architecture, submitted to the Division of Research Programs, for projects beginning after April 1, 1991.

4-5. *Date:* October 11-12, 1990.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications submitted for Humanities Projects in Media, submitted to the Division of General Programs, for projects beginning after April 1, 1991.

6. *Date:* October 15, 1990.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review Texts/Translations applications in Near Eastern Studies, submitted to the Division of Research Programs, for projects beginning after April 1, 1991.

7. *Date:* October 17, 1990.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review Texts/Translation applications in Asian Studies, submitted to the Division of Research Programs, for projects beginning after April 1, 1991.

8. *Date:* October 18, 1990.
Time: 8:30 a.m. to 5 p.m.
Room: M-14.
Program: This meeting will review applications in Special Opportunity in Foreign Language Education (SOFLE), submitted to the Division of Education Programs, for projects beginning after January 1991.

9. *Date:* October 18-19, 1990.
Time: 9 a.m. to 5:30 p.m.
Room: 430.
Program: This meeting will review applications in Humanities Projects in Libraries and Archives, submitted to the Division of General Programs, for projects beginning after September 1990.

10. *Date:* October 18-19, 1990.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications submitted for Humanities Projects in Media, submitted to the Division of General Programs, for projects beginning after April 1, 1991.

11. *Date:* October 19, 1990.
Time: 8:30 a.m. to 5 p.m.
Room: M-14.
Program: This meeting will review applications submitted for Special Opportunity in Foreign Language Education (SOFLE), submitted to the Division of Education Programs, for projects beginning after January 1991.

12. *Date:* October 22, 1990.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review Texts/Translations applications in European Studies I, submitted to the Division of Research Programs, for projects beginning after April 1, 1991.

13. *Date:* October 24-25, 1990.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications submitted for Humanities Projects in Media, submitted to the Division of General Programs, for projects beginning after April 1, 1991.

14. *Date:* October 29, 1990.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review Texts/Translations applications in European Studies II, submitted to the Division of Research Programs, for projects beginning after April 1, 1991.

Stephen J. McCleary,

Advisory Committee, Management Officer.

[FR Doc. 90-22027 Filed 9-17-90; 8:45 am]

BILLING CODE 7536-01-M

Meeting; Inter-Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Artists Projects: New Forms) to the National Council on the Arts will be held on September 21, 1990 from 9 a.m.-3:30 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman on August 7, 1990, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of

section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: September 7, 1990.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90–22002 Filed 9–17–90; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: Billing Instructions for NRC Cost-Type Contracts.

3. The form number if applicable: N/A.

4. How often the collection is required: Monthly.

5. Who will be required or asked to report: NRC Contractors.

6. An estimate of the number of responses: 2,004.

7. An estimate of the total number of hours needed to complete the requirement or request: 1,002 (.5 hrs. per response).

8. An indication of whether section 3504(h), Public Law 96–511 applies: Not applicable.

9. Abstract: The NRC Division of Contracts and Property Management, in administering its contracts provides Billing Instructions for its contractors to follow in preparation of invoices. These instructions stipulate the level of detail in which supporting cost data must be submitted for NRC review. The review of this information ensures that all payments made by NRC for valid and reasonable costs in accordance with the contract terms and conditions.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC.

Comments and questions can be directed by mail to the OMB reviewer:

Ronald Minsk,

Paperwork Reduction Project (3150–0109),

Office of Information and Regulatory Affairs, NEOB–3109,

Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated in Bethesda, Maryland this 6th day of Sept. 1990.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Designated Senior, Official for Information Resources Management.

[FR Doc. 90–22029 Filed 9–17–90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–320]

Meeting of the Advisory Panel for the Decontamination of Three Mile Island, Unit 2 GPU Nuclear Corp.

Notice is hereby given pursuant to the Federal Advisory Committee Act that the Advisory Panel for the Decontamination of Three Mile Island, Unit 2 (TMI–2) will be meeting on October 18, 1990, from 7 p.m. to 10 p.m. at the Holiday Inn, 23 S. Second Street, Harrisburg, Pennsylvania. The meeting will be open to the public.

At this meeting, the Panel will receive a presentation by the licensee, GPU Nuclear Corporation, on the current status of the cleanup at TMI–2. The licensee will also provide a presentation on their July 26, 1990, submittal to the U.S. Nuclear Regulatory Commission providing the licensee's Decommissioning Funding Plan for the damaged reactor. The Panel will continue the discussion on the future role of the Panel, now that the licensee's current cleanup effort is nearly completed.

Further information on the meeting may be obtained from Dr. Michael T. Masnik, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–1442.

Dated: September 12, 1990.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Advisory Committee, Management Officer.

[FR Doc. 90–22026 Filed 9–18–90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–155]

Consumers Power Co., (Big Rock Point Plant), Exemption

I.

Consumers Power Company (CPCo, the licensee) is the holder of Facility Operating License No. DPR–6 which authorizes the operation of the Big Rock Point Plant (the facility) at steady-state reactor power levels not in excess of 240 negawatts thermal (rated power). The facility consists of one boiling water reactor located at the licensee's site in Charlevoix County, Michigan. The license provides, among other things, that it is subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (Commission) now or hereafter in effect.

II.

Section 55.45(b)(2)(ii) of 10 CFR part 55 requires that an application for use of a simulation facility be submitted not later than 42 months after the effective date of the part 55 rule; that is, by November 26, 1990. Further requirements of 10 CFR 55.45(b)(2)(ii) state that the application be submitted in accordance with paragraph (b)(4)(i) of the same section which requires the application to include "(C) A description of the performance tests as part of the application, and the results of such tests."

By letter dated April 4, 1990, the licensee requested a schedular exemption to delay submittal of the performance test requirements until May 26, 1991.

Consumers Power Company has submitted a Big Rock Point simulation facility application (exempting the performance tests) in a letter dated June 29, 1990. The application reflects a simulation facility consisting of five parts: (1) A full scale static mock-up; (2) partial task enhancement; (3) use of actual plant; (4) a plant walk-through; and (5) the continued use of the Dresden full scope simulator. Some of the partial task enhancements will be accomplished by installation of a PC-based work station that models the Big Rock Point reactor core and primary system thermohyudraulics. The work station will include the capability for some input/outputs (I/O) to be dynamically simulated, thereby providing a limited scope simulator (LSS) as part of the simulation facility for Big Rock Point.

Contractual agreements between the licensee and its supplier reflect delivery of the work station during November 1990. The performance testing specified

by 10 CFR 55.45(b)(4)(i)(C) cannot be accomplished until after receipt, installation, and acceptance testing of the work station. Acceptance testing is currently scheduled for completion during January 1991, and will include verification of the software outputs up to the termination units. Installation of the control room panel instuments and wiring from the panels to the termination units may occur concurrent with installation of the work station; however, final ties at the terminators will not occur before acceptance testing has been completed. The acceptance tests results will become part of the 10 CFR 55.45 performance test program. The test program must also include verification of response at the panel instruments. In addition, the performance test program will include confirmation of other partial task enhancements that will be installed in the LSS and will involve dynamic simulation with feedback, but will not directly tie-in as one of the I/Os to the work station.

The Big Rock Point LSS will initially incorporate the dyamics specified by a control manipulation analysis and critical system functions specified by the Control Room Design Review Program. The LSS will be expanded via incorporation in the Intergrated Assessment Living Schedule to include other dynamics identifeid by training that will permit effective demonstration of performance of various routine, off-normal, and emergency procedures. Since the design of the LSS provides for expansion of the facility to accommodate additional panel instruments and controls, an appropriate freeze time must be established for submittal of the performance testing program and test results. Subsequent improvements then, will be submitted via a configuration management program.

A May 26, 1991, freeze date is selected as a an appropriate extensioin for this exemption request. "A description of the performance tests as part of the application, and the results of such tests" will be submitted by May 26, 1991. That date reflects the stage of LSS development at that time.

A schedular exemption until May 26, 1991, is appropriate for the Big Rock Point Simulation Facility because:

(1) It provides an adequate time, following acceptance testing of the work station for wiring of panel instuments to the work station and subsequent performance testing.

(2) It provides for the long term expansion of the LSS via the Integrated Assessment Living Schedule, and establishes a freeze date at which to complete installation and performance testing of as many of the additional panel instruments as possible to permit a more functional and complete simulation facility.

(3) It takes into consideration paragraph (b)(3)(ii) for facility licensee applicants, to allow 180 days before the date for conducting the operating test. No operating test will be proposed for Big Rock Point during the 180-day period following May 26, 1991.

(4) The May 26, 1991, date is specified by regulation in that paragraph (b)(2)(iv) requires, "the simulation facility portion of the operating test will not be administered on other than a certified or an approved simulation facility after May 26, 1991."

Based on the above, the staff has determined that the schedule proposed by the licensee for submittal of the performance tests requirements of its application is acceptable.

III.

The Commission has determined that pursuant to 10 CFR 55.11, the exemption is authorized by law and will not endanger life or property and is otherwise in the public interest. Furthermore, the Commission has determined pursuant to 10 CFR 50.12(a) that special circumstances of 10 CFR 50.12(a)(2)(v) are applicable in that the exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation. This exemption grants a temporary relief period of six months from the November 1990, date for submittal of part of the Big Rock Point application for use of the simulation facility. Good faith efforts to comply with the regulation were made as follows:

(1) Immediately following publication of the new part 55 rule, Big Rock Point joined with three other facilities to form the Utility Simulation Facility Group (UFSG).

(2) During the development of the plan, the UFSG interacted with NRC in meetings on September 15 and 16, 1987, and December 7, 1987, to obtain comments and understandings.

(3) A final USFG document was issued on April 5, 1988, that provided "Guidance for the Development of a Simulation Facility to Meet the Requirements of 10 CFR 55.45."

(4) Consumers Power Company submitted a Big Rock Point Plant specific Simulation Facility Plan that incorporated and reflected the USFG guidance document plans by letter dated May 26, 1988.

(5) NRC letter dated April 10, 1989, provided comments to the licensee's May 26, 1988, Simulation Facility Plan. The NRC comments indicated that the licensee would probably not be successful in justifying continued use of the Dresden simulator, even if they performed "the research and analysis required to support" their position. The letter stated, "the major physical fidelity deviation expected to exist between the Big Rock Point control room and the Dresden simulator are not likely to be sustained for use by such an analysis."

(6) Consumers Power Company met with NRC on May 9, 1989, to discuss NRC comments regarding their proposal, and the need to apply for exemption since resolution of NRC comments seemed to require a plant specific simulator.

(7) NRC letter dated June 12, 1989 documented the May 9, 1989, meeting and summarized the conclusion as follows: "It was also emphasized that if a plant-specific simulator would not be available, Consumers Power Company was to provide a program with the submittal on how the NRC would evaluate the license students."

(8) On September 7, 1989, Consumers Power Company met with NRC to present a plan that specified how the NRC would evaluate Big Rock Point operators, using Dresden controls with Big Rock Point specific labels, panel overlays, and other enhancements. This approach was to be combined with use of the actual plant and a commitment to develop a full-scale site mock-up of the Big Rock Point control room. The licensee expressed concern that an analysis to identify deviations and justify differences between the Dresden simulator and Big Rock Point control room could be cost prohibitive.

(9) NRC letter dated October 2, 1989, documented the September 7, 1988, meeting and summarized the NRC staff position as follows: "The staff indicated that the fidelity issue can be addressed by other techniques with an analysis of any exceptions of deviations. These other techniques would model Big Rock Point processes to compensate for the Dresden simulator differences. The plan should be packaged as close as possible to the rule."

(10) Working meetings and telephone conference calls held with NRC and Region staff members which included a meeting on October 12, 1989; a conference call on October 25, 1989, and a meeting on November 13, 1989, identified alternative courses of action in lieu of spending an estimated additional 1 million dollars on an analysis that offered little in return

except justification for doing what was already proposed in the docketed simulation facility plan.

(11) On December 19, 1989, a letter of intent with a simulator vendor was signed to purchase a work station that provides a real-time thermohydraulic code of the Big Rock Point reactor core and primary system.

(12) During December 1989, and January 1990, methodology was developed for a control manipulation analysis that would evaluate operator actions to identify which part task stimulation devices were appropriate to be included in a Big Rock Point plant-specific limited scope simulator.

(13) In December 1989, January and February 1990, construction of the Big Rock Point plant-specific mock-up and limited scope simulator began. Software development for the work station was also initiated.

(14) On February 27, 1990, Consumers Power Company met with NRC to present our revised approach for the Big Rock Point Plant Simulation Facility. In that meeting, NRC expressed concern that it was important for Consumers Power Company to submit an exemption request as soon as possible if we identified that we could not meet the timing requirements specified by 10 CFR 55.45(2)(ii).

(15) The licensee submitted on exemption request on April 4, 1990.

(16) The licensee submitted an application (excepting the performance test) on June 29, 1990.

The Commission hereby grants an exemption from the schedular requirements of 10 CFR 55.45(b)(2)(ii) for submittal of a description of the performance test and the results of the performance tests as part of the submittal of an application for use of a simulation facility. This exemption is effective until May 26, 1991.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the exemption will have no significant impact on the environment (55 FR 35382, August 29, 1990).

The licensee's request April 4, 1990, is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the North Central Michigan College, 1515 Howard Street, Petoskey, Michigan.

The exemption is effective upon issuance.

Dated at Rockville, Maryland this 10th day of September 1990.

For the Nuclear Regulatory Commission.

Dennis Crutchfield,

Director, Division of Reactor Projects III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90-22630 Filed 9-17-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 72-4 (50-269/270/287)]

Duke Power Co; Issuance of Amendment to Materials License No. SNM-2503

The U.S. Nuclear Regulatory Regulatory Commission (the Commission) has issued Amendment No. 1 to Materials License No. SNM-2503 held by the Duke Power Company for the receipt and storage of spent fuel at the Oconee Independent Spent Fuel Storage Installation, located on the Oconee Nuclear Station site, Oconee County, South California. The amendment is effective as of the date of issuance.

The amendment revises the Technical Specifications in appendix B. Changes were made to Specifications 1.1.A and 1.1.B of appendix B to reflect Revision 3 to the Ozone Nuclear Station Independent Spent Fuel Storage Installation (ISFSI) Security Program.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment. Prior public notice of the amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that, pursuant to 10 CFR 51.22(c), an environmental assessment need not be prepared in connection with the issuance of the amendment.

For further details with respect to this action, see (1) The application for amendment dated June 29, 1990, and (2) Amendment No. 1 to Materials License No. SNM-2503, and (3) the Commission's letter to the licensee dated September 11, 1990. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC., and at the Local Public Document Room at the Oconee County Public Library, 501 W. Southbound Street, Walhalla, South Carolina 29691.

Dated at Rockville, Maryland, this 11th day of September 1990.

For the U.S. Nuclear Regulatory Commission.

Charles J. Haughney,

Chief Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 90-22028 Filed 9-17-90; 8:45 am]

BILLING CODE 7590-01-M

Indiana Michigan Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendment to Facility Operating License Nos. DPR-58 and DPR-74, issued to Indiana Michigan Power Company (the licensee), for operation of the Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, located in Berrien County, Michigan.

The proposed amendment would allow the use of flashing lights and rope boundaries to serve as a substitute for a locked door as providing a locked door is not possible or practical due to area size of configuration. Technical Specification (TS) 6.12.2 currently requires that locked doors provided to prevent unauthorized entry into areas in which the intensity of radiation is greater than 1000 mrem/hr.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided an analysis that addressed the above three standards in the amendment applications.

1. The proposed change would not increase the probability or consequences of a previously evaluated accident because changing the access control requirements for high radiation areas does not impact any of the previously analyzed accidents.

2. The proposed change will not create the possibility of a new or different kind of accident from any previously analyzed or evaluated because the proposed change does not involve a change in plant configuration or operation and will not place the plant in an unanalyzed condition.

3. The change proposed will not involve a significant reduction in a margin of safety because the use of flashing lights in a specifically posted area will provide adequate protection against unauthorized entry into an area with dose rates exceeding 1000 mrem/hr. The proposed change is consistent wth the language contained in the Westinghouse Standard TSs.

The staff has reviewed the licensee's evaluation and concurs with their findings. Therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P–223, Phillips Building Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 18, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. 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 20555 and at the local public document room located at the Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085. 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 particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petiton 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 facts or expert opinion which support the contention and on which the petitioner intends to rely in 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 amendment 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.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment unitl the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petiton for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification number 3737 and the following message addressed to Robert C. Pierson: petitioner's name and telephone number; date petiton was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037 attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request, shoud be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 25, 1990, as amended August 14, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Rockville, Maryland, this 11th day of September 1990.

For the Nuclear Regulatory Commission.

John Stang,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90–22031 Filed 9–17–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–2061–ML]

Kerr-McGee Chemical Corp. (West Chicago Rare Earths Facility); Oral Argument

Notice is hereby given that, in accordance with the Appeal Board's order of September 4, 1990, oral argument on the intervenors' August 31, 1990, motion to vacate or, in the alternative, to reopen the record will be heard at 1:30 p.m. on Wednesday, October 10, 1990, in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.

Dated: September 11, 1990.

For the Appeal Board.

Barbara A. Tompkins,

Secretary to the Appeal Board.

[FR Doc. 90–22025 Filed 9–17–90; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. NO. IC–17737; 812–7482]

Allied Irish Banks, PLC; Application

September 11, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: Allied Irish Banks, PLC.

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from all provisions of the 1940 Act.

SUMMARY OF APPLICATION: Applicant seeks an order permitting it to issue and sell its equity securities in the United States, either directly or in the form of American Depositary Shares representing American Depositary Receipts.

FILING DATE: The application was filed on March 1, 1990, and amended on June 21 and September 5, 1990. A letter was submitted on July 27, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:50 p.m. on October 5, 1990, and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, 450 5th Street, NW, Washington, DC 20549. Applicant, c/o E. Miles Prentice, III, Brown & Wood, One World Trade Center, New York, New York 10048.

FOR FURTHER INFORMATION CONTACT: Brion R. Thompson, Special Counsel, at (202) 272–3567 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (303) 258–4300).

Aplicant's Representations

1. Applicant was incorporated in the Republic of Ireland in 1966 in connection with the amalgamation of three established Irish Banks, The Munster & Leinster Bank Limited, Provincial Bank of Ireland Limited and The Royal Bank of Ireland Limited, and is the successor to the business of those banks. Applicant is the largest banking corporation organized under the laws of Ireland. Applicant is primarily engaged in the business of taking deposits and extending loans. In addition to deposit and lending services, Applicant provides its customers with foreign exchange, documentary credits and guarantees, securities trading and underwriting, fiduciary and protfolio management services. Under Irish law, Applicant can perform both commercial and investment banking services. Applicant and its consolidated subsidiaries provide a diverse range of banking, financial and related services, principally in Ireland, Britain and the United States.

2. March 31, 1989, Applicant's total assets were $20.7 billion, total liabilities (excluding shareholder's funds) were $198 billion and total shareholder's funds were $0.9 billion. On that date, Applicant's total deposits (including due to banks) represented $17.6 billion or 89% of its total liabilities, and total loans and other advances (including due from banks, bills of exchange and money market paper) represented $15.4 billion or 74% of its total assets. Applicant's net profit for the year ended March 31, 1989, was $126.3 million and its share capital was $97 million. Applicant's share capital is widely distributed. Applicant's shares are listed on The International

Stock Exchange of the United Kingdom and the Republic of Ireland (the "Stock Exchange"). All dollar amounts set forth have been converted to United States dollar amounts at the rate of United States $1.4050 = IR 1.00, which was the noon buying rate in New York City for bale transfers in pounds as certified for customs purposes by the Federal Reserve Bank of New York on March 31, 1989. In addition, figures herein are based on the consolidated profit and loss amount and the consolidated balance sheet.

3. As a public limited company incorporated in Ireland, whose shares are listed on the Stock Exchange, Applicant is subject to extensive regulation under the provisions of the Companies Acts 1963 to 1986 (Irish), the provisions of the Currency and Central Banks Acts 1927 and 1971 as amended and extended by the European Communities (Licensing and Supervision of Banks) Regulations 1979 and the Central Bank Act of 1989. The regulation and supervision of banks in Ireland is the function of the Central Bank of Ireland (the "Central Bank") which was established by and derives its power from the Central Bank Act 1942. The Central Bank has statutory power to carry out inspections of the books and records of licensed Irish banks. The Central Bank is further empowered to prescribe ratios to be maintained between the assets and liabilities of licensed banks, to prescribe ratios to be maintained between the assets and liabilities of licensed banks, to prescribe maximum interest rates permitted to be charged and to make regulations for the prudent and orderly conduct of banking business of such banks, including capital and liquidity requirements. It also sets the standards and criteria for the assessment of new applications for licenses and to appraise the business and performance of existing license holders.

4. Applicant has branches in New York City and Chicago, which are licensed by the state of New York and Illinois, respectively, and are subject to examination by the banking departments of those states. Applicant's branches are subject to the reserve requirements estblished by the Board of Governors of the Federal Reserve System (the "Board") pursuant to the International Banking Act of 1978 (the "IBA") and are subject to examination by the Board. In addition, Applicant's New York branch is subject to regulation by the Federal Deposit Insurance Corporation ("FDIC"). Applicant also owns First Maryland Bankcorp ("FMB"), a United States bank holding company with 179 branches and offices in the state of Maryland and adjoining states. As owner of FMB, Applicant is subject to the provisions of the Federal Bank Holding Company Act of 1956. FMB is also subject to regulation by the Office of the Comptroller of the Currency and the FDIC.

5. The proposed offering and sale of Applicant's equity securities in the United States would either be (a) pursuant to a firm commitment underwritten public offering registered under the Securities Act of 1933, as amended (the "1933 Act"), (b) pursuant to an exemption from the registration requirements of the 1933 Act which, in the opinion of United States counsel to Applicant, is available to Applicant with respect tosuch offers and sales or (c) pursuant to the advice of the staff of the SEC that it would not recommend that the SEC take any action under the 1933 Act if such offers and sales were made without registering such equity securities under the 1933 Act.

6. In connection with listing Applicant's equity securities on a national securities exchange or having such securities quoted on an automated inter-dealer quotation system, Applicant's equity securities would be registered udner the Securities Exchange Act of 1934, as amended (the "1934 Act"), and Applicant would thereafter file periodic reports pursuant to the 1934 Act.

Applicant's Legal Analysis

1. Applicant submits that approval of this application is necessary or appropriate in the public interest. In this regard, such an approval is consistent with and would advance the policies underlying the IBA, which seeks to place United States banks and foreign banks on a basis of competitive equality in their United States transactions. The SEC previously has issued at least 14 orders granting exemptions from the provisions of the 1940 Act to other foreign banks in order to enable them to sell their equity securities in the United States. *See, e.g.*, Banque Nationale de Paris, Investment Company Act Release Nos. 16752 (January 11, 1989) and 16807 (February 13, 1989), Banco Espanol Central de Credito, S.A., Investment Company Act Release Nos. 16678 (December 6, 1988) and 16735 (January 3, 1989), Banco Bilbao Vizcaya, S.A., Investment Company Act Release Nos. 16549 (September 7, 1988) and 16604 (October 20, 1988), The Royal Bank of Scotland Group plc, Investment Company Act Release Nos. 16243 (January 29, 1988), and 16295 (March 1, 1988), Banco De Vizcaya, S.A., Investment Company Act Release Nos. 16205 (January 6, 1988) and 16249 (February 3, 1988). Applicant submits that the circumstances described in the application are substantially identical to those applications cited above. In addition, Applicant submits that the granting of the relief requested would benefit institutional and other sophisticated investors in the United States by making Applicant's equity securities more readily available to such investors.

2. Applicant submits that the relief requested is consistent with the protection of investors for the same reasons that United States banks are exempt from the 1940 Act—there are already in place regulatory requirements which afford sufficient protection for investors. The Irish operations of Applicant are extensively controlled and overseen by the government of Ireland through the Departments of Finance and Industry and Commerce and the Central Bank. The United States operations of Applicant are extensively controlled and overseen by state banking departments and are subject to the reserve requirements of the Board.

3. Applicant states that approval of the application is consistent with the purposes of the 1940 Act because commercial banks were not intended to be regulated by the 1940 Act. Commercial bank operations do not give rise to the abuses sought to be prevented by the 1940 Act, and the legislative history of the 1940 Act supports the position that commercial banks, such as Applicant, were not within the intended purview of the 1940 Act.

Applicant's Condition

Applicant consents to any SEC order issued upon the application being expressly conditioned on its compliance with the proposed amendments to Rule 6c–9 under the 1940 Act as they are currently proposed, and as they may be reproposed, adopted or amended.

For the Commission, by the Division of Investment Management, by delegated authority.

[FR Doc. 90–22042 Filed 9–17–90; 8:45 am]
BILLING CODE 8010–01–M

[Rel. No. 34-28424; File No. SR-DTC-90-08]

Self-Regulatory Organization; The Depository Trust Co.; Order Granting Partial Approval of Proposed Rule Change Implementing a Commercial Paper Program

I. Introduction

On May 8, 1990, the Depository Trust Company ("DTC") filed a proposed rule change (File No. SR-DTC-90-08) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change will permit DTC to add commercial paper ("CP") transactions to its same-day funds settlement ("SDFS") system. Notice of the proposed rule change appeared in the **Federal Register** on July 27, 1990.[2] No comments were received.[3] As discussed below, the Commission is approving one aspect of the proposal that would revise DTC's SDFS system participant default controls.

II. Description

DTC's proposal amends its rules to include CP transactions in its SDFS system.[4] Under DTC's proposal, those CP issues made eligible for SDFS will be distributed in book-entry only ("BEO") form upon the electronic instruction of the issuer's issuing agent bank. The issuer's paying agent bank, acting also as DTC's custodian, will hold master CP certificates for DTC.

DTC's SDFS system contains certain controls and safeguards that are designed to minimize DTC's losses in the event of participant default. These controls include: (i) Net debit collateralization, (ii) required contributions to the SDFS component of the participants fund, (iii) net debit caps, (iv) receiver-authorized delivery procedures, (v) net-net settlement, and (vi) failure-to-settle procedures.[5] All of these safeguards will be applicable to CP transactions. In addition, DTC proposes to add additional controls to the SDFS system to address the unique risks arising from the addition of CP to the SDFS system.[6]

DTC proposes to begin processing CP transaction in its SDFS system on October 5, 1990. In an effort to minimize the impact of the operational changes that DTC and its participants must make to accommodate the addition of CP to SDFS, DTC has requested that the Commission approve four components of its proposal before October 5, 1990. These components are (i) Increasing its participants' adjustable net debit caps from 10 to 15 times the participant's required and voluntary deposits to the SDFS fund, (ii) capping the SDFS fund at $400 million, (iii) allowing those participants with multiple SDFS accounts to organize them into one or more families of accounts, and (iv) permitting participants to effect a pledge versus payment transaction in the SDFS system. This order only addresses DTC's proposal to increase its participants' adjustable net debit caps.

Under DTC's current rules and procedures, participant's net debit is limited throughout the processing day to the least of (i) An amount equal to ten times the participant's required and voluntary deposits to the SDFS fund,[7] (ii) an amount equal to 75% of DTC's lines of credit, (iii) an amount, if any, determined by the participant's settling bank, or (iv) an amount, if any, determined by DTC. As stated above, DTC proposes to change the formula for calculating the adjustable portion of a participant's net debit cap ("adjustable net debit cap") from ten to 15 times a participant's required and voluntary deposits [8] to the SDFS fund.

III. DTC's Rationale

DTC states that the adjustable net debit cap protects against abnormal intraday net debit peaks that are out of line with a participant's prior month's average daily level of settlement activity, and note that these fluctuations are typically related to the underwriting of a large new securities issue. DTC also notes that a participant's effective rate of required deposits to the SDFS fund declines from the five percent formula rate because of its proposed $400 million cap on the SDFS fund, allowing the adjustable net debit cap formula to remain at a level equal to ten times a participant's required and voluntary deposit to the SDFS fund may impede their participants' ability to process transactions in the SDFS system. In addition, given the anticipated increase in dollar volume of transactions flowing through the SDFS system once CP is added, DTC believes an increase in its participants' adjustable net debit caps is necessary to permit the original issuance of CP through SDFS.

IV. Discussion

Section 17A of the Act provides that the rules of a clearing agency must promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds for which it is responsible.[9] As discussed below, the Commission believes that DTC's proposal to increase its participants' adjustable net debit caps is consistent with this provision.

The Commission believes that DTC's proposal promotes the prompt and accurate clearance and settlement of CP transactions by encouraging the original issuance of securities eligible for settlement in the SDFS system. Because DTC does not currently place a limit on the aggregate amount of contributions to the SDFS fund, a participant's required contribution to the SDFS fund always equals five percent of its average daily gross debits and credits in the SDFS system for the prior month. Thus, the participant's adjustable net debit cap, which is currently ten times this amount, bears a rational relationship to its SDFS activity.

As noted above, DTC proposes to cap the aggregate level of the SDFS fund at $400 million. Assuming that the average daily gross settlement activity of DTC's participants exceeds $8 billion, their required contribution to the SDFS fund would begin to decrease below an amount equal to five percent of each

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] *See* Securities Exchange Act Release No. 28250 (July 20, 1990), 55 FR 30773.

[3] The Commission notes that DTC sent an initial CP proposal to its participants and others for consideration in October 1988, and received 37 written responses. After a series of meetings with some of the respondents, DTC modified and expanded the CP proposal and reissued it in July 1990. DTC received 11 written comments on the revised proposal. In general, these commentators urged DTC to proceed with its proposal to offer a CP program and encourage DTC to do so as expeditiously as possible.

[4] DTC's SDFS system currently encompasses municipal notes municipal variable-rate bonds, zero-coupon bonds backed by U.S. government securities, medium term notes, auction rate and tender-rate preferred stocks, collateralized mortgage obligations, government agency securities not eligible for the book-entry system operated by the Federal Reserve Banks. For a complete description of DTC's SDFS system, *see* Securities Exchange Act Releaase No. 24689 (July 9, 1987), 52 FR 26613. ("Initial SDFS Order")

[5] *See* Initial SDFS Order *supra*, note 4, at 26614.

[6] DTC's failure-to-settle procedures assume taht securities returned to delivering participants will not have market values so far below their settlement values as to cause those participants to fail to settle with DTC. This assumption is not valid when a failure to settle is caused by a CP issuer's bankruptcy. To guard against this unique risk, DTC will among other things, only make highly rated CP eligible for SDFS, admit only well-capitalized CP issuers, dealers and paying agents to the SDFS system, devalue to zero all of an issuer's CP the actual or potential downgrading of the issuer's CP below DTC's eligibility, standards, and prohibit "free" transactions in CP received versus payment until settlement is completed.

[7] DTC requires each participant in the SDFS system to make a required deposit to the SDFS fund. Each participant's required deposit is calculated monthly and is equal to five percent of the participant's average gross daily SDFS credits and debits during the prior month. In addition, DTC requires the first $200,000, of a participant's required deposit to be made in cash.

[8] A participant may make voluntary contributions to increase its adjustable net debit cap.

[9] 15 U.S.C. 78q-1(b)(3).

participant's average daily gross debits and credits. Because each participant's adjustable net debit cap is based on a multiple of this figure, each participant's adjustable net debit cap would begin to decrease as well. Thus, after this threshold is reached, there is a possibility that a participant's adjustable net debit cap may not bear a reasonable relationship to the dollar amount of transactions that it processes through the SDFS system. Consequently, this artificial constraint may discourage DTC's participants from processing CP transaction through the SDFS system. Thus, by raising its participants' adjustable net debit caps, the Commission believes that DTC will encourage the immobilization and issuance of securities through the SDFS system. This, in turn, will promote the prompt and accurate clearance and settlement of CP transactions.

Raising the adjustable net debit cap of DTC's participants has the potential to magnify the problems arising from a participant default. Nevertheless, several factors temper this concern.

As an initial matter, the Commission notes that all debits in DTC's system must be collateralized by securities, cash or other deposits, subject to deductions that reflect potential changes in the market value of those assets. Also, a participant's net debit cap is the least of (i) Its adjustable net debit cap, (ii) 75% of DTC's available lines of credit, (iii) an amount determined by DTC, or (iv) an amount determined by the participant's settling bank. Thus, although DTC's proposal increases a participant's adjustable net debit cap, this increase is constrained by the dollar amount of DTC's lines of credit [10] and also may be constrained by DTC or the participant's settling bank. In this regard, DTC monitors the financial condition and trading activity of its participants on a continuous basis, and is authorized to reduce a participant's net debit cap in appropriate circumstances.

The Commission believes that DTC's incremental approach to the implementation of its systems' changes is consistent with the Act and, in particular, section 17A of the Act. As the Commission has previously stated, because of the impact systems' failures may have on transaction processing, self-regulatory organizations should ensure that their automated systems have the capacity to handle peak processing volume, conduct stress to determine the behavior of their automated systems under a variety of simulated conditions, and assess the vulnerability of their automated systems to internal and external threat.[11] DTC made these assessments in connection with this proposal and represents that its automated systems have the capacity to accommodate the anticipated increase in transactions processed through SDFS as a result thereof, have been tested successfully under stress situations, and are not unreasonably vulnerable to internal or external threat. In addition, DTC has engaged in functional testing of the new applications proposed to be added to the SDFS system in connection with the CP program.[12] Finally, the Commission believes that DTC's decision to phase-in the systems' changes necessary to accommodate the CP program is beneficial because it will minimize the impact that such changes may have on the operations of DTC.

V. Conclusion

For the reasons stated above, the Commission finds that DTC's proposal to increase its participants' adjustable net debit caps is consistent with section 17A of the Act.

It therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed filing (SR–DTC–90–08) be, and hereby is, partially approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 11, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–22043 Filed 9–17–90; 8:45 am]

BILLING CODE 8010-01-M

[10] Currently, $100 million.

[11] *See* Securities Exchange Act Release No. 27445 (November 16, 1989) 54 FR 48703 (November 24, 1989).

[12] *See* letter from Richard B. Nesson, Senior Vice-President and General Counsel, DTC, to Jonathan Kallman, Assistant Director, Division of Market Regulation, Commission, dated August 30, 1990.

[Rel. No. 34–28425; File No. SR–MSTC–90–05]

Self-Regulatory Organizations; Midwest Securities Trust Co.; Filing and Immediate Effectiveness of Proposed Rule Change Relating to Its Member Transaction Fee Schedule

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 13, 1990, the Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–MSTC–90–05) as described in Items I and II below, which Items have been prepared by the self-regulatory organization ("SRO"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

I. SRO's Statement of the Terms of Substance of the Proposed Rule Change

The proposed procedure will allow MSTC participants to have securities mailed directly to their clients after a transfer has been effected.

II. SRO's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the SRO included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Items IV below. The SRO has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. SRO's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to implement MSTC's Direct Mail Service, which will allow MSTC participants to have securities mailed directly to their clients after a request for physical withdrawal of securities has been processed by MSTC. Under MSTC Rules, article II, rule 1, section 2(F) (Withdrawals of Securities, MSTC processes and fills security withdrawal requests of participants by submitting securities to a transfer agent for transfer in the name(s) designated by a participant. Under MSTC's article I, rule 3, section 1(e) (Miscellaneous), MSTC may from time to time act in delivering and receiving securities from persons, firms or organizations which are not participants. Pursuant to the foregoing rules, and in connection with MSTC's existing transfer service, participants may instruct MSTC to have securities withdrawn and registered in their client's name. Following receipt of these instructions, MSTC will present securities it holds to the transfer agent for reregistration in the customer's name. Once the transfer agent returns securities to MSTC, MSTC will forward such securities to the participant and process the normal close-out entry on the participant's activity report.

Under MSTC's Direct Mail Service, if requested by a participant, MSTC will mail securities directly to a participant's

customer upon receipt of the securities from the transfer agent. The day the transfer is closed and the certificates are mailed, MSTC will provide participants with a closed customer transfer report indicating all closed items. Under the proposed service, MSTC will replace any securities which the participant's customer claims non-receipt for a period of six months from the date of mailing, at no charge.

The proposed rule change also establishes a fee of $1.35 for each Direct Mail Service item. The proposed rule change is commensurate with section 17A of the Act in that it facilitates the prompt and accurate clearance and settlement of securities transactions. The proposed change is designed to expedite the processing of securities directly to a customer of an MSTC participant.

B. SRO'S Statement on Burden on Competition

MSTC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

C. SRO's Statement of Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received concerning the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and the Act's Rule 19b–4 because the proposal: (1) constitutes a policy change with respect to the SRO's existing rules pursuant to Subsection (i) of section 19(b)(3)(A),[2] and (2) changes a fee imposed by the SRO pursuant to Subsection (ii) of section 19(b)(3)(A). At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MSTC. All submissions should refer to File Number SR–MSTC–90–05 and should be submitted by October 9, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–22044 Filed 9–17–90; 8:45 am]

BILLING CODE 8010–01–M

[2] *See*, MSTC Rules, Art. I, Rule 3, Sect. 1(c); and Art. II, Rule 1, Sect. 2(f).

[3] 17 CFR 200.30–3(a)(12).

[Rel. No. IC–17738; International Series Release No. 152; File No. 812–7586]

Morgan Guaranty Trust Co. of New York; Application

September 12, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: Morgan Guaranty Trust Company of New York.

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) of the 1940 Act from section 17(f) and Rule 17f–5 thereunder.

SUMMARY OF APPLICATION: Applicant seeks an order to permit it to continue depositing and maintaining securities and other assets of United States investment companies for which Applicant serves as custodian or subcustodian with J.P. Morgan Nederland, N.V. ("JPMN") even though Applicant intends to sell its interest in JPMN.

FILING DATE: The application was filed on September 5, 1990. Applicant will file an amendment during the notice period, the substance of which is set forth herein.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 5, 1990, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, Gail M. Inaba, Vice President and Assistant Resident Counsel, 60 Wall Street, New York, New York 10260.

FOR FURTHER INFORMATION CONTACT: Barbara Chretien-Dar, Staff Attorney, at (202) 272–3022, or Stephanie M. Monaco, Branch Chief, at (202) 272–3030 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. In Investment Company Act Release No. 16080 (October 26, 1987), the SEC granted an order (the "Morgan Order") exempting the Applicant, any subcustodian of Applicant, any custodian for which Applicant serves as subcustodian, any investment company registered under the 1940 Act other than those registered under section 7(d) of such Act ("Company"), and JPMN (formerly, Morgan Bank Nederland) from the provisions of section 17(f) of the 1940 Act to permit Applicant, as custodian or subcustodian of securities and other assets of Companies (the "Securities"),[1] to deposit such Securities in The Netherlands with JPMN. At the time, JPMN was a wholly-owned subsidiary of Applicant, but Applicant could not rely on Rule 17f–5 to retain JPMN as an eligible foreign custodian because JPMN had shareholders' equity of less than U.S. $100 million. Pursuant to the terms of the Morgan Order, Applicant can deposit Securities with

[1] The term "Securities" does not include securities issued by the government of the United States or by any state or political subdivision thereof or by any agency thereof or any securities issued by any entity organized under the laws of the United States or any state thereof (other than certificates of deposit, evidences of indebtedness, and other securities issued or guaranteed by an entity so organized which have been issued and sold outside the United States).

JPMN only in accordance with an agreement (the "Morgan-JPMN Agreement"), required to remain in effect at all times during which JPMN fails to meet the requirements of Rule 17f–5 relating to shareholders' equity, among (a) a Company or custodian for which Applicant serves as custodian or subcustodian, as the case may be, (b) Applicant, and (c) JPMN. The terms of the Morgan-JPMN Agreement provide that Applicant would act as the custodian or subcustodian of the Securities, as the case may be, and would delegate to JPMN such duties and obligations as would be necessary to permit JPMN to hold in custody the Securities in The Netherlands. The Morgan-JPMN Agreement further provides that Applicant's delegation of duties to JPMN would not relieve Applicant of any responsibility to any Company for any loss due to such delegation, except such loss as may result from political risk (*e.g.*, exchange control restrictions, confiscation, expropriation, nationalization, insurrection, civil strife or armed hostilities) and other risks of loss (excluding bankruptcy or insolvency of JPMN) for which neither Applicant nor JPMN would be liable (*e.g.*, despite the exercise of reasonable care, loss due to Acts of God, nuclear incident and the like).

2. JPMN is a Netherlands corporation and is regulated as a banking institution by the Central Bank of the Netherlands. Applicant has entered into an agreement to transfer its interest in JPMN to Assurantie Maatschappij Van 1896 B.V. ("Assumij") on October 1, 1990. Assumij is a wholly-owned subholding company of AEGON N.V., a Netherlands insurance holding company. JPMN will continue to provide custody services and be regulated as a bank in The Netherlands. Notwithstanding Applicant's sale of its interest in JPMN, Applicant requests an order to permit it to continue to deposit Securities in The Netherlands with JPMN provided that such deposit is made in accordance with the terms of the Morgan Order and that the Morgan-JPMN Agreement remains in effect.

Applicant's Conditions

Applicant will comply with the terms and conditions of the Morgan Order, set forth below, as they relate to JPMN.

1. The foreign custody arrangements with respect to JPMN will satisfy the requirements of Rule 17f–5 in all respects except the shareholders' equity requirement.

2. Securities will be maintained with JPMN only in accordance with the Morgan-JPMN Agreement, required to be in effect at all times during which JPMN fails to satisfy the shareholders' equity requirement of Rule 17f–5, among (a) a Company or a custodian for which Applicant acts as a custodian or subcustodian, as the case may be, (b) Applicant, and (c) JPMN. Under this agreement, Applicant would provide specified custodial or subcustodial services and would delegate to JPMN such duties and obligations as are necessary to permit JPMN to hold the Securities in custody in The Netherlands. The Morgan-JPMN Agreement further provides that Applicant's delegation of duties to JPMN not relieve Applicant of any responsibility to any Company or custodian for any loss due to such delegation except for loss resulting from certain political risks and certain other risks of loss (excluding bankruptcy or insolvency of JPMN) for which neither Applicant nor JPMN would otherwise be liable.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 90–22041 Filed 9–17–90; 8:45 am]
BILLING CODE 8010–01–M

[Rel. No. IC–17736; International Series Release No. 151; 812–7425]

National Australia Bank Limited; Application

September 11, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: National Australia Bank Limited.

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from the provisions of section 17(f).

SUMMARY OF APPLICATION: Applicant seeks an order exempting it and its wholly-owned subsidiary, National Nominees Limited ("NNL"), any investment company registered under the 1940 Act, other than an investment company registered under section 7(d) of the 1940 Act (a "U.S. Investment Company"), and any other custodian for a U.S. Investment Company from section 17(f) of the 1940 Act in connection with NNL's custody of the securities and other assets of any U.S. Investment Company outside of the United States.

FILING DATES: The application was filed on November 7, 1989, and was amended on April 3 and September 7, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 5, 1990, and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, c/o Jeffrey F. Browne, Esq., Sullivan & Cromwell, 125 Broad Street, New York, New York 10004 or John E. Gall, General Manager, Investment and Trust Services, National Australia Bank Limited, P.O. Box 1406M, Melbourne, Victoria 3001, Australia.

FOR FURTHER INFORMATION CONTACT: Brion R. Thompson, Special Counsel, at (202) 272–3567 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations:

1. Applicant, a corporation organized under the laws of Victoria, Australia, is engaged in a broad range of banking, financial and related activities in Australia and around the world; it is one of the four major Australian banking institutions which together account for approximately 66% of commercial banking assets in Australia. In addition, Applicant, as part of the international services that it offers, provides a network of custodial and sub-custodial services for investment companies registered under the 1940 Act and their custodians in Australia and New Zealand exclusively through NNL.

2. NNL, a wholly owned and fully guaranteed subsidiary of Applicant, was established in 1950 under the laws of Victoria, Australia as Applicant's provider of nominee settlement and custodian services for Australian equities and fixed interest securities on behalf of Applicant's customers and

Australian and international investors. NNL is administered by Applicant's Investment and Trust Services Division, whose offshore representatives are located in London, New York, Tokyo and Auckland, New Zealand. All NNL personnel are employees of Applicant, and NNL itself has no employees.

3. NNL is an authorized trustee corporation under Regulation 14 of the Companies (Victoria) Code ("Code") and an approved trustee under section 167 of the Code. NNL is regulated by the Australian companies and securities authorities under the Securities Industry (Victoria) Code.

4. Applicant and NNL are regulated by the Reserve Bank of Australia. The Banking Act of 1959, as amended, of the Commonwealth of Australia gives the Reserve Bank authority to establish certain prudential standards to ensure that the affairs of banks are conducted in such a manner as to maintain a sound financial position and to ensure stability of the Australian financial system.

Applicant's Legal Conclusions

1. Applicant satisfies all of the requirements of Rule 17f–5 under the 1940 Act to serve as an "Eligible Foreign Custodian" of investment company assets. As of November 1989, Applicant was the third largest commercial bank in Australia based on domestic assets. At September 30, 1989, Applicant's assets totalled A$76.1 billion. Shareholders' equity at that date was approximately A$6.0 billion. The exemptive order under section 6(c) is sought, however, because NNL fails to meet the technical requirements of Rule 17f–5 relating to minimum shareholders equity and Applicant wishes to offer its network of custodial and sub-custodial services through NNL.

2. Applicant represents that the relief requested is necessary to increase the access of U.S. Investment Companies to global markets and their ability to hold in Australia the securities of foreign issuers. The relief requested will permit U.S. Investment Companies to have access to the custodial services of NNL which has an established record of investor protection, enhanced by the Applicant's guarantee of NNL's obligations and the supervisory framework imposed by the Reserve Bank.

3. Applicant further believes that the terms of the proposed foreign custodian arrangements will adequately protect U.S. Investment Companies and their shareholders against loss. Applicant will remain liable for the performance of the duties and obligations delegated to NNL as well as for losses relating to NNL's bankruptcy or insolvency. The risks associated with foreign investment, however, will remain with the U.S. Investment Companies.

4. Applicant further represents that the relief requested is consistent with the policy and provisions of the 1940 Act. U.S. Investment Companies holding their assets with NNL under the Agreement (as described below) will receive the functional equivalent of the protection accorded to investment companies who hold their assets with Eligible Foreign Custodians under Rule 17f–5.

Applicant's Conditions: If the requested order is granted, Applicant agrees to the following conditions:

1. Any securities would be maintained in NNL's custody only in accordance with an agreement among Applicant, NNL and the U.S. Investment Company or its custodian (the "Agreement") required to remain in effect at all times during which NNL fails to satisfy all the requirements of Rule 17f–5. Pursuant to such Agreement, Applicant would agree to provide custodial or subcustodial services in respect of the securities of such U.S. Investment Company and NNL would be delegated such duties and obligations of Applicant as would be necessary to permit NNL to hold in custody the securities of the U.S. Investment Company.

2. The Agreement would provide that the delegation by Applicant to NNL of any function would not relieve Applicant of any responsibility to the U.S. Investment Company or custodian for a U.S. Investment Company for any loss due to such delegation except such loss as may result from (a) political risk (e.g., exchange control restrictions, confiscation, expropriation, nationalization, insurrection, civil strife or armed hostilities) and (b) other risks of loss (excluding bankruptcy or insolvency) of NNL for which neither Applicant nor NNL would be liable under Rule 17f–5 (e.g., despite the exercise of reasonable care, loss due to Acts of God).

3. The foreign custody arrangements proposed with respect to NNL will satisfy the requirements of Rule 17f–5 in all respects other than the requirements of 17f–5(c)(2) relating to minimum shareholders equity.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–22040 Filed 9–17–90; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: September 12, 1990.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB number: 1545–0098.

Form number: 1045.

Type of review: Extension.

Title: Application for Tentative Refund.

Description: Form 1045 is used by individuals, estates, and trusts to apply for a quick refund of taxes due to carryback of a net operating loss, unused general business credit, or claim of right adjustment under section 1341(b). The information obtained is used to determine the validity of the application.

Respondents: Individuals or households, Farms, Businesses or other for-profit, Small businesses or organizations.

Estimated number of respondents: 65,220.

Estimated burden hours per response/recordkeeping:

Recordkeeping—34 hours, 12 minutes
Learning about the law or the form—6 hours, 47 minutes
Preparing the form—22 hours, 32 minutes
Copying, assembling, and sending the form to IRS—4 hours, 17 minutes

Frequency of response: On occasion.

Estimated total recordkeeping/reporting burden: 4,422,568 hours.

Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive

Office Building, Washington, DC 20503.

Irving W. Wilson, Jr.,

Departmental Reports Management Officer.

[FR Doc. 90-21960 Filed 9-17-90; 8:45 am]

BILLING CODE 4830-10-M

Office of Thrift Supervision

Appointment of Conservator; Atlanta Federal Savings Association

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Atlanta Federal Savings Association, Atlanta, Texas on August 31, 1990.

Dated: September 12, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-22064 Filed 9-17-90; 8:45 am]

BILLING CODE 6720-01-M

Appointment of Conservator; El Paso Federal Savings Association

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for El Paso Federal Savings Association, El Paso, Texas, on September 7, 1990.

Dated: September 12, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-22065 Filed 9-17-90; 8:45 am]

BILLING CODE 6720-01-M

Appointment of Conservator; Ensign Federal Savings Bank

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Ensign Federal Savings Bank, New York, New York on August 31, 1990.

Dated: September 12, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-22066 Filed 9-17-90; 8:45 am]

BILLING CODE 6720-01-M

Appointment of Conservator; First American Federal Savings Bank

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owner's Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for First American Federal Savings Bank, Santa Fe, New Mexico, on August 31, 1990.

Dated: September 21, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-22067 Filed 9-17-90; 8:45 am]

BILLING CODE 6720-01-M

Appointment of Conservator; First City Federal Savings Bank

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owner's Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for First City Federal Savings Bank, Lucedale, Mississippi, on September 7, 1990.

Dated: September 12, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-22068 Filed 9-17-90; 8:45 am]

BILLING CODE 6720-01-M

Appointment of Conservator; First Federal Savings Association

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2) (B) and (H) of the Home Owner's Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for First Federal Savings Association, Winnfield, Louisiana, on August 31, 1990.

Dated: September 12, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-22069 Filed 9-17-90; 8:45 am]

BILLING CODE 6720-01-M

Atlantia Federal Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(A) of the House Owner's Loan Act of 1933, as amended by § 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Atlanta Federal Savings and Loan Association, Atlanta, Texas on August 31, 1990.

Dated: September 12, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-22071 Filed 9-17-90; 8:45 am]

BILLING CODE 6720-01-M

Replacement of Conservator with a Receiver; American Home Savings and Loan Association, F.A.

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owner's Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for American Home Savings and Loan Association, F.A., Edmond, Oklahoma with the Resolution Trust Corporation as sole Receiver for the Association on September 12, 1990.

Dated: September 12, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-22-90 Filed 9-17-90; 8:45 am]

BILLING CODE 6720-01-M

Replacement of Conservator with a Receiver; Benjamin Franklin Federal Savings and Loan Association

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5 (d)(2) of the Home Owner's Loan Act of 1933, as amended by section 301 of the Financial

Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for The Benjamin Franklin Federal Savings and Loan Association, Portland, Oregon, with the Resolution Trust Corporation as sole Receiver for the Association on September 7, 1990.

Dated: September 12, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–22072 Filed 9–17–90; 8:45 am]

BILLING CODE 6720–01–M

Replacement of Conservator with a Receiver; Caguas-Central Federal Savings Bank of Puerto Rico

Notice is herey given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owner's Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Caguas-Central Federal Savings Bank of Puerto Rico, Caguas, Puerto Rico, OTS Docket No. 6344, with the Resolution trust Corporation as sole Receiver for the Association on August 31, 1990.

Dated: September 12, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington

Executive Secretary.

[FR Doc. 90–22073 Filed 9–17–90; 8:45 am]

BILLING CODE 6720–01–M

Replacement of Conservator with a Receiver; City Savings Association

Notice is herey given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owner's Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for City Savings Association, League City, Texas ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on August 31, 1990.

Dated: September 12, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington

Executive Secretary.

[FR Doc. 90–22074 Filed 9–17–90; 8:45 am]

BILLING CODE 6720–01–M

Notice of Appointment of Receiver; Community Federal Savings and Loan Association

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation Association, Tampa, Florida Docket No. 7163, on September 7, 1990.

Dated: September 12, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–22075 Filed 9–17–90; 8:45 am]

BILLING CODE 6720–01–M

Notice of Appointment of Receiver; Community Federal Savings Association

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Community Federal Savings Association, Bridgeport, Connecticut, Docket No. 8707, on September 7, 1990.

Dated: September 12, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–22076 Filed 9–17–90; 8:45 am]

BILLING CODE 6720–01–M

Notice of Appointment of Receiver; El Paso Savings Association

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(A) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for El Paso Savings Association, El Paso, Texas, OTS Docket No. 0078, on September 7, 1990.

Dated: September 12, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–22077 Filed 9–17–90; 8:45 am]

BILLING CODE 6720–01–M

Notice of Appointment of Receiver; Ensign Bank, F.S.B.

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(A) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Ensign Bank, F.S.B., New York, New York on August 31, 1990.

Dated: September 12, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–22078 Filed 9–17–90; 8:45 am]

BILLING CODE 6720–01–M

Replacement of Conservator with a Receiver; Fairmont Federal Savings Association

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Fairmont Federal Savings Association, Fairmont, Minnesota, OTS Docket No. 8752, with the Resolution Trust Corporation as sole Receiver for the Association on September 7, 1990.

Dated: September 12, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–22080 Filed 9–17–90; 8:45 am]

BILLING CODE 6720–01–M

Appointment of Receiver; Enterprise Federal Savings, F.S.A.

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Enterprise Federal Savings, F.S.A., Clearwater, Florida, Docket No. 8819, on September 7, 1990.

Dated: September 12, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–22079 Filed 9–17–90; 8:45 am]

BILLING CODE 6720–01–M

Appointment of Receiver; First American Savings Bank, F.S.B.

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First American Savings Bank, F.S.B., Santa Fe, New Mexico, Docket No. 7813, on August 31, 1990.

Dated: September 12, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–22081 Filed 9–17–90; 8:45 am]

BILLING CODE 6720–01–M

Appointment of Receiver; First City Federal Bank for Savings, F.S.B.

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First City Federal Bank for Savings, F.S.B., Lucedale, Mississippi, Docket No. 7570, on September 7, 1990.

Dated: September 12, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–22082 Filed 9–17–90; 8:45 am]

BILLING CODE 6720–01–M

Replacement of Conservator with a Receiver; First City Federal Savings and Loan Association

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator for First City Federal Savings and Loan Association, Baton Rouge, Louisiana ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on September 7, 1990.

Dated: September 12, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–22083 Filed 9–17–90; 8:45 am]

BILLING CODE 6720–01–M

First Federal Savings and Loan Association of Winnfield; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(A) of the Home Owners' Loan Act of 1933, as amended by 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First Federal Savings and Loan Association of Winnfield, Winnfield, Lousiana, Docket No. 2941, on August 31, 1990.

Dated: September 12, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–2284 Filed 9–17–90; 8:45 am]

BILLING CODE 6720–01–M

Replacement of Conservator with a Receiver; First Network Federal Savings Bank

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5 (d)(2)(A) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for First Network Federal Savings Bank, Los Angeles, California, OTS Docket No. 8808, with the Resolution Trust Corporation as sole Receiver for the Association on August 31, 1990.

Dated: September 12, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–22085 Filed 9–17–90; 8:45 am]

BILLING CODE 6720–01–M

French Market Homestead, F.S.A.; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for French Market Homestead, F.S.A., Metairie, Louisiana, Docket No. 8434, on September 7, 1990.

Dated: September 12, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–22086 Filed 9–17–90; 8:45 am]

BILLING CODE 6720–01–M

Appointment of Receiver; Gem City Federal Savings and Loan Association

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Gem City Federal Savings and Loan Association, Quincy, Illinois, Docket No. 8719, on September 7, 1990.

Dated: September 12, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–22087 Filed 9–17–90; 8:45 am]

BILLING CODE 6720–01–M

Appointment of Receiver; Missouri Savings Association, F.A.

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Missouri Savings Association, F.A., Clayton, Missouri, Docket No. 8588, on September 7, 1990.

Dated: September 12, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–22088 Filed 9–17–90; 8:45 am]

BILLING CODE 6720–01–M

Appointment of Receiver; Spring Branch Savings and Loan Association

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(F) of the Home Owner's Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform; Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Spring Branch Savings and Loan Association, Houston, Texas, Docket No. 6139, on August 31, 1990.

Dated: September 12, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–22089 Filed 9–17–90; 8:45 am]

BILLING CODE 6720–01–M

Replacement of Conservator with a Receiver; Western Empire Federal Savings and Loan Association

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Western Empire Federal Savings and Loan Association, Yorba Linda, California ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on August 31, 1990.

Dated; September 12, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–22090 Filed 9–17–90; 8:45 am]

BILLING CODE 6720–01–M

UNITED STATES INFORMATION AGENCY

Student and Youth Exchanges With the U.S.S.R., Central and Eastern Europe, and Yugoslavia

The United States Information Agency (USIA) invites applications from U.S. educational, cultural, and other not-for-profit institutions to conduct exchanges of students and young people with Bulgaria, Czechoslovakia, Hungary, Poland, Romania, the Soviet Union (including the Baltic States), and Yugoslavia. These exchanges represent part of the activities of the Samantha Smith Memorial exchange Program and are subject to the availability of funding for the Fiscal Year 1991 program.

Overall authority for these exchanges is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87–256 (Fulbright-Hays Act). The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and people of other countries; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and the other countries of the world." Programs and projects must conform with all Agency requirements and guidelines and are subject to final review by the USIA contracting officer.

Support is offered for two categories of exchange programs with the following countries: Bulgaria, Czechoslovakia, Hungary, Poland, Romania, the Soviet Union (including the Baltic States), and Yugoslavia. Category A supports exchanges of undergraduate students under the age of 26 for academic programs of no less than ten weeks duration; Category B supports exchanges of young people under the age of 21 for exchanges of no less than three weeks. Both existing and new projects are eligible. Programs designed specifically for U.S. teacher preparation in foreign language/area studies and/or programs in which foreign participants teach their native language or area studies in American institutions are ineligible for support.

Applications must be received by USIA no later than 5 p.m. EST on Friday, November 30, 1990.

Category A: Academic Exchanges

Grant funding under this category is intended to enhance and expand the scope of U.S. academic exchanges with Bulgaria, Czechoslovakia, Hungary, Poland, Romania, the Soviet Union (including the Baltic States), and Yugoslavia for undergraduate students under the age of 26.

Applications for substantive, undergraduate, academic exchange will be accepted from accredited, degree-granting U.S. universities or colleges and from not-for-profit organizations engaged in international educational exchange programs. Participants must be citizens either of the U.S. or of the partner country.

Preference will be given to exchanges with institutions located outside the capital cities overseas and for programs with eligible organizations overseas that have not participated in academic exchanges with U.S. institutions.

Language qualifications: It is desirable, but not required, that undergraduate students have sufficient fluency in the language of the country to be visited to pursue university study in the language and to converse with citizens of the country without the aid of interpreters. However, for exchanges with the USSR preference will be given to programs in which U.S. participants will have had a minimum of two years of relevant language study.

Reciprocity: Preference will be given to reciprocal exchanges. It is desirable but not required that the number of U.S. and foreign participants be nearly equal.

Orientation programs: Participating students should be provided with an orientation to the country of their visit.

Allowable Costs for Category A

Projects: Project awards will be made in a wide range of amounts but will not exceed $60,000 except for consortia of six or more institutions or for organizations holding open, national competitions, provided such organizations have at least four years of experience in international exchanges. Grant-funded items of expenditure will be limited to the following categories:

—International travel
—Domestic travel
—Maintenance and per diem
—Academic program costs (e.g. tuition, book allowance)
—Travel and maintenance costs for accompanying faculty supervisors; for no more than one program supervisor per twenty students
—Orientation costs (speaker honoraria are not to exceed $150 per day per speaker)
—Cultural enrichment expenses (limited to $150 per participant)
—Administration (salaries, benefits, medical insurance for participants, other direct and indirect costs) may not exceed 20 percent of the total funds requested; administrative expenses may be cost-shared.

Applications should demonstrate substantial cost sharing, including tuition waivers.

Category B. Youth Exchange

Grant funding for projects submitted under this category is intended to encourage the exchange of young people under the age of 21 between the U.S. and Bulgaria, Czechoslovakia, Hungary, Poland, Romania, the Soviet Union (including the Baltic States), and Yugoslavia. Grants are awarded to expand or enhance existing exchange

programs or to encourage the development of new exchange programs. Programs may involve the U.S. organization in a partnership with one or more countries.

The purpose of Category B exchanges is to promote interaction and interchange between American and foreign youth. Consequently, extensive interaction is a requirement. Proposals should demonstrate how American and foreign youth will interact in a way that encourages the interchange of ideas. Although homestays are considered to be a valuable component of an exchange, the program should consist of additional activities that promote interaction betwen young people.

Grant awards of up to $50,000 are available to support educational and cultural exchange projects.

In addition, "school-to-school exchanges" (which generally involve short-term exchanges of student/teacher groups between two partnered elementary, middle, or high schools) are eligible for support but are limited to grants of no more than $10,000. An organization seeking funds for a project involving more than one linkage may be eligible for a larger grant. Individual high schools currently participating in the US–USSR High School Academic Partnership Program are not eligible for direct grants under this initiative. Organizations other than schools seeking funds for an academic high school exchange of six months or more must be designated by USIA as a Teenager Exchange-Visitor Program Sponsor.

Preference is given for projects that exhibit the following features:

—Thematic focus—Eligible foci may include, but are not limited to: the arts (theater, dance, music, literature, fine arts, folklore, and film/video); conservation and the environment; historic preservation; museum training; political, social and economic issues; business and administration/management; math and science; agriculture; summer "enrichment" programs; and general youth activities. Projects requesting support for tours of performing arts groups or sports teams are eligible if the primary purpose of the program is interaction between international participants and their hosts. Tours of performing arts groups or sports groups where the primary activity is performance or competition are not eligible.

—Selection criteria—All participants must be under age 21. Participants should be chosen for their actual or potential leadership qualities. The ratio of adult escorts to youth participants should be reasonable.

—Orientation programs—There should be ample introduction to the program theme, administrative procedures, basic historical, cultural and social information, and substantive issues likely to be raised by their U.S. or foreign counterparts.

—Minimum stays in the host country—Stays of one month or longer are preferred. Consideration will be given to those projects which for reasons or requirements of the partner country or countries are of limited duration, but the length of stay in country must be no less than three weeks.

—Language qualifications—Speaking ability in the language of the host country for both American and foreign participants is desirable, but not required. Ideally some participants in each incoming delegation should be conversant in English, and some participants in each outgoing delegation should be conversant in the host country language.

—Reciprocity—Two-way programs are not a requirement (except for school-to-school exchanges), but in general preference is given to reciprocal exchanges, and the proposal should provide detailed information on the activities in both the U.S. and the partner country. The number of U.S. and foreign participants should be roughly equal. Such proposals should provide evidence that the U.S. organization has the commitment of a counterpart organization in the Soviet Union or Eastern Europe willing and able to engage in the proposed activities. In most cases the counterpart organization should assume responsibility for the cost of hosting the American participants in the reciprocal portion of the program.

—Adequate lead/planning time to ensure a successful exchange.

Allowable Costs for Category B Projects

Grants will be awarded in varying amounts up to a maximum of $50,000, except for individual school-to-school exchanges (described above), which are limited to a maximum of $10,000. Grant-funded expenditures will generally be limited to the following categories:

—In country travel and per diem.

—Orientation or preparation costs; briefing materials.

—Cultural enrichment allowance (not to exceed $150 per participant).

—Conference/seminar registration fees and other program admission fees.

—International travel, normally limited to partial support for Americans traveling to the USSR or East Europe, and East Europeans traveling to the U.S.; it is assumed that the travel of Soviet participants will be paid from Soviet sources.

—Administration (salaries, benefits, other direct and indirect costs) may not exceed 20% of the total funds requested; administrative expenses may be cost shared.

—Applications should demonstrate substantial cost sharing in both program and administrative expenses.

Application Procedures (Both Categories)

Interested U.S. organizations should write or call the offices listed below to request detailed application packets, which include award criteria, all necessary forms and guidelines for preparing proposals, including specific information on the contents of a complete application.

For Category A Proposals

The Samantha Smith Memorial Exchange Program, Office of Academic Programs (E/AEE), Room 208, United States Information Agency, 301 4th Street SW., Washington, DC 20547; Telephone 202 619–4420.

For Category B Proposals

The Samantha Smith Memorial Exchange Program, Youth Programs Division (E/VY), Office of International Visitors, Room 357, United States Information Agency, 301 4th Street SW., Washington, DC 20547; Telephone 202 619–6299.

Review Process (Both Categories)

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Eligible proposals will be forwarded to panels of USIA officers for advisory review in conformity with the criteria set forth herein and in the guidelines for preparing proposals prior to funding decisions by delegated officials. All proposals will also be reviewed by the Agency's Office of the General Counsel as well as other Agency offices.

Completed applications will be reviewed according to the following criteria:

a. Contribution of the proposed activity to promoting mutual understanding;

b. Adherence of proposed activities to the conditions described above;

c. Feasibility of the program plan and institutional capacity of the organization to conduct the exchange;

d. Track record—The Agency will consider the past performance of prior grantees and the demonstrated potential of new applicants. (Institutions should.

in their proposals, describe relevant experience in the field.);

e. Multiplier effect/impact—the impact of the exchange activity on the wider community and on the development of continuing institutional ties;

f. Value to U.S.-partner country relations—the assessment of USIA's geographic area desk of the need, potential impact, and significance of the project in the partner country(ies);

g. Cost effectiveness—greatest return on each grant dollar; degree of cost-sharing exhibited;

h. Geographic and program balance—Proportional distribution of program activities within the U.S. and the partner countries. Proportional distribution of grant funds between the USSR and Eastern Europe; also between categories A and B.

Additional criteria for Category A proposals:

a. Quality of program plan, including academic rigor, contributions to understanding partner country, proposed followup, qualifications of program staff and participants;

b. Institutional commitment as demonstrated by financial and other support to the program;

c. Responsiveness to preference factors described above.

Deadline: Proposal packages must be received before November 30, 1990, 5 p.m. EST. Applicants are responsible for the submission of complete applications.

Notification: All applicants will be notified of the results of the review process on or about April 30, 1991. Funded proposals will be subject to periodic reporting and evaluation requirements.

Dated: September 10, 1990.

Robert Persiko,

Chief, Youth Programs Division.

Donna M. Culpepper,

Branch Chief, Academic Exchanges, Europe.

[FR Doc. 90-21965 Filed 9-17-90; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register

Vol. 55, No. 181

Tuesday, September 18, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: September 11, 1990, 55 FR 37399.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: September 12, 1990, 10 a.m.

CHANGE IN THE MEETING: The following Docket Numbers and Companies have been added to the Agenda scheduled for September 12, 1990:

Item No., Docket No., and Company

CAH–15—P–3195–031, Sayles Hydro Associates

CAG–2—RP90–165–000, Mid Louisiana Gas Company

Lois D. Cashell,

Secretary.

[FR Doc. 90–22111 Filed 9–13–90; 4:33 pm]

BILLING CODE 6712–02–M

INTERNATIONAL TRADE COMMISSION

[USITC SE–90–22; Emergency Notice]

TIME AND DATE: Monday, September 10, 1990 at 11:30 a.m.

PLACE: Room 101, 500 E Street, SW.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Inv. Nos. 731–TA–448–450 (F) (Sweaters Wholly or in Chief Weight of Manmade Fibers from Hong Kong, The Republic of Korea, and Taiwan)—briefing and vote.

In conformity with 19 CFR 201.35(c)(1), Commissioners Lodwick, Rohr, and Newquist voted to convene a special meeting at 11:30 a.m. on Monday, September 10, 1990. Commissioner Brunsdale did not participate in these deliberations. Commissioners Lodwick, Rohr, and Newquist affirmed that no earlier announcement of the special meeting was possible, and directed the issuance of this notice at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252–1000.

Dated: September 11, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 22186 Filed 9–14–90; 1:24 pm]

BILLING CODE 7020–02–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, September 25, 1990.

PLACE: Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Aviation Accident Report: Aloha Island Air, Inc., de Havilland DHC–6–300, Flight 1712, near Halawa Point, Molokai, Hawaii, October 28, 1989.

2. Hazardous Materials Accident Report: Derailment of CSX Transportation Train and Fire Involving Butane, Akron, Ohio, February 26, 1989.

News Media Contact:

Item 1: Mike Benson, 382–6600

Item 2: Ted Lopatkiewicz, 382–6600

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: September 14, 1990.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 90–22215 Filed 9–14–90; 3:09 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of September 17, 24, October 1, and 8, 1990.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of September 17

Friday, September 21

11:30 a.m. Affirmation/Discussion and Vote (Public Meeting)

a. Termination of Vermont Yankee Proceeding and Motions Related to ALAB–919

b. Amendments to 10 CFR Part 40 for General Licenses for the Custody and Long-Term Care of Uranium and Thorium Mill Tailings Disposal Sites

c. Petitions to Intervene and Requests for Hearing in Shoreham Operating License Amendment Proceeding

Week of September 24—Tentative

Wednesday, September 26

2:00 p.m.

Periodic Briefing on the Status of Browns Ferry 2 (Public Meeting)

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, September 28

2:00 p.m.

NCI Study of Cancer in Populations Near Nuclear Facilities (Public Meeting)

Week of October 1—Tentative

Monday, October 1

2:00 p.m.

Briefing on Conformity of Guidance on Low Level Waste Disposal Facilities with Requirements of 10 CFR part 61 (Public Meeting)

Tuesday, October 2

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

There are no Commission meetings scheduled for the Week of October 8.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording)—(301) 492–0292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Dated: September 13, 1990.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 90–22202 Filed 9–14–90; 2:06 pm]

BILLING CODE 7590–01–M

POSTAL SERVICE

Board of Governors; Notice to Vote to Close Meeting

At its meeting on September 10, 1990, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for October 1, 1990, in Stanford, California. The members will discuss possible strategies in collective bargaining negotiations.

The meeting is expected to be attended by the following persons: Governors Alvarado, Daniels, del Junco, Griesemeer, Hall, Mackie, Nevin, Pace and Setrakian; Postmaster General Frank, Deputy Postmaster General Coughlin, Secretary to the Board Harris, and General Counsel Hughes.

The Board determined that pursuant to section 552b(c)(3) and (9) of Title 39, Code of Federal Regulations, this

portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information prepared for use in connection with the negotiation of collective bargaining agreements under Chapter 12 of Title 39, United States Code, which is specifically exempted from disclosure by section 410(c)(3) of Title 39, United States Code.

In accordance with section 552b(f)(1) of title 5, United States Code, and § 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(3) and (9) of title 5, United States Code; section 410(c)(3) of title 39 United States Code; and section 7.3(b), (c) and (i) of title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 90–22143 Filed 9–14–90; 11:36 am]

BILLING CODE 7710–12–M

Corrections

Federal Register
Vol. 55, No. 181
Tuesday, September 18, 1990

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

Animal and Plant Health Inspection Service

9 CFR Parts 92, 94, 98, 151

[Docket No. 90-023]

RIN 0579-AA30

Importation of Certain Animals, Poultry, Animal and Poultry Products, and Animal Embryos

Correction

In the correction to rule document 90-17451 appearing on page 34797 in the issue of Friday, August 24, 1990, the CFR line in the heading should read as set forth above.

BILLING CODE 1505-01-D

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-302]

Certain Self-Inflating Mattresses; Designation of Commission Investigative Attorney

Correction

In notice document 90-20913 appearing on page 36709 in the issue of Thursday, September 6, 1990, make the following correction:

On page 36709, in the first column, in the second line after the heading, "Thomas L. Jarvis, Esq." should read "Deborah J. Kline, Esq.".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 164

46 CFR Parts 31, 32, 71, 72, 91, 92, 107, 108, 189, and 190

[CGD 85-099]
RIN 2115-AC42

Navigation Bridge Visibility; Ports and Waterway Safety

Correction

In rule document 90-18487 beginning on page 32244 in the issue of Wednesday, August 8, 1990, make the following corrections:

1. On page 32245, in the first column, in the first complete paragraph, in the 12th line, "aided" should read "aimed".

2. On the same page, in the second column, in the first complete paragraph, in the eighth line, "for" should read "the".

BILLING CODE 1505-01-D

federal register

Tuesday
September 18, 1990

Part II

Reader Aids

Federal Register Thesaurus of Indexing Terms

Federal Register Thesaurus of Indexing Terms

1 CFR 18.20 requires Federal agencies to identify major topics and categories of persons affected in their regulations in standard terms from the Federal Register Thesaurus of Indexing Terms. The Thesaurus was last published in the **Federal Register** of June 16, 1983 (48 FR 27646). A revised edition of the Thesaurus is published today for use by agencies and for public information.

Scope

The Federal Register Thesaurus is a basic indexing vocabulary for Federal regulations which are published in the **Federal Register** and the *Code of Federal Regulations*. It includes indexing terms to describe the specific program regulations of individual agencies as well as general administrative regulations common to all agencies. The indexing terms included are intended to express and organize the often technical regulatory concepts in research terms familiar to laypersons.

Use

The Office of the Federal Register uses the Thesaurus as the basis for the subject entries in the *Code of Federal Regulations* Index which is published annually as of January 1. Federal agencies also use the Thesaurus to prepare the "List of Subjects" which is included in rule and proposed rule documents submitted for publication in the **Federal Register**.

Federal agencies and Office of the Federal Register staff members have suggested a number of additions and/or changes to the Thesaurus since the last printing. Some of these suggestions have been incorporated into this edition of the Thesaurus as indexing terms. Others have been added as cross-references to indexing terms. For the convenience of users a list of indexing terms added since the last printing of the Thesaurus appears below.

Air traffic controllers
Alcohol abuse
Drug testing
Hawaiian Natives
Homeless
Hospice care
Lie detector tests
Manufactured homes
Peer Review Organizations(PRO)
Savings associations
Superfund
Whistleblowing

Organization

There are two sections to the Thesaurus. The first is an alphabetic list of all indexing terms with a series of notations under each term to refer users to preferred or related terms. The second is a grouping of terms under 19 broad subject categories, allowing the user to determine quickly the existing Thesaurus terms for that broad subject.

Copies

Copies of the Thesaurus are available from the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Carol Mahoney, telephone (202) 523-5240.

Accidents
see Safety

Accountants (02, 13)
Accounting (02, 08)
sa Uniform System of Accounts
x Auditing
xx Business and industry

Acquisition regulations
see Government procurement

Acreage allotments (01)
xx Agricultural commodities

Additives
see Color additives
Food additives
Fuel additives

Adhesives
Adjustment assistance
see Trade adjustment assistance

Administrative practice and procedure (08)
(Use for hearing, appeal, petition, rulemaking, etc., procedures)
sa Claims
Environmental impact statements
Equal access to justice
Freedom of information
Privacy
Sunshine Act
x Appeal procedures
Ex parte communications
Hearing and appeal procedures
Practice and procedure
xx Law

Adoption and foster care (18)
x Foster care
xx Infants and children

Adult education (04)
x Continuing education
Extension and continuing education
xx Education

Advertising (02)
xx Business and industry

Advisory committees (08)
(Use for management of advisory committees within an agency)
x Committees

AFDC
see Aid to Families with Dependent Children

Affirmative action plans
see Equal employment opportunity

Aged (13)
sa Medicaid
Medicare
Public assistance programs
Supplemental Security Income (SSI)
x Discrimination against aged
Elderly
Senior citizens

Agricultural commodities (01)
(The names of specific agricultural commodities, e.g. Corn, are not listed in this Thesaurus but may be used as indexing terms.)
sa *Specific commodities*
Acreage allotments
Commodity futures
Crop insurance
Fruits
Grains
Marketing agreements
Marketing quotas
Nuts
Oilseeds
Price support programs
Surplus agricultural commodities
Vegetables
x Commodities
Crops
xx Agriculture

Agricultural research (01, 17)
xx Agriculture
Research

Agriculture (01)
sa Agricultural commodities
Agricultural research
Fertilizers
Food assistance programs
Foods
Forests and forest products
Irrigation
Migrant labor
Pesticides and pests
Range management
Rural areas
x Farmers

Aid to Families with Dependent Children (18)
sa Public assistance programs
Work Incentive Programs (WIN)
x AFDC
xx Child welfare
Infants and children
Public assistance programs
Social security

Air carriers (19)
(Organizations operating passenger or cargo carrying aircraft)
sa Air rates and fares
Air taxis
Charter flights
x Airlines
Foreign air carriers
Shipping
xx Air transportation
Common carriers

Air fares
see Air rates and fares

Air pollution control (06)
sa Motor vehicle pollution
x Clean Air Act
xx Environmental protection

Air rates and fares (19)
x Air fares
Air tariffs
Rates and fares
xx Air carriers
Air transportation

Air safety
see Aviation safety

Air tariffs
see Air rates and fares

Air taxis (19)
xx Air carriers
Air transportation

Air traffic control (19)
xx Air transportation

Air traffic controllers (13, 19)
Air transportation (19)
sa Air carriers
Air rates and fares
Air taxis
Air traffic control
Aircraft
Airmen
Airports
Airspace
Aviation safety
Charter flights
Military air transportation
Navigation (air)
xx Transportation

Aircraft (19)
x Airplanes
Airworthiness directives and standards
Balloons
Helicopters
Kites
Parachutes
Rockets
Rotorcraft
Seaplanes
xx Air transportation

Aircraft pilots
see Airmen

Airlines
see Air carriers

Airmen (13, 19)
x Aircraft pilots
Pilots
xx Air transportation

Airplanes
see Aircraft

Airports (19)
x Heliports
xx Air transportation

Airspace (19)
x Airways
xx Air transportation

Airways
see Airspace

Airworthiness directives and standards
see Aircraft

Alaska natives
see Indians

Alcohol abuse (09)
sa Alcoholism
xx Drug abuse
Health

Alcohol and alcoholic beverages (01)
sa Beer
Gasohol
Liquors
Wine
xx Beverages

Alcoholism (09)
xx Alcohol abuse

Alien property (07)
Aliens (07, 13)
sa Citizenship and naturalization
Immigration
Refugees
x Deportation
Foreign persons
xx Citizenship and naturalization
Immigration
Refugees

Alimony (12)
sa Child support

Amateur radio service
see Radio

American Indians
see Indians

Ammunition
see Arms and munitions

Anchorage grounds (19)
sa Harbors
x Water transportation
xx Vessels

Animal biologics (01, 09)
xx Animal drugs
Biologics

Animal diseases (01, 09)
x Diseases
xx Animals

Animal drugs (01, 09)
sa Animal biologics
xx Animal feeds
Animals
Drugs

Animal feeds (01)
sa Animal drugs
xx Animals

Animal foods (01)
xx Animals
Foods

Animal welfare (01)
x Humane treatment of animals
xx Animals

Animals (01)
sa Animal diseases
Animal drugs
Animal feeds
Animal foods
Animal welfare
Livestock
Pets
Wildlife

Annuities
see Pensions

Antennas
see Communications equipment

Antibiotics (09)
xx Drugs

Antidumping (02, 07)
(Prohibition on sales of imports at less than fair value)
xx Customs duties and inspection
Imports

Antiquities
see Historic preservation

Antitrust (02)
x Interlocking directorates
Management official interlocks
xx Business and industry

Appeal procedures
see Administrative practice and procedure

Appliances
see Household appliances

Apprenticeship programs
see Manpower training programs

Archaeology
see Historic preservation

Architectural barriers
see Handicapped

Archives and records (08)
sa Classified information
Freedom of information
Health records
Privacy
Reporting and recordkeeping requirements
x Historical records
Information
Presidential records
Records

Armed forces (14)
(Use for general regulations applicable to all services)
sa *Specific military departments*
Armed forces reserves
Conscientious objectors
Military academies
Military law
Military personnel
Selective Service System
xx National defense

Armed forces reserves (14)
x National guard
Reserve forces
xx Armed forces
Military personnel

Arms and munitions (14)
x Ammunition
Firearms
Guns
Military arms sales
Munitions
Weapons
xx National defense

Art (04)
Arts and crafts (04)
sa Indians-arts and crafts
x Crafts
Handicrafts

Asbestos
Asylum
see Immigration

Atomic energy
see Nuclear energy

Attorneys
see Lawyers

Auditing
see Accounting

Authority delegations (Government agencies) (08)
sa Organization and functions (Government agencies)
xx Organization and functions (Government agencies)

Automatic data processing
see Computer technology

Automobiles
see Motor vehicles

Aviation safety (09, 19)
x Air safety
xx Air transportation
Safety

Awards
see Decorations, medals, awards

Baggage
see Freight

Bakery products (01)
x Bread
xx Foods

Balloons
see Aircraft

Bank deposit insurance (02)
x Deposit insurance
xx Banks, banking
Insurance

Bankruptcy (02)
xx Business and industry

Banks, banking (02)
sa Bank deposit insurance
Credit
Electronic funds transfers
Federal home loan banks
Federal Reserve System
Foreign banking
National banks
Savings associations
Trusts and trustees
x Checks
Finance
xx Credit

Barges
see Cargo vessels

Barrels
see Packaging and containers

Beaches
see Seashores

Beef
see Meat and meat products

Beer (01)
xx Alcohol and alcoholic beverages

Bees (01)

Beverages (01)
sa Alcohol and alcoholic beverages
Coffee
Fruit juices
Tea
Vegetable juices
xx Foods

Bicycles (16, 19)

Bilingual education (04)
xx Education

Biologics (09)
(Viruses, serums, toxins, etc., used in disease treatment)
sa Animal biologics
Blood
x Serums
Toxins
Vaccines
Viruses
xx Drugs

Birds
see Wildlife

Birth control
see Family planning

Black lung benefits (09)
x Pneumoconiosis
xx Health insurance
Lung diseases
Mine safety and health

Blind (09, 13)
sa Medicaid
Public assistance programs
Supplemental Security Income (SSI)
xx Handicapped

Blood (09)
xx Biologics

Blood diseases (09)
x Hemophilia

Boats and boating safety
see Marine safety
Navigation (water)

Bonding
see Surety bonds

Bonds (02)
x Savings bonds
xx Government securities
Securities

Borders
see International boundaries

Boycotts (07)

Bread
see Bakery products

Bridges (19)
x Drawbridges
xx Highways and roads
Transportation
Waterways

Broadcasting
see Radio
Television

Brokers (02, 13)
xx Investments

Buildings (10)
sa Federal buildings and facilities

Buses (19)
sa Motor carriers
Motor vehicles
x Charter buses
xx Motor carriers
Motor vehicles

Business and industry (02)
(The names of specific industries, e.g. Construction industry, are not listed in this Thesaurus but may be used as indexing terms. For a standard list of industry names we recommend using the *Standard Industrial Classification Manual.*)
sa *Specific industries*
Accounting
Advertising
Antitrust
Bankruptcy
Concessions
Confidential business information
Holding companies
Indians-business and finance
Labeling
Labor
Minority businesses
Packaging and containers
Relocation assistance
Small businesses
Taxes
Trade adjustment assistance
Trade names
Trade practices
Trademarks
Warranties
Whistleblowing
x Corporations
Industry

Butter (01)
sa Margarine

Cable television (03)
x Community antenna television systems
xx Television

Cacao products (01)
x Chocolate
Cocoa
xx Foods

Campaign funds (08)
x Election finance
xx Elections
Political candidates

Cancer (09)
sa *Specific hazardous substances*

Cargo
see Freight

Cargo vessels (19)
sa Maritime carriers
x Barges
Tank vessels
xx Maritime carriers
Vessels

Carpets and rugs
x Rugs

Carpools (19)
x Vanpools
xx Highways and roads
Motor vehicles

Cemeteries
x National cemeteries

Census data (08)
x Population census
xx Statistics

Cereals (commodity)
see Grains

Cereals (food) (01)
xx Foods

Chaplains (13)

Charter buses
see Buses

Charter flights (19)
xx Air carriers
Air transportation

Checks
see Banks, banking

Chemicals (01, 09)
(The names of specific chemicals are not listed in this Thesaurus but may be used as indexing terms.)
sa *Specific chemicals*
Drugs
Fertilizers
Hazardous substances
Pesticides and pests

Child abuse
see Child welfare

Child care
see Day care

Child health
see Maternal and child health

Child labor (11, 13)
xx Child welfare
Labor

Child support (18)
xx Alimony
Child welfare

Child welfare (18)
sa Aid to Families with Dependent Children
Child labor
Child support
Day care
Maternal and child health
x Child abuse
xx Infants and children
Public assistance programs
Social security

Children
see Infants and children

Chocolate
see Cacao products

Cigars and cigarettes (01)
sa Smoking
xx Tobacco

Citizens band radio service
see Radio

Citizenship and naturalization (07)
sa Aliens
Immigration
x Nationality
Naturalization
Repatriation
xx Aliens
Foreign relations
Immigration

Citrus fruits (01)
sa *Specific fruits*
xx Fruits

Civil defense (14)
sa Disaster assistance
x Emergency mobilization
xx Disaster assistance
National defense

Civil disorders (12)

Civil rights (12)
sa Equal educational opportunity
Equal employment opportunity
Fair housing
Religious discrimination
Sex discrimination
Voting rights
x Discrimination
Minority groups
Nondiscrimination

Civil service system
see Government employees

Claims (12)
sa Foreign claims
Indians-claims
War claims
x Tort claims
xx Administrative practice and procedure

Classified information (14)
x Declassification
Information
Intelligence
National security information
Security information
xx Archives and records
National defense
Security measures

Clean Air Act
see Air pollution control

Clean Water Act
see Water pollution control

Clemency (12)
x Pardon

Clothing (02)
sa Footwear

Coal (05)
sa Coal conversion program
xx Energy
Mineral resources

Coal conversion program (05)
xx Coal

Coal miners
see Miners

Coal mines
see Mine safety and health
Mines
Surface mining
Underground mining

Coastal zone (15)
sa Continental shelf
Flood plains
Seashores
x Estuaries
Wetlands
xx Natural resources
Seashores

Cocoa
see Cacao products

Coffee (01)
xx Beverages

Coins
see Currency

Collective bargaining
see Labor management relations

Colleges and universities (04)
sa Medical and dental schools
Military academies
Student aid
x Community colleges
Higher education
Universities
xx Education
Schools

Color additives (01, 09)
x Additives
xx Food additives

Commercial fisheries
see Fisheries

Committees
see Advisory committees

Commodities
see Agricultural commodities

Commodity futures (01, 02)
xx Agricultural commodities
Investments

Common carriers (02, 19)
- sa Air carriers
- Communications common carriers
- Freight forwarders
- Maritime carriers
- Motor carriers
- Railroads
- xx Transportation

Communicable diseases (09)
- x Contagious diseases

Communications (03)
- sa Communications common carriers
- Communications equipment
- Defense communications
- Motion pictures
- News media
- Recordings
- Telecommunications

Communications common carriers (02, 03)
- x Rates and fares
- xx Common carriers
- Communications

Communications equipment (03)
- x Antennas
- xx Communications

Communist countries (07)
- sa *Specific countries*

Community action programs (18)
(Financial assistance to local communities to provide basic antipoverty services)
- x Poverty
- xx Community development

Community antenna television systems
- see Cable television

Community colleges
- see Colleges and universities

Community development (10)
(Economic development of deprived areas, emphasizing improved living conditions and participation of the local population.)
- sa Community action programs
- Urban renewal
- x Economic development
- Unemployment
- xx Urban renewal

Community development block grants (10)

Community facilities (10)
- sa Health facilities
- x Public works

Compensation
- see Indemnity payments
- Unemployment compensation
- Wages
- Workers' compensation

Computer technology (17)
- x Automatic data processing
- Data processing
- Electronic data processing

Concessions (02)
- xx Business and industry

Condominiums (10)
- xx Housing

Conduct standards
- see Conflict of interests

Confidential business information (02)
- x Information
- xx Business and industry
- Freedom of information
- Privacy

Conflict of interests (08)
- sa Political activities (Government employees)
- x Conduct standards
- Ethical conduct
- Financial disclosure
- xx Government employees

Congressional elections
- see Elections

Conscientious objectors (13, 14)
- xx Armed forces

Conservation
- see Energy conservation
- Natural resources

Consular services
- see Foreign Service

Consumer protection (02)
- sa Labeling
- Trade practices
- Truth in lending
- xx Safety

Contagious diseases
- see Communicable diseases

Containers
- see Packaging and containers

Continental shelf (15)
- x Offshore structures
- Outer continental shelf
- xx Coastal zone
- Natural resources

Continuing education
- see Adult education

Contracts
- see Government contracts

Controlled substances
- see Drug abuse
- Drug traffic control

Cooperative agreements
- see Grant programs

Cooperatives (01, 10)

Copyright (12)
- x Royalties

Corporations
- see Business and industry

Cosmetics (09)
- x Toiletries

Cottonseeds (01)
- xx Oilseeds

Counterfeiting (12)
- xx Crime

Countervailing duties (02, 07)
(Duties on sales of subsidized imports)
- xx Customs duties and inspection
- Imports

Courts (12)
- xx Law

Crafts
- see Arts and crafts

Credit (02)
- sa Banks, banking
- Credit unions
- Mortgages
- Truth in lending
- x Debts
- Equal credit opportunity
- Finance
- xx Banks, banking

Credit unions (02)
- xx Credit

Crime (12)
- sa Counterfeiting
- Drug abuse
- Forgery
- Fraud
- Juvenile delinquency

Crime insurance (02)
- xx Insurance

Critical habitat
- see Endangered and threatened species

Crop insurance (01, 02)
- xx Agricultural commodities
- Insurance

Crops
- see Agricultural commodities

Crude oil
- see Petroleum

Cultural exchange programs (04, 07)
- x Exchange visitor program
- xx Foreign relations

Currency (02)
sa Foreign currencies
Gold
Silver
x Coins
Finance
Foreign exchange
Money

Customs duties and inspection (02, 07)
sa Antidumping
Countervailing duties
Imports
x Tariffs
xx Foreign trade
Imports
Taxes

Dairy products (01)
(The names of specific dairy products e.g. Cheese, are not listed in this Thesaurus but may be used as indexing terms.)
sa *Specific dairy products*
xx Foods

Dams (15)
xx Flood control
Water supply

Dangerous cargo
see Hazardous materials transportation

Data processing
see Computer technology

Day care (18)
x Child care
xx Child welfare

Deaf
see Handicapped

Debts
see Credit

Declassification
see Classified information

Decorations, medals, awards (08)
x Awards
Medals

Deepwater ports
see Harbors

Defense
see National defense

Defense acquisition regulations
see Government procurement

Defense communications (03, 14)
xx Communications
National defense

Defense contracts
see Government contracts
Government procurement

Delinquency
see Juvenile delinquency

Dental health (09)
xx Health

Dental schools
see Medical and dental schools

Deportation
see Aliens

Deposit insurance
see Bank deposit insurance

Desegregation in education
see Equal educational opportunity

Dietary foods (01)
xx Foods

Disability benefits (11)
(Use for insurance and retirement benefits provided for individuals unable to work)
sa Railroad retirement
Workers' compensation
x Disabled
xx Handicapped

Disabled
see Disability benefits
Handicapped
Medicaid
Medicare
Public assistance programs
Supplemental Security Income (SSI)

Disaster assistance (08)
sa Civil defense
Emergency medical services
x Drought assistance
Earthquakes
Floods
xx Civil defense

Discrimination
see Civil rights

Discrimination against aged
see Aged

Discrimination against handicapped
see Handicapped

Discrimination in education
see Equal educational opportunity

Discrimination in employment
see Equal employment opportunity

Discrimination in housing
see Fair housing

Diseases
(The names of specific diseases, with some exceptions, are not listed in this Thesaurus but may be used as indexing terms.)
see *Specific diseases*
Animal diseases

Distilled spirits
see Liquors

Diving
Doctors
see Health professions

Domestic animals
see Livestock

Draft
see Selective Service System

Drawbridges
see Bridges

Drinking water
see Water supply

Drought assistance
see Disaster assistance

Drug abuse (09)
sa Alcohol abuse
Drug testing
x Controlled substances
xx Crime
Health

Drug testing (09)
xx Drug abuse

Drug traffic control (12)
x Controlled substances
Narcotics
xx Law enforcement

Drugs (09)
(The names of specific drugs are not listed in this Thesaurus but may be used as indexing terms.)
sa *Specific drugs*
Animal drugs
Antibiotics
Biologics
Over-the-counter drugs
Prescription drugs
xx Chemicals
Health

Earthquakes
see Disaster assistance

Eavesdropping
see Wiretapping and electronic surveillance

Ecology
see Environmental protection

Economic development
see Community development

Economic statistics (02)
x Economics
xx Statistics

Economics
see Economic statistics
Price controls

Education (04)
sa Adult education
Bilingual education
Colleges and universities
Education of disadvantaged
Education of handicapped
Educational facilities
Educational research
Educational study programs
Elementary and secondary education
Equal educational opportunity
Indians-education
Libraries
School breakfast and lunch programs
School construction
Schools
Student aid
Students
Teachers
Vocational education

Education of disadvantaged (04)
x Follow Through Program
Head Start Program
Upward Bound Program
xx Education

Education of handicapped (04)
xx Education
Handicapped

Educational facilities (04)
xx Education
Schools

Educational research (04, 17)
xx Education
Research

Educational study programs (04)
(Use for particular areas of study, e.g. Reading, Foreign languages)
xx Education

Elderly
see Aged

Election finance
see Campaign funds

Elections (08)
sa Campaign funds
Political activities (Government employees)
Political candidates
Political committees and parties
Voting rights
x Congressional elections
Presidential elections

Electric power (05)
sa Electric power plants
Electric power rates
Electric utilities
x Hydroelectric power
xx Energy

Electric power plants (05)
xx Electric power

Electric power rates (05)
x Rates and fares
xx Electric power

Electric utilities (05)
x Public utilities
xx Electric power
Utilities

Electronic data processing
see Computer technology

Electronic funds transfers (02)
xx Banks, banking

Electronic products (17)
Electronic surveillance
see Wiretapping and electronic surveillance

Elementary and secondary education (04)
x Secondary education
xx Education

Emergency medical services (09)
xx Disaster assistance
Health care

Emergency mobilization
see Civil defense

Emergency powers (08, 14)
(Extraordinary authority delegated to the Executive in time of national emergency)
xx National defense

Employee benefit plans (11)
(Various plans established by employers to provide financial protection to employees against accidents, illness, death; or to provide certain services such as training, day care, etc.)
sa Pensions
x Fringe benefits
xx Labor
Wages

Employee management relations
see Labor management relations

Employee Retirement Income Security Act
see Pensions

Employment (11)
sa Equal employment opportunity
Government employees
Manpower
xx Labor

Employment taxes (02)
xx Taxes

Endangered and threatened species (15)
x Critical habitat
xx Fish
Marine mammals
Plants
Wildlife

Energy (05)
sa Coal
Electric power
Energy conservation
Geothermal energy
Natural gas
Nuclear energy
Petroleum
Pipelines
Solar energy
x Fuel
Power resources
xx Natural resources

Energy conservation (05)
sa Fuel economy
x Conservation
xx Energy

Engineers (13)
Environmental impact statements (06)
xx Administrative practice and procedure
Environmental protection

Environmental protection (06)
sa Air pollution control
Environmental impact statements
Natural resources
Noise control
Pesticides and pests
Reclamation
Waste treatment and disposal
Water pollution control
x Ecology
Pollution
xx Natural resources

Equal access to justice (08)
xx Administrative practice and procedure

Equal credit opportunity
see Credit

Equal educational opportunity (04, 12)
x Desegregation in education
Discrimination in education
School integration
Segregation in education
xx Civil rights
Education

Equal employment opportunity (11, 12)
x Affirmative action plans
Discrimination in employment
xx Civil rights
Employment
Labor

Eskimos
see Indians

Estate taxes (02)
xx Taxes

Estates (02)
Estuaries
see Coastal zone

Ethical conduct
see Conflict of interests

Ex parte communications
see Administrative practice and procedure

Exchange visitor program
see Cultural exchange programs

Excise taxes (02)
x Stamp taxes
xx Taxes

Executive orders (08)
xx Presidential documents

Explosives (09)
sa Hazardous materials transportation
Hazardous substances
xx Hazardous substances

Exports (02, 07)
xx Foreign trade

Expositions
see Fairs and expositions

Extension and continuing education
see Adult education

Fabrics
see Textiles

Fair housing (10, 12)
x Discrimination in housing
xx Civil rights
Housing

Fairs and expositions (02, 07)
x Expositions
International expositions
Trade fairs
xx Foreign trade

Fallout shelters (14)
Family health
see Maternal and child health

Family planning (09, 18)
x Birth control
Population control
Sterilization
xx Health

FAR (Federal Acquisition Regulation)
see Government procurement

Farmers
see Agriculture

Fats and oils
see Oils and fats

Federal acquisition regulations
see Government procurement

Federal aid programs
see Grant programs
Indemnity payments
Loan programs
Price support programs
Technical assistance

Federal buildings and facilities (08)
x Government buildings
Military installations
Public buildings
xx Buildings
Government property

Federal employees
see Government employees

Federal home loan banks (02)
xx Banks, banking

Federal Prison Industries (12)
xx Prisons

Federal property management regulations
see Government property management

Federal Reserve System (02)
xx Banks, banking

Federal-State relations
see Intergovernmental relations

Federally affected areas (08)
(Use for local jurisdictions, especially school districts, financially burdened by serving Federal installations in the area)
x Impacted areas programs

Feed grains (01)
xx Grains

Fellowships
see Scholarships and fellowships

Fertilizers (01)
xx Agriculture
Chemicals

Films
see Motion pictures

Finance
see Banks, banking
Credit
Currency
Indians-business and finance
Investments
Loan programs
Mortgages
Revenue sharing
Trusts and trustees

Financial disclosure
see Conflict of interests

Fines and penalties
see Penalties

Fire prevention (09)
xx Safety

Firearms
see Arms and munitions

Firefighters (13)
Fish (15)
(Use for conservation, etc., of fish as marine life. Use Seafood for documents on fish as food)
sa Endangered and threatened species
Fisheries
Seafood
xx Natural resources
Seafood

Fisheries (15)
(Use for commercial fishing)
x Commercial fisheries
xx Fish
Marine resources
Seafood

Fishing (16)
(Use for sport fishing)
x Recreational fishing
Sport fishing
xx Recreation and recreation areas

Fishing vessels (19)
xx Vessels

Flags (08)
Flammable materials (09)
xx Hazardous substances

Flavorings
see Spices and flavorings

Flaxseeds
see Oilseeds

Flood control (15)
sa Dams
Reservoirs

Flood insurance (02)
xx Insurance *

Flood plains (15)
x Wetlands
xx Coastal zone

Floods
see Disaster assistance

Follow Through Program
see Education of disadvantaged

Food additives (01)
sa Color additives
x Additives
Food ingredients
Generally Recognized as Safe (GRAS) food ingredients
xx Foods

Food assistance programs (01, 18)
- sa Food stamps
- School breakfast and lunch programs
- x Poverty
- xx Agriculture
- Foods
- Nutrition

Food grades and standards (01)
- sa Meat inspection
- x Food inspection
- xx Foods

Food ingredients
- see Food additives

Food inspection
- see Food grades and standards

Food labeling (01)
- xx Foods
- Labeling

Food packaging (01)
- xx Foods
- Packaging and containers

Food stamps (01, 18)
- xx Food assistance programs

Foods (01)
(The names of specific foods are not listed in this Thesaurus but may be used as indexing terms.)
- sa *Specific foods*
- Animal foods
- Bakery products
- Beverages
- Cacao products
- Cereals (food)
- Dairy products
- Dietary foods
- Food additives
- Food assistance programs
- Food grades and standards
- Food labeling
- Food packaging
- Frozen foods
- Fruits
- Meat and meat products
- Nutrition
- Nuts
- Oils and fats
- Poultry and poultry products
- Seafood
- Spices and flavorings
- Sugar
- Vegetables
- xx Agriculture
- Nutrition

Footwear (02)
- x Shoes
- xx Clothing

Foreign aid (07)
- xx Foreign relations

Foreign air carriers
- see Air carriers

Foreign banking (02)
- xx Banks, banking

Foreign claims (07, 12)
- sa War claims
- xx Claims
- Foreign relations

Foreign currencies (02)
- x Foreign exchange
- xx Currency

Foreign exchange
- see Currency
- Foreign currencies

Foreign investments in U. S. (02)
- xx Investments

Foreign officials (07, 13)
Foreign persons
- see Aliens

Foreign relations (07)
- sa *Specific countries*
- Citizenship and naturalization
- Cultural exchange programs
- Foreign aid
- Foreign claims
- Foreign Service
- Foreign trade
- Immigration
- International boundaries
- Passports and visas
- Treaties

Foreign Service (07)
- x Consular services
- xx Foreign relations
- Government employees

Foreign trade (02, 07)
- sa Customs duties and inspection
- Exports
- Fairs and expositions
- Imports
- Maritime carriers
- Trade adjustment assistance
- Trade agreements
- x International trade
- xx Foreign relations

Foreign trade zones (02, 07)
Forests and forest products (01, 15)
- sa National forests
- x Lumber
- Naval stores
- Timber
- Turpentine
- Wood
- xx Agriculture
- Natural resources

Forfeitures
- see Seizures and forfeitures

Forgery (12)
- xx Crime

Foster care
- see Adoption and foster care

Foundations (13)
Fraud (12)
- xx Crime

Freedom of information (08)
- sa Confidential business information
- x Information
- Records
- xx Administrative practice and procedure
- Archives and records

Freight (19)
- sa Hazardous materials transportation
- x Baggage
- Cargo
- xx Transportation

Freight forwarders (19)
- x Shipping
- xx Common carriers

Fringe benefits
- see Employee benefit plans

Frozen foods (01)
- xx Foods

Fruit juices (01)
- xx Beverages

Fruits (01)
(The names of specific fruits, e.g. Apples, are not listed in this Thesaurus but may be used as indexing terms.)
- sa *Specific fruits*
- Citrus fruits
- xx Agricultural commodities
- Foods

Fuel
- see Energy

Fuel additives (05)
- x Additives
- Gasoline additives
- xx Petroleum

Fuel economy (05)
- xx Energy conservation
- Gasoline
- Motor vehicles

Furs
Gambling (12)
- sa Lotteries

Garnishment of wages
- see Wages

Gas exploration
- see Oil and gas exploration

Gas reserves
- see Oil and gas reserves

Gas utilities
- see Natural gas

Gases (15)
sa Helium
Natural gas

Gasohol (05)
xx Alcohol and alcoholic beverages
Gasoline

Gasoline (05)
sa Fuel economy
Gasohol
xx Petroleum

Gasoline additives
see Fuel additives

Generally Recognized as Safe (GRAS) food ingredients
see Food additives

Genetic diseases (09)
Geothermal energy (05)
xx Energy

Gift taxes (02)
xx Taxes

Gifts to Government
see Government property

Glass and glass products (02)
Gold (02)
xx Currency
Metals

Government buildings
see Federal buildings and facilities

Government contracts (08)
(Use for contracts for services in operating or researching specific government programs. Use Government procurement for contracting for supplies, equipment or related services.)
sa Government procurement
x Contracts
Defense contracts
National defense contracts
xx Government procurement

Government employees (08, 11, 13)
sa Conflict of interests
Foreign Service
Military personnel
Political activities (Government employees)
x Civil service system
Federal employees
xx Employment

Government in the Sunshine Act
see Sunshine Act

Government procurement (08)
(See note under Government contracts.)
sa Government contracts
x Acquisition regulations
Defense acquisition regulations
Defense contracts
FAR (Federal Acquisition Regulation)
Federal acquisition regulations
National defense contracts
Procurement
xx Government contracts

Government property (08)
sa Federal buildings and facilities
Government property management
Surplus Government property
x Gifts to Government

Government property management (08)
x Federal property management regulations
xx Government property

Government publications (08)
x Information
Publications

Government securities (02, 08)
sa Bonds
xx Securities

Grain sorghum (01)
Grains (01)
(The names of specific grains, e.g. Wheat, are not listed in this Thesaurus but may be used as indexing terms.)
sa *Specific grains*
Feed grains
x Cereals (commodity)
xx Agricultural commodities

Grant programs (08)
(Use for programs involving financial aid without repayment by the Federal Government. Divide by the following categories to indicate broad subject area of grant: Agriculture, Business, Communications, Education, Energy, Environmental protection, Foreign relations, Health, Housing and community development, Indians, Labor, Law, National defense, Natural resources, Recreation, Science and technology, Social programs, Transportation, Veterans, e.g. Grant programs-agriculture)
x Cooperative agreements
Federal aid programs
Subsidies
xx Intergovernmental relations

Grants administration (08)
Grazing lands (15)
x Land
xx Public lands

Guaranteed loans
see Loan programs

Guarantees
see Warranties

Guns
see Arms and munitions

Handicapped (09, 13)
sa Blind
Disability benefits
Education of handicapped
Medicaid
Medicare
Public assistance programs
Supplemental Security Income (SSI)
Vocational rehabilitation
x Architectural barriers
Deaf
Disabled
Discrimination against handicapped
Physically handicapped
xx Health

Handicrafts
see Arts and crafts

Hansen's disease
see Leprosy (Hansen's disease)

Harbors (19)
x Deepwater ports
Ports
Water transportation
Waterfront facilities
xx Anchorage grounds
Waterways

Hatch Act
see Political activities (Government employees)

Hawaiian Natives (13)
x Native Americans

Hazardous materials transportation (19)
sa Pipeline safety
x Dangerous cargo
xx Explosives
Freight
Hazardous substances

Hazardous substances (09)
sa Explosives
Flammable materials
Hazardous materials transportation
Hazardous waste
Poison prevention
Radioactive materials
x Toxic substances
xx Chemicals
Explosives
Safety

Hazardous waste (06, 09)
x Radioactive waste
xx Hazardous substances
Waste treatment and disposal

Head Start Program
see Education of disadvantaged

Health (09)
sa *Specific diseases*
Alcohol abuse
Dental health
Drug abuse
Drugs
Family planning
Handicapped
Health care
Health facilities
Health insurance
Health maintenance organizations (HMO)
Health professions
Health records
Health statistics
Maternal and child health
Medical and dental schools
Medical devices
Medical research
Mental health programs
Nutrition
Occupational safety and health
Public health
Quarantine
Radiation protection
Safety

Health care (09)
sa Emergency medical services
Medicaid
Medicare
x Medical care
xx Health

Health facilities (09)
sa Hospitals
Nursing homes
x Medical facilities
xx Community facilities
Health
Nursing homes

Health insurance (02, 09)
sa Black lung benefits
Medicare
xx Health
Insurance

Health insurance for aged
see Medicare

Health maintenance organizations (HMO) (09)
(Prepaid group medical practice)
xx Health

Health professions (09, 13)
sa Veterinarians
x Doctors
Medical personnel
Physicians
xx Health

Health records (09)
x Medical records
Records
xx Archives and records
Health

Health statistics (09)
xx Health
Statistics

Hearing and appeal procedures
see Administrative practice and procedure

Heart diseases (09)
Helicopters
see Aircraft

Heliports
see Airports

Helium (15)
xx Gases

Hemophilia
see Blood diseases

Herbicides
see Pesticides and pests

Higher education
see Colleges and universities

Highway safety (09, 19)
xx Highways and roads
Safety

Highways and roads (19)
sa Bridges
Carpools
Highway safety
Motor carriers
Motor vehicle safety
Motor vehicles
Parking
x Roads
xx Transportation

Historic preservation (15)
sa Monuments and memorials
x Antiquities
Archaeology
National Register of Historic Places

Historical records
see Archives and records

Hobbies (16)
Hogs (01)
x Swine

Holding companies (02)
xx Business and industry

Holidays (08)
Home improvement (10)
xx Housing

Homeless (10, 13)
xx Housing

Homesteads (15)
xx Public lands

Homeworkers (11, 13)
xx Labor

Hospice care (09)
Hospitals (09)
xx Health facilities

Hostages (13)
Hours of work
see Wages

Household appliances (02)
x Appliances

Household goods
see Moving of household goods

Housing (10)
sa Condominiums
Fair housing
Home improvement
Homeless
Housing standards
Low and moderate income housing
Manufactured homes
Mortgage insurance
Mortgages
Public housing
Relocation assistance

Housing assistance payments
see Mortgages
Rent subsidies

Housing standards (10)
xx Housing

Human research subjects
see Research

Humane treatment of animals
see Animal welfare

Hunting (16)
xx Recreation and recreation areas

Hydroelectric power
see Electric power

Immigration (07)
sa Aliens
Citizenship and naturalization
x Asylum
xx Aliens
Citizenship and naturalization
Foreign relations

Immunization (09)
xx Public health

Impacted areas programs
see Federally affected areas

Imports (02, 07)
sa Antidumping
Countervailing duties
Customs duties and inspection
Oil imports
Trade adjustment assistance
xx Customs duties and inspection
Foreign trade

Income taxes (02)
sa Tax treaties
xx Taxes

Indemnity payments (08)
x Compensation
Federal aid programs

Indians (13)
sa Indians-arts and crafts
Indians-business and finance
Indians-claims
Indians-education
Indians-enrollment
Indians-judgment funds
Indians-lands
Indians-law
Indians-tribal government
x Alaska natives
American Indians
Eskimos
Native Americans

Indians-arts and crafts (04)
xx Arts and crafts
Indians

Indians-business and finance (02)
x Finance
xx Business and industry
Indians

Indians-claims (12)
xx Claims
Indians

Indians-education (04)
xx Education
Indians

Indians-enrollment (12)
xx Indians

Indians-judgment funds (12)
xx Indians

Indians-lands (15)
x Land
xx Indians

Indians-law (12)
xx Indians
Law

Indians-tribal government (12)
xx Indians

Industrial safety
see Occupational safety and health

Industry
see Business and industry

Infants and children (13)
sa Adoption and foster care
Aid to Families with Dependent Children
Child welfare
Youth
x Children
xx Youth

Information
see Archives and records
Classified information
Confidential business information
Freedom of information
Government publications
Privacy
Reporting and recordkeeping requirements
Sunshine Act

Inland waters
see Waterways

Insecticides
see Pesticides and pests

Insignia
see Seals and insignia

Insulation
Insurance (02)
sa Bank deposit insurance
Crime insurance
Crop insurance
Flood insurance
Health insurance
Insurance companies
Life insurance
Mortgage insurance
Pension insurance
Surety bonds
Unemployment compensation
War risk insurance
Workers' compensation

Insurance companies (02)
xx Insurance

Insured loans
see Loan programs

Intelligence
see Classified information

Intergovernmental relations (08)
sa Grant programs
Revenue sharing
x Federal-State relations
State-Federal relations

Interlocking directorates
see Antitrust

Intermodal transportation (19)
xx Transportation

International agreements
see Treaties

International boundaries (07)
x Borders
xx Foreign relations

International expositions
see Fairs and expositions

International organizations (07)
International trade
see Foreign trade

Inventions and patents (17)
x Patents

Investigations (08, 12)
Investment advisers
see Securities

Investment companies (02)
xx Investments

Investments (02)
sa Brokers
Commodity futures
Foreign investments in U. S.
Investment companies
Securities
United States investments abroad
x Finance

Irrigation (01)
xx Agriculture
Water supply

Jewelry
see Watches and jewelry

Job Corps (11)
Job Training Partnership Act
see Manpower training programs

Jukeboxes
Juvenile delinquency (12)
x Delinquency
xx Crime
Youth

Kidney diseases (09)
x Renal diseases

Kites
see Aircraft

Labeling (02)
sa Food labeling
Packaging and containers
xx Business and industry
Consumer protection
Packaging and containers

Labor (11)
sa Child labor
Employee benefit plans
Employment
Equal employment opportunity
Homeworkers
Labor management relations
Manpower
Migrant labor
Occupational safety and health
Retirement
Unemployment compensation
Wages
xx Business and industry

Labor management relations (11)
sa Labor unions
x Collective bargaining
Employee management relations
xx Labor

Labor unions (11)
x Trade unions
Unions
xx Labor management relations

Laboratories (17)

Land
see Grazing lands
Indians-lands
Public lands
Rights-of-way

Land sales (10)
sa Public lands-sale

Lasers (17)
xx Scientific equipment

Law (12)
sa Administrative practice and procedure
Courts
Indians-law
Lawyers
Military law

Law enforcement (12)
sa Drug traffic control
Wiretapping and electronic surveillance

Law enforcement officers (12, 13)
x Police

Lawyers (12, 13)
sa Legal services
x Attorneys
xx Law

Lead poisoning (09)
x Paint
xx Poison prevention

Legal services (12)
xx Lawyers

Leprosy (Hansen's disease) (09)
x Hansen's disease

Libraries (04)
xx Education

Lie detector tests (12)
x Polygraph tests

Life insurance (02)
xx Insurance

Linseeds
see Oilseeds

Liquors (01)
x Distilled spirits
xx Alcohol and alcoholic beverages

Livestock (01)
(The names of specific animals, e.g. Cattle, are not listed in this Thesaurus but may be used as indexing terms.)
sa *Specific animals*
Meat and meat products
Meat inspection
x Domestic animals
xx Animals

Loan programs (02, 08)
(Use for Federal Government loan and loan guaranty programs. Divide by the following categories to indicate broad subject area of loan: Agriculture, Business, Communications, Education, Energy, Environmental protection, Foreign relations, Health, Housing and community development, Indians, Labor, Law, National defense, Natural resources, Recreation, Science and technology, Social programs, Transportation, Veterans, e.g. Loan programs-labor)
x Federal aid programs
Finance
Guaranteed loans
Insured loans

Lobbying (08)

Longshore and harbor workers (13, 19)

Lotteries (12)
xx Gambling

Low and moderate income housing (10)
sa Public housing
Rent subsidies
xx Housing
Public housing

Lumber
see Forests and forest products

Lung diseases (09)
sa Black lung benefits
Tuberculosis
x Respiratory and pulmonary diseases

Magazines
see Newspapers and magazines

Mail
see Postal Service

Management official interlocks
see Antitrust

Manpower (11)
sa Manpower training programs
xx Employment
Labor

Manpower training programs (11)
(Use for occupational or on-the-job training, distinguished from vocational education within a school curriculum)
sa Vocational education
Work Incentive Programs (WIN)
x Apprenticeship programs
Job Training Partnership Act
Occupational training
Training programs
Unemployment
xx Manpower
Vocational education

Manufactured homes (10)
x Mobile homes
xx Housing

Margarine (01)
x Oleomargarine
xx Butter

Marine engineering
see Vessels

Marine mammals (15)
sa Endangered and threatened species
x Seals
Whales

Marine pollution
see Water pollution control

Marine resources (15)
sa Fisheries
x Ocean resources
xx Natural resources

Marine safety (09, 19)
sa Vessels
x Boats and boating safety
Water transportation
xx Safety
Vessels

Marital status discrimination (12)

Maritime carriers (19)
(Organizations operating passenger or cargo carrying vessels)
sa Cargo vessels
Passenger vessels
Seamen
Vessels
x Merchant marine
Rates and fares
Shipping
Water carriers
Water transportation
xx Cargo vessels
Common carriers
Foreign trade
Passenger vessels
Vessels

Marketing agreements (01)
sa Milk marketing orders
xx Agricultural commodities

Marketing quotas (01)
xx Agricultural commodities

Mass transportation (19)
xx Transportation

Maternal and child health (09)
x Child health
Family health
xx Child welfare
Health

Measurement standards (17)
sa Metric system
x Weights and measures

Meat and meat products (01)
sa Meat inspection
Stockyards
x Beef
xx Foods
Livestock

Meat inspection (01)
xx Food grades and standards
Livestock
Meat and meat products
Public health

Medals
see Decorations, medals, awards

Medicaid (09, 18)
sa Peer Review Organizations (PRO)
Public assistance programs
x Disabled
Medical assistance program
xx Aged
Blind
Handicapped
Health care
Public assistance programs
Social security

Medical and dental schools (04, 09)
x Dental schools
Nursing schools
xx Colleges and universities
Health

Medical assistance program
see Medicaid

Medical care
see Health care

Medical devices (09)
x Prosthetic devices
xx Health
Scientific equipment

Medical facilities
see Health facilities

Medical personnel
see Health professions

Medical records
see Health records

Medical research (09, 17)
xx Health
Research

Medicare (09)
sa Peer Review Organizations (PRO)
x Disabled
Health insurance for aged
xx Aged
Handicapped
Health care
Health insurance
Social security

Memorials
see Monuments and memorials

Mental health programs (09)
xx Health

Merchant marine
see Maritime carriers
Seamen

Metals (15)
(The names of specific metals, e.g. Copper, are not listed in this Thesaurus but may be used as indexing terms.)
sa *Specific metals*
xx Mineral resources

Metric system (17)
xx Measurement standards

Micrographics (17)
Migrant labor (01, 11, 13)
xx Agriculture
Labor

Migratory birds
see Wildlife

Military academies (04, 14)
xx Armed forces
Colleges and universities

Military air transportation (14, 19)
xx Air transportation
National defense

Military arms sales
see Arms and munitions

Military installations
see Federal buildings and facilities

Military law (12, 14)
x Uniform Code of Military Justice
xx Armed forces
Law

Military personnel (13, 14)
sa Armed forces reserves
xx Armed forces
Government employees

Milk (01)
sa Milk marketing orders

Milk marketing orders (01)
xx Marketing agreements
Milk

Mine safety and health (09)
sa Black lung benefits
x Coal mines
xx Miners
Mines
Occupational safety and health
Safety
Surface mining
Underground mining

Mineral resources (15)
sa Coal
Metals
Oil and gas reserves
Public lands-mineral resources
xx Natural resources

Mineral royalties (15)
x Royalties

Miners (13)
sa Mine safety and health
x Coal miners
xx Mines

Mines (15)
sa Mine safety and health
Miners
Surface mining
Underground mining
x Coal mines
xx Reclamation

Minimum wages (11)
xx Wages

Minority businesses (02)
x Minority groups
xx Business and industry
Small businesses
Women

Minority groups
see Civil rights
Minority businesses

Mobile homes
see Manufactured homes

Mobile offshore drilling units
see Vessels

Money
see Currency

Monuments and memorials (15)
x Memorials
xx Historic preservation

Mortgage insurance (02, 10)
xx Housing
Insurance
Mortgages

Mortgages (02, 10)
- sa Mortgage insurance
- x Finance
- Housing assistance payments
- xx Credit
- Housing

Motion pictures (03)
- x Films
- xx Communications

Motor carriers (19)
(Organizations operating passenger or cargo carrying motor vehicles)
- sa Buses
- x Rates and fares
- Shipping
- Trucks
- xx Buses
- Common carriers
- Highways and roads
- Motor vehicles

Motor vehicle pollution (06, 19)
- xx Air pollution control
- Motor vehicles

Motor vehicle safety (09, 19)
- xx Highways and roads
- Motor vehicles
- Safety

Motor vehicles (19)
- sa Buses
- Carpools
- Fuel economy
- Motor carriers
- Motor vehicle pollution
- Motor vehicle safety
- Traffic regulations
- x Automobiles
- Motorcycles
- Trucks
- xx Buses
- Highways and roads

Motorcycles
- see Motor vehicles

Moving of household goods (19)
- x Household goods

Munitions
- see Arms and munitions

Museums (04)

Music (04)

Narcotics
- see Drug traffic control

National banks (02)
- xx Banks, banking

National cemeteries
- see Cemeteries

National defense (14)
- sa Armed forces
- Arms and munitions
- Civil defense
- Classified information
- Defense communications
- Emergency powers
- Military air transportation
- Strategic and critical materials
- x Defense

National defense contracts
- see Government contracts
- Government procurement

National forests (15)
- xx Forests and forest products
- Natural resources
- Public lands
- Recreation and recreation areas

National guard
- see Armed forces reserves

National parks (15)
- x Parks
- xx Public lands
- Recreation and recreation areas

National Register of Historic Places
- see Historic preservation

National seashores
- see Seashores

National security information
- see Classified information

National trails system (16)
- x Trails
- xx Recreation and recreation areas

National wild and scenic rivers system (16)
- xx Rivers

National Wildlife Refuge System
- see Wildlife refuges

Nationality
- see Citizenship and naturalization

Native Americans
- see Hawaiian Natives
- Indians

Natural gas (05)
- sa Oil and gas exploration
- Oil and gas reserves
- Pipelines
- x Gas utilities
- Public utilities
- Rates and fares
- xx Energy
- Gases
- Pipelines
- Utilities

Natural resources (15)
- sa Coastal zone
- Continental shelf
- Energy
- Environmental protection
- Fish
- Forests and forest products
- Marine resources
- Mineral resources
- National forests
- Public lands
- Reclamation
- Recreation and recreation areas
- Soil conservation
- Water resources
- Wildlife
- x Conservation
- xx Environmental protection

Naturalization
- see Citizenship and naturalization

Naval stores
- see Forests and forest products

Navigable waters
- see Waterways

Navigation (air) (19)
- xx Air transportation

Navigation (water) (19)
- x Boats and boating safety
- Water transportation
- xx Vessels

News media (03)
- sa Newspapers and magazines
- Radio
- Television
- xx Communications

Newspapers and magazines (03)
- x Magazines
- Publications
- xx News media

Noise control (06, 19)
- xx Environmental protection
- Transportation

Nondiscrimination
- see Civil rights

Nonprofit organizations (13)

Nuclear energy (05)
- sa Nuclear materials
- Nuclear power plants and reactors
- x Atomic energy
- xx Energy

Nuclear materials (05)
- xx Nuclear energy
- Radioactive materials

Nuclear power plants and reactors (05)
- xx Nuclear energy

Nuclear safety
- see Radiation protection

Nuclear vessels (19)
xx Vessels

Nursery stock (01)
sa Plants

Nursing homes (09)
sa Health facilities
xx Health facilities

Nursing schools
see Medical and dental schools

Nutrition (09)
sa Food assistance programs
Foods
xx Foods
Health

Nuts (01)
xx Agricultural commodities
Foods

Occupational safety and health (09, 11)
sa Mine safety and health
Workers' compensation
x Industrial safety
xx Health
Labor
Safety

Occupational training
see Manpower training programs
Vocational education

Ocean dumping
see Water pollution control

Ocean resources
see Marine resources

Oceanographic research vessels (19)
xx Vessels

Off-road vehicles
see Traffic regulations

Offshore structures
see Continental shelf

Oil
see Oils and fats
Petroleum

Oil and gas exploration (05)
x Gas exploration
xx Natural gas
Petroleum

Oil and gas reserves (05, 15)
x Gas reserves
xx Mineral resources
Natural gas
Petroleum

Oil imports (02, 05, 07)
xx Imports
Petroleum

Oil pollution (06)
xx Petroleum
Vessels
Water pollution control

Oils and fats (01)
sa Oilseeds
x Fats and oils
Oil
xx Foods

Oilseeds (01)
sa Cottonseeds
x Flaxseeds
Linseeds
Tung nuts
xx Agricultural commodities
Oils and fats

Old-age, Survivors and Disability Insurance (11, 18)

Oleomargarine
see Margarine

Ophthalmic goods and services

Organization and functions (Government agencies) (08)
sa Authority delegations (Government agencies)
xx Authority delegations (Government agencies)

Outer continental shelf
see Continental shelf

Over-the-counter drugs (09)
xx Drugs

Overseas private investment
see United States investments abroad

Overtime pay
see Wages

Packaging and containers (02)
sa Food packaging
Labeling
x Barrels
Containers
xx Business and industry
Labeling

Paint
see Lead poisoning

Paperwork requirements
see Reporting and recordkeeping requirements

Parachutes
see Aircraft

Pardon
see Clemency

Parking (19)
xx Highways and roads

Parks
see National parks

Parole
see Probation and parole

Passenger vessels (19)
sa Maritime carriers
xx Maritime carriers
Vessels

Passports and visas (07, 19)
x Visas
xx Foreign relations
Travel

Patents
see Inventions and patents

Pay
see Wages

Peer Review Organizations (PRO) (09)
xx Medicaid
Medicare

Penalties (12)
sa Seizures and forfeitures
x Fines and penalties

Pension insurance (11)
xx Insurance
Pensions

Pensions (11)
sa Pension insurance
Railroad retirement
Social security
x Annuities
Employee Retirement Income Security Act
xx Employee benefit plans
Retirement

Pesticides and pests (01, 06)
sa Plant diseases and pests
x Herbicides
Insecticides
Rodenticides
xx Agriculture
Chemicals
Environmental protection

Petroleum (05)
sa Fuel additives
Gasoline
Oil and gas exploration
Oil and gas reserves
Oil imports
Oil pollution
Petroleum allocation
Petroleum price regulations
Pipelines
x Crude oil
Oil
xx Energy

Petroleum allocation (05)
xx Petroleum

Petroleum price regulations (02, 05)
xx Petroleum
Price controls

Pets (01)
xx Animals

Physically handicapped
see Handicapped

Physicians
see Health professions

Pilots
see Airmen

Pipeline safety (09, 19)
xx Hazardous materials transportation
Pipelines
Safety

Pipelines (05, 19)
sa Natural gas
Pipeline safety
xx Energy
Natural gas
Petroleum
Transportation

Plant diseases and pests (01)
xx Pesticides and pests
Plants

Plants (01)
sa Endangered and threatened species
Plant diseases and pests
Seeds
xx Nursery stock

Plastics materials and synthetics (02)
x Synthetics

Pneumoconiosis
see Black lung benefits

Poison prevention (09)
sa Lead poisoning
x Toxic substances
xx Hazardous substances
Safety

Police
see Law enforcement officers

Political activities (Government employees) (08)
x Hatch Act
xx Conflict of interests
Elections
Government employees

Political affiliation discrimination (12)

Political candidates (08)
sa Campaign funds
xx Elections

Political committees and parties (08)
xx Elections

Pollution
see Environmental protection

Polygraph tests
see Lie detector tests

Population census
see Census data

Population control
see Family planning

Ports
see Harbors

Postal Service (03)
x Mail
Rates and fares

Posters
see Signs and symbols

Poultry and poultry products (01)
xx Foods

Poverty
see Community action programs
Food assistance programs
Public assistance programs

Power resources
see Energy

Practice and procedure
see Administrative practice and procedure

Prescription drugs (09)
xx Drugs

Presidential documents (08)
sa Executive orders
Proclamations

Presidential elections
see Elections

Presidential records
see Archives and records

Price controls (02)
sa Petroleum price regulations
x Economics

Price support programs (01)
x Federal aid programs
xx Agricultural commodities

Printing
x Publications

Prisoners (12, 13)

Prisoners of war (13, 14)

Prisons (12)
sa Federal Prison Industries
Probation and parole

Privacy (08, 12)
sa Confidential business information
x Information
Records
xx Administrative practice and procedure
Archives and records

Private schools (04)
xx Schools

Probation and parole (12)
x Parole
xx Prisons

Proclamations (08)
xx Presidential documents

Procurement
see Government procurement

Prosthetic devices
see Medical devices

Public assistance programs (18)
(Cash assistance programs under the Social Security Act)
sa Aid to Families with Dependent Children
Child welfare
Medicaid
Supplemental Security Income (SSI)
x Disabled
Poverty
Welfare programs
xx Aged
Aid to Families with Dependent Children
Blind
Handicapped
Medicaid
Social security

Public buildings
see Federal buildings and facilities

Public health (09)
sa Immunization
Meat inspection
Quarantine
Waste treatment and disposal
x Sanitation
xx Health

Public housing (10)
sa Low and moderate income housing
Rent subsidies
xx Housing
Low and moderate income housing

Public lands (15)
sa Grazing lands
Homesteads
National forests
National parks
Public lands-classification
Public lands-grants
Public lands-mineral resources
Public lands-rights-of-way
Public lands-sale
Public lands-withdrawal
Reclamation
x Land
xx Natural resources

Public lands-classification (15)
xx Public lands

Public lands-grants (15)
xx Public lands

Public lands-mineral resources (15)
xx Mineral resources
Public lands

Public lands-rights-of-way (15)
xx Public lands
Rights-of-way

Public lands-sale (15)
xx Land sales
Public lands

Public lands-withdrawal (15)
xx Public lands

Public meetings
see Sunshine Act

Public utilities
see Electric utilities
Natural gas
Utilities
Water supply

Public works
see Community facilities

Publications
see Government publications
Newspapers and magazines
Printing

Quarantine (09)
xx Health
Public health

Radiation protection (09)
sa Radioactive materials
x Nuclear safety
xx Health
Radioactive materials
Safety

Radio (03)
x Amateur radio service
Broadcasting
Citizens band radio service
xx News media
Telecommunications

Radioactive materials (09)
sa Nuclear materials
Radiation protection
xx Hazardous substances
Radiation protection

Radioactive waste
see Hazardous waste

Railroad employees (13, 19)
sa Railroad retirement
Railroad unemployment insurance
xx Railroads

Railroad retirement (11)
xx Disability benefits
Pensions
Railroad employees
Railroads
Retirement

Railroad safety (09, 19)
xx Railroads
Safety

Railroad unemployment insurance (11)
xx Railroad employees
Railroads
Unemployment compensation

Railroads (19)
sa Railroad employees
Railroad retirement
Railroad safety
Railroad unemployment insurance
x Rates and fares
Shipping
xx Common carriers
Transportation

Range management (01)
xx Agriculture

Rates and fares
see Air rates and fares
Communications common carriers
Electric power rates
Maritime carriers
Motor carriers
Natural gas
Postal Service
Railroads

Real property acquisition (10)

Reclamation (15)
sa Mines
Surface mining
xx Environmental protection
Natural resources
Public lands

Record retention
see Reporting and recordkeeping requirements

Recordings (03)
xx Communications

Records
see Archives and records
Freedom of information
Health records
Privacy
Reporting and recordkeeping requirements

Recreation and recreation areas (16)
sa Fishing
Hunting
National forests
National parks
National trails system
Rivers
Seashores
Wilderness areas
xx Natural resources

Recreational fishing
see Fishing

Recycling (06)
xx Waste treatment and disposal

Refugees (07, 13)
sa Aliens
xx Aliens

Religious discrimination (12)
xx Civil rights

Relocation assistance (10)
xx Business and industry
Housing

Renal diseases
see Kidney diseases

Rent subsidies (10)
x Housing assistance payments
Subsidies
xx Low and moderate income housing
Public housing

Repatriation
see Citizenship and naturalization

Reporting and recordkeeping requirements (08)
x Archives and records
Information
Paperwork requirements
Record retention
Records

Research (17)
sa Agricultural research
Educational research
Medical research
x Human research subjects

Reserve forces
see Armed forces reserves

Reservoirs (15)
xx Flood control
Water supply

Respiratory and pulmonary diseases
see Lung diseases

Retirement (11)
sa Pensions
Railroad retirement
Social security
xx Labor

Revenue sharing (02, 08)
x Finance
xx Intergovernmental relations

Rights-of-way (12)
sa Public lands-rights-of-way
x Land

Rivers (16, 19)
- sa National wild and scenic rivers system
- xx Recreation and recreation areas
  Waterways

Roads
- see Highways and roads

Rockets
- see Aircraft

Rodenticides
- see Pesticides and pests

Rotorcraft
- see Aircraft

Royalties
- see Copyright
  Mineral royalties

Rubber and rubber products (02)
- sa Tires

Rugs
- see Carpets and rugs

Rural areas (01)
- xx Agriculture

Safety (09)
- sa Aviation safety
  Consumer protection
  Fire prevention
  Hazardous substances
  Highway safety
  Marine safety
  Mine safety and health
  Motor vehicle safety
  Occupational safety and health
  Pipeline safety
  Poison prevention
  Radiation protection
  Railroad safety
- x Accidents
- xx Health

Salaries
- see Wages

Sanitation
- see Public health
  Waste treatment and disposal

Satellites (17)
- sa Space transportation and exploration
- xx Telecommunications

Savings associations (02)
- xx Banks, banking

Savings bonds
- see Bonds

Scholarships and fellowships (04)
- x Fellowships
- xx Student aid

School breakfast and lunch programs (01, 04, 18)
- xx Education
  Food assistance programs

School construction (04)
- xx Education
  Schools

School integration
- see Equal educational opportunity

Schools (04)
- sa Colleges and universities
  Educational facilities
  Private schools
  School construction
- xx Education

Science and technology (17)
- x Technology

Scientific equipment (17)
- sa Lasers
  Medical devices

Scientists (13, 17)

Seafood (01)
(Use for documents on fish as food. Use Fish for documents on conservation, etc., of fish as marine life)
- sa Fish
  Fisheries
- xx Fish
  Foods

Seals
- see Marine mammals

Seals and insignia (08)
- x Insignia
  Symbols
- xx Signs and symbols

Seamen (13, 19)
- x Merchant marine
- xx Maritime carriers

Seaplanes
- see Aircraft

Search warrants (12)

Seashores (16)
- sa Coastal zone
- x Beaches
  National seashores
- xx Coastal zones
  Recreation and recreation areas

Secondary education
- see Elementary and secondary education

Securities (02)
- sa Bonds
  Government securities
- x Investment advisers
  Stocks
- xx Investments

Security information
- see Classified information

Security measures (08)
- sa Classified information

Seeds (01)
- xx Plants

Segregation in education
- see Equal educational opportunity

Seizures and forfeitures (12)
- x Forfeitures
- xx Penalties

Selective Service System (14)
- x Draft
- xx Armed forces

Senior citizens
- see Aged

Serums
- see Biologics

Sewage disposal (06)
- xx Waste treatment and disposal

Sex discrimination (12)
- xx Civil rights
  Women

Shipping
- see Air carriers
  Freight forwarders
  Maritime carriers
  Motor carriers
  Railroads

Ships
- see Vessels

Shoes
- see Footwear

Signs and symbols (03)
- sa Seals and insignia
  Trademarks
- x Posters
  Symbols

Silver (02)
- xx Currency
  Metals

Sirup
- see Sugar

Slum clearance
- see Urban renewal

Small businesses (02)
- sa Minority businesses
- xx Business and industry

Smoking (09)
- xx Cigars and cigarettes

Social security (11, 18)
- sa Aid to Families with Dependent Children
- Child welfare
- Medicaid
- Medicare
- Public assistance programs
- Supplemental Security Income (SSI)
- Unemployment compensation
- xx Pensions
- Retirement

Soil conservation (01,15)
- xx Natural resources

Solar energy (05)
- xx Energy

Solid waste disposal
- see Waste treatment and disposal

Space transportation and exploration (17, 19)
- xx Satellites
- Transportation

Spices and flavorings (01)
- x Flavorings
- xx Foods

Sport fishing
- see Fishing

Stamp taxes
- see Excise taxes

State-Federal relations
- see Intergovernmental relations

Statistics (08)
- sa Census data
- Economic statistics
- Health statistics

Sterilization
- see Family planning

Stockpiling
- see Strategic and critical materials

Stocks
- see Securities

Stockyards (01)
- xx Meat and meat products

Strategic and critical materials (14)
- x Stockpiling
- xx National defense

Strip mining
- see Surface mining

Student aid (04)
- sa Scholarships and fellowships
- xx Colleges and universities
- Education

Students (04, 13)
- xx Education

Subsidies
- see Grant programs
- Rent subsidies

Sugar (01)
- x Sirup
- Syrup
- xx Foods

Sunshine Act (08)
- x Government in the Sunshine Act
- Information
- Public meetings
- xx Administrative practice and procedure

Superfund (06)

Supplemental Security Income (SSI) (18)
(Assistance to aged, blind and disabled)
- x Disabled
- xx Aged
- Blind
- Handicapped
- Public assistance programs
- Social Security

Surety bonds (02)
- x Bonding
- xx Insurance

Surface mining (15)
- sa Mine safety and health
- x Coal mines
- Strip mining
- xx Mines
- Reclamation

Surplus agricultural commodities (01)
- xx Agricultural commodities

Surplus Government property (08)
- xx Government property

Swine
- see Hogs

Symbols
- see Seals and insignia
- Signs and symbols

Synthetics
- see Plastics materials and synthetics

Syrup
- see Sugar

Tank vessels
- see Cargo vessels

Tariffs
- see Customs duties and inspection

Tax treaties (02, 07)
- xx Income taxes
- Taxes
- Treaties

Taxes (02)
- sa Customs duties and inspection
- Employment taxes
- Estate taxes
- Excise taxes
- Gift taxes
- Income taxes
- Tax treaties
- xx Business and industry

Tea (01)
- xx Beverages

Teachers (04, 13)
- xx Education

Technical assistance (08)
- x Federal aid programs

Technical education
- see Vocational education

Technology
- see Science and technology

Telecommunications (03)
- sa Radio
- Satellites
- Telegraph
- Telephone
- Television
- xx Communications

Telegraph (03)
- xx Telecommunications

Telephone (03)
- xx Telecommunications

Television (03)
- sa Cable television
- x Broadcasting
- xx News media
- Telecommunications

Textiles (02)
- x Fabrics

Timber
- see Forests and forest products

Time (08)

Tires
- xx Rubber and rubber products

Tobacco (01)
- sa Cigars and cigarettes

Toiletries
- see Cosmetics

Tort claims
- see Claims

Tourist trade
- see Travel

Toxic substances
- see Hazardous substances
- Poison prevention

Toxins
see Biologics

Toys
Trade adjustment assistance (02, 07)
(Aid to domestic industries or workers injured by competition from imported products)
x Adjustment assistance
xx Business and industry
Foreign trade
Imports

Trade agreements (02, 07)
xx Foreign trade
Treaties

Trade fairs
see Fairs and expositions

Trade names (02)
xx Business and industry

Trade practices (02)
xx Business and industry
Consumer protection

Trade unions
see Labor unions

Trademarks (02)
xx Business and industry
Signs and symbols

Traffic regulations (19)
x Off-road vehicles
xx Motor vehicles

Trails
see National trails system

Training programs
see Manpower training programs

Transportation (19)
sa Air transportation
Bridges
Common carriers
Freight
Highways and roads
Intermodal transportation
Mass transportation
Noise control
Pipelines
Railroads
Space transportation and exploration
Vessels

Travel (19)
sa Passports and visas
Travel and transportation expenses
Travel restrictions
x Tourist trade

Travel and transportation expenses (19)
xx Travel

Travel restrictions (19)
xx Travel

Treaties (07)
sa Tax treaties
Trade agreements
x International agreements
xx Foreign relations

Trucks
see Motor carriers
Motor vehicles

Trusts and trustees (02)
x Finance
xx Banks, banking

Truth in lending (02)
xx Consumer protection
Credit

Tuberculosis (09)
xx Lung diseases

Tung nuts
see Oilseeds

Turpentine
see Forests and forest products

Underground mining (15)
sa Mine safety and health
x Coal mines
xx Mines

Unemployment
see Community development
Manpower training programs
Unemployment compensation

Unemployment compensation (11)
sa Railroad unemployment insurance
x Compensation
Unemployment
xx Insurance
Labor
Social security

Uniform Code of Military Justice
see Military law

Uniform System of Accounts (02, 08)
(Use for uniform financial reporting requirements for common carriers.)
xx Accounting

Unions
see Labor unions

United States investments abroad (02)
x Overseas private investment
xx Investments

Universities
see Colleges and universities

Upward Bound Program
see Education of disadvantaged

Uranium
Urban renewal (10)
sa Community development
x Slum clearance
xx Community development

Utilities (02, 05, 15)
sa Electric utilities
Natural gas
Water supply
x Public utilities

Vaccines
see Biologics

Vanpools
see Carpools

Vegetable juices (01)
xx Beverages

Vegetables (01)
(The names of specific vegetables, e.g. Potatoes, are not listed in this Thesaurus but may be used as indexing terms.)
sa *Specific vegetables*
xx Agricultural commodities
Foods

Venereal diseases (09)
Vessels (19)
sa Anchorage grounds
Cargo vessels
Fishing vessels
Marine safety
Maritime carriers
Navigation (water)
Nuclear vessels
Oceanographic research vessels
Oil pollution
Passenger vessels
x Marine engineering
Mobile offshore drilling units
Ships
Water transportation
xx Marine safety
Maritime carriers
Transportation

Veterans (13, 14)
Veterinarians (01, 13)
xx Health professions

Viruses
see Biologics

Visas
see Passports and visas

Vocational education (04)
(Use for vocational instruction within a school curriculum. Distinguish from manpower training programs for on-the-job training)
sa Manpower training programs
x Occupational training
Technical education
xx Education
Manpower training programs

Vocational rehabilitation (18)
(Training of the handicapped for employment)
xx Handicapped

Voluntary standards (02)
Volunteers (13)
Voting rights (08, 12)
xx Civil rights
Elections

Wages (11)
sa Employee benefit plans
Minimum wages
x Compensation
Garnishment of wages
Hours of work
Overtime pay
Pay
Salaries
xx Labor

War claims (07, 12)
xx Claims
Foreign claims

War risk insurance (02)
xx Insurance

Warehouses (02)
Warranties (02)
x Guarantees
xx Business and industry

Waste treatment and disposal (06)
sa Hazardous waste
Recycling
Sewage disposal
x Sanitation
Solid waste disposal
xx Environmental protection
Public health
Water pollution control

Watches and jewelry
x Jewelry

Water bank program (15)
xx Water resources

Water carriers
see Maritime carriers

Water pollution control (06)
sa Oil pollution
Waste treatment and disposal
x Clean Water Act
Marine pollution
Ocean dumping
xx Environmental protection

Water resources (15)
sa Water bank program
Water supply
Watersheds
xx Natural resources

Water supply (15)
sa Dams
Irrigation
Reservoirs
x Drinking water
Public utilities
xx Utilities
Water resources

Water transportation
see Anchorage grounds
Harbors
Marine safety
Maritime carriers
Navigation (water)
Vessels
Waterways

Waterfowl
see Wildlife

Waterfront facilities
see Harbors

Watersheds (15)
xx Water resources

Waterways (19)
sa Bridges
Harbors
Rivers
x Inland waters
Navigable waters
Water transportation

Weapons
see Arms and munitions

Weather (17)
Weights and measures
see Measurement standards

Welfare programs
see Public assistance programs

Wetlands
see Coastal zone
Flood plains

Whales
see Marine mammals

Whistleblowing (02, 08)
xx Business and industry

Wilderness areas (16)
xx Recreation and recreation areas

Wildlife (15)
sa Endangered and threatened species
Wildlife refuges
x Birds
Migratory birds
Waterfowl
xx Animals
Natural resources

Wildlife refuges (15)
x National Wildlife Refuge System
xx Wildlife

Wine (01)
xx Alcohol and alcoholic beverages

Wiretapping and electronic surveillance (12)
x Eavesdropping
Electronic surveillance
xx Law enforcement

Women (13)
sa Minority businesses
Sex discrimination

Wood
see Forests and forest products

Work Incentive Programs (WIN) (11)
xx Aid to Families with Dependent Children
Manpower training programs

Workers' compensation (11)
x Compensation
xx Disability benefits
Insurance
Occupational safety and health

X-rays (17)
Youth (13)
sa Infants and children
Juvenile delinquency
xx Infants and children

Zoning (10)

See refers to authorized terms; x refers from terms not used; sa refers to more specific or related terms; xx refers from broader or related terms
Number in parenthesis refer to subject category listings following alphabetical listing of terms

01

AGRICULTURE AND FOOD

Acreage allotments
Agricultural commodities
Agricultural research
Agriculture
Alcohol and alcoholic beverages
Animal biologics
Animal diseases
Animal drugs
Animal feeds
Animal foods
Animal welfare
Animals
Bakery products
Beer
Bees
Beverages
Butter
Cacao products
Cereals (food)
Chemicals
Cigars and cigarettes
Citrus fruits
Coffee
Color additives
Commodity futures
Cooperatives
Cottonseeds
Crop insurance
Dairy products
Dietary foods
Feed grains
Fertilizers
Food additives
Food assistance programs
Food grades and standards
Food labeling
Food packaging
Food stamps
Foods
Forests and forest products
Frozen foods
Fruit juices
Fruits
Grain sorghum
Grains
Hogs
Irrigation
Liquors
Livestock
Margarine
Marketing agreements
Marketing quotas
Meat and meat products
Meat inspection
Migrant labor
Milk
Milk marketing orders
Nursery stock
Nuts
Oils and fats
Oilseeds
Pesticides and pests
Pets
Plant diseases and pests
Plants
Poultry and poultry products
Price support programs
Range management
Rural areas
School breakfast and lunch programs
Seafood
Seeds
Soil conservation
Spices and flavorings
Stockyards
Sugar
Surplus agricultural commodities
Tea
Tobacco
Vegetable juices
Vegetables
Veterinarians
Wine

02

COMMERCE

Accountants
Accounting
Advertising
Antidumping
Antitrust
Bank deposit insurance
Bankruptcy
Banks, banking
Bonds
Brokers
Business and industry
Clothing
Commodity futures
Common carriers
Communications common carriers
Concessions
Confidential business information
Consumer protection
Countervailing duties
Credit
Credit unions
Crime insurance
Crop insurance
Currency
Customs duties and inspection
Economic statistics
Electronic funds transfers
Employment taxes
Estate taxes
Estates
Excise taxes
Exports
Fairs and expositions
Federal home loan banks
Federal Reserve System
Flood insurance
Footwear
Foreign banking
Foreign currencies
Foreign investments in U. S.
Foreign trade
Foreign trade zones
Gift taxes
Glass and glass products
Gold
Government securities
Health insurance
Holding companies
Household appliances
Imports
Income taxes
Indians-business and finance
Insurance
Insurance companies
Investment companies
Investments
Labeling
Life insurance
Loan programs
Minority businesses
Mortgage insurance
Mortgages
National banks
Oil imports
Packaging and containers
Petroleum price regulations
Plastics materials and synthetics
Price controls
Revenue sharing
Rubber and rubber products
Savings associations
Securities
Silver
Small businesses
Surety bonds
Tax treaties
Taxes
Textiles
Trade adjustment assistance
Trade agreements
Trade names
Trade practices
Trademarks
Trusts and trustees
Truth in lending
Uniform System of Accounts
United States investments abroad
Utilities
Voluntary standards
War risk insurance
Warehouses
Warranties
Whistleblowing

03

COMMUNICATIONS

Cable television
Communications
Communications common carriers
Communications equipment
Defense communications
Motion pictures
News media
Newspapers and magazines
Postal Service
Radio
Recordings
Signs and symbols
Telecommunications
Telegraph
Telephone
Television

04

EDUCATION

Adult education
Art
Arts and crafts
Bilingual education
Colleges and universities
Cultural exchange programs
Education
Education of disadvantaged
Education of handicapped
Educational facilities
Educational research
Educational study programs
Elementary and secondary education
Equal educational opportunity

Indians-arts and crafts
Indians-education
Libraries
Medical and dental schools
Military academies
Museums
Music
Private schools
Scholarships and fellowships
School breakfast and lunch programs
School construction
Schools
Student aid
Students
Teachers
Vocational education

05

ENERGY

Coal
Coal conversion program
Electric power
Electric power plants
Electric power rates
Electric utilities
Energy
Energy conservation
Fuel additives
Fuel economy
Gasohol
Gasoline
Geothermal energy
Natural gas
Nuclear energy
Nuclear materials
Nuclear power plants and reactors
Oil and gas exploration
Oil and gas reserves
Oil imports
Petroleum
Petroleum allocation
Petroleum price regulations
Pipelines
Solar energy
Utilities

06

ENVIRONMENTAL PROTECTION

Air pollution control
Environmental impact statements
Environmental protection
Hazardous waste
Motor vehicle pollution
Noise control
Oil pollution
Pesticides and pests
Recycling
Sewage disposal
Superfund
Waste treatment and disposal
Water pollution control

07

FOREIGN RELATIONS

Alien property
Aliens
Antidumping
Boycotts
Citizenship and naturalization
Communist countries
Countervailing duties
Cultural exchange programs
Customs duties and inspection
Exports
Fairs and expositions
Foreign aid
Foreign claims
Foreign officials
Foreign relations
Foreign Service
Foreign trade
Foreign trade zones
Immigration
Imports
International boundaries
International organizations
Oil imports
Passports and visas
Refugees
Tax treaties
Trade adjustment assistance
Trade agreements
Treaties
War claims

08

GOVERNMENT

Accounting
Administrative practice and procedure
Advisory committees
Archives and records
Authority delegations (Government agencies)
Campaign funds
Census data
Conflict of interests
Decorations, medals, awards
Disaster assistance
Elections
Emergency powers
Equal access to justice
Executive orders
Federal buildings and facilities
Federally affected areas
Flags
Freedom of information
Government contracts
Government employees
Government procurement
Government property
Government property management
Government publications
Government securities
Grant programs
Grants administration
Holidays
Indemnity payments
Intergovernmental relations
Investigations
Loan programs
Lobbying
Organization and functions (Government agencies)
Political activities (Government employees)
Political candidates
Political committees and parties
Presidential documents
Privacy
Proclamations
Reporting and recordkeeping requirements
Revenue sharing
Seals and insignia
Security measures
Statistics
Sunshine Act
Surplus government property
Technical assistance
Time
Uniform System of Accounts
Voting rights
Whistleblowing

09

HEALTH AND SAFETY

Alcohol abuse
Alcoholism
Animal biologics
Animal diseases
Animal drugs
Antibiotics
Aviation safety
Biologics
Black lung benefits
Blind
Blood
Blood diseases
Cancer
Chemicals
Color additives
Communicable diseases
Cosmetics
Dental health
Drug abuse
Drug testing
Drugs
Emergency medical services
Explosives
Family planning
Fire prevention
Flammable materials
Genetic diseases
Handicapped
Hazardous substances
Hazardous waste
Health
Health care
Health facilities
Health insurance
Health maintenance organizations (HMO)
Health professions
Health records
Health statistics
Heart diseases
Highway safety
Hospice care
Hospitals
Immunization
Kidney diseases
Lead poisoning
Leprosy (Hansen's disease)
Lung diseases
Marine safety
Maternal and child health
Medicaid
Medical and dental schools
Medical devices
Medical research
Medicare
Mental health programs
Mine safety and health
Motor vehicle safety
Nursing homes
Nutrition
Occupational safety and health

Over-the-counter drugs
Peer Review Organizations (PRO)
Pipeline safety
Poison prevention
Prescription drugs
Public health
Quarantine
Radiation protection
Radioactive materials
Railroad safety
Safety
Smoking
Tuberculosis
Venereal diseases
Veterinarians

10

HOUSING AND COMMUNITY DEVELOPMENT

Buildings
Community development
Community development block grants
Community facilities
Condominiums
Cooperatives
Fair housing
Home improvement
Homeless
Housing
Housing standards
Land sales
Low and moderate income housing
Manufactured homes
Mortgage insurance
Mortgages
Public housing
Real property acquisition
Relocation assistance
Rent subsidies
Urban renewal
Zoning

11

LABOR

Child labor
Disability benefits
Employee benefit plans
Employment
Equal employment opportunity
Government employees
Homeworkers
Job Corps
Labor
Labor management relations
Labor unions
Manpower
Manpower training programs
Migrant labor
Minimum wages
Occupational safety and health
Old-age, Survivors and Disability Insurance
Pension insurance
Pensions
Railroad retirement
Railroad unemployment insurance
Retirement
Social security
Unemployment compensation
Wages
Work Incentive Programs (WIN)
Workers' compensation

12

LAW

Alimony
Civil disorders
Civil rights
Claims
Clemency
Copyright
Counterfeiting
Courts
Crime
Drug traffic control
Equal educational opportunity
Equal employment opportunity
Fair housing
Federal Prison Industries
Foreign claims
Forgery
Fraud
Gambling
Indians-claims
Indians-enrollment
Indians-judgment funds
Indians-law
Indians-tribal government
Investigations
Juvenile delinquency
Law
Law enforcement
Law enforcement officers
Lawyers
Legal services
Lie detector tests
Lotteries
Marital status discrimination
Military law
Penalties
Political affiliation discrimination
Prisoners
Prisons
Privacy
Probation and parole
Religious discrimination
Rights-of-way
Search warrants
Seizures and forfeitures
Sex discrimination
Voting rights
War claims
Wiretapping and electronic surveillance

13

NAMED GROUPS

Accountants
Aged
Air traffic controllers
Airmen
Aliens
Blind
Brokers
Chaplains
Child labor
Conscientious objectors
Engineers
Firefighters
Foreign officials
Foundations
Government employees
Handicapped
Hawaiian Natives
Health professions
Homeless
Homeworkers
Hostages
Indians
Infants and children
Law enforcement officers
Lawyers
Longshore and harbor workers
Migrant labor
Military personnel
Miners
Nonprofit organizations
Prisoners
Prisoners of war
Railroad employees
Refugees
Scientists
Seamen
Students
Teachers
Veterans
Veterinarians
Volunteers
Women
Youth

14

NATIONAL DEFENSE

Armed forces
Armed forces reserves
Arms and munitions
Civil defense
Classified information
Conscientious objectors
Defense communications
Emergency powers
Fallout shelters
Military academies
Military air transportation
Military law
Military personnel
National defense
Prisoners of war
Selective service system
Strategic and critical materials
Veterans

15

NATURAL RESOURCES

Coastal zone
Continental shelf
Dams
Endangered and threatened species
Fish
Fisheries
Flood control
Flood plains
Forests and forest products
Gases
Grazing lands
Helium
Historic preservation
Homesteads
Indians-lands
Marine mammals
Marine resources
Metals

Mineral resources
Mineral royalties
Mines
Monuments and memorials
National forests
National parks
Natural resources
Oil and gas reserves
Public lands
Public lands-classification
Public lands-grants
Public lands-mineral resources
Public lands-rights-of-way
Public lands-sale
Public lands-withdrawal
Reclamation
Reservoirs
Soil conservation
Surface mining
Underground mining
Utilities
Water bank program
Water resources
Water supply
Watersheds
Wildlife
Wildlife refuges

16

RECREATION

Bicycles
Fishing
Hobbies
Hunting
National trails system
National wild and scenic rivers system
Recreation and recreation areas
Rivers
Seashores
Wilderness areas

17

SCIENCE AND TECHNOLOGY

Agricultural research
Computer technology
Educational research
Electronic products
Inventions and patents
Laboratories
Lasers
Measurement standards
Medical research
Metric system
Micrographics
Research
Satellites
Science and technology
Scientific equipment
Scientists
Space transportation and exploration
Weather
X-rays

18

SOCIAL PROGRAMS

Adoption and foster care
Aid to Families with Dependent Children
Child support
Child welfare
Community action programs
Day care
Family planning
Food assistance programs
Food stamps
Medicaid
Old-age, Survivors and Disability Insurance
Public assistance programs
School breakfast and lunch programs
Social security
Supplemental Security Income (SSI)
Vocational rehabilitation

19

TRANSPORTATION

Air carriers
Air rates and fares
Air taxis
Air traffic control
Air traffic controllers
Air transportation
Aircraft
Airmen
Airports
Airspace
Anchorage grounds
Aviation safety
Bicycles
Bridges
Buses
Cargo vessels
Carpools
Charter flights
Common carriers
Fishing vessels
Freight
Freight forwarders
Harbors
Hazardous materials transportation
Highway safety
Highways and roads
Intermodal transportation
Longshore and harbor workers
Marine safety
Maritime carriers
Mass transportation
Military air transportation
Motor carriers
Motor vehicle pollution
Motor vehicle safety
Motor vehicles
Moving of household goods
Navigation (air)
Navigation (water)
Noise control
Nuclear vessels
Oceanographic research vessels
Parking
Passenger vessels
Passports and visas
Pipeline safety
Pipelines
Railroad employees
Railroad safety
Railroads
Rivers
Seamen
Space transportation and exploration
Traffic regulations
Transportation
Travel
Travel and transportation expenses
Travel restrictions
Vessels
Waterways

federal register

Tuesday
September 18, 1990

Part III

Nuclear Regulatory Commission

10 CFR Part 51

Consideration of Environmental Impacts of Temporary Storage of Spent Fuel After Cessation of Reactor Operation; and Waste Confidence Decision Review; Final Rules

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

RIN 3150-AD26

Consideration of Environmental Impacts of Temporary Storage of Spent Fuel After Cessation of Reactor Operation

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is revising its generic determinations on the timing of availability of a geologic repository for commercial high-level radioactive waste and spent fuel and the environmental impacts of storage of spent fuel at reactor sites after the expiration of reactor operating licenses. These revisions reflect findings of the Commission reached in a five-year update and supplement to its 1984 "Waste Confidence" rulemaking proceeding, which are published elsewhere in this issue of the **Federal Register**. The Commission now finds that spent fuel generated in any reactor can be stored safely and without significant environmental impacts in reactor facility storage pools or independent spent fuel storage installations located at reactor or away-from-reactor sites for at least 30 years beyond the licensed life for operation (which may include the term of a revised or renewed license). Further, the Commission believes there is reasonable assurance that at least one mined geologic repository will be available within the first quarter of the twenty-first century, and sufficient repository capacity will be available within 30 years beyond the licensed life for operation of any reactor to dispose of the commercial high-level waste and spent fuel originating in such reactor and generated up to that time.

EFFECTIVE DATE: October 18, 1990.

FOR FURTHER INFORMATION CONTACT: John P. Roberts, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492-0608.

SUPPLEMENTARY INFORMATION:

Background

In 1984, the Commission concluded a generic rulemaking proceeding, the "Waste Confidence" proceeding, to reassess its degree of confidence that radioactive wastes produced by nuclear facilities will be safely disposed of, to determine when any such disposal would be available, and whether such wastes can be safely stored until they are safely disposed of. The Commission found that there was reasonable assurance that one or more mined geologic repositories for commercial high-level radioactive waste and spent fuel will be available by 2007-2009. However, some reactor operating licenses might expire without being renewed or some reactors might be permanently shut down prior to this period. Since independent spent fuel storage installations had not yet been extensively developed, there was a probability that some onsite spent fuel storage after license expiration might be necessary or appropriate. In addition, the possibility existed that spent fuel might be stored in existing or new storage facilities for some period beyond 2007-2009. The Commission also found that the licensed storage of spent fuel for at least 30 years beyond the reactor operating license expiration either at or away from the reactor site was feasible, safe, and would not result in a significant impact on the environment.

Consequently, the Commission adopted a rule, codified in 10 CFR 51.23, providing that the environmental impacts of at-reactor storage after the termination of reactor operating licenses need not be considered in Commission proceedings related to issuance or amendment of a reactor operating license. The same safety and environmental considerations applied to fuel storage installations licensed under part 72 as for storage in reactor basins. Accordingly, the rule also provided that the environmental impacts of spent fuel storage at independent spent fuel storage installations for the period following expiration of the installation storage license or amendment need not be considered in proceedings related to issuance or amendment of a storage installation license.

Amendment to Part 51

At the time of issuance of its Waste Confidence decision and the adoption of 10 CFR 51.23, the Commission also announced that while it believed that it could, with reasonable assurance, reach favorable conclusions of confidence, it also recognized that significant unexpected events might affect its decision.

Consequently, the Commission stated that it would "review its conclusions on waste confidence should significant and pertinent unexpected events occur, or at least every 5 years until a repository for high-level radioactive waste and spent fuel is available." The Commission has now completed a five-year review of its earlier findings. A description of this review and the supplement and update to the earlier findings is announced elsewhere in this issue. As a result of this review, the Commission is modifying two of its earlier findings as follows:

The Commission finds reasonable assurance that at least one mined geologic repository will be available within the first quarter of the twenty-first century, and sufficient repository capacity will be available within 30 years beyond the licensed life for operation (which may include the term of a revised or renewed license) of any reactor to dispose of the commercial high-level waste and spent fuel originating in such reactor and generated up to that time; and

The Commission finds reasonable assurance that, if necessary, spent fuel generated in any reactor can be stored safely and without significant environmental impacts for at least 30 years beyond the licensed life for operation (which may include the term of a revised or renewed license) of that reactor at its spent fuel storage basin, or at either onsite or offsite independent spent fuel storage installations.

In this proceeding, the Commission is revising 10 CFR 51.23(a) to be consistent with these revisions to the Waste Confidence decision.

Summary of Comments

The Commission received 11 comments on its proposed revision to 10 CFR 51.23(a) from the following entities listed in the order of receipt of comments:

Duke Power Company
Public Citizen
Edison Electric Institute
Malachy Murphy (State of Nevada)
Yankee Atomic Electric Company
Department of Energy (DOE)
Philadelphia Electric Company
Commonwealth Edison
Virginia Electric and Power Company
Marvin I. Lewis, Registered Professional Engineer
Florida Power & Light

The revision to this rule was supported by Duke Power Company, Edison Electric Institute, Yankee Atomic Electric Company, Department of Energy, Philadelphia Electric Company, and Virginia Electric and Power Company and generally supported by Commonwealth Edison.

Malachy Murphy, for the State of Nevada, suggests that 10 CFR 51.23(a) be amended to reflect reasonable assurance that spent fuel can be stored safely and without significant environmental risk in dry casks at reactor sites for up to one hundred years. The Commission, in the notice of proposed rulemaking, discussed its conclusion that even if storage of spent fuel were necessary for at least thirty

years beyond the licensed life for operation of reactors, which for a reactor whose license is renewed for thirty years would mean a period of at least 100 years, such storage is feasible, safe and would not result in a significant impact on the environment. The Commission's conclusion on this issue considers both wet and dry storage. Although the Commission does not dispute the statement that dry spent fuel storage is safe and environmentally acceptable for a period of 100 years, the Commission does not find it necessary to make that specific finding in this proceeding.

Marvin I. Lewis avers that 100 years is an excessive amount of time to predict that at-reactor storage will be available and safe. The commenter suggests that our institutions may not survive in a form that will provide safe onsite storage 100 years in the future. The commenter requests that the Commission reverse its finding that storage will be available and safe for 100 years. The Commission does not agree with the commenter that this finding should be reversed. The Commission believes that adequate regulatory authority exists and will remain available to require any measures necessary to assure safe storage of spent fuel.

Conclusions

The Commission is adopting the proposed revision with one small clarifying change. The proposed revision to 10 CFR 51.23(a) (and the proposed revision to the Waste Confidence decision) stated that spent fuel can be stored safely for at least 30 years beyond the licensed life for operation of any reactor which may include the term of a "revised license." As the discussion in the notice made explicit, the term "revised" license was intended to embrace a "renewed" license. To reflect more accurately the inclusion of the term of a renewed license, the parenthetical phrase which refers to this subject is being revised to read: "which may include the term of a revised or renewed license."

The necessity for the proposed revisions to the Waste Confidence decision and to 10 CFR 51.23(a) is based on the timing of repository availability, and premised on the following factors: The potential for delays in DOE's program; the mandate of the Nuclear Waste Policy Act Amendments of 1987 to characterize only the Yucca Mountain site which means that if that site is found unsuitable, characterization will have to begin at another site or suite of sites with consequent delay in repository availability; the regulatory need to avoid premature commitment to the Yucca Mountain site; and the questionable value of making predictions about completion of a project as complex and unique as the repository in terms of years when decades would be more realistic. But even with this change the Commission has concluded that it has reasonable assurance that on such a schedule for repository availability, sufficient repository capacity will be available within 30 years beyond the licensed life for operation of reactors. Adequate regulatory authority is available to require any measures necessary to assure safe storage of the spent fuel until a repository is available. In addition, the Commission has concluded that even if storage of spent fuel were necessary for at least 30 years beyond the licensed life of reactors, which in the case of a reactor whose operating license is renewed for 30 years would mean for a period of at least 100 years, such storage is feasible, safe and would not result in a significant impact on the environment.

The Commission's conclusions with respect to safety and environmental impacts of extended storage are supported by NRC's Environmental Assessment (EA) for the 10 CFR part 72 rulemaking "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste" (53 FR 31651, August 19, 1988). Ongoing licensing and operational experience as well as studies of extended pool storage continue to demonstrate that such storage is a benign environment for spent fuel which does not lead to significant degradation of spent fuel integrity. Significant advances in the processes of dry storage of spent fuel continue to demonstrate that dry storage systems are simple, passive and easily maintained. NRC staff safety reviews of topical reports on dry storage system designs and dry storage installations at two reactor sites, as well as the EA for part 72, support the finding that storage of spent fuel in such installations for a period of 70 years does not significantly impact the environment. No significant additional non-radiological consequences which could adversely effect the environment for extended storage at reactors and independent spent fuel storage installations have been identified. In sum, the long-term material and system degradation effects are well understood and known to be minor, the ability to maintain a spent fuel storage system is assured, and the Commission maintains regulatory authority over any spent fuel storage installation.

Environmental Impact

This final rule amends 10 CFR part 51 of the Commission's regulations to modify the generic determination currently codified in part 51 which was made by the Commission in the Waste Confidence rulemaking proceeding. That generic determination was that for at least 30 years beyond the expiration of a reactor's operating license no significant environmental impacts will result from the storage of spent fuel in reactor facility storage pool or independent spent fuel storage installations located at reactor or away-from-reactor sites. The modification provides that, if necessary, spent fuel generated in a reactor can be stored safely and without significant environmental impacts for at least 30 years beyond the licensed life for operation of any reactor. The licensed life for operation of a reactor may include the term of a revised or renewed license. The environmental analysis on which the revised generic determination is based can be found in the revision and supplement to the Waste Confidence findings published elsewhere in this issue. This final rulemaking action formally incorporating the revised generic determination in the Commission's regulations does not have separate independent environmental impact. The supplemental assessment and revisions to the Waste Confidence findings are available for inspection at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget approval number 3150-0021.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule describes a revised basis for continuing in effect the current provisions of 10 CFR 51.23(b) which provides that no discussion of any environmental impact of spent fuel storage in reactor facility storage pools or independent spent fuel storage installations [ISFSI] for the period following the term of the reactor operating license or amendment or

initial ISFSI license or amendment for which application is made is required in any environmental report, environmental impact statement, environmental assessment or other analysis prepared in connection with certain actions. This rule affects only the licensing and operation of nuclear power plants. Entities seeking or holding Commission licenses for such facilities do not fall within the scope of the definition of small businesses found in section 34 of the Small Business Act, 15 U.S.C. 632, in the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121, or in the NRC's size standards published December 9, 1985 (50 FR 50241).

Backfit Analysis

This final rule does not modify or add to systems, structures, components or design of a facility; the design approval or manufacturing license for a facility; or the procedures or organization required to design, construct or operate a facility. Accordingly, no backfit analysis pursuant to 10 CFR 50.109(c) is required for this final rule.

List of Subjects in 10 CFR Part 51

Administration practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR part 51.

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

1. The authority citation for part 51 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853-854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95-604, Title II, 92 Stat. 3033-3041. Sections 51.20, 51.30, 51.60, 51.61, 51.80, and 51.97 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241, and sec. 148, Pub. L. 100-203, 101 Stat. 1330-223 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036-3038 (42 U.S.C. 2021) and under Nuclear Waste Policy Act of 1982, sec. 121, 96 Stat. 2228 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also issued under Nuclear Waste Policy Act of 1982, sec. 114(f), 96 Stat. 2216, as amended (42 U.S.C. 10134(f)).

2. Section 51.23, paragraph (a) is revised to read as follows:

§ 51.23 Temporary storage of spent fuel after cessation of reactor operation--generic determination of no significant environmental impact.

(a) The Commission has made a generic determination that, if necessary, spent fuel generated in any reactor can be stored safely and without significant environmental impacts for at least 30 years beyond the licensed life for operation (which may include the term of a revised or renewed license) of that reactor at its spent fuel storage basin or at either onsite or offsite independent spent fuel storage installations. Further, the Commission believes there is reasonable assurance that at least one mined geologic repository will be available within the first quarter of the twenty-first century, and sufficient repository capacity will be available within 30 years beyond the licensed life for operation of any reactor to dispose of the commercial high-level waste and spent fuel originating in such reactor and generated up to that time.

* * * * *

Dated at Rockville, Maryland this 11th day of September, 1990.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 90-21889 Filed 9-17-90; 8:45 a.m.]

BILLING CODE 7590-01-D

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10 CFR Part 51

Waste Confidence Decision Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Review and Final Revision of Waste Confidence Decision.

SUMMARY: On August 31, 1984, the Nuclear Regulatory Commission (NRC) issued a final decision on what has come to be known as its "Waste Confidence Proceeding." The purpose of that proceeding was "...to assess generically the degree of assurance now available that radioactive waste can be safely disposed of, to determine when such disposal or offsite storage will be available and to determine whether radioactive waste can be safely stored onsite past the expiration of existing facility licenses until offsite disposal or storage is available." (49 FR 34658). The Commission noted in 1984 that its Waste Confidence Decision was unavoidably in the nature of a prediction, and committed to review its conclusions "...should significant and pertinent unexpected events occur or at least every five years until a repository is available." The purpose of this notice is to present the findings of the Commission's first review of that Decision.

The Commission has reviewed its five findings and the rationale for them in light of developments since 1984. This revised Waste Confidence Decision supplements those 1984 findings and the environmental analysis supporting them. The Commission is revising the second and fourth findings in the Waste Confidence Decision as follows:

Finding 2: The Commission finds reasonable assurance that at least one mined geologic repository will be available within the first quarter of the twenty-first century, and that sufficient repository capacity will be available within 30 years beyond the licensed life for operation (which may include the term of a revised or renewed license) of any reactor to dispose of the commercial high-level radioactive waste and spent fuel originating in such reactor and generated up to that time.

Finding 4: The Commission finds reasonable assurance that, if necessary, spent fuel generated in any reactor can be stored safely and without significant environmental impacts for at least 30 years beyond the licensed life for operation (which may include the term of a revised or renewed license) of that reactor at its spent fuel storage basin, or at either onsite or offsite independent spent fuel storage installations.

The Commission is reaffirming the remaining findings. Each finding, any revisions, and the reasons for revising or reaffirming them are set forth in the body of the review below.

The Commission also issued two companion rulemaking amendments at the time it issued the 1984 Waste Confidence Decision. The Commission's reactor licensing rule, 10 CFR part 50, was amended to require each licensed reactor operator to submit, no later than five years before expiration of the operating license, plans for managing spent fuel at the reactor site until the spent fuel is transferred to the Department of Energy (DOE) for disposal under the Nuclear Waste Policy Act of 1982 (NWPA). 10 CFR part 51, the rule defining NRC's responsibilities under the National Environmental Policy Act (NEPA), was amended to provide that, in connection with the issuance or amendment of a reactor operating license or initial license for an independent spent fuel storage installation, no discussion of any

environmental impact of spent fuel storage is required for the period following expiration of the license or amendment applied for.

In keeping with the revised Findings 2 and 4, the Commission is providing elsewhere in this issue of the Federal Register conforming amendments to its 10 CFR part 51 rule providing procedures for considering in licensing proceedings the environmental effects of extended onsite storage of spent fuel.

Finally, the Commission is extending the cycle of its Waste Confidence reviews from every five years to every ten until a repository becomes available. In its 1984 Decision, the Commission said that because its conclusions were "...unavoidably in the nature of a prediction," it would review them "...should significant and pertinent unexpected events occur, or at least every five years until a repository...is available." As noted below, the Commission now believes that predictions of repository availability are best expressed in terms of decades rather than years. To specify a year for the expected availability of a repository decades hence would misleadingly imply a degree of precision now unattainable. Accordingly, the Commission is changing its original commitment in order to review its Waste Confidence Decision at least every ten years. This would not, however, disturb the Commission's original commitment to review its Decision whenever significant and pertinent unexpected events occur. The Commission anticipates that such events as a major shift in national policy, a major unexpected institutional development, and/or new technical information might cause the Commission to consider reevaluating its Waste Confidence Findings sooner than the scheduled ten-year review.

FOR FURTHER INFORMATION CONTACT: John Roberts, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (202) 492-0608.

SUPPLEMENTARY INFORMATION:

Analysis of Public Comments on the Proposed Waste Confidence Decision Review.

1.0 Introduction

Comments were received from a Federal agency, the public interest sector, the nuclear industry, and one State as listed below in order of their receipt:

Duke Power Company
Public Citizen
Edison Electric Institute
Malachy Murphy (State of Nevada)
Yankee Atomic Electric Company
Department of Energy
Philadelphia Electric Company
Commonwealth Edison
Virginia Electric and Power Company
Marvin I. Lewis, Registered Professional Engineer
Florida Power & Light Company

The majority of the commenters were supportive of the Commission's proposed decision and rule. The comments were consolidated into a total of 19 issues to be addressed. Each of these issues is discussed under the Commission finding to which it relates. Two additional issues, not raised by commenters, are treated under the heading "Other Relevant Issues." The "Other Relevant Issues" section includes consideration of the petition by the State of Vermont to intervene in the consideration of the extension of the operating license for Vermont Yankee and the potential for non-payment of the one-time fee for spent nuclear fuel generated prior to April 1983 into the Nuclear Waste Fund.

2.0 Analysis of Issues Related to Commission Findings

2.1 The Commission's First Finding

The Commission finds reasonable assurance that safe disposal of high-level radioactive waste and spent fuel in a mined geologic repository is technically feasible.

Issue No. 1: Technical Feasibility of Safe Disposal in a Mined Geologic Repository

Comment

The commenter representing Public Citizen (PC) stated that there is still not adequate assurance that permanent, safe disposal of high-level radioactive waste in a mined geologic repository is technically feasible. In support of this, the commenter indicated that a number of major scientific panels have pointed out that there is no technical or scientific basis for knowing for sure that geologic disposal is possible. As an example, PC stated that President Carter's Office of Science and Technology Policy (OSTP) found in 1979 a rather general consensus among scientists that a technology base "sufficient to permit complete confidence in the safety of any particular repository design or the suitability of any particular site" was still lacking. PC further stated that more recently, a Waste Isolation Systems Panel of the National Academy of Sciences pointed out many areas of the geologic disposal problem where technical uncertainties exist, and where "more information is needed." PC also stated that the technical difficulties presented by a million-year disposal problem are unprecedented and enormous, and that there have been no major findings since (the above studies) that have resolved the uncertainties to the point where it is possible to be *assured* that geologic disposal is technically feasible.

NRC Response

The issue of the technical feasibility of the safe disposal of spent nuclear fuel and radioactive waste has been addressed at length in the Commission's 1989 Proposed Waste Confidence Decision Review (54 FR 39767; September 28, 1989) as well as in the original 1984 Waste Confidence Decision (49 FR 34658; August 31, 1984). While those discussions addressed the concerns raised by the comment, it is useful to provide additional specific responses to them. The comment that major scientific panels have pointed out that there is no technical or scientific basis for knowing for sure that geologic disposal is possible makes reference to President Carter's OSTP statement in 1979. Contrary to the comment, the OSTP statement does not support the contention that there is no technical or scientific basis for knowing for sure that geologic disposal is possible. Rather, it remarks on the lack of a technology base sufficient to permit complete confidence in the safety of any particular repository design or the suitability of any particular site. The information base necessary to license a repository is still being developed. This includes information on site characterization, repository design, waste package design, and the performance assessment of the entire disposal system. The complete body of such necessary information is expected to be in hand only at the completion of the developmental studies and characterization work being undertaken by the DOE. It is at this point that the DOE will be in a position to apply for a license from the NRC and seek NRC's approval of the safety of its proposed site and repository design.

The Commission also notes that the OSTP statement was made over a decade ago, prior to the completion of a substantial amount of work which has addressed many of the issues related to disposal technology. While the Commission recognizes that more information is needed and that the technical difficulties are challenging, there is no basis to believe that safe disposal in a repository is impossible, or even that it is not likely. No major breakthrough in technology is required to develop a mined geologic repository. Rather, there is a need to add to the current extensive body of technical

information already available and apply it to an evaluation of specific sites and engineering designs.

Regarding the commenter's emphasis on the need for resolution of uncertainties to assure the technical feasibility of geologic disposal, we would respond that the Commission did not state that the feasibility of a mined geologic repository was assured, in the absolute sense, but that it had found reasonable assurance in the feasibility of mined geologic disposal on the basis of a thorough review of the technologies needed to achieve this disposal.

Issue No. 2: Difficulty in Evaluating Compliance with Repository Safety Standards Over Long Time Periods

Comment

The PC commenter also raised the issue of what he termed the "inability to predict with a reasonable degree of certainty that, once buried, the waste will remain contained [in the geologic repository] for the required time period." The commenter noted uncertainties related to geologic stability, engineered barriers, rock-waste interactions, and groundwater hydrology which contribute to the difficulty of evaluating compliance with safety standards over the long time periods involved in radioactive waste isolation. The commenter concluded that although these problems may be able to be resolved, there is not a basis for assurance that this will be the case.

NRC Response

The NRC believes that existing safety assessment techniques have the potential to provide a basis for deciding whether proposed radioactive waste disposal systems are acceptable. We recognize the difficulty of predicting with a high degree of accuracy the maximum impacts a repository would have on human health and the environment, especially in the very far future. It will likely not be possible to test empirically the ability of models to predict long-term repository performance to the same extent as models for short-term performance. However, we believe existing technology can provide a sufficient level of safety for present and future generations under certain conditions. These conditions include addressing the uncertainties inherent in projecting far into the future and in modelling complex heterogeneous natural systems, and acquiring and evaluating data on specific sites.

We also note that the language of the original Environmental Protection Agency's (EPA) Environmental Radiation Standards for Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Wastes (40 CFR part 191) does not require absolute assurance that containment requirements will be met. Rather, it recognizes the uncertainties involved in projecting repository performance far into the future, and states "Instead, what is required is a reasonable expectation, on the basis of the record before the implementing agency, that compliance with Sec.191.13(a) will be achieved."

Issue No. 3: Unanticipated Difficulties in Developing the WIPP Facility

Comment

PC also indicated that the Waste Isolation Pilot Plant (WIPP) has not opened because of numerous unanticipated difficulties, including leakage of salt water into the site. PC states that this leakage, which was not anticipated prior to the beginning of construction in the early 1980s, shows that even on a scale of a few years, geologic events in a repository are unpredictable--to say nothing of events on a time scale of hundreds of thousands of years.

NRC Response

Although the NRC does not have oversight responsibility for the WIPP project, NRC does monitor DOE progress on WIPP insofar as it may offer valuable insight into efforts to license a repository for commercial high-level waste and spent fuel. For example, DOE must demonstrate compliance with the EPA standard in order to operate the WIPP facility. NRC cognizance of DOE efforts to implement the EPA Standard at WIPP could help provide information and consensus-building in the implementation of the EPA Standard for the commercial high-level waste repository.

The NRC does not consider the occurrence of brine pockets at the WIPP site as a factor that might diminish its confidence in the technical feasibility of a mined geologic repository. The Commission does not expect that site characterization of a candidate site will proceed free from all difficulty. We have urged DOE to establish a planning mechanism for timely development and implementation of contingency plans at Yucca Mountain to address problems during site characterization as they arise. DOE has announced a new focus on surface-based testing for the Yucca Mountain site in its Reassessment Report to Congress. Under this program, the primary goal of testing is to identify features of the site which would render it unsuitable for a repository. If such features are identified, DOE would notify Congress and the State of Nevada, and terminate site specific activities. A finding that the Yucca Mountain site is unsuitable would likely lead to delays in repository availability while another candidate site is identified and characterized, however it would not diminish confidence in the technical feasibility of geologic disposal.

Issue No. 4: Impact of the BEIR V Report on the Commission's Decision

Comment

Marvin Lewis drew attention to the recent findings of the Committee on the Biological Effects of Ionizing Radiation (BEIR V) in their report on the Health Effects of Exposure to Low Levels of Ionizing Radiation. The commenter stated that the BEIR V study indicated that the danger from radioactivity is four or more times higher than previously known. The commenter further stated that the BEIR V findings will require that the NRC change many of its radiation protection guidelines and rules. He also requested that the NRC stop all action on the Waste Confidence Decision Review until the Commission can determine the effect of the BEIR V report on the Decision.

NRC Response

The Commission has been aware for some time of the scientific data underpinning the estimate of risk from radiation exposure contained in the BEIR V report. Much of this information has been incorporated in the Commission's forthcoming revisions to its radiation protection requirements (10 CFR part 20). For reasons stated below, however, the Commission does not foresee any impact of the BEIR V report on the Waste Confidence Decision.

The BEIR V report is the latest in a series of reports dealing principally with the effects of low-LET radiation in humans, e.g., radiation such as beta particles and gamma photons. The report covers radiation carcinogenesis, genetic effects, and effects on the developing embryo/fetus. The report also includes new information related to the dosimetry of the Japanese atomic bomb survivors, and new epidemiological information. The NRC staff, other Federal agencies, and national and international organizations are currently reviewing both the BEIR V report and the report issued in 1988 by the United Nations Scientific Committee on the Effects of Atomic Radiation (UNSCEAR).

The estimates of risk due to low-LET radiation in the BEIR V report are based principally upon effects observed in populations exposed to high doses and at high dose rates. These effects are then extrapolated using statistical modeling to predict effects at low doses

and dose rates. The extrapolations to low dose and dose rate lead to significant uncertainties in the estimates of risk in the BEIR V report. The estimates of risk for fatal cancer induction in the BEIR V report are from three to four times larger than the estimate from the preferred model of the BEIR III report in 1980. However, the new BEIR V estimate is within the overall range of risk estimates and uncertainties from the different models presented in BEIR III.

It is important to note that the BEIR V report only addresses the issue of risk estimates for radiation effects. The BEIR committee did not make any recommendations on acceptable risk or on the potential impacts of the risk estimates to dose limits or standards for radiation protection. Efforts are underway by the International Commission on Radiological Protection (ICRP), National Council on Radiation Protection and Measurements (NCRP), and the Committee on Interagency Radiation Research and Policy Coordination (CIRRPC) of the Executive Office of the President to reach some measure of consensus on the impacts of the revised risk estimates to radiation protection standards.

Under section 121(a) of the Nuclear Waste Policy Act (NWPA), NRC is required to issue technical requirements and criteria that it will apply in approving or disapproving a repository. These requirements and criteria must be consistent with the high-level waste disposal standards promulgated by the Environmental Protection Agency. Demonstration of compliance with the EPA standard was discussed under the rationale for Finding 1 in the Commission's Proposed Waste Confidence Decision Review.

The NRC does not believe that numerical criteria for individual protection requirements are at issue in its Waste Confidence Proceeding. The broader issue of demonstrating compliance with EPA release limits using probabilistic analyses was a concern of the NRC staff and the NRC's Advisory Committee on Nuclear Waste in preparing the Proposed Waste Confidence Decision Review. As stated in the Proposed Waste Confidence Decision Review, the NRC staff is closely monitoring EPA's progress on issuing its revised standards to assure that EPA methodologies for demonstrating compliance with them can be applied by NRC to evaluate DOE's demonstration of compliance. NRC will also monitor DOE efforts to demonstrate compliance with the EPA standard at the Waste Isolation Pilot Plant facility for transuranic wastes.

2.2 The Commission's Second Finding

The Commission finds reasonable assurance that at least one mined geologic repository will be available within the first quarter of the twenty-first century, and that sufficient repository capacity will be available within 30 years beyond the licensed life for operation (which may include the term of a revised or renewed license) of any reactor to dispose of the commercial high-level radioactive waste and spent fuel originating in such reactor and generated up to that time.

Issue No. 5: Expected Date for Repository Availability

Comment

Malachy Murphy (State of Nevada) and Public Citizen expressed a lack of support for the Commission's proposed second finding. These commenters argue that the finding should be revised to reflect the 2010 date for repository availability announced in DOE's November 1989 Reassessment Report to Congress. They believe that the NRC's "confidence" date of 2025 for repository availability may be exceeded if the Yucca Mountain site is found to be unsuitable sometime after the year 2000 because there might not be enough time to locate, characterize, license and construct a repository at another site by 2025. The commenter from Public Citizen also finds that even if the Yucca Mountain site were found to be suitable, a repository there might not be available until after 2025. This commenter concluded that it would be more conservative to assume that four candidate sites would be found to be unsuitable during the course of site characterization and that there is no basis for assurance that a repository would be available before 2055.

NRC Response

The NRC does not believe it is necessary to change the proposed second finding to reflect DOE's revised date for repository availability of 2010. NRC anticipated an extension of several years in DOE's schedule when it issued its proposed revised second finding. NRC took the position that if the Yucca Mountain site were found to be unsuitable on or before the year 2000, it was reasonable to expect that an alternative site could be identified and developed in time for repository availability by 2025.

NRC continues to believe that if DOE determines that the Yucca Mountain site is unsuitable, it will make this determination by about the year 2000. DOE's program is now focused on surface-based testing designed to identify features of the site which would render it unsuitable for a repository. The only significant barriers to DOE proceeding with site characterization at Yucca Mountain are the development of a quality assurance (QA) program acceptable to NRC, completion of study plans for site characterization activities they wish to begin, and resolution of the impasse between DOE and the State of Nevada regarding permits for drilling. DOE has made significant progress in the development of a QA program for its site characterization activities. It is possible that this work will be completed and accepted by late 1990 or early 1991. Regarding the impasse with the State of Nevada, both DOE and the State of Nevada have filed lawsuits in Federal Court in an effort to resolve the question of site access. While any litigation of this matter has the possibility of an unfavorable outcome for DOE, the Commission believes that Congress has aggressively demonstrated in both the Nuclear Waste Policy Act of 1982 and the Nuclear Waste Policy Amendments Act of 1987 that it is committed to an orderly progression of the repository program and a resolution of the radioactive waste disposal problem. Accordingly, NRC believes that it is reasonable to assume that Congress will not allow the uncertainties related to the start of site characterization to continue for many more years.

For these reasons, NRC believes that the coming decade will be ample time for the DOE to determine whether or not Yucca Mountain is unsuitable and to begin work on an alternate site, if necessary. We believe that Congress is committed to a resolution of the waste problem and will take measures to bring this issue to a close.

We would also point out here that the Court decision that led to the Waste Confidence Proceeding did not require NRC to determine when a repository would be available. The Court remanded to NRC the question of "...whether there is reasonable assurance that an offsite storage solution will be available by the years 2007-2009, the expiration of [Prairie Island and Vermont Yankee's] operating licenses, and if not, whether there is reasonable assurance that the fuel can be safely stored at the reactor sites beyond those dates." NRC chose as a matter of policy not to confine itself to the storage-related questions in the Court's remand, but to address the broader issues of whether radioactive wastes could be safely disposed of, when such disposal would be available, and whether such wastes can be safely stored until they are disposed of. NRC

was not requested to determine nor has it made a determination that a repository must be available by 2025 in order to protect public health and safety.

NRC does not find a reasonable basis for the argument that even if the Yucca Mountain site were found to be suitable, it might not be available by the year 2025. Surface-based and in-situ testing are expected to take approximately ten years. The NWPA provides that NRC's review of DOE's license application is to be completed in three years (with the possibility of an additional year). Construction is scheduled to take another six years. Even if each of these activities were to take several years longer than planned, a repository at Yucca Mountain could be available well before the year 2025. The limiting condition appears to be the timing of DOE's access to the site to begin testing.

Finally, we do not believe it is realistic to assume for conservatism that four candidate sites will be found unsuitable before an acceptable site is characterized, licensed and built. To date, no candidate site for a repository has been found to be unsuitable for technical reasons. However, if the Yucca Mountain site is found to be unsuitable, an alternative site would have to undergo a similar process of site-screening and characterization to determine its suitability. We believe it is reasonable to expect that experience gained in the Yucca Mountain site characterization effort would provide a better basis for choosing an alternative site. Furthermore, it may be possible to complete site suitability testing at another site at a faster pace than at Yucca Mountain given the benefits of lessons-learned at that site.

Issue No. 6: Clarification of the NRC's Role in the Licensing Support System (LSS)

Comment

The DOE commented that it was not clear what NRC meant by the words "implementing it" in the statement "DOE has the responsibility for designing the LSS and bearing the costs associated with it and NRC will be responsible for implementing it."

NRC Response

In its Proposed Waste Confidence Decision Review, NRC included a description of the Licensing Support System (LSS) under its discussion of "Measures for dealing with Federal-State-Local concerns." The LSS is intended to provide participants in the repository licensing proceeding early access to documents relevant to the licensing decision.

To eliminate any confusion regarding NRC's responsibilities for the LSS, the above sentence in the Proposed Decision Review will be eliminated and the following description will be inserted in its place: "DOE is responsible for the design, development, procurement and testing of the LSS. LSS design and development must be consistent with objectives and requirements of the Commission's LSS rulemaking and must be carried out in consultation with the LSS Administrator and with the advice of the Licensing Support System Advisory Review Panel. NRC (LSS Administrator) is responsible for the management and operation of the LSS after completion of the DOE design and development process."

Issue No. 7: Suggestion for Reducing Licensing Uncertainties Related to Spent Fuel Transshipments

Comment

Commonwealth Edison commented that in order to enhance the viability of the option of transferring spent fuel from retired reactors to others under active management, the NRC should reduce, to the maximum extent possible, licensing uncertainties related to such fuel transfers. The commenter also stated that by predetermining that spent fuel pool densification and alternative on-site spent fuel storage methods do not raise any significant hazards considerations, the NRC's final decision would be strengthened.

NRC Response

The Commission evaluates applications for modification of spent fuel storage at licensee's facilities or for transshipment from one site to another on an individual basis. Such a case-by-case consideration of the merits of each application ensures that all significant safety issues are addressed in a thorough manner and provides a conservative approach for arriving at a decision on the merits of the license application.

Issue No. 8: Appropriate Use of Nuclear Waste Fund Monies

Comment

Commonwealth Edison Company (CECo) refers to the NRC's statement that DOE could accept responsibility for management of spent fuel until a repository is available in the event that a licensee becomes insolvent prior to the time a geologic repository is ready to accept spent fuel. Funds from either the Nuclear Waste Fund (NWF) or from the utility itself could be used (54 FR 39767, at 39786 and 39790). CECo comments that the use of the NWF monies for this purpose would involve the solvent utilities funding the storage of spent fuel generated by the bankrupt licensees. CECo believes that it is not clear whether the Nuclear Waste Policy Act would allow NWF monies to be used for this purpose and suggests that NRC should seek and analyze comments on this issue. Until further evaluation and analysis has taken place, CECo believes NRC should delete this as a basis for confidence.

NRC Response

The Commission believes that there are two related issues presented in the above comment. The first is whether DOE can accept responsibility for spent fuel if a utility is insolvent or otherwise no longer capable of managing it. A second related issue is, given DOE's acceptance of responsibility for the spent fuel, where would DOE obtain the funds needed to pay the costs of this responsibility? The NRC continues to believe that DOE would accept responsibility for spent fuel management in the event that a licensee is unable to exercise its own responsibility. Further, the NRC believes that DOE would have sufficient resources to carry out any safety-related measures.

As indicated in the discussion under Issue 21, because DOE is not precluded from accepting responsibility for the waste in those situations, default is an issue of equity rather than public health and safety. As such, the Commission does not believe that a licensee's potential default has a direct bearing on the Commission's Waste Confidence Decision.

Nevertheless, because the source of funds, but not DOE's ultimate responsibility is ambiguous, the NRC has decided to change the references that CECo cites with the bracketed words to be deleted in the Final Waste Confidence Decision Review:

> If for any reason not now foreseen, this spent fuel can no longer be managed by the owners of these reactors, and DOE must assume responsibility for its management earlier than currently planned, this quantity of spent fuel is well within the capability of DOE to manage onsite or offsite with available technology [financed by the utility either directly or through the Nuclear Waste Fund]. (p.39786, col.1)
>
> Even if a licensed utility were to become insolvent, and responsibility for spent fuel management were transferred to DOE earlier than is currently planned, the Commission has no reason to believe that DOE would [have insufficient Nuclear Waste Fund resources or otherwise] be unable to carry out any safety-related measures NRC considers necessary. (p.39390, col.1)

Issue No. 9: Costs Incurred Due to Delayed Acceptance of Spent Fuel at Repository

Comment

Commonwealth Edison Company (CECo) observed that additional costs will be incurred by licensees as a result of delayed acceptance of spent fuel at the repository. CECo believes that consideration should be given as to whether these costs will be covered by the Nuclear Waste Fund or whether the costs will be incurred directly by the licensee.

NRC Response

The Commission believes that this is a matter which will have to be resolved in another forum in the context of the contracts between DOE and the utilities/owners of spent fuel. The individual contracts currently specify the dates by which DOE has agreed to accept responsibility for the disposal of spent fuel. If DOE must delay its acceptance of spent fuel, the responsibility for the financial consequences of that default would have to be determined at that time by reference to and interpretation of the pertinent contracts. The ultimate answer to this question will not affect the findings of the Waste Confidence Decision.

Issue No. 10: Clarification of Discussion of Period of Safe Spent Fuel Storage at Dresden 1

Comment

Commonwealth Edison Company (CECo) comments that the discussion in the Proposed Decision Review of the possible extended storage of spent fuel from Dresden 1 is not clear and should be clarified. On the basis of assumptions discussed in the Proposed Decision Review, CECo concludes that three different dates could be derived to indicate the maximum time for onsite spent fuel storage. For Dresden 1, which was licensed to operate in 1959 and permanently shut down in 1978, 30 years after shutdown would yield a maximum date of 2008; 30 years after a full 40-year license term yields a maximum date of 2029; and 30 years after a full 40-year license term plus a 30-year extension of the operating license would yield a date of 2059.

NRC Response

The NRC believes that CECo has misinterpreted the discussion pertaining to the maximum term of onsite spent fuel storage in the Waste Confidence Decision and the bases and assumptions underlying that discussion as they pertain to the specific circumstances of Dresden 1. The *generic* discussion of the derivation of the maximum safe storage term for the purposes of the Waste Confidence Decision is contained in pp.39785-90 and pp.39783-96. The Commission concluded on a generic basis that "spent fuel generated in *any* reactor can be stored safely and without significant environmental impacts in reactor facility storage pools or independent spent fuel storage installations located at-reactor or away-from-reactor sites for at least 30 years beyond the licensed life for operation (which may include the term of a revised license) of that reactor at its spent fuel storage basin or at either onsite or offsite independent spent fuel storage installations" (proposed 10 CFR 51.23(a) at p. 39968 (Finding 4) (emphasis added)). The discussion and findings were based on technical and institutional considerations that, for the sake of completeness, considered situations like those at Dresden 1 that differ from those with most reactors that are expected to operate to full term plus a possible extended license term. For Dresden 1, based on proposed § 51.23(a), the applicable storage period would be 30 years beyond the licensed life of operation, or until 2029.

2.3 The Commission's Third Finding

The Commission finds reasonable assurance that high-level radioactive waste and spent fuel will be managed in a safe manner until sufficient repository capacity is available to assure the safe disposal of all high-level waste and spent fuel.

Issue No. 11: Resolution of Contractual Conflicts Between DOE and Licensees

Comment

Commonwealth Edison Company (CECo) comments that the NRC has unnecessarily interjected itself into issues involved in the contracts between the DOE and licensees by NRC's statement that it would have more confidence if the DOE and licensees could resolve any uncertainties by reaching an early and amicable resolution as to how and when the DOE will accept responsibility for spent fuel. CECo believes that the implication in this statement is that licensees should amend their contracts with DOE to allow DOE additional time to perform under the contracts or that licensees should refrain taking action against DOE if it defaults under the contracts. CECo notes that NRC has stated that its confidence in safe storage is unaffected by potential contractual disputes between DOE and the spent fuel owners (54 FR 39792), therefore CECo believes that it would be appropriate for NRC to strike the statement and express no opinion regarding possible future disputes between DOE and licensees.

NRC Response

The Commission did not intend the implication that CECo perceives regarding any particular preferred outcome or suggested resolution of future potential contract disputes between DOE and contract holders. The Commission has stated that its confidence in safe storage is unaffected by any potential contractual dispute between DOE and spent fuel generators and owners as to responsibility for spent fuel storage. The Commission's further statement that it would be helpful if any future potential contract disputes could be resolved amicably merely expressed a concern that the waste management system operates smoothly and efficiently. The statement did not imply any additional impact on or repercussion from the Waste Confidence Decision upon the resolution of future potential contract disputes between DOE and contract holders.

The Commission believes that it has made its position clear that its confidence is not diminished by any potential contractual disputes between DOE and spent fuel owners. However, in order to avoid any further misunderstanding in this regard, the Commission has decided to delete the following statements in its Proposed Waste Confidence Decision Review from its Final Waste Confidence Decision Review:

To resolve any continuing uncertainties, however, it would be helpful if DOE and utilities and other spent fuel generators and owners could reach an early and amicable resolution to the question of how and when DOE will accept responsibility for spent fuel. This would facilitate cooperative action to provide for a smoothly operating system for the ultimate disposition of spent fuel. (54 FR 39792) and

If DOE and the utilities can amicably resolve their respective responsibilities for spent fuel storage in the interest of efficient and effective administration of the overall waste management system, including the Nuclear Waste Fund, NRC would gain added confidence in the institutional arrangements for spent fuel management. (54 FR 39797)

Issue No. 12: NRC Responsibility to Identify Need for Utilities to Provide Interim Storage and to Notify Congress of This Requirement

Comment

Malachy Murphy (State of Nevada) comments that, in light of DOE's Reassessment Report to Congress, the NRC should explicitly state that utilities will need to have interim spent fuel storage available well into the next century. The commenter also states that NRC should explicity request that Congress take note of this requirement. The commenter believes that such action would be in keeping with NRC's responsibilities to the public and to nuclear utilities.

NRC Response

The standard contracts between DOE and generators of spent nuclear fuel or persons holding title to spent fuel currently provide that in return for payment to the Nuclear Waste Fund, DOE will dispose of high-level waste and spent fuel beginning no later than January 31, 1998. The Commission believes it would be inappropriate for NRC to take any position on the need for generators and those holding title to such material to provide interim storage for it beyond 1998. This is a matter that will have to be resolved between the parties to the standard contracts. NRC, in its original Waste Confidence Decision and in the Proposed Waste Confidence Decision Review, addressed the issue of storage of spent fuel until a repository becomes available and has expressed its confidence that spent fuel will be safely managed until a repository is available. Furthermore, in its original Waste Confidence Proceeding, NRC amended its reactor licensing rule, 10 CFR part 50 to require each licensed reactor operator to submit, no later than five years before expiration of the operating license, plans for managing spent fuel at the reactor site until the spent fuel is transferred to DOE for disposal.

In the Nuclear Waste Policy Act (NWPA), Congress placed primary responsibility for interim storage of spent fuel on the nuclear utilities until disposal becomes available. Section 132 of the NWPA requires that DOE, NRC, and other authorized Federal officials take such actions as they believe are necessary to encourage and expedite the effective use of available storage, and necessary additional storage, at the site of each civilian nuclear power reactor.

Sections 218(a) and 133 of the NWPA also provide that NRC by rule establish procedures for the licensing of any technology approved by NRC for use at the site of any civilian nuclear power reactor. NRC may by rule approve one or more dry spent fuel storage technologies for use at the sites of civilian power reactors without, to the maximum extent practicable, the need for additional site-specific approvals. Congress is eminently aware of the likely need for at-reactor storage of spent fuel and has taken legislative action with respect to this matter. Therefore, the NRC believes it is not necessary to inform Congress of this need. However, the NRC will continue to exercise its responsibility to assure that spent fuel is managed safely until a repository is available and will notify Congress of any actions it believes are necessary to provide this assurance.

2.4 The Commission's Fourth Finding

The Commission finds reasonable assurance that, if necessary, spent fuel generated in any reactor can be stored safely and without significant environmental impacts for at least 30 years beyond the licensed life for operation (which may include the term of a revised or renewed license) of that reactor at its spent fuel storage basin, or at either onsite or offsite independent spent fuel storage installations.

Issue No. 13: Consideration of the Cumulative Impacts on Waste Management in the NRC's NEPA Documentation

Comment

DOE commented that the cumulative impacts on waste management of potential reactor operating license extensions should be considered in the NRC's National Environmental Policy Act (NEPA) documentation for license renewals.

NRC Response

DOE has observed that renewal of operating licenses would increase the total amount of spent fuel requiring disposal or interim storage which would be taken into account in DOE program planning and should be considered in NRC's NEPA documentation for license renewals. This is generally consistent with the discussion in the Commission's proposed decision, especially 54 FR 39795 (third column). The greater amount of spent fuel which must be stored as a result of license renewal does not affect the Commission's overall finding of no significant environmental impacts.

Issue No. 14: Need for NRC to Facilitate ISFSI License Extensions to Reflect the Commission's Revised Fourth Finding

Comment

The Virginia Electric & Power Company (VEPCo) states that the current license on the Independent Spent Fuel Storage Installation (ISFSI) for its Surry nuclear power plant expires on July 31, 2006. VEPCo states that the NRC should initiate actions to facilitate ISFSI license extensions to reflect the proposed revised Fourth Finding that spent fuel generated in any reactor can be safely stored for at least 30 years beyond the licensed life for operation of that reactor either onsite or offsite.

NRC Response

The Commission's Waste Confidence finding on the duration of safe storage of spent fuel is generic in nature. Site-specific licensing procedures remain effective. Pursuant to § 72.42, an ISFSI license is issued for a period of 20 years but may be renewed upon application by the licensee. Part 72 in no way precludes licensees from requesting additional extensions of license terms for ISFSIs. The licensee thus has the option of requesting an ISFSI license renewal to coincide with whatever operating term and post-operation spent fuel storage period is in effect for a particular reactor. For example, a single renewal could extend the Surry ISFSI license expiration date to the year 2026. The NRC does not believe that further revisions to § 72.42 to facilitate these license extensions are warranted at this time.

Issue No. 15: Insufficient Assurance on Duration of Safe Storage and Risk of Fire at a Spent Fuel Pool

Comment

Public Citizen stated that there is not adequate assurance that spent fuel will be stored safely at reactor sites for up to 30 years beyond the expiration of reactor operating licenses. This is even more the case if license extensions of up to 30 years are included. Public Citizen further stated that "the (Waste Confidence) policy statement fails to recognize that spent fuel buildup at reactor sites poses a growing safety hazard. The pools are not well protected from the environment (in many cases they are outside the reactor's containment structure) and have leaked in the past. For example, in December 1986 at the Hatch nuclear power plant in Baxley, Georgia, 141,000 gallons of radioactive water leaked out of the plant's fuel pool. More than 80,000 gallons of the water drained into a swamp and from there into the Altamaha River near the plant." Public Citizen added that "More recently, on August 16, 1988, a seal on a fuel pool pump failed at the Turkey Point nuclear plant near Miami, FL, causing some 3,000 gallons of radioactive water to leak into a nearby storm sewer. The shoes and clothing of approximately 15 workers were contaminated."

Public Citizen also stated that the danger posed by an accident in which enough pool water escaped to uncover the irradiated fuel assemblies would be greater than the operational incidents described above. According to the commenter, if a leak or pump failure caused the water level in a spent fuel pool to drop to a level which exposed the fuel assemblies, the remaining water might be insufficient to provide adequate cooling. The pool water could then heat to the boiling point, producing steam and causing more water to boil away. The danger then is that heat could continue to build up even further until the cladding which encloses the irradiated fuel pellets catches fire. The commenter continued saying that the

NRC itself, in the time since the original Waste Confidence Decision, has studied the issue of storage in reracked spent fuel pools and concluded in a 1987 report that the consequence of such a cladding fire could be a "significant" radiation release. The NRC report found:

(1) the natural air flow permitted by high-density storage racks is so restricted that potential for self-sustaining cladding fire exists; and

(2) with high-density racks providing "severely restricted air flow" the oxidation (burning) would be "very vigorous" and "failure of both the fuel rods and the fuel rod racks is expected."

Public Citizen states that nowhere in the Proposed Waste Confidence Decision Review does the NRC take into account the findings of this report, which should have been included.

NRC Response

The Commission has addressed the safety of extended post-operational spent fuel storage at considerable length in the discussion of its proposed revised Fourth Finding.

Operational occurrences cited in Public Citizen's comment have been addressed by the NRC staff at the plants listed. The NRC has taken inspection and enforcement actions to reduce the potential for such operational occurrences in the future. We would like to note, however, that the event at the Hatch plant occurred in a transfer canal between spent fuel pools during an operation that would not normally be performed following expiration of a reactor operating license. In the case of the event at Turkey Point, the water that flowed outside the building went back into the intake of the plant cooling canal. The canal is a large, closed loop onsite flow path. There was no radiation release offsite, and the safety significance of the event appears to have been very low.

Regarding the risk of fire at spent fuel pools, the NRC staff has spent several years studying in detail catastrophic loss of reactor spent fuel pool water possibly resulting in a fuel fire in a dry pool. The 1987 report, "Severe Accidents in Spent Fuel Pools in Support of Generic Safety Issue 82" (NUREG/CR-4982), referred to in Public Citizen's comment represents an early part of the NRC's study. Its findings were based on generic data on seismic hazards and response of spent fuel pools, which resulted in calculated risk numbers with wide ranges of uncertainty. (See p. xiii.) Subsequent study of the consequences and risks due to a loss of coolant water from spent fuel pools was conducted by the NRC, and the results were published in NUREG/CR-5176, "Seismic Failure and Cask Drop Analysis of the Spent Fuel Pools at Two Representative Nuclear Power Plants," January 1989, and NUREG-1353, "Regulatory Analysis for the Resolution of Generic Issue 82, >Beyond Design Basis Accidents in Spent Fuel Pools'," April 1989. These reports were cited in the Commission's Proposed Waste Confidence Decision Review (54 FR 39767-39797, at p.39795, September 28, 1989). Also issued in 1989, as part of the NRC staff's study, was "Value/Impact Analyses of Accident Preventive and Mitigative Options for Spent Fuel Pools" (NUREG/CR-5281).

The analyses reported in these studies indicate that the dominant accident sequence which contributes to risk in a spent fuel pool is gross structural failure of the pool due to seismic events. Risks due to other accident scenarios (such as pneumatic seal failures, inadvertent drainage, loss of cooling or make-up water, and structural failures due to missiles, aircraft crashes and heavy load drops) are at least an order of magnitude smaller. For this study, older nuclear power plants were selected, since the older plants are more vulnerable to seismic-induced failures.

It should be noted that for a zircaloy cladding fire in a spent fuel storage pool, an earthquake or other event causing a major loss of cooling water would have to occur within two years after operation of a PWR or six months after operation of a BWR. (See NUREG-1353, p. 4-11.) Thus, during the decades of post-operational storage, even a major loss of cooling water would not be sufficient to cause a cladding fire. During the time the pool would be most vulnerable to a fire, the most-recently discharged fuel assemblies would have to be adjacent to other recently discharged assemblies for a fire to propagate to the older fuel. Considering that a third of the reactor core is typically unloaded as spent fuel each year, the probability of a fire involving even the equivalent of a reactor core--a small portion of a pool's capacity--is quite remote.

It should also be noted that even if the timing of a spent fuel pool failure were conducive to fire, a fire could occur only with a relatively sudden and substantial loss of coolant--a loss great enough to uncover all or most of the fuel, damaging enough to admit enough air from outside the pool to keep a large fire going, and sudden enough to deny the operators time to restore the pool to a safe condition. Such a severe loss of cooling water is likely to result only from an earthquake well beyond the conservatively estimated earthquake for which reactors are designed. Earthquakes of that magnitude are extremely rare.

The plant-specific studies following the 1987 generic study found that, because of the large safety margins inherent in the design and construction of their spent fuel pools, even the more vulnerable older reactors could safely withstand earthquakes several times more severe than their design basis earthquake. Factoring in the annual probability of such beyond-design-basis earthquakes, the plant-specific and generic followup studies calculated that the average annual probability of a major spent fuel pool failure at an operating reactor was ten to thirty times lower than the average probabilities in the 1987 study. (See NUREG/CR-5176, p. xiii, and NUREG-1353, pp. ES-2-3.) For either BWR or PWR designs, this probability was calculated at two chances in a million per year of reactor operation. (See NUREG-1353, pp. ES-3-4.)

After evaluating several regulatory options for reducing the risk of spent fuel pool fires, the NRC regulatory analysis concluded that "[t]he risk[s] due to beyond design basis accidents in spent fuel pools, while not negligible, are sufficiently low that the added costs involved with further risk reductions are not warranted." (See NUREG-1353, pp. ES-6-8.)

Issue No. 16: Need for NRC Requirement for Dry Cask Storage Instead of Storage in Spent Fuel Pools

Comment

Public Citizen states that the use of dry cask storage for spent fuel would help address some of the concerns described above, but that NRC has no plans to require dry cask storage instead of storage in spent fuel pools. The commenter notes that NRC has explicitly stated in its Proposed Decision Review that storage in a reactor's "spent fuel storage basin" is considered safe, and (the commenter) apparently disagrees with this conclusion.

NRC Response

The record of operational experience with reactor spent fuel storage pools, as discussed in the Commission's Proposed Decision Review and in response to the preceding comments, strongly supports the conclusion that reactor spent fuel pool storage, which has continued for decades, is safe. Accordingly, the NRC has reached the conclusion that past experience and available information amply support the safety of spent fuel storage, both in pools and dry storage casks, for at least 30 years past the expiration of reactor operating licenses (including the term of a revised license).

Issue No. 17: Suggestion to Revise Proposed Fourth Finding to Reflect Reasonable Assurance That Spent Fuel Can Be Safely Stored in Dry Casks at Reactor Sites for Up to One Hundred Years

Comment

Malachy Murphy (State of Nevada) commented that NRC's Proposed Revised Fourth Finding did not go far enough with respect to the duration of safe storage in dry storage casks. The commenter suggested that both the proposed finding and the Proposed Amendment to 10 CFR 51.23 be amended to reflect reasonable assurance that spent fuel can be stored safely and without significant environmental risk in dry casks at reactor sites for up to one hundred (100) years.

NRC Response

The Commission does not dispute a conclusion that dry spent fuel storage is safe and environmentally acceptable for a period of 100 years. Evidence supports safe storage for this period. A European study published in 1988 states, "In conclusion, present-day technology allows wet or dry storage over very long periods, and up to 100 years without undue danger to workers and population." (See Fettel, W., Kaspar, G., and Gunther, H., "Long-Term Storage of Spent Fuel from Light-Water Reactors" (EUR 11866 EN), Executive Summary, p.v, 1988.)

Although spent fuel can probably be safely stored without significant environmental impact for longer periods, the Commission does not find it necessary to make a specific conclusion regarding dry cask storage in this proceeding, as suggested by the commenter, in part because the Commission's Proposed Fourth Finding states that the period of safe storage is "at least" 30 years after expiration of a reactor's operating license. The Commission supports timely disposal of spent fuel and high-level waste in a geologic repository, and by this Decision does not intend to support storage of spent fuel for an indefinitely long period.

Issue No. 18: Maintenance of Institutional Controls for One Hundred Years

Comment

Marvin Lewis commented that the Commission's Proposed Revised Decision and Amendment to 10 CFR part 51 both require that at-reactor storage be available and safe for at least 100 years, which is an excessive amount of time to depend on institutional memory. The commenter states that to look into the future and have confidence that our institutions will survive in a form which will provide that safe onsite storage is available for at least 100 years into the future lacks any merit. The commenter asked that the Commission arrive at the opposite conclusion, namely that "Due to the Department of Energy's lack of quality control of data and analysis, inability to qualify acceptable sites, accusation against subcontractors when data contradicts DOE's preconceived assumptions, and general adherence to the political solution instead of scientific veracity, the NRC cannot find that temporary storage at reactors will ensure that geological storage for spent fuel will be available and safe when needed."

NRC Response

The Commission believes there is an adequate basis from the record of Federal regulations, historical experience and current practice to support the Commission's finding regarding institutional controls over spent fuel storage activities.

The Environmental Protection Agency's standards for high-level waste disposal provide that "active institutional controls over disposal sites should be maintained for as long a period of time as is practicable after disposal; however, performance assessments that assess isolation of the wastes from the accessible environment shall not consider any contributions from active institutional controls for more than 100 years after disposal" (40 CFR 191.14(a)). The finding that repository licensing performance assessments can take credit for active institutional controls for 100 years is not one of the issues involved in the judicial action which vacated the EPA standard, and it is not expected that this section will be disturbed when the standard is reissued. It should also be noted that this language does not suggest that active institutional controls are unlikely for a period greater than 100 years. In the summary of the Final Rule (50 FR 38066; September 19, 1985), EPA noted that many commenters on the Proposed Rule felt that "a few hundred years" which was the proposed period for reliance on active institutional controls was too long. EPA agreed to limit the period to 100 years, noting that "this was the time period [EPA] considered in criteria for radioactive waste disposal that were proposed for public comment in 1978 (43 FR 53262), a period that was generally supported by the commenters on that proposal" (50 FR 38066, at p. 38080).

NRC would add that there are abundant examples of institutions in human society which have maintained a continuity in institutional controls far exceeding 100 years. The government of the United States, which is relatively young, is over 200 years old. The governments of some European countries have been in existence for time periods between 700 to 1000 years. While invading armies and civil wars have been disruptive, archival information of interest to the safety of the population can be expected to be preserved. In the United States today, real estate contracts are commonly executed to cover a period of 100 years, or a significant fraction thereof. One hundred-year land-lease agreements are common. Major civil construction projects such as harbors, bridges, flood control systems, and dams are often planned and executed--and investments made in them--with the view of recovering the benefits over a period of 100 years or more.

2.5 The Commission's Fifth Finding

The Commission finds reasonable assurance that safe independent onsite or offsite spent fuel storage will be made available if such storage capacity is needed.

Issue No. 19: Impact of Extension of Time for Repository Availability on the Increased Generation of Low-Level Radioactive Waste

Comment

Commonwealth Edison (CECo) commented that the Proposed Waste Confidence Review does not address low-level waste concerns resulting from delayed acceptance of spent fuel by the repository under DOE's extended schedule for repository availability. CECo commented that if they store spent fuel in pools and implement rod consolidation to conserve space during the extension, additional low-level waste may be generated. CECo believes that NRC should determine if this additional low-level waste should go to a Federal Repository or to a sited compact for disposal.

NRC Response

The disposition of high-level and low-level radioactive wastes has already been determined by Congress in the Nuclear Waste Policy Act of 1982 (NWPA) and in the Low-Level Radioactive Waste Policy Act (LLWPA). Congressional designation of the method of disposal of each type of waste was not dependent on the DOE's schedule for development of the repository; rather, Congress designated the method of disposal according to characteristics of the waste which are associated with its hazard (i.e., radioactive source strength, radioactive species of the emanating radiation, and half-life). It is not within the NRC's regulatory

jurisdiction to change the directives provided by Congress in the NWPA and the LLWPA.

3.0 Consideration of Other Events Relevant to the Commission's Decision

Issue No. 20: Petition by the State of Vermont to Intervene in the Consideration of the Extension of the Operating License for Vermont Yankee

In the Commission's Proposed Waste Confidence Decision Review, it was stated that the basis for the 2007-2009 timeframe in the Court remand leading to the Waste Confidence Proceeding had changed since the original Decision. This discussion was based on the fact that it appeared likely that these dates no longer represented the expected expiration dates for the operating licenses of the Vermont Yankee and Prairie Island nuclear plants. The NRC staff has been granting extensions of the dates of expiration of nuclear plant operating licenses to reflect a 40-year period from the date of issuance of the operating license rather than from the date of the construction permit. The dates of expiration of the Prairie Island Units 1 and 2 had already been extended from the year 2006 to the years 2013 and 2014. The NRC staff anticipated that on the basis of the date of issuance of its operating license, Vermont Yankee would be eligible for an extension of its operating license to March 2012.

In the time since the drafting of the Proposed Decision Review, several pertinent events have occurred. NRC published a notice of consideration of amendment to the Vermont Yankee Operating License, a proposed "no significant hazards" consideration determination, and opportunity for a hearing (54 FR 31120; July 26, 1989). On August 22, 1989, the State of Vermont filed a petition for leave to intervene. On October 30, 1989, Vermont filed a supplement to its petition to intervene proposing nine contentions for litigation on Vermont Yankee Nuclear Power Corporation's application to extend its operating license. On November 15, 1989, the NRC's Atomic Safety and Licensing Board (ASLB) heard oral argument by counsel for the licensee, the NRC staff, and the State of Vermont concerning the State's petition for leave to intervene and supplemental petition for leave to intervene. The ASLB granted the State of Vermont's petition for leave to intervene, admitted one contention (which did not concern waste disposal) as an issue in controversy for litigation, and granted the request for hearing. The ASLB's ruling was issued in a Prehearing Conference Memorandum and Order dated January 26, 1990 (Docket No.50-271-OLA-4).

It is now apparent that the extension of Vermont Yankee's operating license expiration date will be dependent on the outcome of this contested hearing. There is the possibility that a shorter extension or that no extension will be granted. In view of the uncertain outcome, the Commission will delete all discussion of a possible revised date for the Vermont Yankee operating license expiration and the revised date for expiration of the Prairie Island operating license. This deletion, however, does not affect the Commission's Proposed Revised Second Finding in its Waste Confidence Decision Review. Assuming that no extension or a lesser extension is granted and Vermont Yankee's operating license expires in 2007, the basis for the Commission's finding that a repository will be available within the first quarter of the twenty-first century and that sufficient repository capacity will be available within 30 years beyond the licensed life for operation of any reactor, would be unaffected.

Issue No. 21: Potential Need for Additional Financial Security for the Nuclear Waste Fund

The NRC staff has been informed by DOE's Office of Civilian Radioactive Waste Management that a pending final report from DOE's Inspector General has indicated a potential problem for certain nuclear utility licensees to pay the one-time fee into the Nuclear Waste Fund (NWF) for spent fuel generated prior to April 1983. This issue arises because several utilities elected to defer payment into the fund and, instead, themselves hold the money that was collected from ratepayers for the one-time fee. DOE's Inspector General believes that some of those utilities may not be able to make their payments when due.

The NRC staff met with DOE's Office of Civilian Radioactive Waste Management (OCRWM) on December 13, 1989 to discuss this issue and determine the potential impact on both NRC's Decommissioning Rulemaking and on the Waste Confidence Decision, and, more generally, on protection of public health and safety. In addition, NRC discussed at that meeting and in follow-up telephone conversations potential actions that DOE might take. These actions could include modifying DOE's spent fuel contracts with electric utilities, seeking legislative amendments, and working with the National Association of Regulatory Utility Commissioners to increase assurance of one-time contributions into the NWF.

The NRC understands from OCRWM staff that, if a nuclear utility licensee were to default on its one-time contribution to the NWF, DOE is not precluded from accepting for disposal all spent fuel from that utility. Thus, the NRC does not view this issue as affecting its confidence that the spent fuel will be disposed of. Rather, the issue is one of equity--that is, will a utility and its customers and investors or U.S. taxpayers and/or other utilities ultimately pay for disposal of spent fuel generated prior to April 1983.

Background

In November 1976, the Natural Resources Defense Council (NRDC) petitioned NRC for a rulemaking to determine whether radioactive wastes generated in nuclear power reactors can be subsequently disposed of without undue risk to the public health and safety. The NRDC also requested that NRC not grant pending or future requests for operating licenses until the petitioned finding of safety was made.

On June 27, 1977, NRC denied the NRDC petition. The Commission said that in issuing operating licenses, NRC must have assurance that wastes can be safely handled and stored as they are generated. It also said that it is not necessary for permanent disposal to be available if NRC could be confident that permanent disposal could be accomplished when necessary. NRC added that Congress was aware of the relationship between nuclear reactor operations and the radioactive waste disposal problem, and that NRC would not refrain from issuing reactor operating licenses until the disposal problem was resolved. The Commission also stated that it "...would not continue to license reactors if it did not have reasonable confidence that the wastes can and will in due course be disposed of safely."

Also in November 1976, two utility companies requested amendments to their operating licenses to permit expansion in the capacity of their spent nuclear fuel storage pools: Vermont Yankee Nuclear Power Corporation for the Vermont Yankee plant; and Northern States Power Company for its Prairie Island facility. In both cases, the utilities planned to increase storage capacity through closer spacing of spent fuel assemblies in existing spent fuel pools. The New England Coalition on Nuclear Power and the Minnesota Pollution Control Agency intervened. The NRC staff evaluated the requests and found that the modifications would not endanger public health and safety. The staff did not consider any potential

environmental effects of storage of spent fuel at the reactors beyond the dates of expiration of their operating licenses. NRC's Atomic Safety and Licensing Board Panel (ASLBP) adopted the staff's safety and environmental findings and approved the license amendments for the two plants. It too did not consider the effects of at-reactor storage beyond the expiration of the facility operating license.

The Board's decision was appealed to the Atomic Safety and Licensing Appeal Board (ASLAB). The ASLAB affirmed the Licensing Board's decision, citing the Commission's "...reasonable confidence that wastes can and will in due course be disposed of safely...." in the Commission's denial of the NRDC petition. The decision of the ASLAB was appealed to the U.S. Circuit Court of Appeals. On May 23, 1979 the Court declined to stay or vacate the license amendments, but remanded to NRC the question of "...whether there is reasonable assurance that an offsite storage solution will be available by the years 2007-2009, the expiration of the plants' operating licenses, and if not, whether there is reasonable assurance that the fuel can be safely stored at the reactor sites beyond those dates." In its decision to remand to NRC, for consideration in either a generic rulemaking or an adjudicatory proceeding, the Court observed that the issues of storage and disposal of nuclear waste were being considered by the Commission in an ongoing generic proceeding known as the "S-3 Proceeding" on the environmental impacts of uranium fuel cycle activities to support the operation of a light water reactor, and that it was appropriate to remand in light of a pending decision on that proceeding and analysis.

On October 18, 1979, NRC announced that it was initiating a rulemaking proceeding in response to the Appeals Court remand and as a continuation of the NRDC proceeding. Specifically, the purpose of the proceeding was for the Commission "...to reassess its degree of confidence that radioactive wastes produced by nuclear facilities will be safely disposed of, to determine when any such disposal will be available, and whether such wastes can be safely stored until they are disposed of."

The Commission recognized that the scope of this proceeding would be broader than the Court's instruction, which required the Commission to address only storage-related questions. The Commission believed, however, that the primary public concern was the safety of waste disposal rather than the availability of an off-site solution to the storage problem. The Commission also committed itself to reassess its basis for confidence that methods of safe permanent disposal for high-level waste would be available when needed. Thus, the Commission chose as a matter of policy not to confine itself exclusively to the narrower issues in the court remand.

In the Notice of Proposed Rulemaking, the Commission also stated that if the proceeding led to a finding that safe off-site storage or disposal would be available before expiration of facility operating licenses, NRC would promulgate a rule providing that the impact of onsite storage of spent fuel after expiration of facility operating licenses need not be considered in individual licensing proceedings.

The Waste Confidence Decision was issued on August 31, 1984 (49 FR 34658). In the Decision, the Commission made five findings. It found reasonable assurance that:

(1) Safe disposal of high-level radioactive waste and spent fuel in a mined geologic repository is technically feasible.

(2) One or more mined geologic repositories for commercial high-level radioactive waste and spent fuel will be available by the years 2007-2009, and sufficient repository capacity will be available within 30 years beyond expiration of any reactor operating license to dispose of existing commercial high-level radioactive waste and spent fuel originating in such reactor and generated up to that time.

(3) High-level radioactive waste and spent fuel will be managed in a safe manner until sufficient repository capacity is available to assure the safe disposal of all high-level radioactive waste and spent fuel.

(4) If necessary, spent fuel generated in any reactor can be stored safely and without significant environmental impacts for at least 30 years beyond the expiration of that reactor's operating license at that reactor's spent fuel storage basin, or at either onsite or offsite independent spent fuel storage installations.

(5) Safe independent onsite or offsite spent fuel storage will be made available if such storage capacity is needed.

On the day the Decision was issued, the Commission also promulgated two rulemaking amendments: (1) an amendment to 10 CFR part 50, which required that no later than five years before expiration of reactor operating licenses, the licensee must provide NRC with a written plan for management of spent fuel onsite, until title for the spent fuel is transferred to the DOE; and (2) an amendment to 10 CFR part 51 which provided that environmental consequences of spent fuel storage after expiration of facility licenses need not be addressed in connection with issuance of or amendment to a reactor operating license.

In issuing the part 51 amendment, the Commission stated that although it had reasonable assurance that one or more repositories would be available by 2007-2009, it was possible that some spent fuel would have to be stored beyond those dates. The part 51 amendment was based on the Commission's finding in the Waste Confidence Proceeding that it had reasonable assurance that no significant environmental impacts will result from storage of spent fuel for at least 30 years beyond expiration of reactor operating licenses.

Enactment of the NWPA contributed significantly to the basis for the Commission's 1984 Decision and companion rulemakings. The Act established a funding source and process with milestones and schedules for, among other things, the development of a monitored retrievable storage (MRS) facility and two repositories, one by early 1998 and a second, if authorized by Congress, at a later date, initially planned by DOE for 2006. For each repository, the Act required DOE to conduct *in-situ* investigations of three sites and recommend one from among them to the President and Congress for repository development. The NWPA also required DOE to recommend, from among alternative sites and designs, a site and design for an MRS for spent fuel and high-level waste management before disposal. The Commission's licensing and regulatory authority over both storage and disposal facilities was preserved by the Act.

In the four years after enactment of the NWPA, DOE met a number of the Act's early program requirements, but also encountered significant difficulties. It published a final Mission Plan for the overall NWPA program, and followed with a Project Decision Schedule for DOE and other Federal agency actions. It promulgated, with Commission concurrence, a set of guidelines for repository siting and development. It published draft and final environmental assessments for nine candidate repository sites, and recommended three for characterization. It completed and submitted to Congress an environmental assessment, a program plan, and a proposal with a site and design for an MRS. All these actions followed extensive interactions with interested Federal agencies, State, Indian tribal, and local governments, and other

organizations. In the course of these activities, however, DOE also slipped its schedule for operation of the first repository by five years, indefinitely postponed efforts toward a second repository, and had to halt further MRS siting and development activities pending Congressional authorization.

In December, 1987, Congress enacted the Nuclear Waste Policy Amendments Act (NWPAA). The NWPAA redirected the high-level waste program by suspending site characterization activities for the first repository at sites other than the Yucca Mountain site, and by suspending all site-specific activities with respect to a second repository. The Amendments Act also authorized and set schedule and capacity limits on the MRS. The purpose of these limitations, according to sponsors of the legislation, was to assure that an MRS would not become a substitute for a geologic repository.

Consistent with its commitment to revisit its Waste Confidence conclusions at least every five years, the Commission has undertaken the current review to assess the effect of these and other developments since 1984 on the basis for each of its five findings. The Commission issued its proposed Waste Confidence Decision Review and proposed revised findings for public comment on September 28, 1989. The comment period expired December 27, 1989. A total of eleven comments were received.

In this document, the Commission supplements the basis for its earlier findings and the environmental analysis of the 1984 Decision. The Commission is amending its second finding, concerning the timing of initial availability and sufficient capacity of a repository, and its fourth finding, concerning the duration of safe spent fuel storage. These revisions are based on the following considerations:

(1) the five-year slippage, from 1998 to 2003, in the DOE schedule for repository availability prior to issuance of its November 1989 "Report to Congress on Reassessment of the Civilian Radioactive Waste Management Program" and its new target date of 2010 for repository availability announced in that report;

(2) the additional slip of four and one-half years since the January 1987 Draft Mission Plan Amendment in the DOE schedule for the excavation of the exploratory shaft;

(3) the need to continue accounting for the possibility that the Yucca Mountain site might be found unsuitable and that DOE would have to initiate efforts to identify and characterize another site for the first repository;

(4) the statutory suspension of site-specific activities for the second repository;

(5) DOE's estimate that site screening for a second repository should start about 25 years before the start of waste acceptance; and

(6) increased confidence in the safety of extended spent fuel storage, either at the reactor or at independent spent fuel storage installations.

The Commission is also issuing an amendment to 10 CFR 51.23(a) to conform with the revisions to Findings 2 and 4 elsewhere in this issue of the **Federal Register.**

Organization and Table of Contents

In conducting this review, the Commission has addressed, for each of its 1984 Findings, two categories of issues. The first category consists of the issues the Commission considered in making each Finding at the time of the initial Waste Confidence Decision. For these issues, the Commission is interested in whether its conclusions, or the Finding these conclusions support, should be changed to address new or foreseeable developments that have arisen since the first Waste Confidence Decision. The second category of issues consists of those the Commission believes should be added to the 1984 issues in light of subsequent developments. (To enable the reader to follow more easily, the lengthy discussions of Findings 1 and 2 have been organized to address each original and new issue under subheadings.)

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Reaffirmed Finding 1: The Commission finds reasonable assurance that safe disposal of high-level radioactive waste and spent fuel in a mined geologic repository is technically feasible.

I.A. Issues Considered in Commission's 1984 Decision on Finding 1

I.A.1. The identification of acceptable sites

Under the Nuclear Waste Policy Act of 1982 (NWPA), the Department of Energy (DOE) had responsibility for identifying candidate sites for a geologic repository and for repository development. The first requirement leading to recommendation of candidate sites was formal notification of States with one or more potentially acceptable sites for a repository within 90 days of enactment of the NWPA. In February 1983, the DOE identified nine potentially acceptable sites for the first repository. Four of the sites were in bedded-salt formations, three were in salt domes, one in volcanic tuff, and one in basalt.

The NWPA required that each site nomination be accompanied by an environmental assessment (EA). In December 1984, DOE published Draft EAs (DEAs) for each of the nine sites identified as potentially acceptable and proposed the following sites for nomination: the reference repository location at Hanford, WA; Yucca Mountain, NV; Deaf Smith County, TX; Davis Canyon, UT; and Richton Dome, MS. In May 1986, DOE released Final EAs (FEAs) for the five sites nominated. At that time, DOE recommended that the Yucca Mountain, Hanford, and Deaf Smith County sites undergo site characterization. The President approved the recommendation.

The NRC staff provided extensive comments on both the DEAs and the FEAs. NRC concerns on the FEAs related primarily to DOE's failure to recognize uncertainty inherent in the existing limited data bases for the recommended sites, and the tendency of DOE to present overly favorable or optimistic conclusions. The primary intent of the comments was to assist DOE in preparing high-quality Site Characterization Plans (SCPs) for each site, as required under the NWPA, before excavation of exploratory shafts. NRC concerns can only be addressed adequately through the site characterization process, because one of the purposes of this process is to develop the data to evaluate the significance of concerns relative to site suitability.

NRC did not identify any fundamental technical flaw or disqualifying factor which it believed would render any of the sites unsuitable for characterization. Further, NRC did not take a position on the ranking of the sites in order of preference, because this could be viewed as a prejudgment of licensing issues. NRC was not aware of any reason that would indicate that any of the candidate sites was unlicenseable. Nor has NRC made any such finding to date with respect to any site identified as potentially acceptable.

In March 1987, Congress began drafting legislation to amend the repository program. NRC provided comments on a number of these draft amendments. In December 1987, the NWPAA was enacted. In a major departure from the initial intent of the NWPA, the new law required that DOE suspend site characterization activities at sites other than the Yucca Mountain site. This decision was not based on a technical evaluation of the three recommended sites or a conclusion that the Hanford and Deaf Smith sites were not technically acceptable. According to sponsors of the legislation, the principal purpose of the requirement to suspend characterization at these sites was to reduce costs. In effect, the NWPAA directed DOE to characterize candidate sites sequentially, if necessary, rather than simultaneously. If DOE determines at any time that the Yucca Mountain site is unsuitable, DOE is to terminate all site characterization activities and report to Congress its recommendations for further actions.

The NRC staff has identified numerous issues regarding the Yucca Mountain site that may have a bearing on the licenseability of that site. These issues will have to be resolved during site characterization. An example of a site issue that may bear on the question of suitability is tectonic activity, the folding or faulting of the earth's crust. In the 1984 Waste Confidence Decision, NRC noted that "...the potential sites being investigated by DOE are in regions of relative tectonic stability." The authority for this statement came from the Position Statement of the US Geological Survey (USGS). NRC has raised concerns regarding tectonic activity at the Yucca Mountain site in the comments on the draft and final EAs, in the draft and final Point Papers on the Consultation Draft Site Characterization Plan, and in the Site Characterization Analysis for the Yucca Mountain site. If it appears during site characterization that the Yucca Mountain site will be unable to meet NRC requirements regarding isolation of waste, DOE will have to suspend characterization at that site and report to Congress.

DOE's program of site screening in different geologic media was consistent with section 112(a) of the NWPA, which required that DOE recommend sites in different geologic media to the extent practicable. This strategy was to ensure that if any one site were found unsuitable for reasons that would render other sites in the same geologic medium unacceptable, alternate sites in different host rock types would be available. NRC referred to this policy in its 1984 Waste Confidence Decision, when it said, in support of its argument on technical feasibility, that "...DOE's program is providing information on site characteristics at a sufficiently large number and variety of sites and geologic

media to support the expectation that one or more technically acceptable sites will be identified."

NRC recognizes that simultaneous site characterization is not necessary to identify a repository site that would meet NRC's technical criteria for isolating wastes. Sequential site characterization does not necessarily preclude or hinder identification of an acceptable site for a repository. NRC did express concern to Congress, on several occasions during deliberations over the proposed legislation, that sequential site characterization could delay considerably the schedule for opening a repository if the site undergoing characterization were found to be unlicenseable. NRC also indicated that this potential for delay would have to be considered by NRC in reevaluating the findings in its Waste Confidence Decision. The impact of this redirection of the high-level waste program on the Commission's Waste Confidence findings is not on the ability to identify technically acceptable sites, but on the timing of availability of technically acceptable sites. Because characterization of multiple sites appears to be more directly related to the timing of repository availability than to the feasibility of geologic disposal, consideration of the above statement in light of the NWPAA program redirection will be discussed under Finding 2.

Another question bearing on whether technically acceptable sites can be found is whether compliance with Environmental Protection Agency (EPA) environmental standards for disposal of spent fuel and high-level waste can be demonstrated. These standards, originally promulgated in final form in September 1985, were vacated in July, 1987, by the U.S. Court of Appeals, and remanded to EPA for further consideration (see *NRDC* v. *EPA*, 824 F. 2d 1258). As originally promulgated, the standards set limits on releases of radioactive materials from the site into the accessible environment over a 10,000-year period following disposal. They also required that there be less than one chance in ten that the release limits will be exceeded in 10,000 years, and less than one chance in 1,000 that releases will exceed ten times the limits over 10,000 years.

In past comments on draft and proposed EPA standards, and in related NRC rulemaking efforts, NRC has expressed concern that probabilistic analyses should not be exclusively relied on to demonstrate compliance with EPA release limits. NRC's comments said in part that "...[t]he numerical probabilities in [the standards] would require a degree of precision which is unlikely to be achievable in evaluating a real waste disposal system." The comments went on to explain that "...identification of the relevant processes and events affecting a particular site will require considerable judgment and will not be amenable to accurate quantification, by statistical analysis, of their probability of occurrence." NRC believed then, and continues to believe, that it must make qualitative judgments about the data and methodologies on which the numerical probabilities were based.

In response to NRC concerns, EPA incorporated language into its 1985 standards that appeared to allow flexibility to combine qualitative judgments with numerical probability estimates in a way that might have made implementation of the EPA standards practicable. The text of those standards recognized that "proof of the future performance of a disposal system is not to be had in the ordinary sense of the word" with the substantial uncertainties and very long performance period involved. The 1985 standards emphasized that a "reasonable expectation"--rather than absolute proof--is to be the test of compliance. "What is required," the text of the standards said, "is a reasonable expectation, on the basis of the record..., that compliance...will be achieved." In an additional attempt to provide flexibility for implementation of the standards, EPA also provided that numerical analyses of releases from a repository were to be incorporated into an overall probability distribution only "to the extent practicable." This phrase appeared to allow some discretion for NRC to incorporate qualitative considerations into its license decision-making, rather than having to rely solely on numerical projections of repository performance. On the strength of these and other EPA assurances, the Commission did not object when the final standards were published in 1985.

The Commission also notes that the EPA standards, as promulgated in 1985, contained a provision for development of alternative standards by EPA. The **Federal Register** text (50 FR 38074, September 19, 1985) describing this alternative standards provision stated:

> There are several areas of uncertainty the Agency [EPA] is aware of that might cause suggested modifications of the standards in the future. One of these concerns is implementation of the containment requirements for mined geologic repositories. This will require collection of a great deal of data during site characterization, resolution of the inevitable uncertainties in such information, and adaptation of this information into probabilistic risk assessments. Although the Agency is currently confident that this will be successfully accomplished, such projections over thousands of years to determine compliance with an environmental regulation are unprecedented. If--after substantial experience with these analyses is acquired--disposal systems that clearly provide good isolation cannot reasonably be shown to comply with the containment requirements, the Agency would consider whether modifications to [the standards] were appropriate.

This statement suggests to the Commission that EPA would be willing to consider modifications to the standard's containment requirements in the event that their probabilistic formulation is found to hamper or preclude an adequate evaluation of a proposed repository's capability to isolate radioactive waste.

Pursuant to the remand by the Federal court in 1987, EPA is currently revising its standards for disposal of spent fuel and high-level waste. The court's decision directed that the remand focus on the ground water and individual protection requirements of the standards. Although the EPA standards are still undergoing development at this time, the Commission does not currently see a sufficient basis to withdraw its confidence in the feasibility of evaluating compliance with such standards. NRC staff will closely monitor the development of the repromulgated standards.

In sum, considering both past and current programs for characterizing sites, the Commission concludes that technically acceptable sites for a repository can be found. The Commission is confident that, given adequate time and resources, such sites can be identified, evaluated, and accepted or rejected on their merits, even if no more than one site is undergoing site characterization. This judgment does not rest on the acceptability of the Yucca Mountain site or any one future candidate site.

I.A.2. The development of effective waste packages.

I.A.2.a. Considerations in developing waste packages.

The NWPA required NRC to promulgate technical requirements and criteria to be applied in licensing a repository for high-level radioactive waste. Under Section 121 of the Act, these technical criteria must provide for use of a system of multiple barriers in the design of the repository and such restrictions on the retrievability of waste as NRC deems appropriate. The system of multiple barriers includes both engineered and natural barriers.

The waste package is the first engineered barrier in the system of multiple barriers to radionuclide escape. The waste package is defined as the "waste form and any containers, shielding, packing and other absorbent materials immediately surrounding an individual waste container." Before sinking an exploratory shaft for site characterization, DOE is required to prepare an SCP including a description of the waste form or packaging proposed for use at the repository, and an explanation of the relationship between such waste form or packaging and the geologic medium of the site.

The multiple barrier approach to radioactive waste isolation in a geologic repository is implemented in NRC requirements by a number of performance objectives and by detailed siting and design criteria. The NRC performance objective for the waste package requires substantially complete containment for a period of not less than 300 years nor more than 1000 years after permanent closure of the repository. The technical design criteria for the waste package require that interaction of the waste package with the environment not compromise performance of the package, the underground facility, or the geologic setting. Therefore, the waste package design must take into account the complex site-specific interactions between host rock, waste package, and ground water that will affect waste package and overall repository performance.

Under the NWPAA, DOE was required to suspend site characterization activities at sites other than the Yucca Mountain, NV site. Consequently, DOE has narrowed the range of waste package designs to a design tailored for unsaturated tuff at the Yucca Mountain site. This aspect of the high-level waste program redirection may facilitate and expedite the waste package design process insofar as it enables DOE to concentrate its efforts on developing a single design for a single site instead of three designs for sites in bedded salt, basalt, and unsaturated tuff.

Currently, DOE is evaluating uncertainties in waste package design related to waste form, container type, and environment. The current conceptual design for the waste package is based on several assumptions. The waste form is presumed to be ten-year-old spent fuel or high-level waste in the form of borosilicate glass in stainless-steel canisters. (In addition to spent fuel and high-level waste, the waste form may include greater-than-Class C (GTCC) low-level waste. This waste is not routinely acceptable for near-surface disposal under NRC regulations for disposal of low-level wastes, but is acceptable for disposal in a repository licensed for disposal of spent fuel and high-level wastes. This waste might include such materials as sealed sources and activated metals from the decommissioning of reactors and production facilities.)

Six materials are being considered for fabrication of containers, including austenitic steel (316L), nickel-based alloys (Alloy 825), pure copper (CDA 102), copper-based alloys (aluminum-bronze, CDA-613, and 70-30 Cu-Ni, CDA-715), and a container with a metal outer shell and ceramic liner. The reference container for the spent fuel and high-level waste is a 1.0-cm thick cylinder to be made of American Iron and Steel Institute (AISI) 304L stainless steel. This will be DOE's benchmark material, against which other materials are to be compared. DOE currently intends for spent fuel containers to be filled with an inert gas, such as argon, before being welded closed. In addition to these six materials, DOE also plans to assess the merits of alternative waste package materials and designs.

The reference repository location is in the unsaturated tuff of the Topopah Spring Formation underlying Yucca Mountain. According to DOE, little free-flowing water is thought to be present there to contribute to corrosion of the waste containers, although the degree of saturation in this tuff is estimated to be 65 (plus or minus) 19 percent of the available void space in the rock. DOE has acknowledged, however, that the greatest uncertainties in assessing waste package performance at Yucca Mountain stem from difficulty in characterizing and modeling the coupled geochemical-hydrologic processes that represent the interactions between the host rock, waste package, and ground water. The final waste package design will depend on the results of site characterization and laboratory testing to reduce uncertainty in predicting these interactions in the reference repository horizon. The final design will also be shaped by research in understanding the degradation of candidate container materials, and the characteristics of the likely reference waste forms.

Regarding the state of technology for developing long-lived waste package containers, the Swedish Nuclear Fuel and Waste Management Company (SKB), the organization responsible for radioactive waste disposal in Sweden, has described a container for spent fuel rods that consists of a 0.1-m thick copper canister surrounded by a bentonite overpack. The design calls for pouring copper powder into the void spaces in the canisters, compacting the powder using hot-isostatic pressing with an inert gas, and sealing the canisters. SKB estimates that the copper canister waste package has a million-year lifetime. (See also I.B.3. below.)

As noted in NRC's Final Point Papers on the Consultation Draft Site Characterization Plan, the Commission does not expect absolute proof that 100 percent of the waste packages will have 100 percent containment for 300 to 1000 years. Since that time, the NRC staff has completed its review of the December 1988 Site Characterization Plan for Yucca Mountain. Although the Commission continues to have concerns about DOE's waste package program, nothing has occurred to diminish the Commission's confidence that as long as DOE establishes conservative objectives to guide a testing and design program, in tuff or in other geologic media if necessary, it is technically feasible to develop a waste package that meets the performance objective for substantially complete containment.

I.A.2.b. Effect of reprocessing on waste form and waste package.

The Draft 1988 Mission Plan Amendment estimates that about 77,800 metric tons of heavy metal (MTHM) of spent nuclear fuel will be available for disposal by the year 2020. (This estimate is based on a "no new orders" assumption for commercial nuclear reactors and a 40-year reactor lifetime.) Also, approximately 9400 MTHM of reprocessed defense waste and a small amount of commercial reprocessed waste from the West Valley Demonstration Project is estimated to be available for disposal by 2020. The decision to locate the defense high-level waste in the repository for wastes from commercial power reactors resulted from the requirement in Section 8 of the NWPA that the President evaluate the possibility of developing a defense-waste-only repository. In February 1985, DOE submitted a report to the President recommending a combined commercial and defense repository. In April 1985, the President agreed that no basis appeared to exist for a defense-only repository and directed DOE to dispose of defense waste in the commercial repository.

About 8750 MTHM of reprocessed high-level waste from defense facilities at Savannah River, SC, Hanford, WA, and Idaho Falls, ID will be available by 2020 for disposal in the repository, according to the Draft 1988 Mission Plan Amendment. This waste will likely be solidified into a borosilicate glass

matrix. About 640 MTHM of reprocessed high-level waste will come from the West Valley Demonstration Project, a facility for wastes from discontinued commercial reprocessing of spent fuel at that site. This reprocessed waste also will be solidified, probably in a borosilicate glass waste form.

Waste-form testing for the Yucca Mountain site is focusing on both spent fuel and reprocessed high-level waste. The performance of the waste form in providing the first barrier to radionuclide migration is being evaluated on the basis of the physical and chemical environment of the waste form after disposal, the performance of the waste container, and the emplacement configuration.

A major limitation on glass waste-form testing is that the actual waste glasses to be disposed of are not available, and their exact composition will not be established until after further testing. Reference waste-glass compositions are being used for studies on the effect of variation in glass composition on performance. (These glass compositions are designed by Savannah River Laboratory (SRL) for defense high-level waste, and by Pacific Northwest Laboratory (PNL) for the commercial high-level wastes to be vitrified under the West Valley Demonstration Project Act.) The reference compositions will be revised when better analyses of the composition of the wastes at SRL and West Valley are available. The test program will seek to establish upper bounds on leaching of important radionuclides, and the extent to which glass fracturing increases leach rate. Other factors influencing leach rate are temperature, pH of the leaching solution, formation of solid layers on the surface of the waste glass, irradiation, water volume, and chemistry.

It is possible that renewed reprocessing of spent fuel from nuclear power reactors may result in a greater proportion of reprocessed waste to spent fuel than is currently anticipated. Although such a departure from the current plan to dispose of mostly unreprocessed spent fuel in the repository does not appear likely at this time, the Commission believes it is important to recognize the possibility that this situation could change.

The possibility of disposal of reprocessed waste as an alternative waste form to spent fuel assemblies was recognized by the Commission in the 1984 Waste Confidence Decision. The Commission noted that the disposal of waste from reprocessing had been studied for a longer time than the disposal of spent fuel, and that the possibility of reprocessing does not alter the technical feasibility of developing a suitable waste package. The Commission went on to say that there is evidence that the disposal of reprocessed high-level waste may pose fewer technical challenges than the disposal of spent fuel. As long as DOE uses conservative assumptions and test conditions for evaluating the performance of different waste forms against NRC licensing requirements, the Commission has no basis to change its finding that there is reasonable assurance that reprocessing does not reduce confidence in the technical feasibility of designing and building a waste package that will meet NRC licensing requirements in a variety of geologic media.

I.A.3. The development of effective engineered barriers for isolating wastes from the biosphere

I.A.3.a. backfill materials.

At the time of the 1984 Waste Confidence Decision, DOE was developing conceptual designs for backfill in several geologic media. Most candidate sites at that time were in saturated rock, and the conceptual designs included backfilling or packing around waste containers to prevent or delay ground water flow which could enhance corrosion and radionuclide transport near the waste containers. The conceptual design for the engineered barrier system at the Yucca Mountain site has different parameters because the site is unsaturated; instead of backfill or packing around the waste container, there is to be an air gap between sides of the waste canister and the host rock.

Backfill material around the container is not required under NRC regulations for the waste package. NRC regulations require that "...containment of high-level waste within the waste packages [which includes the container] will be substantially complete for a period to be determined by the Commission...provided, that such period shall not be less than 300 years nor more than 1000 years after permanent closure of the repository" [10 CFR subsection 60.113(a)(1)(ii)(B)], and that the entire engineered barrier system meet the release rate performance objective of 1 part in 100,000 per year.

Backfill is also a component of the borehole, shaft, and ramp seals, which are not part of the engineered barrier system or the underground facility. Boreholes, shafts, and ramps must be sealed when the repository is permanently closed. This aspect of backfilling is discussed below under "Development of Sealants." Backfill may also include crushed rock used to fill openings such as drifts in the underground facility. At the Yucca Mountain candidate site, DOE currently plans to fill openings in the underground facility at closure of the repository. Backfilling is not planned before repository closure because it is not needed for structural support for the openings, and it would make waste retrieval more difficult. At closure of the facility, however, openings will be backfilled with coarse tuff excavated for the facility. In the conceptual design provided in the SCP, the selection of coarse tuff as backfill material is based on numerical simulations performed by DOE which suggest that coarse tuff would be a more effective barrier to capillary flow in the backfill matrix than fine materials.

DOE's design for the engineered barrier system submitted with the license application will have to contain information sufficient for NRC to reach a favorable conclusion regarding the overall system performance objective. Backfill or packing around waste containers is not required by NRC regulations if DOE can demonstrate that applicable performance objectives can be met without it. If, on the basis of testing and experiments during site characterization, DOE decided that backfill would enhance engineered barrier system performance, the design would have to reflect this conclusion. DOE has already conducted research on a wide variety of candidate materials for backfill around waste packages in a variety of geologic media. The Commission continues to have confidence that backfill or packing materials can be developed as needed for the underground facility and waste package to meet applicable NRC licensing criteria and performance objectives.

I.A.3.b. Borehole and shaft seals.

The engineered barrier system described above is limited to the waste package and the underground facility as defined in 10 CFR part 60. The underground facility refers to the underground structure, including openings and backfill materials, but excluding shafts, boreholes, and their seals. Containment and release-rate requirements are specified for the engineered barrier system, but not for the borehole and shaft seals. Seals are covered under 10 CFR section 60.112, the overall post-closure system performance objective for the repository. Among other things, this provision requires that shafts, boreholes and their seals be designed to assure that releases of radioactive materials to the accessible

environment following permanent closure conform to EPA's generally applicable standards for radioactivity. Although the criteria for seals given in 10 CFR part 60 do not specifically mention seals in ramps and the underground facility, it is reasonable to consider them together with borehole and shaft sealants, because the seals and drainage design in ramps and the underground facility could also affect the overall system performance of the geologic repository.

Construction of the exploratory shaft facility (ESF) will be the first major site characterization activity at the repository horizon. Currently, DOE is reviewing its plans for construction of exploratory shafts. According to the 1989 "Reassessment Report," DOE is reevaluating the "locations chosen for the two exploratory shafts, the method chosen (drilling and blasting) for the construction of the shafts, the means of access (ramps or shafts) to the repository horizon, the need for additional exploratory drifts, and the design of the shafts and other components of the exploratory shaft facility." This reevaluation of plans for the shaft facility is in response to concerns from the NRC staff and the Nuclear Waste Technical Review Board (NWTRB).

When the repository is decommissioned, NRC expects that most, if not all, shafts, ramps, and boreholes will probably have to be sealed to reduce the possibility that they could provide preferential pathways for radionuclide migration from the underground facility to the accessible environment. DOE estimates that as many as 350 shallow and 70 deep exploratory boreholes may be emplaced by the time site characterization has been completed at the Yucca Mountain site. Decommissioning may not occur for up to 100 years after commencement of repository operations. Because the final design for seals will likely have been modified from the initial license application design (LAD), DOE is viewing the seal LAD as serving two primary functions. As set forth in DOE's SCP for the Yucca Mountain candidate site, the seal LAD is to establish that: (1) "...technology for constructing seals is reasonably available;" and (2) "...there is reasonable assurance that seals have been designed so that, following permanent closure, they do not become pathways that compromise the geologic repository's ability to meet the post-closure performance objectives."

To establish the availability of technology for seal construction, DOE has identified at least 31 site properties that need to be characterized in determining necessary seal characteristics. These properties include saturated hydraulic conductivity of alluvium near shafts, the quantity of water reaching the seals due to surface-flooding events, and erosion potential in the shaft vicinity. The SCP also discusses material properties that need to be identified to determine sealing components such as initial and altered hydrologic properties of materials.

The SCP indicates that DOE is planning to use crushed tuff and cements in the sealing program at the Yucca Mountain candidate site. The stated advantages of using tuff include minimizing degradation of seal material and avoiding disruption of ambient ground-water chemistry.

DOE's current design concept for meeting the overall performance objectives includes a combination of sealing and drainage. Seal requirements may be reduced in part by: (1) limiting the amount of surface water that may enter boreholes, shafts, and ramps; (2) selecting borehole, shaft, and ramp locations and orientations that provide long flow paths from the emplaced waste to the accessible environment above the repository; and (3) maintaining a sufficient rate of drainage below the repository horizon level so that water can be shunted past the waste packages without contacting them.

Although DOE's program is focusing on seals for the Yucca Mountain candidate site, the Commission finds no basis for diminished confidence that an acceptable seal can be developed for candidate sites in different geologic media. The Commission finds no evidence to suggest that it can not continue to have reasonable assurance that borehole, shaft, ramp, and repository seals can be developed to meet 10 CFR part 60 performance objectives.

I.B. Relevant Issues That Have Arisen Since the Commission's Original Decision

I.B.1. In support of its argument on technical feasibility, the Commission stated in its 1984 Waste Confidence Decision that "...DOE's program is providing information on site characteristics at a sufficiently large number and variety of sites and geologic media to support the expectation that one or more technically acceptable sites will be identified." The NWPAA required, however, that DOE suspend site-specific site characterization activities under the Nuclear Waste Policy Act of 1982 at all sites other than the Yucca Mountain, NV site.

Under the NWPAA, the DOE program has been redirected to characterize candidate repository sites in sequence rather than simultaneously. If the Yucca Mountain site is found to be unsuitable, DOE must terminate site characterization activities there and provide Congress with a recommendation for further action, such as the characterization of another site. Because characterization of multiple sites now appears to be more directly related to the timing of repository availability than to the technical feasibility of geologic disposal as a concept, consideration of the Commission's aforementioned 1984 statement in light of the NWPAA will be discussed under Finding 2.

I.B.2. What is the relationship, if any, of the "S-3 Proceeding" to the current review of the Commission's 1984 Waste Confidence Findings? Would the planned revision of the S-3 rulemaking be affected if the Commission had to qualify its current confidence in the technical feasibility of safe disposal?

In its decision to remand to NRC the questions of whether safe offsite storage would be available by 2007-2009, or, if not, whether spent fuel could be safely stored onsite past those dates, the U.S. Circuit Court of Appeals observed that the issues of storage and disposal of nuclear waste were being considered by the Commission in an ongoing generic proceeding known as the "S-3" Proceeding.

The S-3 Proceeding was the outgrowth of efforts to address generically the NEPA requirement for an evaluation of the environmental impact of operation of a light water reactor (LWR). Table S-3 assigned numerical values for environmental costs resulting from uranium fuel cycle activities to support one year of LWR operation. NRC promulgated the S-3 rule in April 1974. In July 1976, the U.S. Circuit Court of Appeals found that Table S-3 was inadequately supported by the record regarding reprocessing of spent fuel and radioactive waste management, in part because the Commission, in reaching its assessment, had relied heavily on

testimony of NRC staff that the problem of waste disposal would be resolved.

When the U.S. Circuit Court of Appeals issued the remand on what were to become the "Waste Confidence" issues in May 1979, NRC had pending before it the final amended S-3 rule. The Court regarded the resolution of the issue of waste disposal in the S-3 proceeding as being related to the issue raised by the petitioners in the appeals of the NRC decisions on the expansion of spent fuel storage capacity. The Court said that the "...disposition of the S-3 proceeding, though it has a somewhat different focus, may have a bearing on the pending cases."

The Commission approved the final S-3 rule in July 1979. In October 1979, the Commission issued a Notice of Proposed Rulemaking (NPR) on the Waste Confidence issues in response to the remand by the Court of Appeals. In the NPR, the Commission stated that the proceeding would "...draw upon the record compiled in the Commission's recently concluded rulemaking on the environmental impacts of the nuclear fuel cycle, and that the record compiled herein will be available for use in the general fuel cycle rule update discussed in that rulemaking."

In the final Table S-3 rule issued in 1979, the Commission had said that "...bedded salt sites can be found which will provide effective isolation of radioactive waste from the biosphere." When the Commission issued the 1984 Waste Confidence Decision, part of the basis for the discussion of waste management and disposal in the August 1979 final S-3 rule had changed. For example, in 1984 the repository program was proceeding under the NWPA, which required that DOE recommend three sites for site characterization.

NRC is preparing to amend 10 CFR 51.51, adding new estimates for releases of Tc-99 and Rn-222, and a revised narrative explanation describing the basis for values contained in Table S-3. The amendment would also explain the environmental effects of potential releases from the light water reactor (LWR) fuel cycle, and postulate the potential radiation doses, health effects, and environmental impacts of these releases. It is unlikely that the revision will have any impact on the Commission's generic findings in the Waste Confidence proceeding. Nor is it likely that this reexamination of the Waste Confidence findings will affect the S-3 rule; the Waste Confidence Proceeding is not intended to make quantitative judgments about the environmental costs of waste disposal. Unless the Commission, in a future review of the Waste Confidence decision, finds that it no longer has confidence in the technical feasibility of disposal in a mined geologic repository, the Commission will not consider it necessary to review the S-3 rule when it reexamines its Waste Confidence findings in the future.

I.B.3. To what extent do developments in spent fuel disposal technology outside of the United States (e.g., Swedish waste package designs) enhance NRC's confidence in the technical feasibility of disposal of high-level waste and spent fuel?

Spent fuel disposal technology is the subject of extensive research investigation in both Europe and North America. Advances in this technology are being communicated to the NRC staff both through bilateral agreements and the presentation of research results at international meetings.

Outside the U.S., studies of spent fuel as a waste form are now being conducted primarily in Canada and Sweden, although both France and West Germany have small programs in this area. The Swedish studies have been mainly concerned with boiling water reactor (BWR) spent fuel, whereas the Canadian studies focus on spent fuel from that country's CANDU reactors, which use unenriched uranium in a core immersed in "heavy" water made from deuterium. BWR and CANDU fuel, like pressurized water reactor (PWR) fuel, are uranium dioxide fuels clad in zircaloy. However, the burnup rates for these three fuel types vary considerably. Ongoing research studies on spent fuel include: work on the characterization of spent fuel as a waste form; the corrosion of spent fuel and its dissolution under oxidizing and reducing conditions; the radiolysis of ground water in the near vicinity of the spent fuel, and its effects on the dissolution of the fuel; and the development of models to predict the leaching of spent fuel over long time periods. The results of this work are steadily increasing our understanding of spent fuel as a waste form.

High-level radioactive waste, whether it is spent reactor fuel or waste from reprocessing, must be enclosed in an outer canister as part of the waste package. The canister surrounding the waste is expected to prevent the release of radioactivity during its handling at the repository site before emplacement. After emplacement in the repository, it is expected to prevent the release of radioactivity for a specified period of time after the repository is closed, by providing a barrier to protect the waste from coming into contact with ground water.

For practical reasons, canister materials may be divided into the following classes: (1) completely or partially thermodynamically stable materials such as copper; (2) passive materials such as stainless steel, titanium, Hastelloy, Inconel, and aluminum; (3) corroding or sacrificial materials such as lead and steel; and (4) non-metallic materials such as alumina and titanium dioxide ceramics and cement.

Sweden has been conducting an extensive canister research program over the past several years. The main canister material of interest is copper, but titanium, carbon steel, and alumina and titanium dioxide are also being studied as reasonable alternatives, should unexpected problems be discovered with using pure copper.

One of the Swedish canister designs is a 0.1-m thick copper container (as described previously in section I.A.2.a.), which is claimed to provide containment, in conjunction with an appropriate backfill material, for a period on the order of one million years. The critical factors for the isolation period for copper canisters are: (1) the presence of corrosive substances such as sulphide ions in the ground water; (2) the possibility of these substances reaching the canister surface; and (3) the degree of inhomogeneity, or pitting, of the resulting corrosion. Studies are continuing to obtain more information on pitting corrosion of copper and on techniques for welding thick-walled copper containers.

Several conceptual designs for canisters for the safe disposal of unreprocessed spent fuel have also been developed in Canada. One canister design option is the supported-shell, metal-matrix concept, which involves packing the spent fuel bundles into a thin corrosion-resistant shell and casting the remaining space with a low melting point metal or alloy. Structural support for the shell would be provided by the resulting metal matrix. Lead is a possible matrix material because of its favorable casting properties, cost, and low melting point.

Other supported shell canister concepts include the packed-particulate and structurally-supported designs. In these designs, a thin outer shell is supported by a particulate material packed around a steel internal structure that contains the spent fuel bundles. Several materials have been identified for the fabrication of the corrosion resistant outer shell, including commercially pure and low-alloy titanium, high nickel-based alloys such as Inconel 625, and pure copper.

Detailed designs have been produced for all three types of supported shell canisters incorporating either a titanium or nickel alloy shell less than 6-mm thick. A conceptual design has also been produced for a copper-shell structurally-supported canister and a metal-matrix container with a relatively thick (25-mm) copper shell and a lead matrix material. This last canister is intended to contain 72 used CANDU fuel bundles in four layers of 18 bundles each.

Both the Canadian and Swedish conceptual designs for the disposal of spent fuel in canisters provide for surrounding the canister with backfill material as part of the waste package when it is emplaced in the repository. This backfill material would be packed around the canister to retard the movement of ground water and radionuclides. Investigations of backfill material at the Stripa mine in Sweden have shown that bentonite and silica sand can be employed successfully as backfill, both around the canister and in repository tunnels. A bentonite-silica mixture is the recommended backfill material on the basis of its thermal and mechanical properties. Bentonite backfills have been shown to produce hydraulic conductivities that are very similar to the surrounding granite at Stripa. Problems concerning the variability of bentonite samples from different geographic locations can be eliminated if material from a single source is used. The presence of sulfur and some organic material, including bacteria, in many bentonites poses some problems related to microbially-accelerated corrosion. Treatment with hydrogen peroxide may be used to oxidize these organics. Heating the bentonite to 400 degrees C can also be effective, although this may alter the crystal structure of the bentonite.

Many countries intend to dispose of their high-level radioactive waste by first converting the wastes into a solid, vitrified form after reprocessing. Since the leaching of the waste form by circulating ground water after disposal is the most likely mechanism by which the radionuclides might be returned to the biosphere, the waste form must be composed of a highly stable material with an extremely low solubility in ground water. Thus, the waste form itself should function as an immobilization agent to prevent any significant release of radionuclides to the biosphere over very long time periods. The two primary materials currently being considered for use as solidified waste forms are borosilicate glass and SYNROC, a man-made titanate ceramic material.

SYNROC was initially developed in Australia as an alternative material to borosilicate glass. It is composed primarily of three minerals (hollandite, zirconolite, and perovskite) which collectively have the capacity to accept the great majority of radioactive high-level waste constituents into their crystal lattice structure. These three minerals, or closely related forms, occur naturally, and have been shown to have survived for many millions of years in a wide range of natural environments. SYNROC has the property of being extremely resistant to leaching by ground water, particularly at temperatures above 100 degrees C. In addition, the capacity of SYNROC to immobilize high-level wastes is not markedly impaired by high levels of radiation damage.

The high leach-resistance of SYNROC at elevated temperatures increases the range of geologic environments in which it may be used, such as deep geologic repositories in both continental and marine environments.

Research and development work on improving SYNROC production technology is currently being done jointly in Australia and Japan. New methods of using metal alkoxides in the fabrication of SYNROC to obtain high homogeneity and lowered leachability have recently been developed in Australia. The Japanese have recently developed a new method that uses titanium hydroxide, as a reducing agent to produce SYNROC with a high density and low leach rate. A pilot facility for the production of non-radioactive SYNROC is now in operation in Australia, and a small pilot facility for producing SYNROC with radioactive constituents is being completed in Japan.

On the basis of current information from the foreign studies just described on canisters, spent fuel as a waste form, backfill materials, and alternatives to borosilicate glass waste forms, the Commission concludes that there is no basis for diminished confidence that an acceptable waste package can be developed for safe disposal of high-level waste and spent fuel.

I.C. Conclusion on Finding 1

The Commission has reexamined the basis for its First Finding in the 1984 Waste Confidence Decision in light of subsequent program developments, and concludes that Finding 1 should be reaffirmed.

The technical feasibility of a repository rests initially on identification of acceptable sites. At this time, the Commission is not aware of any evidence indicating that Yucca Mountain is not acceptable for site characterization. There are many outstanding questions regarding the licenseability of the site, however, and they must be answered satisfactorily in order for NRC to issue a construction authorization for that site. If data obtained during site characterization indicate that the Yucca Mountain site is not suitable for a repository, DOE is required by the NWPAA to terminate site characterization activities and report to Congress. Within six months of that determination, DOE must make a recommendation to Congress for further action to assure the safe, permanent disposal of spent fuel and high-level waste. DOE could recommend, for example, that Congress authorize site characterization at other sites. Considering DOE's investigations of other potentially acceptable sites before its exclusive focus on Yucca Mountain, the Commission has no reason to believe that, given adequate time and program resources, a technically acceptable site can not be found.

The technical feasibility of geologic disposal also depends on the ability to develop effective engineered barriers, such as waste packages. DOE is currently evaluating six candidate materials for waste containers, including austenitic steel and copper- and nickel-based alloys, and is planning waste-form testing based on both spent fuel and high-level waste in borosilicate glass. On the basis of DOE's program, and results from Swedish investigations of a copper waste container, the Commission is confident that, given a range of waste forms and conservative test conditions, the technology is available to design acceptable waste packages.

In addition to the materials testing for the waste container and waste form, there may be additional measures that can be taken to improve the effectiveness of the engineered barriers. It is known, for example, that the heat-loading characteristics of the wastes diminish with time. Also, the longer wastes are stored before disposal, the smaller will be the quantities of radionuclides available for transport to the accessible environment.

It is also technically feasible to separate from radioactive wastes the radionuclides that constitute the principal source of heat from the nuclides of greatest long-term concern. The former radionuclides, mainly fission products such as cesium-137 and strontium-90, could then be stored for a period of years while the fission products decay to the point where they could be disposed of either in a manner

that does not require the degree of confinement provided by a geologic repository, or in a repository with less concern for thermal disturbance of the host rock's expected waste isolation properties. Meantime, the longer-lived remaining radionuclides, such as transuranic wastes with elements heavier than uranium, could be disposed of in a repository away from the fission products and without the high thermal loadings that would otherwise have to be considered in predicting the long-term waste isolation performance of the geologic setting. France, Great Britain, and Japan are currently pursuing this waste management strategy or a variant of it.

The Commission emphasizes here that it does not believe that recycling technologies are required for the safety or feasibility of deep geologic disposal in the United States. Other countries, such as Canada, the Federal Republic of Germany, and Sweden are pursuing disposal strategies based on a similar view. Reprocessing, if employed in its current stage of development, would result in additional exposures to radiation and volumes of radioactive wastes to be disposed of. For the purpose of finding reasonable assurance in the technical feasibility of geologic disposal, however, it is worth noting that technology is currently available to permit additional engineering control of waste forms if, for reasons not now foreseen, such control were deemed desirable at some future time. Meanwhile, the Commission continues to have confidence that safe geologic disposal is technically feasible for both spent fuel and high-level waste.

DOE's reference design for the waste package in the December 1988 Site Characterization Plan does not include backfill or packing around waste containers in the emplacement boreholes. Neither is required under NRC rules so long as DOE can show that applicable regulatory criteria and objectives will be met. An air gap between the container and the host rock is currently one of the barriers in DOE's design for meeting the performance objective. DOE has conducted investigations on a variety of candidate materials for backfill in a variety of geologic media, and the Commission finds no basis to qualify its past confidence that backfill materials can be developed, if needed, to meet applicable NRC requirements.

The December 1988 reference design for sealing boreholes, shafts, ramps and the underground facility at the Yucca Mountain candidate site employs crushed tuff and cement. Regardless of the geologic medium of the candidate site, DOE will have to show that the license application design meets NRC post-closure performance objectives. The Commission continues to have reasonable assurance that DOE's program will lead to identification of acceptable sealant materials for meeting these objectives.

No major breakthrough in technology is required to develop a mined geologic repository. NRC will not be able to license a repository at a particular site, however, until there is sufficient information available for that site. The information needed to license a site includes site characterization data, data on repository design, and waste package design sufficient for performance assessment of the entire waste disposal system. Further, the Commission recognizes the challenge posed by the need to predict impacts of a repository on human health and the environment over very long periods of time. It will not be possible to test the accuracy of long-term repository performance assessment models in an absolute sense. The NRC does believe that existing performance assessment models have the potential to provide a basis for deciding whether a system for geologic disposal of high-level waste is acceptable, and can provide a sufficient level of safety for present and future generations under certain conditions. These conditions include addressing uncertainties, and gathering data from specific sites.

Overall, from its reexamination of issues related to the technical feasibility of geologic disposal, the Commission concludes that there is reasonable assurance that safe disposal of high-level waste and spent fuel in a mined geologic repository is technically feasible.

Original Finding 2: The Commission finds reasonable assurance that one or more mined geologic repositories for commercial high-level waste and spent fuel will be available by the years 2007-2009, and that sufficient repository capacity will be available within 30 years beyond expiration of any reactor operating license to dispose of existing commercial high-level radioactive waste and spent fuel originating in that reactor and generated up to that time.

Revised Finding 2: The Commission finds reasonable assurance that at least one mined geologic repository will be available within the first quarter of the twenty-first century, and that sufficient repository capacity will be available within 30 years beyond the licensed life for operation (which may include the term of a revised or renewed license) of any reactor to dispose of the commercial high-level radioactive waste and spent fuel originating in such reactor and generated up to that time.

II.A. Issues Considered in Commission's 1984 Decision on Finding 2

II.A.1. Finding Technically Acceptable Sites in a Timely Fashion

In order for the Commission to find that any candidate site for a repository is technically acceptable (that is, in compliance with NRC licensing requirements), the site must undergo comprehensive site characterization to assess its hydrologic, geologic, geochemical, and rock mechanics properties. It is possible that a site may be found unacceptable on the basis of surface-based testing, early in-situ testing or other site characterization activities. It will not be possible, however, for the NRC staff to take a position before a licensing board that a site will meet NRC requirements for construction authorization until the results of all site characterization activities are available. Even then, the staff may conclude that the evidence from site characterization does not constitute reasonable assurance that NRC performance objectives will be met. Also, the results of the licensing hearings on construction authorization cannot be predicted. If construction is authorized and when it is substantially complete, DOE is required to obtain, in addition to the construction authorization permit, a license to receive and possess waste at the geologic repository operations area in order to commence repository operations. These considerations argue for maintaining the ready availability of alternative sites if, after several years, site characterization or licensing activities bring to light difficulties at the leading candidate site.

In support of its argument on technical feasibility, the Commission stated in its 1984 Waste Confidence Decision that "...DOE's program is providing information on site characteristics at a sufficiently large number and variety of sites and geologic media to support the expectation that one or more technically acceptable sites will be identified." At the time, DOE was required under the NWPA to characterize three candidate repository sites.

The NWPAA had a major impact on DOE's repository program, however. Under the NWPAA, DOE was required to suspend site-specific activities at the Hanford, WA and Deaf Smith County, TX sites, which had been approved by the President for site characterization for the first repository. Redirection of the repository program to single-site

characterization (or, if necessary, sequential site characterization if the Yucca Mountain site is found to be unsuitable) will permit DOE to concentrate its efforts and resources on information gathering at a single site, as opposed to spreading out its efforts over a range of sites. The possible schedular benefits to single-site characterization, however, must be weighed for the purposes of this Finding against the potential for additional delays in repository availability if the Yucca Mountain site is found to be unsuitable. By focusing DOE site characterization activities on Yucca Mountain, the NWPAA has essentially made it necessary for that site to be found suitable if the 2007-2009 timeframe for repository availability in the Commission's 1984 Decision is to be met. Clearly, the Commission cannot be certain at this time that the Yucca Mountain site will be acceptable.

Although the Commission has no reason to believe that another technically acceptable site can not be found if the Yucca Mountain site proves unsuitable, several factors raise reasonable doubts as to the availability of even one repository by 2007-2009. These include: (1) the current reliance on a single site with no concurrently available alternatives; (2) the probability that site characterization activities will not proceed entirely without problems; and (3) the history of schedular slippages since passage of the NWPA. For example, DOE's schedule for the first repository slipped five years (from 1998 to 2003) between January 1983, when the NWPA was enacted, and January 1987, when the first Draft Mission Plan Amendment was issued. The schedule for excavation of the exploratory shaft for the Yucca Mountain site has slipped by more than five years since the issuance of the PDS in March 1986. In the past several years, DOE has cited numerous reasons for program slippages, including the need for a consultation process with States and Tribes, Congressional actions (e.g., the barring of funds in the 1987 budget appropriation for drilling exploratory shafts), and DOE's recognition that the EIS and license application would require more technical information than previously planned.

In the November 1989 "Report to Congress on Reassessment of the Civilian Radioactive Waste Management Program," DOE announced a further extension of three years until 1992 for sinking the exploratory shaft, and extensions until 2001 for submittal of the license application and 2010 for repository availability. DOE attributes the causes for these delays to prolonging the schedule for site characterization and repository development activities, and to the unwillingness, to date, of the State of Nevada to issue the permits required for DOE to begin testing. In the "Reassessment Report," DOE proposes to focus the repository program on the evaluation of features of the site that can be studied through surface-based testing, beginning in January 1991. The aim of this surface-based testing program is to make an early determination as to whether there are any features of the site that would render it unsuitable for development as a repository. Of course, the site may be found unsuitable or unlicenseable at any time during the site characterization or licensing process. The NRC supports DOE's efforts to reach an early determination that this may be the case. If the Yucca Mountain site is unsuitable, it will be necessary to begin work to identify and characterize another candidate site for a repository. The sooner this determination is made, the sooner DOE will have an alternative site available for disposal of high-level waste.

The NRC had anticipated additional delays in repository program milestones when it issued its Proposed Waste Confidence Decision Review (54 FR 39767). One of the key issues in the repository program to date has been the need for DOE to develop a qualified quality assurance (QA) program. For example, DOE has taken the position, with which NRC agrees, that sinking of exploratory shafts should not occur before it has a qualified quality assurance (QA) program in place. The Commission believes that DOE's aggressive, success-oriented schedule for this milestone did not allow for unexpected developments. Indeed, the effort to develop an acceptable QA program has, in itself, identified problems in design control and other processes that must be resolved in order to establish a qualified program that addresses all applicable NRC licensing requirements. DOE has made progress in development of its QA program with seven contractor plans accepted in October and November 1989. NRC expects that DOE should be able to have the study plans and technical procedures which implement the contractor plans ready in time for surface-based testing at the Yucca Mountain site to begin by January 1991, consistent with the schedule for starting surface-based testing in the Reassessment Report.

DOE's current schedule appears to be more realistic than previous schedules. Yet even this schedule could prove unattainable due to difficulties of a non-technical nature that are outside of DOE's control, for example litigation over gaining access to the Yucca Mountain site. Although the NWPAA is a clear and strong reaffirmation of Congressional support for the timely development of a repository, the Commission in this Waste Confidence review cannot ignore the potential for delay in repository availability if the Yucca Mountain site, or any other single site designated for site characterization, is found to be unsuitable. Without alternative sites undergoing simultaneous characterization or even surface-based testing, DOE will have to begin characterizing another site if the site currently selected for characterization proves unsuitable. The earlier a determination of unsuitability can be made, the smaller the impact of such a finding would be on the overall timing of repository availability.

DOE has estimated conservatively that it would require approximately 25 years to begin site screening for a second repository, perform site characterization, submit an EIS and license applications, and await authorizations before the repository could be ready to receive waste. In its June 1987 Mission Plan amendment, DOE stated "It ... seems prudent to plan that site-specific screening leading to the identification of potentially acceptable sites should start about 25 years before the start of waste acceptance for disposal." DOE went on to say that it considered this estimate to be conservative because it does not account for expected schedular benefits from the first repository program, including improvements in such areas as site screening, site characterization, and performance assessment techniques.

Although DOE's estimate was premised on the successful completion of a program for the first of two repositories, schedular benefits from improvements in the understanding of waste isolation processes would still be available. The glass waste form from the Defense Waste Processing Facility now under construction at Savannah River, SC, for example, will be available for testing under simulated repository conditions well before the turn of the century under current DOE schedules, and improvements in the modelling of spent fuel behavior within waste canisters can be applied in performance assessments largely irrespective of the geology of a site. It may also be pertinent that when DOE made its 25-year estimate for the second repository program in mid-1987, the law at the time

required the simultaneous characterization of three sites, so that DOE could not proceed to develop one site for a repository until the completion of characterization at the site that required the most time.

In view of DOE's new schedule, it no longer appears feasible for repository operation to commence prior to 2010. As stated in the Proposed Decision Review, the Commission does not believe it would be prudent to reaffirm the Agency's 1984 finding of reasonable assurance that the 2007-2009 timetable will be met. As the Court of Appeals noted in remanding this issue to NRC, the ultimate determination of whether a disposal facility will be available when needed "...can never rise above a prediction." The Commission is in the position of having to reach a definitive finding on events which are approximately two decades away. We believe that the institutional timescale for this question can more realistically be framed in decades than in years. As the program proceeds into the next century, it will become easier for NRC to make more definitive assessments, if necessary, of the time a repository will be available.

In light of all these considerations, the Commission believes it can have reasonable assurance that at least one repository will be available within the first quarter of the twenty-first century. This estimate is based on the time it would take for DOE to proceed from site screening to repository operation at a site other than Yucca Mountain, if this should prove necessary. Assuming for the sake of conservatism that Yucca Mountain would not be found suitable for repository development, it is reasonable to expect that DOE would be able to reach this conclusion by the year 2000. This would leave 25 years for the attainment of repository operations at another site.

NRC will reassess progress towards attaining repository operation by 2025 prior to 2000 during its next scheduled review of its Waste Confidence Findings, if not sooner. DOE's current focus on surface-based testing as an early indicator of repository suitability should help provide a strong basis for evaluating the likelihood of meeting the 2025 estimate of repository availability.

II.A.2. Timely Development of Waste Packages and Engineered Barriers.

The November 1989 Reassessment Report announced that "major activities related to the design of a repository at the Yucca Mountain site and waste package are being deferred. They will be resumed when more information is available concerning the suitability of the site. This approach will conserve resources and allow the DOE to concentrate efforts on scientific investigations." Prior to the Reassessment Report, DOE's most recent conceptual design for the waste package was discussed in the Site Characterization Plan (SCP) for the Yucca Mountain site. As information is obtained from site characterization activities and laboratory studies, the conceptual design will evolve in successive stages into the Advanced Conceptual Design (ACD), the LAD, and the final procurement and construction design. DOE has identified four areas of investigation related to the waste package LAD: (1) waste package environment; (2) waste form and materials testing; (3) design, analysis, fabrication, and prototype testing; and (4) performance assessment. Numerous uncertainties exist in each of these areas. DOE's testing program will attempt to reduce uncertainties in these areas where possible. For example, *in-situ* testing is expected to decrease significantly uncertainties regarding the repository host rock mass in which the waste packages will be emplaced. In the area of performance assessment, however, where results of relatively short-term testing of complex rock-waste-ground water interactions must be extrapolated over as many as 10,000 years, it may be necessary to rely more heavily on the use of simplifying assumptions and bounding conditions than in other areas of investigation.

As discussed under Finding 1, the Commission continues to have reasonable assurance that waste packages and engineered barriers can be developed which will contribute to meeting NRC performance objectives for the repository. Development of acceptable waste packages and engineered barriers for a repository in the 2010 timeframe will depend on the overall acceptability of the Yucca Mountain site. If the site is found to be unsuitable, waste package and engineered barrier development will have to begin for a different site, because under the NWPAA, DOE may not carry out site characterization and waste package development work at sites other than the Yucca Mountain site.

Although much of the work related to waste form, materials, and performance assessment for the waste package can proceed independently of *in-situ* testing, the investigations related to waste package environment depend on the schedule for this testing. The schedule for *in-situ* testing depends on when DOE is able to resolve outstanding issues which have impeded shaft sinking and *in-situ* testing, and on DOE's being granted access to the site to begin surface-based testing.

In sum, the Commission is not aware of any scientific or technical problems so difficult as to preclude development of a waste package and engineered barrier for a repository at Yucca Mountain to be available within the first quarter of the twenty-first century. Moreover, even given the uncertainty regarding the ultimate finding of site acceptability, and the uncertainty concerning the range of site-related parameters for which the engineered facility and waste package will have to be designed, the Commission finds reasonable assurance that waste package and engineered barrier development can be completed on a schedule that would permit repository operation within the first quarter of the twenty-first century. If necessary (that is, if Yucca Mountain were found unsuitable by the turn of the century), DOE could initiate site characterization and develop waste packages and engineered barriers at another site or sites and still commence operation before the end of the first quarter of that century.

II.A.3. Institutional Uncertainties.

II.A.3.a. Measures for dealing with Federal-State-local concerns.

In its 1984 Waste Confidence Decision, the Commission found that the NWPA should help to minimize the potential that differences between the Federal Government and States and Indian tribes will substantially disrupt or delay the repository program. The Commission noted that the NWPA reduced uncertainties regarding the role of affected States and tribes in repository site selection and evaluation. The Commission also said that the decision-making process set up by the NWPA provides a detailed, step-by-step approach that builds in regulatory involvement, which should also provide confidence to States and tribes that the program will proceed on a technically sound and acceptable basis. Despite the expected and continuing State opposition to DOE siting activities, the Commission has found no institutional developments since that time that would fundamentally disturb its 1984 conclusions on this point.

NRC regulatory involvement, for example, has indeed been built into the process. DOE has continued its interactions with NRC regarding repository program activities since the Commission's 1984 Waste Confidence decision was issued. NRC provided comments to DOE on major program

documents such as the Siting Guidelines and the PDS as required by the NWPA, and NRC concurred on those documents. NRC also reviewed and provided comments to DOE on the DEAs and FEAs. In the December 22, 1986 letter to DOE on the FEAs, the NRC staff noted that "...significant efforts were made by DOE to respond to each of the NRC staff major comments on the DEAs, and in fact, many of these comments have been resolved." NRC provided comments to DOE on the 1987 Draft Mission Plan Amendment, and DOE responded to most of these comments in the Final Mission Plan Amendment provided to Congress on June 9, 1987.

Since enactment of the NWPAA in December 1987, DOE-NRC interactions have focused on the Yucca Mountain site. In January 1988, DOE issued the Consultation Draft Site Characterization Plan (CDSCP) for the Yucca Mountain site. The NRC staff provided comments in the form of draft and final "point papers" on the CDSCP. The NRC comments included several objections related to: (1) the failure to recognize the range of alternative conceptual models of the Yucca Mountain site; (2) the status of the quality assurance (QA) plans for site characterization activities; and (3) concerns related to the exploratory shaft facility. Although the December 1988 SCP shows improvement over the CDSCP, NRC continues to have an objection involving the need for implementing a baselined QA program before beginning site characterization and an objection involving the need for DOE to demonstrate the adequacy of both the ESF design and the design control process. Prior to the November 1989 Reassessment Report, DOE had committed to having a qualified QA program in place before sinking the exploratory shaft at the Yucca Mountain site.

This commitment has not changed. However, in view of the extension in the schedule for shaft sinking from November 1989 to November 1992, qualified QA plans are needed in the near term for meeting the January 1991 schedule for surface-based testing. In addition to having a qualified QA program in place, DOE must also have issued the pertinent study plans for site characterization activities they wish to begin.

DOE has taken measures to clarify and institutionalize the roles of other Federal agencies in addition to NRC. In the Draft 1988 Mission Plan Amendment, DOE described interactions with these agencies. DOE has a Memorandum of Understanding (MOU) with the Mine Safety and Health Administration of the Department of Labor for technical support and oversight for shaft construction and other site characterization activities, and with the Department of Transportation to define the respective responsibilities of the two agencies in the waste disposal program. DOE also has interagency agreements with the Bureau of Mines and the U.S. Geological Survey of the Department of the Interior.

DOE's efforts to address the concerns of States, local governments, and Indian tribes have met with mixed results. For example, DOE has not succeeded in finalizing any consultation and cooperation (C&C) agreements as required under section 117(c) of the NWPA, as amended. These agreements were to help resolve State and Tribal concerns about public health and safety, environmental, and economic impacts of a repository. Publication of the Siting Guidelines under section 112(a) of the NWPA resulted in numerous lawsuits challenging the validity of the Guidelines. Similarly, the FEAs were challenged in the Ninth Circuit by affected States and tribes.

The NWPAA did not curtail financial assistance to affected States and tribes, except to redefine and redistribute it if DOE and a State or tribe enter into a benefits agreement. The State of Nevada and affected local governments are eligible to receive financial assistance. DOE has attempted to negotiate an agreement with the State of Nevada for monetary benefits under Section 170 of the NWPAA. This Section would provide for payments of $10 million per year before receipt of spent fuel, and $20 million per year after receipt of spent fuel until closure of the repository. These payments would be in addition to certain monetary benefits for which the State is eligible under the NWPA, as amended. Also under a benefits agreement, a Review Panel would be constituted for the purpose of advising DOE on matters related to the repository, and for assisting in the presentation of State, tribal, and local perspectives to DOE. The beneficiary to a benefits agreement must waive its right to disapprove the recommendation of the site for a repository and its rights to certain impact assistance under Sections 116 and 118 of the NWPA, as amended. To date, the State of Nevada has declined DOE's offer to negotiate a benefits agreement. In 1989, the State of Nevada requested $23 million for work on Yucca Mountain. Congress appropriated $5 million and authorized DOE to release an additional $6 million at the discretion of the Secretary on the basis of good faith efforts of the State to allow technical investigations to begin at the site.

The NWPAA introduced several new organizational entities to the repository program with responsibilities that may contribute to resolving concerns of Federal, State, and local governments involved in the program. Under section 503 of the NWPAA, the Nuclear Waste Technical Review Board (NWTRB) is to evaluate the technical and scientific validity of DOE activities under the NWPAA, including site characterization and activities related to packaging or transportation of spent fuel. The NWPAA also established the Office of Nuclear Waste Negotiator, who is to seek to negotiate terms under which a State or Indian tribe would be willing to host a repository or MRS facility at a technically qualified site. Among the duties of the Negotiator is consultation with Federal agencies such as NRC on the suitability of any potential site for site characterization.

Secretary of Energy James Watkins has emphasized the importance of the Negotiator to the success of the program. A Negotiator could contribute to the timely success of the repository program by providing an alternative site to the Yucca Mountain site that would still have to be technically acceptable, but that would enjoy the advantage of reduced institutional uncertainties resulting from opposition of State or affected Indian tribes. The President nominated and the Senate recently confirmed David Leroy to be the Negotiator.

An additional measure which may facilitate documentation and communication of concerns related to a repository is the Licensing Support System (LSS). The LSS is to provide full text search capability of and easy access to documents related to the licensing of the repository. Although the primary purpose of the LSS is to expedite NRC's review of the construction authorization application for a repository, it will be an effective mechanism by which all LSS participants, including the State and local governments, can acquire early access to documents relevant to a repository licensing decision. DOE is responsible for the design, development, procurement and testing of the LSS. LSS design and development must be consistent with objectives and requirements of the Commission's LSS rulemaking and must be carried out in consultation with the LSS Administrator and with the advice of the Licensing Support System Advisory Review Panel. NRC (LSS Administrator) is responsible for the management and operation of the

LSS after completion of the DOE design and development process.

Procedures for the use of the LSS are part of revisions to 10 CFR part 2, NRC's Rules of Practice for the adjudicatory proceeding on the application to receive and possess waste at a repository. These revisions were the result of a "negotiated rulemaking" process in which affected parties meet to reach consensus on the proposed rule. The members of the negotiating committee included: DOE; NRC; State of Nevada; coalition of Nevada local governments; coalition of industry groups; and a coalition of national environmental groups. The coalition of industry groups dissented on the final text of the proposed rule, but the negotiating process enabled NRC to produce a proposed rule reflecting the consensus of most of the interested parties on an important repository licensing issue.

NRC is committed to safe disposal of radioactive waste and the protection of public health and safety and the environment. Any State with a candidate site for a repository should be assured that a repository will not be licensed if it does not meet NRC criteria. NRC has its own program for interaction with the State of Nevada and affected units of local government, and will continue to provide information to Nevada and consider State concerns as requested.

Given the difficult nature of siting a repository, the Commission believes that the NWPA, as amended, has achieved the proper balance between providing for participation by affected parties and providing for the exercise of Congressional authority to carry out the national program for waste disposal. The NWPAA provides adequate opportunity for interaction between DOE and other Federal agencies, States, tribes, and local governments such that concerns can be presented to DOE for appropriate action. Both the NRC and the State or tribe can exercise considerable prerogative regarding repository development. The State or tribe may disapprove the recommendation that the site undergo repository development. This disapproval can be overridden only by vote of both houses of Congress within 90 days of continuous session. If the State disapproval is overridden, DOE may submit an application for authorization to construct the repository, and, if approved, a subsequent application to receive and possess waste for emplacement. NRC will make decisions on the license applications according to the requirements of its statutory mission. Despite the complexity of the overall process and the strong views of the participants in it, the Commission sees no compelling reason to conclude that current institutional arrangements are inadequate to the task of resolving State, Federal, and local concerns in time to permit a repository to be available within the first quarter of the twenty-first century.

II.A.3.b. Continuity of the management of the waste program

At the time the Commission issued its 1984 Waste Confidence Decision, the possibility that DOE functions would be transferred to another Federal agency was cited as the basis for concerns that the resolution of the radioactive waste disposal problem would likely undergo further delays. The Commission responded that in the years since the Administration had proposed to dismantle DOE in September 1981, Congress had not acted on the proposal. The Commission further stated that even if DOE were abolished, the nuclear waste program would simply be transferred to another agency. The Commission did not view the potential transfer in program management as resulting in a significant loss of momentum in the waste program. The Commission also concluded that the enactment of the NWPA, which gave DOE lead responsibility for repository development, further reduced uncertainties as to the continuity of management of the waste program.

Section 303 of the NWPA did, however, require the Secretary of Energy to "...undertake a study with respect to alternative approaches to managing the construction and operation of all civilian radioactive waste facilities, including the feasibility of establishing a private corporation for such purpose." To carry out this requirement, DOE established the Advisory Panel on Alternative Means of Financing and Managing Radioactive Waste Facilities, which came to be known as the "AMFM" Panel. The Panel's final report, issued in December 1984, concluded that several organizational forms are more suited than DOE for managing the waste program, including an independent Federal agency or commission, a public corporation, and a private corporation. The report identified a public corporation as the preferred alternative on the basis of criteria developed by the Panel for an acceptable waste management organization. In particular, the report indicated that a public corporation would be stable, highly mission-oriented, able to maintain credibility with stakeholders, and more responsive to regulatory control than a Federal executive agency.

Commenting on the AMFM Panel's report in April 1985, DOE recommended retaining the present management structure of the waste program at least through the siting and licensing phase of the program. Congress did not take action to implement the Panel's recommendations, and DOE's management of the waste program has remained uninterrupted.

By enacting the NWPAA, Congress effectively reaffirmed DOE's continued management of the waste program. Congress did not revise DOE's role as the lead agency responsible for development of a repository and an MRS. Congress did establish several new entities for the purpose of advising DOE on matters related to the waste program, such as the NWTRB and the Review Panel, to be established if DOE and a State or tribe enter into a benefits agreement under Section 170 of the NWPAA. Congress provided further indication of its intent that DOE maintain management control of the waste program for the foreseeable future in requiring, under Section 161, that the Secretary of DOE "...report to the President and to Congress on or after January 1, 2007, but not later than January 1, 2010, on the need for a second repository."

This is not to say, however, that there have been no management problems in the DOE program. Since the enactment of the NWPA in 1983, only one of the five Directors of DOE's Office of Civilian Radioactive Waste Management (OCRWM) has held the position on a permanent basis. Inadequate progress toward an operating repository has concerned several Congressional observers, including Senator J. Bennett Johnston, Chairman of the Senate Energy and Natural Resources Committee. In February 1989 confirmation hearings for then-Secretary-of-Energy-designate James Watkins, Senator Johnston strongly criticized mounting cost projections and lack of progress in the program, and called for new and stronger management.

In the November 1989 Reassessment Report, DOE discussed several new initiatives for improving its management of the repository program. The initiatives include "direct-line" reporting from the Yucca Mountain Project Office to the Office of Civilian Radioactive Waste Management (OCRWM), and an independent contractor review of OCRWM management structures, systems and procedures to identify program redundancies, gaps, and

strengths. The OCRWM is also implementing improvements in the overall Program Management System, the QA program, and establishment of program cost and schedule baselines.

Whether the management structure of the repository development program should in fact be changed is a decision best left to others. The Commission believes that a finding on the likely availability of a repository should take management problems into account, but finds no basis to diminish the degree of assurance in its 1984 conclusion on this issue. Events since the submission of the AMFM Panel report do not indicate that there will be a fundamental change in the continuity of the management structure of the program any time soon. In addition, it cannot be assumed that the program would encounter significantly less difficulty with a new management structure than it would continuing under the present one. Under either scenario, however, the Commission believes it would be more prudent to expect repository operations after the 2010 timeframe than before it. Neither the problems of a new management structure nor those of the existing one are likely to prevent the achievement of repository operations within the first quarter of the next century, however.

II.A.3.c. Continued funding of the nuclear waste management program

Section 302 of the NWPA authorized DOE to enter into contracts with generators of electricity from nuclear reactors for payment of 1.0 mill (0.1 cent) per kilowatt-hour of net electricity generated in exchange for a Federal Government commitment to take title to the spent fuel from those reactors. In the 1984 Waste Confidence Decision, the Commission noted that all such contracts with utilities had been executed. After the 1984 Decision, then-President Reagan decided that defense high-level wastes are to be collocated with civilian wastes from commercial nuclear power reactors. DOE's Office of Defense Programs is to pay the full cost of disposal of defense waste in the repository.

DOE is required under Section 302(a)(4) of the NWPA, as amended, "...annually [to] review the amount of the fees...to evaluate whether collection of the fees will provide sufficient revenues to offset the costs...." In the June 1987 Nuclear Waste Fund Fee Adequacy Report, DOE recommended that the 1.0 mill per kilowatt-hour fee remain unchanged. This assessment was based on the assumption that an MRS facility would open in 1998, the first repository would open in 2003, and the second repository in 2023. These assumptions do not reflect changes in the waste program brought about by the NWPAA enacted in December 1987. Two such changes with significant potential impacts were the suspension of site-specific activities related to the second repository until at least 2007, and the linkage between MRS construction and operation and the granting of a repository construction authorization, which will probably occur no earlier than 1998.

DOE has not issued a fee adequacy report since the June 1987 report. When the updated report is released, it is expected to reflect overall program cost savings to the utilities resulting from: (1) limiting site characterization activities to a single site at Yucca Mountain, NV; and (2) the DOE Office of Defense Programs' sharing other program costs with generators of electricity "...on the basis of numbers of waste canisters handled, the portion of the repository used for civilian or defense wastes, and the use of various facilities at the repository," in addition to paying for activities solely for disposing of defense wastes. An additional factor which may eventually also contribute to the overall adequacy of Nuclear Waste Fund fees is the likelihood that a significant number of utilities will request renewals of reactor operating lifetimes beyond their current OL expiration dates. OL renewal would provide additional time during which Nuclear Waste Fund fees could be adjusted, if necessary, to cover any future increase in per-unit costs of waste management and disposal. It is expected that the new report may reflect a recent Court decision which found that fees paid into the Nuclear Waste Fund be adjusted to reflect transmission and distribution losses.

The Commission recognizes the potential for program cost increases over estimates in the 1987 Nuclear Waste Fund Fee Adequacy Report. If there is a significant delay in repository construction, for example, it is reasonable to assume that construction costs will escalate. There may also be additional costs associated with at-reactor dry cask storage of spent fuel, if DOE does not have a facility available to begin accepting spent fuel by the 1998 date specified in the NWPA. These costs would be further increased if one or more licensee was to become insolvent and DOE was required to assume responsibility for storage at affected reactors before 1998.

In the event of insolvency, DOE would still have sufficient funds to take over responsibility for managing spent fuel until a repository is available. Because spent fuel disposal costs are directly related to the amount of electricity generated, with contributions to the NWF based on a kilowatt-hour surcharge that must be paid in short-term installments, utilities can be presumed to be mostly up-to-date with their contributions. It is highly unlikely that a utility would jeopardize its contract for spent fuel disposal with DOE by defaulting on a periodic payment to save a few million dollars. Even if a utility were to default, it would not be much in arrears for its spent fuel before it would trigger close DOE scrutiny and mitigative action.

Larger amounts in default could possibly occur with those relatively few utilities that have not paid their full share of pre-1983 collections. This issue arises because several utilities elected to defer payment for spent fuel generated prior to April 1983 into the fund and, instead, themselves hold the money that was collected from ratepayers for the one-time fee. DOE's Inspector General believes that some of those utilities may not be able to make their payments when due. The NRC understands from OCRWM staff that, if a nuclear utility licensee were to default on its one-time contribution to the NWF, DOE is not precluded from accepting for disposal all spent fuel from that utility. Thus, the NRC does not view this issue as affecting its confidence that the spent fuel will be disposed of. Rather, the issue is one of equity--that is, will a utility and its customers and investors or U.S. taxpayers and/or other utilities ultimately pay for disposal of spent fuel generated prior to April 1983. The Commission does not believe that a licensee's potential default has a direct bearing on the Commission's Waste Confidence Decision.

The full impact of the program redirection resulting from the NWPAA and the outlook for the timing of repository availability will continue to be assessed annually. If it does appear that costs will exceed available funds, there is provision in the NWPA for DOE to request that Congress adjust the fee to ensure full-cost recovery. Thus, the Commission finds no reason for changing its basic conclusion that the long-term funding provisions of the Act should provide adequate financial support for the DOE program.

II.A.3.d. DOE's schedule for repository development

At the time that the 1984 Waste Confidence Decision was issued, the Nuclear Waste Policy Act of 1982, enacted in January 1983, had been in effect for less than 20 months. The NWPA had established numerous deadlines for various repository program milestones. Under section

112(b)(1)(B), the NWPA set the schedule for recommendation of sites for characterization no later than January 1, 1985. Section 114(a)(2) specified that no later than March 31, 1987, with provision for a 12-month extension of this deadline, the President was to recommend to Congress one of the three characterized sites qualified for an application for repository construction authorization. Under section 114(d), NRC was to issue its decision approving or disapproving the issuance of a construction authorization not later than January 1, 1989, or the expiration of three years after the date of submission of the application, whichever occurs later. Section 302(a)(5)(B) required that contracts between DOE and utilities for payments to the Waste Fund provide that DOE will begin disposing of spent fuel or high-level waste by January 31, 1998.

In little more than a year after enactment, the schedule established by the NWPA began proving to be optimistic. In the reference schedule for the repository presented in the April 1984 Draft Mission Plan, for example, DOE showed a slip from January 1989 to August 1993 for the decision on construction authorization.

In the 1984 Waste Confidence Decision, the Commission recognized the possibility of delay in repository availability beyond 1998, and did not define its task as finding confidence that a repository would be available by the 1998 milestone in the NWPA. The Commission focused instead on the question of whether a repository would be available by the years 2007-2009, the date cited in the court remand as the expiration of the OLs for the Vermont Yankee and Prairie Island reactors. The NRC believed that the NWPA increased the chances for repository availability within the first few years of the twenty-first century, by specifying the means for resolving the institutional and technical issues most likely to delay repository completion, by establishing the process for compliance with NEPA, and by setting requirements for Federal agencies to cooperate with DOE in meeting program milestones. Finding that no fundamental technical breakthroughs were necessary for the repository program, the Commission predicted that "...selection and characterization of suitable sites and construction of repositories will be accomplished within the general time frame established by the Act [1998] or within a few years thereafter."

In January 1987, DOE issued a Draft Mission Plan Amendment to apprise Congress of significant developments and proposed changes in the repository program. In the Draft Amendment, DOE announced a five-year delay in its schedule for repository availability from the first quarter of 1998 to the first quarter of 2003. DOE's reasons for the delay included the need for more time for consultation and interaction with States and Tribes, the requirement in DOE's 1987 budget that funds not be used for drilling exploratory shafts in 1987, and the need for more information than previously planned for site selection and the license application. The 1987 Draft Mission Plan Amendment set the second quarter of 1988 as the new date for exploratory shaft construction at the Yucca Mountain site. When the final 1987 Mission Plan Amendment was submitted to Congress in June 1987, the schedule for shaft sinking at the Yucca Mountain site had slipped six months to the fourth quarter of 1988. Congress did not take action to approve the June 1987 Mission Plan Amendment as DOE had requested.

On December 22, 1987, the NWPAA was enacted. The NWPAA had its major impact on the repository program in suspending site characterization activities at the Hanford and Deaf Smith County sites and authorizing DOE to characterize the Yucca Mountain site for development of the first repository.

DOE subsequently issued the Draft 1988 Mission Plan Amendment in June 1988, to apprise Congress of its plans for implementing the provisions of the NWPAA. In the Draft 1988 Mission Plan Amendment, DOE's schedule for shaft sinking at Yucca Mountain had slipped another six months to the second quarter of 1989. Since the NRC published the Proposed Waste Confidence Review (54 FR 39767) for comment, the schedule for shaft sinking has been changed from November 1989 to November 1992. Issues requiring DOE attention before site characterization can begin have been identified, and it is possible that additional issues affecting DOE's readiness will come to light. However, DOE has made progress in completing QA plans since September 1989, and it is reasonable to expect that study plans and technical procedures needed for surface-based testing will be ready in time for testing to begin by January 1991.

Heretofore, the repository schedule has always been agressive and highly success-oriented. In comments on the Draft 1988 Mission Plan Amendment, the Commission noted that the schedule has not allowed adequately for contingencies, and that, given the compression in the schedule for near-term program milestones, DOE had not shown how it would be able to meet the 2003 milestone for repository operation. The revised schedule announced in the November 1989 Reassessment Report includes a new reference schedule for the restructured repository, MRS, and transportation programs. Under the restructured program, the schedule for submittal of a construction authorization application to NRC has been extended from 1995 to 2001, and the schedule for repository operation at Yucca Mountain, if that site is found to be suitable, is 2010. DOE believes that this reference schedule is the first repository program schedule since passage of the NWPA that is based on a "realistic assessment of activity duration and past experience." The new schedule allows more time for scientific investigations than earlier schedules. NRC believes that the restructured program has been responsive to NRC concerns that the quality and completeness of site investigations were being compromised in order to satisfy unrealistic schedule requirements.

Another potential source of delay in repository availability may arise from NRC regulations. Given the revised schedule, however, the NRC does not believe this is likely. The Commission believes that current NRC rules are fully adequate to permit DOE to proceed to develop and submit a repository license application, but further clarification of these rules is desirable to reduce the time needed to conduct the licensing proceeding itself. In order to meet the three-year schedule provided in the NWPA for a Commission decision on repository construction authorization, the NRC staff has undertaken to refine its regulatory framework on a schedule that would permit DOE to prepare and submit an application for repository construction authorization under its current schedule. The Commission fully intends to avoid delaying DOE's program, while working to reduce the uncertainties in NRC regulatory requirements that could become contentions in the licensing proceeding. Even if there are any delays resulting from a need for DOE to accommodate more specific regulatory requirements in its site characterization or waste package development programs, the Commission is confident that the time savings in the licensing proceeding will more than compensate for them.

In view of the delays in exploratory shaft excavation since the 2003 date for repository availability was set, the Commission believed it was optimistic to expect that Phase 1 of repository operations would be able to begin by

2003. As DOE's schedule for repository availability has slipped a year and a half since the date was changed from 1998 to 2003, the earliest date for repository availability would probably be closer to 2005. Given additional delays in shaft sinking and DOE's revised program schedule, NRC believes that 2010 is the earliest date for repository availability at Yucca Mountain. Yet, the Commission recognizes that DOE is committed to improving the schedule where possible without sacrificing quality and completeness of scientific investigations.

An institutional issue that may further affect DOE's schedule is the status of EPA standards for disposal of spent fuel and high-level waste. These standards are required under section 121(a) of the NWPA. Under 10 CFR section 60.112, NRC's overall postclosure system performance objective, the geologic setting shall be selected and the engineered barrier system, which includes the waste package, must be designed to assure that releases of radioactive materials to the accessible environment, following permanent closure, conform to EPA's standards. 40 CFR part 191, the EPA standards, first became effective in November 1985. In July 1987, the U.S. Court of Appeals for the First Circuit vacated and remanded to EPA for further proceedings subpart B of the high-level radioactive waste disposal standards. As noted under the aforementioned I.A.1., the standards have not been reissued.

A significant modification in the reissued EPA standard may affect the schedule for completing the design of the waste package and engineered barrier to the extent that design testing is planned to demonstrate compliance with the standards. DOE's current site characterization plans for demonstrating compliance with 40 CFR part 191 are based on the standards as promulgated in 1985. DOE is proceeding to carry out its testing program developed for the original EPA standards. DOE has stated that if the EPA standards are changed significantly when they are reissued, DOE will reevaluate the adequacy of its testing program.

The Commission believes that DOE's approach is reasonable. Much of the information required to demonstrate compliance with the EPA standards is expected to remain the same regardless of the numerical level at which each standard is set. Considering the importance of developing the repository for waste disposal as early as safely practicable, it would be inappropriate for DOE to suspend work on development of engineered barriers pending reissuance of the standards, unless EPA had given clear indications of major changes in them.

Another possibility is that, regardless of any changes in the repromulgated EPA standards, they will be litigated in Federal court. Even if this proves to be the case, however, the Commission believes that any such litigation will still permit EPA to promulgate final standards well within the time needed to enable DOE to begin repository operations at any site within the first quarter of the twenty-first century.

Given the current DOE program schedule, and assuming that the QA program can be qualified and surface-based testing begun within the next year, the Commission finds that although it is not impossible that a repository at Yucca Mountain will be available by 2007-2009, it is more likely that the earliest date for a repository there is 2010. If DOE determines that the Yucca Mountain site is unsuitable, and if DOE makes this determination by the year 2000, the NRC believes that a repository at another site could be available within the first quarter of the next century. The Commission will reevaluate these dates during the next scheduled Waste Confidence Review in 1999.

II.B. Relevant Issues That Have Arisen since the Commission's Original Decision

II.B.1. NRC stated in 9-14-87 correspondence to Sen. Breaux on pending nuclear waste legislation that under a program of single site characterization, "...there may be a greater potential for delay of ultimate operation of a repository than there is under the current regime where three sites will undergo at-depth characterization before a site is selected." To what extent does the NWPAA raise uncertainty about the identification of a technically acceptable site and potential delay in repository availability by limiting site characterization to a single candidate site (Yucca Mt.) and by raising the possibility that a negotiated agreement might influence repository site selection? Does this uncertainty affect confidence in the availability of a repository by 2007-2009?

In providing comments to Congress on proposed amendments to the NWPA, NRC took the position that simultaneous site characterization of three sites, as required by the NWPA, was not necessary to protect public health and safety. NRC further stated that the adequacy of a site for construction authorization would ultimately be determined in a licensing proceeding, and that NRC would only license a site that satisfied NRC licensing requirements. As described next, the Commission believes that the NWPAA contains numerous provisions to ensure that a technically acceptable site will be identified.

The NWPAA does not reduce the scope of site characterization activities that DOE is authorized to undertake. The Amendments Act establishes a Nuclear Waste Technical Review Board composed of individuals recommended by the National Academy of Sciences and appointed by the President to evaluate the scientific validity of DOE activities, including site characterization activities, and to report its findings at least semiannually to Congress and DOE. The Amendments Act also provides funding for technical assistance to States, tribes, and affected units of local government. Finally, section 160(l) of the NWPAA provides that "Nothing in this Act shall be construed to amend or otherwise detract from the licensing requirements of the NRC established in Title II of the Energy Reorganization Act of 1974 (42 U.S.C. 5841 et seq.)." In providing for these reviews and in reaffirming NRC's licensing authority, the NWPAA ensures that a candidate site for a repository must satisfy all NRC requirements and criteria for disposal of high-level radioactive wastes in licensed geologic repositories.

Section 402 of the NWPAA establishes the Office of the Nuclear Waste Negotiator. The duty of the Negotiator is to attempt to find a State or tribe willing to host a repository or MRS at a technically qualified site. The Negotiator may solicit comments from NRC, or any other Federal agency, on the suitability of any potential site for site characterization. Section 403(d)(4) strengthens the Commission's confidence that a technically acceptable site will be identified by providing that DOE may construct a repository at a negotiated site only if authorized by NRC. Given these safeguards on selection of a technically acceptable site, the Commission does not consider that the possibility of a negotiated agreement reduces the likelihood of finding a technically qualified site.

The Commission raised the concern as early as April 1987 that under a program of single-site characterization, there could be considerable delay while

characterization was completed at another site or slate of sites if the initially chosen site was found inadequate. By terminating site characterization activities at alternative sites to the Yucca Mountain site, the NWPAA has had the effect of increasing the potential for delay in repository availability if the Yucca Mountain site proves unsuitable. The provision in the NWPAA for a Negotiator could reduce the uncertainty and associated delay in restarting the repository program by offering an alternate to the Yucca Mountain site; but at the time of this writing, a Negotiator has not been appointed.

It should be noted here that the repository program redirection under the NWPAA does not, *per se*, have a significant impact on the Commission's assurance of repository availability by 2007-2009, the relevant dates in the original Waste Confidence Proceeding, or on availability by 2010, DOE's current date. The Commission's reservations about affirming this timeframe derive from other considerations, including delays in sinking shafts and the potential for other delays in meeting program milestones, that would have arisen without the NWPAA.

The Amendments Act does, however, effectively make it necessary that Yucca Mountain be found suitable if the 2007-2009 or 2010 timeframe is to be met; this target period would almost certainly be unachievable if DOE had to begin screening to characterize and license another site. Thus, confidence in repository availability in this period would imply confidence in the suitability of Yucca Mountain. The Commission does not want its findings here to constrain in any way its regulatory discretion in a licensing proceeding. Therefore, the Commission declines to reaffirm the 2007-2009 timeframe in the original decision or to affirm the current 2010 date for repository operation.

II.B.2. In the Draft 1988 Mission Plan Amendment, DOE stated that "...the

data indicate that the Yucca Mountain site has the potential capacity to accept at least 70,000 MTHM [metric tons heavy metal equivalent] of waste, but only after site characterization will it be possible to determine the total quantity of waste that could be accommodated at this site."

a. Do the issues of limited spent fuel capacity at Yucca Mountain, indefinite suspension of the second repository program, and the likelihood that no more than one repository will be available by 2007-2009 undermine the NRC's 1984 assurance that "sufficient repository capacity will be available within 30 years beyond expiration of any reactor operating license to dispose of existing commercial high level radioactive waste and spent fuel originating in such reactor and generated up to that time?"

b. Is there sufficient uncertainty in total spent fuel projections (e.g., from extension-of-life license amendments, renewal of operating licenses for an additional 20 to 30 years, or a new generation of reactor designs) that this Waste Confidence review should consider the institutional uncertainties arising from having to restart a second repository program?

II.B.2.a. Although it will not be possible to determine whether Yucca Mountain can accommodate 70,000 MTHM or more of spent fuel until after site characterization, the Commission does not believe that the question of repository capacity at the Yucca Mountain site should be a major factor in the analysis of Finding 2. This is because it cannot be assumed that Yucca Mountain will ultimately undergo development as a repository. The generic issue of repository capacity does add to the potential need for more than one repository, however.

As noted earlier, the NWPA established deadlines for major milestones in the development of the first and the second repository programs. The Act also required NRC to issue a final decision on the construction authorization application by January 1, 1989 for the first repository, and January 1, 1992 for the second (or within three years of the date of submission of the applications, whichever occurred later). The July 1984 Draft DOE Mission Plan set January 1998 and October 2004 as the dates for commencement of waste emplacement in the first and second repositories, assuming that Congressional authorization was obtained to construct the second repository.

Thus, at the time the 1984 Waste Confidence Decision was issued, DOE was authorized and directed to carry out two repository programs under a schedule to make both facilities operational by 2007-2009. DOE and NRC were also working under the constraint, still in force under the NWPA as amended, that no more than 70,000 MTHM may be emplaced in the first repository before the second is in operation. Because DOE estimated at the time that commercial U.S. nuclear power plants with operating licenses or construction permits would discharge a total 160,000 MTHM of spent fuel, it appeared that at least two repositories would be needed.

In the 1984 Waste Confidence Decision, reactors were assumed to have a 40-year operating lifetime, and because the earliest licenses were issued in 1959 and the early 1960's, the oldest plants' licenses were due to expire as early as 1999 and 2000, as discussed in more detail below. Although it was expected that at least one repository would be available by this time, there was also a limit as to how quickly spent fuel could be accepted by the repository. DOE had estimated that waste acceptance rates of 3400 MTHM per year could be achieved after the completion of Phase 2 of the first repository. This rate could essentially double if two repositories were in operation. At 6000 MTHM/year, it was estimated that all the anticipated spent fuel could be emplaced in the two repositories by about the year 2026. This was the basis for the Commission's position that sufficient repository capacity would be available within 30 years beyond expiration of any reactor OL to dispose of existing commercial high level waste and spent fuel originating in such reactor and generated up to that time.

In May 1986, however, DOE announced an indefinite postponement of the second repository program. The reasons for the postponement included decreasing forecasts of spent fuel discharges, as well as estimates that a second repository would not be needed as soon as originally supposed. With enactment of the NWPAA in December 1987, DOE was required to terminate all site-specific activities with respect to a second repository unless such activities were specifically authorized and funded by Congress. The NWPAA required DOE to report to Congress on the need for a second repository on or after January 1, 2007, but not later than January 1, 2010.

Current DOE spent fuel projections, based on the assumption of no new reactor orders, call for 87,000 MTHM to have been generated by the year 2036, including approximately 9000 MTHM of defense high-level waste. With the likelihood that there will be reactor lifetime extensions and renewals, however, the no-new-orders case probably underestimates total spent fuel discharges. Also, the NWPAA did not change the requirement that no more

than 70,000 MTHM could be emplaced in the first repository before operation of the second. It therefore appears likely that two repositories will be needed to dispose of all the spent fuel and high-level waste from the current generation of reactors, unless Congress provides statutory relief from the 70,000 MTHM limit, and the first site has adequate capacity to hold all of the spent fuel and high-level waste generated. The Commission believes that if the need for an additional repository is established, Congress will provide the needed institutional support and funding, as it has for the first repository.

For all but a few licensed nuclear power reactors, OLs will not expire until some time in the first three decades of the twenty-first century. Several utilities are currently planning to have their OLs renewed for ten to 30 years beyond the original license expiration. At these reactors, currently available spent fuel storage alternatives effectively remove storage capacity as a potential restriction for safe operations. For these reasons, a repository is not needed by 2007-2009 to provide disposal capacity within 30 years beyond expiration of most OLs. If work is begun on the second repository program in 2010, the repository could be available by 2035, according to DOE's estimate of 25 years for the time it will take to carry out a program for the second repository. Two repositories available in approximately 2025 and 2035, each with acceptance rates of 3400 MTHM/year within several years after commencement of operations, would provide assurance that sufficient repository capacity will be available within 30 years of OL expiration for reactors to dispose of the spent fuel generated at their sites up to that time.

There are several reactors, however, whose OLs have already expired or are due to expire within the next few years, and which are now licensed or will be licensed only to possess their spent fuel. If a repository is not available until about 2025, these reactors may be exceptions to the second part of the Commission's 1984 Finding 2, which was that sufficient repository capacity will be available within 30 years beyond the expiration of any reactor OL to dispose of the commercial high-level waste and spent fuel originating in such reactor and generated up to that time.

The basis for this second part of Finding 2 has two components: (1) a technical or hardware component; and (2) an institutional component. The technical component relates to the reliability of storage hardware and engineered structures to provide for the safe storage of spent fuel. An example would be the ability of spent fuel assemblies to withstand corrosion within spent fuel storage pools, or the ability of concrete structures to maintain their integrity over long periods. In the 1984 Decision, the Commission found confidence that available technology could in effect provide for safe storage of spent fuel for at least 70 years.

The Commission's use of the expression "30 years beyond expiration of any reactor operating license" in the 1984 Finding was based on the understanding that the license expiration date referred to the scheduled expiration date at the time the license was issued. It was also based on the understanding that, in order to refuel the reactor, some spent fuel would be discharged from the reactor within twelve to eighteen months after the start of full power operation.

Thus, the Commission understood that, depending on the date of the first reactor outage for refueling, some spent fuel would be stored at the reactor site for most of the 40-year term of the typical OL. In finding that spent fuel could be safely stored at any reactor site for at least 30 years after expiration of the OL for that reactor, the Commission indicated its expectation that the total duration of spent fuel storage at any reactor would be about 70 years.

Taking the earliest licensed power reactor, the Dresden 1 facility licensed in 1959, and adding the full 40-year operating license duration for a scheduled license expiration in the year 1999, the Commission's finding would therefore entail removal of all spent fuel from that reactor to a repository within the succeeding 30 years, or by 2029. Even if a repository were not available until the end of the first quarter of the twenty-first century, DOE would have at least four years to ship the reactor's 683 spent fuel assemblies, totalling 70 metric tons initial heavy metal (MTIHM), from Dresden 1 without exceeding the Commission's 30-year estimate of the maximum time it would take to dispose of the spent fuel generated in that reactor up to the time its OL expired. (MTIHM is a measure of the mass of the uranium in the fuel (or uranium and plutonium if it is a mixed oxide fuel) at the time the fuel is placed in the reactor for irradiation.)

Considering the experience from the 1984 and 1985 campaigns to return spent fuel from the defunct West Valley reprocessing facility to the reactors of origin, 70 metric tons of BWR spent fuel can easily be shipped within four years. The first campaign, involving truck shipments of 20 metric tons from West Valley, NY, to Dresden 1 in Morris, IL, took eleven months. The second, involving truck shipments of 43 tons from West Valley to the Oyster Creek reactor in Toms River, NJ, took six months. (See *Case Histories of West Valley Spent Fuel Shipments*, Final Report, NUREG/CR-4847 WPR-86(6811)-1, p. 2-2.) This estimate assumes, moreover, that no new transportation casks, designed to ship larger quantities of older, cooler spent fuel, for example, would be available by 2025.

The institutional part of the question concerning the availability of sufficient repository capacity required the Commission to make a finding as to whether spent fuel in at-reactor storage would be safely maintained after the expiration of the facility OL. This question related to the financial and managerial capability for continued safe storage and monitoring of spent fuel, rather than to the capability of the hardware involved. The Commission determined, in Finding 3 of its 1984 Decision, that spent fuel will be managed in a safe manner until sufficient repository capacity is available to assure safe disposal, which was expected under Finding 2 to be about 30 years after the expiration of any reactor OL. (See discussion of Finding 3 below for additional discussion of the institutional aspects of spent fuel storage pending the availability of sufficient disposal capacity.)

The availability of a repository within the first quarter of the twenty-first century holds no significant adverse implications for the Commission's institutional concern that there be an organization with adequate will and wherewithal to provide continued long-term storage after reactor operation. This could be a concern if a significant number of reactors with significant quantities of spent fuel onsite were to discontinue operations indefinitely between now and 1995, and the utility-owners of these reactors did not appear to have the resources to manage them safely for up to 30 years pending the assumed availability of a repository in 2025.

No such development is likely. No licenses for currently operating commercial nuclear reactors are scheduled to expire until the year 2000, and most such licenses will expire during the first two decades after 2006. (See *Nuclear Regulatory Commission 1989 Information Digest*, NUREG-1350, Vol. 1, p. 33.) The availability of the first repository by 2025, and of a second repository within one or two decades

thereafter, would provide adequate disposal capacity for timely removal of the spent fuel generated at these reactors.

There are several licensees, however, whose authority to operate their commercial reactors has already been terminated. These are Indian Point 1, Dresden 1, Humboldt Bay, and Lacrosse. They are also the only licensed power reactors that are retired with spent fuel being stored onsite. Assuming conservatively that a repository does not become operational until 2025, it appears likely that spent fuel will remain at these sites for more than 30 years beyond the time their reactors were indefinitely shut down, at which point their operating licenses could be considered to have effectively expired, although they will continue to hold a possession license for the storage of the spent fuel.

In considering the means and motivation of the owner of an indefinitely retired reactor to provide safe long-term storage, the Commission believes it is useful to distinguish between the owner with only one reactor, and the owner of a reactor at a multi-unit site or an owner with operating reactors at other sites. In the case of a retired reactor at a multi-unit site, the owner would have a clear need to maintain the safety of storage at the retired reactor sufficiently to permit continued generation at the site. If the owner of the retired reactor also owned other reactors at other sites, the spent fuel at the retired reactor could be transferred, if necessary, to the storage facilities of other units still under active management. Of the four reactors just cited, Indian Point 1 and Dresden 1 fit this description, and the sibling reactors at their sites are operating under licenses that do not expire until well beyond the year 2000--that is, well within the post-OL period during which the Commission has found that spent fuel could be safely stored pending the availability of a repository.

For the Lacrosse and Humboldt Bay reactors, the Commission is confident that, even if a repository is not available within 30 years following their retirement, the overall safety and environmental acceptability of extended spent fuel storage will also be maintained for these exceptional cases. Because there will still be an NRC possession license for the spent fuel at these facilities, the Commission will retain ample regulatory authority to require any measures, such as removal of the spent fuel remaining in storage pools to passive dry storage casks, that might become necessary until the time that DOE assumes title to the spent fuel under contracts pursuant to the NWPA. It should also be borne in mind that Humboldt Bay and Lacrosse are both small early reactors, and their combined spent fuel inventory totals 67 metric tons of initial heavy metal. (See *Spent Fuel Storage Requirements* (DOE/RL 88-34) October 1988, Table A.3b., pp. A.15-A.17.) If for any reason not now foreseen, this spent fuel can no longer be managed by the owners of these reactors, and DOE must assume responsibility for its management earlier than currently planned, this quantity of spent fuel is well within the capability of DOE to manage onsite or offsite with available technology.

Nor does the Commission see a significant safety or environmental problem with premature retirements of additional reactors. In the Commission's original Waste Confidence Decision, it found reasonable assurance that spent fuel would have to spend no more than 30 years in post-operational storage pending the availability of a repository. For a repository conservatively assumed to be available in 2025, this expected 30-year maximum storage duration remains valid for most reactors, and would be true for all reactors that were prematurely retired after 1995. Based on the past history of premature shutdowns, the Commission has reason to believe that their likely incidence during the next six years will be small as a proportion of total reactor-years of operation.

Historically, 14 of the 125 power reactors that have operated in the U.S. over the past 30 years have been retired before the expiration of their operating licenses. These early retirements included many low-power developmental reactors, which may make the ratio of 14 to 125 disproportionately high as a basis for projecting future premature shutdowns.

The Commission is aware of currently operating reactors that may be retired before the expiration of their OLs, including: the recently-licensed Shoreham reactor, which has generated very little spent fuel; the Fort St. Vrain high-temperature gas-cooled reactor, which its owner plans to decommission; and the Rancho Seco reactor, which has operated for the past 12 years and may or may not be retired. Assuming that these and perhaps a few more reactors do retire in the next several years, their total spent fuel storage requirements would not impose an unacceptable safety or environmental problem, even in the unlikely event that all these reactors' owners were rendered financially or otherwise unable to provide adequate care, and DOE were required to assume custody earlier than currently envisioned under the NWPA.

Licensed non-power research reactors provide an even more manageable case. DOE owns the fuel for almost all of these reactors, many of which have been designed with lifetime cores that do not require periodic refueling. For those reactors that do discharge spent fuel, DOE accepts it for storage or reprocessing, and not more than an estimated 50 kilograms of such spent fuel are generated annually.

Thus, given these worst-case projections, which are not expectations but bounding estimates, the Commission finds that a delay in repository availability to 2025 will not result in significant safety or environmental impacts due to extended post-operational spent fuel storage. To put it another way, the Commission is confident that, even if a repository were not available within 30 years after the effective expiration of the OLs for both currently retired reactors and potential future reactor retirements through 1995, the overall safety and environmental impacts of extended spent fuel storage would be insignificant.

II.B.2.b. Although it is clear that there is uncertainty in projections of total future spent fuel discharges, it is not clear that the institutional uncertainties arising from having to restart a second repository program should be considered in detail in the current Waste Confidence Decision review.

License renewals would have the effect of increasing requirements for spent fuel storage. The Commission understands that some utilities are currently planning to seek renewals for 30 years. Assuming for the sake of establishing a conservative upper bound that the Commission does grant 30-year license renewals, the total operating life of some reactors would be 70 years, so that the spent fuel initially generated in them would have to be stored for about 100 years if a repository were not available until 30 years after the expiration of their last OLs.

Even under the conservative bounding assumption of 30-year license renewals for all reactors, however, if a repository were available within the first quarter of the twenty-first century, the oldest spent fuel could be shipped off the sites of all currently operating reactors well before the spent fuel initially generated in them reached the age of 100 years. Thus, a second repository, or additional capacity at the first, would be needed only to accommodate the additional quantity of spent fuel generated during the later years of these reactors'

operating lives. The availability of a second repository would permit spent fuel to be shipped offsite well within 30 years after expiration of these reactors' OLs. The same would be true of the spent fuel discharged from any new generation of reactor designs.

In sum, although some uncertainty in total spent fuel projections does arise from such developments as utilities' planning renewal of OLs for an additional 20 to 30 years, the Commission believes that this Waste Confidence review need not at this time consider the institutional uncertainties arising from having to restart a second repository program. Even if work on the second repository program is not begun until 2010 as contemplated under current law, there is sufficient assurance that a second repository will be available in a timeframe that would not constrain the removal of spent fuel from any reactor within 30 years of its licensed life for operation.

II.B.3. Are early slippages in the DOE repository program milestones

significant enough to affect the Commission's confidence that a repository will be available when needed for health and safety reasons?

The 2007-2009 timeframe imposed on the Commission by the May 23, 1979 remand by the Court of Appeals was based on the scheduled expiration of the OLs for the Vermont Yankee and Prairie Island nuclear reactors. The specific issues remanded to the Commission were: (1) whether there is reasonable assurance that an offsite storage solution will be available by the years 2007-2009 (the expiration of the plants' operating licenses); and, if not, (2) whether there is reasonable assurance that the fuel can be stored safely at the sites beyond those dates.

There was no finding by the Court that public health and safety required offsite storage or disposal by 2007-2009. In directing the Commission to address the safety of at-reactor storage beyond 2007-2009, the Court recognized the possibility that an offsite storage or disposal facility might not be available by then.

The Commission has not identified a date by which a repository must be available for health and safety reasons. Taking into account institutional requirements for spent fuel storage, the Commission found, under Finding 3 in the 1984 Waste Confidence Decision, that spent fuel would be safely managed until sufficient repository capacity is available. The Commission also found, however, that in effect, under the second part of Finding 2, safe management would not need to continue for more than 30 years beyond expiration of any reactor's OL, because sufficient repository capacity was expected to become available within those 30 years. Considering that spent fuel would not have to be stored more than 30 years after any reactor's 40-year OL expiration, and taking into account the technical requirements for such storage, the Commission went on to determine under Finding 4 that, in effect, spent fuel could be safely stored for at least 70 years after discharge from a reactor. Thus, the Commission's 1984 Decision did not establish a time when sufficient repository capacity would be required; it established a minimum period during which storage would continue to be safe and environmentally acceptable pending the expected availability of sufficient repository capacity.

Bearing in mind that reactor facilities were originally designed and OLs issued for a licensed life for operation of 40 years, the Commission is proposing elsewhere in this Federal Register notice a clarifying revision of Finding 4 to say that spent fuel can be safely stored at a reactor for at least 30 years after the "licensed life for operation" of that reactor. Implicitly, the proposed use of the phrase "licensed life for operation" clarifies that the Commission found in 1984 that NRC licensing requirements for reactor facility design, construction, and operation provide reasonable assurance that spent fuel can be stored safely and without significant environmental impacts for at least the first 40 years of the reactor's life. The Commission's proposed finding also implies that, barring any significant and pertinent unexpected developments, neither technical nor institutional constraints would adversely affect this assurance for at least another 30 years after that first 40 years. Another implication of this revised finding is that, where a utility is able to meet NRC requirements to extend that reactor's operating lifetime by license renewal, spent fuel storage for at least 30 years beyond the end of the period of extended life will also be safe and without significant environmental impacts.

In assessing the effect of early slippages in DOE repository program milestones, therefore, the most important consideration is not the earliest date that an operating license actually expired, but the earliest date that an OL was issued. The earliest OL to be issued was for Dresden 1 in 1959, followed by a number of reactors licensed for operation in 1962. The OLs for all of the 111 power reactors now licensed to operate are currently scheduled to expire sometime within the first three decades of the twenty-first century, which is also the period in which their currently licensed life for operation would end. (See *Nuclear Regulatory Commission 1989 Information Digest*, NUREG-1350, Vol. 1, p. 33.) Thus, conservatively assuming here that there will be no license renewals, the earliest timeframe when a repository might be needed to dispose of spent fuel from the majority of reactors is 2029-2050.

As proposed in the first part of Finding 2, the Commission has reasonable assurance that a repository will be available within the first quarter of the twenty-first century. Even if a repository were not available until 2025, this would be several years before the beginning of the earliest timeframe within which, based on an assumed 30-year storage after an assumed 40-year licensed life of reactor operation, a repository might be needed for spent fuel disposal. Thus, early slippages in DOE's program milestones do not affect the Commission's confidence that a repository will be available within that timeframe.

II.B.4. NRC has stated that the 3- to 4-year license application review schedule is optimistic, and that for NRC to meet this schedule, DOE must submit a complete and high-quality license application. In the September 16, 1988 NRC comments to DOE on the Draft 1988 Mission Plan Amendment, the Commission requested that DOE acknowledge its commitment to develop this complete and high-quality application, "even if this would result in longer times to collect the necessary information and subsequent delays in submitting the license application."

Will NRC's emphasis on the completeness and quality of the license application have a significant effect on the timing of the submittal of the license application and subsequent licensing proceeding to grant construction authorization in time for repository availability by 2007-2009?

As the NRC indicated to DOE in NRC's October 25, 1985 comments on the draft PDS, the three-year statutory schedule for the NRC licensing proceeding on the application for construction authorization is optimistic. The Commission has sought ways to improve the prospects for meeting this schedule, for example by developing the LSS for expedited document discovery during the licensing proceeding.

In the same correspondence on the PDS, NRC also stated that the adequacy of the three-year review period depends

on DOE's submittal of a complete and high-quality application. A license application supported by inadequate data may lead to findings during the licensing proceeding that the results of certain tests cannot be admitted as part of the license application. If it is not possible to repeat the tests in question, NRC may have no alternative but to deny the application--with a consequent loss of program momentum and considerable financial cost.

In the November 1989 Reassessment Report, DOE announced extensions in all major repository program milestones. The current target date for repository availability is 2010. In a speech before the 1989 Nuclear Energy Forum, W. Henson Moore, Deputy Secretary of Energy, stated that a permanent repository at Yucca Mountain could not be operational before 2010, under optimum circumstances. The 2010 at-the-earliest timeframe falls outside of the 2007-2009 timeframe for an "offsite storage solution" in the 1979 Court remand which precipitated the NRC's Waste Confidence Proceeding. In the Reassessment Report, DOE noted that in developing its current schedule, certain activities, one of which was NRC's review of the license application, were outside of DOE's control. However, DOE also stated that it would continue its ongoing interactions with NRC and EPA "to reduce the number of unresolved issues remaining at the time of licensing, which should enhance confidence that the license application can be reviewed in three years, as called for in the Nuclear Waste Policy Act." The NRC does not believe that it is likely that NRC's emphasis on completeness and quality of the license application will contribute to substantial delays in submitting the license application and in the licensing proceeding that would delay repository availability much beyond 2010 at the Yucca Mountain site.

In any case, the Commission remains convinced that the benefits to the repository program of submitting a high-quality license application would outweigh the cost of delay in preparing the application. NRC has always placed great emphasis on early resolution of potential licensing issues in the interest of expeditious review of the license application and timely repository availability. It is in the same spirit of timely repository operation that the Commission is urging greater attention to quality than to meeting the schedule for submittal of the license application. NRC believes that a complete and high-quality license application offers the best available assurance that timely repository licensing and operation can be achieved.

In addition to expediting the review of the application, a high-quality license application and site characterization program should enhance overall confidence that any site granted a construction authorization will prove to be reliable during the period of performance confirmation. It will also increase public confidence that the program is being carried out in a thorough and technically sound manner.

II.C. Conclusion on Finding 2

In reexamining the technical and institutional uncertainties surrounding the timely development of a geologic repository since the 1984 Waste Confidence Decision, the Commission has been led to question the conservatism of its expectation that a repository would be available by 2007-2009.

At the time of the 1984 Decision, the Commission said that timely attainment of a repository did not require DOE to adhere strictly to the milestones set out in the NWPA, and there would be delays in some milestones. It did not appear to the Commission at the time that delays of a year or so in meeting any of the milestones would delay the date of repository availability by more than a few years beyond the 1998 deadline specified in the Act.

Since then, however, several developments have made it apparent that delays of more than a few years are to be the norm rather than the exception in the early years of this program. There has been a twelve-year slip in DOE's estimate of repository availability from 1998 to 2010, and DOE has been unable to meet such near-term repository program milestones as excavation of the exploratory shaft and the start of in-situ testing. There remains the possibility that potential repository availability at the Yucca Mountain site will be further delayed due to unforeseen problems during site characterization.

In predicting the timing of repository availability, the suitability of Yucca Mountain should not be assumed. Yucca Mountain is now the only candidate site available; the NWPAA required that DOE terminate site characterization activities at all sites other than the Yucca Mountain site. In effect, the 2007-09 schedule for repository availability in the original Waste Confidence Decision could have been met only if Yucca Mountain survived the repository development process as a licensed site without major delays in site characterization and licensing. If this site were found to be unlicenseable or otherwise unsuitable, characterization would have to begin at another site or suite of sites, with consequent further delay in repository availability. The final decision on the suitability of the site to proceed to licensing and repository development will rest with DOE, but the position of the NRC staff will figure in that decision. The staff will not be able to make a recommendation to a licensing board to authorize repository construction at Yucca Mountain until all site characterization activities have been completed. DOE might thus be unable for several more years to determine whether there will in fact have to be a delay to find and characterize another site.

Another reason the Commission is unwilling to assume the suitability of Yucca Mountain is that NRC must be mindful of preserving all its regulatory options--including a recommendation of license application denial--to assure adequate protection of public health and safety from radiological risk. In our view, it is essential to dispel the notion that for schedular reasons there is no alternative to the currently preferred site. This view is consistent with past Commission statements that the quality of DOE's preparations for a license application should take precedence over timeliness where the two conflict. It is also consistent with the view that because we are making predictions about completion dates for a unique and complex enterprise at least some 20 years hence, it is more reasonable to express the timescale for completion in decades rather than years.

In order to obtain a conservative upper bound for the timing of repository availability, the Commission has made the assumption that the Yucca Mountain site will be found to be unsuitable. If DOE were authorized to initiate site screening for a repository at a different site in the year 2000, the Commission believes it reasonable to expect that a repository would be available by the year 2025. This estimate is based on the DOE position that site screening for a second repository should begin 25 years before the start of waste acceptance.

The consideration of technical and institutional issues presented here has found none that would preclude the availability of a repository within this timeframe. Given DOE's revised schedule, which provides 11 years for site characterization activities instead of six, it is possible that the Yucca Mountain site could be found unsuitable after the year 2000. In this case, DOE would have fewer than 25 years to initiate site screening and develop a repository for availability by 2025. The NRC will evaluate the likelihood of this

development during the next scheduled review of the Waste Confidence Decision in 1999.

For the second part of its 1984 finding on repository availability, the Commission found reasonable assurance that sufficient repository capacity will be available within 30 years beyond expiration of any reactor OL to dispose of existing commercial high level waste and spent fuel originating in that reactor and generated up to that time. The Commission believes that this finding should also be modified in light of developments since 1984.

When the Commission made this finding, it took into consideration both technical and institutional concerns. The technical concern centered on the ability of the spent fuel and the engineered at-reactor storage facilities to meet the requirements for extended post-operational storage before shipment for disposal. The institutional question concerned whether the utility currently responsible for post-operational at-reactor storage, or some substitute organization, would be able to assure the continued safety of this storage.

The principal new developments since 1984 that bear on these questions are: (1) that dry spent fuel storage technologies have become operational on a commercial scale; and (2) that several utilities are proceeding with plans to seek renewals of their OLs, with appropriate plant upgrading, for an additional period up to 30 years beyond the 40-year term of their current licenses. The accumulation of operating experience with dry-cask storage, a technology requiring little active long-term maintenance, provides additional assurance that both the technical and institutional requirements for extended post-operational spent fuel storage will be met. License renewals, however, would have the effect of increasing requirements for both the quantity and possibly the duration of storage. If the Commission were to grant 30-year license renewals, the total operating life of some reactors could be 70 years, so that the spent fuel initially generated in such reactors would have to be stored for about 100 years, if a repository were not available until 30 years after the expiration of their last OLs. This raises the question as to whether that spent fuel, and the hardware and civil engineering structures for storing it, can continue to meet NRC requirements for an additional 30 years beyond the period the Commission supported in 1984.

For all the reasons cited in the discussion of Finding 4, the Commission believes there is ample technical basis for confidence that spent fuel can be stored safely and without significant environmental impact at these reactors for at least 100 years. If a repository were available within the first quarter of the twenty-first century, the oldest spent fuel could be shipped off the sites of all currently operating reactors well before the spent fuel initially generated in them reached the age of 100 years.

The need to consider the institutional aspects of storage beyond 30 years after OL expiration was not in evidence in 1984 because the Commission was confident that at least one repository would be available by 2007-2009. On that schedule, waste acceptance of spent fuel from the first reactor whose operating license had expired (Indian Point 1, terminated in 1980) could have begun within 30 years of expiration of that license. If a repository does not prove to be available until 2025, however, it would not be available within 30 years of the time that OLs could be considered effectively to have expired for Indian Point 1 and the three other plants with spent fuel onsite that were retired before the end of their licensed life for reactor operation. The same would be true of any additional reactors prematurely retired between now and 1995, when the 30-year clock starts for the availability of a repository by 2025. Premature shutdowns notwithstanding, the Commission has reasons to be assured that the spent fuel at all of these reactors will be stored safely and without significant environmental impact until sufficient repository capacity becomes available.

Considering first the technical reasons for this assurance, it is important to recognize that each of these reactors and its spent fuel storage installation were originally licensed in part on the strength of the applicant's showing that the systems and components of concern were designed and built to assure safe operation for 40 years under expected normal and transient severe conditions. All of the currently retired reactors have a significant portion of that 40-year expected life remaining, and all have only small quantities of spent fuel onsite in storage installations that were licensed to withstand considerably larger thermal and radiation loadings from much greater quantities of spent fuel. Of the four reactors currently retired with spent fuel onsite, the two with far the longest terms of operation, Lacrosse and Dresden, were operated for 19 and 18 years, respectively.

For the continued safe management of the spent fuel in storage installations at any existing or potential prematurely retired plant, the Commission believes it can reasonably rely on the continued structural and functional integrity of the plant's engineered storage installations for at least the balance of its originally licensed life as if the OL were still in effect. This is to say that for the purposes of Finding 2, no foreseeable technical constraints have arisen to disturb the Commission's assurance that spent fuel storage at any reactor will remain safe and environmentally acceptable for at least 30 years after its licensed life for operation, regardless of whether its OL has been terminated at an earlier date.

The Commission also sees no insurmountable institutional obstacles to the continued safe management of spent fuel during the remainder of any shutdown reactor's initially licensed life for operation, or for at least 30 years thereafter. Because there will still be an NRC possession license for the spent fuel at any reactor that has indefinitely suspended operations, the Commission will retain ample regulatory authority to require any measures, such as removal of the spent fuel remaining in storage pools to passive dry storage casks, that might appear necessary after an OL expires. Even if a licensed utility were to become insolvent, and responsibility for spent fuel management were transferred to DOE earlier than is currently planned, the Commission has no reason to believe that DOE would be unable to carry out any safety-related measures NRC considers necessary. Thus, in the case of a premature reactor retirement, the Commission has an adequate basis, on both technical and institutional grounds, for reasonable assurance that spent fuel can be stored safely and without significant environmental impacts for at least 30 years beyond not only the actual end of that reactor's OL, but the end of its originally licensed life for operation.

In sum, considering developments since 1984 in the repository development program, in the operating performance of U.S. power reactors, and in spent fuel storage technology, the Commission finds that: (1) the overall public health, safety, and environmental impacts of the possible unavailability of a repository by 2007-2009 would be insignificant; and (2) neither 30-year renewals of reactor licenses nor a delay in repository availability to 2025 will result in significant safety or environmental impacts from extended post-operational spent fuel storage.

The Commission finds ample grounds for its proposed revised findings on the expected availability of a repository. The institutional support for the repository program is well-established. A mechanism for funding repository

program activities is in place, and there is a provision in the NWPA for adjusting, if necessary, the fee paid by utilities into this fund. Congress has continued to provide support for the repository program in setting milestones, delineating responsibilities, establishing advisory bodies, and providing a mechanism for dealing with the concerns of States and affected Indian tribes.

Technical support for extended spent fuel storage has improved since 1984. Considering the growing availability, reasonable cost, and accumulated operating experience with new dry cask spent fuel storage technology since then, the Commission now has even greater assurance that spent fuel can be stored safely and without significant environmental impact for at least 30 years after the expected expiration of any reactor's OL. Where a reactor's OL has been terminated before the expected expiration date, the Commission has an adequate basis to reaffirm what was implicit in its initial concept, namely: that regardless of the actual date when the reactor's operating authority effectively ended, spent fuel can be stored safely and without significant environmental impacts for at least 30 years beyond that reactor's licensed life for operation.

There is thus no foreseeable health and safety or environmental requirement that a repository be made available within the 2007-2009 timeframe at issue in the Commission's original proceeding.

Indeed, the Commission sees important NRC mission-related grounds for avoiding any statement that repository operation by 2007-2009 is required. Geologic disposal of high-level radioactive wastes is an unprecedented endeavor. It requires reliable projections of the waste isolation performance of natural and engineered barriers over millennia. After the repository is sealed, retrieval of the emplaced wastes will no longer be practicable, and the commitment of wastes to that site will, by design, be irreversible. In DOE's testing, both in the laboratory and at the candidate repository site, in its development of facility and waste-package designs, and in all other work to demonstrate that NRC requirements will be met for a repository at Yucca Mountain, the Commission believes that the confidence of both NRC and the public depends less on meeting the schedule for repository operation than on meeting safety requirements and doing the job right the first time. Thus, given the Commission's assurance that spent fuel can safely be stored for at least 100 years if necessary, it appears prudent for all concerned to prepare for the better-understood and more manageable problems of storage for a few more years in order to provide additional time to assure the success of permanent geologic disposal.

This is not to say that the Commission is unsympathetic to the need for timely progress toward an operational repository. It is precisely because NRC is so confident of the national commitment to achieve early repository operation that the Commission believes it no longer need add its weight to the considerable pressures already bearing on the DOE program. There is ample institutional impetus on the part of others, including Congress, the nuclear power industry, State utility rate regulatory bodies, and consumers of nuclear-generated power, toward DOE achievement of scheduled program milestones. With continuing confidence in the technical feasibility of geologic disposal, the Commission has no reason to doubt the institutional commitment to achieve it in a timeframe well before it might become necessary for safety or environmental reasons. Indeed, the Commission believes it advisable not to attempt in this review a more precise NRC estimate of the point at which a repository will be needed for radiological safety or environmental reasons, lest this estimate itself undermine the commitment to earlier achievement of repository operations.

To find reasonable assurance that a repository will be available by 2007-2009, however, is a different and more consequential proposition in the context of this review. In light of the delays the program has encountered since its inception, and the regulatory need to avoid a premature commitment to the Yucca Mountain site, the Commission could not prudently describe a basis for assurance that the previous DOE schedule for repository operation in 2003 would not slip another four to six years under any reasonably foreseeable circumstances. The NRC believes it is more realistic to expect that a repository at the Yucca Mountain site could be available by the year 2010 or a few years thereafter, if the Yucca Mountain site is found to be suitable. This revised estimate, however, could too easily be misinterpreted as an NRC estimate of the time at which continued spent fuel storage at these sites would be unsafe or environmentally significant. The Commission's enhanced confidence in the safety of extended spent fuel storage provides adequate grounds for the view that NRC need not at this time define more precisely the period when, for reasons related to NRC's mission, a permanent alternative to post-operational spent fuel storage will be needed. The Commission therefore proposes the following revision of its original Finding on when sufficient repository capacity will be available:

The Commission finds reasonable assurance that at least one mined geologic repository will be available within the first quarter of the twenty-first century, and sufficient repository capacity will be available within 30 years beyond the licensed life for operation (which may include the term of a revised or renewed license)[1] of any reactor to dispose of the commercial high-level radioactive waste and spent fuel originating in such reactor and generated up to that time.

Reaffirmed Finding 3: The Commission finds reasonable assurance that high-level radioactive waste and spent fuel will be managed, in a safe manner until sufficient repository capacity is available to assure the safe disposal of all high-level waste and spent fuel.

III.A. Issues Considered in Commission's 1984 Decision on Finding 3

In the Commission's discussion of Finding 3 in its Waste Confidence Decision (49 FR 34658, August 31, 1984), in Section 2.3 >Third Commission Finding,' the Commission stated,

Nuclear power plants whose operating licenses expire after the years 2007-09 will be subject to NRC regulation during the entire period between their initial operation and the availability of a waste repository. The Commission has reasonable assurance that the spent fuel generated by these licensed plants will be managed by the licensees in a safe manner. Compliance with the NRC regulations and any specific license conditions that may be imposed on the licensees will assure adequate protection of the public health and safety. Regulations primarily addressing spent fuel storage include 10 CFR Part 50 for storage at the reactor facility and 10 CFR Part 72 for storage in independent spent fuel storage installations (ISFSIs). Safety and environmental issues involving such storage are addressed in licensing reviews under both Parts 50 and 72, and continued storage operations are audited and inspected by NRC. NRC's experience in more than 80 individual evaluations of the safety of spent fuel storage shows that significant releases of radioactivity from spent fuel under licensed storage conditions are extremely remote.

Some nuclear power plant operating licenses expire before the years 2007-09. For technical, economic or other reasons, other plants may choose, or be forced to terminate operation prior to 2007-09 even though their

[1] The parenthetical phrase "which may include the term of a revised or renewed license" has been added to revised Finding 2 to make it consistent with revised Finding 4.

operating licenses have not expired. For example, the existence of a safety problem for a particular plant could prevent further operation of the plant or could require plant modifications that make continued plant operation uneconomic. The licensee, upon expiration or termination of its license, may be granted (under 10 CFR Part 50 or Part 72) a license to retain custody of the spent fuel for a specified term (until repository capacity is available and the spent fuel can be transferred to DOE under Sec. 123 of the Nuclear Waste Policy Act of 1982) subject to NRC regulations and license conditions needed to assure adequate protection of the public. Alternatively, the owner of the spent fuel, as a last resort, may apply for an interim storage contract with DOE, under Sec. 135(b) of the Act, until not later than 3 years after a repository or monitored retrievable storage facility is available for spent fuel. For the reasons discussed above, the Commission is confident that in every case the spent fuel generated by those plants will be managed safely during the period between license expiration or termination and the availability of a mined waste repository for disposal.

Even if a repository does not become available until 2025, nothing has occurred during the five years since its original Decision to diminish the Commission's confidence that high-level waste and spent fuel will be managed in a safe manner until a repository is available. The same logic just stated continues to apply through the first quarter of the twenty-first century. NRC regulations remain adequate to assure safe storage of spent fuel and radioactive high-level waste at reactors, at independent spent fuel storage installations (ISFSIs), and in an MRS until sufficient repository capacity is available.

10 CFR subsection 72.42(a) provides for renewal of licensed storage at ISFSIs for additional 20-year periods for interim storage, or for additional 40-year periods for monitored retrievable storage of spent fuel and solidified radioactive high-level waste if an MRS facility is constructed, licensed, and operated. This would ensure that spent fuel and solidified high-level waste, if any were to be delivered to an MRS facility, would remain in safe storage under NRC regulation throughout its storage. The Commission has also published for public comment a proposed amendment to part 72 to issue a general license to reactor licensees to use approved spent fuel storage casks at reactor sites. Currently, the Commission is considering the draft final amendment for this rulemaking action. If this amendment is promulgated, no specific part 72 license would be required. Operating license holders would register with NRC to use approved casks on their sites

Spent fuel may continue to be stored in the reactor spent fuel pool under a part 50 "possession only" license after the reactor has ceased operating. In addition, DOE's policy of disposing of the oldest fuel first, as set forth in its Annual Capacity Report, makes it unlikely that any significant fraction of total spent fuel generated will be stored for longer than the 30 years beyond the expiration of any operating reactor license. This expectation, established in the Commission's original proceeding, continues to be reasonable, even in the event that a repository is not available until some time during the first quarter of the twenty-first century. Even in the case of premature shutdowns, where spent fuel is most likely to remain at a site for 30 years or longer beyond OL expiration (see Finding 2, previously discussed), the Commission has confidence that spent fuel will be safely managed until safe disposal is available.

Until the reactor site has been fully decommissioned, and spent fuel has been transferred from the utility to DOE as required by NRC regulations, the licensee remains responsible to NRC. Furthermore, under 10 CFR subsection 50.54bb, originally issued in final form by the Commission with its 1984 Waste Confidence Decision, a reactor licensee must provide to NRC, five years before expiration of an OL, notice of plans for spent fuel disposition. Accordingly, the Commission concludes that nothing has changed since the enactment of the Nuclear Waste Policy Act of 1982 and the Waste Confidence Decision in August 1984 to diminish the Commission's "...reasonable assurance that high-level radioactive waste and spent fuel will be managed in a safe manner until sufficient repository capacity is available...."

Pursuant to the NWPA, the Commission issued in final form 10 CFR part 53, "Criteria and Procedures for Determining Adequacy of Available Spent Nuclear Fuel Storage Capacity," addressing the determination of need, if any, for DOE interim storage. No applications were received by the June 30, 1989 NWPA deadline incorporated into the Commission's rule, and it seems unlikely that any applications will be made to NRC for interim storage by DOE. Even if NRC had made an exception for a late application, a determination would have to have been made before January 1, 1990 to comply with the NWPA.

III.B. Relevant Issues That Have Arisen since the Commission's Original Decision on Finding 3

Although a DOE facility may not be available to enable the Department to begin accepting spent fuel in 1998, as currently provided in the contracts under the NWPA, the Commission's confidence in safe storage is unaffected by any potential contractual dispute between DOE and spent fuel generators and owners as to responsibility for spent fuel storage. In the event that DOE does not take title to spent fuel by this date, a licensee under either 10 CFR part 50 or part 72 cannot abandon spent fuel in its possession.

The Commission recognizes that the NWPA limitation of 70,000 MTHM for the first repository will not provide adequate capacity for the total amount of spent fuel projected to be generated by all currently operating licensed reactors. The NWPAA effectively places a moratorium on a second repository program until 2007-2010. Either the first repository must be authorized and able to provide expanded capacity sufficient to accommodate the spent fuel generated, or there must be more than one repository. Since Congress specifically provided in the NWPAA for a first repository, and required DOE to return for legislative authorization for a second repository, the Commission believes that Congress will continue to provide institutional support for adequate repository capacity.

The Commission's confidence about the availability of repository capacity is not affected by the possibility that some existing reactor licenses might be renewed to permit continued generation of spent fuel at these sites. Because only two reactor licenses are scheduled to expire before 2003, the impact of license renewals (a matter not considered in the Commission's 1984 Decision) will have no significant effect within the first quarter of the twenty-first century on scheduling requirements for a second repository. Renewals may slightly alleviate the need for a second repository in the short term, because spent fuel storage capacity will be expanded for extended storage at these reactor sites. Over the longer term, renewals might increase spent fuel generation well into the latter half of the twenty-first century. Nonetheless, nothing in this situation diminishes the Commission's assurance that safe storage will be made available as needed.

In summary, the Commission finds no basis for changing the Third Finding in its Waste Confidence Decision. The Commission continues to find "...reasonable assurance that high-level radioactive waste and spent fuel will be managed in a safe manner until sufficient repository capacity is

available to assure the safe disposal of all high-level waste and spent fuel."

Original Finding 4: The Commission finds reasonable assurance that, if necessary, spent fuel generated in any reactor can be stored safely and without significant environmental impacts for at least 30 years beyond the expiration of that reactor's operating license at that reactor's spent fuel storage basin, or at either onsite or offsite independent spent fuel storage installations.

Revised Finding 4: The Commission finds reasonable assurance that, if necessary, spent fuel generated in any reactor can be stored safely and without significant environmental impacts for at least 30 years beyond the licensed life for operation (which may include the term of a revised or renewed license) of that reactor at its spent fuel storage basin, or at either onsite or offsite independent spent fuel storage installations.

IV.A. Issues Considered in Commission's 1984 Decision on Finding 4

In the Commission's discussion of Finding 4 in its Waste Confidence Decision (49 FR 34658; August 31, 1984) section 2.4 "Fourth Commission Finding," the Commission said that:

> Although the Commission has reasonable assurance that at least one mined geologic repository will be available by the years 2007-09, the Commission also realizes that for various reasons, including insufficient capacity to immediately dispose of all existing spent fuel, spent fuel may be stored in existing or new storage facilities for some periods beyond 2007-09. The Commission believes that this extended storage will not be necessary for any period longer than 30 years beyond the term of an operating license. For this reason, the Commission has addressed on a generic basis in this decision the safety and environmental impacts of extended spent fuel storage at reactor spent fuel basins or at either onsite or offsite spent fuel storage installations. The Commission finds that spent fuel can be stored safely and without significant environmental impacts for at least 30 years beyond the expiration of reactor operating licenses. To ensure that spent fuel which remains in storage will be managed properly until transferred to DOE for disposal, the Commission is proposing an amendment to its regulations (10 CFR Part 50). The amendment will require the licensee to notify the Commission, five years prior to expiration of its reactor operating license, how the spent fuel will be managed until disposal.
>
> The Commission's finding is based on the record of this proceeding which indicates that significant releases of radioactivity from spent fuel under licensed storage conditions are highly unlikely. It is also supported by the Commission's experience in conducting more than 80 individual safety evaluations of storage facilities.
>
> The safety of prolonged spent fuel storage can be considered in terms of four major issues: (a) The long-term integrity of spent fuel under water pool storage conditions, (b) structure and component safety for extended facility operation, (c) the safety of dry storage, and (d) potential risks of accidents and acts of sabotage at spent fuel storage facilities.

For reasons discussed above, the Commission arrived at a provisional figure of 70 years or more for storage (i.e., a 40-year reactor OL span, plus 30 years or more).

The 70-year-plus estimate is supported by oral testimony from the nuclear industry to the Commission in the Waste Confidence Proceeding. (See Transcript of Commission Meeting, "In the Matter of: Meeting on Waste Confidence Proceeding," January 11, 1982, Washington, DC, pp. 148-160). This testimony specifically addressed safety issues related to water pool storage of spent fuel and supported the position that spent fuel could be stored for an indefinite period, citing the industry's written submittal to the Commission in the proceeding. (See "The Capability for the Safe Interim Storage of Spent Fuel" (Document 4 of 4), Utility Nuclear Waste Management Group and Edison Electric Institute, July 1980). Some of this material alluded to in the oral testimony was subsequently referenced by the Commission in its discussion of water pool storage issues and its Fourth Finding of reasonable assurance that spent fuel and high level waste "...will be managed in a safe manner." (See 49 FR 34658 at pp. 34681-2, August 31, 1984).

If a reactor with a 40-year initial license were to have that license renewed for another 30 years, the Commission believes that the spent fuel generated at that reactor can be safely stored for at least several decades past the end of the 70-year operating period. Adding to these 70 years the expected 30-year post-OL period during which the Commission believes, under Finding 2, that sufficient repository capacity will be made available for any reactor's spent fuel, the total storage time would be about 100 years.

In making the original Fourth Finding, the Commission did not determine that for technical or regulatory reasons, storage would have to be limited to 70 years. This is apparent from the Commission's use of the words "...for *at least* 30 years beyond the expiration of that reactor's operating license...[emphasis added]." Similarly, in using the words "at least" in its revised Finding Four, the Commission is not suggesting 30 years beyond the licensed life for operation (which may include the term of a revised or renewed license) represents any technical limitation for safe and environmentally benign storage. Degradation rates of spent fuel in storage, for example, are slow enough that it is hard to distinguish by degradation alone between spent fuel in storage for less than a decade and spent fuel stored for several decades.

The Commission's revised Finding here is meant to apply both to wet storage in reactor pools and dry storage in engineered facilities outside the reactor containment building. Both dry and wet storage will be discussed in detail next.

Since the original Waste Confidence Decision, which found that material degradation processes in dry storage were well-understood, and that dry-storage systems were simple, passive, and easily maintained, NRC and ISFSI operators have gained experience with dry storage which confirms the Commission's 1984 conclusions. NRC staff safety reviews of topical reports on storage-system designs, the licensing and inspection of storage at two reactor sites, and NRC promulgation of the part 72 amendment for MRS, have significantly increased the agency's understanding of and confidence in dry storage.

Under NWPA Section 218(a), DOE has carried out spent fuel storage research and development as well as demonstration of dry cask storage at its Idaho National Engineering Laboratory. Demonstration has been carried out for metal casks under review or previously reviewed by NRC staff. DOE has also provided support to utilities in dry storage licensing actions (see Godlewski, N.Z., "Spent Fuel Storage--An Update," *Nuclear News*, Vol. 30, No. 3, March 1987, pp.47-52).

Dry storage of spent fuel has become an available option for utilities, with at-reactor dry storage licensed and underway at three sites: the H. B. Robinson Steam Electric Plant, Unit 2, in South Carolina, and the Surry Nuclear Station in Virginia. A license was recently granted for a modular system at Duke Power Company's Oconee Nuclear Station site. New applications have been received in 1989 for CP&L's Brunswick site, for the Baltimore Gas and Electric Company's Calvert Cliffs site, and in 1990 for Consumer Power Company's Palisades site. Based on utility statements of intent, and projections of need for additional storage capacity at reactor sites, the NRC staff expects numerous applications from utilities over the next decade (see "Final Version Dry Cask Storage Study," DOE/RW-0220, February 1989).

Since the original Waste Confidence finding, the Commission has reexamined long-term spent fuel storage in issuing an amendment to 10 CFR part 72 to address the storage of spent fuel and high-level radioactive waste in an MRS, as envisioned by Congress in Section 141 of the NWPA. Under this rule, storage in an MRS is to be licensed for a period of 40 years, with the possibility for renewal. The Commission determined not to prepare an environmental impact statement for the proposed amendments to 10 CFR part 72, however. (See 53 FR 31651, p. 31657; August 19, 1988.) An environmental assessment and finding of no significant impact were issued because the Commission found that the consequences of long-term storage are not significant. The environmental assessment for 10 CFR part 72, "Licensing Requirements for the Independent Storage of Spent Fuel and High-Level Radioactive Waste," NUREG-1092, assessed dry storage of spent fuel for a period of 70 years after receipt of spent fuel from a reactor:

The basis chosen for evaluating license requirements for the long-term storage of spent nuclear fuel and high-level radioactive waste in an MRS is an installation having a 70-year design lifetime and a 70,000 MTU storage capability. This assessment focuses on the potential environmental consequences for a long-term storage period, a period for which the Commission needs to assure itself of the continued safe storage of spent fuel and high-level radioactive waste and the performance of materials of construction. This means the reliability of systems important to safety needs to be established to ensure that long-term storage of spent fuel and HLW does not adversely impact the environment.

For example, the staff needs to establish that systems, such as concrete shielding, have been evaluated to determine how their physical properties withstand the consequences of irradiation and heat flux for about a 70-year period. The Commission addressed structure and component safety for extended operation for storage of spent fuel in reactor water pools in the matter of waste confidence rulemaking proceeding. The Commission's preliminary conclusion is that experience with spent fuel storage provides an adequate basis for confidence in the continued safe storage of spent fuel for at least 30 years after expiration of a plant's license. The Commission is therefore confident of the safe storage of spent fuel for at least 70 years in water pools at facilities designed for a 40-year lifetime. The Commission also stated that its authority to require continued safe management of spent fuel generated by licensed plants protects the public and assures them the risks remain acceptable. In consideration of the safety of dry storage of spent fuel, the Commission's preliminary conclusions were that [its] confidence in the extended dry storage of spent fuel is based on a reasonable understanding of the material degradation processes, together with the recognition that dry storage systems are simpler and more readily maintained. In response to Nuclear Waste Policy Act of 1982 authorizations, the Commission noted; >...the Commission believes the information above [on dry spent fuel storage research and demonstration] is sufficient to reach a conclusion on the safety and environmental effects of extended dry storage. All areas of safety and environmental concern (e.g., maintenance of systems and components, prevention of material degradation, protection against accidents and sabotage) have been addressed and shown to present no more potential for adverse impact on the environmental and the public health and safety than storage of spent fuel in water pools.' At this time, the Commission is confident it can evaluate the long-term integrity of material for constructing an installation and provide the needed assurance for safe storage of spent fuel and HLW to establish the licensibility of an MRS over extended periods of time. The MRS fuel storage concepts discussed here for revision of 10 CFR Part 72 covers only dry storage concepts. [References omitted]

The Commission believes that its 1984 Fourth Finding should be changed to reflect the environmental assessment in the 10 CFR part 72 MRS rulemaking and other evidence that spent fuel can be stored, safely and without significant environmental impact, for extended periods. Although the Commission does not believe storage in excess of a century to be likely, with or without an MRS, there is the potential for storage of spent fuel for times longer than 30 years beyond the expiration of an initial, extended, or renewed reactor OL, if a reactor operating under such a license were prematurely shut down. The Commission does not, however, see any significant safety or environmental problems associated with storage for at least 30 years after the licensed life for operation of any reactor, even if this effectively means storage for at least 100 years, in the case of a reactor with a 70-year licensed life for operation.

Under the environmental assessment for the MRS rule, the Commission has found confidence in the safety and environmental insignificance of dry storage of spent fuel for 70 years following a period of 70 years of storage in spent fuel storage pools. Thus, this environmental assessment supports the proposition that spent fuel may be stored safely and without significant environmental impact for a period of up to 140 years if storage in spent fuel pools occurs first and the period of dry storage does not exceed 70 years.

The Commission has also found that experience with water-pool storage of spent fuel continues to confirm that pool storage is a benign environment for spent fuel that does not lead to significant degradation of spent fuel integrity. Since 1984, utilities have continued to provide safe additional reactor pool storage capacity through reracking, with over 110 such actions now completed. The safety of storage in pools is widely recognized among cognizant professionals. Specifically, the Commission notes one expert's view that:

During the last 40 years there has been very positive experience with the handling and storing of irradiated fuel in water; thus wet storage is now considered a proved technology. There is a substantial technical basis for allowing spent fuel to remain in wet storage for several decades. For the past two decades, irradiated Zircaloy-clad fuel has been handled and stored in water. There continues to be no evidence that Zircaloy-clad fuel degrades significantly during wet storage--this includes: fuel with burnups as high as 41,000 MWd/MTU; continuous storage of low-burnup fuel for as long as 25 years; and irradiation of fuel in reactors for periods up to 22 years. Cladding defects have had little impact during wet storage, even if the fuel is uncanned. [References omitted.] [See Bailey, W.J. and Johnston, Jr. A.B., *et al.*, "Surveillance of LWR Spent Fuel in Wet Storage," NP-3765, Electric Power Research Institute (EPRI), October 1984, pp. 2-10.]

This last conclusion has been reaffirmed by the same authors, who recently wrote: "There continues to be no evidence that LWR spent fuel with Zircaloy or stainless steel cladding degrades significantly during wet storage [EPRI 1986; International Atomic Energy Agency (IAEA) 1982]." (See "Results of Studies on the Behavior of Spent Fuel in Storage," Journal of the Institute of Nuclear Materials Management, Vol. XVI, No. 3, April 1988, p. 27.IV A).

In addition to the confidence that the spent fuel assemblies themselves will not degrade significantly in wet storage, there is confidence that the water pools in which the assemblies are stored will remain safe for extended periods:

As noted in the recent IAEA world survey, the 40 years of positive experience with wet storage illustrates that it is a fully-developed technology with no associated major technological problems. Spent fuel storage pools are operated without substantial risk to the public or the plant personnel. There is substantial technical basis for allowing spent fuel to remain in wet storage for several decades. Minor, but repairable, problems have occurred with spent fuel storage pool components such as liners, racks, and piping. [See Bailey, W.J., and Johnson, Jr., A.B., *et al.*, "Surveillance of LWR Spent Fuel in Wet Storage," EPRI NP-3765, prepared by Battelle Pacific Northwest Laboratories, Final Report, October 1984, p. 6-1.]

The studies just cited also support the view that rates of uniform corrosion of spent fuel cladding in storage pools are low over time. Localized corrosion on

cladding surfaces has also been gradual and can be expected to remain so. Cladding that has undergone damage while in the reactor core has not resulted in significant releases of radioactivity when stored in pools. Furthermore, the operational experience accumulated since the 1984 Waste Confidence Decision and NRC experience in licensing and inspection reinforce the conclusions in that Decision that wet storage involves a relatively benign environment. There are no driving mechanisms, such as temperature and pressure, to degrade storage structures or components or the fuel itself, or to spread contamination. Degradation mechanisms are gradual and well understood; they allow ample time for remedial action, including repair or replacement of any failing systems. This extensive experience adequately supports predictions of long-term integrity of storage basins.

The Commission also notes the endorsement of this basic confidence by cognizant professional organizations:

The American Nuclear Society issued a policy statement [ANS 1986] in 1986 regarding storage of spent nuclear fuel. The statement indicates that continued wet storage of spent fuel at nuclear power plant sites until the federal government accepts it under existing contracts with the utilities is safe, economical and environmentally acceptable. [See Gilbert, E.R., Bailey, W.J., and Johnson, A.B., "Results of Studies on the Behavior of Spent Fuel in Storage," Journal of the Institute of Nuclear Materials Management, Vol. XVI, No. 3, April 1988, p. 27.IV A).]

The Commission is aware that in December 1986 at the Hatch nuclear power plant, radioactive water leaked out of a spent fuel transfer canal between spent fuel pools. Contaminated water drained into a swamp and from there into the Altamaha River. Also, more recently, on August 16, 1988, a spent fuel pool cooling pump failed at the Turkey Point nuclear power plant, causing about 3000 gallons of radioactive water to leak into the spent fuel pool heat exchanger room. Approximately 1500 gallons leaked from that room to adjacent areas. Approximately six to seven gallons entered the plant intake canal via storm drains. There was no radiation release offsite in this event. However, the shoes and clothing of approximately 15 workers were contaminated.

The occurrence of operational events like these have been addressed by the NRC staff at the plants listed. The staff has taken inspection and enforcement actions to reduce the potential for such operational occurrences in the future.

The NRC staff has spent several years studying in detail catastrophic loss of reactor spent fuel pool water possibly resulting in a fuel fire in a dry pool, and recently participated in litigation over this issue relative to Vermont Yankee. The 1987 report, "Severe Accidents in Spent Fuel Pools in Support of Generic Safety Issue 82" (NUREG/CR-4982), referred to in Public Citizen's comment represents an early part of the NRC's study. Subsequent study of the consequences and risks due to a loss of coolant water from spent fuel pools was conducted by the NRC, and the results were published in NUREG/CR-5176, "Seismic Failure and Cask Drop Analysis of the Spent Fuel Pools at Two Representative Nuclear Power Plants," January 1989, and NUREG-1353, "Regulatory Analysis for the Resolution of Generic Issue 82, >Beyond Design Basis Accidents in Spent Fuel Pools'," April 1989. These reports were cited in the Commission's Proposed Waste Confidence Decision Review (54 FR 39767-39797, at p.39795, September 28, 1989). Also issued in 1989, as part of the NRC staff's study, was "Value/Impact Analyses of Accident Preventive and Mitigative Options for Spent Fuel Pools" (NUREG/CR-5281).

The primary concern regarding accidents in spent fuel pools is the loss of water and its capability to cool the radioactive fuel. Without sufficient water cooling, some performance assessment models suggest that the fuel's zircaloy cladding may initiate and sustain rapid oxidation (fire) that may spread to adjacent fuel assemblies, with the potential of releasing large amounts of radioactivity.

The analyses reported in these NUREGs indicate that the dominant accident sequence which contributes to risk in a spent fuel pool is gross structural failure of the pool due to seismic events. Risks due to other accident scenarios (such as pneumatic seal failures, inadvertent drainage, loss of cooling or make-up water, and structural failures due to missiles, aircraft crashes and heavy load drops) are at least an order of magnitude smaller. For this study, older nuclear power plants were selected, since the older plants are more vulnerable to seismic-induced failures. The selected plants included the Vermont Yankee and the H.B. Robinson plants.

Although these studies conclude that most of the spent fuel pool risk is derived from beyond design basis earthquakes, this risk is no greater than the risk from core damage accidents due to seismic events beyond the safe-shutdown earthquake. Because of the large inherent safety margins in the design and construction of the spent fuel pool analyzed, it was determined that no action was justified to further reduce the risk (NUREG-1353). As stated in the Preface to NUREG-1353:

This report presents the regulatory analysis, including decision rationale, for the resolution of Generic Issue 82, >Beyond Design Basis Accidents in Spent Fuel Pools.' The object of this regulatory analysis is to determine whether the use of high density storage racks for the storage of spent fuel poses an unacceptable risk to the health and safety of the public. As part of this effort, the seismic hazards for two older spent fuel pools were evaluated. The risk change estimates, value/impact and cost-benefit analyses, and other insights gained during this effort, have shown that no new regulatory requirements are warranted in relation to this generic issue.

Thus, supported by the consistency of NRC experience with that of others, the Commission has concluded that spent fuel can be stored safely and without significant environmental impact, in either wet storage or in wet storage followed by dry storage, for at least 100 years. The Commission considers it unlikely, however, that any fuel will actually remain in wet storage for 100 years or even for 70 years. We anticipate that, consistent with the currently developing trend, utilities will move fuel rods out of spent fuel pools and into dry storage to make room in pools for freshly-discharged spent fuel.

Although the Commission has concluded that reactor spent fuel pools can safely be used to store spent fuel for 100 years, there is no technically compelling reason to use them that long. If reactor licenses are renewed for as long as 30 years, making a total of 70 years of operation, it will be necessary to store the spent fuel discharged at the end of the reactor's operation in a spent fuel pool for several years to allow for radioactive decay and thermal cooling. After this period, the fuel could be placed in dry storage and the spent fuel pool decommissioned. Thus, for most reactors, the most likely maximum period of storage will be well within the extended 30-year post-operational period under the Commission's proposed revision to Finding 4. Moreover, considering that under certain conditions spent fuel can be stored safely and without significant environmental impacts for up to 140 years, the Commission believes there is ample basis for confidence in storage for at least 100 years.

In its 1984 Waste Confidence Decision, the Commission also concluded that "there are no significant additional non-radiological impacts which could adversely affect the environment if spent fuel is stored beyond the expiration of operating

licenses for reactors" (see 49 FR 34658 at p. 34686, August 31, 1984). The Commission did not find anything to contradict this conclusion in its 1988 rulemaking amending 10 CFR part 72 for long-term spent fuel and high-level waste storage at an MRS:

In August 1984, the NRC published an environmental assessment for this proposed revision of Part 72 NUREG-1092, >Environmental Assessment for 10 CFR Part 72, Licensing Requirements for the Independent Storage of Spent Fuel and High-Level Radioactive Waste.' NUREG-1092 discusses the major issues of the rule and the potential impact on the environment. The findings of the environmental assessment are >(1) past experience with water pool storage of spent fuel establishes the technology for long-term storage of spent fuel without affecting the health and safety of the public, (2) the proposed rulemaking to include the criteria of 10 CFR Part 72 for storing spent nuclear fuel and high-level radioactive waste does not significantly affect the environment, (3) solid high-level waste is comparable to spent fuel in its heat generation and in its radioactive material content on a per metric ton basis, and (4) knowledge of material degradation mechanisms under dry storage conditions and the ability to institute repairs in a reasonable manner without endangering the health [and safety] of the public shows dry storage technology options do not significantly impact the environment.' The assessment concludes that, among other things, there are no significant environmental impacts as a result of promulgation of these revisions of 10 CFR Part 72.

Based on the above assessment, the Commission concludes that the rulemaking action will not have a significant incremental environmental impact on the quality of the human environment. [53 FR 31651 at pp. 31657-31658; August 19, 1988.]

Thus, the 1988 amendments to 10 CFR part 72 provide the basis for the Commission to conclude that the environmental consequences of long-term spent fuel storage, including non-radiological impacts, are not significant.

Finally, no considerations have arisen to affect the Commission's confidence since 1984 that the possibility of a major accident or sabotage with offsite radiological impacts at a spent-fuel storage facility is extremely remote. NRC has recently reexamined reactor pool storage safety in two studies, "Seismic Failure and Cask Drop Analyses of the Spent Fuel Pools at Two Representative Nuclear Power Plants" (NUREG/CR-5176) and "Beyond Design Basis Accidents in Spent Fuel Pools" (NUREG-1353). These studies reaffirmed that there are no safety considerations that justify changes in regulatory requirements for pool storage. Both wet- and dry-storage activities have continued to be licensed by the Commission. In its recent rulemaking amending 10 CFR part 72 to establish licensing requirements for an MRS, the Commission did choose to eliminate an exemption regarding tornado missile impact "...to assure designs continue to address maintaining confinement of particulate material." (53 FR 31651, p. 31655, August 19, 1988). However, NRC staff had previously considered tornado missile impacts in safety reviews of design topical reports and in licensing reviews under 10 CFR part 72.

IV.B. Relevant Issues That Have Arisen since the Commission's Original Decision on Finding 4

In its original Finding 4, the Commission found reasonable assurance of safe storage without significant environmental impacts for at least 30 years beyond reactor OL expiration. Delays and uncertainties in the schedule for repository availability since the 1984 Decision have convinced the Commission to allow some margin beyond the scheduled date for repository opening currently cited by DOE. As noted in Finding 2, the Commission has reasonable assurance that at least one repository will be available within the first quarter of the twenty-first century. For all currently operating reactors, this would still be within the period of 30 years from expiration of their OLs, which the Commission previously found to be the minimum period for which spent fuel storage could be considered safe and without significant environmental impact.

Under the NWPA as amended, DOE is authorized to dispose of up to 70,000 MTHM in the first repository before granting a construction authorization for a second. Under existing licenses, projected spent fuel generation could exceed 70,000 MTHM as early as the year 2010. Possible extensions or renewals of OLs also need to be considered in assessing the need for and scheduling the second repository. It now appears that unless Congress lifts the capacity limit on the first repository--and unless this repository has the physical capacity to dispose of all spent fuel generated under both the original and extended or renewed licenses--it will be necessary to have at least one additional repository. Assuming here that the first repository is available by 2025 and has a capacity on the order of 70,000 MTHM, additional disposal capacity would probably not be needed before about the year 2040 to avoid storing spent fuel at a reactor for more than 30 years after expiration of reactor OLs.

Although action on a second repository before the year 2007 would require Congressional approval, the Commission believes that Congress will take the necessary action if it becomes clear that the first repository site will not have the capacity likely to be needed. If DOE were able to address the need for a second repository earlier, for example by initiating a survey for a second repository site by the year 2000, DOE might be able to reduce the potential requirement for extended spent fuel storage in the twenty-first century. The Commission does not, however, find such action necessary to conclude that spent fuel can be stored safely and without significant environmental impact for extended periods.

The potential for generation and onsite storage of a greater amount of spent fuel as a result of the renewal of existing OLs does not affect the Commission's findings on environmental impacts. In Finding 4, the Commission did not base its determination on a specific number of reactors and amount of spent fuel generated. Rather, the Commission took note of the safety of spent fuel storage and lack of environmental impacts overall, noting that individual actions involving such storage would be reviewed. In the event there were applications for renewal of existing reactor OLs, each of these actions would be subject to safety and environmental reviews, with subsequent issuance of an environmental assessment or environmental impact statement, which would cover storage of spent fuel at each reactor site during the period of the renewed license.

The Commission also notes that the amount of spent fuel expected to be discharged by reactors has continued to decline significantly, a trend already noted in the Commission's discussion of its Finding 5 (49 FR 34658 at p. 34687, August 31, 1984). At the time of the Commission's decision, "...the cumulative amount of spent fuel to be disposed of in the year 2000 [was] expected to be 58,000 metric tons of uranium" (see "Spent Fuel Storage Requirements" (Update of DOE/RL-82-17) DOE/RL-83-1, January, 1983). Today, that figure has declined to 40,200 metric tons, the lower reference case which represents the conservative upper bound of commercial nuclear power growth (see "Integrated Data Base for 1989: Spent Fuel and Radioactive Waste Inventories, Projections, and Characteristics," DOE/RW-0006, Rev. 5, November 1989). The amount of spent fuel considered likely to be discharged by the year 2000 in the Commission's 1984 decision will not be attained until the end of calendar year 2010, if then.

The Commission believes that its 1984 Finding 4 should be revised to acknowledge the possibility and assess the safety and environmental impacts of extended storage for periods longer than 70 years. The principal reasons for this proposed revision are that: (1) the long-term material and system degradation effects are well understood and known to be minor; (2) the ability to maintain the system is assured; and (3) the Commission maintains regulatory authority over any spent fuel storage installation.

On the basis of experience with wet and dry spent fuel storage and related rulemaking and licensing actions, the Commission concludes that spent fuel can be safely stored without significant environmental impact for at least 100 years, if necessary. Therefore, the Commission is revising its original Fourth Finding thus: "The Commission finds reasonable assurance that, if necessary, spent fuel generated in any reactor can be stored safely and without significant environmental impacts for at least 30 years beyond the licensed life for operation (which may include the term of a revised or renewed license) of that reactor at its spent fuel storage basin, or at either onsite or offsite independent spent fuel storage installations."

Reaffirmed Finding 5: The Commission finds reasonable assurance that safe independent onsite spent fuel storage or offsite spent fuel storage will be made available if such storage capacity is needed.

V.A. Issues Considered in Commission's 1984 Decision on Finding 5

In its discussion of Finding 5 of its Waste Confidence Decision (49 FR 34658; August 31, 1984), the Commission said that:

> The technology for independent spent fuel storage installations, as discussed under the fourth Commission Finding, is available and demonstrated. The regulations and licensing procedures are in place. Such installations can be constructed and licensed within a five-year time interval. Before passage of the Nuclear Waste Policy Act of 1982 the Commission was concerned about who, if anyone, would take responsibility for providing such installations on a timely basis. While the industry was hoping for a government commitment, the Administration had discontinued efforts to provide those storage facilities.... The Nuclear Waste Policy Act of 1982 establishes a national policy for providing storage facilities and thus helps to resolve this issue and assure that storage capacity will be available.
>
> Prior to March 1981, the DOE was pursuing a program to provide temporary storage in off-site, or away-from-reactor (AFR), storage installations. The intent of the program was to provide flexibility in the national waste disposal program and an alternative for those utilities unable to expand their own storage capacities.
>
> Consequently, the participants in this proceeding assumed that, prior to the availability of a repository, the Federal government would provide for storage of spent fuel in excess of that which could be stored at reactor sites. Thus, it is not surprising that the record of this proceeding prior to the DOE policy change did not indicate any direct commitment by the utilities to provide AFR storage. On March 27, 1981, DOE placed in the record a letter to the Commission stating its decision >to discontinue its efforts to provide Federal government-owned or controlled away-from-reactor storage facilities.' The primary reasons for the change in policy were cited as new and lower projections of storage requirements and lack of Congressional authority to fully implement the original policy.
>
> The record of this proceeding indicates a general commitment on the part of industry to do whatever is necessary to avoid shutting down reactors or derating them because of filled spent fuel storage pools. While industry's incentive for keeping a reactor in operation no longer applies after expiration of its operating license, utilities possessing spent fuel are required to be licensed and to maintain the fuel in safe storage until removed from the site. Industry's response to the change in DOE's policy on federally-sponsored away-from-reactor (AFR) storage was basically a commitment to do what is required of it, with a plea for a clear unequivocal Federal policy.... The Nuclear Waste Policy Act of 1982 has now provided that policy.
>
> The Nuclear Waste Policy Act defines public and private responsibilities for spent fuel storage and provides for a limited amount of federally-supported interim storage capacity. The Act also includes provisions for monitored retrievable storage facilities and for a research development and demonstration program for dry storage. The Commission believes that these provisions provide added assurance that safe independent onsite or offsite spent fuel storage will be available if needed. [References omitted]

The policy set forth in the NWPA regarding interim storage remains in place. Therefore, the Commission's confidence remains unchanged. The only policy change affecting storage involves long-term storage in an MRS. The NWPAA sets schedule restrictions on an MRS by tying it to the repository siting and licensing schedule. These restrictions effectively delay implementation of an MRS. Consequently, its usefulness in providing storage capacity relief to utilities is likely to be lost.

The NWPAA established a Monitored Retrievable Storage Review Commission tasked with preparing a report on the need for an MRS facility as part of the national nuclear waste management system (section 143(a)). In its November 1989 report "Nuclear Waste: Is There a Need for Federal Interim Storage?", the MRS Commission reached the following conclusion:

> An MRS linked as provided in current law would not be justified, especially in light of uncertainties in the completion time for the repository. Consequently, the Commission does not recommend a linked MRS as required by current law and as proposed by DOE.

In the November 1989 Reassessment Report, DOE stated that

> current linkages between the repository and MRS program make it impossible for the DOE to accept waste at an MRS facility on a schedule that is independent from that of the repository. Therefore, the DOE plans to work with the Congress to modify the current linkages between the repository and the MRS facility and to embark on an aggressive program to develop an integrated MRS facility for spent fuel. The DOE believes that if the linkages are modified, it is likely that waste acceptance at an MRS facility could begin by 1998 or soon thereafter.

Although the Commission's confidence in its 1984 Decision did not depend on the availability of an MRS facility, the possibility of such a facility, as provided for in the NWPA, was one way in which needed storage could be made available. The NWPAA makes an MRS facility less likely by linking it to repository development, unless Congress is willing to modify these linkages. The potential impact of the uncertainty surrounding an MRS on the Commission's confidence is, however, more than compensated for by operational and planned spent fuel pool expansions and dry-storage investments by utilities themselves--developments that had not been made operational at the time of the original Waste Confidence Decision. Consequently, the current statutory restrictions that may make an MRS ineffective for timely storage capacity relief are of no consequence for the Commission's finding of confidence that adequate storage capacity will be made available if needed.

Although the NWPAA limits the usefulness of an MRS by linking its availability to repository development, the Act does provide authorization for an MRS facility. The Commission has remained neutral since its 1984 Waste Confidence Decision with respect to the need for authorization of an MRS facility. The Commission does not consider the MRS essential to protect public health and safety. If any offsite storage capacity is required, utilities may make application for a license to store spent fuel at a new site. Consequently, while the NWPAA provision does affect MRS development and therefore can be said to be limiting,

the Commission believes this should not affect its confidence in the availability of safe storage capacity.

V.B. Relevant Issues That Have Arisen since the Commission's Original Decision on Finding 5

DOE will probably not be able to begin operation of a repository before 2010 under current plans, and operation might begin somewhat later. Given progress to date on an MRS, the link between MRS facility construction and repository construction authorization established by the NWPAA, and the absence of other concrete DOE plans to store the spent fuel, it seems unlikely that DOE will meet the 1998 deadline for taking title to spent fuel, unless DOE is successful in its efforts to work with Congress to modify the linkages. (Under section 302(a)(5)(B) of the NWPA, "...the Secretary, beginning not later than January 31, 1998, will dispose of the high-level radioactive waste or spent nuclear fuel [subject to disposal contracts]."') This potential problem does not, however, affect the Commission's confidence that storage capacity will be made available as needed.

The possibility of a dispute between DOE and utilities over the responsibility for providing spent fuel storage will not affect the public health and safety or the environment. Uncertainty as to contractual responsibilities raises questions concerning: (1) who will be responsible; (2) at what point in time responsibility for the spent fuel will be transferred; (3) how the fuel will be managed; (4) how the transfer of management responsibility from the utilities to DOE will take place; and (5) how the cost of DOE storage might differ, if at all, from utility storage. Utilities possessing spent fuel in storage under NRC licenses cannot abrogate their safety responsibilities, however. Until DOE can safely accept spent fuel, utilities or some other licensed entity will remain responsible for it.

Estimates of the amount of spent fuel generated have continued to decline. At the time of the Commission's Decision, the Commission cited in Finding 5 the cumulative figure of 58,000 metric tons uranium of spent fuel generated in the year 2000 (See 49 FR 34658, p. 34697, August 31, 1984.) More recently, DOE estimated 40,200 metric tons the lower reference case which represents the conservative upper bound of commercial nuclear power growth (see "Integrated Data Base for 1989: Spent Fuel and Radioactive Waste Inventories, Projections, and Characteristics," DOE/RW-0006, Rev. 5, November 1989). Although estimates may show an increase at some date well into the twenty-first century if licenses of some reactors are renewed or extended, this possibility does not affect the Commission's confidence in the availability of safe storage capacity until a repository is operational. The industry has made a general commitment to provide storage capacity, which could include away-from-reactor (AFR) storage capacity. To date, however, utilities have sought to meet storage capacity needs at their respective reactor sites. Thus, a new industry application for AFR storage remains only a potential option, which currently seems unnecessary and unlikely.

Utilities have continued to add storage capacity by reracking spent fuel pools, and NRC expects continued reracking where it is physically possible and represents the least costly alternative. Advances in dry-storage technologies and utility plans both have a positive effect on NRC's confidence. At the time the Commission reached its original findings, dry storage of LWR spent fuel was, as yet, unlicensed under 10 CFR part 72, and DOE's dry-storage demonstrations in support of dry-cask storage were in progress at the Idaho National Engineering Laboratory (INEL).

Today, DOE's demonstration efforts have been successful (See Godlewski, N. Z., "Spent Fuel Storage-An Update," *Nuclear News*, Vol. 30, No. 3, March 1987, pp. 47-52, at p. 47.) Dry storage has been licensed at three reactor sites, and three new applications are under review. Dry cask storage is licensed at Virginia Electric Power Company's Surry Power Station site (see License, SNM 2501 under Docket No. 72-2), and dry-concrete module and stainless-steel canister storage is licensed at Carolina Power and Light Company's (CP&L's) H. B. Robinson, Unit 2, site (see License SNM 2502, under Docket No. 72-3). A license was recently granted for a similar modular system at Duke Power Company's Oconee Nuclear Station site. New applications have been received in 1989 for CP&L's Brunswick site, the Baltimore Gas and Electric Company's Calvert Cliffs site, and in 1990 for Consumer Power Company's Palisades site. Applications are also expected for CP&L's Robinson 2 site (at another onsite location to allow for greater storage capacity) and Wisconsin Electric Power Company's Point Beach site. The Tennessee Valley Authority has indicated that it will apply for a licensed dry storage installation at its Sequoyah plant site.

Thus, the successful demonstration by DOE of dry cask technology for various cask types at INEL, utilities' actions to forestall spent fuel storage capacity shortfalls, and the continuing sufficiency of the licensing record for the Commission to authorize increases in at-reactor storage capacity all strengthen the Commission's confidence in the availability of safe and environmentally sound spent fuel storage capacity.

Renewal of reactor OLs will involve consideration of how additional spent fuel generated during the extended term of the license will be stored onsite or offsite. There will be sufficient time for construction and licensing of any additional storage capacity needed.

In summary, the Commission finds no basis to change the Fifth Finding in its Waste Confidence Decision. Changes by the NWPAA, which may lessen the likelihood of an MRS facility, and the potential for some slippage in repository availability to the first quarter of the twenty-first century (see our discussion of Finding 2) are more than offset by the continued success of utilities in providing safe at-reactor-site storage capacity in reactor pools and their progress in providing independent onsite storage. Therefore, the Commission continues to find "...reasonable assurance that safe independent onsite spent fuel storage or offsite spent fuel storage will be made available if such storage is needed."

Dated at Rockville, Maryland, this 11th day of September 1990.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 90-21890 Filed 9-17-90; 8:45 a.m.]

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Federal Register

Tuesday
September 18, 1990

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 3 et al.
Federal Acquisition Regulation (FAR); Final Rule; Technical Amendments and Correction

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 3, 8, 14, 15, 17, 19, 22, 23, 24, 25, 27, 29, 30, 31, 32, 33, 42, 46, 47, 52, and 53

Federal Acquisition Regulation (FAR); Technical Amendments and Correction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule; technical amendments and correction.

SUMMARY: For the purpose of annually revising 48 CFR Ch. 1 (Federal Acquisition Regulation), this document makes editorial changes throughout the FAR to correct errors made as a result of oversights in typesetting and proofing, and to reflect suggestions made by our users, and also corrects a publication in the **Federal Register** on November 28, 1989 (54 FR 48978).

FOR FURTHER INFORMATION CONTACT: Ms. Sharon A. Kiser, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 501–4755.

List of Subjects in 48 CFR Parts 3, 8, 14, 15, 17, 19, 22, 23, 24, 25, 27, 29, 30, 31, 32, 33, 42, 46, 47, 52, and 53

Government procurement.

Dated: September 10, 1990.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 3, 8, 14, 15, 17, 19, 22, 23, 24, 25, 27, 29, 30, 31, 32, 33, 42, 46, 47, 52, and 53 are amended as set forth below:

1. The authority citation for 48 CFR parts 3, 8, 14, 15, 17, 19, 22, 23, 24, 25, 27, 29, 30, 31, 32, 33, 42, 46, 47, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

Technical Amendments to the Code of Federal Regulations

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. Section 3.803 is amended by revising paragraph (b)(3) to read as follows:

3.803 Certification and disclosure.

* * * * *

(b) * * *

(3) A change in the officer(s), employee(s), or Member(s) of Congress contacted to influence or attempt to influence a Federal action.

* * * * *

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.404 [Amended]

3. Section 8.404 is amended in paragraph (b) by removing the acronym "FPMR" and inserting in its place "FIRMR".

PART 14—SEALED BIDDING

4. Section 14.201–2 is amended by revising paragraph (a)(2) to read as follows:

14.201–2 Part I—The Schedule.

* * * * *

(a) * * *

(2) When the SF 33 or SF 1447 is not used, include the following on the first page of the invitation for bids:

(i) Name, address, and location of issuing activity, including room and building where bids must be submitted.

(ii) Invitation for bids number.

(iii) Date of issuance.

(iv) Time specified for receipt of bids.

(v) Number of pages.

(vi) Requisition or other purchase authority.

(vii) Requirement for bidder to provide its name and complete address, including street, city, county, State, and ZIP code.

(viii) A statement that bidders should include in the bid the address to which payment should be mailed, if that address is different from that of the bidder.

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

5. 15.406–2 is amended by revising paragraph (a)(3)(vii) to read as follows:

15.406–2 Part I–The Schedule.

(a) * * *

(3) * * *

(viii) Requirement for the offeror or quoter to provide its name and complete address, including street, city, county, State and Zip Code.

* * * * *

15.506 [Amended]

6. Section 15.506 is amended in paragraph (b) by removing the reference "15.501" and inserting in its place "15.504".

15.605 [Amended]

7. Section 15.605 is amended in the second sentence of paragraph (f) by removing the figure "$250" and inserting in its place "$500".

15.611 [Amended]

8. Section 15.611 is amended in paragraph (b)(4) by removing the words "or Quotations".

PART 17—SPECIAL CONTRACTING METHODS

17.208 [Amended]

9. Section 17.208 is amended in paragraph (g) by removing the words "for services".

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

10. Section 19.303 is amended by revising the second sentence in paragraph (c)(1) to read as follows:

19.303 Determining product or service classifications.

* * * * *

(c) * * *

(1) * * * If the solicitation period is 30 days or is shorter than 30 days, the appeal must be filed not less than 5 business days before the bid opening or proposal submission date.

* * * * *

11. Section 19.508 is amended by revising paragraph (e) to read as follows:

19.508 Solicitation provisions and contract clauses.

* * * * *

(e) The contracting officer shall insert the clause at 52.219–14, Limitations on Subcontracting, in solicitations and contracts for supplies, services, and construction, if any portion of the requirement is to be set aside for small business or if the contract is to be awarded under subpart 19.8, except those awarded using small purchase procedures in part 13.

* * * * *

19.1001 [Amended]

12. Section 19.1001 is amended in the fifth sentence by removing the reference "sec. 714(a) of Pub. L. 100–656" and inserting in its place "sec. 713(a) of Pub L. 100–656".

19.1004 [Amended]

13. Section 19.1004 is amended by alphabetically adding the words "The Department of Interior" and removing "Department of Veterans Affairs" and adding alphabetically, "The Department of Veterans Affairs" in the list of agencies.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1308 [Amended]

14. Section 22.1308 is amended by redesignating paragraphs (a)(1) and (a)(2) as (a)(1)(i) and (a)(1)(ii) respectively; by redesignating paragraph (a) introductory text as (a)(1) and paragraph (c) as (a)(2).

PART 23—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

15. Section 23.504 is amended by revising paragraph (a)(6) to read as follows:

23.504 Policy.

(a) * * *

(6) Within 30 calendar days after receiving notice under subparagraph (a)(4) of this section of a conviction, taking one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

* * * * *

PART 24—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

24.000 [Amended]

16. Section 24.000 is amended by removing the reference "OMB Circular No. 108, July 9, 1975," and inserting in its place "OMB Circular No. A–130, December 12, 1985,".

PART 25—FOREIGN ACQUISITION

25.108 [Amended]

17. Section 25.108 is amended in the introductory text of paragraph (d)(2) by removing the words "subparagraph (1) above" and inserting in their place "subparagraph (d)(1) of this section".

25.406 [Amended]

18. Section 25.406 is amended by removing "Department of Veterans Affairs" and adding alphabetically, "The Department of Veterans Affairs" in the list of agencies.

PART 27—PATENTS, DATA, AND COPYRIGHTS

27.409 [Amended]

19. Section 27.409 is amended in the second sentence of paragraph (e) by removing the reference "27.404(f)(2)" and inserting in its place "27.404(f)(1)"; and in paragraph (r) by removing the clause number "52.227–21" and inserting in its place "52.227–22".

PART 29—TAXES

29.401–6 [Amended]

20. Section 29.401–6 is amended in paragraph (c)(1) by alphabetically adding the words "United States Department of Transportation" to the list of participating agencies.

PART 30—COST ACCOUNTING STANDARDS

30.201–4 [Amended]

21. Section 30.201–4 is amended in paragraph (b)(2) by removing the reference "52.230–3, Cost Accounting Standards," and inserting in its place "52.230–4, Administration of Cost Accounting Standards,".

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.205–38 [Amended]

22. Section 31.205–38 is amended in paragraph (f) by removing the words "Arms Export Contract Act" and inserting in their place "Arms Export Control Act".

PART 32—CONTRACT FINANCING

32.606 [Amended]

23. Section 32.606 is amended at the end of paragraph (b) by removing the date "1979" and inserting in its place "1978".

32.700 Scope of subpart.

24. Section 32.700 is amended by revising the title to read as set forth above.

PART 33—PROTESTS, DISPUTES, AND APPEALS

33.102 [Amended]

25. Section 33.102 is amended by removing in the first sentence of paragraph (b)(3) the reference "(48 CFR Part 61)" and inserting in its place "(48 CFR chapter 61)".

33.104 [Amended]

26. Section 33.104 is amended in paragraph (h)(2) by removing the reference "paragraph (g)(1) above" and inserting in its place "subparagraph (h)(1) of this section".

PART 42—CONTRACT ADMINISTRATION

42.102 [Amended]

27. Section 42.102(a) is amended in the second and third sentences by removing the zip code "22314" and inserting in its place in the second sentence "22304–6100", and by inserting in its place in the third sentence "22304–6178".

42.302 [Amended]

28. Section 42.302 is amended in paragraph (a)(65) by removing the parenthetical reference "(42.804–5)" and inserting in its place "(4.804–5)".

PART 46—QUALITY ASSURANCE

46.105 [Amended]

29. Section 46.105 is amended in paragraph (a)(3) by removing the words "acceptance quality" and inserting in their place "acceptable quality".

PART 47—TRANSPORTATION

47.301–3 [Amended]

30. Section 47.301–3 is amended in the introductory text of paragraph (c) by removing the words "contract point" and inserting in their place "contact point".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.203–12 [Amended]

31. Section 52.203–12 is amended in the clause by redesignating the paragraphs shown in first column as the paragraphs shown in second column:

Current paragraph designation	New paragraph designation
(b)(3)(iii)	(c)
(b)(3)(iii)(A)	(c)(1)
(b)(3)(iii)(B)	(c)(2)
(b)(3)(iii)(B)(*1*)	(c)(2)(i)
(b)(3)(iii)(B)(*2*)	(c)(2)(ii)
(b)(3)(iii)(B)(*3*)	(c)(2)(iii)
(b)(3)(iii)(C)	(c)(3)
(b)(3)(iii)(D)	(c)(4)
(b)(3)(iv)	(d)
(b)(3)(v)	(e)
(b)(3)(v)(A)	(e)(1)
(b)(3)(v)(B)	(e)(2)
(b)(3)(vi)	(f)

52.210–1 [Amended]

32. Section 52.210–1 is amended in paragraph (a) of the clause by removing the words "(Tel. 202–472–2205 or 472–2140)" and inserting in their place "(Tel. 202–708–9205 or 708–7140)".

52.210-2 [Amended]

33. Section 52.210-2 is amended in the clause to revise the address to read as follows:

Standardization Document, Order Desk, Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 1911-5094
Telex Number: 834295
Western Union Number: 710-670-1685
Telephone Number: (215) 697-3321 (Express shipment pickup)
Telephone Order Entry System (TOES) Numbers: 215-697-1187 through and including 215-697-1197

52.212-7 [Amended]

34. Section 52.212-7 is amended in the title of the clause by removing the date "(MAY 1986)" and inserting in its place "(SEP 1990)"; and by removing in the clause the reference "(15 CFR Part 350)" and inserting in its place "(15 CFR part 700)".

52.212-8 [Amended]

35. Section 52.212-8 is amended in the title of the clause by removing the date "(MAY 1986)" and inserting in its place "(SEP 1990)"; and by removing in the clause the reference "(15 CFR Part 350)" and inserting in its place "(15 CFR part 700)".

52.215-5 [Amended]

36. Section 52.215-5 is amended in the provision by moving the definition for "Government" to appear before the definition for "Offer".

52.216-22 [Amended]

37. Section 52.216-22 is amended in the clause of the last sentence of paragraph (d) by removing the word "contact" and inserting in its place "contract".

52.219-12 [Amended]

38. Section 52.219-12 is amended in Alternate I of the clause by redesignating existing paragraphs (4), (5), and (6) as new paragraphs (b)(5), (b)(6), and (b)(7).

52.219-18 [Amended]

39. Section 52.219-18 is amended in the introductory text of Alternate III of the clause by removing the words "paragraph (d) for paragraph (d)" and inserting in their place "paragraph (d)(1) for paragraph (d)(1)"; and by redesignating existing paragraph (d) as new paragraph (d)(1).

40. Section 52.222-2 is amended by revising paragraph (a) of the clause and its asterisked footnote to read as follows:

52.222-2 Payment for Overtime Premiums.

* * * * *

(a) The use of overtime is authorized under this contract if the overtime premium cost does not exceed *. . . . . or the overtime premium is paid for work—

* * * * *

*Insert either "zero" or the dollar amount agreed to during negotiations.

52.222-23 [Amended]

41. Section 52.222-23 is amended paragraph (d) of the clause by redesignating existing paragraphs (d)(1), (2), (3), and (4) as new paragraphs (d)(2), (3), (4), and (5) respectively; and by removing in newly redesignated paragraph (d)(2)(i) the word "Employer" and inserting in its place "Employer's".

52.222-27 [Amended]

42. Section 52.222-27 is amended in paragraph (g)(13) of the clause by inserting a comma following the word "practices".

52.222-35 [Amended]

43. Section 52.222-35 is amended in paragraph (d)(1) of the clause by removing the words "50 states" and inserting "50 States".

52.223-1 [Amended]

44. Section 52.223-1 is amended in paragraph (a) of the clause by adding the acronym "(EPA)" following the words "Environmental Protection Agency"; and in paragraph (b) by removing "Environmental Protection Agency" and inserting "EPA".

52.223-2 [Amended]

45. Section 52.223-2 is amended in paragraph (a) of the clause in the definitions "Clean water standards", "Compliance", and "Facility" by adding the acronym "(EPA)" following the words "Environmental Protection Agency"; and in paragraph (b)(2), by removing the words "Environmental Protection Agency" and inserting in their place "(EPA)".

52.227-12 [Amended]

46. Section 52.227-12 is amended in paragraph (o)(1)(iv) of the clause by removing the reference "(f)(6) above" and inserting in its place "(f)(8) of this clause".

52.228-8 [Amended]

47. Section 52.228-8 is amended in paragraph (a)(2) of the clause by removing the reference "(28 U.S.C. 2671-2680)" and inserting in its place "(28 U.S.C. 2671-26870)".

52.232-10 [Amended]

48. Section 52.232-10 is amended in paragraph (c) of the clause by removing the second sentence.

52.232-16 [Amended]

49. Section 52.232-16 is amended in the clause in the introductory text of paragraph (c), by removing the word "acquisitions" and inserting in its place "actions".

52.236-13 [Amended]

50. Section 52.236-13 is amended in paragraph (b) of the clause by removing the date "October 1984" and inserting in its place "October 1987".

52.236-21 [Amended]

51. Section 52.236-21 is amended in the introductory text by removing in the first sentence the reference "36.521" and inserting in its place "36.520".

52.243-7 [Amended]

52. Section 52.243-7 is amended in the second sentence of paragraph (a) of the clause by removing the words "Specifically authorized representative" and by inserting in their place "Specifically Authorized Representative".

52.246-17 [Amended]

53. Section 52.246-17 is amended in the introductory text of paragraph (c)(3)(i) of the clause by removing the word "suppliers" and inserting in its place "supplies".

54. Section 52.247-1 is amended by revising the introductory text in paragraph (a) to read as follows:

52.247-1 Commercial bill of lading notations.

(a) As prescribed in 47.104-4(a), insert the following clause:

* * * * *

52.249-2 [Amended]

55. Section 52.249-2 is amended in Alternate II of the clause by removing the reference "subparagraph (a)(2)" and inserting in its place "subparagraph (l)(2)."

PART 53—FORMS

53.203 [Amended]

56. Section 53.203 is amended in paragraph (a) by removing the date "(*REV. 10/83*)" and inserting in its place "(*REV. 1/90*)".

57. Section 53.222 is amended by revising paragraph (C) to read as follows:

53.222 Application of labor laws to Government acquisitions (SF's 99, 308, 1093, 1413, 1444, 1445, 1446, WH-347).

* * * * *

(c) *SF 308 (DOL) (REV. 5/85), Request for Wage Determination and Response to Request.* (See 22.404-3 (a) and (b).)

* * * * *

58. Section 53.301-308 is revised to read as follows:

53.301-308 Standard Form 308, Request for Determination and Response to Request.

Request For Wage Determination And
Response To Request
(Davis Bacon Act as Amended and Related Statutes)

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

FOR DEPARTMENT OF LABOR USE

Response To Request

☐ Use area determination issued for this area

_____

_____

☐ The attached decision noted below is applicable to this project

Decision Number

Date of Decision

Expires

Supersedes Decision Number

Approved

Mail Your Request To

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Branch of Construction Contract Wage Determinations
Washington, D.C. 20210

Requesting Officer *(Typed name and signature)*

Department, Agency, or Bureau		Phone Number
Date of Request	Estimated Advertising Date	Estimated Bid Opening Date
Prior Decision Number *(If any)*	Estimated $ Value of Contract ☐ Under ½ Mil ☐ 1 to 5 Mil ☐ ½ to 1 Mil ☑ Over 5 Mil	Type of Work ☐ Bldg ☐ Highway ☐ Resid ☐ Heavy

Address to which wage determination should be mailed *(Print or type)*

Location of Project *(City, County, State, Zip Code)*

Description of Work *(Be specific) (Print or type)*

CHECK OR LIST CRAFTS NEEDED
(Attach continuation sheet if needed)

___ Asbestos workers
___ Boilermakers
___ Bricklayers
___ Carpenters
___ Cement masons
___ Electricians
___ Glaziers
___ Ironworkers
___ Laborers *(Specify classes)*
___ _____
___ _____
___ _____
___ Lathers
___ Marble & tile setters, terrazzo workers
___ Painters
___ Piledrivermen
___ Plasterers
___ Plumbers
___ Roofers
___ Sheet metal workers
___ Soft floor layers
___ Steamfitters
___ Welders—rate for craft
___ Truck drivers
___ Power equipment operators *(Specify types)*
___ _____
___ _____
___ _____
___ _____
___ _____
___ _____

Other Crafts
___ _____
___ _____
___ _____
___ _____

308-104
NSN 7540-00-105-0078

Standard Form 308 (Rev May 1985)
U.S Department of Labor –29 CFR Part 1

BILLING CODE 6830-34-M

59. Section 53.301–1447 is added to read as follows:

53.301–1447 Solicitation/Contract.

SOLICITATION/CONTRACT
BIDDER/OFFEROR TO COMPLETE BLOCKS 11, 13, 15, 21, 22, & 27.

1 THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350) | RATING | PAGE 1 OF

2. CONTRACT NO. | 3. AWARD/EFFECTIVE DATE | 4. SOLICITATION NUMBER | 5. SOLICITATION TYPE ☐ SEALED BIDS (IFB) ☐ NEGOTIATED (RFP) | 6. SOLICITATION ISSUE DATE

7. ISSUED BY CODE

NO COLLECT CALLS

8. THIS ACQUISITION IS
☐ UNRESTRICTED
☐ SET ASIDE % FOR
☐ SMALL BUSINESS
SIC: SIZE STANDARD
☐ LABOR SURPLUS AREA CONCERNS
☐ COMBINED SMALL BUSINESS & LABOR SURPLUS AREA CONCERNS
☐ OTHER

9. (AGENCY USE)

10. ITEMS TO BE PURCHASED (BRIEF DESCRIPTION)
☐ SUPPLIES ☐ SERVICES

11. IF OFFER IS ACCEPTED BY THE GOVERNMENT WITHIN _____ CALENDAR DAYS (60 CALENDAR DAYS UNLESS OFFEROR INSERTS A DIFFERENT PERIOD) FROM THE DATE SET FORTH IN BLK 9 ABOVE, THE CONTRACTOR AGREES TO HOLD ITS OFFERED PRICES FIRM FOR THE ITEMS SOLICITED HEREIN AND TO ACCEPT ANY RESULTING CONTRACT SUBJECT TO THE TERMS AND CONDITIONS STATED HEREIN.

12. ADMINISTERED BY CODE

13. CONTRACTOR OFFEROR CODE FACILITY CODE

TELEPHONE NO. DUNS NO.
☐ CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER

14. PAYMENT WILL BE MADE BY CODE

SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK

15. PROMPT PAY DISCOUNT

16. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION
☐ 10 U.S.C. 2304 (C) ( )
☐ 41 U.S.C. 253 (C) ( )

17. ITEM NO.	18. SCHEDULE OF SUPPLIES/SERVICES	19. QUANTITY	20. UNIT	21. UNIT PRICE	22. AMOUNT

23. ACCOUNTING AND APPROPRIATION DATA

24. TOTAL AWARD AMOUNT (FOR GOVT USE ONLY)

25. ☐ CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY CONTINUATION SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN.

26. ☐ AWARD OF CONTRACT YOUR OFFER ON SOLICITATION NUMBER SHOWN IN BLOCK 4 INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS

27. SIGNATURE OF OFFEROR/CONTRACTOR

NAME AND TITLE OF SIGNER (TYPE OR PRINT) | DATE SIGNED

28. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)

NAME OF CONTRACTING OFFICER | DATE SIGNED

NSN 7540–01–218–4386 1447-101 STANDARD FORM 1447 (5-88)
Prescribed by GSA
FAR (48 CFR 53.215-1(g))

NO RESPONSE FOR REASONS CHECKED			
	CANNOT COMPLY WITH SPECIFICATIONS		CANNOT MEET DELIVERY REQUIREMENT
	UNABLE TO IDENTIFY THE ITEM(S)		DO NOT REGULARLY MANUFACTURE OR SELL THE TYPE OF ITEMS INVOLVED
	OTHER (Specify)		
	WE DO		WE DO NOT, DESIRE TO BE RETAINED ON THE MAILING LIST FOR FUTURE PROCUREMENT OF THE TYPE OF ITEM(S) INVOLVED

NAME AND ADDRESS OF FIRM (Include Zip Code)	SIGNATURE
	TYPE OR PRINT NAME AND TITLE OF SIGNER

FROM

AFFIX STAMP HERE

TO:

SOLICITATION NO. _____

DATE AND LOCAL TIME _____

GPO : 1988 - 219-705

SF 1447 (5-88) BACK

60. Section 53.302–90 is added to read as follows:

53.302–90 Release of Lien on Real Property

RELEASE OF LIEN ON REAL PROPERTY

Whereas _____, of _____, by a bond
(Name) (Place of Residence)
for the performance of U.S. Government Contract Number _____,
became a surety for the complete and successful performance of said contract, which bond includes a lien upon certain real property further described hereafter, and

Whereas said surety established the said lien upon the following property

and recorded this pledge on _____
(Name of Land Records)
In the _____ of _____,
(Locality) (State)
and

Whereas, I, _____, being a duly authorized representative of the United States Government as a warranted contracting officer, have determined that the lien is no longer required to ensure further performance of the said Government contract or satisfaction of claims arising therefrom,
and

Whereas the surety remains liable to the United States Government for continued performance of the said Government contract and satisfaction of claims pertaining thereto.

Now, therefore, this agreement witnesseth that the Government hereby releases the aforementioned lien.

[Date] [Signature]

Seal

61. Section 53.302–91 is added to read as follows:

§ 53.302–91 Release of Personal Property from Escrow.

RELEASE OF PERSONAL PROPERTY FROM ESCROW

Whereas _____, of _____, by a bond
(Name) (Place of Residence)
for the performance of U.S Government Contract Number _____,
became a surety for the complete and successful performance of said contract, and

Whereas said surety has placed certain personal property in escrow

In Account Number _____ on deposit

at _____
(Name of Financial Institution)

located at _____, and
(Address of Financial Institution)

Whereas I, _____, being a duly authorized representative of the United States Government as a warranted contracting officer, have determined that retention in escrow of the following property is no longer required to ensure further performance of the said Government contract or satisfaction of claims arising therefrom:

and

Whereas the surety remains liable to the United States Government for the continued performance of the said Government contract and satisfaction of claims pertaining thereto.

Now, therefore, this agreement witnesseth that the Government hereby releases from escrow the property listed above, and directs the custodian of the aforementioned escrow account to deliver the listed property to the surety. If the listed property comprises the whole of the property placed in escrow in the aforementioned escrow account, the Government further directs the custodian to close the account and to return all property therein to the surety, along with any interest accruing which remains after the deduction of any fees lawfully owed to _____.
(Name of Financial Institution)

[Date] [Signature]

Seal

OPTIONAL FORM 91 (1-90)
Prescribed by GSA
FAR (48 CFR) 53.228(o)

AUTHORIZED FOR LOCAL REPRODUCTION

BILLING CODE 6820-34-C

Correction to the Federal Register

62. In FR Doc. 89–27616, amendatory instruction number 95 was inadvertently added and is hereby removed.

[FR Doc. 90–21554 Filed 9–17–90; 8:45 am]
BILLING CODE 6820–34–M

federal register

Tuesday
September 18, 1990

Part V

The President

Proclamation 6180—National POW/MIA Recognition Day, 1990

Part V

The President

Federal Register
Vol. 55, No. 181
Tuesday, September 18, 1990

Presidential Documents

Title 3—

The President

Proclamation 6180 of September 14, 1990

National POW/MIA Recognition Day, 1990

By the President of the United States of America

A Proclamation

Our Nation owes a lasting debt of gratitude to all those selfless and heroic members of our Armed Forces who have risked their own freedom and safety to defend the lives and liberty of others. On this occasion, as a measure of our thanks and as an expression of our determination to keep faith with those who have so faithfully served and defended us, we remember in a special way those Americans who remain missing and unaccounted for.

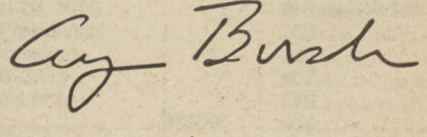
In honor of these Americans, on September 21, 1990, the National League of Families POW/MIA flag will be flown over the White House, the U.S. Departments of State, Defense, and Veterans Affairs, the Selective Service System headquarters, and the Vietnam Veterans Memorial. This proudly upheld black and white emblem symbolizes our firm and united commitment to securing the release of any Americans who may still be held against their will, to obtaining the fullest possible accounting for the missing, and to repatriation of all recoverable American remains.

Our Nation will not forget its POWs/MIAs and the devoted service they have bravely rendered to our country. Neither will we fail to meet our obligation to their families. All Americans recognize the profound suffering of those who continue to await word of their loved ones' fate, and we are determined to help them gain the peace and consolation that word will bring.

The Congress, by House Joint Resolution 467, has designated Friday, September 21, 1990, as "National POW/MIA Recognition Day" and has authorized and requested the President to issue a proclamation in observance of this day. Through Section 2 of this resolution, the Congress has also designated the National League of Families POW/MIA flag as the official symbol of our Nation's commitment to obtaining the fullest possible accounting for those Americans who remain missing and unaccounted for in Southeast Asia.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim September 21, 1990, as National POW/MIA Recognition Day. I urge all Americans to join in honoring former American POWs, as well as those U.S. servicemen and civilians still missing in action. I also encourage the American people to express their gratitude for the extraordinary sacrifices made on behalf of this country by the families of POWs/MIAs. Finally, I call upon State and local officials and private organizations to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of September, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.



[FR Doc. 90-22281
Filed 9-17-90; 11:07 am]
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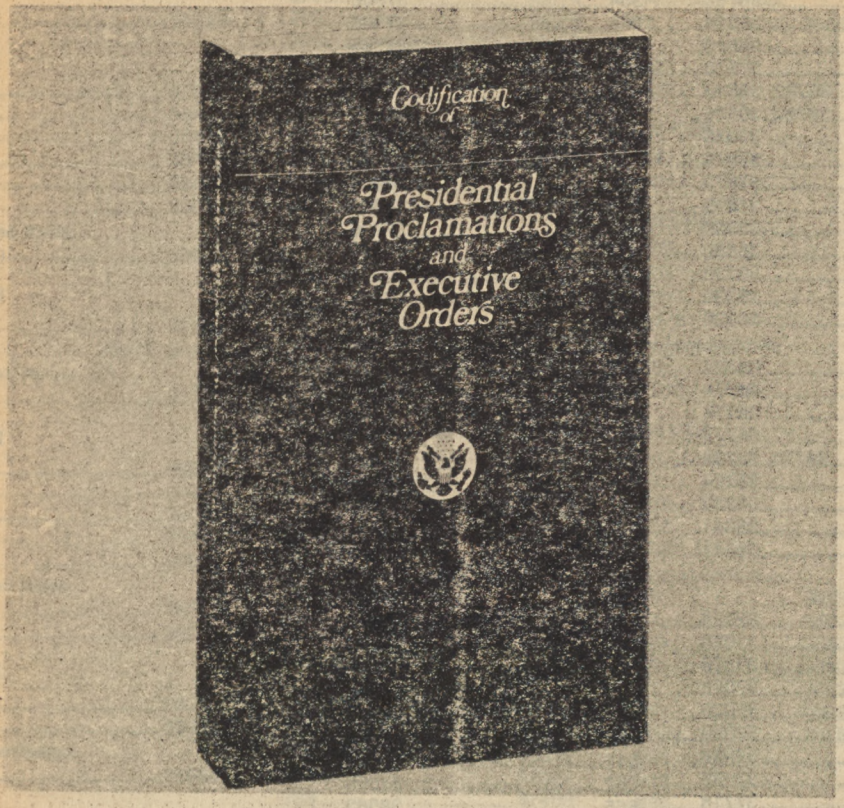
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Last List August 22, 1990

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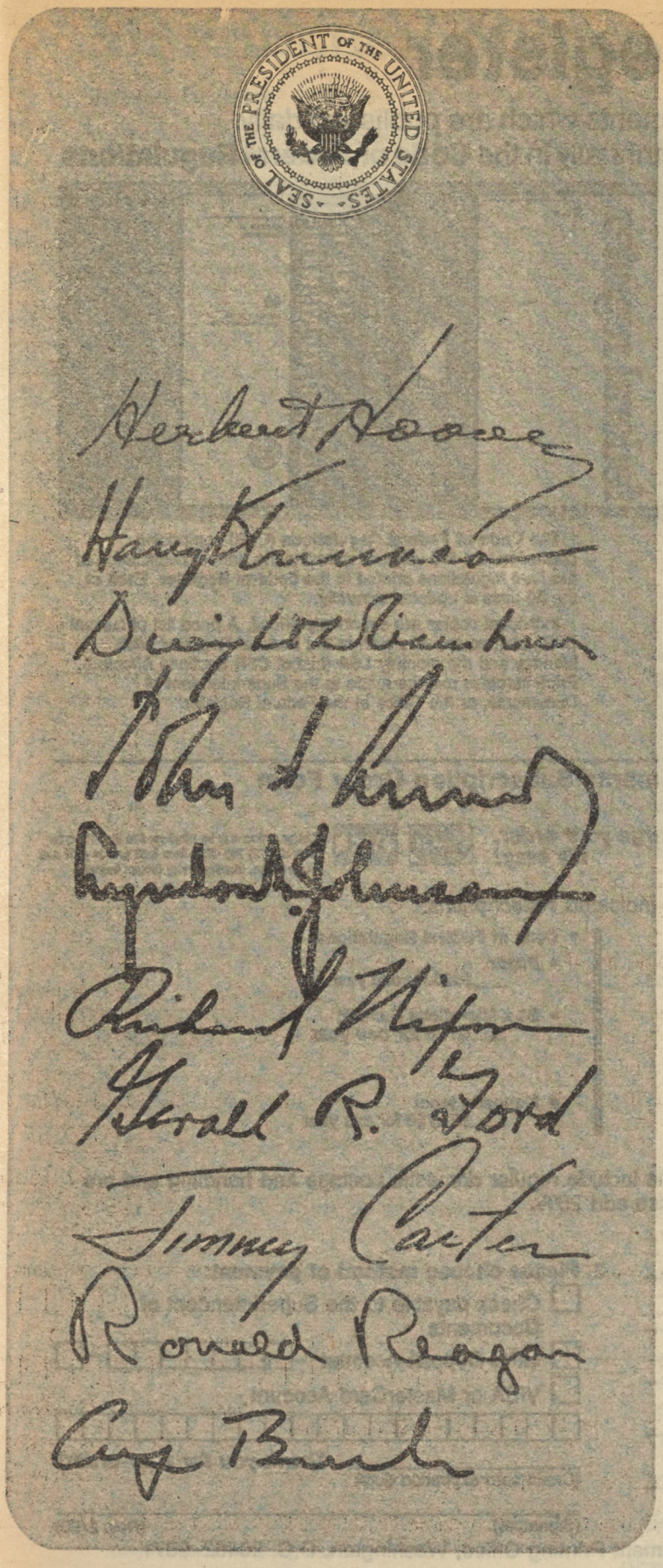
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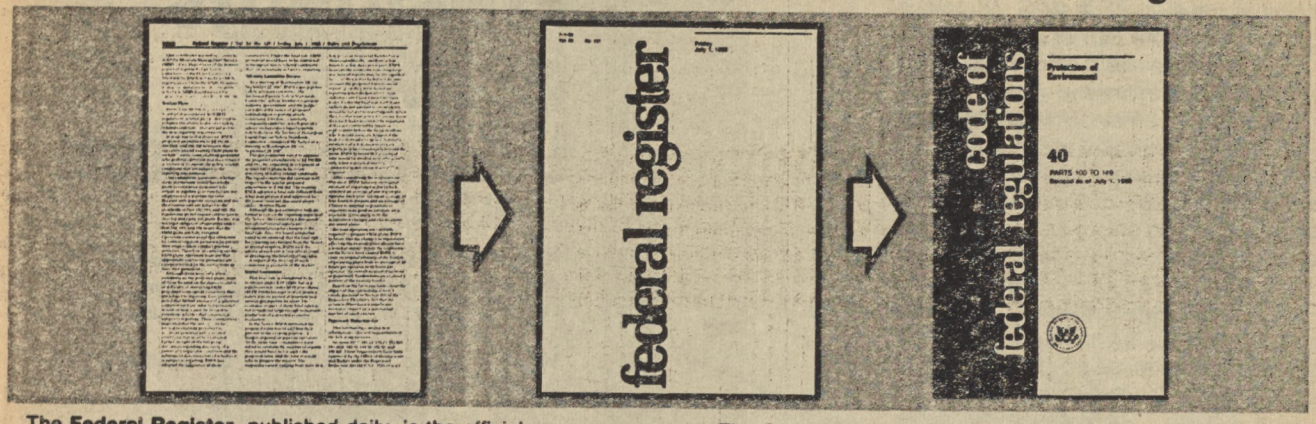
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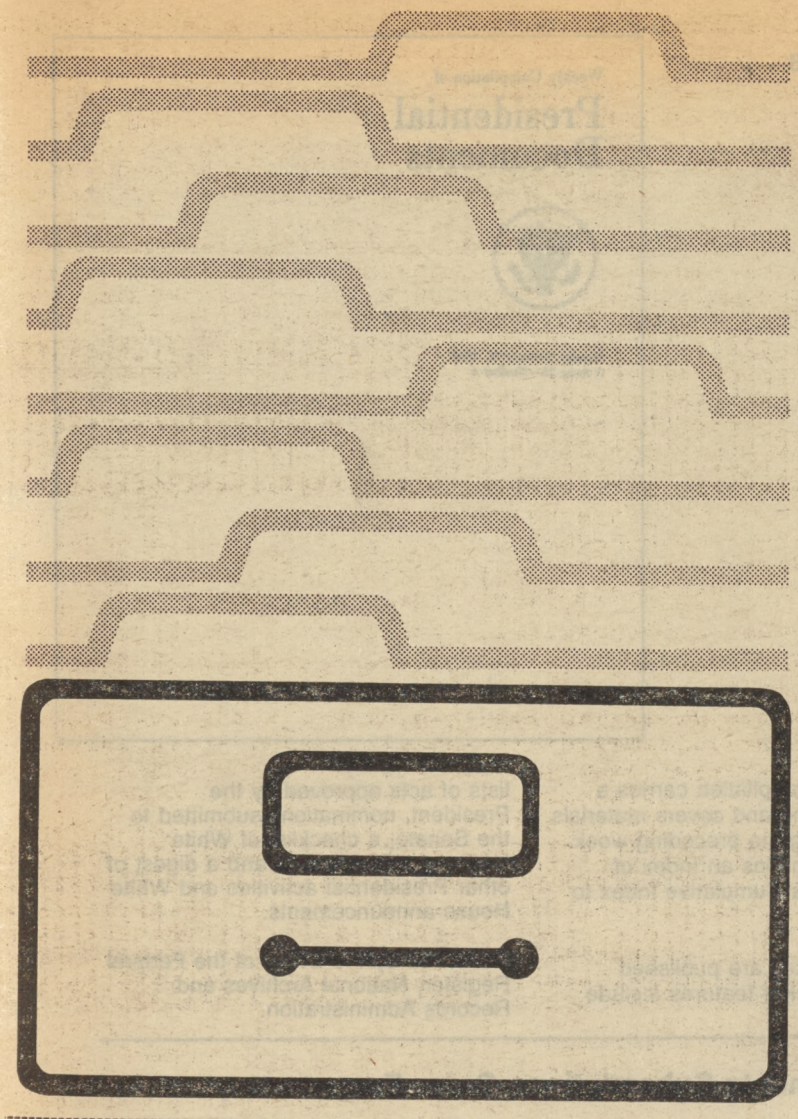
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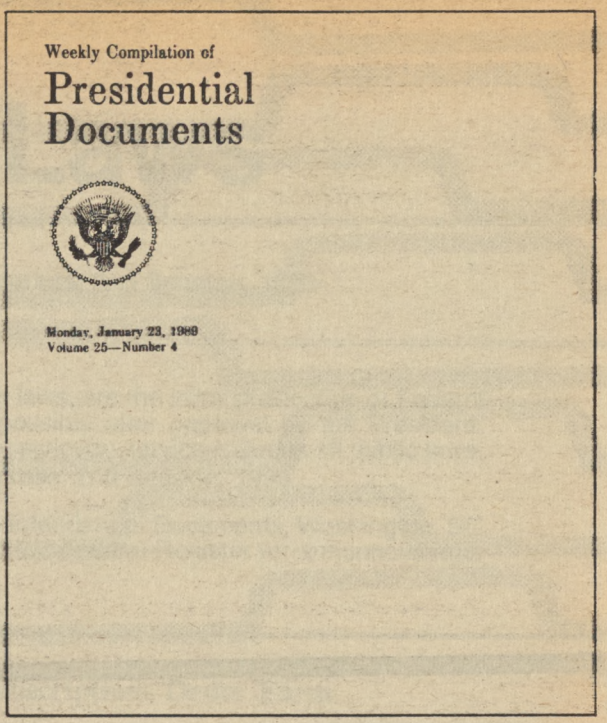
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